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Notice of Appeal of the
Public Service Electric and Gas Company.

Filed February 17, 1929.

In Chancery of New Jersey

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Between

DODGE & BLISS COMPANY, a
corporation,

Complainant,

and

MAYOR AND ALDERMEN OF
JERSEY CITY, a municipal
corporation, *et al.*,

Defendants.

On Bill, &c.

*Notice of
Appeal.*

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The defendant Public Service Electric and Gas Company hereby appeals from the amended final decree in the above-entitled cause made by the Chancellor on the advice of Vice-Chancellor Bentley on the twenty-third day of January, Nineteen hundred and twenty-nine, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

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Dated: February 14, 1929.

FRANK BERGEN,
Solicitor for and of Counsel with the
Defendant Public Service Electric
and Gas Company.

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Notice of Appeal of Public Serv. Elec. & Gas Co.

I conceive there is good cause for appeal in the above-entitled cause.

WILLIAM H. SPEER,
Of Counsel with the Defendant Public
Service Electric and Gas Company.

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Petition of Appeal of the
Public Service Electric and Gas Company.

Filed February 28, 1929.

New Jersey Court of Errors and Appeals

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DODGE & BLISS COMPANY, a corporation,

Complainant-Appellee,

vs.

PUBLIC SERVICE ELECTRIC AND
GAS COMPANY, a corporation,
Defendant-Appellant.

*On Appeal
from the
Court of
Chancery.*

*Petition of
Appeal.*

To the Honorable the Court of Errors and
Appeals in the last resort in all causes:

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The petition of Public Service Electric and
Gas Company, the defendant-appellant in the
above-entitled cause, respectfully shows that:

Petitioner finds itself aggrieved by an amended
final decree made in the Court of Chancery by
his Honor Edwin Robert Walker, Chancellor
of the State of New Jersey, bearing date the
twenty-third day of January, nineteen hundred
and twenty-nine, in a certain cause in said
Court of Chancery, wherein the said Dodge &
Bliss Company was complainant, and Mayor and
Aldermen of Jersey City, a municipal corpora-
tion, and said Public Service Electric and Gas
Company, were defendants, in this respect, to
wit: that the said decree orders, adjudges and
decrees that the filing of a certain map in the
office of the Clerk (now Register) of Hudson
County, entitled "Map of property belonging to

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Petition of Appeal of P. S. Elec. & Gas Co.

Stephen Morgan and J. H. Van Reyphen, in the tenth ward of Jersey City, January, 1870, Levi W. Post, City Surveyor," and the references thereto and to the said Van Keuren avenue in certain deeds of conveyance do not constitute nor operate as a dedication of the streets delineated on said map on the lands and premises described in the bill of complaint and that there was not a public user of so-called "Van Keuren avenue," nor of any other street delineated on said map except Fourth street (now West Side avenue) and Ninth street (now Duffield avenue) on the said lands and premises; and that as to the portions of said lands and premises on which the streets were delineated on said map excepting West Side avenue and Duffield avenue, and that as to the alleged private way over the said property, the defendants, and each of them have and has no estate, right or interest in the same or any part thereof, except the rights of the defendant Public Service Electric and Gas Company under its conduit agreement with the complainant; and that in respect to all of the said lands and premises as described in the bill of complaint so far as relates to any claim thereon by or on behalf of any of the defendants, the title of the complainant in and to the same and every part thereof, is hereby determined, fixed and settled, and declared to be good, subject to the public rights in West Side avenue and Duffield avenue, both of which are recognized as public streets and subject to the rights of Public Service Electric and Gas Company under its said conduit agreement; and that the defendants do pay the complainant its costs to be taxed.

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon

Petition of Appeal of P. S. Elec. & Gas Co.

the ground that the same is erroneous, illegal and contrary to equity in that:

(a) It was decreed that there was no dedication of Van Keuren avenue to public use as a public street or highway.

(b) It was decreed that there was no dedication and acceptance of Van Keuren avenue to public use as a public street or highway. 10

(c) The use of Van Keuren avenue by the public for over twenty years established a public user in said street.

(d) The reference to Van Keuren avenue in the deeds to complainant-appellee from their predecessors in title established a dedication and acceptance of Van Keuren avenue for the public use and complainant-appellee is estopped from asserting to the contrary. 20

(e) The trustee was acting within the power of his trust when he filed in the office of the Clerk (now Register) of Hudson County a map entitled "Map of property belonging to Stephen Morgan and J. H. Van Reyden in the tenth ward of Jersey City, January, 1870, Levi W. Post, City Surveyor" and a dedication of said street to public use was thereby established which was accepted and recognized by the complainant-appellee when it accepted deeds which included Van Keuren avenue in the description which referred to Van Keuren avenue as a boundary line. 30

(f) The defendant-appellant established by adverse use thereof for a period of over twenty years, a right to use said Van Keuren avenue.

(g) Costs of this action should not have been taxed against this defendant. 40

Petition of Appeal of P. S. Elec. & Gas Co.

(h) The order in other respects is unlawful and contrary to equity and good conscience.

10 Petitioner therefore prays that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden and that petitioner may have such other relief in the premises as to this Court may seem proper.

FRANK BERGEN,
Solicitor for and of Counsel with
Appellant.

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**Notice of Appeal of the
Mayor and Aldermen of Jersey City.**

Filed April 23, 1929.

IN CHANCERY OF NEW JERSEY.

<i>Between</i> DODGE & BLISS COMPANY, a corporation, <i>Complainant,</i> <i>and</i> MAYOR AND ALDERMEN OF JERSEY CITY, a municipal corporation, <i>et al.</i>, <i>Defendants.</i>	}	<i>On Bills, &c.</i> <i>Notice of Appeal.</i>
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The defendant, Mayor and Aldermen of Jersey City, hereby appeals from the amended final decree in the above-entitled cause made by the Chancellor on the advice of Vice-Chancellor Bentley on the twenty-third day of January, nineteen hundred and twenty-nine, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

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Dated: February 21, 1929.

THOMAS J. BROGAN,
Solicitor for and of Counsel with
the Defendant, Mayor and Aldermen
of Jersey City.

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Notice of Appeal of Jersey City.

I conceive there is good cause for appeal in the above-entitled cause.

CHARLES A. ROONEY,
Of Counsel with Defendant, Mayor and
Aldermen of Jersey City.

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**Petition of Appeal of the
Mayor and Aldermen of Jersey City.**

Filed April 23, 1929.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

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DODGE & BLISS COMPANY, a corporation,

Complainant-Appellee,

vs.

THE MAYOR AND ALDERMEN OF
JERSEY CITY, a municipal corporation, and PUBLIC SERVICE
ELECTRIC AND GAS COMPANY,
a corporation,

Defendants-Appellants.

*On Appeal
from the
Court of
Chancery.*

*Petition of
Appeal.*

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To the Honorable the Court of Errors and
Appeals in the last resort in all causes:

The petition of The Mayor and Aldermen of
Jersey City, defendant-appellant, in the above-
entitled cause, respectfully shows that:

Petitioner finds itself aggrieved by an amended
final decree made in the Court of Chancery by
his Honor Edwin Robert Walker, Chancellor
of the State of New Jersey, bearing date the
twenty-third day of January, nineteen hundred
and twenty-nine, in a certain cause in said Court
of Chancery, wherein the said Dodge & Bliss
Company was complainant, and Mayor and Aldermen of Jersey City, a municipal corporation, and Public Service Electric and Gas Company were defendants, in this respect, to wit: That the said

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Petition of Appeal of Jersey City.

decree orders, adjudges and decrees that the filing of a certain map in the office of the Clerk (now Register) of Hudson County, entitled "Map of Property belonging to Stephen Morgan and J. H. Van Reypen, in the tenth ward of Jersey City, January 1870, Levi W. Post, City Surveyor," and the references thereto and to the said Van Keuren avenue in certain deeds of conveyance do not constitute nor operate as a dedication of the streets delineated on said map on the lands and premises described in the bill of complaint and that there was not a public user of so-called "Van Keuren avenue," nor of any other street delineated on said map except Fourth street (now West Side avenue) and Ninth street (now Duffield avenue) on the said lands and premises; and that as to the portions of said lands and premises on which the streets were delineated on said map excepting West Side avenue and Duffield avenue, the defendants, and each of them have and has no estate, right or interest in the same or any part thereof, except the rights of the defendant Public Service Electric and Gas Company under its conduit agreement with the complainant; and that in respect to all of the said lands and premises as described in the bill of complaint so far as relates to any claim thereon by or on behalf of any of the defendants, the title of the complainant in and to the same and every part thereof, is hereby determined, fixed and settled, and declared to be good, subject to the public rights in West Side avenue and Duffield avenue, both of which are recognized as public streets and subject to the rights of Public Service Electric and Gas Company under its said conduit agreement; and that the defendants do pay the complainant its costs to be taxed.

Petition of Appeal of Jersey City.

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, illegal and contrary to equity in that:

(a) It was decreed that there was no dedication of Van Keuren avenue to public use as a public street or highway. 10

(b) It was decreed that there was no dedication and acceptance of Van Keuren avenue to public use as a public street or highway.

(c) It was decreed that there was no dedication of James avenue and other streets referred to on map on file in the office of the Clerk (now Register) of Hudson County, entitled "Map of property belonging to Stephen Morgan and J. H. Van Reyphen in the tenth ward of Jersey City, January 1870, Levi W. Post, City Surveyor." 20

(d) Petitioner urges that the use of Van Keuren avenue, and other streets, referred to on the aforementioned map, by the public for over twenty years established a public user in said streets.

(e) The reference to Van Kuren avenue and other streets mentioned on the aforementioned map in deeds to complainant-appellee from its predecessor in title and to others in the chain of title, established a dedication and acceptance of Van Keuren avenue, and other public streets, within the premises mentioned in the bill of complaint for the public use and complainant-appellee is estopped from asserting to the contrary. 30

(f) The trustee was acting within the power of his trust when he filed in the office of the Clerk (now Register) of Hudson County a map entitled 40

Petition of Appeal of Jersey City.

- 10 “Map of property belonging to Stephen Morgan and J. H. Van Reyphen in the tenth ward of Jersey City, January 1870, Levi W. Post, City Surveyor.”, and a dedication of said streets to public use was thereby established, which was accepted and recognized by the complainant-appellee when it accepted deeds which included Van Keuren avenue and other streets mentioned in the aforementioned map in the description which referred to Van Keuren avenue and other streets and boundary lines.

(g) Costs of this action should not have been taxed against this defendant.

(h) The decree in other respects is unlawful and contrary to equity and good conscience.

- 20 Petitioner therefore prays that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden and that petitioner may have such other relief in the premises as to this court may seem proper.

THOMAS J. BROGAN,
Solicitor for and of Counsel with
Appellant, The Mayor and Aldermen of Jersey City.

**Answer to Petition of Appeal of the
Public Service Electric and Gas Company.**

Filed March 9, 1929.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

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DODGE & BLISS COMPANY, a corporation, <i>Respondent,</i> <i>vs.</i> PUBLIC SERVICE ELECTRIC AND GAS COMPANY, a corporation, <i>Appellant.</i>	}	<i>On Appeal from Chancery. Answer.</i>
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The answer of respondent, Dodge & Bliss Company, to the petition of the appeal of the appellant, Public Service Electric & Gas Company.

This respondent, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto, nevertheless admits that an amended final decree was, on the 23rd day of January, 1929, made and entered in the Court of Chancery of New Jersey, in the above-entitled cause for the purpose in said petition mentioned, and as therein set forth, but as to the substance and form of said amended decree, this respondent begs leave to refer thereto when the same shall be produced.

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And this respondent is advised and believes that said amended decree is agreeable to equity

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Answer to Petition of Appeal.

and good conscience, and prays that said amended decree be affirmed.

HERBERT CLARK GILSON,
Solicitor and of Counsel with Dodge &
Bliss Company.

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**Answer to Petition of Appeal of the
Mayor and Aldermen of Jersey City.**

Filed April 29, 1929.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

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Between

DODGE & BLISS COMPANY, a
corporation,
Complainant-Respondent,
and

THE MAYOR AND ALDERMEN OF
JERSEY CITY, a municipal
corporation, and PUBLIC
SERVICE ELECTRIC & GAS
COMPANY, a corporation,
Defendants-Appellants.

*On Appeal
from
Chancery.*

*Answer to
Petition of
Appeal of
the Mayor
and Aldermen
of Jersey
City.*

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The answer of the respondent, Dodge & Bliss Company, to the petition of appeal of the appellant, The Mayor and Aldermen of Jersey City.

The respondent, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto, nevertheless admits that an amended final decree was, on the 23rd of January, 1929, made and entered in the Court of Chancery of New Jersey, in the above-entitled cause for the purpose in said petition mentioned and as therein set forth, but as to the substance and form of said amended decree, this respondent begs leave to refer thereto when the same shall be produced.

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Answer to Petition of Appeal.

And this respondent is advised and believes that said amended decree is agreeable to equity and good conscience, and prays that said amended decree be affirmed.

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HERBERT CLARK GILSON,
Solicitor for and of Counsel with
Dodge & Bliss Company, Re-
spondent.

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BILL OF COMPLAINT.

Filed April 10, 1928.

IN CHANCERY OF NEW JERSEY.

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

Complainant, Dodge & Bliss Company, a corporation organized and existing under the laws of the State of New Jersey, having its principal office in Jersey City, Hudson County, New Jersey, respectfully shows that.

1. Complainant is in peaceable possession of the following described lands in this State, claiming to own the same:

All that tract or parcel of lands and premises situate, lying and being in the City of Jersey City, in the County of Hudson, and State of New Jersey, more particularly described as follows: 20

BEGINNING at a point in the exterior line for solid filling on the easterly shore of the Hackensack River as established by the Riparian Commission of the State of New Jersey, and at the intersection of the southwesterly corner of the lands conveyed by Dodge & Bliss Company to The Holland Company, by deed dated March 30, 1917, and recorded in the Office of the Register of Deeds for Hudson County in Book 1252 of deeds page 216, and running thence (1) along the said exterior line for solid filling south twenty-six degrees thirty minutes (26 deg 30') West two hundred and seventy feet (270) to a point; thence (2) south fifty degrees nine minutes (50 deg 9') East two hundred seventy-three and eighty hundredths (273.80) feet to the center 30
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Bill of Complaint.

of Duffield Avenue; thence (3) south fifty-eight degrees thirty-six minutes (58 deg 36') East eleven hundred thirty-six and fifty hundredths (1136.50) to a point; thence (4) south forty-one degrees eighteen minutes (41 deg 18') East three hundred seventy-two and forty-one hundredths (372.41) feet to a point; thence (5) south fifty-eight degrees thirty-six minutes (58 deg 36') East one hundred sixty-nine and sixty-eight hundredths feet (169.68) feet to a stone monument in the centre of West Side Avenue; thence (6) north thirty-one degrees twenty-four minutes (31 deg 24') East two hundred forty-three and seventy-nine hundredths (243.79) feet to a point; thence (7) south forty-nine degrees thirty-one minutes (49 deg 31') East eighty-eight and twenty-six hundredths (88.26) feet to a stone monument; thence (8) North forty degrees twenty-five minutes (40 deg 25') East one hundred fifty and fifty hundredths feet (150.50) to a stone monument; thence (9) north forty-nine degrees no minutes (49 deg 0') west one hundred thirty-seven and ninety-nine hundredths (137.99) feet to an iron pipe at the corner of lands conveyed by Dodge & Bliss Company to The Barnes Manufacturing Company, by deed dated February 1, 1907, and recorded in the office of the Register of Deeds for Hudson County, in Book 968 of deeds page 507; thence (10) south thirty-one degrees twenty-four minutes (31 deg 24') west one hundred and ten (110) feet along the lands of The Barnes Manufacturing Company; thence (11) north forty-nine degrees thirty-five minutes west five hundred forty-six and twenty-nine hundredths (546.29) feet along the southerly line of the property of The Barnes Manufacturing Company to a point; thence (12) North thirty-one

Bill of Complaint.

degrees twenty-four minutes east one hundred ten (110) feet to a point; thence (13) North forty-nine degrees no minutes (49 deg 0') west five hundred eighty-three and two hundredths (583.02) feet to the lands conveyed by Dodge & Bliss Company to North Jersey Street Railway Company, by deed dated April 26, 1904 and recorded in the office of the Register of Deeds for Hudson County, in Book 871 of deeds pages 109; thence (14) south thirty-one degrees twenty-four minutes (31 deg 24') West three hundred thirty-seven and fifty-six hundredths feet along the lands of The Holland Company to a point; thence (15) north forty-nine degrees thirty-five minutes (49 deg 35') west eight hundred forty-eight and eighty-six, hundredths (848.86) feet along the southerly line of the lands of The Holland Company to the point or place of BEGINNING.

2. Complainant's title to said lands, or some part thereof, is denied and disputed by the Mayor and Aldermen of Jersey City, a municipal corporation of this State, who is the defendant in this suit, and it, the said defendant claims and is claimed and reputed to own some part thereof, or some interest therein or to have some encumbrance thereon.

3. No suit or action of any kind whatever is pending to enforce or test the validity of such title or claim.

Complainant charges that such claims, so made by the defendant, are utterly without foundation, unjust and vexatious.

Complainant therefor prays:

(1) That the Mayor and Aldermen of Jersey City, who is the defendant to this suit may an-

Bill of Complaint.

swer this bill of complaint and each statement therein made:

10 (2) That said defendant may answer and set forth and specify its title, claim and encumbrance, and how and by what instrument or instruments the same is derived or created, and what title or claim to or encumbrance upon the said lands or any part thereof, or any interest therein, it may make or claim, and to what part and what interest, and further, how and by what instruments such title or claim or encumbrance is derived or created:

20 (3) That by the determination and final decree of this court the rights of the parties to this suit in and to the said lands hereinbefore set forth, and every part thereof, may be fixed and settled, and that it may be decreed that the complainant has a perfect title thereto, and that the defendant has no estate, interest, right in or encumbrance on said lands or any part thereof:

(4) That complainant may have such other and further relief in the premises as the nature of the case may require and it may be entitled to, pursuant to the statute in such case made and provided:

30 (5) That a writ of subpoena may issue commanding said defendant to answer this bill of complaint and abide by such decree as this court may make in the premises.

HERBERT CLARK GILSON,
Solicitor and of Counsel with Complainant.

**ANSWER OF THE MAYOR AND ALDERMEN
OF JERSEY CITY.**

Filed August 4, 1928.

IN CHANCERY OF NEW JERSEY.

Between

DODGE & BLISS COMPANY, a
corporation,

Complainant,

and

THE MAYOR AND ALDERMEN OF
JERSEY CITY, a municipal
corporation,

Defendant.

*On Bill to
Quiet Title.*

Answer.

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The defendant, The Mayor and Aldermen of Jersey City, a municipal corporation of the State of New Jersey, answering the bill of complaint in this cause says:

1. It denies the allegations contained in paragraph 1 of the bill of complaint.

2. It admits the allegations contained in paragraph 2 of the bill of complaint.

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3. It has no knowledge or information sufficient to form a belief as to the allegations contained in the third paragraph of the bill of complaint.

This defendant denying such claims so made by it are without foundation and are unjust and vexatious, further answering says: That there is a city street running through the land described in the first paragraph of the bill of com-

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Answer of Mayor and Aldermen of Jersey City.

plaint which has been dedicated to public use by the filing of a map in the office of the County Clerk (now Register) of Hudson County, which map is entitled: "Map of property of Stephen Morgan and J. V. H. Van Reypen, situate in the tenth ward of Jersey City, dated January 1870," and filed December 13, 1870, upon which map there are certain streets delineated, one of which streets is now known as Van Keuren avenue, the area of which is contained in the description set forth in the premises described in the first paragraph of the bill of complaint in this cause, which dedication was accepted by the defendant.

This defendant further answering says: That all the buildings erected on said tract and in vicinity of said Van Keuren avenue have been built so as to conform with the street line as shown on said map.

This defendant further answering says: That the above-mentioned street, together with other streets have been expressly dedicated by the complainant or its predecessors in ownership by the filing of the aforesaid map and that this defendant's rights thereon and thereto have been open, notorious and undisputed by the complainant, its predecessors in ownership, since the filing of said map and prior thereto.

This defendant humbly prays to be henceforth dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THOMAS J. BROGAN,
Solicitor for Defendant.

REPLICATION.

Filed August 3, 1928.

IN CHANCERY OF NEW JERSEY.

*Between*DODGE & BLISS COMPANY, a
corporation,*Complainant,**and*THE MAYOR AND ALDERMEN OF
JERSEY CITY, a municipal
corporation,*Defendant.**On Bill to
Quiet Title.**Replication.*

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The complainant joins issue on the answer of
the defendant.

HERBERT CLARK GILSON,
Solicitor of Complainant.

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ORDER OF REFERENCE.

Filed August 14, 1928.

IN CHANCERY OF NEW JERSEY.

10 *Between*

DODGE & BLISS COMPANY, a
corporation,

Complainant,

and

THE MAYOR AND ALDERMEN OF
JERSEY CITY, a municipal
corporation,

Defendant.

*On Bill to
Quiet Title.*

*Order of
Reference.*

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Upon the consent hereunder written,

It is, on this 14th day of August, 1928, on motion of Herbert Clark Gilson, Esq., solicitor of the complainant, ORDERED, that the above-stated cause be referred to Hon. John Bentley one of the Vice-Chancellors, to hear the same for the Chancellor, and to report thereon to him, and advise what order or decree should be made therein.

30

I consent to the entry of the within order.

THOMAS J. BROGAN,
Solicitor of Defendant.

ORDER OF DESIGNATION.

Filed August 30, 1928.

IN CHANCERY OF NEW JERSEY.

Between

DODGE & BLISS COMPANY, a
corporation,

Complainant,

and

THE MAYOR AND ALDERMEN OF
JERSEY CITY, a municipal
corporation,

Defendant.

10

*On Bill to
Quiet Title.*

*Order of
Designation.*

20

Upon the consent hereunder written,
It Is, on this 10th day of September, 1928,
ORDERED that the final hearing of the above-en-
titled cause be, and it is hereby fixed for the
18th day of October, next, at Chancery Chambers
in the City of Jersey City.

I consent to the entry of the within order.

THOMAS J. BROGAN,
Solicitor of Defendant.

30

40

NOTICE OF HEARING.

Filed September 25, 1928.

IN CHANCERY OF NEW JERSEY.

10 *Between*

DODGE & BLISS COMPANY, a
corporation,

Complainant,

and

MAYOR AND ALDERMEN OF
JERSEY CITY, a municipal
corporation,

Defendant.

*On Bill to
Quiet Title.*

*Notice of
Hearing.*

20

To Thomas J. Brogan, Esq., solicitor of defendant.

SIR:

30 TAKE NOTICE, that this cause will be brought to a hearing on pleadings and proofs before Honorable John Bentley, the Vice-Chancellor to whom the said cause has been referred, on the 18th day of October, 1928, at ten o'clock in the forenoon, or as soon thereafter as counsel may be heard, at Chancery Chambers in Jersey City.

Dated, September 11, 1928.

HERBERT CLARK GILSON,
Solicitor of Complainant.

Service of a copy of the within notice, is hereby acknowledged, this 11th day of September, 1928.

T. J. BROGAN,
Solicitor for Defendant.

40

Offer of Complainant's Exhibits.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between

DODGE & BLISS COMPANY, a
corporation,

10

Complainant, 68-13.

and

On Bill, &c.

THE MAYOR AND ALDERMEN OF
JERSEY CITY, a municipal
corporation,

Transcript.

Defendant.

Transcript of the testimony taken in the above- 20
stated cause, on final hearing, at the Chancery
Chambers in Jersey City on Thursday, October
18, 1928, 10 o'clock in the forenoon, before his
Honor JOHN BENTLEY, *Vice-Chancellor*.

Appearances:

Herbert C. Gilson, Esq., for the complainant.

Thomas J. Brogan, Esq., solicitor, by Charles 30
A. Rooney, Esq., of counsel, for the defendant
Mayor and Aldermen.

Leland Taliaferro, Esq., solicitor, Hon. William
H. Speer, of counsel, for the Public Service Elec-
tric & Gas Co.

Arthur R. Bailey, official shorthand reporter,
1 Exchange Place, Jersey City.

Mr. Gilson: I offer in evidence certified copy 40
of deed from William Van Keuren and Sarah J.,
his wife, to William H. Batty and Stephen
Morgan, dated January 5, 1870, and recorded in

Offer of Complainant's Exhibits.

Liber 207 of deeds for Hudson County, at pages 183, &c. And in that deed the following clause is written:

10 To have and to hold all and singular
the said land and premises unto the said
party of the second, part his heirs and as-
signs, forever in trust for the following and
no other uses and purposes, viz: On a
written request of the same to be made
within two years, signed William H. Bum-
stedt, William Keeney, Charles Schultz and
William Batty, or any three of them, or the
survivors, to convey in fee simple by proper
deeds for that purpose either or both of the
above-described piece or parcel of land and
premises as may be designated in the said
20 request to the party or parties, and for the
price or prices mentioned in said request
and to apply the net proceeds arising from
payment of any certain promissory notes
which in pursuance of a compromise entered
into on the 28th day of December in the
year 1869 between the said William Van
Keuren and William H. Batty the divers of
their creditors were drawn by the said Wil-
liam Van Keuren and William H. Batty in
30 favor of them said creditors payable in three,
six and nine months, respectively, and en-
dorsed by the said William H. Bumstedt,
William Keeney, Charles Schultz and Wil-
liam Batty or either of them, which may not
be paid according to the terms of said com-
promise; Secondly, to pay any balance there
may be after all said notes are paid off
arising from the sale of the piece or parcel
of land and premises purchased by the par-

Offer of Complainant's Exhibits.

ties of first part from Daniel Toffey and wife and George C. Toffey, being the premises hereinbefore first described, then the profit or excess of the net proceeds of the sale over the amounts laid out and expended by the said parties of the first part in or upon said premises to said William H. Bumstedt, William Keeney and Charles Schultz, and any balance yet remaining, together with any balance arising from the sale of three lots of land in Hudson City. Being the premises hereinbefore secondly described to said William H. Van Keuren and William H. Batty and if said written request be not made within said two years or if said request be for the sale of one only of the two pieces or parcels of land and premises hereinbefore described then to reconvey in fee simple by proper deed or deeds for that purpose to said William H. Van Keuren and William H. Batty, their heirs and assigns, both the said pieces or parcels of land and premises, or the one not mentioned of the said request as the case may be.

(Admitted and marked Exhibit C. 1.)

Mr. Gilson: I also offer in evidence a certified copy of a deed of request from William H. Bumstedt, William Keeney and Charles Schultz to Stephen Morgan, dated March 24, 1871, and recorded in Book 224 of Deeds for Hudson County, pages 516, &c., and is the request mentioned in Exhibit C. 1.

(Admitted and marked Exhibit C. 2.)

Mr. Gilson: I also offer in evidence certified copy of deed from Stephen Morgan to William H. Bumstedt, William Keeney, and William Van

Offer of Complainant's Exhibits.

Keuren, dated March 24, 1871, and recorded in Book 224 of Deeds for Hudson County, pages 521, &c., in which this request, Exhibit C. 2, is referred to.

(Admitted and marked Exhibit C. 3.)

10 Mr. Gilson: I also offer in evidence certified copy of deed from William P. Douglass, Master in Chancery, and William Van Keuren, et ux., et al., defendants, to Daniel Toffey, et al., dated April 18, 1879, and recorded in Book 333 of Deeds for Hudson County at pages 396, &c., which recites that the deed is made pursuant to a decree in the Court of Chancery in the foreclosure of a mortgage dated May 1, 1869, made by Daniel Toffey and George C. Toffey to Van Reiper.

20 (Admitted and marked Exhibit C. 4.)

Mr. Gilson: I offer in evidence the original deed from Robert Davis, sheriff, to Daniel Toffey, dated September 19, 1888, and recorded in Book 467 of Deeds for Hudson County at pages 50, &c., in which it is recited that the deed is made in pursuance of a decree in the Court of Chancery for the foreclosure of a mortgage from Daniel Toffey, et ux., et al., to Van Reipen, for \$15,000, dated April 8, 1879.

30 (Admitted and marked Exhibit C. 5.)

Mr. Gilson: I offer in evidence original deed from Daniel Toffey and wife to Charles S. Dodge, et al., dated September 24, 1888, trading as Dodge & Company, and recorded in Book 467 of Deeds for Hudson County at pages 57, &c.

(Admitted and marked Exhibit C. 6.)

40 Mr. Gilson: I offer in evidence original deed from John R. Halladay and wife to Charles S. Dodge and Edward K. Meigs, partners trading as

Offer of Complainant's Exhibits.

Dodge & Company, dated July 18, 1890, and recorded in Book 512 of Deeds for said County at pages 275, &c.

(Admitted and marked Exhibit C. 7.)

Mr. Gilson: I offer in evidence original deed from Charles S. Dodge, et al., to the Dodge & Bliss Box Company, dated October 12, 1891, and recorded in Book 541 of Deeds for Hudson County at pages 519, &c. 10

(Admitted and marked Exhibit C. 8.)

Mr. Gilson: I offer in evidence certified copy of deed from American Lumber Company to Charles S. Dodge, et ux., and Edward K. Meigs, partners trading as Dodge & Company, dated November 20, 1891, and recorded in Book 585 of Deeds for Hudson County at pages 427, &c. 20

(Admitted and marked Exhibit C. 9.)

Mr. Gilson: I offer in evidence certified copy of deed from Charles S. Dodge, et ux., et al., to Dodge & Bliss Company, dated November 19, 1894, and recorded in Book 655 of Deeds for Hudson County at pages 451, &c.

(Admitted and marked Exhibit C. 10.)

Mr. Gilson: I offer in evidence certified copy of deed from Dodge & Bliss Box Company to Dodge & Bliss Company, dated November 19, 1894, recorded in Book 655 of Deeds for Hudson County, at pages 448, &c. 30

(Admitted and marked Exhibit C. 11.)

Mr. Gilson: I offer in evidence original deed from Charles S. Dodge and wife to Dodge & Bliss Company, dated March 29, 1904, recorded in Book 864 of Deeds for Hudson County, at pages 584, &c., conveying the riparian rights to Charles S. Dodge by the State of New Jersey, 40

Offer of Complainant's Exhibits.

on October 18, 1888, as recorded in Book 476 of Deeds for Hudson County at pages 63, &c.

(Admitted and marked Exhibit C. 12.)

10 Mr. Gilson: I offer in evidence original deed from Edward K. Meigs and wife to the Dodge & Bliss Company, dated March 29, 1904, recorded in Book 865 of Deeds for Hudson County at pages 295, &c., conveying his interest in the riparian rights to Dodge & Bliss by the State of New Jersey, by deed recorded in Book 476 of Deeds for Hudson County at pages 63, &c.

(Admitted and marked Exhibit C. 13.)

20 Mr. Gilson: I offer in evidence certified copy of a mortgage from Daniel Toffey and George C. Toffey to Cornelius C. Van Reyper, for \$23,000, dated May 1, 1869, and recorded in Book 65 of Mortgages for Hudson County at pages 211, &c.

(Admitted in evidence and marked Exhibit C. 14).

Mr. Gilson: I offer in evidence certified copy of a mortgage from Daniel Toffey, et ux., et al., to Cornelius C. Van Reyper, for \$50,000, dated April 18, 1879, and recorded in Book 139 of Mortgages for Hudson County, at pages 615, &c.

30 (Admitted and marked Exhibit C. 15.)

Mr. Gilson: I offer in evidence certified copy of certificate of incorporation of the Dodge & Bliss Company, dated November 16, 1894.

(Admitted and marked Exhibit C. 16.)

Will Filon, for Complainant, direct.

WILL FILON, sworn on behalf of the complainant, testified as follows:

Direct examination by Mr. Gilson.

Q You are connected with the office of the Register of Hudson County? A Yes, sir. 10

Q And have you produced a map of the property of Morgan and Van Reyper, dated January, 1870, known as "Map 350"? A Yes, sir (producing map).

Mr. Gilson: I offer this in evidence.

(Admitted and designated as Exhibit C. 17 but not marked.)

Q Mr. Filon, can you tell us what the width of Van Keuren avenue is? A It is drawn to scale. 20

Q I notice that this street called Van Keuren avenue on this map, C. 17, has a mark of 60 feet indicating the width of the street, has it not? A Yes, sir.

Q This map shows the following streets running north and south: 4th street, 5th street, Charlotte street, 8th street and 9th street, and the following streets running approximately east and west: Van Keuren avenue, Catherine street, and Van Keuren avenue. 4th street is now known as West Side avenue, is it not? A It says so here. 30

Q And 9th street is now known as Duffield avenue, is it not? A That is a fact.

Q And 6th street is now known as James street, is it not? A Yes.

Mr. Rooney: It is so stipulated.

No cross examination.

James Tumulty, for Complainant, direct.

JAMES TUMULTY, sworn on behalf of the complainant, testified as follows:

Direct examination by Mr. Gilson.

10 Q Mr. Tumulty, you are connected with what department? A Bureau of Taxes and Assessments.

Q You have produced the official assessment map of Jersey City? A Yes, I have it here.

Q And what is the name of that map? A Block 673 and 681.

Q Now, will you tell us whether that is the map from which the official assessments for taxes are made? A It is.

20 Q And what is the date of it? A This is the original 1894 map.

Q Made by L. G. Fowler and has been used by the City of Jersey City for assessments and taxes since 1894; is that correct? A It is.

Q Are you familiar with the property known as the Dodge & Bliss property? A I am.

Q It is marked so on the map, is it not? A The original map of 1894 produced by Fowler.

30 Q Now, on that property will you tell us what streets are shown? A Duffield avenue, intersecting Block 4 and Block 16.

Q And where is West Side avenue? A It is here (indicating), east of it.

Q And where is James avenue? A James avenue is abutting, between West Side avenue and Duffield avenue, immediately west of West Side avenue.

40 Q And the Dodge & Bliss property runs from the Hackensack River to West Side avenue? A Yes.

James Tumulty, for Complainant, direct.

Q And from the American Lumber Company, as shown on this map, over to Clarence Linn and John Romine property? A Yes.

Mr. Gilson: I offer that map in evidence. I offer both maps; I offer the original map of 1894.

10

(Admitted and designated Exhibit C. 18 but not marked.)

Q Now, you have also produced a drawing marked— A Book 4, page 17.

Q Of what? A Of the official assessment map of Jersey City.

Q Can you tell us about when that was made—how long it has been in use? A It is printed on the original, “Fowler Map and brought up to date.”

20

Q Up to what date; the present date? A Yes.

Q Now, on that map the only streets shown are Duffield avenue running parallel with the Hackensack River, and then a little strip called Van Keuren avenue running in an easterly and westerly direction, and James avenue running to the Dodge & Bliss property; is that right? A Yes.

30

Q And where is James avenue shown on this map?

Mr. Rooney: It is property 16.

Q It is block shown as 16. on the Dodge & Bliss property? A Yes.

Q And then it also shows West Side avenue, running along the easterly end of the Dodge & Bliss property; is that correct? A Yes.

40

James Tumulty, for Complainant, direct.

Mr. Gilson: I offer that in evidence.

(Admitted and designated Exhibit C. 19
but not marked.)

10 Q Will you produce the assessment books and
records for the year 1889 of this Dodge & Bliss
property? A 1889; yes, I have it.

Q And will you turn to the record of the
assessments of taxes for the year 1889 of this
Dodge & Bliss property, please? A Block 673,
1889, block 681 and several other parcels.

Q I notice on page 78 a description of the
property of the Dodge & Bliss Company; is that
of the whole tract? A As described above
14,500.

20 Q And this is a description on page 78 of
that tract of property of the assessments you
stated? A Right.

Q And there isn't anything in that descrip-
tion about Van Keuren avenue, is there? A
Shall I read it?

Q No, don't read it, just tell us; is there
anything about Van Keuren avenue? A No.

30 Q Maybe we can expedite this: You have
gone over these records with respect to the
Dodge & Bliss Co. property? A In the present-
day assessments, yes.

Q And in those records is there anything
about Van Keuren avenue? A There is.

Q In what records; what year? A It does
not directly affect the Van Keuren property but
the Dodge & Bliss property and adjoining it.

Mr. Gilson: I move that that be stricken
out.

40 The Court: It may be stricken out.

James Tumulty, for Complainant, direct.

Q I am talking only of the Dodge & Bliss Company property. Have you any record that you know of where the Van Keuren avenue property is referred to in your book of assessment as of the Dodge & Bliss property?

Mr. Rooney: I think there should be a ruling on the question. His question is, if he finds any record of Van Keuren avenue. 10

The Court: I thought the question was restricted to anything in the record about the Dodge & Bliss property. That question, Mr. Rooney, says, "Is there anything in the record about Van Keuren avenue." This is qualified by the preceding question restricting the inquiry to the Dodge & Bliss property. 20

Mr. Rooney: This is a bill to quiet title of practically all of Van Keuren avenue, insofar as it runs west of West Side avenue.

Mr. Gilson: No, you are mistaken about that.

Mr. Rooney: With the exception of this—

Mr. Gilson: Maybe I can explain. Originally, Van Keuren avenue ran right straight all the way down from West Side avenue, right down to Duffield avenue and met Duffield avenue. 30

Mr. Rooney: Which is the block immediately east of the Hackensack River.

Mr. Gilson: Now, about 10 years ago—or 6 years ago—the Public Service got the City to surrender its right from the northeast point of plot 6F to the northwest corner of that plot (indicating on map), and in ex- 40

James Tumulty, for Complainant, direct.

change for surrendering the rights in that part of the property the Public Service gave this strip now shown on Exhibit C. 19 as Van Keuren.

The Court: (Addressing the witness.)
Is that so?

10

The Witness: Yes.

Q And we are now only concerned with the strip of land alleged to be Van Keuren avenue from West Side avenue down to that northeasterly corner of the Public Service property just mentioned and have no concern with the Van Keuren avenue shown on this Exhibit C. 19? A That is true.

20

Q Is there anything in the records, so far as your knowledge is concerned, about Van Keuren avenue with respect to the Dodge & Bliss Company property? A Van Keuren avenue? The Dodge & Bliss Company's property east of Duffield avenue?

30

The Court: Here is what Mr. Gilson wants to know: Is there anything in any of your assessments against the property of the Dodge & Bliss Company that refers to Van Keuren avenue—in your tax assessment records?

The Witness: The records show Van Keuren avenue, on the north side of the Dodge & Bliss property, known as "Plot 6E" and running east of Duffield avenue.

Q You are now referring to Van Keuren avenue as shown on Exhibit C. 19? A Right.

40

Q Outside of that is there anything in your records for tax purposes that shows Van Keuren avenue? A Outside of that, no, sir.

James Tumulty, for Complainant, direct.

Q. Isn't it a fact that the records of the City show that the Dodge & Bliss Company and its predecessors have paid the taxes on this property we are talking about from 1888 up to the present time, including the strip that is alleged to be Van Keuren avenue from West Side avenue down to the Public Service property? 10

Mr. Rooney: The record is the best evidence, but if Mr. Tumulty knows that I will let him answer.

A. No, I don't.

Q. Well, do you know, then, Mr. Tumulty, whether or not Van Keuren avenue, as alleged, is included in the tract upon which Dodge & Bliss Company has been paying taxes? A. (The witness pauses and does not answer.) 20

Q. Well, I will withdraw that; you can't probably answer it very well. All right, that is all. Thank you.

No cross examination by Mr. Rooney.

Mr. Rooney: Mr. Gilson, let us understand this situation: Your property, as described in the bill of complaint, comes to the south of this Van Keuren avenue as laid out on this Exhibit C. 19, or does your description include any part of Van Keuren avenue as shown on C. 19? 30

Mr. Gilson: No, it does not.

Mr. Gilson: I offer in evidence the tax receipts from 1888 to 1928, showing the taxes paid by the Dodge & Bliss Company on this property.

Mr. Rooney: They may be admitted and checked up afterwards. 40

Offer of Complainant's Exhibits.

The Court: What is the use of putting in any more than the last five years before the filing of the bill.

Mr. Gilson: I want to show that they never did, for 30 years, 50 years, or any other period treat it as Van Keuren avenue.

10

(Package of receipts admitted as one exhibit and marked Exhibit C. 20.)

Mr. Gilson: I call on the defendant to produce the resolution, and later a report, with respect to James avenue, under notice to produce which I served; the first resolution being dated January 17, 1919; a letter from John Milton, Esq., to Hon. Michael Fagan, dated November 11, 1918, and the record of Frank Collins, title searcher, dated 1918.

20

Mr. Rooney: I produce the resolution, but I object to the offer of those in evidence as showing any actual condition.

The Court: Of course, you may object to it being admitted, or anything else that is offered; do you mean you object to turning it over to complainant's counsel?

Mr. Rooney: Yes, sir; we are here under subpoena and we answer that subpoena, but when it comes to producing them—

30

The Court: There is no objection to handing them over to counsel?

Mr. Rooney: No, sir.

The Court: That is all he asks, so far.

Mr. Gilson: I offer in evidence resolution passed by the City of Jersey City on January 7, 1919, produced by the defendant under notice to produce.

40

(Admitted and marked Exhibit C. 21.)

Offer of Complainant's Exhibits.

Mr. Gilson: I offer in evidence a letter signed "John Milton," on the stationery of the City of Jersey City, Law Department, dated November 15, 1918, addressed to the Hon. Michael I. Fagan, Department of Public Utilities, City Hall, produced by counsel for the city in response to a notice to produce and also produced under a subpoena *duces tecum*. 10

(Admitted and designated as Exhibit C. 22 but not marked.)

Mr. Rooney: I object to any communication between the then corporation counsel and other parties, as having no hearing on the actual merits.

The Court: What is the purpose of it?

Mr. Gilson: This is a public record—and I have a certified copy of the whole record—affecting James avenue. This certified copy by the city contains a copy of the letter, and copy of the resolution in connection with it, and a copy of the record. Now, the purpose is this: If Mr. Milton, the then corporation counsel of Jersey City, after an examination of the title, after an examination of the law, after an examination of the effect of the filing of this very map, can advise the defendant corporation, in his opinion, that that did not effectuate a dedication, and upon that opinion this Exhibit C. 21 was passed by the city, it is of some value. 20 30

The Court: Right; but since when has the opinion of a lawyer for the defendant on the question of the law and facts, been admissible as evidence in a case?

Mr. Gilson: Only as an element going to show that a defendant, whether it is a cor- 40

Offer of Complainant's Exhibits.

10 poration or whether it is an individual, takes a certain position based upon the opinion of the counsel, out of a public record. This is not a communication between attorney and client, but part of the record why this resolution was passed. Now, it only has this effect: Here is the defendant, a municipality going on public record as saying that that effectuates a dedication, and the question of estoppel comes in, the question of admission against interests. It seems to me it is a part of these records, the same as the resolution.

 The Court: How can the personnel or opinion of the corporation counsel be an admission or declaration against interests?

20 Mr. Gilson: No, the act based upon that.

 The Court: Of course, any official act taken by the city is competent if it is relevant. It seems to me your offer now is nothing more than the opinion of a lawyer as to the state of the title. I don't see how I can receive it or consider it.

30 Mr. Gilson: Not on that theory; not as an opinion of a lawyer, but it is a part of the public record. It is certified by the City Clerk. When you ask for a copy of a resolution he annexes that as a part of the record. I am offering the whole record; I am not offering this as an opinion of a lawyer but as a public record.

 The Court: I don't see how it is properly any part of a public record or resolution at all.

40 Mr. Gilson: Well, I don't know that it is absolutely necessary to the public record, but the fact is it is a part of the public

Offer of Complainant's Exhibits.

record. If your Honor doesn't think it is admissible I will withdraw it.

The Court: I am interested in any evidence you can produce, but what value would it be to the Court in deciding whether or not this land has been dedicated as a public street, except that it has become public property. How can Mr. Milton's letter be of any help to me in that respect? 10

Mr. Gilson: I don't know that it would be any help to this court, but it seems to me it would be a help to have it on the record; that if the then corporation counsel is on record that he has examined this question thoroughly and he has come to the conclusion he there states, and as a result of that a resolution is passed, it seems to me it is an element that might be taken into consideration. 20

The Court: If I were to take it into consideration I would certainly surrender to some extent my duty, which is to decide this case. I will sustain the objection.

Mr. Gilson: Just for the purpose of the record, I offer the report of the searcher referred to in this letter, as a part of the record produced by the city under subpoena *duces tecum* and notice to produce. 30

Mr. Rooney: I make the same objection.

The Court: Same ruling.

Mr. Gilson: Now, I ask the city to produce the petition of the Dodge & Bliss Company to surrender the city's rights in Van Keuren avenue, dated on or about August 12, 1922.

Mr. Rooney: This is with reference to Van Keuren avenue? 40

Offer of Complainant's Exhibits.

10 Mr. Gilson: Van Keuren avenue, yes. Well, maybe we can stipulate this: In August, 1922, the Dodge & Bliss Company had filed a petition, praying that appropriate action may be taken "by your Honorable Body to vacate and surrender the public right in any such street or highway known as Van Keuren avenue" a particular strip of land, which said public easement, if any exists, is as follows: Then describing it by meets and bounds. Dated August 12, 1922; and, as a result of that petition, no action has ever been taken by the city. Is that admitted?

20 Mr. Rooney: Oh, no. You mean that you made that petition? I believe, according to the testimony that was taken yesterday of Mr. William F. Brown, of your company, that this petition was abandoned in the present complainant's case.

Mr. Gilson: He said his recollection was that the request was never granted and was abandoned. I asked him on re-direct why he said that, and he said he didn't have any knowledge of it; no action was ever taken by the city.

30 Mr. Rooney: I understand that we had a resolution and I am unable to locate that just now among the papers; but I think we did take some action.

The Court: Well, can you pass that for the time being?

40 Mr. Gilson: Now, if your Honor please, I would like to either read or have your Honor read the testimony taken *de bene esse* yesterday, pursuant to a stipulation which I

James C. Herrold, for Complainant, direct.

now ask your Honor to mark "filed." Shall I read the testimony? It is not so long.

The Court: Does that conclude your proofs?

Mr. Gilson: Yes.

The Court: Suppose you read the direct. 10

(The testimony of William F. Brown, taken *de bene esse* on October 17, 1928, is read in full by Mr. Gilson.)

JAMES C. HERROLD, sworn on behalf of the complainant, testified as follows:

Direct examination by Mr. Gilson. 20

Q Where do you live, Mr. Herrold? A 121 Highland avenue, Jersey City.

Q You are Treasurer of the Dodge & Bliss Company? A Yes.

Q How long have you been connected with the Dodge & Bliss Company? A About thirty years.

Q Did you make a search of your records for the contract, estimate, &c., for the building of this railroad switch that has been referred to? 30
A I did.

Q And did you find them? A Yes.

Q Can you tell us what the date of the contract for the switch was? A Excepting from the letter here of July 14, 1888.

Q Did you also make a search of the records for the contract for paving or any other improvements your company might have made with respect to the installation of the water pipes on that property? A I did. 40

James C. Herrold, for Complainant, direct.

Q Did you find anything on that? A No.

Q Why not? A I think they were lost in the fire. We had a fire some years ago and we can't find a lot of records we had.

Q How long have you been with the company?

A Thirty years.

10 Q Were there pipes on the property when you went there? A Yes, I think there were. Some of the records we might find in the book.

Q I show you a photograph; do you recognize that? A Yes.

Q What does that represent? A That represents the face of the Dodge & Bliss Company looking north, and Van Keuren avenue running down there.

Q Did you ever see that photograph before?

20 A Yes, I have had it up in my office for several years.

Q How many years have you had it? A Ten or twelve anyway; I can't remember exactly.

Q I call your attention to a white sign on the telegraph pole in front of the office of the Dodge & Bliss Company; can you tell us what that is? A Yes, a sign "No thoroughfare."

30 Q Can you tell us how long that sign "No thoroughfare" has been there? A That sign has been there two or three or four years. That replaced an older sign that had been there for years.

Q How long had you seen a sign "No thoroughfare" where that sign is now located in that photograph? A Possibly fifteen years or more, to my knowledge.

Q As I understood you, this sign shown in this photograph has been there about two years? A Yes.

40 Q And you have had the photograph ten years? A We took those same signs and

James C. Herrold, for Complainant, cross.

Painted them over every one or two or three years, and we will paint that over again when required.

Mr. Gilson: I offer this photograph in evidence.

(Admitted and marked Exhibit C. 23.) 10

Now, outside of the one question in respect to the description and the bill of sale, I presume we can agree upon without calling the engineer.

Cross examination by Mr. Rooney.

Q How many years, Mr. Herrold, did you say that sign had been there? A That sign has been there—

Q I mean any sign? A Fifteen years any- 20 way.

Q Maybe twenty or twenty-five? A This sign has been repainted.

Q I mean a sign of that type? A That's it.

Q How long has a sign of that type been there—a sign of that type? A I should say twelve or fifteen years.

Q Might it not have been twenty or twenty-five years? A Might have been in my time. I 30 started in as a clerk there, and many years I was just a bookkeeper.

Q You were at the office every day when you were a clerk? A Yes.

Q The office was right alongside of that sign? A Yes; it might have been there and I might have noticed it, but I don't remember it.

Q Suppose you think it over and see if you cannot recall seeing a sign there possibly twenty-five years ago? A No, I can't, because I 40

James C. Herrold, for Complainant, cross.

wouldn't recall back that far. It never appealed to me at that time that I did see it. I probably saw it and walked by.

10 Q When was the first time it appealed to you? A Recalling the instructions of Mr. Brown, I put one up when I got to a position of doing work outside.

Q When was that? A About fifteen years ago.

Q And that was to replace another sign? Is that correct? A Yes, to be replaced by the painter.

Q You don't know how long the previous sign had been there, do you? A No.

20 Q You haven't any idea about that? A No.
Q This fire plug, also shown on this picture, do you know how long that was there? A No, I don't.

Q I think that is all.

By the Court.

Q What was the date of that fire that you spoke of? A I don't know the year. The Barnes Mfg. Co. was burned down and our office was burned down, too.

30 Q Well, about how long ago? A Well, two years ago maybe, maybe longer than that; I'm not sure.

Further cross examination by Mr. Rooney.

Q You have produced this contract, did you not, concerning the switch on the railroad? A Yes.

40 Q You had charge of the record at that time? A No, I was assistant bookkeeper and I

James C. Herrold, for Complainant, cross.

was called sales agent. Those records weren't kept by me.

Q By whom were they kept? A By Mr. Allen who is dead.

Q Do you know whether or not all the records were kept together? A They were not kept together; I got them together from different sources for Mr. Gilson for this case. 10

Q Where did you make search to find any evidence of any payment of the installation of these water mains and pipes? A When?

Q Yes, when and where? A In our office and in some of the books.

Q These water mains were practically installed before you were employed by the company? A Possibly; I don't know. I presume they were. If I was there about thirty years and about ten years as a clerk there I wouldn't know about the water mains. 20

Q Don't you know whether or not this big hydrant that was right in front of your office was there when you went into the employ of the company? A No, I don't.

The Court: Is that the complainant's case?

Mr. Gilson: With the exception a stipulation that we can possibly agree to, which is a description of the property described by the deed and so forth. 30

Mr. Rooney: When I was out there I endeavored to locate this property with reference to the north line of Van Keuren avenue. It is a very irregularly shaped plot. This is evidently made up by showing the notes of the plot and we have had considerable difficulty in locating Van Keuren avenue. 40

James C. Herrold, for Complainant, cross.

The Court: Well, I have wondered if you wouldn't be aided if you had a chance to compare those descriptions, and I have wondered if a master can't go over that instead of my sitting here while it is being done. Is it very lengthy?

10

Mr. Gilson: I think we can get at it this way: A description has been in metes and bounds. It is intended to run from West Side avenue down to the property as shown in the deed to the Public Service Company and, eliminating that property, owned by the Dodge & Bliss Company, down to the Hackensack River, and along the Hackensack River, and then back as shown on maps and in the description, back to West Side avenue, and as stated previously, does not include or affect the present Van Keuren avenue as shown on the recent maps.

20

Mr. Rooney: If we could have this description on some modern map we have—

Mr. Gilson: I think Mr. Rooney and I can get together; if the description is not correct we will make it correct. With that one reservation we close our proofs.

30

The Court: Have you some proofs, Mr. Rooney?

Mr. Rooney: I have deeds that I want to produce which I haven't had an opportunity to get copies of.

The Court: Then we will take recess until 2 o'clock or to some other day.

(The further hearing is laid over until Wednesday, October 31, 1928, 10 A. M., at the Chancery Chambers in Jersey City.)

40

Offer of Complainant's Exhibits.

COMPLAINANT'S CASE

(Continued)

Hearing of Wednesday, October 31, 1928,
10 A. M.

Counsel present as before.

10

Mr. Gilson: I offer in evidence copy of petition filed by the complainant with the defendant, dated August 12, 1922, praying that the defendant vacate and surrender the public right in such street or highway known as Van Keuren avenue, the particular description being as follows, and then describing this alleged Van Keuren avenue.

(Admitted and marked Exhibit C. 24.)

Mr. Gilson: Mr. Rooney and I have agreed to enter into a stipulation with respect to the description of the *locus in quo*, in case there is any little discrepancy between the two descriptions by metes and bounds as set forth in the bill of complaint after his engineer checks up on it. And, furthermore, that at the end of the description there will be the additional words, "subject to the rights of the public in West Side avenue to Duffield avenue, or words to that effect." This eliminates those two streets with respect to this suit?

20

30

Mr. Rooney: Yes, that's right.

The Court: That is to eliminate any possibility of any conflict in the public right in those streets in time to come?

Mr. Rooney: Yes; in other words, the only subject of this suit is Van Keuren avenue and James avenue?

40

James C. Herrold, for Complainant, direct.

Mr. Gilson: Yes, the streets shown on the Morgan map of 1870, Exhibit C. 1 in this case. I would like to recall Mr. Herrold.

JAMES C. HERROLD, recalled on behalf of the complainant, testified as follows:

10

Direct examination by Mr. Gilson.

Q Mr. Herrold, at the last hearing the Court asked you as to the date of the fire at the plant of the Dodge & Bliss Company, and you couldn't remember; since that time, have you looked up any of the records of the Dodge & Bliss Company, to find out the date of that fire? A Yes.

20 Q Will you just open those records, please. You produce a book?

The Court: Containing some entries.

Q Containing some entries, in whose handwriting are those entries, if you know? A Mr. Parke, who was with us and died about a year ago.

30 Q How long was he with the Dodge & Bliss Company; do you know? A Well, he was with the Dodge & Bliss Company, except a few years, over thirty years.

Q And all the time you were there was he there except those two or three years you speak of? A No, he was there before me.

Q And do you recognize his handwriting there in that book that you have produced? A Yes.

40 Q What is that book? A This is a memorandum book that he kept of anything that might happen during the time he was with the company.

James C. Herrold, for Complainant, direct.

Q And do you find anything in his handwriting in that book in respect to the date of the fire that you referred to the other day? A Yes, I do.

Q What was the date of the fire, as shown by his handwriting in that book; do you remember? A No, I forget. 10

Q Well, if you don't remember, can you find it? A Yes (referring to the book). It was Sunday, February 25, 1906, the Barnes building burnt down.

Q Have you produced also a book that was in that fire? A Yes, sir. (Witness produces book.)

Q This book that you produce is one of the books that was in that fire? A Yes, sir. 20

Q There were some that were totally destroyed, as I understand? A Yes.

Q Now, in this book that you produce, is Mr. Parkes' handwriting; is there anything with respect to the payment for water pipes and the work in connection with the laying out of the property? A Yes.

Mr. Gilson: I ask the defendant to produce the records of the city, showing payments for the laying of water pipes September, 1902, under the notice to produce. 30

Mr. Rooney: They are on their way down. As I understand it, even if we didn't produce, that wouldn't necessarily make your books of account competent.

Mr. Gilson: No, I will put it up to the records of the city.

Mr. Rooney: Whatever records you have that you believe are competent to prove those 40

James C. Herrold, for Complainant, cross.

payments, we will admit, and I presume you will do the same thing with the city?

Mr. Gilson: Yes.

10 Q Now, have you looked up all of the records of the Dodge & Bliss Company, with respect to the payment for water pipes and the laying of water pipes? A Yes.

Q Did you find anything except these books that you say are in the handwriting of Mr. Parkes? A No.

20 Q What does that book show in his handwriting in that respect? A It shows here a memorandum, "Sept. 1902, West Side avenue hydrant in front of office; paid Board of Street and Water Commissioners, laying, \$316.17; digging, \$64.97; total \$381.14." Then it says, "The pressure there on Duffield avenue is sixty-seven pounds pressure of pipe."

Q What else does it show? A That is all it says: "Pressure hydrant of the R. R. V. fifty-six pounds; pressure hydrant on Duffield avenue, or street, sixty-seven pounds."

30 Mr. Gilson: I understand that the records of the city are on their way down to court under a subpoena *duces tecum*, and I would like to reserve the right to put that record in of the books, necessary.

Cross examination by Mr. Rooney.

40 Q Mr. Herrold, this record that you are reading from, is what? A A record of Mr. Parkes, the man who had charge of those things at that time, made by him.

James C. Herrold, for Complainant, cross.

Q And this record is written on the inside cover of that book; it isn't a part of the numbered page entries in the book, is it? A No.

Q And in addition to that entry just written on the cover of the book, there is also a sketch, apparently in the same handwriting, showing the laying out of James avenue, Duffield street, and Van Keuren avenue, is there not? A Yes, sir. 10

Mr. Rooney: Then may I ask that that be marked for identification?

Mr. Gilson: I will offer it in evidence if you want it.

The Court: Is that satisfactory?

Mr. Rooney: Yes, but not all of it; only the part referred to. 20

The Court: Let the book be marked, with the idea that any part may be used that has been brought out in this hearing.

Mr. Gilson: I have only one objection to that last question, and that is that Mr. Rooney asked the witness if the diagram on the book did not show that those streets mentioned were laid out. That isn't quite correct. 30

Mr. Rooney: It doesn't show that they were laid out; the diagram shows the streets but doesn't show that they were laid out.

The Court: Well, doesn't the book speak for itself? It may be marked.

(The same is marked Exhibit C. 25.)

Offer of Defendant's Exhibits.

THE DEFENDANT'S CASE.

10 Mr. Rooney: If the Court please, I would like to offer some pictures in evidence that were taken about a week ago. The first is a view of West Side avenue looking south to the point of about the Dodge & Bliss Company plant along West Side avenue.

(Admitted and marked Exhibit D. 1.)

The second is a view of West Side avenue, taken from a point south of Van Keuren avenue, looking north.

(Admitted and marked Exhibit D. 2.)

20 This is a view of the intersection of Van Keuren avenue and West Side avenue, taken from a point on Van Keuren avenue looking in a southerly direction.

Mr. Gilson: Showing the coal yard and the switch referred to in the testimony.

Mr. Rooney: Yes.

(Admitted and marked Exhibit D. 3.)

30 Mr. Rooney: The fourth is a view of Van Keuren avenue, looking westerly along Van Keuren avenue, taken from a point slightly west of West Side avenue, showing in the background the stacks and main building of the Public Service Corporation and in the foreground on the right the plant of the Barnes Mfg. Co., and on the left a part of the Dodge & Bliss Company plant.

(Admitted and marked Exhibit D. 4.)

40 Mr. Rooney: The next is a view from a point about the intersection of Duffield avenue and Van Keuren avenue, looking easterly along Van Keuren avenue, showing the plant of the Brick & Tile Company on the left and

Claude A. Flagg, for Defendant City, direct.

a part of the plant of the Dodge & Bliss Company on the right.

(Admitted and marked Exhibit D. 5.)

Mr. Rooney: The next is a view of Van Keuren avenue, looking west along Van Keuren avenue, taken from a point at about the office of the Dodge & Bliss Company, showing the office of the Barnes Company on the right as the picture is faced, and the towers of the Public Service Corporation in the background. 10

(Admitted and marked Exhibit D. 6.)

CLAUDE A. FLAGG, sworn on behalf of the defendant City, testified as follows:

Direct examination by Mr. Rooney. 20

Q You are the custodian of the maps of Jersey City? A Yes, sir.

Q Have you with you, Mr. Flagg, a map of the 9th, 10th and 11th Wards of Jersey City, made by Levi Post, in 1871? A I have.

Q Will you please produce that. A (Witness produces map and hands it to counsel.)

Q Is this map on file in your office? A On file in my office. 30

Mr. Rooney: I would like to offer the map.

(Admitted and designated as Exhibit D. 7 but not marked.)

Q Referring to this map, Mr. Flagg, will you locate first, please, Van Keuren avenue? A Right here (indicating on map.) 40

Claude A. Flagg, for Defendant City, direct.

Q Where does Van Keuren avenue, as shown on that map, run from and to? A It runs from the Susquehanna Railroad to 9th street shown on this map.

Q In what direction does it run? A Runs east and west.

10 Q Is it intersected by any streets? A It is not intersected, no.

Q Do any streets meet it? A Yes.

Q What streets, starting from the most westerly part? A Starting from the most westerly street, the first is 9th street, then 8th street, 7th street, Charlotte street; then there is a hole; then there is 6th, 5th, and 4th streets.

Q Can you tell us which of those streets is the present West Side avenue? A West Side
20 avenue is 4th street.

Q And which of those streets, if any, is at present Duffield avenue? A 9th street.

Q How far south of Duffield avenue do those intersecting streets on Van Keuren avenue run? A How far south?

Q Yes. They all meet Van Keuren avenue from the south, do they not? A They run south from Van Keuren avenue. Several of them run a block and some of them run further.

30 Q What is the width of Van Keuren avenue as shown on that map? A Sixty feet.

Q For its entire length? A For its entire length.

Q What is the approximate length of Van Keuren avenue in feet? A Well, it is 300 feet.

Q What is the date of that map? A 1871.

By the Court.

40 Q What year was that filed? A I don't know about the filing; it is dated 1871.

Claude A. Flagg, for Defendant City, cross.

By Mr. Rooney.

Q What is the width of the streets that run into Van Keuren avenue? A They're all 60 feet.

Cross examination by Mr. Gilson.

10

Q What is that map used for, Mr. Flagg? A At the present time it is used as a record.

Q By whom? A By the City, by lawyers in general for titles and anything that pertains to titles.

Q It isn't even used for assessment purposes, is it? A I believe at the time, it was made for assessment purposes.

Q It doesn't say it was made for assessment purposes, does it? A I wasn't with the City at the time the map was in use.

20

Q I mean, from your knowledge of the records? A Well, the map was used at that time, I believe, for assessment purposes. I can't say positively, but it is my belief that it was.

Q Did you say when it was filed? A No, I didn't.

Q You don't know that? A No, not offhand. The date of filing is listed in the court house record as a filed map.

30

Q And do you know whether or not any of those streets that you have referred to have actually been laid out? A 9th street, Duffield avenue, has been laid out. Of course, it depends upon what you mean by being laid out.

Q What do you mean by it? A I am in the Department of Revenue and Finance, and everything that is given to me is a street, whether it is improved or not.

40

Claude A. Flagg, for Defendant City, cross.

Q I mean, as laid out physically between West Side avenue and Duffield. A West Side avenue is laid out.

Q Up to what point, do you know? A Well, up to Dodge & Bliss Company plant, anyway. I don't know the extent of the physical condition.

Q Do you remember when the Lackawanna elevated its tracks through there, about? A I remember the incident.

Q Do you remember how many years ago? A No.

Q Do you remember that up to that time West Side avenue ran only up to the Lackawanna Railroad? A No; according to my records it ran through. That is the physical condition, according to the records of it.

Q Before the elevation of the Lackawanna tracks? A Yes, my records in the office show it runs through.

Q Up to the Dodge & Bliss Co. land? A Up to Van Keuren avenue.

Q As a matter of fact, do you know whether or not West Side avenue is actually paved now up to the line of the so-called Van Keuren avenue? A I don't believe it is.

Q It is only paved up to the Dodge & Bliss Company line, isn't it? A Yes.

Q Now, is there any other map in your department upon which Van Keuren avenue, so-called is shown? A Yes, several maps.

Q Have you produced any of those? A No, I haven't produced them.

Q Why not? A I wasn't asked to.

Q Do you remember one map in your office which has this notation on it: "NOTE: Streets colored red vacated by foreclosure of mortgage"? A

Claude A. Flagg, for Defendant City, cross.

Mr. Rooney: I object to that. If there is any such map it should be produced.

Mr. Gilson: If your Honor please, I can't produce the maps, and I am cross examining now to find out whether one of the maps he says he has in his office showing Van Keuren avenue, has these notes on it. 10

A There is another map that shows Van Keuren avenue.

Mr. Gilson: Now, I ask him if he knows whether one of those maps has these notations on it.

The Court: Is it your purpose to prove the notation?

Mr. Gilson: Well, to prove the City has recognized the fact that Van Keuren avenue is not a street. 20

The Court: If you could show that merely by the notations made our rules of evidence would become almost a ridiculous thing; but I don't see any exception here to the rule against secondary evidence.

Mr. Gilson: Well, I'm not offering the evidence; I am cross examining the witness on his testimony with respect to the maps in his office. 30

The Court: Well, there is no jury here and I will allow the witness to answer and deal with it when I come to decide the case.

Q (Question is read by the stenographer) and also the following note: "Streets colored yellow vacated by the Board of Water Commissioners; Streets colored green vacated by Board of Public Works, October 6, 1890"; and that Van Keu- 40

Claude A. Flagg, for Defendant City, cross.

ren avenue on that map is colored red from the railroad west to Duffield avenue.

10 Mr. Rooney: Now, if the Court please, I still make the same objection, of course, and possibly the additional objection should be embodied in it, that even if there should be such notation on the map it should be given by whom the map was made and the authority for it, and the City being defendant in this case the acts of its agents would not be binding upon it as showing their vacation. That is strictly the law. There is only one method by which the City can vacate streets and anything made by any member of the department would not be binding, and not being binding it wouldn't be competent evidence.

20

The Court: What about the assumption by the City of what the agent or employee has done in the course of his duty, and which is done according to the action of the appropriate body?

30 Mr. Rooney: The only difficulty with that is that the Court of Errors and Appeals in this type of case has held that even if the action of a street and water board recognizes the street as vacated, it is not binding.

The Court: For the present I will overrule the objection and deal with that also when I come to hear your full argument. (Addressing the witness.) Now, do you remember the question?

40 A Yes. We have such a book but it is not a city map; it is a book or index kept by Fowler

Claude A. Flagg, for Defendant City, cross.

at the time he was making up the Fowler Map, and it is not a city reference.

Q Doesn't that appear on the map? A No, only in the one book which has Fowler's reference.

Q As I remember that Fowler map, it was made in 1894 and then contains a memoranda dated 1890. A Yes, that is what I say; it is a book, nothing more or less than a street outline book which was kept for the purpose of indexing different maps and different data at the time of filing the later map which was accepted. 10

Q Do you know where he got that information? A I don't know where he got that information.

Q Do you know whether or not the Department has acted on that information? A The Department has acted only insofar as it filed it in its records. We look up these things from time to time to see what records are used, and we only use it as an index. 20

Q Now, are there any other maps in your department that are more modern than those you have brought here, which show Van Keuren avenue and the other intersecting streets? A Yes, two maps that I know of. 30

Q How recent? A Well, they are not very recent.

Q About? A I imagine they are later than the Fowler map.

Q Ever since that time all the maps of the City had not shown Van Keuren and those other streets mentioned excepting Duffield and West Side; isn't that a fact? A That is a fact.

Q Are you familiar with the physical condition down there? A Well, slightly. 40

Claude A. Flagg, for Defendant City, cross.

Q Do you know that James avenue is shut off completely at the line of the Dodge & Bliss Co. by a gate or fence? Do you know that? A I know it is shut off, yes.

10 Q I mean, there is a fence and gate built across that part of James avenue, and James avenue from St. Paul's avenue north has never been improved in any way, has it, but is all full of holes and just dirt, isn't it? A Yes.

Q And never has been improved, has it? A Not that I know of.

Q Never has been used from the railroad over, has it? A North?

Q Yes, north, except by the lumber concern? A I don't know.

20 Q Well, do you know this, Mr. Flagg, that the only concerns on or near this property north are the Public Service Corporation and this cinder brick concern, and the Barnes Mfg. Co.; that is true, isn't it, and you know that the cinder brick concern is on the Dodge & Bliss property, don't you?

30 Mr. Rooney: I will prove that later. I will offer now the abstract of deed from William Keeney, et al., to Halladay, dated July 8, 1871, recorded in Liber 234 of Deeds, page 488, in the office of the Register of Hudson County.

(Admitted and marked Exhibit D. 8.)

Mr. Rooney: I offer abstract of deed from William Van Keuren, et al., to the New Jersey Midland Railway Co., dated August 7, 1871; recorded March 15, 1872, in Liber 251 of Deeds, page 414, in the office of the Register of Hudson County.

40 (Admitted and marked Exhibit D. 9.)

Andrew B. Mauzy, for Complainant, direct.

Mr. Rooney: I offer in evidence abstract of deed of William Keeney, et ux., et al., to John R. Halliday, dated June 14, 1872, recorded June 5, 1872, in Liber 242 of Deeds, page 428, in the office of the Register of Hudson County.

(Admitted and marked Exhibit D. 10.)

10

Mr. Rooney: Also abstract of deed of William Van Keuren, et ux., et al., to the New Jersey Midland Railroad Company, dated June 1, 1872; recorded August 16, 1872, in Liber 246 of Deeds, page 145, in the office of the Register of Hudson County.

(Admitted and marked Exhibit D. 11.)

Mr. Rooney: I also offer in evidence abstract of deed from Stephen Morgan to Charles Schultz, dated March 23, 1871, recorded in Liber 224 of Deeds, page 518, in the office of the Register of Hudson County.

20

(Admitted and marked Exhibit D. 12.)

Mr. Rooney: I have Mr. Mauzy here; do you want him on your case?

Mr. Gilson: I would like to put those records in. I will ask that my case be re-opened and I will call him now.

30

ANDREW B. MAUZY, sworn on behalf of the complainant, testified as follows:

Direct examination by Mr. Gilson.

Q You are connected with the Jersey City government? A Yes.

Q In what capacity? A Water conservator.

40

Andrew B. Mauzy, for Complainant, cross.

Q Have you any records with respect to the payment of water pipes or work in connection with the property of the Dodge & Bliss Company? A No, we have no records of that. We made a search in all the cash-books and permit books but couldn't find anything.

10 Q Covering what period? A From 1901 to 1905.

Q There might be some records prior to 1901? A That I don't know.

Cross examination by Mr. Rooney.

Q You have, however, some records showing the laying of these pipes in Van Keuren avenue and James avenue? A We have no records of the laying of the mains; we have records of
20 repairs and placement of fire hydrants.

Q In what capacity do you serve Jersey City? A At the head of the water department, in charge of the distribution.

Q As such, you are familiar with the various mains and hydrants? A Yes.

Q Can you tell us whether or not there is at present any city water line running through Van Keuren avenue?

30 Mr. Gilson: I object to that so far as the question of the Jersey City water line is concerned.

Mr. Rooney: All right; I will change that.

Q Is there any water line connected with the Jersey City water supply to Van Keuren avenue? A Yes.

Q Just tell the Court what pipes connected
40 with the City supply run through Van Keuren

Andrew B. Mauzy, for Complainant, cross.

avenue, James avenue, and any street in that immediate vicinity? A There is a six-inch, reduced to four-inch in Van Keuren avenue.

Q Just show us from what point that line runs and to what point? A That runs from West side avenue to Duffield avenue.

Q What is the approximate length of it? A 10
It is about a thousand feet.

Q Has that water-line any outlet? A You mean connections taken from the main? Yes.

Q What connections are taken from it? A Connections taken off to supply the Barnes Mfg. Co.

Q Where is the Barnes Mfg. Co. with reference to Van Keuren avenue? A Off of Van Keuren avenue.

Q What supply lines did you take off for Barnes? A 20
Two-inch connection and six-inch connection.

By the Court.

Q You mean that the Barnes' property abuts on Van Keuren avenue? A Yes.

By Mr. Rooney.

Q And are there any other connections from that main running through Van Keuren avenue? 30
A Yes, there is a cinder company down there, but I don't show it on this plan. That is a connection off of Van Keuren avenue.

Q From the main to Van Keuren avenue? A Yes.

Q Any others from the Van Keuren avenue main? A The Public Service Electric Company.

Q And at what point on Van Keuren avenue does that connect with Van Keuren avenue? A 40

Andrew B. Mauzy, for Complainant, cross.

There at the foot of Van Keuren avenue and Duffield.

Q What is that connection today? A Six inch.

Q That connection runs west, does it, from Van Keuren avenue? A Runs north.

10 Q What is the northerly extremity of the main running along West Side avenue? A West Side avenue and Van Keuren avenue.

Q And what size main runs along West Side avenue? A Eight inch.

Q Are there any mains running through James avenue? A Yes, six inch main.

Q And from what point to what point does the James avenue main run? A I believe it is
20 dead-ended on James avenue south of Van Keuren avenue.

Q Is this sketch that you are referring to a part of your office records, Mr. Mauzy? A Yes, taken from the Water Department maps.

Q Doesn't this sketch show some other connection from the Van Keuren avenue main running south toward the property marked "Dodge & Bliss property"? A No, this line here is a connection taken off of the six-inch main on Van
30 Keuren avenue, running into the Barnes Mfg. Co. fire-supply line.

Q What is this line apparently running from the main, slightly west of West Side avenue and then running due west, I should judge, about 150 feet, and then making a right-angle turn, and then running about 100 feet north? A That is the supply pipe of the Barnes Mfg. Co.

Q Have the Dodge & Bliss Company any connection with this six-inch main from Van Keuren
40 avenue? A Not from Van Keuren avenue.

Andrew B. Mauzy, for Complainant, cross.

Q Where does the Dodge & Bliss Company tie up with the water supply? A West Side avenue.

Q In other words, the Dodge & Bliss Company does not connect with the water supply running through Van Keuren avenue at all? A No.

Q How many city fire hydrants are there on Van Keuren avenue? A Two.

10

Q Where are they located? A One on Van Keuren avenue just north of James avenue, and one on Van Keuren avenue about 100 feet east of James avenue, and one about 75 feet west of West Side avenue.

Q Are there any fire hydrants at or near the intersection of Van Keuren avenue and West Side avenue? A Yes.

Q Where are they located? A There is one located on West Side avenue, and one about 75 feet west of West Side avenue on Van Keuren avenue.

20

Q Where is the one on West Side avenue located with reference to Van Keuren avenue? A About 200 feet south.

Q Are there any fire hydrants on James avenue? A No.

Q Any on Duffield avenue, at or near Van Keuren? A Well, yes, at the intersection of Duffield and Van Keuren.

30

Q Are these fire hydrants the same type as are used throughout the rest of Jersey City? A Yes, sir.

Q By whom are these fire hydrants maintained or repaired? A By the City.

Q Now, are you referring to the fire hydrants that are on Van Keuren avenue also? A Yes.

Q By whom is the water line connecting with these fire hydrants running through James ave-

40

Andrew B. Mauzy, for Complainant, re-direct.

nue and Van Keuren avenue repaired and maintained? A By the City.

Q At whose expense? A The City's.

Q Referring to your records, Mr. Mauzy, can you tell us when the water line along Van Keuren avenue, which I believe you have referred to as a six-inch main, was laid? A That
10 I couldn't say. I have no knowledge of that.

Q Well, there are some records, are there not, showing the laying of this main in 1878? A That would be in the Engineering Department, not the Water Department.

Q How long have you been connected with the Water Department? A Since 1921.

Q And during that time the City has maintained these water mains and hydrants? A
20 Yes.

Q Has the Barnes Mfg. Co. a meter on this water main? A Yes.

Q Is the Dodge & Bliss Co. metered onto it? A No.

Q What is the size of the connection of the Dodge & Bliss Company? A Dodge & Bliss have a six-inch fire-supply main.

Re-direct examination by Mr. Gilson.

30

Q As I understand, Mr. Mauzy, these six-inch mains you have spoken of were for fire purposes? A Yes, sir.

Q And the small one—two inch, was it? A Two inch.

Q That was for ordinary use? A Commercial use.

Q Have you seen any records in your department showing when this system was installed in
40 1888 it was because the Dodge & Bliss Company

Andrew B. Mauzy, for Complainant, re-direct.

were going down there to operate with its lumber yard a box factory? A No, sir.

Q But I understand you do know from your records that that system has been in there since 1888? A Yes.

Q This connection that you have spoken of to the Public Service is that a six-inch main? A Yes, six-inch main, going down from Van Keuren to Duffield. 10

Q And they also get water through Duffield avenue? A Yes.

Q Have you made a test recently by having the water shut off through James avenue, to see if it has any effect on the Public Service? A We can maintain the pressure by shutting down the Van Keuren main, but there is no provision for taking the surface water from James avenue. 20

Q So that when it rains there is water on Van Keuren avenue? A Six or eight feet. It acts as a supplement and also as an auxiliary. They are taking water through it today.

Q As I understand it, you have looked through your records to see who paid for the repairs but we could find no record in our cash-books. 30

Q But they were installed in 1888. Who looked for that? A I didn't search prior to that.

Q And when you say that any repairs that were made to that pipe line or the hydrants were made by the City, you don't know whether they were charged against the Dodge & Bliss Company, do you? A No, there are no charges made against the Dodge & Bliss Company.

Q Do you know that? A Yes. 40

Andrew B. Mauzy, for Complainant, re-direct.

Q You said that the Barnes Mfg. Co. was metered? A Yes.

Q Well, it has been out of business for two years, hasn't it? A I don't know.

Q But do you leave meters in after the service is discontinued? A They might be holding
10 these lines for fire purposes.

Q Doesn't the reading of the meter come within your jurisdiction? A Yes, sir.

Q Do you know whether they have attempted to read the meter in the last three years? A They go there every quarter.

Q No, whether water consumption is shown on the meter? A That I couldn't say. I didn't check up the records.

20 *By Mr. Rooney.*

Q Do you recall whether you have had occasion to make any major repairs to this line? A Yes, about two years ago.

Q What was the nature of those repairs? A A break in the six-inch line.

Q Do you recall when that matter was called to your attention? A We were notified by Dodge & Bliss. I have a list here of repairs made since 1921.

30 Q Give us those, please. A December 9, 1921, packed a gate valve at James avenue and Van Keuren avenue.

December 14, 1921, hydrant inspected, wasting two hydrants, that is, drawing water from both—

Mr. Rooney: This is a long document; can't we put it in evidence?

Mr. Gilson: Just call the Vice-Chancellor's attention to the major items in there.

40 The Court: And tell me which.

Andrew B. Mauzy, for Complainant, re-direct.

A This is repairs to the gate valve, trying gate valve, in James avenue; and this (referring to another paper) is for repairs to hydrants in Van Keuren avenue.

The Court: I assume that you want to point out the ones that are more extensive. 10

Mr. Rooney: Yes, to show that we are taking care of the water-mains in Van Keuren and James avenues. It is also between December 9, 1921 and December 31, 1927, that the City did these repairs on the pipes and hydrants.

A Yes, that is correct.

Mr. Gilson: I will offer it.

Mr. Rooney: No, I will offer it. It is shown on paper marked "Division of Water Service." 20

(Admitted and marked Exhibit D. 13.)

Q All the repairs and maintenance charges were actually paid for by the City and not charged to any other persons, as shown on Exhibit D. 13? A That's right.

Mr. Rooney: I would also like to offer Mr. Morgan's sketch showing the main, taken from the City's original records. 30

(Admitted and marked Exhibit D. 14.)

Mr. Gilson: I would like to have him mark those two hydrants so that we can locate them on D. 14.

A I will mark them with an X.

Mr. Rooney: That is our case.

Douglas Brown, for Complainant, direct.

COMPLAINANT'S REBUTTAL.

DOUGLAS BROWN, sworn on behalf of the complainant, in rebuttal, testified as follows:

Direct examination by Mr. Gilson.

10

Q Where do you live, Mr. Brown? A 2600 Boulevard, Jersey City.

Q And you are Secretary of Dodge & Bliss Company? A Yes, sir.

Q How long have you been connected with the Dodge & Bliss Company? A 13 years.

Q What concerns or people live or are in business along the so-called Van Keuren avenue?

20

A The Cinder Brick Corporation, or the Hudson Corporation, and then the Public Service at the foot of Van Keuren avenue and Duffield.

Q Did you mention the Barnes? A The Barnes are there, too, but they are not running the plant.

Q How long has the Barnes Mfg. Co. been out of business, if you remember? A I should say about two years, or two and one-half years.

Q And this Cinder Brick concern that you speak of, is that company and also the Dodge & Bliss Co. joined? A It is.

30

Q The Public Service plant is at the extreme westerly end of Van Keuren avenue, at the intersection of Duffield avenue; is that correct? A That's right.

By the Court.

Q East or west of Duffield, the Public Service? A West of Van Keuren, north of Duffield.

40

Douglas Brown, for Complainant, direct.

By Mr. Gilson.

Q It is north of Duffield? A It is north of Duffield, west of Van Keuren avenue.

By the Court.

Q I thought Van Keuren avenue ran east and west? A Well, it does. The Public Service used to be all north of Van Keuren avenue, and then they gave a part of the line, so that a part of their plant now is west of Van Keuren avenue—a certain part of the building. 10

By Mr. Gilson.

Q A part of it is west and a part of it north? A Yes.

By the Court.

Q Duffield runs north and south, doesn't it? A Yes. 20

Q Is it all west of Duffield; in other words, is the Public Service plant all between Duffield and the Hackensack River, or part on the easterly side? A No, part is on the easterly side of Duffield.

By Mr. Gilson.

Q No— A Yes, it is. Here is the Public Service (indicating on map). 30

Mr. Gilson: Mr. Rooney, have we a map that we can put in evidence, or a sketch?

Mr. Rooney: Showing what?

The Court: The location of the Public Service plant with regard to Van Keuren and Duffield avenues. 40

Douglas Brown, for Complainant, direct.

A I could give you a little sketch.

10 Mr. Rooney: I think I brought that out. This is Van Keuren avenue where it intersects Duffield avenue. It has been changed. Here is a blue print of the Dodge & Bliss Company in 1900.

Mr. Gilson: I offer this. I think it would be helpful to the Court with a little explanation on the side. I haven't checked it up as to distances, but it will be helpful to the Court in getting the location of the buildings.

(Admitted in evidence and marked Exhibit C. 26.)

20 Q Now, on this Exhibit C. 26, I call your attention to what is shown as Van Keuren avenue, running down to a point outlined in red, and ask you if you know what that property, outlined in red, is, or whose property it is? A This property belongs to the Public Service.

30 Q Now, do you know, of your own knowledge, whether recently, within the last few years, there has been any change in Van Keuren avenue as shown on this Exhibit C. 26 from the beginning of that red line westerly? A Yes, from this line down to here—to Van Keuren avenue—has been changed, and the Public Service, as I understand, has dedicated to the City a strip that runs in there to take the place of Van Keuren avenue.

The Court: That is, a strip further south from Van Keuren avenue, as shown on Exhibit C. 26?

40 A Yes.

Douglas Brown, for Complainant, direct.

Q Now, the Public Service plant, as I understand it, now runs up to the present line of Van Keuren avenue, and then extends over north of the old Van Keuren avenue for some distance?

A That's right.

By the Court.

10

Q Now, where would Duffield avenue be on C. 26? A Now Duffield avenue comes down here (indicating on map).

The Court: You make no claim to that part of Van Keuren avenue shown on the tract marked in red on C. 26?

Mr. Gilson: That is correct. Our claim is only from West Side avenue westerly.

The Court: To the line of the Public Service, down here?

20

Mr. Gilson: That is correct.

By Mr. Gilson.

Q I show you Exhibit D. 1, which is a photograph, and ask you what building that is that is shown on West Side avenue? A This is a shed that we occupy. It is a part of the Dodge & Bliss factory.

30

The Court: The witness is referring to Exhibit D. 1 and is now pointing to the building shown at the right of the observer.

Q And that is the building shown on Exhibit C. 26 on the left-hand side of West Side avenue? A That's right.

Q Now, I show you Exhibit D. 2 and ask you what that building in the background is in that picture?

40

Douglas Brown, for Complainant, direct.

The Court: Which shows white.

A That is the office of the Dodge & Bliss Company.

Q And I ask you what the building to the left of that white building is? A That is the
10 factory of the Barnes Mfg. Co.

Q And on that picture, Exhibit D. 2, do you see that sign that is referred to "No Thoroughfare"? A Yes, sir.

Q Where is that? A On this pole right there.

The Court: Indicating a pole directly in front of the Barnes Company building.

Q And I call your attention to the corner of
20 a building on the left-hand side of this same photograph, and ask you what building that is a part of? A That is a part of the Dodge & Bliss factory.

Q As shown in Exhibit D. 1? A That's right.

The Court: And is the extreme left along that building shown on Exhibit D. 2?

Q Now, on Exhibit D. 3 I call your attention
30 to what looks like a board on a telegraph pole, on the extreme left of this photograph, and ask you if you know what that is? A That is the sign I pointed out on the telegraph pole in this one.

Q On Exhibit D. 2? A Yes.

By the Court.

Q Reading "No Thoroughfare"? A "No
40 Thoroughfare."

Douglas Brown, for Complainant, direct.

By Mr. Gilson.

Q And I call your attention to an object about in the center of this picture D. 3 and ask you what that is? A Water hydrant.

Q And the building shown on the right of this picture is what? (Referring to Exhibit D. 3.) A Part of the Dodge & Bliss factory. Same one that is shown on the other. 10

Q That is the same building that you referred to in the other two photographs? A That's right.

Q Now, I show you Exhibit D. 4, looking westerly down Van Keuren avenue, and ask you what building that is, the first building on the right-hand side of that photograph? A That is the plant of the Barnes Mfg. Co. factory.

Q And then I call your attention to some objects adjoining that building to the west? A That's the boiler-room for the Barnes Mfg. Co. plant. 20

Q And then beyond that and westerly, I call your attention to another building; what building is that? A That is the offices of the Barnes Mfg. Co.

Q And then beyond that, westerly, there is another shed or building; what is that? A That is the storage shed or building that belongs to the Barnes Mfg. Co. 30

Q And then beyond that and westerly, what is there between that and the Public Service property? A Dodge & Bliss building, leased to the Hudson Co.

Q The Cinder Brick Company? A Cinder Brick Company.

Q And on the same photograph, Exhibit D. 4, I call your attention to two buildings on the left-hand side of the photograph, and ask you 40

Douglas Brown, for Complainant, direct.

what they are? A They are the factories of the Dodge & Bliss Company. The first building is the factory referred to in the other exhibit, and the next building is the second factory. We have two plants.

10 Q And Exhibit D. 5, showing Van Keuren avenue looking in an easterly direction, shows the end of a railroad track; what track is that? A That is the Dodge & Bliss Company track.

Q And that is where it ends at the present time? A That is where it ends.

Q And on the left of this photograph there is a pile of something? A Those are cinder bricks manufactured by the Cinder Brick Company.

20 Q And that property used by the Cinder Brick Company runs down to the Public Service Corporation property; is that right? A That's right.

30 Q During the time that you have been connected with the Dodge & Bliss Company has any other street been used there except West Side avenue and Duffield avenue, and who has used, if anybody, Van Keuren avenue? A The only people that have used Van Keuren avenue to my knowledge are the employees of the Public Service when they go home at night and would walk up, and some would drive up, making a short cut rather than taking the road out through Duffield avenue and then up St. Paul's. The only other people besides those would be perhaps anyone coming from the Cinder Brick with a truck load of brick. Those are the only persons except on rare occasions somebody might come through.

Q What was done, if anything, when the Public Service used that? A They were advised to keep off of that, as private.

40 Q By whom? A By Mr. Herrold, or by others.

Douglas Brown, for Complainant, cross.

Q Did you hear them or see them do that on any occasion? A Yes, sir.

Q See them stop people from using it? A Yes.

Q During what period? A All the time I have been there.

10

Cross examination by Mr. Rooney.

Q The Public Service has a large plant there? A Yes, sir.

Q About how many employees have they? A I don't know.

Q Have you any idea of how many employees have used Van Keuren avenue? A In numbers about 50.

Q A day? A Yes, sir; I should think so.

20

Q About how many automobiles run through that street? A From the Public Service or all kinds of traffic?

Q All kinds of traffic, outside of the Dodge & Bliss Company business? A I couldn't tell you; not very many.

Q You can pass from Van Keuren avenue directly into Duffield avenue, can you not? A Yes.

Mr. Gilson: That is the complainant's case.

30

Mr. Rooney: We have checked up on the engineer's records; I have a letter from one of the engineers and it seems that those records were turned over to the Water Department, and I wonder if we couldn't stipulate it.

Mr. Gilson: I think so. There is no dispute on the record that they were laid. I

40

Proceedings of October 18, 1928.

understood they were laid in 1888, but I wouldn't want to stipulate that.

10 Mr. Rooney: I understood Mr. Mauzy was going to bring down all the records today, and that is the only thing we have to prove that by. There is somebody on the way down with the records, I understand. I think Mr. Gilson and I can get together on that.

CASE CLOSED.

20 Transcript of proceedings taken in the above-stated cause, at the Chancery Chambers in Jersey City, on Thursday, October 18, 1928, 10 o'clock in the forenoon, before his Honor John Bentley, Vice-Chancellor. These proceedings took place on a regular motion day and concerned the entry of Public Service Electric & Gas Co. as a party defendant in the case and the designation of a day on which the testimony of its witnesses and of witnesses of the complainant in rebuttal thereto could be taken. There was also some general discussion as to mat-

30 ters pertinent to the case.

Appearances:

Herbert C. Gilson, Esq., for the complainant.

Charles A. Rooney, Esq., for defendant Jersey City.

Hon. William H. Speer, for Public Service Elec. & Gas Co.

40 Arthur R. Bailey, official shorthand reporter, 1 Exchange Place, Jersey City.

Proceedings of October 18, 1928.

The Court: Mr. Gilson has made a request that the record be cleared up at this time, as to what the position of the Public Service Electric & Gas Company is, that corporation having agreed to come in as a party defendant, to be bound by any decree that is made.

10

Mr. Gilson: I would like to have it appear instead of "agreed to come in," "requested to join" as party defendant.

The Court: Well—

Mr. Speer: I didn't agree that I would do that. The Vice-Chancellor suggested it.

The Court: And it has been stipulated by counsel that the land described in Exhibit C. 28, the title thereto, is in the Public Service Electric & Gas Company, by deed from the Holland Company.

20

Mr. Speer: As far as that is concerned, we will set up the contention, first, that there has been a dedication to the public of Van Keuren avenue;

Secondly, there has been a dedication to the public and accepted by the public of Van Keuren avenue; and

30

Thirdly, that there has been a user which, apart from its bearing on the question of dedication, is also plenary evidence of a prescription, or prescriptive right, in Van Keuren avenue. And

Fourth, that the Public Service Electric & Gas Company and the Public Service Railway Company have a private right of way over the property known as Van Keuren avenue.

40

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Mr. Gilson: Then the complainant joins issue on the answer as outlined by Judge Speer.

The Court: Now you are going to proceed with the argument?

10 Mr. Rooney: I would like to clear up the situation and ask leave to amend and to recite that the defendant Jersey City, a municipal corporation, states as a further defense that there are in the *locus quo* mentioned in the bill of complaint a number of public streets over which the public travels, or which have been used as public streets, by long user, adversely; and, as a further defense, that there are a number of streets in the *locus in quo* which have been expressly
20 dedicated to the public; and, as a further defense, that there are further streets dedicated to and accepted by the municipality.

Mr. Gilson: I feel that I should object to any amendment of the answer at this time. I have prepared the case, put in evidence and prepared the argument on the pleadings as framed which confined the issue to Van Keuren avenue. Now, we cannot probably produce evidence to meet the question as to these
30 other streets at this time, and it seems to me the amendment should not be allowed.

The Court: But, Mr. Rooney, haven't you bound yourself to a contest only as to Van Keuren avenue by stipulations made in the final hearing?

Mr. Rooney: The stipulation as I understand it, your Honor, was to the effect that the prescription mentioned in the bill was to be taken, as claimed, to West Side avenue
40

Proceedings of October 18, 1928.

and to Duffield avenue, both of which were recognized by the parties as public streets.

The Court: You see, the whole final hearing, as I look back upon it, has developed nothing as to any streets except as to Van Keuren avenue.

Mr. Rooney: The only thing that has developed in reference to these other streets that I have in mind is James avenue, or street, running north and south of West Side avenue, and from the intersection on the south is a question of dedication by the map. Of course, as I understand it, when a street is established and there is a dedication of that one street, we establish the dedication mentioned on the whole map.

The Court: I have a very clear recollection of your having stipulated that any claim made to James avenue was relinquished.

Mr. Gilson: No, my understanding was with respect to Duffield avenue and West Side avenue and the other streets which would include James avenue. I understood the only street in question in this case was Van Keuren avenue.

The Court: That is what I say.

STATEMENT DICTATED BY THE COURT.

To make what will follow this statement intelligible, it should be explained that after the second day of the hearing, which was on October 31, 1928, Mr. Speer appeared on the following day, November 1st, with some witnesses, and upon the Court interrogating

Hearing of November 22, 1928.

10 him he said that he had been advised of the continuation of the hearing from October 18th, and had been informed that it would be resumed on November 1st, and that he either desired to intervene or had been requested by the Mayor and Aldermen of Jersey City to produce some proofs.

In a subsequent conference of all counsel with the Court, the Court suggested that the Public Service Electric & Gas Company might come in so that all parties in interest would have their respective days in court and the entire matter could then be determined once and for all. To that Mr. Speer agreed.

20

CASE REOPENED FOR DEFENDANT
PUBLIC SERVICE PROOFS.

Hearing of Thursday, November 22, 1928, 10
A. M.

Appearances.

Mr. Gilson, for complainant,

Mr. Rooney, for Mayor and Aldermen,

30 Mr. William H. Speer and Mr. Taliaferro
for Public Service Corporation.

Mr. Gilson: If your Honor please, before further evidence is put in and for the purposes of the record, I would like to make my objection to the reopening of the case. I don't expect your Honor to change your mind about it, but I owe it to my client in case any question comes up that I appear here voluntarily I would like to offer the same objection that I did the other day.

40

Hearing of November 22, 1928.

The Court: You had better state your grounds again.

Mr. Gilson: On the ground that the final hearing took place on October 15th, the complainant put in all the exhibits and evidence, and then upon the application of the defendant the case was continued to a date afterwards fixed to complete the evidence, which date was October 31st. At that time the defendant put in all of its evidence and the Court then gave the complainant one week to serve its brief on the defendant, and the defendant was to serve and file its brief not later than November 15th, and it wasn't until November 16th that I heard of any application to reopen the case for the purpose of permitting additional evidence to be put in, and counsel then appeared before the Court on November 19th, and I objected to the reopening of the case, on the ground that I had served my brief and the time had expired for the service of the defendant's brief. The case had been fully completed and I felt that it was not fair to the complainant to reopen the case for the purpose of putting in any more evidence.

Mr. Speer: Does your Honor desire any answer to that?

The Court: No, I think you disposed of that.

Mr. Speer: I think I did, and I feel that I am entirely within the discretion of the trial judge. I see no reason why there should be any objection by the counsel representing the complainant.

Jos. J. Connell, for Def. Public Service, direct.

Mr. Rooney: I might say to the Court in order to have the record straight, that in the taking of this proof Mr. Taliaferro will examine the witnesses.

The Court: You may proceed.

10 JOSEPH J. CONNELL, sworn on behalf of Public Service Corporation, testified as follows:

Direct examination by Mr. Taliaferro.

Mr. Taliaferro: For your Honor's convenience and the convenience of the witness, I would like to hand you this drawing, outlining the picture there. We are talking now about Van Keuren avenue and the Public Service plant.

20

Q Mr. Connell, by whom are you employed?

A Public Service Electric & Gas Corporation.

Q What is your position with them at the present time? A Assistant Superintendent of Construction.

Q How long have you worked for the Public Service or predecessors? A Since 1902.

Q Where were you first employed in 1902? A Plank Road car lines.

30

Q What is the name of the company that employed you? A North Jersey Street Railway.

Q When did you go to the Marion station? A About 1907.

Q Have you been at the Marion station since that time? A On and off all the time—in and out there.

Q Do you know where the street known as Van Keuren avenue runs in that vicinity? A

40

Yes, sir.

Jos. J. Connell, for Def. Public Service, cross.

Q Have you ever used Van Keuren avenue?

A Yes, sir.

Q Yourself, going to and from your work?

A Yes, sir.

Q What other uses have you observed of this so-called street? A In what way do you mean?

Q Have you ever seen wagons, trucks, or automobiles going along that street? A Yes, sir.

Q You have seen those? A Yes, sir.

Q Can you name the trucks of any particular company? A Reppenhagen; I see his trucks; and Mournes' truck, I have seen that go up there; and the mail wagon goes up and down there.

Q Have you ever seen anyone stopping the use of that street? A No, sir.

Q So far as you know, the street has been open to the public? A Yes, sir.

Mr. Gilson: I object to that.

Mr. Taliaferro: I withdraw it.

Cross examination by Mr. Gilson.

Q This Reppenhagen you speak of; what kind of a truck was that? A Well, ash trucks—five or six ton ash trucks.

Q He was carting ashes away from the plant? A Yes, sir.

Q And Mournes—what kind of a truck did he have? A Three or four different kind of trucks.

Q What was he doing? A Taking all the material from the freight depot to the power house.

Q Delivery of materials? A Yes, sir.

Jos. J. Connell, for Def. Public Service, cross.

Q How often did you see them using it? A Oh, I couldn't specify; I couldn't say, really, how often.

Q When did you first see them using that so-called Van Keuren avenue in the way you have described? A Oh, I will say about 10 years
10 back—8 years.

Q And during that time was Duffield avenue usable? A Well, five years ago Duffield avenue wasn't very good to use as a road—up to about five years ago. Now it is fairly good.

Q It was repaved by your company? A I don't know who paved it.

Q What is it, cobble-stone? A It is paved now, but I don't know who paved it.

Q Before that it was just mud? A Yes.
20

Q And what kind of filling in was it? A Oh, I guess ashes. The power house dumped it there during the week.

Q Where do you live? A North Bergen.

Q How do you come down? A I use the company's car now.

Q How did you come down in 1907? A Walked down; sometimes down St. Paul's avenue, through the lumber yard down through Van
30 Keuren avenue, down that way.

Q And you take a short-cut to the Public Service plant through the lumber yard? A What is known as Van Keuren avenue.

Q You are familiar with that locality down there? A Yes, sir.

Q And you know where Van Keuren avenue is, don't you? A Yes, sir.

Q Where is it? A That runs from West Side avenue down to the plant of the Public
40 Service.

Jos. J. Connell, for Def. Public Service, cross.

Q How long has West Side avenue been cut through to Van Keuren avenue? A West Side avenue has been there as long as I can remember.

Q How long has West Side avenue been maintained from the railroad cut to Van Keuren avenue? A As long as I can remember.

Q Wasn't there always mud there? A On West Side avenue? 10

Q Yes. A I never seen mud in West Side avenue of any account.

Q Do you remember whether it was paved with cobblestones? A No, sir; I don't.

Q Don't remember that? A No, sir; I don't.

Q Where does Van Keuren avenue begin? A I should say right there by Dodge & Bliss's office.

Q And then it ran westerly, when you first went down there, to what point? A To Duffield avenue. 20

Q And how wide is it? A That I can't say.

Q You don't know whether it is 30 feet, 40 feet, 50 feet, or 100 feet? A No, sir.

Q You don't know whether you walked to Van Keuren avenue or not when you went down that alleyway? A Well, I won't swear that it was, but the maps showed that it was.

Q When did you see those maps? A Oh, I saw those maps 18 years ago. 30

Q What maps are you referring to? A The company's property maps.

By the Court.

Q You never saw this one? A A map similar to it.

By Mr. Gilson.

Q Blue print? A Yes. 40

Jos. J. Connell, for Def. Public Service, cross.

Q What I am trying to get at is, there was no well-defined avenue there? A No, sir; just rough filling, with big hunks of cement and pieces of asphalt and just all lumpy and bumpy, and the railroad track ran right down through Van Keuren avenue right on the side there. I don't
10 know whether it is in the avenue or at the side of the avenue.

Q Where did you walk on there, on the side of the track or on the railroad track? A No, sir, on the side.

Q Which side? A I should say the north.

Q You don't know whether you were on Van Keuren avenue or on the strip to the north of Van Keuren avenue, do you? A That I can't say; I don't know how wide Van Keuren avenue
20 is.

Q You are very familiar with that locality, of course? A Yes.

Q Did you ever hear of Charlotte street? A I have; yes, sir.

Q Where is it? A I don't know.

Q Did you ever hear of 9th street? A I have, yes.

Q Where is that? A That is down in Jersey
30 City.

Q Did you ever hear of 9th street on the Dodge & Bliss property in that locality? A No, sir.

Q Did you ever hear of 4th, 5th, 6th, 7th and 8th street on that property? A No, sir.

Q Then you are not so familiar with it, are you? A Not very well when you come to them streets.

Q Now, you say nobody ever interfered with your walking down there? A No, sir.
40

Jos. J. Connell, for Def. Public Service, cross.

Q Didn't anybody from the Dodge & Bliss Company ask you not to do it? A No, sir.

Q What time would you get down there? A Some mornings 8 o'clock, some 11 or half-past 11, and some around 3 or 4 o'clock in the afternoon.

Q All hours? A Yes.

Q And the same when you left for home, you would leave different hours? A Well, of course my work don't call for different hours, but this business I had to do. 10

Q As I understand it, you were there continuously from 1907 for a few years, and since then you have been going back and forth? A Yes.

Q When did you live there and just go off and on? A Oh, I should say about 18 years ago. 20

Q So that during the last 18 years you have been going back there how often a month? A Oh, I would say pretty near every day.

Q How long would you stay there? A Five or ten minutes—ten minutes.

Q So you have been using that Van Keuren avenue during the last 18 years, excepting going back and forth the way you have described? A Yes, sir.

Q What time of the day would that be? A As I just said, all hours of the day. 30

Q Did you ever notice a sign up there at the entrance of the Dodge & Bliss Company, "No Thoroughfare"? A I have seen the sign up there; yes, sir.

Q How long have you seen that there? A Oh, that sign has been there I should say five or six years, I wouldn't be surprised—

Q And despite that, you continued to use it? A That didn't cut me from going down to the 40

Jos. J. Connell, for Def. Public Service, re-direct.

power house. The object of that was to cut people from going on the Dodge & Bliss property.

Q You know that the Dodge & Bliss Company didn't make any very great objection to Public Service employees using it as a short-cut? A
10 They never bothered me.

Re-direct examination by Mr. Taliaferro.

Q I show you, Mr. Connell, Exhibit D. 6 and ask you if you recognize that picture? A Yes, sir.

Q Is there a roadway outlined on that picture? A There is.

Q What is the name of that roadway? A I
20 always remember it as Van Keuren avenue.

Q Will you indicate to the Court what part of that roadway you used in going to and from the Public Service station on West Side avenue?
A (The witness indicates the road on the picture.)

Q Have you had occasion to walk on the far side of that road on either side next to the building, or do you walk down the middle of the roadway? A Well, at times when the weather was
30 bad we would go up the railroad track.

Q But you have walked down the roadway which you have just indicated? A Yes, sir.

Q Now, these trucks which you said you saw using Van Keuren avenue; where would you see them? A Right there.

Q That is, the roadway to the right of the picture? A Yes.

Frank Gunderson, for Def. Public Service, direct.

FRANK GUNDERSON, sworn on behalf of the defendant, Public Service Corporation, testified as follows:

Direct examination by Mr. Taliaferro.

Q Mr. Gunderson, you are employed by the Public Service Electric & Gas Co.? A Yes, sir. 10

Q What station are you employed at? A Marion station.

Q When did you first come to the Marion station? A In 1908.

Q Have you been employed there since that time? A Yes, sir.

Q And you are still employed there? A Yes, sir.

Q I show you Exhibit D. 6, and I ask you if you recognize that picture? A Yes, sir. 20

Q What does it show? A Van Keuren avenue.

Q Is that an exact representation of Van Keuren avenue as you know it? A Yes, sir.

Q What use have you observed during the period from 1908 up to the present time of Van Keuren avenue? Have you ever seen anybody using that roadway? A The letter-carrier used it.

Q Where was he going? A Generally makes delivery to the Dodge & Bliss office, and then comes down to our place. 30

Q After he leaves your place where does he go? A I don't know; he goes out some other street then.

Q Have you ever seen him go out Duffield avenue? A I couldn't swear to that.

Q Who else have you seen use Van Keuren avenue? A Well trucks used to use it and still use it. 40

Frank Gunderson, for Def. Public Service, direct.

Q Can you mention any company that sends trucks down that street that you have seen going through there? A Reppenhagen's trucks come up there.

10 Q Where was that truck going? A It would come in and go west and then come out and go wherever they are going.

Q Who else have you seen using it? A Myself.

Q Have you used it? A Yes, sir; twice a day.

Q Walk or ride? A Ride automobile.

Q Is Van Keuren avenue in such a condition that vehicles can go through? A I go through it.

20 Q You don't have any trouble going through that street, do you? A No, sir.

Q How long have you been using Van Keuren avenue? A Ever since I have been there, 20 years.

Q How did you use the street previous to having an automobile? A I walked.

Q During this period that you have used this street have you ever been stopped or molested by anyone? A No, sir.

30 Q And asked not to go through that way? A No, sir.

Q Can you recall the names of any other trucks that you have seen use the street? A Well, no. I have seen the ambulance come down there, and fire engines cut down through that way.

Q Do you remember any specific time when you saw the fire engine coming down that street? A When the docks was on fire; I don't remember the date.

Frank Gunderson, for Def. Public Service, cross.

Q About how many years ago was that? A Well, I couldn't tell you; five or six years, maybe. I don't know whether it is that long.

Q The firemen that came through Van Keuren avenue came through all right? A I don't know whether they came through all right, but I know they came through.

10

Q You didn't see them stop in the street? A No.

Q Do you recall when the last building operations took place on the Marion station? Do you recall when the plant was put up there for the present station? A When it was started?

Q Yes; how long ago? A Oh, I don't know; before my time when it was started.

Q I am referring to the present plant that stands right at the head of Van Keuren avenue?

20

A Big office building and storage?

Q Yes. A About 10 or 12 years.

Q Did you observe at that time how the materials were carted into the plant—into the office building there? A Some light stuff came in by truck.

Q What highways did they use? A They came down West Side avenue and down Van Keuren avenue.

Q Came right through Van Keuren avenue to the plant? A Yes.

30

Cross examination by Mr. Gilson.

Q Some of them came through Duffield avenue, didn't they? A Maybe they did; I didn't watch them.

Q Trucks from Newark? A Well, they used to have to go to St. Paul's avenue and come out that way, because Duffield avenue was pretty soft road.

40

Frank Gunderson, for Def. Public Service, cross.

Q Duffield avenue is better now than Van Keuren avenue is now? A Oh yes.

Q And when you go down there in the automobile do you go down on high speed or low speed? A Oh, I keep her off high; about 20 miles an hour.

10 Q Can you go down there 20 miles an hour without being bumped out of the car? A With my car; yes, sir.

Q You say when Reppenhagen used it his truck came in from the west and went out towards the east? A Yes.

Q You mean he used Duffield avenue going out? A No, east of Van Keuren avenue up towards West Side.

20 Q But he came in from the west? A Came down West Side avenue and then into our plant.

Q And then came through Van Keuren avenue? A Yes, and go east to West Side.

Q He was hauling cinders and ashes from your plant? A Yes, he was hauling ashes when I seen the trucks going along.

Q Before you used the automobile to go down you walked? A Yes, sir.

30 Q And you would take a short-cut across the lumber yard until you came to Van Keuren avenue? A Came down St. Paul's avenue, along West Side, and then came down this street here.

Q You would go through West Side avenue until you struck Van Keuren right in front of the Dodge & Bliss Company place? A Yes, sir.

Q Walked down Van Keuren avenue? A Yes, sir.

Q Where did you walk; on the tracks or on the side of the track, north or south side? A On this side.

Frank Gunderson, for Def. Public Service, cross.

Q Which side is that? A On the right-hand side going west.

Q Well, that is the north side; and that property all through there is kind of unkempt with alleys, isn't it? A Yes.

Q Or streets? A I don't know whether they are streets. 10

Q Well, they look like streets between the lumber piles all the way down to Van Keuren avenue; there is no difference between the looks of Van Keuren avenue in that respect than any of the other alleys, or streets, or whatever you call them, through the lumber yard, is there? A Well, there is just a straight avenue going down to our place; that is the only difference.

Q I know, but the paving is about the same, and the filling in is about the same? A Well, the Dodge & Bliss Company take care of that; they take care of the planks on the side. It is more like alleys. 20

Q I show you a blue print, Exhibit C. 26, and call your attention to West Side avenue, and then what is marked Van Keuren avenue here? A Yes, sir.

Q And then south of Van Keuren avenue aren't there a lot of alleys or streets, with lumber piled on both sides all the way from West Side avenue down to your plant? A Why yes, there is lumber piled there, but that lumber here— 30

Q I am talking about this (indicating on plan)? A Yes.

Q There is no difference between the alleys and streets there, so far as the physical condition of the street pavement and so forth is concerned than from Van Keuren avenue, except Van Keuren avenue has the railroad track. 40

Frank Gunderson, for Def. Public Service, cross.

There is no difference otherwise, is there? A No, sir; they take care of that.

Q Did anybody ever speak to you and ask you not to use that? A Van Keuren avenue? No, sir.

10 Q Did you ever see a sign there "No Thoroughfare"? A Yes, there is a sign there, but it is on that property.

Q How long have you seen that sign there? A I don't know; quite a while ago.

Q One year or ten years? A Well, I would say 10 years, maybe.

Q But you didn't pay any attention to it? A No, I didn't go over there.

20 Q The Dodge & Bliss Company knew you were an employee of the Public Service; you were friendly with them—with the Dodge people? A Yes, sir.

Q Now, then, you referred to the Marion station; you are referring to the Public Service Electric plant down there, the power house and other buildings; is that what you mean by the Marion station? A Yes, sir.

Q You don't know when that was built? A No, sir; I do not.

30 Q Are you familiar with that locality? A Well, by going through there; yes, sir.

Q Do you know where Charlotte street is? A Yes.

Q Where? A It goes across there.

Q What do you mean, north and south? A North and south.

Q And what part of the property does it cross north and south? A This side of West Side avenue, I am pretty sure.

40 Q Yes, but how far west of West Side avenue, nearer Duffield or nearer West Side? A Nearer West Side.

Frank Gunderson, for Def. Public Service, cross.

Q Don't you know that there isn't any such street as Charlotte street cut through there? A There was at one time.

Q When? A They said there was; I never seen it myself.

Q You don't know anything about it today? A Well, they told me it was Charlotte street. 10

Q When did they tell you that? A Five or six years ago.

Q When did they tell you there was a Charlotte street there? A Five or six years ago.

Q Did they say that Charlotte street was there five or six years ago or had been there 50 years ago? A To my knowledge, they told me five or six years ago.

Q Did you ever hear of any other street running through there? A James avenue ran through there before they blocked it up. 20

Q Any others? A Well, Lewis avenue is supposed to run through there if the railroad don't block it off.

Q Any others? A I don't know.

Q Never heard of 4th, 5th, 6th, 7th, 8th and 9th street down there? A No, I can't say that I did around that section.

Q Where do you live? A 98 Hopkins avenue, Jersey City. 30

By the Court.

Q I missed the number of years you say you have been using that avenue? A Twenty years.

John F. Sullivan, for Def. Public Service, direct.

JOHN F. SULLIVAN, sworn on behalf of defendant Public Service Corporation, testified as follows:

Direct examination by Mr. Taliaferro.

10 Q Mr. Sullivan, where do you live? A 147 Beach street, Jersey City.

Q By whom are you employed? A Public Service Electric & Gas Co.

Q How long have you been working for them? A Over 19 years.

Q Where are you employed at the present time? A Marion power house.

Q How long have you been at that station? A Over 19 years.

20 Q Do you recall the date when you went there? A Yes, sir.

Q What is it? A March 1, 1909.

Q I show you Exhibit D. 6 and ask you if you recognize that picture? A Yes, sir.

Q I also show you Exhibit D. 4 and ask you if you recognize that picture? A Yes, sir.

Q Is there a roadway laid out on that picture? A Yes, sir.

30 Q What is the name of that? A Van Keuren avenue.

Q Is that picture an exact representation and does it depict exactly the street as it is today? A Yes, sir.

Q During your period of work at the Marion station has that street always been in that condition? A Yes, sir.

Q Have you ever used Van Keuren avenue while you have been employed at the Marion station? A Every day, sir.

40 Q How do you happen to use Van Keuren avenue? A Walking.

John F. Sullivan, for Def. Public Service, direct.

Q Where were you going? A Between the plant and my home.

Q When you used Van Keuren avenue did you go all the way through to West Side avenue?

A Yes, sir.

Q Have you ever been stopped from using the street? A No, sir. 10

Q Have you ever observed anybody else using the street? A Yes, sir.

Q Whom have you seen using it? A Several different people, strangers; and the biggest part of our plant use it.

Q Have you ever seen any trucks or automobiles using the street? A Yes, sir.

Q Can you give me the names of any of those? A American Express Company— 20

Q How often have you seen the American Express Co. use the street? A About three or four times a week; every time they come to the plant.

Q Do you recall when the first time was that you saw them use Van Keuren avenue? A Yes, sir.

Q When was that? A At the time that I started with the Public Service.

Q And the American Express Company has been using that street? A I won't say the American Express Company, but Wells-Fargo and Adams and Shufflebotham's. 30

Q Have you ever seen anyone else use the street? A You mean trucks or automobiles? Yes, sir.

Q Can you give us the names of those? A I have seen Reppenhagen, U. S. mail wagon, Jersey City Water Department wagon, fire engine, and lots of private owned cars. 40

John F. Sullivan, for Def. Public Service, direct.

Q When have you seen any privately owned cars? A During severe rainstorms, on Newark avenue when it is impossible to get through, they use this Van Keuren avenue.

10 Q Where were they going? A Going to West Side avenue, going easterly and going westerly.

Q How do they get into Van Keuren avenue? A Through Duffield and through West Side avenue.

Q Do those cars have any trouble going through Van Keuren avenue? A No, sir.

Q Was it in good condition? A Very good condition.

20 Q Have you ever seen any automobiles or trucks using the street stopped when they were going through? A No, sir.

Q When was the last time you saw a private automobile go through there? A Two weeks ago.

Q In which direction was that automobile going? A Easterly.

Q Have you ever seen a policeman on Van Keuren avenue? A Yes, sir.

Q When have you seen him? A Quite often.

30 Q Was he walking or riding? A Both; sometimes he would be a mounted officer and at other times on foot.

Q Have you seen him going through about the same time each day as if he was on a beat? A Yes, sir.

Mr. Gilson: I object.

The Court: It is rather leading.

Mr. Taliaferro: I will withdraw the question.

John F. Sullivan, for Def. Public Service, cross.

Q What time of the day have you seen policemen going through there? A Between three and four o'clock in the afternoon.

Q In which direction was he going? A Both directions, at different times.

Q Now, if he was going in a westerly direction where would he go after leaving Van Keuren avenue? A Up to Duffield avenue. 10

Q If he was going in an easterly direction where would he go after leaving Van Keuren avenue? A To West Side avenue.

Q In other words, was he making a circle there? A At different times I have seen him going in different directions.

Q At times when you saw him going in any direction would he usually complete that direction? A Yes, sir. 20

Q When was the first time you saw policemen going through Van Keuren avenue? A Many years ago.

Q Can you say approximately? A I could say back when I started in the Public Service in 1909.

Q You can recall seeing policemen going through there as far back as that date? A Yes, sir.

Q When was the last time you saw policemen going through there? A About two weeks ago. 30

Cross examination by Mr. Gilson.

Q You knew that the police went down there on paydays to Dodge & Bliss Company, didn't you? A I know nothing about that, sir.

Q Would they go down there on pay-days to your plant? A We have two pay-days in our plant. 40

John F. Sullivan, for Def. Public Service, cross.

Q Two pay-days a week or month? A A week.

Q And aren't those the days that you have seen these police officers go down there? A No, sir; only one of the pay-days.

10 Q Well, do I understand you to say that that street is patrolled by a policeman every day from between three and four? A I didn't say every day, sir; quite often.

Q About how often would you say? A Well, on an average of four times a week.

Q And those four days would include the times that they would go down on pay-days to your plant and the other plants? A No, sir.

Q Those are different policemen, then, are they? A Yes, sir.

20 Q Now, you said that you have seen hundreds of cars go through there, through Van Keuren avenue, in violent rainstorms? A Yes, sir.

Q And when did you first see that happen; soon after Duffield avenue was paved so that they could get out, or before? A Both times.

Q How long was the first time you saw so many cars going through there in violent storms? A Well, maybe 10 or 12 years ago.

30 Q And those cars were coming from Newark or going toward Newark? A Both ways.

Q And on those occasions haven't you often seen the cars wandering around through the alleys and streets of the Dodge & Bliss Company lumber yard? A No, sir.

Q Do you know that Catherine street runs parallel with Van Keuren avenue and St. Paul avenue? A I don't know that street.

40 Q Do you know the street just north of the Lackawanna Railroad? A No, sir; I don't know

John F. Sullivan, for Def. Public Service, cross.

that street. Catherine street? No, I don't know it.

Q Don't you know that there is a street there? A I don't know it.

Q As I understand it, when there is a cloudburst or very violent rainstorm in the summertime, St. Paul's avenue and Newark avenue would be flooded down in that section? A It doesn't have to be a severe storm to flood those two streets. 10

Q It would flood them severely enough to cause some cars to wander around through Duffield avenue; is that so? A Yes, sir.

Q And that would last for two or three hours? A Yes.

Q Do you mean to tell us that that has been going on for 9 or 10 years? A Thereabouts. 20

Q Don't you know, as a matter of fact, it has been going on for the last two years, since that construction work has been causing the water to back up St. Paul's and Newark avenues? A What construction work?

Q As regards Duffield avenue. Don't you know that they are building a new road and building a sewer connection down there? A That has been going on long before that. 30

Q How long? A 10 or 12 years; I can't say how many years, because I never noticed it.

Q Is Van Keuren avenue wide enough so that traffic or cars could go both ways at the same time? A Yes, sir.

Q Outside of the railroad that is laid in that street? A Between the railroad tracks and the fire hydrants and the lumber piles.

Q Wide enough for two cars to pass at the same time? A Yes, sir. 40

Percy C. Dixon, for Def. Public Service, direct.

Q Well, where West Side avenue meets the so-called Van Keuren avenue there is only space enough for one car to go through there, isn't it?
A Two cars can pass there.

Q Have you ever seen two cars passing at the same time? A I have seen one parked.

10 Q No, see the express company cars, such as you have told us you have seen, going down there with deliveries to the Public Service? A Yes, sir.

Q And that is true of the mail wagons? A Yes, sir.

Q How often have you seen the fire engine go down there? A I have seen them once.

Q When the dock was on fire? A No, sir; when the Public Service was on fire.

20 Q When was that? A In 1917.

Q You are employed by the Public Service Electric & Gas Company? A Yes, sir.

Q And what other subsidiary companies of the Public Service Corporation are there? A At Marion station?

Q Yes. A Public Service Production for doing work there.

30

PERCY C. DIXON, sworn on behalf of the defendant, Public Service Corporation, testified as follows:

Direct examination by Mr. Taliaferro.

Q Mr. Dixon, where are you employed? A Public Service Electric & Gas Co.

40 Q Where do you live? A 551 Cedar avenue, Woodbridge.

Percy C. Dixon, for Def. Public Service, direct.

Q How long have you been working for the Public Service? A Since 1907.

Q And where do you work at the present time? A Marion station.

Q How long have you been there? A Since July 20, 1926.

Q What is your position there at the present time? A Chief engineer. 10

Q Have you charge of the plant in that station? A Yes, sir.

Q I refer you to Exhibits D. 4 and D. 6; do you recognize the picture that is shown there? A Yes, sir.

Q What does that picture show? A Van Keuren avenue.

Q Where does Van Keuren avenue run? A Between West Side avenue and Duffield avenue. 20

Q And in which direction does the picture run, east or west? A West.

Q Towards the plant? A Westerly towards the plant.

Q During your employment at Marion station have you ever seen any use made of Van Keuren avenue? A Yes.

Q Whom have you seen using it? A Why, Borden's milk wagon—Borden Farm Products Co. I believe is the right name for it. 30

Q When did you see the Borden wagon? A They go through there quite often.

Q When was the last time you saw them going through there? A Probably a month or so ago.

Q Who else have you seen? A Breyer's ice cream.

Q When have you seen the Breyer ice cream wagon go through there? A Probably a year ago.

Q How many times have you seen them go through the street? A Two or three times. 40

Percy C. Dixon, for Def. Public Service, direct.

Q Who else have you seen use the street? A J. T. Ryerson & Sons.

Q What is Ryerson's business? A Why, they are in the iron business, delivering steel.

Q When have you seen them using the street?

10 A Well, I saw them in about the neighborhood of a year ago.

Q Who else? A The mail man goes through there, delivers to us and goes on through to Duffield avenue.

Q Comes in Van Keuren avenue and goes out Duffield avenue? A Yes, sir.

Q When did you first see the mail man going through there? A Since I have been at the plant.

20 Q When did you last see him? A Yesterday.

Q Was he walking or using an automobile? A Walking.

Q Have you ever seen a mail automobile in the street, or parcel-post delivery? A No, I don't think I have.

Q What else have you seen use the street? A I have seen private cars coming through there from different states, some going east and some going west.

30 Q When did you observe those cars going through there? A Quite frequently I have noticed them last summer. My office has been moved over on that switch yard and I have seen them often.

Q You say "different states"; how do you know they are cars from different states? A The state is on the license.

Q How many of those automobiles have you seen going through there? A Probably 25 or
40 30, maybe more than that.

Percy C. Dixon, for Def. Public Service, direct.

Q Have you seen policemen using the street?

A Yes, mounted policemen.

Q What time of the day? A Sometimes in the morning and sometimes in the afternoon, it might be.

Q Have you seen him as often as every day?

A No, I wouldn't say every day.

10

Q How often? A Might see him a couple of days and might not see him again for a week or ten days.

Q Were you watching for them? A I wasn't exactly watching for him, but I happened to be looking in that direction.

Q Have you seen the firemen using that street? A They were down there.

Mr. Gilson: I don't want to be objecting all the time; I think you had better let him say that he does see. They are all leading questions.

20

The Court: I know, but I suppose there ought to be some relaxation of the rule when a witness takes the stand and is asked to relate his experience in regard to a large number of things. I think counsel might be permitted to prompt him to some extent.

Q (Question read by the stenographer). A They were.

30

Q When? A About a year ago.

Q What was the occasion of their coming down there? A There was a fire alarm Saturday afternoon about two o'clock—between 12 and 3, somewhere in that neighborhood; they were down there to a fire next to Dodge & Bliss.

Q How did they get out of the street or get away from the plant? A Some of them went

40

Percy C. Dixon, for Def. Public Service, cross.

through Van Keuren avenue; some went other ways.

Q Have you ever seen any other vehicles using the street? A Well—(witness pauses).

Q Have you ever used that street? A Yes, quite often.

10 Q Were you walking or riding? A Riding.

Q When was the last time you rode through there? A This morning.

Q Did anyone stop you this morning? A No, sir.

Q Have you ever been stopped or bothered when you were going through the street? A No, sir.

Q Have you ever seen anyone stop or bother anyone else? A No, sir.

20 *Cross examination by Mr. Gilson.*

Q You knew, Mr. Dixon, that the Dodge & Bliss Company didn't object to the Public Service employees, or some of them, making a shortcut through Van Keuren avenue? A I didn't know it was Dodge & Bliss Company property; I thought it was a public street.

30 Q You saw the sign there "No Thoroughfare"? A I thought that belonged to the property twixt Dodge & Bliss and the Barnes that they often used.

Q You thought it was a public street? A Yes.

Q Didn't you see that the lumber was piled in some places on that street? A Well, no; I don't think it is piled in the street.

Q And you never had any suspicion that the Dodge & Bliss Company was letting you use it as a sort of neighborly accommodation, did you?

40 A No.

Percy C. Dixon, for Def. Public Service, cross.

Q You said that some of these vehicles that you saw use Van Keuren avenue west one way and some went the other way? A Well, they were going in different directions through that street.

Q And then some of them would go in through Van Keuren avenue and go out Duffield avenue? 10

A Some would come in through Duffield to West Side avenue and go out Duffield.

Q And the reason you used it you thought it was quicker than to go around Duffield avenue? A Yes.

Q And you have been doing that all the time since 1926? A Yes.

Q Did you ever see any of these private cars you speak of before last summer, using Duffield avenue? A Ever since I have been in the plant. 20

Q Since 1926? A Yes.

Q And on those occasions it was because the other streets were flooded? A On one occasion.

Q They never used it except when they couldn't get through St. Paul's avenue or Newark avenue, when they were flooded? A Yes, I have seen them when it wasn't flooded.

Q What business were they? A I don't know.

Q Did they have any business? A No, they were pleasure cars. 30

Q Did they look as though they were lost? A They seemed to be moving along rapidly enough, and I wouldn't say they were lost.

Q Can you explain to the Court how they could get into Van Keuren avenue without they were lost, unless it was to avoid the flood in St. Paul's avenue and Newark avenue? A Very frequently they have Newark avenue blocked off, or Tonnelle avenue blocked off, and they divert 40

Wm. G. Warfield, for Def. Public Service, direct.

the traffic and some of them follow Duffield avenue on down looking for the street to go up.

Q How many times do you say you saw that happen? A Well, probably four or five.

10 Q And when you saw Borden's milk wagon going down there it was to supply milk to some of the employees, wasn't it? A Yes.

Q In your plant; and the same is true of the ice cream wagon? A Yes.

Q And when you saw Ryerson there it was to deliver materials to your plant? A Yes, sir.

20 WILLIAM G. WARFIELD, sworn on behalf of the defendant, Public Service Corporation, testified as follows:

Direct examination by Mr. Taliaferro.

Q By whom are you employed, Mr. Warfield?
A Public Service Electric & Gas Co.

Q How long have you been working for them?
A 34 years

30 Q Have you ever been employed at the Marion station? A Yes, sir.
Q When did you first go there? A In 1906.

Q What were your duties while you were at the Marion station? A Chief engineer.

Q What is your present duty? A Mechanical plant engineer, visiting all plants, supervising on the steam end.

Q I show you Exhibit D. 5 and ask you if you recognize that picture? A Yes, sir.

40 Q What does that picture show? A Through the center of Van Keuren avenue up to the D. L. & W. tracks.

Wm. G. Warfield, for Def. Public Service, direct.

Q From what direction was that taken? A Taken east.

Q Where was the picture taken from? A Taken from Duffield avenue, in that direction looking east. It may have been taken from the top of a building; I don't know. It is looking east, anyway. 10

Q In relation to the Public Service plant, where was it taken? You observe the wire fence.

A Well, that was on the east corner—that is toward the east corner property line.

Q Do you recall when Van Keuren avenue ran right through the Public Service? A Yes, sir.

Q Did Van Keuren avenue form the southern boundary of the plant? A It did at that time, yes. 20

Q When was that? A Well, up to 1915 when I left there. I believe in 1920 Van Keuren avenue was cut around the Dodge & Bliss property, and then we put that Van Keuren avenue around the property line.

Q Now, before the Public Service obtained the piece of property to the south of Van Keuren avenue did you ever see any use made of Van Keuren avenue? A Oh, yes, we made use of it ourselves.

Q Did you see anybody else besides the Public Service use that street? A Well, I saw our expressman coming in there. I don't just recall how many of them did or how many times they delivered stuff through there. 30

Q Did you ever make any repairs to Van Keuren avenue? A We did; put ashes on there—filled it in and put ashes along there.

Q Well, where did Van Keuren avenue run before it was changed, west or east? A West. It went to Duffield avenue. 40

Wm. G. Warfield, for Def. Public Service, direct.

Q Did it go beyond Duffield avenue? A No, sir.

Q You say that the street was changed? A Yes, sir.

Q Do you know what the new direction of Van Keuren avenue was after the Public Service
10 bought the property to the south? How did Van Keuren avenue run then? A Before they bought it?

Q No, after they bought it? A Well, it ran south from our property; I don't know just how many feet; a couple of hundred feet or so, and then it goes west to Duffield avenue.

Q In other words, at the present time, since Van Keuren avenue has been changed it is possible to go through Van Keuren avenue around
20 our plant to Duffield avenue? A Yes.

Q And previous to your buying the property south of Duffield avenue it was possible to go through Van Keuren avenue to Duffield avenue? A Yes.

Q In other words, when we cut off Van Keuren avenue and made a road, do you know whether any proceedings were taken to close Van Keuren avenue? Do you know that that was done, according to law? A I understand so.

Q Where is the present switching station; is that in the old bed of Van Keuren avenue? A
30 Yes, sir.

Q How often do you visit the Marion station now? A Well, two to three, sometimes four, times a month; sometimes oftener.

Q Did you observe any use made of the Van Keuren avenue, made at the present time? A Well, I know I use it myself, that is, quite often when I go to our Secaucus power station; I
40 drive up there.

Wm. G. Warfield, for Def. Public Service, cross.

Q Do you use an automobile? A Yes, sir.

Mr. Gilson: May I interrupt. I think, if your Honor please, there should be now some streets between Van Keuren avenue in question and this street. I don't know whether he is talking about that. We are not making any claim to Van Keuren avenue as relocated by the Public Service. 10

Mr. Taliaferro: I will qualify that.

Q Referring to his picture, Exhibit D. 5; have you ever seen Van Keuren avenue as it is there? A Yes, sir.

Q Have you ever used that street? A Yes, sir.

Q When did you last use it? A Five or six weeks ago. 20

Q Did you use an automobile? A Yes, sir.

Q Were you stopped or molested when you went through there? A No, sir.

Q How many times have you used it a month? A I used it many years ago probably once a month; not this last month; previous to that.

Cross examination by Mr. Gilson.

30

Q Where do you live? A 224 Roosevelt avenue, Avon, N. J.

Q 224 Roosevelt avenue— A Avon-by-the-Sea.

Q Not Avon, England? A No, sir.

Q It used to be easier for you to take a short-cut through Van Keuren? A I never did take that cut; we used Van Keuren avenue to James avenue several years ago before James avenue was closed up. 40

Wm. G. Warfield, for Def. Public Service, cross.

Q In those days did you walk or drive? A Oh, sometimes walked and sometimes drove.

Q And you knew the Dodge & Bliss Company men and they knew you, didn't they? A Oh, yes.

10 Q And you knew that they didn't have any objection to your using Van Keuren avenue the way you did use it? A They were always good neighbors.

Q Now, you have been there since 1906; is that right? A Since when?

Q 1906? A I was there part of the time.

Q That was when the plant was built, wasn't it? A That was when it started up.

20 Q Nothing there before 1906, was there? A Well, they started the foundation, I think, around 1904.

Q I mean there wasn't any plant of any kind there? A Not to my knowledge.

Q When you went down there there wasn't anything except the foundation started? A I didn't go there until the plant was partly erected.

Q It was in the course of construction? A Yes.

30 Q When was it finished? A Oh, I don't know.

Q Well, it took a year or two to build? A It took up to three or four years ago, and it ain't quite finished yet.

Q I mean the power plant and the big chimneys and things like that? A That was finished somewhere around 1915, I think it was.

Q And they hauled materials more or less down there for the construction of the plant from 1906 up to the present time; that is so, isn't it?

40 A I believe so.

Wm. G. Warfield, for Def. Public Service, cross.

Q And how many employees are there down there? A How many?

Q Yes, how many? A Well, there was probably 300—280 or 300, something like that now.

Q About how many people of the employees of the Public Service use Van Keuren avenue as a short cut? A I can't say; I can't answer how many. I know they always use it for going in and out to lunch. A lot of them carry their own lunch and a lot of them take that as a short-cut. 10

Q Now, you said you made some repairs to Van Keuren avenue? A Yes, sir.

Q Was that before the re-location of the westerly end of Van Keuren avenue? A Yes.

Q And those repairs, as I understand, consisted of dumping ashes in Van Keuren avenue in front of your property? A Yes. 20

Q And that is all the repairs? A Yes.

Q And you say you think the change of the westerly end of Van Keuren avenue took place in 1915? A I don't understand you.

The Court: When was the street continued around your property?

A About 1920. The property was bought around 1920; I don't know just when the street was cut through there. 30

Q You said up to 1915 Van Keuren avenue was the southerly boundary line of the Public Service property down there; might it not have been 1917? A It was probably about 1920 when they bought it, and then they changed it around. It still is the south end of the property line.

Q You never noticed any well-defined lines of Van Keuren avenue, did you? A Well, I took the property line of the Barnes Mfg. Company 40

James F. Kelly, for Def. Public Service, direct.

and along our property to be the north side of Van Keuren avenue. I don't know just how wide it was; I never checked it up.

Q You don't know what part of the street the railroad track was in, whether the center or north or south side? A My recollection is that
10 it was just south of the center.

Q You say the Barnes Mfg. Co. factory was on the northerly line of the avenue? A Apparently.

Q But there weren't any lines? A Building lines, as shown in the picture.

20 JAMES F. KELLY, sworn on behalf of defendant Public Service Corp., testified as follows:

Direct examination by Mr. Taliaferro.

Q Where do you live, Mr. Kelly? A 277 Bergen avenue, Jersey City.

Q By whom are you employed? A Public Service Electric & Gas Company.

Q How long have you been working for them? A 25 years.

Q Were you ever employed at the Marion station? A Yes, sir.
30

Q When did you first go to the Marion station? A July, 1906.

Q Are you at the Marion station at the present time? A No, sir.

Q When did you leave there? A June 1, 1919.

Q Where are you at the present time? A Public Service Building, 80 Park Place, Newark.

Q What is your position there? A Elec-
40 trical engineer.

James F. Kelly, for Def. Public Service, direct.

Q Since you left the Marion station have you had occasion to go back there? A Yes, sir.

Q How often? A Four or five times a month.

Q Do you know a street known as Van Keuren avenue that runs from the Public Service Marion station in a northerly direction? A Yes, sir. 10

Q Do you recognize that picture (showing witness Exhibit D. 5)? A Yes, sir.

Q What does that picture show? A It shows Van Keuren avenue, running east.

Q Where was that picture taken from, do you know? A I would say directly in front of the watchman's shanty, outside of the office of the Marion station.

Q Is that the easterly boundary of the present plant? A Yes, sir. 20

Q Will you state whether or not you have ever observed any use being made of that as a street, referring to Van Keuren avenue? A I have.

Q Whom have you seen using it? A Express wagons, butcher wagons, baker wagons—all kinds of delivery wagons, and fire engines.

Q When was the first time you saw that street used? A The first year I was at Marion.

Q Have you seen it used continually since that time? A Well, continually up to the time I left there, and on several occasions since then. 30

Q Have you ever used Van Keuren avenue? A Many times.

Q How did you go along that street? A Well, I walked there, back and forth, to my home to Tonnele avenue and Romaine avenue in the morning and night, up until 1919.

Q Since 1919 how often have you used the street? A I haven't used it; I have gone 40 through Duffield avenue since that time.

James F. Kelly, for Def. Public Service, direct.

Q Have you ever observed since 1919 anyone else using the street? A Yes, sir.

Q Have you ever seen anyone stopped from using the street? A No, sir.

Q Were you ever stopped? A No, sir.

10 Q Is Van Keuren avenue in a condition to be used by automobiles and wagons? A So far as I can observe from the plant, yes, sir.

Q Have you observed automobiles and wagons going over the street while you were at the plant? A Yes, sir.

Q During the time you were at the plant walking along Van Keuren avenue was it in any condition so that people could use it walking on foot and others traveling in wagons? A Yes, sir.

20 Q Do you recall when Van Keuren avenue ran straight ahead from the plant? A Alongside of the plant, yes.

Q Was that previous to the time that the property to the south was purchased? A Yes, sir.

Q Where did Van Keuren avenue run to at that time? A Well, to my way of thinking, it continued right down to our dock, to the westerly end of the building.

30 Q Did Van Keuren avenue make connection with Duffield avenue? A Yes.

Q When Van Keuren avenue was closed was there any provision made for getting to Duffield avenue in a westerly direction? A Yes.

Q What was done? A They re-routed it in a southerly and in a westerly direction when they were building the switch.

40 Q Do you know whether Van Keuren was ever closed off at all running alongside of the plant? A Never, to my knowledge.

Walter J. Ritchie, for Def. Public Service, direct.

Q I am referring to it before the re-routing took place? A No, I don't know when it was closed off.

Cross examination by Mr. Gilson.

Q These express wagons, butcher wagons and delivery wagons that you speak of were making deliveries to the Public Service and the Public Service employees? A Yes, sir. 10

Q And I suppose the reason you used Van Keuren avenue was because it was more convenient than to drive and walk way down to Duffield avenue and through that way? A Yes, sir.

Re-direct examination by Mr. Taliaferro. 20

Q Why do you use Duffield avenue at the present time? A Well, it is in better condition, and because of the fact that I come from Newark and go back that way.

Q It is more convenient? A Yes.

WALTER J. RITCHIE, sworn on behalf of the defendant Public Service, testified as follows: 30

Direct examination by Mr. Taliaferro.

Q Where do you live, Mr. Ritchie? A 7 Reservoir avenue, Jersey City.

Q By whom are you employed? A Public Service Electric and Gas Company.

Q How long have you been working for them? A Ten years, since March, 1918. 40

Walter J. Ritchie, for Def. Public Service, direct.

Q Where have you been employed since that time? A Marion.

Q What is your position there now? A Assistant Chief Engineer.

Q Do you know a street known as Van Keuren avenue? A Yes, sir.

10 Q I show you Exhibit D. 5; do you recognize that picture? A Yes, sir.

Q What does that show? A That shows Van Keuren avenue running east. That is a picture taken from the west.

Q Have you ever seen use made of Van Keuren avenue? A Yes, sir.

Q Whom have you seen use the street? A All kinds of traffic going up and down there, and I have been going up and down there for
20 10 years.

Q Ever since you have been at the plant? A Yes, sir.

Q When was the last time you saw an automobile use that street? A I saw a truck going through there this morning.

Q Do you use Van Keuren avenue? A Yes, sir.

Q How often? A Twice a day.

30 Q For how long have you been using it? A Ten years.

Q Have you ever been stopped or molested from using the street? A No.

Q Have you ever seen anyone else that was making use of that street stopped? A I never saw anybody stopped, no, sir.

Q Is that street in a condition to be used by automobiles? A Yes, sir.

Walter J. Ritchie, for Def. Public Service, cross.

Cross examination by Mr. Gilson.

Q This truck that you saw this morning, Mr. Ritchie, was whose truck? A It was a truck going to the brick yard.

Q You know that that cinder brick concern has leased a piece of property from the Dodge & Bliss Company? A I don't know anything about it; I know it is there, that's all. 10

Q You know that cinder brick company is running on what is called Van Keuren avenue? A Yes.

Q And, of course, all trucks go back and forth to that cinder brick company on Van Keuren avenue? A Yes.

Q Now, you say you have seen all kinds of traffic for the last 10 years going along Van Keuren avenue? A I mean wagons and automobiles. 20

Q Deliveries? A Not only deliveries; I have seen taxicabs going through there.

Q Where do they go, through to Duffield avenue? A Yes.

Q People that are coming to your plant? A Yes.

Q In a taxi? A Yes.

Q And then they go up from Van Keuren avenue? A Yes. 30

Q Did you notice whether those taxis were going from Newark or Jersey City? A Jersey City.

Q They would go through Duffield avenue? A Yes.

Q And outside of those taxis and delivery wagons—that is what you mean by all kinds of traffic? A Yes, all kinds of wagons and never have seen anybody stopped. 40

Walter J. Ritchie, for Def. P. S., re-direct.

Q This trucking would be deliveries to the Public Service or the cinder company? A Yes. Before it used to be to the Barnes Mfg. Co., but they are not there any more.

10 Q You know they were right on Van Keuren avenue? A They were right near the Dodge & Bliss plant.

Q That is to say, on Van Keuren avenue? A Yes.

Q Of course, you have seen trucks going in and out of the Dodge & Bliss Company plant? A Yes.

Q Did you ever notice that sign up there "No Thoroughfare"? A Yes, there is a sign up there.

20 Q "No Thoroughfare"? A Yes.

Q How long have you noticed that there? A I think that is only about 18 months or two years.

Q You never saw it there before that? A No.

Q You never paid any attention to it? A There was a siding between Dodge & Bliss.

30 Q Did you know that that was no thoroughfare? A We had to get into the property and we took that road in getting there.

Re-direct examination by Mr. Taliaferro.

Q What did you think that sign meant? A There was a road that run between Dodge & Bliss' place and Barnes Mfg. Co. and we used it for going in on our property.

40 Q You mean that was the passage-way from Van Keuren avenue to the Public Service property? A Yes, sir.

Percy F. Wilcox, for Def. Public Service, direct.

Q How long did you use that? A That must be up to about six months ago, maybe a little more than that.

Q Were you ever asked to stop using that there? A Yes, sir; we had a gate there.

Q To your knowledge, has the Public Service received any correspondence in relation to that roadway? 10

Mr. Gilson: He is the chief engineer, he doesn't know about the correspondence.

A I had to take care of that fence. There is a gate there—automobile gate.

Q You received letters from the plant? A Yes.

Q Did you receive any letters directly from the Dodge & Bliss Company? A I believe we had correspondence with Dodge & Bliss. 20

Q Where did the cars come from? A Through there (indicating).

Q In other words, that piece of property was shut off? A Yes, sir.

Re-cross examination by Mr. Gilson.

Q You saw that sign there but you never stopped using it? A No, sir. 30

PERCY FRANKLIN WILCOX, sworn on behalf of defendant Public Service Corporation, testified as follows:

Direct examination by Mr. Taliaferro.

Q Where do you live? A West Orange. 40

Percy F. Wilcox, for Def. Public Service, direct.

Q By whom are you employed? A Public Service Electric & Gas Co.

Q How long have you been working for them?

A About 30 years.

Q Have you ever been employed at the Marion station? A Yes, sir.

10 Q When did you first go there? A In 1905.

Q Are you employed there at the present time? A Yes, sir.

Q I show you Exhibit D. 5; do you recognize that picture? A Yes, sir.

Q I show you Exhibit D. 4; do you recognize that picture? A Yes, sir.

Q What do those pictures show? A This D. 4 shows Van Keuren avenue looking west.

20 Q What does D. 5 show? A This is Van Keuren avenue looking east.

Q Are you familiar with Van Keuren avenue? A Yes.

Q What uses have you seen made of Van Keuren avenue? A I saw express trucks and ambulances; and I have seen mounted policemen going through there.

30 Q How often have you seen policemen going through there? A From 1905 to 1913 there used to be a mounted policeman going through there every morning and afternoon, commencing at James avenue down through Van Keuren to Duffield, and back the same way; sometimes through West Side.

Q What else have you seen? A I have seen the fire department down there answering the alarm at the Barnes Company.

Q Have you ever use Van Keuren avenue? A In the early days, yes; loads of people used to use it twice a day, morning and night, walking.

40

Percy F. Wilcox, for Def. Public Service, cross.

Q Have you seen any Public Service people using that street? A Yes.

Q Have you ever been stopped from using that street? A No, sir.

Q Have you ever seen anyone else stopped from using the street? A No, sir.

Q Do you know Mr. John O'Brien? A Yes, 10
sir.

Q Where does John O'Brien live? A He used to live right on the east end of the property next to the D. L. & W. railroad.

Q Have you ever seen Mr. O'Brien use Van Keuren avenue? A Yes, sir.

Q Many times? A Yes, several times.

Q When was the last time you saw him use Van Keuren avenue? A Oh, I can't just exactly 20
say.

Q How long has it been since he lived there? A Oh, he hasn't lived there since, I think, around 1904 or 1905—1905, I think.

Q But you did see him use the avenue in 1904 and 1905? A Yes.

Cross examination by Mr. Gilson.

Q When you went down there, Mr. Wilcox, in 1905 what was there on the Public Service 30
property? A There was nothing up but the iron work—all the iron work was up.

Q And then did you have anything to do with the construction of the plant? A Yes, I did all the piping and put in the auxiliaries.

Q And you have been there continuously ever since? A From 1905 to 1913, when I was transferred to Trenton, and I came back in 1916.

Q So that you have been there from 1916 up to the present time? A Yes, sir. 40

Percy F. Wilcox, for Def. Public Service, cross.

Q Where do you live in West Orange? A St. Cloud avenue, West Orange.

Q And when was the plant finished and they started to operate? A In 1906.

Q How many employees were there there then, about? A There was about—well, I don't
10 know; I should judge around 150.

Q And now there are about 300? A About 360 now, or '62.

Q About how many of the employees of the Public Service would you say used Van Keuren avenue? A I would say about 60%.

Q So that it would be more convenient to go out that way than it would be to go through Duffield avenue? A Yes.

Q You have seen them lots of times coming
20 through the alleys of the Dodge & Bliss Company, too? A Yes.

Q So that there isn't any particularly defined way through Van Keuren avenue, but they can wanted up both sides of it and make short-cuts through? A Most of the time they went up Van Keuren avenue and out James avenue; other times they would go around behind the stable.

Q And you used Van Keuren avenue up to West Side avenue? A Well, most of the time
30 we went out James avenue.

Q That is about half way down between West Side avenue and your place? A Yes.

Q And then used James avenue to St. Paul's? A Yes. Sometimes we would go on up to West Side avenue and down to the railroad.

Q When was James avenue cut off so that you didn't use it any more? A About 1917, I think.

Q And then since 1917, about up to the
40 present time, you had been cutting right up Van

Percy F. Wilcox, for Def. Public Service, cross.

Keuren avenue to West Side? A Well, for the last few years I haven't gone that way. The time I used to go that way I used to come in by the Pennsylvania depot and come down to the Marion depot.

Q Now, then, where did John O'Brien live? A Well, he used to live on the east end of the property which led right behind Barnes' property and up to the railroad. 10

Q The east end of your property? A Yes.

Q You say you saw him using Van Keuren avenue? A Yes.

Q Walking or riding? A Walking.

Q He would go down Van Keuren to the place west of Barnes' place and go through to his property—his house? A Well, after I came to work here he had just moved away from there. He moved away from there, I think, in 1904; I ain't sure about that. 20

Q Then you didn't see him using it, did you? A He was down there up to the time he did use it.

Q When was that? A I don't just remember what year.

Q Well, I don't get that quite: You say he moved away in 1904? A That is, off of our property. When we bought the property we tore the house down, and he moved here in Jersey City somewhere. 30

Q What was he, a kind of squatter down there? A No, not that I know of.

Q What kind of a house was it? A One-family house, two stories.

Q He used Van Keuren avenue to get up to West Side and so on up to the hill; is that what you mean? A Well, he used to work down 40

Chas. Gunardson, for Def. Public Service, direct.

there. He had an office at the corner of Van Keuren and Duffield.

Q What kind of an office? A He was a watchman.

Q For Dodge & Bliss? A Yes.

10 Q Why didn't you tell us that?

CHARLES GUNARDSON, sworn on behalf of the defendant Public Service Corporation, testified as follows:

Direct examination by Mr. Taliaferro.

Q By whom are you employed, Mr. Gunardson? A Public Service Electric & Gas Co.

20 Q How long have you been working for them? A 24 years.

Q How long have you been at the Marion station? A Since 1906, in November.

Q Do you know a street in that neighborhood known as Van Keuren avenue? A I do.

Q Have you ever seen any use made of that street? A I have.

30 Q Whom have you seen using it? A Laundry man, grocery man, some of the police, hospital ambulance, fire patrol trucks—

Q When was the first time you saw anyone use that street; do you recall? A Well, most of the time I seen them using it during the war.

Q Well, as far back as 1906, did you see the street used then? A Oh, yes.

Q When was the last time you saw someone using it? A This morning.

40 Q What did you see on the street? A I saw a milk wagon coming down.

Chas. Gunardson, for Def. Public Service, cross.

Q Whom did the milk wagon belong to? A I don't remember; it was Borden's or the Keystone; I don't remember which, one or the other.

Q Have you ever used Van Keuren avenue?

A Yes, sir.

Q How often? A Daily for years, driving. 10

Q Used in the daytime? A Yes.

Q Have you ever used it at night? A Yes.

Q How did you happen to use it at night?

A I was called in on a job.

Q Have you ever been stopped from using Van Keuren avenue? A No.

Q Have you ever seen anybody else stopped from using that street? A No, sir.

Cross examination by Mr. Gilson.

20

Q Is it necessary for you to use Van Keuren avenue to get to your work? A No, not now.

Q How could you get to your work otherwise? A Duffield avenue.

Q Which would be the shorter? A By my living in Newark it is more handy for me to come up Duffield avenue.

Q You go that way now? A Yes.

Q Where do you live, in Newark? A Yes, 104 Hedden Terrace. 30

Q When you used Van Keuren avenue it was during what years? A Around 1918, 1919 and 1920.

Q The first time you used it was in 1919? A I used it before that.

Q That is what I asked you. A But I didn't use it regular; I didn't have any occasion to.

Q When was the first time? A During the war, 1917, 1918, 1919 and 1920. 40

P. C. Dixon, recalled, for Def. Pub. Serv., direct.

Q And these wagons were carrying mail, etc., making deliveries to the Public Service plant and employees? A Well, they were carrying material away from it, ashes and so forth.

10 Mr. Taliaferro: I want to recall Mr. Dixon for just one question.

PERCY C. DIXON, recalled on behalf of the defendant Public Service Corporation, testified as follows:

Direct examination by Mr. Taliaferro.

20 Q Do you know whether or not any complaints were received from Dodge & Bliss Company about the use of their property? A There was some complaint during my time there regarding the use of the strip of land betwixt the Barnes Mfg. Co. and their office.

Q How many times was that complained of, do you know? A Why, I think once.

30 Q Have you made an examination of the correspondence in your office to find out whether there were any other complaints made? A I have.

Q What do you find? A I was unable to find any.

Q Except the one you have mentioned? A Yes.

Q Do you know where this "No Thoroughfare" sign is located? A I do.

40 Q Where is it located? A Up on the property—well, about the end of the paving of West Side avenue, up probably 10 or 12 feet, facing the southerly direction.

Jas. F. O'Brien, for Def. Public Service, direct.

Cross examination by Mr. Gilson.

Q The Dodge & Bliss Company were object-
ing because you were dumping live ashes and
coal in there? A No, sir.

Q Didn't you hear of that? A No.

Q Didn't they give you any reason for ask- 10
ink you not to use it? A A construction com-
pany was travelling back and forth there and
they didn't want them to use it.

JAMES F. O' BRIEN, sworn on behalf of the
defendant Public Service Corporation, testi-
fied as follows:

Direct examination by Mr. Taliaferro. 20

Q Mr. O'Brien, where do you live? A 3184
Boulevard, Jersey City.

Q How long have you lived there? A About
seven years.

Q Where did you live previous to that time?
A Oh, many places; on what we call "Sparrow
Hill."

Q Where is "Sparrow Hill"? A That be- 30
gins at about what we designate Sparrow Hill
which is where they leave the D. L. & W. tunnel
to Manhattan avenue.

Q Do you know where the Marion station of
the Public Service Electric & Gas Company is
located? A I believe I do.

Q About where is that? A Well, that is
west of our old shanty we sold sometime ago.

Q You mean the O'Brien estate? A
O'Brien estate. 40

Jas. F. O'Brien, for Def. Public Service, direct.

Q Was that plant a part of the old estate?

A Yes, sir.

10 Q Now, the old estate you speak of—what were approximately the boundaries of that? A Why, the Susquehanna & Western Railroad on the east, D. L. & W. on the north, and I believe Mr. Romain's property between the Hackensack River and our property on the west, and the Dodge & Bliss property on the south.

Q Did you live on that estate? A Oh yes, I was born there.

Q How long did you live there? A Why, my folks lived there—let me see, about 11 years before we had bought another piece of property on Liberty avenue and we moved out of there for a time, seven or eight or nine years.

20 Q When were you born? A I was born August 18, 1877.

Q And you were born on this property? A Yes, sir.

Q How long did you live there? A I lived there until my folks had bought this property on Liberty avenue somewheres in 1888 or 1887, along there, just before the blizzard.

30 Q Did you ever go back to that property after that? A Yes, I believe we went back there in 1903, or '4, or '5, or '6, along there.

Q How did you get in and out of your property there? What did you use as a street—what street did you use? A Well, James avenue at that time was the best street to travel.

40 Q Where did James avenue run? A I believe it begins at the Pennsylvania Railroad and ends around Dodge & Bliss Company plant at Van Keuren avenue.

Jas. F. O'Brien, for Def. Public Service, direct.

Q At that time did it run through to Van Keuren avenue? A Yes.

Q How did you get from James street to where you lived? A We came up what is called Van Keuren avenue. It wasn't improved then. There was a rough roadway of red dirt—Jersey mud, they used to call it. However, we would go up to Van Keuren avenue and come up to my place by the Dodge & Bliss property, which wasn't there then; I don't know, I suppose Mr. Van Keuren, Romain and Van Reyper owned the property at that time. 10

Q How far west did this street run? A Van Keuren?

Q Yes. A Van Keuren, I believe, began at the Susquehanna and went down to the river.

Q As far as the river at that time? A Yes. 20

Q Was Duffield a nice street, cut through at that time? A It was, but you could only use it at times when the weather was very good.

Q Do you happen to recall when Van Keuren avenue was put through? Was it put through as long as you can remember? A Well, really there was no obstruction to traffic there, but when a person could come in there with a hay wagon and cart his hay from there they would use that filled-in street which was called Van Keuren avenue, and he would also come in in that way and we were quite generous and they used to take our water from our well. 30

Q About how many years was this use made you speak of of Van Keuren avenue? A Was what?

Q During what year was this use made of Van Keuren avenue? A Just as far back as I can remember as a boy, possibly I might have been six or seven or eight years old when I 40

Jas. F. O'Brien, for Def. Public Service, direct.

used to run up and down there, and there was use made of it then and especially on Sunday.

Q When you lived there back in 1904 was Van Keuren avenue still there? A Yes.

Q Did you move back to the old homestead where you previously had been? A Yes.

10 Q Did you again use Van Keuren avenue in getting to and from your place of residence? A Yes.

Q What route would you pursue? A Sometimes we would cross at Van Keuren to James and go to West Side up Van Keuren.

Q At that time was West Side avenue in? A Yes.

Q At that time West Side avenue was cut through? A Well, it was cut through to the
20 bridge, and then they crudely finished that with yellow dirt and clay.

Q How long did you stay there the second time you lived there? A Until we sold to the Public Service.

Q Do you recall about when that was? A Oh, I don't know. When they bought it I don't just recall now.

Q What do you think the year was you moved back there? A I believe we went back in 1904
30 or 1905, along there—'4 or '5; we weren't back there long, anyhow.

Q Do you know approximately the boundaries of the property you sold to the Public Service? A Yes.

Q Could you describe that? A Well, as I
say, our property faced the railroad, the Susque-
hanna & Western railroad on the east, and then
the D. L. & W. was in front of our door, we
used to call it; and then came a street, but it only
40 ran as far as the cemetery and that was on the

Jas. F. O'Brien, for Def. Public Service, direct.

north of the D. L. & W. property and I believe that was in front of our door. Mr. Romaine, I believe, got the property on the west of the Dodge & Bliss Company.

Q Where was the Susquehanna located? A That was on the easterly end of our property.

Q With respect to West Side avenue, where as that? A West Side avenue was south, or southwesterly.

10

The Court: I thought the Susquehanna right of way turned north from Newark avenue at about West Side?

Mr. Speer: It does, and runs north.

A It runs north, and standing on our property looking toward the Susquehanna & Western, it runs north and south. Looking east from our property the Susquehanna Railroad was on our eastern boundary.

20

By Judge Speer.

Q Van Keuren avenue runs across West Side avenue? A Yes.

By Mr. Taliaferro.

Q How many years did you live there the last time you were there? A Why, I believe we lived there until my father—no, until we sold to the Public Service. I don't know just when that was.

30

Q Do you remember approximately how many years? A Four or five.

Q And you were there after that? A Only on occasions.

40

James F. O'Brien, for Def. Public Service, cross.

Q How did you get out of your property? A I would go several ways, and perhaps I was using that street.

Q Have you ever been stopped? A Yes, plenty of people used it on Sunday crabbing and shooting and so forth.

10 Q Have you ever seen anyone chased off of Van Keuren avenue when they were on it? A No, I never did.

Cross examination by Mr. Gilson.

Q Well, during those days when they were shooting your street was filled in with this Jersey mud, as you call it? A Yes.

20 Q How wide was that? A About 25 feet deep.

Q And there was a line used as a house line? A Yes.

Q In those days the Susquehanna and the other railroad were on the ground the same level with the ground? A Oh, no, the ground had a raise to it the same as all railroads and it dropped down to the ground in some places.

30 Q Yes, but I mean they were elevated? A They were elevated over James avenue and Duffield avenue.

Q Yes, but I mean east, those tracks up there, the Susquehanna. A No, they ran a grade there.

Q What is your business? A Locomotive engineer.

Q Have you a son? A No, sir; I have not.

40 Q How did you happen to come down here to testify this morning? A Why, some gentleman asked me if I knew the boundary line of

James F. O'Brien, for Def. Public Service, cross.

that part of the territory some years ago, and if I knew where Van Keuren avenue was, and if I would come here and testify, and I said I would and I would certainly tell the truth about this matter, from what I knew of it, and I volunteered to do this and give the information thinking it would help both sides. That is what I am here for. 10

Q Were you born down there on this property? A Yes, sir.

Q And you lived there until about when? A 1887.

Q And then you moved away? A Yes. I wouldn't want to use my memory too well; I wouldn't say that Dodge & Bliss wasn't there when I went away; they may have been.

Q They were there in 1888, to relieve your mind. A All right, but I can't but think they weren't there. 20

Mr. Taliaferro: We would like to put an exhibit in but it won't be available until about two o'clock—the abandonment of the old Van Keuren avenue and the dedication of the new route around the Public Service property, connecting Van Keuren avenue and Duffield avenue. 30

Mr. Speer: We will have the papers here and give them to your Honor.

The Court: With that exception, you rest?

Mr. Taliaferro: We have five more witnesses here, but they will testify to the same effect, and we won't burden your Honor with them at this time. I would like to put in this letter, Exhibit C. 21. 40

Complainant's Rebuttal.

Mr. Rooney: That is a letter from the Dodge & Bliss Company dated October 15, 1918, addressed to the Commissioners, Michael J. Fagan, City Hall, Exhibit D. 4. Shall I read it?

10 The Court: No. This is a letter purporting to have been sent by Dodge & Bliss Company to Mr. Michael I. Fagan under date of October 15, 1918. It may be marked.

(The same is marked Exhibit D. 15.)

DEFENDANT PUBLIC SERVICE RESTS.

COMPLAINANT'S REBUTTAL.

20 Mr. Gilson: I offer in evidence copy of deed from Dodge & Bliss Company to the North Jersey Street Railway Company, dated April 26, 1904, recorded in Book 871 of Deeds for Hudson County, page 109 &c.

(Admitted and marked Exhibit C. 27.)

30 Mr. Gilson: I also offer in evidence copy of a deed from the Dodge & Bliss Company to The Holland Company, dated March 30, 1917, recorded in Book 1252 of Deeds for Hudson County, pages 216 &c.

(Admitted and marked Exhibit C. 28.)

40 Mr. Gilson: For the purpose of the record is it admitted that these two deeds convey the property at the westerly end of Van Keuren avenue referred to in the testimony, and that these companies are either subsidiary companies or taken over by the Public Service Corporation? Well, the Holland Company is the company which holds title.

John Lindauer, for Complainant, direct.

Mr. Speer: For the purposes of this case we admit that.

Mr. Gilson: For the purposes of this case it is admitted that the Holland Company holds title to real estate that was the Public Service Electric & Gas Company?

Mr. Speer: I admit that for the purposes of this case, although I don't say that they hold title to this property. It is probable that they conveyed it, and I am just admitting it for the purposes of this case. Occasionally, the Public Service does buy property and holds title. Whether that is so or not in this case I am not at present advised, but I would be glad to find out.

Mr. Gilson: Then suppose we leave it this way: That it appears from this statement I have made, unless it has been changed recently, that that is the situation?

Mr. Speer: I will find out exactly what the fact is and communicate with the Vice-Chancellor.

Mr. Gilson: Will you stipulate that the property referred to in this Exhibit C. 27, conveyed by the Dodge & Bliss Company to the North Jersey Railroad Company is part of the property of the Public Service?

Mr. Speer: I think that is so, but I will find out about that also and let you know.

JOHN LINDAUER, sworn on behalf of the complainant, in rebuttal, testified as follows:

Direct examination by Mr. Gilson.

Q You are a member of the Jersey City Police Department? A Yes, sir.

John Lindauer, for Complainant, direct.

Q How long have you been a member of that department? A From February 1, 1917.

Q Where are you stationed at the present time? A In the Traffic Department at the present time located at Tonnele and Newark avenues.

10 Q About how far is that from West Side and St. Paul's avenues? A It was approximately 7 blocks, 3 blocks on Tonnele avenue and 4 blocks on St. Paul's.

Q Are you familiar with that locality and the property around the Dodge & Bliss Company? A Yes, I have done duty there for practically 10 years, in that vicinity.

20 Q During the last ten years? A Yes, outside of the past year. In the past year I have been in the Traffic Department.

Q Prior to that? A Prior to that about nine years.

Q During the time you were on duty down there in that locality, during the last ten years, did you know of floods on St. Paul's avenue or Newark avenue, or the backing up of water? A We had floods on Newark avenue when there were heavy storms.

30 Q Were they unusual storms or just ordinary storms such as we have in the summer? A Well, unusual storms in the summer.

Q Was it ever so bad that traffic couldn't go through? A Oh yes, sir.

40 Q About how many times has that occurred during the last ten years? A Well, I figured about four times a year. That is a rough estimate; I couldn't exactly say how many storms we have had in the last ten years, but we have had them on several occasions.

Douglass Brown, for Complainant, direct.

Q And that has happened during the last ten years? A Oh, yes.

Q In the summer? A In the summertime.

Q Would it happen at other times? A No, only in the summertime when heavy rains would come down.

Q Now, was there any occasion that you know of when traffic would be sent around West Side avenue to Van Keuren avenue? A I never sent any traffic through there; I endeavored to send traffic to Van Keuren avenue when the water was deeper on Newark avenue and St. Paul's avenue. 10

Q From your knowledge of that locality was there any reason for going around that way? A I don't think so.

Q Do you know where Catherine street is? A No, I don't. 20

Cross examination by Mr. Speer.

Q Officer, as I understand your testimony you have never sent any traffic through there? A That is exactly right. I can only speak for myself.

Q You don't know whether anybody else went through there or not? A No, sir. 30

DOUGLASS BROWN, recalled on behalf of the complainant, in rebuttal, testified as follows:

Direct examination by Mr. Gilson.

Q I show you an agreement between the Dodge & Bliss Company and the Public Service Electric & Gas Company, dated May 19, 1926, 40

Douglass Brown, for Complainant, direct.

purporting to be signed by you as Secretary of Dodge & Bliss Company, and ask if that is your signature? A Yes, sir.

Mr. Gilson: I offer this in evidence.

10 Mr. Rooney: I object to the offer, on the ground that any agreement made between the Public Service Corporation and this company would not be binding upon the City of Jersey City.

The Court: I suppose that is so, but as I understand it, Judge Speer has agreed that the Public Service will join as party defendant, and I assume that it is binding upon that defendant.

20 Mr. Speer: We have no objection to it going in; in fact, we would be very glad to have it go in.

Mr. Rooney: Of course, any agreement made between these two parties couldn't affect Jersey City or Van Keuren avenue.

The Court: I think that it is admissible against one defendant, and that makes it admissible whether it is to be used against the other defendant or not.

30 (The same is marked Exhibit C. 29.)

Q Referring to Exhibit C. 29, which is an agreement between your company and the Public Service Electric & Gas Company, what was the amount of the consideration for that? A \$5,000.

40 Mr. Rooney: So far as the City is concerned I object to the contents of the agreement, and and circumstances surrounding it.

Douglass Brown, for Complainant, direct.

The Court: Certainly, your objection will go to any other subject matter regarding this contract or any testimony about it, or any consideration of it for use here.

Q As I remember it, you have been connected with the Dodge & Bliss Company for 13 years? 10

A Yes, sir.

Q And during what part of the 13 years have you been an officer of the company? A Since 1919.

Q And during those 13 years have you noticed some of the employees of the Public Service Corporation going down what is called Van Keuren avenue? A Yes, sir.

Q And did you or your company prohibit that or make any objection to that? A No, not if we knew they were going down to the Public Service or the other place there. 20

Q The Cinder Brick Company? A Yes.

Q And that is true with reference to these delivery wagons that have been testified to? A That's right.

Q Now, during the 13 years that you have been connected with the complainant company how long have any others used Van Keuren avenue, if at all? A Just twice, to my knowledge, within the past two years that anybody has used that property in any—that is, I mean that any amount of people that have used it at one time, just within the past two years—twice. 30

Q And on what occasion? A That was during these heavy rainstorms that the traffic was diverted over through this so-called Van Keuren avenue, and how they got there I don't know, but they came through at any rate. 40

Douglass Brown, for Complainant, direct.

Q Did they go in both directions at the same time? A Never.

Q These times that they did go through there from West Side avenue and Van Keuren avenue did they go through in opposite directions? A No, sir.

10 Q Why not? A The street isn't wide enough at that point where West Side avenue goes into Van Keuren.

Q When was the first time that you noticed those automobiles go through there? A Within the past two years.

Q And only twice during those years? A That's right.

20 Q At those times did you notice whether any of the cars or trucks got off into your lumber yard? A I didn't personally, no.

Q Now, were there occasions when the police would go down there? A Yes.

Q And when on Van Keuren avenue? A Yes, they may have gone down Van Keuren avenue.

30 Q What were those occasions? A The only times I ever knew was when the County Police used to go down and put their horses in the stable. That is the only time I ever knew.

Q What about pay days? A Well, they came down to our plant on pay days.

Q What was the occasion of their putting their horses in your stable? A Leave them there to rest, I guess.

The Court: To rest?

40 A The officers brought their horses there while they walked around, I suppose.

Douglass Brown, for Complainant, cross.

Q Who took care of the repairing and filling in of Van Keuren avenue? A The Dodge & Bliss Company.

Q What is that used for? A We used it sometimes for our own trucks, and we took lumber across and piled it on the north side of Van Keuren avenue.

10

Q Was West Side avenue paved from the railroad over to your or near your office while you were there? A No, sir.

Q That was before? A Yes.

Q What was the condition of Duffield avenue when you first went down there 13 years ago? A I don't remember Duffield avenue, how it was paved.

Cross examination on behalf of the City by Mr. Rooney. 20

Q How many years ago were you down there? A Thirteen.

Q Now, Mr. Brown, you say that Dodge & Bliss filled in Van Keuren avenue; you are not testifying from your own knowledge? A Yes, sir.

Q When was it filled in? A Numerous times we would bring ashes down when the street was in a dry condition and we would dump ashes and asphalt and try to fill it in for our trucks.

30

Q Mr. Brown, will you swear before you went there 13 years ago that there was not a road running west from West Side avenue which was known as Van Keuren avenue? A No, sir; I didn't know about it then.

Q There was such a road, wasn't there? A Not that I know of. I don't know one way or the other, to be absolutely frank.

40

Douglass Brown, for Complainant, cross.

Q Don't you know when you went down there there was an open space on which you could drive teams or any other vehicle? A Yes.

Q All the way down to the river? A Yes.

Q And that was a continuous, straight road? A It was a continuous road; it wasn't straight.

10

Q Where did it bend? A It didn't go straight down; it was an irregular road, put it that way.

Q Has the course of that road been changed—meaning by that, Van Keuren avenue—at any time within the last 13 years? A Not that I know of, except that it might have been levelled off a little and looks a little more like a street than it was 13 years ago.

20

Q Wasn't the actual course of the road, of Van Keuren avenue, changed in the last 13 years? A Only the end where the Public Service changed it down to the west end of Van Keuren avenue.

Q And about how far west of West Side avenue was that? A I don't know how long it is.

Q Have you any idea? A No, I would have to guess about it.

30

Q Well, what is your guess? A Oh, maybe 300 yards.

Q And up to that point this Van Keuren avenue runs straight down to West Side avenue? A No, not straight.

Q Take a look at one of these pictures; I show you Exhibit D. 4 and ask you if that is Van Keuren avenue shown on that picture? A Yes.

Q That runs down straight, doesn't it? A Yes, if you call that a straight road.

40

Douglass Brown, for Complainant, cross.

Q Look at Exhibit D. 5 and tell us what street that is shown on there? A That is Van Keuren avenue.

Q That runs pretty straight, too, doesn't it? A At that point it does.

Q Look at Exhibit D. 6 and tell us what that street is. A Van Keuren avenue. 10

Q That has substantially followed that course ever since you have been there 13 years? A Yes.

The Court: As I understand it, he means to say there is no abrupt, considerable turn, but that it takes an irregular course in small curves; is that what you mean, Mr. Brown?

A That is what I mean. I mean it isn't regular in its contour all the way down. In some places it is wider than others and in some places it is narrower. It doesn't go in a direct, straight line on either side. 20

Q Now, you said I believe, Mr. Brown, at any of these points Van Keuren avenue, with the exception of West Side and Van Keuren, that two automobiles can't pass abreast, but two automobiles could pass abreast at any other section? A I imagine they could.

Q And two automobiles couldn't pass at the junction of West Side and Van Keuren? A No, sir. 30

Q Take a look at this and guess the distance between the pole with the sign on and the fire haydrant shown there (handing witness Exhibit D. 3). A I don't know how far that is.

Q How far in this court-room? A About 50 feet.

Q I mean how far is it, laid out in this court room? A I should say about from here to 40

Douglass Brown, for Complainant, cross.

where Mr. Gilson sits, or perhaps a little further than that. I should say from here to the railing out there.

Q Twenty feet? A Twenty feet from the pole to the hydrant, I should say.

10 Q What is the width of West Side avenue as it meets Van Keuren avenue. Here, maybe this Exhibit D. 2 will help you. A Oh, I suppose—I don't know, 75 feet, is it? These photographs are apt to be deceiving. I mean, in this photograph that street looks a great deal wider.

The Court: D. 2.

A Yes, in D. 2 West Side avenue looks a great deal wider in this photograph than this Van
20 Keuren avenue on Exhibit D. 3. It is quite deceiving. You look at West Side avenue here and then look at it here. I don't know what the width of West Side avenue is.

Q What is your idea of the width of Van Keuren avenue as it enters West Side avenue?

A Oh, I shouldn't say that is over 12 feet at the most. I am referring now to Exhibit D. 3, between this end of the curbing and this section here that is passible.

30 Q I am asking you now the distance between the curb and the pole on which you have seen the warning sign? A Between the curb and the pole?

Q Yes. A I should say that was perhaps 15 yards, something like that.

Q 45 feet? A Perhaps.

Q That is outside, isn't it? A It looks so to me on this photograph Exhibit D. 3. But you can't get over these tracks. This pole is on the
40 north side of the tracks and no cars can go in

Douglass Brown, for Complainant, cross.

there close; it would drop right down on the tracks.

Q Take a look at this picture, Exhibit D. 5, and tell us how many automobiles could pass abreast on that? A About three, I imagine.

Q How wide do you think that is? A Oh, perhaps 30 yards; something like that. 10

Q And that is all to the north of this railroad siding, is it not? A To the north, yes.

Q Referring to the siding that runs through your property? A Yes.

Cross examination on behalf of Public Service by Mr. Speer.

Q Mr. Brown, I understood you to say for the last couple of years the public had used Van Keuren avenue on a couple of occasions. 20

Mr. Gilson: I object to that. He didn't use the word "public."

Mr. Speer: I am asking him what he said.

A No, I said twice in the last two years a number of cars had come through Van Keuren avenue at the time of these heavy rainstorms. 30

Q They were the general public? A I don't know who they were; I suppose so, yes.

Q There had been heavy rainstorms on these occasions? A Yes.

Q And Newark avenue was flooded? A I imagine so. I didn't see it, personally.

Q Why do you say they couldn't come through because of the heavy rainstorms? A Because we observed in front of our own office that there was a lot of rainwater on West Side ave- 40

Douglass Brown, for Complainant, re-direct.

nue on these two occasions when there was a terrific rainfall.

Q Do you know that that caused them to go through Van Keuren avenue? A Only at this time Mr.—

10 Q Don't tell me what somebody told you; you don't know it of your own knowledge? A No, I didn't see the flood.

Q Now, for the sake of getting something clear on this matter, if it was caused by the flood on the other street then the officer was wrong when he said there was a flood on the other side and you couldn't pass Van Keuren avenue; is that right? A I don't quite get that.

20 Q You heard the police officer this morning? A Yes.

Q And you heard him say that on a couple of occasions the traffic had been re-routed around there because of the flood on Newark avenue; did you hear that? A Yes. He didn't say through Van Keuren avenue; he said that the traffic may have been diverted off on one side on account of it not being passable there.

30 Q And you heard him say he didn't see, if there was a flood on Newark avenue, how anyone could get through Van Keuren? A No.

Re-direct examination by Mr. Gilson.

Q Where is Catherine street? A Catherine street is to the south of Van Keuren, between St. Paul's and Van Keuren.

Q Where with respect to the Lackawanna? A It runs along the north side of the Lackawanna Railroad.

40

Herman L. Meyers, for Complainant, direct.

Q And from there to where? A From Duffield avenue east to West Side avenue.

Q Is there any reason why that street couldn't be used for the purpose as Van Keuren avenue?

A Not as I know of.

Q Now, you said, in answer to Judge Speer's question, that you didn't know of your own knowledge why those cars came around Van Keuren avenue during these storms; was there any other reason than the one that you have stated, the flooding of those two streets, that would cause cars, other than deliveries, to go around through Van Keuren avenue? A No, except that they were lost. 10

By Mr. Speer.

Q Well, they could go through, but those cars didn't go through Catherine street, although that was further to the south? A That's right. 20

By Mr. Gilson.

Q Why didn't they go through? A Because when they run so close to the railroad they would get in the culvert and wouldn't see it. That is the only reason I can imagine.

30

HERMAN L. MEYERS, sworn on behalf of the complainant, in rebuttal, testified as follows:

Direct examination by Mr. Gilson.

Q Where do you live, Mr. Meyers? A 2695 Boulevard, Jersey City.

Q And you are connected with the Dodge & Bliss Company in what capacity? A As a book-keeper. 40

Herman L. Meyers, for Complainant, cross.

Q How long have you been with the Dodge & Bliss Company? A About 14 years.

Q And during that time you were in the office of that company continuously from early in the morning until late in the afternoon? A Yes, sir.

10 Q And during the time that you have been with the Dodge & Bliss Company have you noticed any other than delivery wagons and Public Service employees using Van Keuren avenue? A No, sir.

Q Have you noticed during any violent storms that some cars would cut through there? A Yes, in the last five years there have been two heavy storms, and I inquired about it and they told me they came through our street, which
20 they had lost and went through the other street. Newark avenue was out of commission at that time. They were foreign cars; that is, they were cars from Massachusetts, Connecticut and Pennsylvania. There was one of the large buses that ran to Chicago that came through there.

Q And you say that has happened only twice in the last 14 years, to your knowledge? A Only twice.

Q Did you ever see them using any of the
30 other alleys or streets in the lumber yard there? A No, sir.

Cross examination by Mr. Speer.

Q What did you say your employment at the Dodge & Bliss Company is? A Accountant and cashier.

Q You are not employed to look out of the window? A My office is situated where it is
40 very easy to glance out.

James C. Herrold, for Complainant, direct.

Q Are you looking at the books or out of the window? A Partly both.

Q Which the most? A Books, naturally.

Q Now, there have been violent storms in other years? A There have been storms in other years, but they didn't use the road in other years.

10

Q Then you did look out of the window? A They don't usually last more than a couple of hours and anything that happens to attract our attention that is out of the ordinary we can see.

Q You know that rains during the equinoctial season last three or four days? A On these two occasions heavy storms lasted only about two hours, or maybe three, in the afternoon.

Q Have you seen a heavy storm in that neighborhood for two or three years? A No, I don't believe so.

20

JAMES C. HERROLD, recalled on behalf of the complainant, in rebuttal, testified as follows:

Direct examination by Mr. Gilson.

30

Q I have forgotten how long you said you were connected with the Dodge & Bliss Company.

A About 31 years.

Q And you have been down at their place continuously since that time, except when you were on vacation, or sick, or something like that, and you are there from morning until night; is that right? A Yes.

Q And during the time that you have been there have you seen any other use of Van Keuren

40

James C. Herrold, for Complainant, direct.

avenue except by delivery wagons and trucks going to the Public Service and the Cinder Brick, and the employees of the Public Service?

10 Mr. Speer: If your Honor please, I suppose the questions now should be strictly in rebuttal.

Mr. Gilson: I withdraw it.

Q During the time that you have been there what use have you seen made of Van Keuren avenue? A Well, the employees of the Public Service have gone up and down there as free as they would any other place. We have never tried to keep any of those people off.

20 Q Besides those people have you seen anybody else? A Yes, we have seen particularly twice quite a big crowd, quite a big number of automobiles, that came through there that was due to the flood, and at other times I saw some that had evidently lost their way and were up back of our engine room.

Q And those occasions occurred during what period? A You mean these two large numbers of automobiles?

Q Yes. A Within the last two years.

30 Q You say "a large number"; about how many would you say? A Well, I didn't count them, quite a string of them.

Q Give us some idea, one, or 100 or 200? A No, probably 40 or maybe 50, or maybe 35 or so. It was quite a string of them.

40 Q And what other vehicles or pedestrians have you seen on Van Keuren avenue during the 31 years that you have been there? A Well, I have seen other people come in there outside of the Public Service, and the Brick people and

James C. Herrold, for Complainant, cross.

the Barnes, those large trucks, and I have turned some of those away. Anybody that had anything to do with the Public Service—I have had nothing to do with them. I have found some down in the middle of the yard down there and had to help them out at times. In other words, they had sunk right down into the gang- 10 ways.

Q Was that during these floods you speak of? A No, not particularly these two floods, but in the automobile time.

Cross examination by Mr. Speer.

Q I understand you to say you have been there about thirty-odd years? A Thirty-one.

Q And during that time you have seen use made of Van Keuren avenue by all kinds of vehicles? A Not all kinds, but automobiles and wagons. 20

Q I don't mean circus wagons; I mean general vehicles used on the public highway generally?

A Yes, automobiles and wagons of that sort, if that is what you mean.

Q Throughout the 30 years you have seen that use going on? A No, not for 30 years, because the first part of the 30 years that street was not in condition for travel, but within the last eight or ten years. 30

Q Then, as I understand you, there was a street there about 30 years ago, but it wasn't in use for the kind of use that is made of it now?

A There was no opening by which vehicles could get through.

Q What do they call that opening, Van Keuren avenue? A Van Keuren avenue, yes.

Q And that has been the use applied to it at least 30 years, to your knowledge? A Yes. 40

James C. Herrold, for Complainant, cross.

Q And throughout that period, as the road got better the travel has increased? A No, not except what came down from the city, no more than St. Paul's avenue.

10 Q But they do use Van Keuren avenue? A It is out of the way two blocks either way, and at St. Paul's avenue there isn't any delay if you come directly north, on West Side avenue. You run down two blocks and get back to St. Paul's.

Q So that the reason for the larger use of St. Paul's over Van Keuren is that St. Paul's is more convenient? A No, you can go over St. Paul's to Duffield and come down and in Van Keuren you keep two blocks away on either side.

20 Q They can go down to Van Keuren from West Side avenue and they can get into Duffield avenue from Van Keuren? A Yes.

Q And through that period you have seen vehicles do that, have you not? A No, I can't say that I have seen them come in there in the 30 years and do all that.

Q How many years? A For about 15 years, I have had more experience outside than I have had previous years before.

30 Q But in the 15 years you have seen the use of that street by vehicles that would come in through West Side avenue and go along down Van Keuren? A I don't know where they went.

Q They wouldn't come back, would they? A Not that I would see.

Q And if they had you would be apt to have seen them? A Possibly I would.

Q Prior to those 15 years you were indoors? A More indoors.

40 Q So that you wouldn't be so apt to know what was going on on Van Keuren avenue, would you? A No, I wouldn't.

James C. Herrold, for Complainant, re-direct.

Q West Side avenue it a through street, isn't it? A West Side avenue runs up to the railroad track.

Q And Van Keuren avenue is the outlet there? A It is an outlet but it doesn't run into West Side avenue except by a turn.

Q I mean it does run into it, does it not, by a turn? A Yes, by a turn. 10

Re-direct examination by Mr. Gilson.

Q Does Van Keuren avenue run at right-angles to West Side? A No.

Q West Side avenue is a dead-end street? A That's it, dead-end street.

Q Do you know who did the paving of West Side avenue from St. Paul's over? A I am not sure, but I think the D. L. & W. did a lot of that when they graded their tracks there. They had to get some permission from the City or someone to do that, in doing it they paved the street, and the Dodge & Bliss Company had to pay for a part of the paving of the street. 20

Q Did you pay for all the paving from the Lackawanna over to your place? A Yes, I think the Dodge & Bliss Company did.

Q How long ago was that? A I don't remember when the D. L. & W. raised the tracks there; I don't know how many years ago that was. I can guess at it, but I'm not sure. 30

Q Do you know how long ago Duffield avenue was improved, about? A I should say about five or six years ago, but that is mere guess-work.

Q Before that was it usable? A Well, it was a dirt road; nothing but cinders and mud in there, and when it was bad weather it was almost unusable. 40

James C. Herrold, for Complainant, re-cross.

Q Did you have anything to do with the filling? A The place down there, Duffield avenue or the road?

Q Duffield avenue? A No, we didn't have.

Q I mean, did your company have anything to do with it? A Yes, the company filled it in there with the Public Service cinders, and the Public Service filled it in with cinders also.

Re-cross examination by Mr. Speer.

Q You said West Side was a dead-end street; what you mean by that is that West Side avenue runs into Van Keuren avenue and ends there? A No.

The Court: Van Keuren runs into West Side avenue.

Q Is that right? A Yes, Van Keuren runs east and west.

Q So that West Side avenue dead-ends at Van Keuren is that right? A Yes.

Q So that if you cut West Side avenue off Van Keuren will be left dead-ended there without any outlet; isn't that right? A No, you can make a turn between the two streets. West Side avenue is dead-ended so far as this plot is concerned. You make the turn off from either one of the streets, whichever way you are going. You can go and turn in across the tracks and go into Van Keuren and vice versa.

Q So that if you cut that off West Side avenue will be left without any dead end? A Yes.

Cross examination by Mr. Rooney.

Q As at present constituted, Van Keuren avenue connects with West Side avenue; isn't

Louis H. Fardelmann, for Complainant, direct.

that so? A By running across the sidewalk that runs into our office.

Q Take a look at Exhibit D. 3 and see if that refreshes your mind about it? A Yes, West Side runs out this way and Van Keuren runs out here and turns here, and Van Keuren runs straight on that and stops here. Now, in order to get on here they run across this and run up there. This street runs straight up there. This street runs directly east and west and that street runs that way. 10

Q Referring to that picture, Exhibit D. 3, I wish you would tell me whether or not a car can pass from the road-bed of Van Keuren directly into the road-bed of West Side avenue. A Yes.

Q And then Duffield avenue comes to the westerly extremity of Van Keuren avenue, does it not? A Yes. 20

Q It terminates there, does it not? A Yes.

Q So that in the absence of this Van Keuren avenue would be two dead-end streets, at the northerly terminus at Duffield avenue and at West Side avenue; that is correct, is it? A Yes.

LOUIS H. FARDELMANN, sworn on behalf of the complainant, in rebuttal, testified as follows: 30

Direct examination by Mr. Gilson.

Q Where do you live, Mr. Fardelmann? A 37 Watchung avenue, Montclair.

Q And you are employed by the Dodge & Bliss Co.? A Yes, sir.

Q How long have you been with the Dodge & Bliss Co.? A Going on 16 years. 40

Louis H. Fardelmann, for Complainant, cross.

Q During that time have you noticed any use of what has been called Van Keuren avenue? A No, sir; I have not.

10 Q Haven't you seen anybody use it there at all? A Employees of the Public Service Company going down there to business in the morning and leaving there at night; I have seen the Keystone Dairy wagon and the Wagner Pie Co. and that is about the only traffic I have seen going through there.

Q On any occasions when there have been storms, have you noticed any use of it then? A I didn't see the traffic going through then; no, sir.

Cross examination by Mr. Speer.

20

Q You were busy and didn't look very much to see? A I was on the outside a good part of the time, and in the yard a part of the time.

Q And you didn't see these things? A No, sir; I wasn't there at that particular moment, but lots of times when I was there I saw traffic going through.

30 Q You didn't see these people that came from Pennsylvania and other places? A I saw some of them that asked me how to get out of the yard; they were lost.

Q And they had gone off of Van Keuren avenue into your yard? A I don't know how they got there; they were in our yard.

Q And the entrance to your yard is Van Keuren avenue? A Not necessarily.

Q What is the other one? A We have got private property right alongside of the factory.

40 Q I am talking about streets. A I never knew it was a street there until this case came up.

Louis H. Fardelmann, for Complainant, re-direct.

Q Assume for the sake of argument it is a street; then is what we call Van Keuren avenue the main entrance to your property? A That is one of the entrances.

Q The main entrance? A No, it isn't.

Q What are the others? A Right there through our place what you call Van Keuren 10 avenue is not a street.

Q Please get your mind away from calling it a street; where is the entrance to your property? A That is one of the two road entrances.

Q What is the other one? A The road entrance that I speak of.

Q And that is on private property? A So is the other one.

Q You are arguing the case now; that is all. 20

Re-direct examination by Mr. Gilson.

Q How many alleys, roads and streets are there leading into your lumber yard from Van Keuren avenue? A Why, there is what we call the driveway from our lumber piles—there are about four of those.

Q And how wide are they? A Probably about 8 or 9 feet.

Q How many of those alleys, roads or streets, or whatever you call them, lead into your lumber yard from Duffield avenue? A Four or five; I'm not sure. 30

Q And about how wide are they? A About 8 feet.

Q And how many of those roads, streets or alleys are there leading into your lumber yard from West Side avenue? A Two.

Q And they are about the same width? A That's right. 40

Louis H. Fardelmann, for Complainant, cross.

Cross examination by Mr. Rooney on behalf of City.

Q Where are they with reference to your property? A On the northeast corner.

10 Q And some other road leading into your property rather than Van Keuren avenue? A This road parallel with what people term Van Keuren avenue.

Q And that is what you consider to be your property? A Dodge & Bliss property.

Q And that is another way you have of going into your plant? A Yes, sir; it is.

Q What part of your property is that on, north, south, east or west? A From the north side.

20 Q North side? A Yes.

Q Are you sure about that? A Yes, sir.

Q Do you understand the directions down there? A Yes, sir.

Q And where does that road come through; where does it start? A It starts right from our factory; where our trucks go up in the front of the factory to load.

30 Q It runs into West Side avenue, doesn't it? A It does not run into West Side avenue; it runs into the front of our factory. We have got a driveway that goes from that particular place into West Side, in front of the factory.

Q You are referring now to the part of your property that faces West Side avenue? A That is correct, but the drive is at right angles to that going down into the yard alongside of one factory and along to another factory.

40 Q How do you go to get in through there? A It is an open lane, paved lane.

Louis H. Fardelmann, for Complainant, cross.

Q This is on the north side of your property?

A Yes.

Q What part of your property is the office on?

A On the northeast corner.

Q And this road that you speak of runs from your office down? A No, sir; it runs alongside of the factory.

10

Q Well, in what direction does it run? A Parallel to what we call Van Keuren avenue.

Q How far is from your office to this road?

A About 70 feet.

Q And runs into West Side avenue? A Runs into the property in front of our factory where we load our trucks, and then from there we go into the factory through the driveway from West Side avenue.

Q What driveway is that? A The driveway the teams go up so that they won't have to go into the gutter to load the trucks. 20

Q That is West Side avenue, isn't it (showing Exhibit D. 1 to witness)? A Yes.

Q And that is the entrance you speak of? A That is the entrance that goes into the factory.

Q Referring to this Exhibit D. 1, isn't there a gate from the entrance into the factory? A I'm not talking about that gate; if you go a little further down you go right into the factory, and you can see the traffic going right down there (indicating on Exhibit D. 3). 30

Q It is in the open space shown on this Exhibit D. 3 which is just south of the street described as Van Keuren avenue; is that correct?

A Parallel to Van Keuren avenue?

Q A little to the south of it? A South of our factory.

Q This shows it here (referring to Exhibit D. 4); doesn't the space between the railroad 40

Louis H. Fardelmann, for Complainant, cross.

shown on Exhibit D. 4 and your factory show it?

A Alongside of this factory and going into there.

10 The Court: The factory referred to is the second building from the left-hand margin of the exhibit.

Q Is that correct? A Yes, sir; it goes alongside of this factory down here.

Q And when it goes down into the yard as you go west along this road where do you come to? A Come to our molding shed.

Q And if you turn to the right where do you go? A Across that railroad track into what you call Van Keuren avenue.

20 Q And is that the place where you say these people were wandering around aimlessly looking for the road? A Yes, they got down alongside of the lumber pile back into the yard.

Q Into this open space? A No, I said back into the lumber pile.

Q Do they have to go down Van Keuren? A They were right nearly adjoining the factory and the lumber yard.

30 Q And that is the street that you define as the entrance to your plant; is that correct? A There are two entrances from West Side avenue, yes.

Q I am talking from any place; that is the only means you have of getting in and out of your plant? A We can come in through Newark avenue and over Duffield avenue and get into the back of our yard.

40 Q Without touching what you call Van Keuren avenue?

Louis H. Fardelmann, for Complainant, cross.

Mr. Gilson: I don't think counsel understands the situation.

The Court: Do you want to make an objection?

Mr. Gilson: Yes, because he is going over the same ground and isn't stating the facts. This witness' evidence shows that there are four entrances from Duffield avenue to this lumber yard. There are two from Van Keuren avenue into the lumber yard. Now, his question is, do only these two entrances from West Side avenue—

The Court: No, the last question elicited the information that the only way to get from Duffield avenue to the complainant's property was along Van Keuren avenue, but the witness is about to explain that that isn't so because wagons come right in from Duffield avenue onto the property. (Addressing the witness.) Now, do you understand the question? It means this: Can you get from Newark avenue along Duffield avenue into your property without the use of Van Keuren avenue?

A Yes, sir; there are four entrances off of Duffield avenue—four or five, I'm not sure which.

Q Through streets? A Through our alleys and between the lumber piles.

By Mr. Gilson.

Q And all of those streets you have spoken of are paved the same way as Van Keuren avenue?

A Yes, that's right. Mr. Herrold made those roads.

William Ritz, for Complainant, direct.

By Mr. Rooney.

Q Well, how wide are they? A Eight or nine feet; some of them are narrower.

10 WILLIAM RITZ, sworn on behalf of the complainant, in rebuttal, testified as follows:

Direct examination by Mr. Gilson.

Q Where do you live, Mr. Ritz? A 236 Fourth street, Ridgefield Park.

Q And you are employed by the Dodge & Bliss Company? A Yes, sir.

20 Q In what capacity? A As order clerk and salesman.

Q How long have you been with the company? A Why, since 1922, about six years.

Q Have you noticed any use of what has been called Van Keuren avenue during your time down there? A Why, I have seen just the Public Service boys going back and forth to work in their cars, and the bakers and milk man going up and down there.

30 Q Have you noticed any other use during storms? A Why, on one occasion I have seen a lot of cars come down through there, along in the afternoon after a thunder shower or heavy rain.

Q When was that? A I guess it was just this past summer.

40 Q And that is the only occasion since you have been there that you have seen any other use of Van Keuren avenue except by the Public Service people? A That's right.

William Ritz, for Complainant, cross.

Cross examination by Mr. Rooney on behalf of City.

Q What wagons? A I have seen the wagon of the pie-baking company, and the truck of the Keystone Dairy, and all the Public Service boys going back and forth to work. 10

Q Have you ever seen any other automobiles going down there? A I have seen some trucks with cinders going down there and going to the Cinder Brick & Tile Company.

Q Have you seen the trucks of any other company that you remember? A No, sir.

Q You have seen the Public Service boys coming out? A Yes.

Q In cars or walking? A Both walking and in cars. 20

Q How many have you seen? A Maybe four or five coming up there every night.

Q In cars? A In cars, yes.

Q What is your business with the Dodge & Bliss Co.? A I am order clerk and also salesman. I spend half of my time inside and at times I get outside. Up until last year I was inside all the time; it was only this past year that I have spent part of my time outside.

Q How many cars did you see after that rain-storm? A Of course, I didn't count them; it may have been 30 or 40; something like that. 30

Q In which direction were these cars going? A Why, both directions.

Q On Van Keuren avenue? A I have seen them on West Side avenue. I don't know whether they came out of West Side avenue or not; I was just coming back to the office.

Q How far from Van Keuren? A They were on West Side avenue I guess about 200 feet this side of St. Paul's avenue. 40

William Ritz, for Complainant, cross.

Q North or south? A North.

Q North of it? A Yes.

Q That is the only way they could get into West Side avenue, wasn't it, from Van Keuren?

A Yes.

10 Q And you say that you saw a number of Public Service boys going back and forth to their work? A To their work, yes.

Q How many of them, do you know? A Why, I come home with three or four of them at night.

Q Do you see them going back and forth? A Yes, I meet them in the train every night.

20 Q How many more of them do you see? A I see three or four cars come out of there every night, and I have been told that they were employees of the Public Service. They have been doing that for the last four or five years, to my knowledge.

Q Might it have been longer than that? A Yes.

Q How long do you say you have been there?

A About six years.

Cross examination by Mr. Taliaferro on behalf of Public Service.

30

Q How long have you been working for the Dodge & Bliss Company? A About six years.

Q Have you ever been instructed to stop people from using it? A I have never had occasion for that.

Q Just answer the question: You never have? A No, sir.

40 Q Do you know of anybody else who has been instructed to stop people from using Van Keuren avenue? A No, sir.

Mrs. Helen Broad, for Compl't, direct—cross.

MRS. HELEN BROAD, sworn on behalf of the complainant, in rebuttal, testified as follows:

Direct examination by Mr. Gilson.

Q Where do you live? A 30 Romaine avenue, Jersey City.

10

Q And you are employed by the Dodge & Bliss Company? A Yes, sir.

Q How long have you been with the Dodge & Bliss Co.? A Two years.

Q During that time have you noticed any use of Van Keuren avenue? A Yes, delivery trucks and the milk wagon; that's all.

Q How about employees of the Public Service? Have you noticed any of them? A Yes, one man that I know. I don't know whether the other people belong to the Public Service or not.

20

Q And during the time that you have been there have you noticed any other use by automobiles during the storms? A Yes, on two occasions.

Q And when were those occasions? A During the summertime, one last year and once this year.

Q Did you ever notice any cars wandering around in the lumber yard as if they were lost? A No, sir.

30

Cross examination by Mr. Speer on behalf of Public Service.

Q What did you say your employment was? A Stenographer.

Q What part of the building are you employed in? A On the west side where Van Keuren and West Side avenue are. I can just look out of the window and see everything that is going on.

40

Mrs. Helen Broad, for Complainant, re-direct.

Q But you don't do that usually, or if you do you can't do your stenographic work. Now, on these two occasions you speak of when they had the torrential rains and storms there, did the employees gather about in groups and look at it?

A Yes, sir; they did.

10 Q Was that the occasion that these other witnesses testified to when you got together and saw it? A Yes, sir; it was very unusual.

Q And on other occasions they were not together for that purpose? A No, sir.

Q How many people did you say you had seen use Van Keuren avenue? A I saw delivery trucks.

Q And, of course, you have seen lots of people walking along there, haven't you? A No, I can't say that I have.

20 Q You have seen several walking along there, haven't you? A No, I don't remember seeing people walking along there at all.

Q You mean on Van Keuren avenue? A Yes, on Van Keuren avenue.

Q You have heard a lot of men testify that they were walking up and down the street trying to find their way out? A No, sir.

Q You didn't hear that? A No, sir.

30 Q Did you ever see anybody stop people from going through there? A No, sir.

Q Even when the family party was gathered together looking out of the window? A No.

Re-direct examination by Mr. Gilson.

Q What caused these family parties to look out of the window? A I called attention to the fact; I says, "My, goodness! I've never seen so many cars passing here," and they all came and

40 looked out.

Barnard Whalan, for Defendant City, direct.

DEFENDANT'S REBUTTAL.

BARNARD WHALAN, sworn on behalf of the defendant City, in rebuttal, testified as follows:

Direct examination by Mr. Rooney.

Q Mr. Whalan, what is your business? A Superintendent of repairing water pipes for Jersey City. 10

Q How long have you been connected with the Water Company of Jersey City? A For the last 37 years.

Q Do you recall, Mr. Whalan, a street known as Van Keuren avenue? A Yes, I sure do.

Q Which runs from West Side avenue to Duffield avenue? A Yes; you go in through West Side, and if you want to go into Duffield you have to go up Van Keuren from Duffield to West Side. 20

Q It is the connecting link between two dead-end streets? A Yes.

Q West Side avenue is used by vehicles?

Mr. Gilson: I object to that, unless he knows. 30

Q How long have you been living in Jersey City? A Over 40 years.

Q How long has West Side avenue been there? A Oh, 37 years ago if I wanted to come to the east side I would come up Van Keuren avenue, and if I wanted to come back I would come up through Duffield avenue and into it again; there are two openings, and I have been up and down there all that time, driving a horse at times. 40

Barnard Whalan, for Defendant City, cross.

Q You would use a city truck going through?

A Yes.

Q Did anybody object to your using it? A No, sir.

10 Q How long, do you recall, has the city used that street? A Since the first day I went into it.

Q And that is 37 years ago? A Yes, and when the park was made I was in the employ of the city up there piping Van Keuren avenue. When I was employed by the city there was a water pipe in Van Keuren avenue.

Q Started 37 years ago? A Yes.

Q And you have been supervising repairs since that time? A Not all of that time; about 25 years I have been superintendent.

20 Q Any repairs that you made were at the request of your superiors and not at the request of the Dodge & Bliss Company? A By the city. My orders are from the Commissioners. The policeman would report a break in the main and I would go there and repair it.

Q During the time you were down there, 30 or 35 years ago, you could drive through that street, couldn't you to West Side avenue? A Yes.

30 Q Did you ever notice any city trucks or automobiles going down toward the river using Van Keuren avenue? A Only lumber trucks or if they would be in a hurry to get there or the water doing some harm. I have seen lumber trucks and that is all that I could say.

Cross examination by Mr. Gilson.

Q When you went down there 37 years ago would you drive with a horse and wagon? A

40 Horse and wagon, yes.

Barnard Whalan, for Defendant City, cross.

Q And sort of look the hydrants and pipes over to see whether they were needing repairs?

A Probably some needed repairing. I went there to make repairs, yes.

The Court: As I understand it, for the last 25 years he has been more exclusively employed in repairing broken mains. 10

Q Now, can you tell us when you made any repairs on those pipes? A Oh yes, inside of two years we have moved probably 25 feet of main. Somebody reported to the Board that they were in the way.

Q That isn't repairs, is it? A Sure it is repairs.

Q Outside of that don't you know that the Dodge & Bliss made repairs there? A No, I was down at the Dodge & Bliss place 10 years ago helping them to make repairs. Now, if you will let me explain what I mean by anybody else making repairs. I was sent there now and then to the property and the one who owns the property would want to do repairs and I would shut off the water until they made the repairs. If they didn't make those repairs I would go in and make those repairs and charge the property with the repairs. That is how they got repairs. 20 30

Q And when you would make any repairs to the city main they would be paid for by Dodge & Bliss Company? A Yes.

Q And that is how you would make repairs? A But I had to make repairs to get other people water.

Q And outside of that time ten years ago you didn't have to make any repairs, did you? A Oh, any time. 40

Barnard Whalan, for Defendant City, cross.

Q Just made some changes? A At times I had to make repairs of broken pipe, maybe cut a piece off and put in a sleeve.

Q You are talking about the Dodge & Bliss property now, are you? A I am talking about property nowhere; I am talking about pipe in
10 Van Keuren avenue. I don't know whose property it is.

Q When was the last time you did that? A I would have to go to the office and look the books over to tell that. It might be a week and maybe I wouldn't think of it, or because I would send another man on the job if the boys were disengaged.

Q My question is, when did you make the last repair, and I show you Exhibit D. 13 to refresh your recollection? A I don't know
20 whether it is shown in this. I will have to go over it. You put me to a lot of trouble.

Mr. Rooney: We have a list here showing the repairs (handing it to witness).

A On James avenue, the 12th of this month, I was there packing a lot of things all right.

Q That is on James avenue? A Yes.

Q Not on the Dodge & Bliss Co. property?
30 A Just outside. I don't think I have ever been on the Dodge & Bliss property at all. I have been on the highway, the street.

Q I show you Exhibit D. 14, which is a diagram showing water pipe line running in West Side avenue. This line runs along West Side avenue and then comes over into Van Keuren avenue, and then is met by another pipe line from James avenue, and then continues on down what is called Van Keuren avenue— A Does
40 that connect with the pipe on Duffield avenue?

Barnard Whalan, for Defendant City, cross.

Q Yes. Now, the Public Service get their water through Duffield avenue and not through this Van Keuren avenue line? A Not exactly.

Q Isn't it as shown on this plan? A Well, that may be all right.

Q Isn't this the situation, that this is a kind of an emergency line in case the Duffield avenue line breaks? A Years ago it wasn't. 10

Q But the Public Service gets its main from the Duffield avenue pipe, doesn't it? A It does.

Q And this one through Van Keuren avenue and James avenue would only be used in an emergency in case the Duffield avenue line broke down? A I wouldn't say that; I don't know but what they use it as an auxiliary for Duffield.

Q If you put in a meter to measure the water from James avenue and Van Keuren, and a meter from West Side avenue then you can keep tab on the water used by the Public Service and any other concern down there? A No. 20

Q Why not? A I couldn't get through James avenue; it would have to pass Duffield avenue.

Q There is one at Duffield avenue? A Yes.

Q If you put one in James avenue and one in West Side avenue how would it be? A Well, let me refresh my memory and see if there are any connections. Well, I would check up the water going through to see if they were using it. 30

Q There is no question but what this line running through Duffield avenue is an auxiliary line in case of a break-down? A Are you talking of Duffield avenue or Van Keuren?

Q I mean Van Keuren? A The one going through Van Keuren avenue is an auxiliary line to Duffield. 40

Barnard Whalan, for Defendant City, cross.

10 Mr. Rooney: We have the entire proceedings from the City Clerk's office of Jersey City upon a petition of the Public Service Electric & Gas Company for the vacation of the westerly end of what is claimed to be Van Keuren avenue, and the subsequent proceedings thereon, including a protest filed with the city against any such vacation by the complainant, and I offer that record in evidence.

Mr. Gilson: I object, on the ground that Van Keuren is not a public street but is private property.

The Court: I will admit it and deal with it when I come to decide the case.

20 (The same is designated as Exhibit D. 16 but not marked.)

CASE CLOSED.

30

40

Deposition of William F. Brown.

DEPOSITION.

IN CHANCERY OF NEW JERSEY.

Between.

DODGE & BLISS COMPANY,
Complainant,

and

MAYOR AND ALDERMEN OF JER-
SEY CITY,

Defendant.

*On Bill to
Quiet Title.*

Deposition.

10

Deposition of William F. Brown, a witness produced, sworn and examined on the part of the complainant in the above-entitled cause, taken *de bene esse* before me, Harry Schirmer, a Supreme Court Examiner of the State of New Jersey, at 62 Kensington avenue, Jersey City, New Jersey, this seventeenth day of October, 1928, at ten o'clock in the forenoon, pursuant to stipulation of counsel made and filed in this cause. 20

Appearances:

Herbert Clark Gilson, Esquire, solicitor of complainant.

Thomas J. Brogan, Esq. (Mr. Rooney), solicitor of defendant. 30

It is stipulated that the deposition be taken stenographically and the signature of the witness waived.

Deposition of William F. Brown, direct.

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

WILLIAM F. BROWN, being first duly sworn according to law, on his oath deposes and says:

10 *Direct examination by Mr. Gilson.*

Q You reside at 62 Kensington avenue, Jersey City? A Yes.

Q And you are president of the complainant, Dodge & Bliss Company? A Yes, sir.

Q How long have you been connected with Dodge & Bliss Company? A Since 1885, or thereabouts.

Q During that time, what was the business of Dodge & Bliss Company, and its predecessors?
20 A Always the lumber business and the wooden packing case business.

Q Do you know when Dodge & Bliss Company, or its predecessor, bought the property in question in this suit, between West Side avenue and the Hackensack River? A About 1885 to 1888.

Q Well, at that time what was the physical condition of the property? A It was all meadow
30 land, except near West Side avenue, which came up on a bluff; all that land for a distance of about 175 feet to the west of West Side avenue was solid ground; the balance of it was filled in.

Q What streets, if any, were there there at the time the company bought that property? A The only street that I knew was there was West Side avenue and the street known as Van Keuren avenue.

Q No; I mean what physically; was Duffield
40 avenue there? A Duffield avenue was there.

Deposition of William F. Brown, direct.

Q Was there any other street that was on that property except West Side avenue and Duffield avenue, actually laid out or used? A Not to my knowledge; we never understood it as such.

Q What, if anything, did you do to make the meadowland part of the property usable for the lumber and box business? A We filled it in with cinders and shavings and made the land as it is at the present time. 10

Q What did you do to make it usable for trucks and moving the lumber by hand trucks or whatever you call it? A We made gangways there.

Q Of what? A Of shavings, and refuse, and cinders.

Q Did you do any planking? A And plank- ing. 20

Q And the planking made the gangways and alleyways for the movement of lumber? A Yes.

Q Was there a dock on this property at the Hackensack River at the time you purchased it? A No.

Q Who built the dock? A We did.

Q And by "we," you mean Dodge & Bliss Company? A Dodge & Bliss Company.

Q Was there any railroad switch on the property at the time you purchased it? A I should say Dodge & Bliss Company, and its predecessors. 30

Q Was there any railroad switch on the property at the time you purchased it? A There was not.

Q Is there at the present time? A Yes, sir.

Q Who put that railroad switch in; who paid for it? A We did; Dodge & Bliss Company and its predecessors. 40

Deposition of William F. Brown, direct.

Q About when was that switch put in; not the present one, but the original one? A Shortly after the company went over to be located there; which would have been along in 1888 to 1890.

Q Then was that switch relocated after that? A Once, when the D. L. & W. Railroad built their elevation.

Q When was that, about? A I don't remember the year, but the records would show it.

Q I mean, was it five years ago, or ten, or twenty, or thirty? A It would have been at least fifteen years ago; but the records show.

Q Now, the original railroad switch, where was that with respect to the strip that is sometimes called Van Keuren avenue; was any part of that switch on any part of that strip? A Yes, indeed; all of the line itself, the switch itself, was on that Van Keuren avenue property, or on this piece of property that is now known as Van Keuren avenue.

Q And that is still there? A Still there.

Q Who paid for that switch? A We did; Dodge & Bliss Company, and its predecessors.

Q Are there any water pipes and hydrants on the property? A There are.

Q Who paid for that? A Dodge & Bliss Company, and its predecessors.

Q What, if anything, has Dodge & Bliss Company, and its predecessors, done with respect to allowing people to use that part of the property which is alleged to be Van Keuren avenue? A Put signs of "No Thoroughfare" up, and many, many times stopped anyone who came down and turned into this strip, there being no gates or fences there, and turned them back.

Q Covering what period would you say that those signs have been up and you stopped the

Deposition of William F. Brown, direct.

people from using it as you have described? A At least fifteen years.

Q Was any of that property ever cut up into building lots, or marked off for building lots, or for streets? A Never to my knowledge.

Q Well, you would know it if it had been, wouldn't you? A Yes. 10

Q Have you been down there daily from 1888 up to about last June? A Except the time I was off.

Q Except when you were on vacation? A Except when I was on vacation, I have been.

Q Has any of that property ever been sold since it was purchased in 1888? A Yes.

Q What tracts have been sold, and to whom? A To the subsidiary of the Public Service, I think it is the Holland Company, and also to the Barnes Manufacturing Company. 20

Q How about the North Jersey Street Railway? A Well, they may be another subsidiary of the Public Service.

Q Outside of those three tracts, no other part of that property has been sold? A No.

Q So that Dodge & Bliss Company still owns all of the property purchased, except those three tracts? A Yes. 30

Q Do you know of your own knowledge whether Dodge & Bliss Company ever made an application to the City to surrender or vacate any rights, if any, that the City might claim in that strip now called Van Keuren avenue? A Yes; I think in 1922.

Q You, as president, made the petition, did you? A Yes.

Deposition of William F. Brown, cross.

Cross examination by Mr. Rooney.

Q What happened to that petition, do you know, Mr. Brown? A It was refused.

Q Was the matter pressed to a conclusion by your company? A Not at that time.

10 Q That is, you filed a petition, but did not proceed with it? A Yes.

Q There are water pipes and hydrants running through this property, which we will call for the purpose of the record Van Keuren avenue? A Yes.

Q When were those water pipes put there, do you know? A I can't remember the years; I can't remember; it was many years ago.

20 Q About how long after your firm came into this property were those water pipes installed? A Well, again I can't tell you, because I don't really know. It seems to me that it was along in 1900, or thereabouts, that those pipes were put in, but I am not sure of it.

Q By whom were the pipes installed? A You mean the folks that did the work?

Q Yes. A I don't know.

Q Was it done by Jersey City? A It must have been.

30 Q Do you know whether or not those pipes run from West Side avenue, westerly, towards the Hackensack River, along this strip that we have identified as Van Keuren avenue? A Yes.

Q Do you know with reference to the center line of this street, about where that pipe or pipes are located? A Yes, I know, about the center of the street at West Side avenue, and branching north a bit to the northerly side of the strip, then they run down to a point at least opposite to what is known as the Dodge & Bliss Company
40 stable.

Deposition of William F. Brown, cross.

Q Do you know what becomes of the pipe at that point? A It turns and makes a circuit and connects up with the main again at James avenue.

Q Where is James avenue located with reference to this strip we are identifying as Van Keuren avenue? A It connects with Van Keuren avenue at the end of what was known, and is now known, as James avenue. 10

Q How many blocks west of West Side avenue is James avenue? A One.

Q And about how far, in feet, west of West Side avenue, is James avenue? A Five to six hundred feet, I would guess.

Q Do you know how many water pipes there are that run through this street? A One large main, with branches. 20

Q Have you any idea as to the diameter of this large main? A No, I haven't; I think it is a six inch main.

Q Where do those branches run around the street and around the property? A Around Van Keuren avenue, as we call it, and James avenue, with the plugs that are indicated there.

Q By "plugs" do you mean fire hydrants, Mr. Brown? A Yes.

Q How many fire hydrants are there on this strip known as Van Keuren avenue, west of West Side avenue? A Three of them, I think. 30

Q Are there any fire hydrants on James avenue? A One.

Q Where is that with reference to Van Keuren avenue? A To the south, about two or three hundred feet.

Q When were those fire hydrants installed? A The whole of this water main was put in for the purpose of fire protection. 40

Deposition of William F. Brown, cross.

Q No; I say when? A When were they installed?

Q Yes. A At the time that the water system was put in there.

10 Q There have been no hydrants added to that equipment since that time, so far as you know? A Not that I know of. And the whole of the equipment was put in there for fire service.

Mr. Rooney: Now, I ask that that be stricken out.

Q You said, I believe, that Dodge & Bliss Company, or its predecessors, paid for the installation of this main, its branches and hydrants? A Yes, sir.

20 Q When was that bill paid? A I can't tell you, because it is so far back that I can not recollect it.

Q By whom was it paid? A By Dodge & Bliss Company, or its predecessors.

Q Well, haven't you any idea as to what year it was paid? A I couldn't tell you that, because I don't know that I ever looked it up.

30 Q Have you any records pertaining to that? A There may be, but they might have been consumed in the fire that we had in our office building there some years ago.

Q Will you endeavor to locate those records? A Yes.

Q Have you any idea as to what that cost? A No, I haven't.

Q Do you know to whom that money was paid? A No, I do not.

40 Q Who had charge of the payment of the money? A The firm whom we succeeded, which was Dodge & Company.

Deposition of William F. Brown, cross.

Q Were you interested in Dodge & Company?

A Only as a clerk at that time.

Q So when you tell us that those funds were paid for the installation of this water main and fire hydrants, are you testifying as to your own knowledge, or from what you understood to be the situation? A From what I understood to be the facts. 10

Q Not from your actual knowledge? A Not from my actual knowledge.

Q Do you know whether or not these fire hydrants are marked with any identification number by Jersey City, or name? A I do not.

Q They are maintained and kept in order by the City of Jersey City? A Yes; one moment there—

Mr. Gilson: Of course, he means from your own knowledge. 20

A Not from my own knowledge, I don't know that they are kept in repair by the City of Jersey City.

Q You have been there every day for the last thirty years; you know that situation, don't you?

A All the repairs that have been made, I now recollect, as far as I can remember, have been made by the Dodge & Bliss Company. 30

Q When were any repairs made by the Dodge & Bliss Company on this water main? A Within the past two or three years back.

Q When? A I can't say the exact date; I can only recollect that we did make the repairs.

Q What did those repairs consist of? A Digging up of the ground and looking for leaks, as I remember it.

Q That was done by your own men? A By our own men; yes. 40

Deposition of William F. Brown, cross.

Q Not by some plumber hired by you for that purpose? A No; we always made repairs of that kind with our own men.

Q Well, can't you give us any idea as to when those repairs were made, or what they consisted of?

10

Mr. Gilson: I will get those records; but you can go ahead with that.

A I can't remember at the present time.

Q Do you know whether or not the main which runs through Van Keuren avenue feeds water into your property from the City water supply?

20 A It does not, to my knowledge, except to the fire tanks on our roof; from artesian wells we pump all of the water that we use into our boilers, and the City water, as I know it, has only been used for fire protection.

Q Is that metered service, do you know? A It is not.

Q Do you know whether or not any other consumers tap into this main that runs through Van Keuren avenue, who use the City water supply?

A I do not.

30 Q Do you know whether or not the Barnes Manufacturing Company which is on the opposite side, I believe, of this street, taps into it? A I don't know.

Q Mr. Brown, I understood you to say, in answer to your counsel's question, that when you first went to this property, which I believe was about 1888 or 1885, the only streets which you noticed there were West Side avenue and the street known as Van Keuren avenue; is that correct? A That is right. One moment; not West Side avenue and Van Keuren avenue. West
40 Side avenue and Duffield avenue.

Deposition of William F. Brown, cross.

Q I believe you also identified Duffield avenue.

Mr. Gilson: He mis-spoke when he said Van Keuren avenue.

Q You meant by that then— A The only streets I knew were West Side avenue and Van Keuren avenue. 10

Mr. Gilson: You mean Duffield avenue.

A West Side avenue and Duffield avenue; and also James avenue.

Q James avenue? A James avenue.

Q What was the northerly extremity of James avenue at that time? A Well, it connected with the road that we now use and which we are questioning now on, Van Keuren avenue. 20

Q There was a road there then, was there not? A We made it; there was no road that we knew of, but we made the road as an ingress into the property.

Mr. Gilson: Well, what Mr. Rooney means is, what was the end of James avenue when you bought the property, before you extended it? Isn't it? 30

Mr. Rooney: Yes; I want to know—he said he knows that James avenue was there. I want to find out what the northerly extremity of the street was.

Mr. Gilson: When you bought the property.

A I understood it as the southerly line of the Dodge & Bliss Company property.

Q James avenue was a street actually laid out at that time, was it not? A Yes. 40

Deposition of William F. Brown, cross.

Q And there was such a road running north beyond the southerly line of your property, known as James avenue, was there not? A It ran over the property of the Dodge & Bliss Company, as we knew it.

10 Q At that time? A At that time.

Mr. Gilson: May I interrupt you once more for the record. Are you talking about the physical condition? Mr. Rooney is talking about the physical condition; not what you understood how far out it went; he is talking about the physical condition of it when you bought the property. That is to say, how far north was James avenue cut through when you bought the property?

20 A To the southerly line of the Dodge & Bliss Company's property, as I knew it.

Q Now, what do you mean, "As you knew it"; as you knew the southerly line of the Dodge & Bliss property, or as you knew James street?

A As I knew the southerly line of the Dodge & Bliss property.

30 Q Now, there was actually a road running beyond the southerly line of your Dodge & Bliss property at that time, which we will now identify as James avenue, was there not? A There was no road at all at that time; we made such a road with planking, and with filling, and so forth, from our property over to what is known as St. Paul's avenue.

Q And that road which you made with your planking, follows the line of what is known as James avenue, does it not? A Yes.

40 Q How did you determine that line? A I don't know how it was determined; I wasn't in

Deposition of William F. Brown, cross.

the management of those things at that time; I was but a clerk, and I don't know how it was determined.

Q That planking through James avenue ran north, however, to the point where we identified as Van Keuren avenue, did it not? A It ran north to the point of the Dodge & Bliss Company's southerly line. 10

Mr. Gilson: The northerly line; north to the northerly line. He means from your southerly line north.

A It ran north to the northerly line; that is quite right.

Q Well, this line that you speak of as the northerly line of the Dodge & Bliss Company property is the northerly extremity or side of the street which has been identified as Van Keuren avenue, is it not? A Yes. 20

Mr. Gilson: You are mixed about that. Your northerly line is beyond Van Keuren avenue, isn't it? Here is the line of Van Keuren avenue, it comes down here (indicating). You own property north of Van Keuren avenue, do you not? 30

A Yes, we do; we own property north of Van Keuren avenue for a distance of 192 feet.

Q Well, this planking that you speak of also ran, as I understood it, from West Side avenue, west, down to the Hackensack River? A From West Side avenue?

Q No; along this street known as Van Keuren avenue? A No planking was used there; it was simply a dirt formation, which we filled in with 40

Deposition of William F. Brown, cross.

cinders and with shavings and with bottom from this meadow land down to Duffield avenue.

Q How wide was the surface of the road, running from West Side avenue down to Duffield avenue, over the strip which is known as Van Keuren avenue? A I would say about fifty
10 feet; but I may be wrong about that width.

Q And then that was the width running from West Side avenue west to Duffield avenue; is that correct? A Yes.

Q Over this strip which we have identified as Van Keuren avenue? A Yes.

Q Do you know of your own knowledge as to how the course of this road, as you filled it in and improved it, was determined with reference to the street which is known as Van Keuren avenue? A It was determined by ourselves; it followed the railroad switch that we had laid down there, and it was a natural determination, because of its access to the railroad track and to the cars that were placed on that railroad track.
20

Q When was this railroad track laid? A About 1890 to 1895.

Q When was Van Keuren avenue improved?

Mr. Gilson: I object to that, because there is no evidence to show that it is improved.
30

Mr. Rooney: Improved by you.

A The only improvement put on it was the fill.

Q When was that done? A From time to time during the years 1890 and on.

Q Well, over how long a period did this filling in of this strip known as Van Keuren avenue continue? A Probably for a number of years.

Q About how many years? A I would guess at least five to ten years.
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Deposition of William F. Brown, cross.

Q Well, this filling in then of Van Keuren avenue had been started and was in operation before the laying of the railroad switch, was it not?

A Yes; I think so.

Q Then you are mistaken when you say that that line was determined by the railroad line? A No; the switch was laid first and the road followed the switch of the railroad line. 10

Q Now, this switch, I understood you to say—I may be mistaken—was laid about 1895? A Earlier than that; the switch must have been laid between 1890 and 1895, or thereabouts; it was a long way back.

Q Haven't you any idea as to when that switch was laid?

Mr. Gilson: I can refresh your memory if you want the date. 20

Mr. Rooney: I am testing Mr. Brown's memory.

A I can't recollect it at the present time.

Q Is there any planking in Van Keuren avenue? A Yes.

Q From what point to what point does that extend? A From say fifty or a hundred feet north of the Barnes sheds and then right down to the line that the Public Service makes at the westerly end of the property. 30

Q About how far west of West Side avenue does this planking start on Van Keuren avenue? A Probably 300 feet.

Q Then how far west, in feet, then does that planking continue? A To the end of the Dodge & Bliss Company property as bounded by the Public Service.

Q About how far, in feet, is that? A I can't remember, sir. 40

Deposition of William F. Brown, cross.

Q Now, this strip that is known as Van Keuren avenue, Mr. Brown, was open all the way down to the river, was it not, to the Hackensack River, from West Side avenue? A Yes; to Duffield avenue, which is the end of the property there.

10 Q Is that where your dock was located, at the end of Van Keuren avenue? A Yes, including the full width of the property, and running over to the southerly line; the dock was a big dock.

Q This strip known as Van Keuren avenue has been used by the public for a great many years, has it not? A Only under objections by ourselves.

Q People drove horses and wagons and automobiles over that strip? A They did at times; 20 and we cautioned them many, many times that they were transgressing on private property.

Q Cautioned by you personally? A No; but by our men.

Q When you speak of your men cautioning people, are you again testifying as to what you understood to be the fact, without your own knowledge, or do you know? A I do know, because I have issued orders, and saw them obeyed.

Q When was the first time to your actual 30 knowledge that you know that someone was prevented from going over this strip known as Van Keuren avenue? A Many years ago; how many, I can't recollect.

Q I understood you to say in your direct examination that you put some sort of a "No Trespass" sign up on this Van Keuren avenue? A Always had one.

Q By "always," you mean down to how long ago? A Ten to fifteen years ago.

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Deposition of William F. Brown, cross.

Q Where was that sign with reference to West Side avenue? A At the junction of West Side avenue and Van Keuren avenue, there is a post there, and at this date there is, or should be, a "No Thoroughfare" sign there.

Q Well, do you mean, when you say that there should be, that you are not sure as to whether it is there or not? A I haven't been there for a few months; up to the date of my sickness, which was some four months ago, it was there then. 10

Q What does that sign say, Mr. Brown? A "No Thoroughfare."

Q That is all there is on that sign? A I think so.

Q Is that the same sign that has been there, as you say, for the past ten or fifteen years? A Yes, sir; except that it may have been replaced from time to time. 20

Q Well, don't you know? A Yes; I know that the sign has been there itself.

Q When was it last replaced? A I can't tell you, because I don't remember; but the sign itself has always been there; the sign itself has always been there for those years.

Q By "always," you mean during the last ten or fifteen years? A Yes, sir. 30

Q Did Duffield avenue, as you knew it in 1888, run north to the point where it would meet Van Keuren avenue? A I can not remember, sir, whether it did or not; I remember a creek being there; whether the creek was at the end of Duffield avenue or not, I am not sure; they were all dirt roads on those days, roads that were built by ourselves; when we got hold of the property it was meadowland, running under the water, I guess, at the point that we now have a dock, and the roads were built by ourselves. 40

Deposition of William F. Brown, cross.

Q Mr. Brown, do you know of your own knowledge as to whether or not, when the street known as Van Keuren avenue was surfaced, it was so surfaced and laid out as to follow the line of the map street known as Van Keuren avenue?
A I don't know that.

10 Q Would you say that it was not, by your company?

Mr. Gilson: He says of your own knowledge.

A I don't know, sir, whether it followed the line of a map, or any map.

Q Do you know whether or not it does follow the line of a map street known as Van Keuren
20 avenue, as actually laid out? A I think it does.

Q And that was the intention, was it not, to follow that map?

Mr. Gilson: I object to that, because he said before that when that was done he was only a clerk, he had nothing to do with the management, and therefore he would not know what the intention of the management or the executive officers of the concern was
30 at that time.

A I don't know, because I did not in any way enter into the building of the road or the directing of it being built; I was only working for them.

Q What is the surface of James avenue at the present time? A In our own property it is filled in and covered with asphalt; south of the line of the Dodge & Bliss Company property it
40 is much as it was when we planked it ourselves

Deposition of William F. Brown, re-direct.

to allow our trucks to go out to St. Paul's avenue.

Q What is the present surface of Van Keuren avenue, west of West Side avenue? A Dirt, and filled in with cinders and planking that we have put down from time to time.

Q All the way down to Duffield avenue? A 10
No; all the way down to the easterly line of the Public Service.

Q Is there any gate or other obstruction to prevent persons from using this street known as Van Keuren avenue, from West Side avenue west? A No, there is not.

Q Has there ever been any? A There has never been a gate put up.

Q Do you know whether or not there are any municipal lights in the strip known as Van Keuren avenue? A I don't remember any such; 20
all the lighting that there is down there is done by ourselves.

Q What does that consist of? A Electric lights in front of the stable.

Q You don't know then, of course of your own knowledge, as to whether or not there are any municipal lights on Van Keuren avenue or James avenue? A There are none on Van Keuren avenue, I am sure, nor on James avenue, on the 30
Dodge & Bliss Company property.

Re-direct examination by Mr. Gilson.

Q Did you ever give any person—or your company—permission to the municipality, to put any lights on Van Keuren avenue? A No.

Q Now, you stated that the request which your company made in 1922, to the City, to surrender its rights, if any, in Van Keuren avenue, 40

Deposition of William F. Brown, re-direct.

was refused; do you know of your own knowledge whether that request was refused, or whether no action was taken by the City on that petition? A I do not.

10 Q You said also that the matter was not pressed at that time by your company; what did you do with respect to any action on pressing the request at that time? A We turned it over to you (Mr. Gilson), and you took it up with other counsel, if I remember rightly, and endeavored to bring the matter to a conclusion.

Q Now, is the Barnes Manufacturing Company still in business down there? A It is not.

Q How long has it been out of business? A Probably two or three years.

20 Q What is the northerly end of James avenue at the present time, from a physical standpoint? A The northerly end of James avenue, I would say, that I understood that it had been closed to the gate.

Q What gate? A The gate of the Dodge & Bliss Company, the office of the Dodge & Bliss Company, on the southerly line of our property.

30 Q The Pennsylvania Railroad runs in approximately an easterly and westerly direction, just to the south of your property—the Dodge & Bliss Company property? A Yes.

Q And that is on an elevation? A The D. L. & W. Not the Pennsylvania.

Q I mean the D. L. & W. A Yes.

Q Is that on a grade, or on an elevation? A On an elevation.

Q Is there any culvert or opening of any street between the one at West Side avenue and the one at Duffield avenue under that railroad?

40 A One, on James avenue.

Deposition of William F. Brown, re-cross.

Q Is there a culvert there? A There is a culvert, a bridge.

Re-cross examination by Mr. Rooney.

Q When was this fence put up there that you speak of—this gate put up that you speak of, at James avenue? A Some seven or eight years ago. The records will show that. 10

Taken and sworn to before me this
17th day of October, 1928.

HARRY SCHIRMER,
Supreme Court Examiner.

I, HARRY SCHIRMER, a Supreme Court Examiner of the State of New Jersey, do certify that the foregoing is a true and accurate transcript of the deposition of William F. Brown, taken by and before me at the time and place hereinbefore mentioned; and I believe said transcript fairly and accurately states the testimony given. 20

HARRY SCHIRMER,
Supreme Court Examiner. 30

OPINION OF VICE-CHANCELLOR.

IN CHANCERY OF NEW JERSEY.

Between

10	DODGE & BLISS COMPANY, a corporation, <i>Complainant,</i>	} 68-13. } <i>On Bill, &c.</i> } <i>Memo-</i> } <i>randum.</i>
	<i>and</i>	
	MAYOR AND ALDERMEN OF JER- SEY CITY, a municipal cor- poration, <i>et al.</i> , <i>Defendants.</i>	

December 7, 1928.

20

Herbert C. Gilson, Esq., for the complainant.
 Thomas J. Brogan, Esq., and Charles A.
 Rooney, Esq., for defendant, Jersey City.

Hon. William H. Speer, for Public Service
 Elec. & Gas Co.

BENTLEY, V.-C.

On bill to quiet title.

30 In 1870 lands, including those described in the
 bill, were conveyed to Stephen Morgan—

In Trust for the following and no other
 uses and purposes Viz On a written request
 of the same to be made within two years two
 years signed William H. Bumstedt William
 Keeney Charles Schultz and William Batty
 or any three of them or the survivors to
 convey in fee simple by proper deeds for
 that purpose either or both of the above de-
 scribed piece or parcel of land and premises

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Opinion of Vice-Chancellor.

as may be designated in said request to the party or parties and for the price or prices mentioned in said request and to apply the net proceeds arising from such sale or sales Firstly towards the payment any of certain promissory notes which in pursuance of a compromise entered into on the twenty-eighth day of December in the year eighteen hundred and sixty nine between the said William Van Keuren and William H. Batty and divers of their creditors were drawn by the said William Van Keuren and William H. Batty in favor of them said creditors payable in three six and nine months respectively and endorsed by the said William H. Bumsted William Keeney and Charles Schultz and William Batty or either of them which may not be paid according to the terms of said compromise and secondly to pay any balance there may be after all said notes are paid if arising from the sale of the piece or parcel of land and premises purchased by parties of the first part from Daniel Toffey and wife and George C. Toffey being the premises hereinbefore first described then the profits or excess of the net proceeds of the sale over the amount laid out and expended by the said parties of the first part in or upon said premises to said William H. Bumsted William Keeney and Charles Schultz and any balance yet remaining together with any balance arising from the sale of three lots of land in Hudson City. Being the premises hereinbefore secondly described to said William H. Van Keuren and William H. Batty and if said written request be not made within said two years or if said

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Opinion of Vice-Chancellor.

request be for the sale of one only of the two pieces or parcels of land and premises hereinbefore described then to reconvey in fee simple by proper deed or deeds for that purpose to said William Van Keuren and William H. Batty their heirs and assigns both of said pieces or parcels of land and premises or the one not mentioned in said request as the case may be.

That conveyance was subject to a mortgage which was foreclosed in 1879, but to which the Mayor and Aldermen of Jersey City was not made a party. During the time that Morgan held the legal title, he filed in the appropriate office a map of the lands so held by him, upon which there were delineated a number of streets, one of which carried the name of Van Keuren avenue. By stipulations during the final hearing, the differences of the parties were reduced to the present dispute as to whether or not the avenue just mentioned is a public highway or the private property of the complainant. It is conceded that West Side avenue and Duffield avenue are subject to the public easement. By various mesne conveyances, the lands so held in trust by Morgan have become the property of the complainant. They consisted of unimproved, unenclosed lands lying in Jersey City, near the easterly bank of the Hackensack River. Beginning in 1888, the complainant and its predecessors filled in the land and established avenues or ways over and across its lands for its use in carrying on its business which consists of lumber and the manufacture of wooden packing cases. Among the ways so laid out was one running from the extreme northerly end of a street named West Side avenue westerly to the northern end of an-

Opinion of Vice-Chancellor.

other street called Duffield avenue which is the most westerly street in this part of Jersey City, and the one immediately east of the said river.

Upon acquiring title to these lands the complainant's predecessor paid to the municipal authorities of Jersey City the sum of \$381 for the establishment of a water system for fire-fighting purposes. At or about the same time it caused a railroad siding to be laid over the strip of land, which will be referred to as Van Keuren avenue, for the purpose of convenience.

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There was some attempt to dispute this first fact by the production of a witness from the water department of Jersey City who testified that a search of the records thereof disclosed no charge for any such installation, from 1901 to the present time. It cannot be seriously maintained that this disproves the claim of the complainant, because the defendant municipality's representatives had known for a period of two weeks before this testimony was given that the charge was made against the complainant more than twelve years before the date at which the search was begun.

20

Sometime after the establishment of the complainant's business at the place referred to, it sold and conveyed a portion of its lands abutting on the easterly bank of the Hackensack River to the Public Service Electric & Gas Company. This last-mentioned tract lay at the westerly end of Van Keuren avenue and included a small portion thereof. In or about the year 1920 the Public Service Electric & Gas Company petitioned the governing body of Jersey City to vacate so much of the westerly extremity of Van Keuren avenue as pierced its property, upon its offer to substitute a portion of its land which it agreed to

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Opinion of Vice-Chancellor.

dedicate so as to continue Van Keuren avenue from the point where the vacation was to begin, southerly and westerly around its property, to Duffield avenue. This vacation was made, and from that the defendants argue an acceptance of the Morgan dedication was accomplished.

10 Ten witnesses were produced by the Public Service Electric & Gas Company who testified to a use of Van Keuren avenue as a street over varying periods of time, running from two or three years to approximately twenty-four years. Nine of them are employees of that company, who testified, I think without exception, that the only use of the street has been by such employees and others, such as trades people, having business with the company or its employees in this
20 territory. It should be said, however, that they testified to having seen pleasure or bus automobiles use the street at times when the adjoining, parallel public streets were impassable by reason of floods caused by torrential rains. It was also made to appear that members of the Jersey City Police Department occasionally were seen to traverse it.

30 The complainant argues that there was no efficient dedication of the streets delineated on the Morgan Map. It will be recalled that the deed of trust to Morgan required him to hold the lands and, upon a written request of any three of the beneficiaries or the survivors, to convey the same, as might be directed in such request, and to distribute the proceeds of such sale as therein directed. It seems to me that it was not within the authority of Morgan to dedicate any portion of the real estate held in trust or to dispose of it in any otherwise except in accordance with
40 the provisions of the deed. I do not conceive

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that *Prudden v. Lindsley*, 29 N. J. Eq., 615, is any authority for the position taken by the defendants. There, trustees of a school district dedicated a strip of land held in trust for the purpose of establishing a road over one side of the track. The Court of Errors and Appeals decided that inasmuch as the trust was of a somewhat indefinite character a discretion was vested in the trustees and they held that the road was not inconsistent with the uses and purposes of the trust, but by implication this pronouncement is rather favorable to the complainant because in the case at bar there is nothing indefinite or ambiguous in the covenant, and any unauthorized dealing with the land was certainly inconsistent with the trust, where the effect was to give away a portion of the trust property. 10

The next point to be dealt with grows out of the attempt of the defendants to establish a public right of way by user for a period of twenty years and more. It is elementary that every use of a way will not establish a public right. The use by the public must be with the actual or implied knowledge of the land owner and it must be adversely under a claim or color of right, not merely by the owner's permission. It must be continuous and uninterrupted for the required period. 29 C. J., 373. It will have been observed that the use of the lands in question appears to have been exclusively by the employees of the defendant Public Service Electric & Gas Company and those having business relations with them. The only exceptions were occasional visits by municipal police officers and the two occasions when unusually heavy summer rainstorms flooded the adjoining parallel streets so that the traffic normally borne by them was 20 30 40

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diverted over it for temporary passage. The difficulty with the use of the land under consideration by the employees is that it does not appear to have been adverse but, according to the testimony of some of the witnesses for the complainant, was acquiesced in by them as a neighborly accommodation.

It should be said that there was further testimony given by one or two of the witnesses for the defendants, to the effect that an occasional passenger automobile would be seen using the land in dispute (in some instances where the occupants had lost their way and wandered off the main avenues of transportation into and through the locus in question) as well as other runways which the complainant had established for transporting lumber to and from the various piles of lumber which it kept in stock. It is inconceivable that anyone could seriously consider such casual and sometimes unintended use sufficient to constitute a public user. Besides that, it is common knowledge that the use of the automobile as a means of transportation had hardly come into use at all twenty years ago. It was used almost exclusively for pleasure. In addition to that, no one who examined the exhibits in this case showing the surface of the ground would believe that any man in his right senses would have driven a motor vehicle over Van Keuren avenue before the days of snubbers, shock absorbers and semi-elliptical springs. Those accessories have all come into use within the last twenty years.

The remaining point to be considered is evidenced by a considerable number of deeds in the complainant's chain of title, wherein the descriptions of the lands conveyed make refer-

Opinion of Vice-Chancellor.

ence to the Morgan Map. It certainly requires
 neither argument nor the citation of authorities
 to convince anyone that the sole owner of lands
 may dedicate them, or a portion or portions of
 them, to public use by filing a map illustrative
 thereof and conveying other lands shown upon
 the map by reference thereto. In fact, this ele- 10
 mentary rule is conceded by complainant's coun-
 sel. But, as already pointed out, the ownership
 of Morgan at the time of the filing of the map
 in question and at the making of the conveyance
 by him, was highly qualified and consisted of
 holding the mere naked title without any bene-
 ficial interest or any powers other than those
 set out in the conveyance to him. It would be
 intolerable to attempt to explain in detail why
 the innumerable citations do not appear to be 20
 germane. Of course, no one will undertake to
 dispute the soundness of the views expressed in
 cases such as *Trustees v. Hoboken*, 33 N. J. L.,
 13, and *Earle v. New Brunswick*, 38 N. J. L., 47.
 But I do not think that either of these cases is
 of the slightest aid, because the powers of the
 trustees were nothing at all like those con-
 fided to Morgan. For example, in the New
 Brunswick Case just mentioned, executors whose
 testator had clothed them with a general power 30
 to sell lands caused a map to be filed delineating
 certain streets. It requires but slight knowledge
 of real estate marketing to realize that it is
 not only highly desirable, but necessary, to pro-
 vide public, perpetual ways in order to sell off
 small parcels of land to a large number of
 purchasers. But in Morgan's case he was deal-
 ing with land that was little better than swamp,
 on an extreme outlying section of what is now
 Jersey City, which at that time was so desolate 40

Opinion of Vice-Chancellor.

and isolated that, according to the witness O'Brien, it was used years later for trapping wild animals. Certainly the establishing of a system of ordinary city streets in lands such as these was of no value to the beneficiaries of the trust and, therefore, was not within the implied power
 10 of Morgan, as it was in the executors in the New Brunswick Case, or the school trustees in *Prudden v. Lindsley* (*supra*).

It is also "hornbook law," as Vice-Chancellor Garrison would say, that a grantee is bound by the provisions of his deed when he accepts delivery thereof and of all matters appearing in the recorded deeds which evidence his chain of title. The exhibits show that in several of the recorded deeds in the chain of title of the
 20 complainant's property descriptions were given by reference to the Morgan Map. Complainant's counsel argues that in some of the deeds the map was only mentioned to identify certain parcels of land which were excepted from the grant and that, therefore, these deeds are not evidence of estoppel. Whether or not that result follows, I do not know. But, it is of no moment, in view of what is about to be said. It is undoubtedly true, however, that in at least four deeds this form
 30 of description was used to identify the land intended to be granted in these deeds. The reason for the rule under consideration, I understand to grow out of the determination of this court that one shall not by his act make it probable that others, relying thereon, will change their positions for the worse, and then allow him to repudiate his act, to the disadvantage of the others. If I file a map showing broad streets and avenues, parks and spacious plazas and sell to
 40 others by reference thereto, certainly I will

Opinion of Vice-Chancellor.

not be permitted to deprive such purchasers and their grantees of the benefits for which they will be presumed to have paid by subsequently disposing for private use of the lands so dedicated to public use for the benefit of all my vendees. But consider the application of the rule to the character of the neighborhood of the *locus in quo*. 10
 In addition to what has already been said it should be further pointed out that the complainant's land is comprehended upon the outskirts of Jersey City between the extreme northerly ends of two streets, West Side avenue and Duffield avenue. Nobody had any reason to traverse Van Keuren avenue except for the purpose of visiting the lands of the complainant at the time the complainant or its predecessors in business secured title. While I appreciate that 20
 a dedication once made is irrevocable, I have not only found that there was no dedication arising from the filing of the Morgan map but, in addition, the complainant and its predecessors in title cannot be held to have ratified an attempted dedication when the examination of title must have disclosed the map and the deed to Morgan, from which the invalidity of Morgan's effort to dedicate would have been apparent. While the 30
 grantee, as I have already said, is bound by all valid and subsisting covenants, conditions, restrictions and other matters appearing in his chain of title, he certainly does not convert an invalid portion of an earlier deed into an enforceable one by his acceptance of a deed which does not contain an express ratification.

I have been earnestly entreated to consider the interest of the public in retaining all properly-dedicated streets until the dedication is vacated in proper form. I have not lost sight of the 40

Opinion of Vice-Chancellor.

gravity of allowing public property to be appropriated to private use. It may be that in the future Van Keuren avenue, or land in its immediate vicinity, will be of great value as an artery of traffic. If that time comes, as counsel for the complainant says, there is plenary power
10 in the defendant municipality to acquire the same and improve it as a street. On the other hand, it is no less momentous in the eyes of this court that private property shall not be taken for public use without just compensation, and for the reasons already given I consider this strip of land which has been referred to for convenience sake as Van Keuren avenue, to be the private property of the complainant.

A decree should be entered in accordance with
20 the prayer of the bill.

30

40

AMENDED FINAL DECREE.

Filed December 17, 1928.

IN CHANCERY OF NEW JERSEY.

Between

DODGE & BLISS COMPANY, a
corporation,

Complainant,

and

MAYOR AND ALDERMEN OF
JERSEY CITY, a municipal
corporation, and PUBLIC
SERVICE ELECTRIC & GAS
COMPANY, a corporation,
Defendants.

10

*On Bill to
Quiet Title.*

*Amended
Final Decree.*

20

This cause coming on to be heard in the presence of Herbert Clark Gilson, solicitor of the complainant, and Thomas J. Brogan and Charles A. Rooney, solicitors of the defendant, Mayor and Aldermen of Jersey City, and William H. Speer, solicitor of the defendant, Public Service Electric & Gas Company, and it appearing that the bill in this cause was filed by the complainant, pursuant to the statute in such case made and provided, to settle the title to certain lands and to clear up all doubts and disputes concerning the same, which lands are, in the said bill more particularly described as follows:

30

All that tract or parcel of lands and premises situate, lying and being in the City of Jersey City, in the County of Hudson, and State of New Jersey:

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Amended Final Decree.

BEGINNING at a point in the exterior line for solid filling on the easterly shore of the Hackensack River as established by the Riparian Commission of the State of New Jersey, and at the intersection of the south-westerly corner of lands conveyed by Dodge & Bliss Company to The Holland Company, by deed dated March 30, 1917, and recorded on the office of the Register of Deeds for Hudson County, in Book 1252 of deeds, page 216; and running thence (1) along the said exterior line for solid filling south twenty-six degrees thirty minutes (26 deg 30') West two hundred and seventy feet (270) to a point; thence (2) south fifty degrees nine minutes (50 deg 9') East two hundred seventy-three and eighty hundredths (273.80) feet to the centre of Duffield Avenue; thence (3) south fifty-eight degrees thirty-six minutes (58 deg 36') East eleven hundred thirty-six and fifty hundredths (1136.50) feet to a point; thence (4) south forty-one degrees eighteen minutes (41 deg 18') East three hundred seventy-two and forty-one hundredths (372.41) feet to a point; thence (5) south fifty-eight degrees thirty-six minutes (58 deg 36') East one hundred sixty-nine and sixty-eight hundredths feet (169.68) feet to a stone monument in the centre of West Side Avenue; thence (6) north thirty-one degrees twenty-four minutes (31 deg 24') East two hundred forty-three and seventy-nine hundredths feet (243.79) to a point; thence (7) south forty-nine degrees thirty-one minutes (49 deg 31) East eighty-eight and twenty-six hundredths feet (88.26) to a stone monument; thence (8) north forty de-

Amended Final Decree.

grees twenty-five minutes (40 deg 25') East
 one hundred fifty and fifty hundredths feet
 (150.50) to a stone monument; thence (9)
 north forty-nine degrees no minutes; (49
 deg 0') West one hundred thirty-seven and
 ninety-nine hundredths feet (137.99) to an
 iron pipe at the corner of lands conveyed 10
 by Dodge & Bliss Company to The Barnes
 Manufacturing Company, by deed dated Feb-
 ruary 1, 1907, and recorded in the office of
 the Register of Deeds for Hudson County, in
 Book 968 of deeds, page 507; thence (10)
 south thirty-one degrees twenty-four minutes
 (31 deg 24') West one hundred ten feet (110)
 along the lands of The Barnes Manufac-
 turing Company; thence (11) north forty-nine
 degrees thirty five minutes west (49 deg 35') 20
 five hundred forty-six and twenty-nine hun-
 dredths feet (546.29) along the southerly
 line of the property of The Barnes Manufac-
 turing Company to a point; thence (12) north
 thirty-one degrees twenty-four minutes (31
 deg 24') East one hundred ten (110) feet to
 a point; thence (13) North forty-nine de-
 grees no minutes (49 deg 0') west five hun-
 dred eighty-three and two hundredths
 (583.02) feet to the lands conveyed by Dodge 30
 & Bliss Company to North Jersey Street
 Railway Company, by deed dated April 26,
 1904 and recorded in the office of the Regis-
 ter of Deeds for Hudson County, in Book
 871 of deeds, pages 109; thence (14) south
 thirty one degrees twenty-four minutes (31
 deg 24') west three hundred thirty-seven and
 fifty-six hundredths feet (337.56) along the
 lands of The Holland Company to a point;
 thence (15) north forty-nine degrees thirty- 40

Amended Final Decree.

five minutes (49 deg 35') west eight hundred forty eight and eighty-six hundredths (848.86) feet along the southerly line of the lands of The Holland Company to the point or place of Beginning;

- 10 and it appearing that the said defendant, Public Service Electric & Gas Company, became a party defendant herein and that its solicitor stated in open court that its answer to the bill of complaint was, first, that there has been a dedication to the public of Van Keuren avenue; secondly, there has been a dedication to the public and acceptance by the public of Van Keuren avenue; and thirdly, that there has been a user which, apart from its bearing on the question of dedication, is also plenary evidence
- 20 of a prescription or prescriptive right, in Van Keuren avenue; and fourthly, that the Public Service Electric & Gas Company and the Public Service Railway Company have a private right of way over the property known as Van Keuren avenue and the complainant, by its solicitor, having replied in open court to said answer by joining issue thereon; and the court having read and heard the pleadings, proofs and arguments of the respective counsel; and it appearing that
- 30 the defendants have set up and relied upon the said dedication by virtue of the filing of a certain map in the office of the Clerk (now Register) of Hudson County, entitled "Map of property belonging to Stephen Morgan and J. H. Van Reyphen, in the tenth ward of Jersey City, January 1870, Levi W. Post, City Surveyor," and of references thereto and descriptions using Van Keuren avenue as a boundary line in certain deeds and mesne conveyances to the complainant
- 40 and its predecessors in title, and by virtue of

Amended Final Decree.

the acceptance by the public of the said dedication, and by virtue of the alleged public user of Van Keuren avenue, and that the defendant Public Service Electric & Gas Company, has set up and relied upon a private right of way over the property known as Van Keuren avenue; and it further appearing that the defendants have, in respect to the remainder of said land and premises disclaimed any claim to, or estate, right or interest in the same excepting the streets known as Fourth street (now West Side avenue) and Ninth street (now Duffield avenue) which it was conceded by stipulation in open court, are subject to the rights of the public, and excepting the rights of the defendant, Public Service Electric & Gas Company, under its conduit agreement with complainant in the strip called "Van Keuren avenue"; and it further appearing that the claim of the defendants which they alleged and insisted on as aforesaid, are not valid, and that there was no dedication nor acceptance nor public user of any of the said streets on or through the said lands and premises, excepting the public user of Fourth street (now West Side avenue) and Ninth street (now Duffield avenue), and that there is no private way over the said property, and that the defendants have not, nor has either of them, any estate, right or interest in the said lands and premises, except as aforesaid; and the complainant appearing to be entitled to the relief prayed for by its bill;

It is, on this 23rd day of January, 1929, by Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, and the said Chancellor, by virtue of the power and authority of this court, does hereby order,

Amended Final Decree.

adjudge and decree, that the filing of the said Morgan and Van Keuren map, and the reference thereto and to said Van Keuren avenue, in certain deeds of conveyance, did not constitute nor operate as a dedication of the streets delineated on said map on the lands and premises described
10 in the bill of complaint herein, and that there was not a public user of the so-called "Van Keuren avenue," nor of any other street delineated on said map, except Fourth street (now West Side avenue) and Ninth street (now Duffield avenue) on the said lands and premises; and that as to the portions of the said lands and premises on which the streets were delineated on the said map, excepting West Side avenue and Duffield avenue, and that as to the alleged private way over the said property, the defendants,
20 and each of them, have and has no estate, right or interest in the same or any part thereof, except the rights of the defendant, Public Service Electric & Gas Company, under its conduit agreement with the complainant.

AND IT IS FURTHER ORDERED, that in respect to all of the said lands and premises, as described in the bill of complaint so far as relates to any claim thereon by or on behalf of either of the
30 defendants, the title of the complainant in and to the same, and every part thereof, is hereby determined, fixed, and settled, and declared to be good, subject to the public rights in West Side avenue and Duffield avenue, both of which are recognized as public streets, and the rights of the Public Service Electric & Gas Company under its said conduit agreement.

Amended Final Decree.

AND IT IS FURTHER ORDERED, that the defendants do pay to the complainant its costs to be taxed.

E. R. WALKER,

C.

Respectfully advised,

10

JOHN BENTLEY,

V.-C.

20

30

40

*Exhibit C. 1.***EXHIBIT C. 1.**

William Van Keuren et ux and William H. Batty to 10 Stephen Morgan	Deed of Trust; Book 207 p. 183 Dated Jan. 5, 1870 Ack. Jan. 5, 1870 Red. Jan. 8, 1870 Consid. \$1.00
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THIS INDENTURE made this fifth day of January in the year eighteen hundred and seventy; BETWEEN William Van Keuren of the City of Bergen in the County of Hudson and State of New Jersey; AND Sarah J. his wife, and William H. Batty of Jersey City in the County and State aforesaid parties of the first part and Stephen Morgan of Jersey City aforesaid party of the second part; WITNESSETH

20 that the said parties of the first part for and in consideration of One dollar lawful money of the United States to them in hand *in hand* paid by the said party of the second part the receipt whereof is hereby acknowledged hath granted bargained sold aliened remised and conveyed and by these presents do grant bargain, sell alien

30 remise and convey unto the said party of the second part his heirs and assigns forever; ALL those two pieces or parcels of land and premises situate lying and being in the City of Hudson in the County of Hudson and State of New Jersey, more particularly described as follows:—

Viz The first piece or parcels of land and premises is bounded easterly by the lands of the Paterson and Hudson River Railroad Company, southerly by lands of John D. H. Van Reypen late John G. Van Horne westerly by the Hackensack river and northerly by lands of James

40 O'Brien and lands of late Ann Romaine contain-

Exhibit C. 1.

ing twenty three acres and one eighth together
 with the right of way thereto as granted to Cor-
 nelius C. Van Reypen by the Erie Railroad
 Company by deed hereto-fore recorded in the
 Hudson County Clerks Office being the same
 premises which was conveyed by Daniel Toffey 10
 and Adeline S. his wife, to and George C. Toffey
 to William Van Keuren and William H. Batty
 by deed dated May 1st, 1869 and recorded in the
 Clerk's office of the County of Hudson in Liber
 187 of deeds on page 667 &c The second piece
 or parcel of land and premises consists of three
 lots which on a certain map entitled map of
 Waverly made by Bevan and Slator Surveyors
 and Civil Engineers and filed in the Clerk's
 Office of the County of Hudson are known and
 distinguished as lots numbered fifteen (15) six- 20
 teen (16) and seventeen (17) facing and fronting
 on the southerly side or line of Waverly street
 each lot being twenty five (25) feet wide in front
 and rear and one hundred feet deep on each
 side laid down on said map reference being
 thereto had will more fully appear and being
 the same lot of land conveyed by Susanna Smith
 to said William Van Keuren and William H.
 Batty by deed dated August 21, 1869 and re- 30
 corded in the Office of the Clerk of the said
 County of Hudson in Book 198 of deeds for said
 County page 257 &c. Together with all and sin-
 gular the tenements hereditaments and appur-
 tenances thereunto belonging or in anywise ap-
 pertaining, and the reversion and reversions, re-
 mainder and remainders rents issues and profits
 thereof.

AND ALSO all the estate right title interest
 property possession claim and demand whatso-
 ever as well in law as in equity of the said 40

Exhibit C. 1.

parties of the first part of in and to the above described land and premises and every part and parcel thereof with the appurtenances; TO HAVE AND TO HOLD all and singular the said land and premises unto the said party of the second part his heirs and assigns forever,

10 In Trust for the following and no other uses and purposes Viz On a written request of the same be made within two years *two years* signed William H. Bunstedt William Keeney Charles Schultz and William Batty or any three of them or the survivors to convey in fee simple by proper deeds for that purpose either or both of the above described piece or parcel of land and premises as may be designated in said request

20 to the party or parties and for the price or prices mentioned in said request and to apply the net proceeds arising from such sale or sales Firstly towards the payment any of certain promissory notes which in pursuance of a compromise entered into on the twenty eighth day of December in the year eighteen hundred and sixty-nine between the said William Van Keuren and William H. Batty and divers of their creditors were drawn by the said William Van Keuren and William H. Batty in favor of them said credi-

30 tors payable in three six and nine months respectively and endorsed by the said William H. Bumstedt William Keeney and Charles Schultz and William Batty or either of them which may not be paid according to the terms of said compromise and secondly to pay any balance there may be after all said notes are paid if arising from the sale of the piece or parcel of land and premises purchased by parties of first part from Daniel Toffey and wife and George C. Toffey being the premises hereinfoe first de-

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Exhibit C. 1.

scribed then the profits or excess of the net
 proceeds of the sale overer the amount laid out
 and expended by the said parties of the first
 part in or upon said premises to said William
 H. Bumsted William Keeney and Charles Schultz
 and any balance yet remaining together with
 any balance arising from the sale of three lots 10
 of land in Hudson City Being the premises
 hereinfere secondly described to said William
 H. Van Keuren and William H. Batty and
 if said written request be not made within
 said two years or if said request be for the
 sale of one only of the two pieces or parcels
 of land and premises hereinbefore described
 then to reconvey in fee simple by proper deed
 or deeds for that purpose to said William Van
 Keuren and William H. Batty their heirs and 20
 assigns both of said pieces or parcels of land
 and premises or the one not mentioned in said
 request as the case may be In witness whereof
 the said parties of the first part have hereunto
 set their hands and seals the day and year first
 above written.

Wm Van Keuren (L. S.)
 Sarah J. Van Keuren (L. S.)
 William H. Batty (L. S.)

30

SIGNED SEALED AND DELIVERED
 IN THE PRESENCE OF

James B. Vredenbergh

Acknowledged before James D. Vredenbergh,
 Master in Chancery of New Jersey.

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*Exhibit C. 2.***EXHIBIT C. 2.**

	William H. Bumsted	Deed of Request; Book
	William Keeney and	224 page 516
	Charles Schultz	Dated March 24, 1871
	to	Acknowl'd. March 27,
10	Stephen Morgan	1871
		Recrd'd. April 12, 1871
		Consd. \$63,000.

TO STEPHEN MORGAN whereas by deed dated the fifth day of January A. D. eighteen hundred and seventy and recorded the eighth day of January in the year eighteen hundred and seventy in book two hundred and seven (207) of Deeds for Hudson County on page one hundred and eighty three (183) &c William Van Keuren and Sarah I his wife and William H. Batty did convey to you certain land and premises of which the land hereinafter described is a part in trust for the following (among others) uses and purposes viz'' on a written request of the same be made within two years signed by William Bumstedt, William Keeney, Charles Schultz and William Batty or any three of them or the survivors to convey in fee simple by proper deeds for that purpose either or both of the above described premises or parcels of land and premises as may be designated in said request to the party or parties and for the price or prices mentioned in said request.

NOW THEREFORE, we William H. Bumsted William Keeney and Charles Schultz in pursuance of the said trust in said deed do hereby in writing request you to convey in fee simple by a proper deed for that purpose to William H. Bumsted William Keeney and William Van Keuren for the sum of Sixty three thousand

Exhibit C. 2.

(63000) dollars all that piece or parcel of land and premises situate lying and being in Jersey City (formerly the City of Hudson in the County of Hudson and State of New Jersey more particularly described as follows; viz. bounded easterly by lands of the Paterson and Hudson River Railroad Company southerly by land of John V. H. Van Reypen late John G. Van Horne westerly by the Hackensack River and Northerly by land of James O'Brien and lands late of Ann Romaine containing twenty three acres and one eighth. 10

TOGETHER with the right of way as granted to Cornelius C. Van Reypen by the Erie Railway Company by deed heretofore recorded in Hudson County Clerks office. Being the same premises which were conveyed by Daniel Toffey and Adeline S. his wife, and George C. Toffey to William Van Keuren and William H. Batty by deed dated May 1st, 1869 and recorded in the Clerks office of Hudson County in Liber 187 of Deeds on page 667 &c with this exception and reservation viz. a piece or parcel of the above mentioned land and premises which by a request from us bearing date the 23rd day of March in the year eighteen hundred and seventy one you were requested to convey to Charles Schultz more particularly described as follows; 20 30

Beginning at the most northerly point in the westerly side of Ninth Street as the same is laid down on a map entitled Map of property belonging to Stephen Morgan and J. V. H. Van Reypen in the tenth ward of Jersey City Jan. 1870 Levi W. Post City Surveyor and duly filed in the office of the Clerk of Hudson County on the thirteenth day of December 1870 being the same point where the westerly line of said Ninth Street 40

Exhibit C. 2.

meets the division line line between the lands and premises mentioned in said trust deed and the land and premises next adjoining northerly thereto being the land late of Ann Romaine as laid down on said map thence along the westerly line of Ninth Street south thirty one degrees sixteen minutes west two hundred and seven feet five inches and one-quarter of an inch (207 ft 5 $\frac{1}{4}$ inch) thence 2. north forty nine degrees west one hundred and fifty two feet two inches and one quarter thence 3. south thirty one degrees sixteen minutes west one hundred feet (100 ft) thence 4. North fifty eight degrees and forty four minutes west forty feet (40 ft.) to high-water line of the Hackensack River thence 5. northerly along the high water line of the Hackensack River the several courses thereof to the said line of the land and premises late of Ann Romaine as laid down on said Map thence 6. along said line south forty nine degrees and fourteen minutes east two hundred and seventy nine feet and six inches (279. ft. 6 in.) to the point of beginning, Being a part of the piece or parcel of land and premises in said trust deed first described.

WITNESS our hands and seals this twenty fourth day of March in the year eighteen hundred and seventy one.

WILLIAM H. BUMSTED (L. S.)
 WILLIAM KEENEY (L. S.)
 CHARLES SCHULTZ (L. S.)

SIGNED SEALED AND DELIVERED in the presence of

JAMES B. VREDENBURGH

Acknowledged before James B. Vredenburg,
 Master in Chancery of N. J.

*Exhibit C. 3.***EXHIBIT C. 3.**

Stephen Morgan	Deed; Book 224 p. 521	
to	Dated March 24, 1871	
William H. Bumsted	Ackn'd March 27, 1871	
William Keeney and	Recorded April 12, 1871	
William Van Keuren	Consd. \$63,000.	10

THIS INDENTURE made this twenty fourth day of March in the year of our Lord one thousand eight hundred and seventy one.

BETWEEN STEPHEN MORGAN of Jersey City in the County of Hudson and State of New Jersey party of the first part and WILLIAM H. BUMSTED, WILLIAM KEENEY and WILLIAM VAN KEUREN all of said Jersey City parties of the second part,

WITNESSETH whereas William Van Keuren & Sarah I his wife and William G. Batty by deed dated the fifth day of January in the year eighteen hundred and seventy and recorded the Eighth day of January in the year eighteen hundred and seventy in book two hundred and seven (207) of Deeds for Hudson County on page one hundred and eighty three (183) &c, did convey certain lands and premises of which the land and premises hereinafter described is a part to said party of the first part In Trust for the following (among others) uses and purposes viz "on a written request of the same be made within two years signed by William H. Bumsted, William Keeney, Charles Schultz and William Batty or any three of them or the survivors to convey in fee simple by proper deeds for that purpose either or both of the above described pieces or parcels of land and premises as may be designated in said request to the

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Exhibit C. 3.

party or parties and for the price or prices mentioned in said request" pro ut said deed and.

WHEREAS William H. Bumsted, William Keeney and Charles Schultz have by written request signed by them bearing date the twenty fourth day of March eighteen hundred and sev-

10 enty one requested the said party of the first part to convey in fee simple by a proper deed for that purpose to the said parties hereto of the second part for the price of sixty three thousand (63000) dollars lawful money of the United States of America, the land and premises hereinafter described.

NOW THIS INDENTURE WITNESSETH that the said party of the first part for and in consideration of the said sum of Sixty three

20 thousand (\$63000) dollars lawful money of the United States of America, to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged and the said party of the first part therewith fully satisfied and paid has given granted bargained sold aliened remised released conveyed and confirmed and by these presents doth grant bargain sell alien remise release convey and confirm unto the

30 said parties of the second part and to their heirs and assigns forever.

ALL that piece or parcel of land and premises situate lying and being in Jersey City (formerly the City of Hudson in the County of Hudson and State of New Jersey more particularly described as follow viz. bounded easterly by lands of the Paterson and Hudson River Railroad Company southerly by land of John V. H. Van Reypen late John G. Van Horne, westerly by the Hackensack River and northerly by land of James

40 O'Brien and lands late of Ann Romaine containing twenty three acres and one eighth.

Exhibit C. 3.

TOGETHER with the right of way as granted to Cornelius C. Van Reypen by the Erie Railway Company by deed hereto fore recorded in Hudson County Clerks Office. Being the said premises which were conveyed by Daniel Toffey and Adeline S. his wife and George C. Toffey to William Van Keuren and William H. Batty by deed dated May 1st, eighteen hundred and sixty nine and recorded in the Clerks office of Hudson County in Liber 187 of Deeds on page 667 &c. 10

Excepting and reserving therefrom a certain piece or parcel of the above described land and premises hereto fore conveyed by the said party of the first part to one Charles Schultz by deed dated the *the* twenty third day of March eighteen hundred and seventy one and which in said deed is more particularly described as follows: 20

BEGINNING at the most northerly point in the westerly side of Ninth Street as the same is land down on a map entitled "Map of property belonging to Stephen Morgan and J. V. H. Van Reupen, in the 10th ward of Jersey City January 1870 Levi W. Post City Surveyor" and duly filed in the office of the Clerk of Hudson County on the thirteenth day of December 1870 being the same point where the westerly line of said Ninth Street meets the division line. between the land and premises mentioned in said deed and the land and premises next adjoining northerly thereto (being the land late of Ann Romaine) as laid down on said Map thence along the westerly line of Ninth Street south thirty one degrees sixteen minutes west two hundred and seven feet five inches and one quarter of an inch (207 ft. $5\frac{1}{4}$ inch) thence 2. North forty nine degrees west one hundred and fifty two feet two inches and one quarter thence 40

Exhibit C. 4.

3. South thirty one degrees sixteen minutes west
 one hundred (100) feet thence 4. North fifty
 eight degrees and forty four minutes west forty
 feet (40) feet to high waterline of the Hacken-
 sack River thence 5. northerly along the high
 water line of the Hackensack River, the several
 10 courses thereof to the said line of the land and
 premises late of Ann Romaine as laid down on
 said map thence 6. along said line south forty
 nine degrees and fourteen minutes east two hun-
 dred and seventy nine feet and six inches (279
 ft. 6 in. to the point of beginning.

TOGETHER with &c.

TO HAVE AND TO HOLD &c.

Acknowledgement taken by James V. Vreden-
 burgh, Master in Chancery of New Jersey.

20

EXHIBIT C. 4.

William Van Keuren et	Master's Deed; Book
ux et al Defts by Wil-	333 p. 396.
liam P. Douglass,	Dated April 18 1879
M. C. C. of N. J.	Ackn'd April 19, 1879
to	Recrd. April 19, 1879
30 Daniel Toffey et al.	Consd. \$18,570.74

THIS INDENTURE made this eighteenth day
 of April in the year one thousand eight hundred
 and seventy nine.

BETWEEN William P. Douglass one of the
 Masters in Chancery of New Jersey, party of
 the first part and Daniel Toffey and Edward
 M. Wilson both of Jersey City in the County
 of Hudson and State of New Jersey party of
 the second part.

40

Exhibit C. 4.

WITNESSETH, Whereas on the fifth day of
 February in the year of our Lord one thousand
 eight hundred and seventy nine, a certain writ
 of fieri facias was issued out of the Court of
 Chancery of the State of New Jersey directed
 and delivered to me the said William P. Douglass,
 then and still being one of the Masters in Chan- 10
 cery of New Jersey and which writ is in the
 words or to the effect following that is to say:
 New Jersey to wit: The State of New Jersey
 to William P. Douglass one of the Masters in
 Chancery of New Jersey (L. s.) GREETING,
 WHEREAS on the twenty fifth day of January
 in the year of our Lord one thousand eight
 hundred and seventy nine by a certain decree
 made in our Court of Chancery before our
 Chancellor at Trenton in a certain cause therein 20
 depending wherein Cornelius C. Van Reypen is
 complainant and William Van Keuren and Sarah
 J. his wife, William H. Batty and Charlotte his
 wife, Charles Schultz, Martha Bumsted, adminis-
 tratrix of William H. Bumsted deceased, William
 Keeney and Lydia his wife, Stephen Morgan,
 Benjamin Van Keuren and Mary Elizabeth his
 wife, John R. Halladay and Mary E. his wife,
 The New Jersey Midland Railway Company,
 William Morris Hawkins, Henry A. Henken, 30
 Harrison Docks, Joshua W. French, Abram R.
 Briggs, Joseph H. Auth, William G. Henchman,
 Russell W. Woodward, Thomas P. Sherman,
 Martha Bumsted, William G. Bumsted, Clara H.
 Bumsted, Adele L. Bumsted, Martha A. Bum-
 sted, Mary Ann Bumsted, Eugene B. Bumsted,
 Sophia Wilson Executrix and Edward Newkirk
 Wilson Executor of Blakely Wilson decd., Daniel
 Toffey and George C. Toffey, Sophia Wilson,
 Edward M. Wilson and Adeline Sophia Toffey 40
 are Defendants.

Exhibit C. 4.

It was ordered adjudged and decreed that certain mortgaged premises with the appurtenances in the bill of complaint in the said cause particularly set forth and described that is to say:

- 10 All that certain parcel of land and premises situate lying and being in the City of Hudson now Jersey City in the County of Hudson and State of New Jersey bounded easterly by land of the Paterson and Hudson River Railroad Company southerly by lands of John V. H. Van Reyppen late John G. Van Horne, westerly by the Hackensack River and northerly by lands of James O'Brien and lands late of Jim Romine containing twenty three acres and one eighth, together with the right of way of thereto as
20 granted to said Cornelius C. Van Reyppen by the Erie Railway Company by deed recorded in Hudson County Clerks office before May 1, 1869 except the tracks described as follows:—

- First: ALL that portion of said mortgaged premises beginning at the most northerly point in the westerly side of Ninth Street as the same is laid down on a map entitled Map of property belonging to Stephen Morgan and J. V. H. Van Reyppen in the tenth ward of Jersey
30 City Jan. 1870 Levi W. Post City Surveyor and duly filed in the office of the Clerk of Hudson County 13th Dec. 1870. being the same point where the westerly line of said Ninth Street meets the division line between the lands and premises mentioned in said mortgage and the lands and premises next adjoining northerly thereto being the lands late of Jim Romine as laid down on said map thence along the westerly line of Ninth Street south thirty
40 one degrees sixteen minutes west two hundred

Exhibit C. 4.

and seven feet five and one quarter inches thence
 north forty nine degrees west one hundred and
 fifty two feet two and one quarter inches thence
 3. south thirty one degrees sixteen minutes west
 one hundred feet thence 4. North fifty eight
 degrees forty four minutes west forty feet to
 high water line of the Hackensack River thence 10
 5. Northerly along the highwater line of the
 Hackensack River the several courses thereof to
 the said line of lands and premises late of Ann
 Romine thence 6. along said line south forty
 nine degrees and fourteen minutes east two
 hundred and seventy nine feet six inches to
 the point of beginning as described in a deed
 made by Stephen Morgan to Charles Schultz
 dated March 23, 1871 and recorded in book
 224 of deeds for Hudson County on page 518 &c. 20

SECOND. ALL that other portion of said
 mortgaged premises which on the map aforesaid
 is known and distinguished as lots numbered
 from fifty seven (57) to seventy six (76) both
 inclusive as described in a deed made by William
 Keeney and others to John R. Halladay dated
 July 8th 1871 and recorded in Book 234 of deeds
 for Hudson County on page 488 &c.

THIRD: ALL that other portion of said mort-
 gaged premises BEGINNING at a point in the 30
 westerly boundary line of the right of way of
 the Paterson and Hudson River Railroad where
 the same is intersected by the centre line of Van
 Keuren Avenue and from thence running west-
 erly along the centre line of Van Keuren Avenue
 fifty feet two inches thence southerly and parallel
 with the westerly line of said right of way of
 said Paterson and Hudson River Railroad three
 hundred and forty one feet and four inches to 40
 the line of lands of John V. H. Van Reypen

Exhibit C. 4.

thence easterly along said Van Reyppen's line fourteen feet eleven inches to the centre line of Catherine Street thence easterly along the centre line of Catherine Street thirty-five feet seven inches to the westerly line of said right of way of said Paterson and Hudson River Rail Road
 10 thence north thirty three degrees thirty eight minutes east along the westerly side of said right of way of said Rail Road three hundred and thirty eight feet and eight inches to the place of beginning as the same is described in a deed made by William Van Keuren and others to the New Jersey Midland Railway Company dated August 7, 1871 and recorded in Book 237 of deeds for Hudson County on page 414 &c.

FOURTH ALL that other portion of said
 20 mortgage premises known and distinguished on the map aforesaid as lots numbered fifty five (55) and fifty six (56) as the same are described in a deed made by William Van Keuren and others to John R. Halladay dated June 14 1872 and recorded in Book 242 of deeds for Hudson County on page 428 &c.

FIFTH ALL that other part of said mortgaged premises BEGINNING at a point in the southerly side of Van Keuren Avenue and on
 30 the westerly side of the right of way of the New Jersey Midland Railway Company and from thence running 1st, westerly and along the southerly side of Van Keuren Avenue one hundred and eleven feet four inches to the easterly side of Fourth Street thence 2nd, along the easterly side of Fourth Street three hundred feet four inches to the division line of lands of the party of the first part thence 3rd, southeasterly along said division line about twenty
 40 five feet to the Northerly line of Catherine Street

Exhibit C. 4.

thence 4th, easterly along the northerly side of Catherine Street sixty six feet three inches to the westerly side of the right of way of the New Jersey Midland Railway Company thence 5th northerly and along said right of way three hundred and twelve feet three inches to the place of beginning. BEING all of the remainder of block I on said map not heretofore conveyed to Railroad Company as shown on said map as the same is described in a deed made by William Van Keuren and others to the New Jersey Midland Railway Company dated June 1, 1872 and recorded in Book 246 of deeds for Hudson County on page 145 &c. 10

SECOND PARCEL ALL those two lots of land in Jersey City aforesaid which on a map entitled map of property belonging to Stephen Morgan and J. V. H. Van Reypen in the Tenth Ward of Jersey City Jan. 1870 Levi W. Post City Surveyor filed in the office of the Register of Hudson County are known and distinguished as lots numbered fifty five (55) and fifty six (56) in block W as described in a deed made by William Van Keuren and others to John R. Halladay dated June 14, 1872 and recorded in Book 242 of deeds for Hudson County on page 428 &c. 20 30

THIRD PARCEL ALL that tract of land in Jersey City aforesaid beginning at the most northerly point in the westerly side of Ninth Street as the same is laid down on a map entitled "Map of property belonging to Stephen Morgan and J. V. H. Van Reypen in the Tenth Ward of Jersey City Jan. 1870 Levi W. Post City Surveyor and duly filed in the office of the Register of Hudson County 15th December 1870 being the same point where the westerly line 40

Exhibit C. 4.

of said Ninth Street meets the division line between the lands and premises mentioned in said mortgage and the lands and premises next adjoining northerly thereto being the land late of Jim Romine as laid down on said map thence along the westerly line of Ninth Street south
10 twenty one degrees sixteen minutes west two hundred and seven feet five and a quarter inches thence (2) north forty nine degrees west one hundred and fifty two feet two and a quarter inches thence (3) south thirty nine degrees sixteen minutes west one hundred feet thence (4) north fifty eight degrees forty four minutes west forty feet to high water line of the Hackensack River thence (5) northerly along the highwater
20 line of Hackensack River the several courses thereof to the said line of the land and premises late of Ann Romine thence (6) along said line south forty nine degrees fourteen minutes east two hundred and seventy nine feet six inches to the place of beginning. as the same is described in a deed made by Stephen Morgan to Charles Schultz dated March 23 1871 and recorded in Book 224 of deeds for Hudson County on page 518 &c.

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Exhibit C. 5.

EXHIBIT C. 5.

Robert Davis, Sheriff	Sheriff's Deed; Book	
to	467 page 50.	
Daniel Toffey	Dated Sept. 19, 1888.	
	Ack'd. Sept. 19, 1888.	
	Recrd. Sept. 28, 1888.	10
	Consd. \$5,200.	

This Indenture, made this Nineteenth day of September in the year eighteen hundred and eighty-eight between Robert Davis, Sheriff of the county of Hudson, in the State of New Jersey, party of the first part, and Daniel Toffey of Jersey City in said County and State, party of the second part, witnesseth:

Whereas on the Sixteenth day of July in the year eighteen hundred and eighty eight, a certain writ of fieri facias was issued out of the Court of Chancery of the State of New Jersey directed and delivered to me, the said Robert Davis, then and still being Sheriff of the said County of Hudson, and which said writ is in the words following, that is to say:

New Jersey, to wit: The State of New Jersey to the Sheriff of the County of Hudson, Greeting Whereas on the Fifth (L. s) day of July in the year of our Lord one thousand eight hundred and eighty eight by a certain decree made in our Court of Chancery before our Chancellor at Trenton, in a certain cause therein depending, wherein John J. Toffey is complainant and Daniel Toffey and Adeline S. Toffey his wife, Florence Adele Wilson, and Elizabeth T. Wilson, in her own right, and as General Guardian of the said Florence Adele Wilson, are defendants It was ordered, adjudged and decreed, that

Exhibit C. 5.

certain mortgaged premises, with the appurtenances, in the bill of complaint in the said cause particularly set forth and described, that is to say: ALL that certain parcel of land and premises situate, lying and being in Jersey City (formerly the City of Hudson) in the county of Hudson and State of New Jersey bounded Easterly by land of the Paterson and Hudson River Railroad Company, Southerly by lands of John V. H. Van Reypen, late John G. Van Horne, Westerly by the Hackensack River and Northerly by lands of James O'Brien and lands late of Ann Romaine,—Containing twenty-three acres and one eighth, together with the right of way thereto as granted to said Cornelius C. Van Reypen, by the Erie Railway Company by deed recorded in Hudson County Clerks Office before May 1, 1869,—Excepting however the three parcels described as follows:— ALL that portion of said premises which on a map entitled "Map of property belonging to Stephen Morgan and J. V. H. Van Reypen in the Tenth Ward of Jersey City, Jan. 1870 Levi W. Post, City Surveyor," is known and distinguished as lots numbered from fifty seven (57) to seventy six (76) both inclusive as described in a deed made by William Keeney and others to John R. Halladay, dated July 8, 1871, and recorded in Book 234 of Deeds for Hudson County page 488 &c., Also all that other portion of said premises, beginning at a point in the westerly boundary line of the right of way of the Paterson and Hudson River Railroad where the same is intersected by the center line of Van Keuren Avenue, and from thence running Westerly along the centre line of Van Keuren Avenue, fifty feet, two inches; thence Southerly and parallel with

Exhibit C. 5.

the westerly line of said right of way of said Paterson and Hudson River Railroad three hundred and forty one feet and four inches to the line of land of John V. H. Van Reypen; thence Easterly along said Van Reypen's line, fourteen feet eleven inches to the centre line of Catharine Street; thence easterly along the centre line of Catharine Street, thirty five feet seven inches to the westerly line of said right of way of said Paterson and Hudson River Railroad; thence north thirty five degrees thirty eight minutes east along the westerly side of said right of way of said railroad three hundred and thirty eight feet and eight inches to the place of beginning as the same is described in a deed made by William Van Keuren and others to the New Jersey Midland Railway Company, dated August 7, 1871 and recorded in Book 237 of Deeds for Hudson County, on page 414 &c.

Also all that other part of said premises, beginning at a point in the Southerly side of Van Keuren Avenue and on the Westerly side of the right of way of the New Jersey Midland Railway Company, and from thence running (1st) Westerly and along the Southerly side of Van Keuren Avenue one hundred and eleven feet four inches to the Easterly side of Fourth Street; thence (2nd) along the Easterly side of Fourth Street three hundred feet four inches to the division line of lands of the party of the first part; thence (3rd) Southeasterly along said division line about twenty five feet to the northerly line of Catharine Street; thence 4th Easterly along the Northerly side of Catharine Street sixty six feet, three inches to the Westerly side of the right of way of the New Jersey Midland Railway Company; thence (5th) Northerly and

Exhibit C. 6.

10 along said right of way three hundred and twelve feet three inches to the place of beginning, being all of the remainder of Block I on said map not heretofore conveyed to said railroad company as shown on said map; as the same is described in a deed made by William Van Keuren and others to the New Jersey Midland Railway Company dated June 1, 1872, and recorded in Book 246 of Deeds for Hudson County, on page 145 &c.

EXHIBIT C. 6.

20 Daniel Toffey et ux at Deed; Book 467 p. 57;
al. Dated Sept. 24, 1888.
to Ack'd Sept. 24, 1888.
Charles S. Dodge and Recr'd. Sept. 28, 1888.
Edward K. Meigs, part- Consd. \$31,660.
ners, trading as Dodge
& Co.

Granted, bargained, sold, aliened, remised, released, conveyed and confirmed unto the said parties of the second part and to their heirs and assigns forever,

30 ALL that certain parcel of land and premises, situate, lying and being in Jersey City (formerly the City of Hudson) in the County of Hudson and State of New Jersey, bounded Easterly by land of the Paterson and Hudson River Railroad Company; Southerly by lands of John V. H. Van Reypen, late John G. Van Horne; Westerly by the Hackensack River and Northerly by lands of James O'Brien and lands late of Ann Romine, containing twenty three acres and one eighth, together with the right of way thereto as granted

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Exhibit C. 6.

to Cornelius C. Van Reypen by the Erie Railway Company, by Deed recorded in Hudson County Clerk's office before May 1. 1869;—Excepting however, the three parcels described as follows;—

ALL that portion of said premises which on a map entitled "Map of property belonging to Stephen Morgan and J. V. H. Van Reypen, in the Tenth ward of Jersey City, January 1870 Levi W. Post City Surveyor", is known and distinguished as lots numbered from fifty seven (57) to seventy six (76) both inclusive as described in a Deed made by William Keeney and others to John R. Halladay, dated July 8 1871 and recorded in Book 234 of Deeds for Hudson County, page 488 &c. 10

Also all that other portion of said premises, Beginning at a point in the westerly boundary line of the right of way of the Paterson and Hudson River Railroad, where the same is intersected by the centre line of Van Keuren Avenue, and from thence running westerly along the centre line of Van Keuren Avenue fifty feet, two inches; Thence Southerly and parallel with the westerly line of said right of way of said Paterson and Hudson River Railroad, three hundred and forty one feet and four inches to the line of land of John V. H. Van Reypen; Thence Easterly along said Van Reypen's line fourteen feet, eleven inches to the centre line of Catharine Street; Thence Easterly along the centre line of Catharine Street thirty five feet, seven inches to the westerly line of said right of way of said Paterson and Hudson River Railroad Thence north thirty five degrees thirty eight minutes East along the westerly side of said right of way of said Railroad three hundred 20 30 40

Exhibit C. 6.

and thirty eight feet and eight inches to the place of Beginning, as the same is described in a Deed made by William Van Keuren and others to the New Jersey Midland Railway Company, dated August 7, 1871, and recorded in Book 237 of Deeds for Hudson County, on page 414 etc.

- 10 Also all that other part of said premises, Beginning at a point in the Southerly side of Van Keuren Avenue and on the westerly side of the right of way of the New Jersey Midland Railway Company, and from Thence running (1st) westerly and along the Southerly side of Van Keuren Avenue one hundred and eleven feet four inches to the Easterly side of Fourth Street; Thence (2nd) along the Easterly side of Fourth Street three hundred feet four inches
- 20 to the division line of lands of the party of the first part; Thence (3rd) Southeasterly along said division line about twenty five feet to the northerly line of Catherine Street; Thence (4th) Easterly along the northerly line of Catharine Street sixty six feet, three inches to the westerly side of the right of way of the New Jersey Midland Railway Company; Thence (5th) North-erly and along said right of way three hundred and twelve feet three inches to the place of
- 30 Beginning. Being all of the remainder of Block I on said Map, not heretofore conveyed to said Railroad Company, as shown on said map, as the same is described in a Deed made by William Van Keuren and others to the New Jersey Midland Railway Company, dated June 1, 1872, and recorded in Book 246 of Deeds for Hudson County, on page 145 &c.

Together with &c.

To have and to hold &c.

- 40 SUBJECT Nevertheless to the public ease-ment in any street or streets crossing or pro-

Exhibit C. 7.

jected across said lands, if any such right of way or public easement exists,—and also subject to the said rights and interests, if any there be, of and pertaining to the said pipe line hereinbefore mentioned, by whatever name the same may be known and however the said rights may be found to be secured.

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Acknowledged before William A. Lewis,
Master in Chancery of New Jersey.

EXHIBIT C. 7.

John R. Halladay & wife	Deed: Book 512, p. 275. Dated July 18, 1890.	
to	Ackd. July 28, 1890.	
Charles S. Dodge and	Recd. Sept. 18, 1890.	20
Edward K. Meigs	Consd. \$3,000.	

Granted, bargained, sold, aliened, remised, released, conveyed and confirmed unto the said parties of the second part, to their heirs and assigns, forever

ALL those sixteen certain lots pieces or parcels of land situate lying and being in Jersey City (that part formerly known as Hudson City) in the County of Hudson and State of New Jersey which on a map now on file in the Office of the Register of Hudson County entitled "Map of Property belonging to Stephen Morgan and J. V. H. Van Reyphen in the 10th Ward of Jersey City Jan'y 1870" are designated as lots numbered fifty seven (57) fifty eight (58) fifty nine (59) sixty (60) sixty one (61) sixty two (62) sixty three (63) sixty four (64) sixty five (65) sixty six (66) sixty seven (67) sixty eight (68) sixty nine (69) seventy (70) seventy one (71) and

30

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Exhibit C. 8.

- seventy two (72) in Block marked A. and now known upon the Assessors Map as Block six hundred and eighty one A (681a). Said lots are each twenty five feet in width lot fifty seven being ninety four feet and seven inches in depth upon its westerly line and lot seventy two ninety feet and six inches in depth upon its easterly line and all of said lots front upon the north-easterly side of Van Keuren Avenue as laid down upon the aforesaid map. Being part of the same land conveyed to said John R. Haladay from William Keeney and wife William H. Busted and wife and William Van Keuren and wife by Deed dated July 8th 1871 which Deed is recorded in the office of the Register of Hudson County in Book 234 of Deeds for said county p. 488 &c.

Acknowledged by J. C. Inwright, Master in Chancery of New Jersey.

EXHIBIT C. 8.

- Charles S. Dodge et al., Deed; Book 541, p. 519.
to Dated Oct. 12, 1891.
30 Dodge and Bliss Box Ackd. Oct. 13, 1891
Co. Rerd. Dec. 10, 1891.
Consd. \$1,000.

Granted, bargained, sold, aliened, remised, released conveyed and confirmed unto the said party of the second part and to its successors and assigns forever,

- ALL that certain tract, piece or parcel of land and premises, hereinafter more particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson and

Exhibit C. 8.

State of New Jersey. Beginning at a point in the centre line of Fourth Street (now West Side Avenue) as the same is shown on a map entitled, Map of the 9th, 10th, 11th and 12th Wards of Jersey City, formerly the City of Hudson, made for the Mayor and Aldermen of Jersey City, 1871," at a point distant eight hundred and seventeen feet and fifteen hundredths of a foot (817 $\frac{15}{100}$ ft) Northerly from the Northerly side of Saint Paul's Avenue; thence running (1) Northerly along the centre line of West Side Avenue, one hundred and fifty two feet and nine tenths of a foot ($152 \frac{9}{10}$ ft); thence (2) Westerly curving to the left, with a radius of four hundred and sixty one feet and twenty five hundredths of a foot ($461 \frac{25}{100}$ ft) a distance of two hundred and twenty nine feet and six tenths of a foot ($229 \frac{6}{10}$ ft) measured along said curve; thence (3) Southerly and parallel with West Side Avenue two hundred and forty eight feet and fifty five hundredths of a foot ($248 \frac{55}{100}$ ft); thence (4) Easterly one hundred seventy nine feet and eighty six hundredths of a foot ($179 \frac{86}{100}$ ft.) to the centre of West Side Avenue, the point or place of Beginning.

Acknowledgement taken before John L. Anderson, Commissioner of Deeds.

*Exhibit C. 9.***EXHIBIT C. 9.**

American Lumber Co.	Deed; Book 585, p. 427.
to	Dated Nov. 20, 1891
Charles S. Dodge et ux	Rerd. Nov. 15, 1893
et al.	Consd. \$1.

10 Granted, bargained, sold, aliened, remised, released, conveyed and confirmed unto the said Charles S. Dodge and Edward K. Meigo, partners as aforesaid two of said parties of the second part, and to their heirs and assigns forever.

20 ALL its right, title, interest, property and estate claim and demand in and to all that certain tract, piece or parcel of land situate lying and being in the Fourth Aldemianic District of the City of Jersey City in the County of Hudson and State of New Jersey and bounded and described as follows to wit on the West by the Easterly side of Duffield Avenue (formerly Ninth Street) on the east by the westerly side of James Avenue (formerly Sixth Street) on the south by a line drawn from the easterly side of Duffield Avenue to the westerly side of James Avenue north of and at a uniform distance of one hundred and fifty (150) feet from the north-
 30 erly side of Catherine Street as shown on a map entitled Map of property belonging to Stephen Morgan and J. V. H. Van Reyphen in the Tenth Ward of Jersey City "dated January 1870 and filed in the office of the Register of said County of Hudson December 13" 1870 but which street is now legally vacated and closed and on the north by a line drawn from the easterly side of Duffield Avenue to the westerly side of James Avenue north of and at an uniform distance of ninety (90) feet from the line last above
 40 described.

Exhibit C. 10.

EXHIBIT C. 10.

Charles S. Dodge et ux	Deed; Book 655 p. 451.	
et al.,	Dated Nov. 19, 1894.	
to	Ackd. Nov. 19 and 23,	
Dodge and Bliss Co.	1894.	
	Rerd. Oct. 13, 1896.	10
	Consd. \$10.	

Granted, bargained, sold, *alined*, remised, released, conveyed and confirmed unto the said party of the second part, and to its successors and assigns forever.

FIRST: All that certain parcel of land and premises, situate, lying and being in Jersey City, (formerly the City of Hudson,) in the County of Hudson and State of New Jersey bounded east- 20
erly by the land of the Paterson and Hudson River Rail Road Company, SOUTHERLY by lands of JOHN V. N. VAN REYPEN late of JOHN G. VAN HORNE, Westerly by the Hackensack River and Northerly by lands of JOHN O'BRIEN and lands late of ANN ROMAINE
Containing twenty three acres and ONE
EIGHTH. TOGETHER with the right of way
thereto as granted to CORNELIUS C. VAN
REYPEN, by the ERIE RAILROAD COM- 30
PANY, by deed Recorded in Hudson County
Clerks Office before May 1, 1869, Excepting how-
ever the Three parcels described as follows:

ALL that portion of said premises which on
a Map entitled Map of property belonging to
STEPHEN Morgan and J. V. H. VAN REYPEN
in the Tenth Ward of Jersey City, January 1870
LEVI W. POST, CITY SURVEYOR is known
and distinguished as lots numbered from fifty
seven (57) to seventy six (76) both inclusive as
described in a deed made by WILLIAM KEN- 40

Exhibit C. 10.

NEY, and others to JOHN R. HALLADAY, dated July 8 1871 and recorded in Book 234 of deeds for Hudson County, page 488 &c.

ALSO all that other portion of said premises BEGINNING at a point in the westerly boundary line of the right of way of the Paterson and
 10 Hudson River Railroad where the same is intersected by the Centre line of VAN KEUREN AVENUE and from thence running westerly along the centre line of VAN KEUREN AVENUE fifty feet two inches thence southerly and parallel with the westerly line of said right of way of said Paterson and Hudson River Railroad three hundred and forty one feet and four inches to the line of land of JOHN V. H. VAN REY-
 20 PEN; thence easterly along said VanReypen's line fourteen feet eleven inches to the centre line of Catherine Street thence easterly along the centre line of Catherine Street thirty five feet seven inches to the westerly line of said right of way of said Paterson and Hudson River Railroad, thence south thirty five degrees thirty eight minutes east along the westerly side of said right of way of said Railroad three hundred and thirty eight feet and eight inches to the place of beginning as the same is described in
 30 a deed made by William Van Keuren and others to the New Jersey Midland Railway Company dated August 7, 1871 and recorded in Book 237 of deeds for Hudson County on page 414 &c.

ALSO all that other part of said premises BEGINNING at a point in the southerly side of Van Keuren Avenue, and on the westerly side of the right of way of the New Jersey Midland Railway Company and from thence running (1st) westerly and along the southerly side of
 40 Van Keuren Avenue one hundred and eleven

Exhibit C. 10.

feet four inches to the easterly side of Fourth Street thence (2nd) along the easterly side of Fourth Street three hundred feet four inches to the division line of lands of the party of the first part, thence (3rd) southeasterly along said division line about seventy five feet to the northerly line of Catherine Street thence (4th) easterly along the northerly line of Catherine Street sixty six feet three inches to the westerly side of the right of way of the New Jersey Midland Railway Company thence (5th) northerly and along said right of way three hundred and eleven feet three inches to the place of beginning. BEING all of the remainder of Block I on said Map not heretofore conveyed to said Railroad Company as shown on said Map as the same is described in a deed made by WILLIAM VAN KEUREN and others to the New Jersey Midland Railway Company, dated June 1 1872 and recorded in Book 246 of deeds for Hudson County on page 145 &c.

Being the same premises conveyed to the said CHARLES S. DODGE and EDWARD K. MEIGS, partners trading as Dodge & Co. by DANIEL GOFFEY and wife by deed dated the twenty fourth day of September 1888 and recorded in the office of the Register of the County of Hudson, N. J., on the 28th day of September A. D. 1888 in Book 467 of deeds for said County on page 57.

SECOND: ALL those sixteen certain lots, pieces or parcels of land situate lying and being in Jersey City (that part formerly known as Hudson City) in the County of Hudson, and State of New Jersey, which on a Map now on file in the Office of the Register of Hudson County entitled Map of property belonging to STEPHEN MORGAN & J. V. H. VAN RYPER,

Exhibit C. 10.

in the 10th Ward of Jersey City, January 1870 and designated as lots numbered fifty seven (57) fifty eight (58) fifty nine (59) sixty (60) sixty one (61) sixty two (62) sixty three (63) sixty four (64) sixty five (65) sixty six (66) sixty seven (67) sixty eight (68) sixty nine (69) seventy (70) seventy one (71) and seventy two (72) in Block marked A and now known upon the assessors Map as Block six hundred and eighty one A (681A) said lots are each twenty five feet in width lot fifty seven being ninety four feet and eleven inches in depth upon its westerly line and lot seventy two ninety feet and six inches in depth upon its easterly line and all of said lots front upon the northerly side of Van Keuren Avenue as laid down upon the aforesaid Map.

BEING the same premises conveyed to the said CHARLES S. DODGE, and EDWARD K. MEIGS partners trading as DODGE & COMPANY by JOHN R. HALLADY and MARY E. HALLADY his wife by deed dated the eighteenth day of July 1890 and recorded in the Hudson County Register's Office on the 18 day of September 1890 in book 562 of deeds, page 275.

THIRD all that certain tract piece or parcel of land situate, lying and being in the Fourth Alderman's District of the City of Jersey City in the County of Hudson and State of New Jersey, and bounded and described as follows; to wit; on the west by the Easterly side of Duffield Avenue (formerly Ninth Street) on the East by the westerly side of James Avenue (formerly Sixth Street) on the south by a line drawn from the easterly side of Duffield Avenue to the Westerly side of James Avenue north of land as an uniform distance of One hundred and fifty (150) feet from the northerly side of Catherine Street as shown on a Map entitled Map of property

Exhibit C. 11.

belonging to STEPHEN MORGAN and J. V. H. VAN REYPER in the Tenth Ward of Jersey City dated January 1870 and filed in the Office of the Register of said County of Hudson December 13, 1870 but which Street is now legally vacated and closed and on the north by a line drawn from the easterly side of Duffield Avenue to the westerly side of James Avenue north of and at an uniform distance of Ninety (90) feet from the line above described. AND also all the right title, interest property and estate of said parties of the first part, in and to all those parts of James Avenue and Duffield Avenue lying in front of and adjoining the said tract of land to the centre lines of said Avenues respectively. 10

BEING the same premises conveyed to CHARLES S. DODGE and EDWARD K. MEIGS, partners trading as Dodge & Co., by the American Lumber Company by deed dated the Twentieth day of November 1891 and recorded in the Hudson County Registers Office on the 15th day of November 1893 on page 427 &c. in book 585 of deeds. 20

EXHIBIT C. 11.

Dodge & Bliss Box Co., Deed; Book 655 p. 448.
to Dated Nov. 19, 1894.
Dodge & Bliss Co., Ackd. Nov. 19, 1894.
Rerd. Oct. 13 1896.
Consd. \$10. 30

Granted, bargained, sold, aliened, remised, released, conveyed and confirmed unto the said party of the second part and to its successors and assigns forever. 40

Exhibit C. 11.

ALL that certain tract, piece or parcel or land and premises hereinafter more particularly described, situated, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey,

- 10 BEGINNING at a point in the centre line of Fourth Street (now West Side Avenue) as the same is shown on a Map entitled Map of the 9th, 10th, 11th and 12th Wards of Jersey City formerly the City of Hudson made for the Mayor and Aldermen of Jersey City 1871 at a point distant eight hundred and seventeen feet and fifteen hundredths of a foot ($817 \frac{15}{100}$) northerly from the northerly side of St. Paul's Avenue thence running (1) northerly along the centre line of West Side Avenue one hundred and fifty
- 20 two feet and nine tenths of a foot (152.9) thence (2) westerly curving to the left with a radius of four hundred and sixty one feet and twenty five hundredths of a foot ($401 \frac{25}{100}$ ft.) a distance of two hundred and twenty nine feet and six tenths of a foot ($229 \frac{6}{10}$ ft.) measured along said curve thence (3) southerly and parallel with West Side Avenue, two hundred and forty eight feet and fifty five hundredths of a foot ($248.55/100$ ft.); thence (4) easterly one hundred
- 30 seventy nine feet and eighty six hundredths of a foot ($179 \frac{86}{100}$ ft) to the Centre of West Side Avenue the point or place of beginning.

Being the same premises conveyed to the party of the first part by CHARLES S. DODGE and EDWARD K. MEIGS and their respective wives by deed bearing date the 12th day of October 1891 and recorded in the office of the Register of the County of Hudson New Jersey on the 10th day of December 1891 in Book 541 of deeds page

Exhibits C. 12, C. 13, C. 14.

EXHIBIT C. 12.

Charles S. Dodge and wife	Deed; Book 864, p. 584 &c.	
to	Dated March 29, 1904	
Dodge and Bliss Com- pany	Ackd. Apr. 9, 1904. Rerd. Apr. 26, 1904. Consd. \$1.	10

Conveys riparian rights along the Hackensack River.

EXHIBIT C. 13.

Edward K. Meigs and wife	Deed; Book 865, p. 295 &c.	20
to	Dated Mar. 29, 1904.	
Dodge and Bliss Com- pany	Ackd. Apr. 5, 1904. Rerd. Apr. 15, 1904. Consd. \$1.	

Conveys riparian rights along the Hackensack River.

EXHIBIT C. 14.

30

Daniel Toffey and George C. Toffey	Mortgage; Book 65 p. 211
to	Dated May 1, 1869.
Cornelius C. Van Reypen	Ackd. May 1, 1869. Rerd. May 4, 1869 Amt. \$23,000.

ALL that certain parcel of land and premises situate lying and being in the City of Hudson in the County of Hudson and State of New Jer- 40

Exhibit C. 14.

sey bounded easterly by land of the Paterson and Hudson River Rail Road Company southerly by lands of John Y. H. Van Reyphen late John G. Van Horne, westerly by the Hackensack River and Northerly by Lands of James O'Brien and lands late of Ann Romaine containing twenty
 10 three acres and one eighth together with the right of way thereto as granted to said Cornelius G. Van Reyphen by the Erie Railway Company by deed heretofore Recorded in Hudson County Clerk's Office being the same property which was conveyed to said party of the first part by said Cornelius G. Van Reyphen and wife by deed of even date herewith this Mortgage is given to secure part of the purchase money of said conveyance.

20 The premises above described were Mortgaged by Daniel Toffey and George C. Toffey of the City of Hudson in the County of Hudson and State of New Jersey. To Cornelius G. Van Reyphen of Bergen in said County and State, by deed dated May First 1869 to secure the payment of a certain bond or obligation bearing even date herewith given by the said parties of the first part to the said Van Reyphen in the penal sum of Forty Six Thousand Dollars, conditioned for the pay-
 30 ment of Twenty three thousand dollans on the First day of May 1869, &c.

Exhibit C. 15.

EXHIBIT C. 15.

Daniel Toffey et ux at	Mortgage; Book 135, p.	
al,	615	
to	Dated Apr. 18, 1879.	
Cornelius C. Van	Ackd. Apr. 18, 1879.	
Reypen	Rerd. Apr. 19, 1879.	10
	Amt. \$15,000.	

ALL that certain parcel of land and premises situate, lying and being in Jersey City (formerly in the City of Hudson) in the County of Hudson and State of New Jersey, bounded easterly by land of Paterson and Hudson River Railroad Company, southerly by lands of JOHN V. H. VAN REYPEN, late of JOHN G. VAN HORNE, westerly by the Hackensack River and northerly by lands of JAMES O'BRIEN AND LANDS, LATE OF ANN ROMAINE, containing twenty-three acres and one eighth. 20

TOGETHER with the right of way thereto as granted to said CORNELIUS C. VAN REYPEN by the ERIE RAILWAY COMPANY by deed recorded in Hudson County Clerk's Office, before May 1, 1869, excepting however the three parcels described as follows:

ALL that portion of said premises which on a map entitled "Map of property belonging to STEPHEN MORGAN AND J. V. H. VAN REYPEN, in the Tenth Ward of Jersey City, Jan. 1870 LEVI W. POST, CITY SURVEYOR" is known and distinguished as lots numbered from fifty seven (57) to seventy-six (76) both inclusive as described in a deed made by WILLIAM KEENEY AND others to JOHN R. HALLADAY dated July 8, 1871 and recorded in Book 234 of deeds for Hudson County page 488 &c. 30

ALSO all that other portion of said premises 40

Exhibit C. 15.

beginning at a point in the westerly boundary line of the right of way of the Paterson and Hudson River Railroad where the same is intersected by the centre line of Van Keuren Avenue, and from thence running westerly along the centre line of Van Keuren Avenue fifty feet two inches, thence southerly and parallel with the Westerly line of said right of way of said Paterson and Hudson River Railroad, three hundred and forty one feet and four inches to the line of land of JOHN V. H. VAN REYPEN thence easterly along said Van Reypens line fourteen feet and eleven inches to the centre line of CATHERINE STREET, thirty-five feet seven inches to the westerly line of said right of way of said Paterson and Hudson River Railroad, thence north thirty-five degrees thirty eight minutes east along the westerly side of said right of way of said railroad three hundred and thirty eight feet and eight inches in the place of beginning as the same is described in a deed made by WILLIAM VAN KEUREN and others to the New Jersey Midland Railway Company dated August 7, 1871 and recorded in Book 237 of Deeds for Hudson County on page 414 &c. ALSO all that other part of said premises beginning at a point in the southerly side of Van Keuren Avenue and on the westerly side of the right of way of the New Jersey Midland Railway Company, and from thence running 1st westerly and along the southerly side of Van Keuren Avenue one hundred and eleven feet four inches to the easterly side of Fourth Street, thence 2nd along the easterly side of Fourth Street, three hundred feet four inches to the division line of lands of the party of the first part, thence 3rd southeasterly along said division line about twenty five

Exhibit C. 15.

feet to the northerly line of Catherine Street
 thence 4th easterly along the northerly side of
 Catherine Street sixty six feet three inches to
 the westerly side of the right of way of the New
 Jersey Midland Railway Company, thence 5th
 northerly and along said right of way three hun-
 dred and twelve feet three inches to the place of
 beginning. 10

BEING all of the remainder of Block I on said
 map not here before conveyed to said Railroad
 Company, as shown on said map as the same is
 described in a deed made by WILLIAM VAN
 KEUREN and others to the New Jersey Midland
 Railway Company dated June 1, 1872, and re-
 corded in Book 240 of deeds for Hudson County
 on page 145 &c.

BEING the same premises, conveyed to said 20
 DANIEL TOFFEY and EDWARD H. WILSON
 by WILLIAM P. DOUGLASS MASTER IN
 CHANCERY by deed bearing even date herewith
 this mortgage being given to secure a part of the
 purchase money therein mentioned.

30

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*Exhibit C. 16.***EXHIBIT C. 16.**

Certified copy of Certificate of Organization of Dodge & Bliss Company;

- 10 Date of Incorporation,
Nov. 16, 1894.
Certificate filed in office
of Secretary of State,
Nov. 17, 1894.

- Organized under and by virtue of provisions
of an act of the Legislature of the State of New
Jersey entitled, "An Act concerning corporations," approved April 7, 1875 and the several
acts supplementary thereto and amendatory
20 thereof.
Incorporators:

David G. Bodman, Augustus A. Bliss, George
G. Rowland, Charles A. Walk, James Gilson and
John V. Sinsabaugh.

30

40

MAP OF PROPERTY

Belonging To

STEPHEN MORGAN & J V H VAN REYPER

IN THE 10TH WARD OF

JERSEY CITY

Filed December 13, 1870

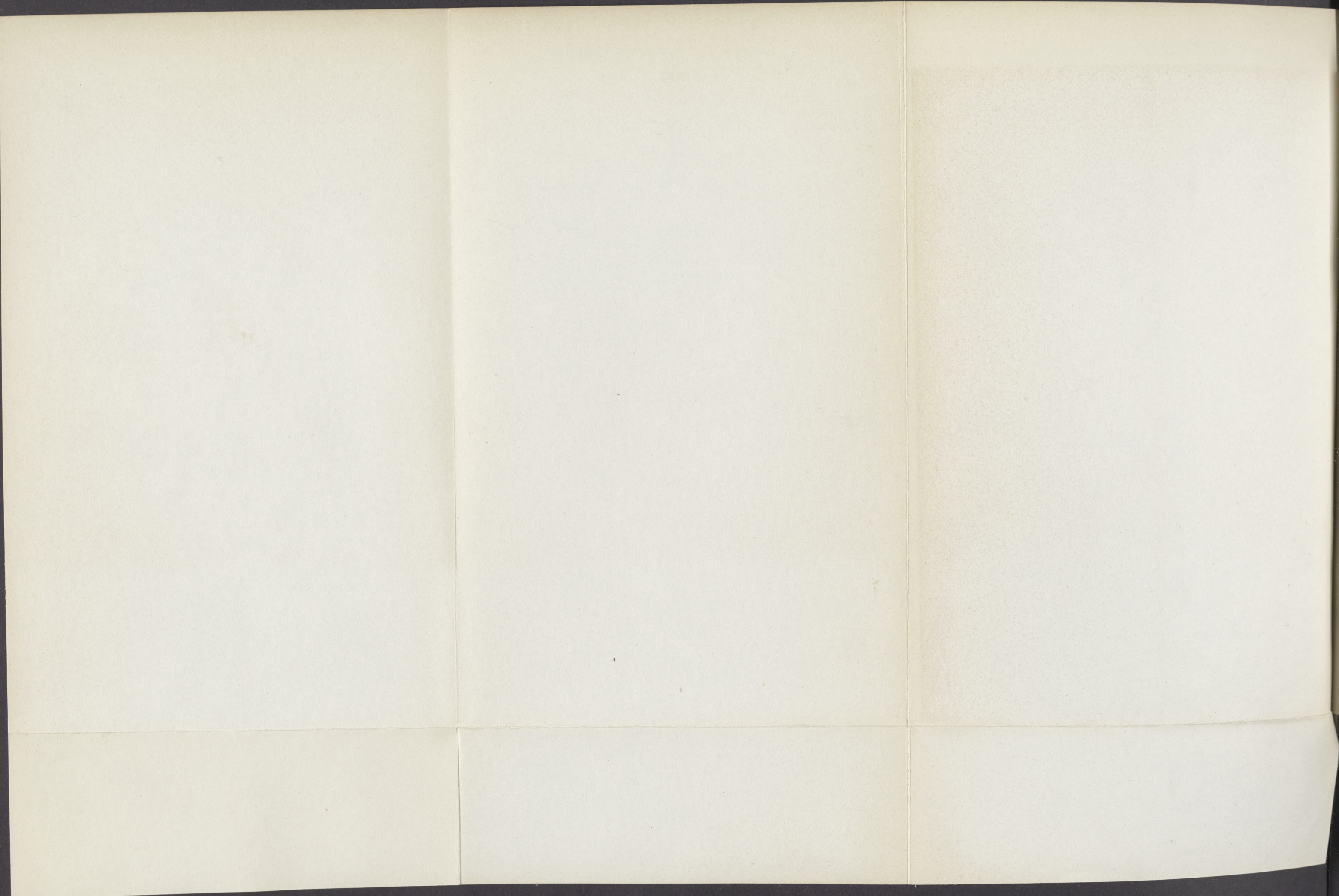
(MAP NO 350)

Scale One inch = 100 ft

Jan'y 1870

EW Post City Engineer





730

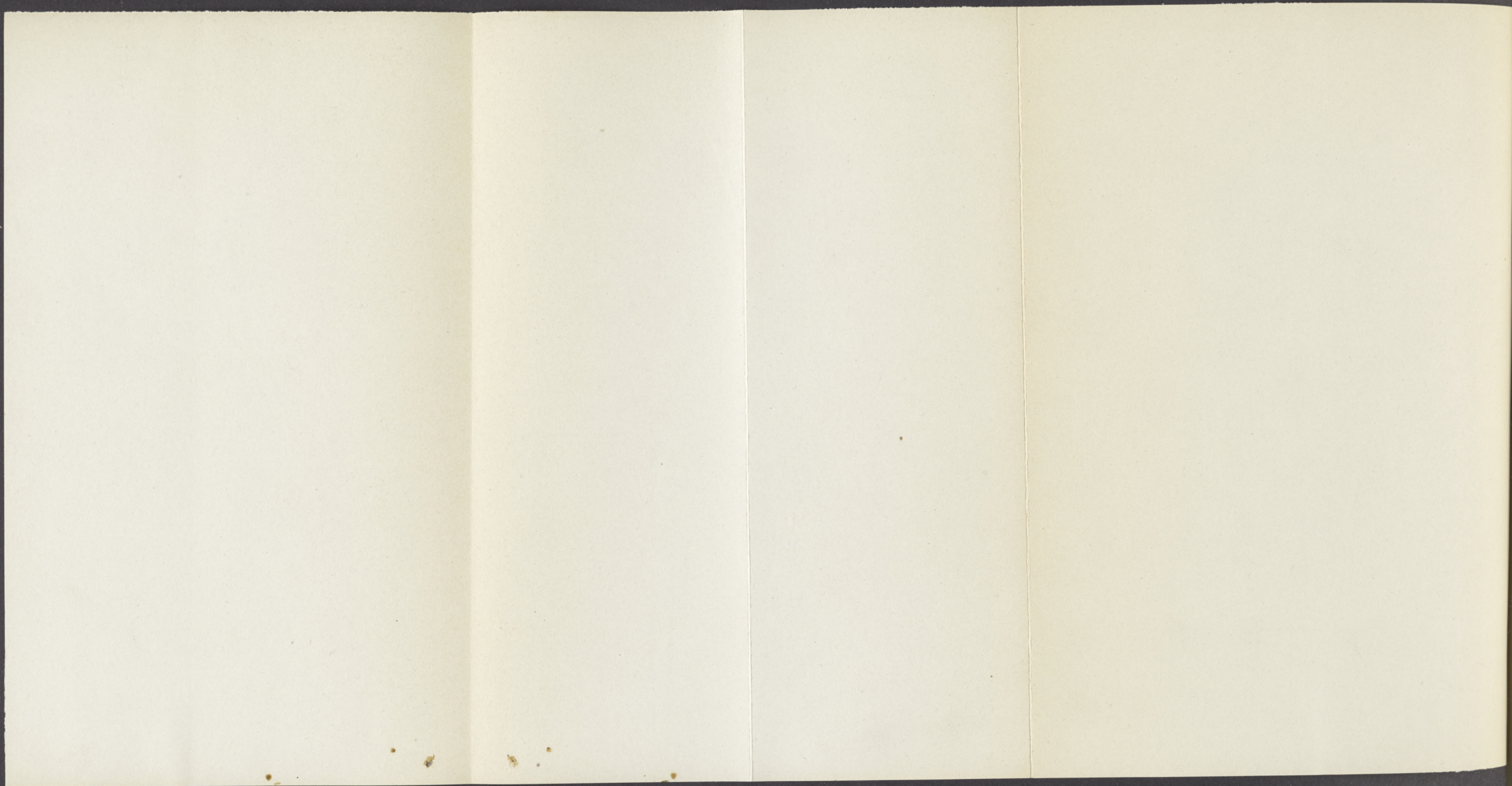
C K R I V E R

EXHIBIT C. 18.



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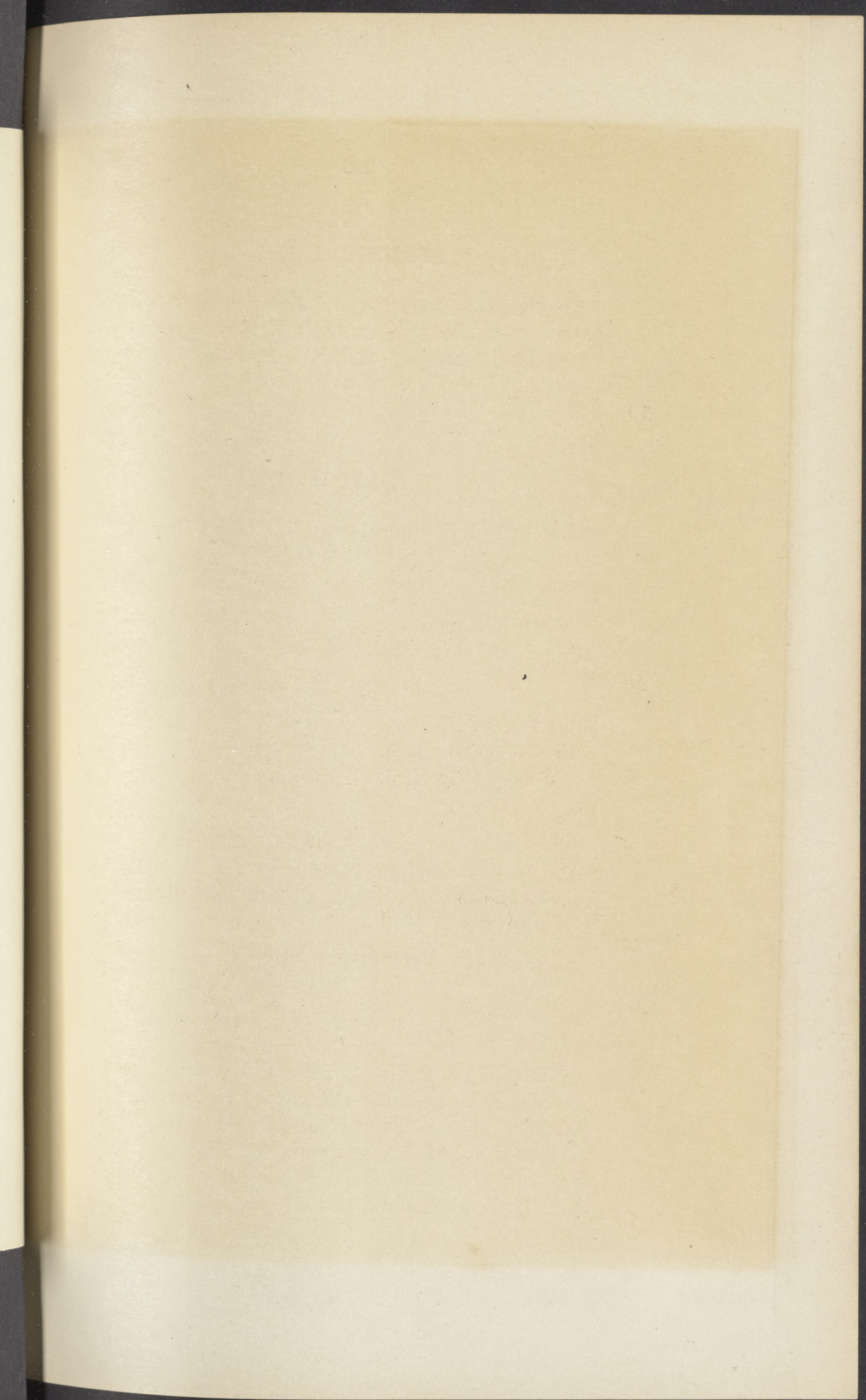


Exhibit C. 21.

EXHIBIT C. 20.

Tax receipts from City of Jersey City for the payment of taxes on Dodge and Bliss property which is the subject of this suit, from 1888 to 1928, both inclusive.

10

EXHIBIT C. 21.

Board of Commissioners of Jersey City
City Clerk's Office

(CORP. SEAL)

Michael J. Hagen
City Clerk

20

Jersey City, January 8, 1919

Hon. Jas. F. Fielder,
15 Exchange Place,
Jersey City N. J.

Sir:

This is to certify that the following is a true copy of a resolution passed by the Board of Commissioners of Jersey City at the meeting held January 7, 1919

30

Very respectfully,

F A Dolan
City Clerk.

WHEREAS Dodge & Bliss Company desires to erect a fence along the southerly line of its property in city block No. 681 and across the northerly end of James Avenue as shown on the Official Assessment Map of Jersey City, made by L. D. Fowler, 1894; and

40

Exhibit C. 21.

WHEREAS it was referred to the Corporation Counsel to ascertain and report whether or not James Avenue had been dedicated as a public street from its northerly terminus as shown on said map, through the property owned by Dodge & Bliss Company; and

WHEREAS the Corporation Counsel having reported that there has been no dedication of James Avenue as a public street beyond the intersection of the northerly line thereof with the southerly line of the property of Dodge & Bliss Company as shown on said Official Map of Jersey City, be it

RESOLVED that the Police Department of Jersey City be and it is hereby instructed not to prevent or interfere with Dodge & Bliss Company in the erection of a fence across the northerly end of James Avenue as shown on said map.

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Exhibit C. 24.

EXHIBIT C. 24.

*To the Honorable Board of Commissioners of
Jersey City:*

10 Petition of Dodge & Bliss Company, a corpora-
tion of the State of New Jersey respectfully
shows:

1. That it is the owner of a tract of land and
premises located in Jersey City and running
from a point east of West Side Avenue to the
Hackensack River, being parts of block 681 and
block 673 as shown on Fowler's Official Assess-
ment Map of Jersey City, 1894, as since amended
and corrected.

20 2. Upon a certain map known as "Map of
property belonging to Stephen Morgan & J. H.
Van Reyphen in the 10th Ward of Jersey City,
Jan'y 1870; 1 inch to 100 ft. L. W. Post, Sur-
veyor, Filed Dec. 1870. Map No. 350" there ap-
pears or delineated a certain street or highway
running from a point about one hundred and
sixty feet east of West Side Avenue in a general
westerly direction to Duffield Avenue on said
map, and which said alleged public street or
30 highway is known on said map as Van Keuren
Avenue.

3. So far as your petitioner has been able
to ascertain such public street or highway is not
shown upon any other map on file in the office
of the Register of Hudson County, and it does
not appear as a public street or highway upon
any of the maps used by Jersey City in assessing
and taxing property.

40 4. Although no dedication of such public
street or highway so shown upon said map as

Exhibit C. 24.

Van Keuren Avenue appears of record and although your petitioner has exercised complete dominion and control over the lands embraced within the confines of said street or highway so known as Van Keuren Avenue, having planked the same, laid railroad tracks thereon, paid for all water pipes therein, and paid taxes thereon, it has been claimed that said street or highway so known as Van Keuren Avenue actually exists as a public street.

10

Without adopting the map known as "Map of property belonging to Stephen Morgan & J. H. Van Reyphen in the 10th Ward of Jersey City, Jan'y. 1870; 1 inch to 100 ft. L. W. Post, Surveyor, Filed Dec. 13, 1870, Map. No. 350" or any of the streets shown thereon, and without adopting Fowler's Official Assessment Map of Jersey City, 1894, as since amended and corrected or any of the streets shown thereon and without waiving any of its rights to claim the said street or public highway known as Van Keuren Avenue has never been dedicated to public use or is not in fact and law a public highway.

20

Your petitioner prays that appropriate action may be taken by your Honorable Body to vacate and surrender the public right, if any, in such street or highway so known as Van Keuren Ave., a particular description of the lands in which such public easement, if any, exists, being as follows:

30

BEGINNING at a point in the center line of Van Keuren Avenue as laid down on a certain map entitled "Map of Property belonging to Stephen Morgan and J. V. H. Van Reyphen in the 10th Ward of Jersey City made by L. W.

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Exhibit C. 24.

Post, surveyor, filed in the Register's Office of the County of Hudson on December 13th, 1870.

10 The said beginning point being five hundred feet easterly from the easterly line of Duffield Avenue; thence easterly along the center line of Van Keuren Avenue to a point distant eighty-eight and twenty-six one hundredths of a foot (88.26) easterly from the center line of West Side Avenue extended, being a strip of land sixty feet in width and thirty feet on either side of the above described center line.

Dated August 12th, 1922

DODGE & BLISS COMPANY

By Wm. F. Brown, Prest.

20

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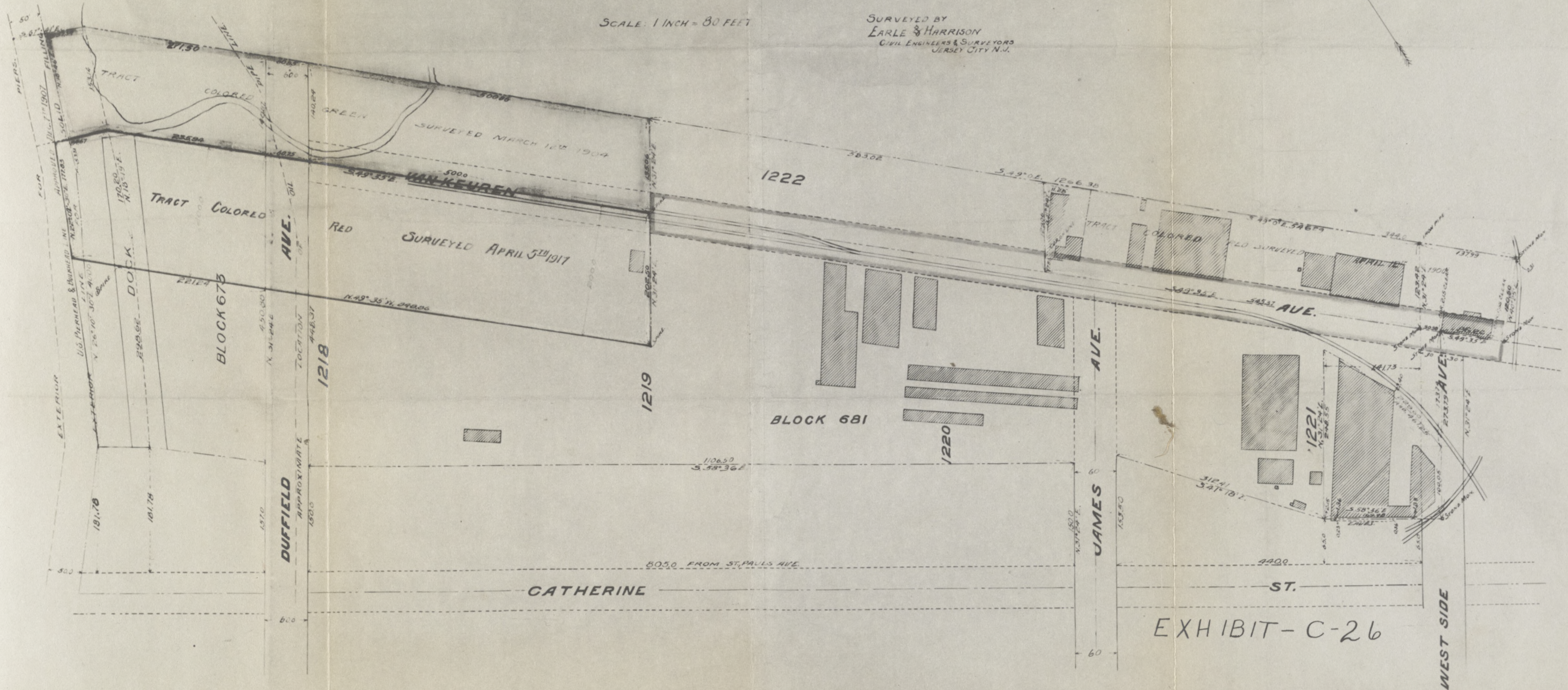
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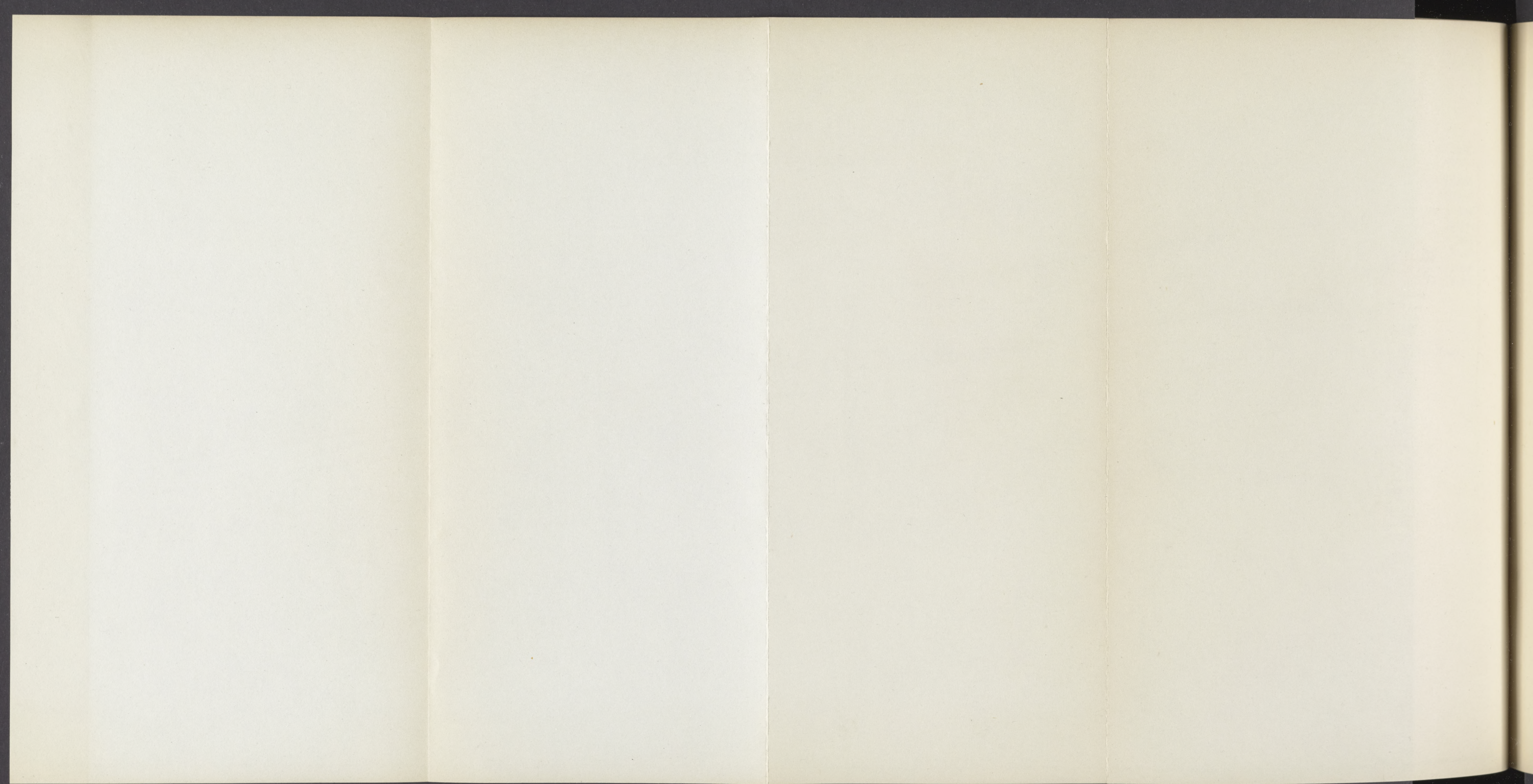
MAP SHOWING PROPERTY
BELONGING TO
DODGE & BLISS COMPANY
SITUATED IN
JERSEY CITY
HUDSON CO. N.J.
1900

SCALE: 1 INCH = 80 FEET

SURVEYED BY
EARLE & HARRISON
CIVIL ENGINEERS & SURVEYORS
JERSEY CITY N.J.

RIVER
HACKENSACK





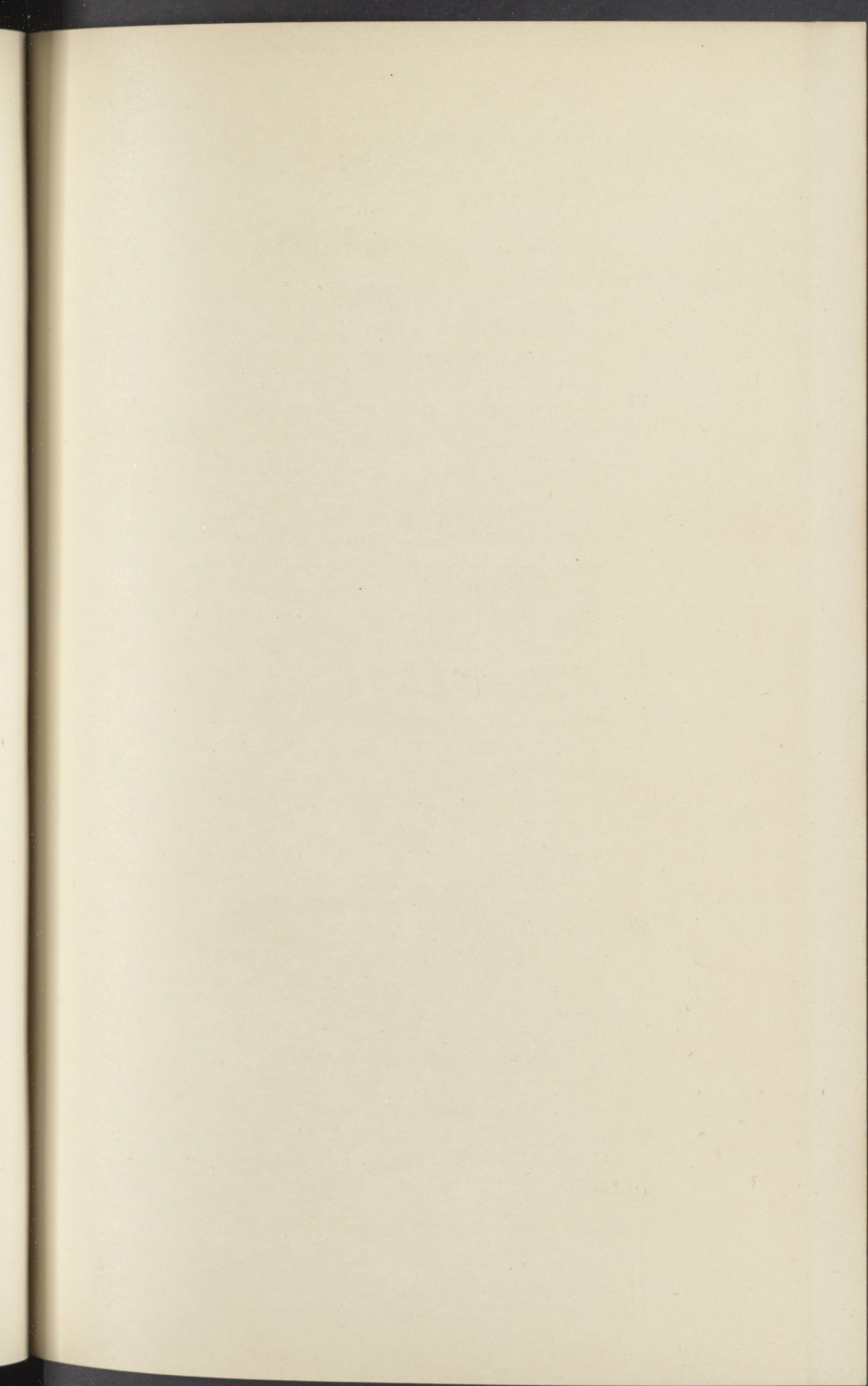


Exhibit C. 27.

EXHIBIT C. 27.

COPY.

THIS INDENTURE, made the twenty sixth day of April in the year one thousand nine hundred and four.

10 BETWEEN DODGE AND BLISS COMPANY, a corporation of the State of New Jersey, of the first part, AND NORTH JERSEY STREET RAILWAY COMPANY, a corporation of New Jersey, of the second part. WITNESSETH, That the said party of the first part for and in consideration of the sum of five thousand dollars (and other valuable consideration) lawful money of the United States of America, to it in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, and its successors, forever released and discharged from the same by these presents has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and its successors
20 and assigns, forever,

30 ALL that certain plot, tract or parcel of land and premises, situate, lying and being in Jersey City, in the County of Hudson and State of New Jersey, particularly described as follows: BEGINNING at a point in the division line between lands of the party of the first part and lands of the United Electric Company of New Jersey, said point being distant along said division line south forty nine (49) degrees east five hundred
40 feet and eighty six one hundredths of a foot

Exhibit C. 27.

(500.86) from the southeasterly line of Duffield Avenue; thence (1) along said division line north forty nine (49) degrees west eight hundred and thirty three feet and twenty one one hundredths (833.21) of a foot to the high water line in the easterly shore of the Hackensack River; thence (2) north sixty seven (67) degrees, forty one (41) minutes west, fifty seven feet and thirty four one hundredths (57.34) of a foot to the exterior line for solid filling established by the Riparian Commissioners of the State of New Jersey; thence (3) along said exterior line for solid filling south eighteen (18) degrees forty six (46) minutes west, one hundred and fifty six feet and sixty nine one hundredths (156.69) of a foot; thence (4) south seventy one (71) degrees, fourteen (14) minutes east, fifty eight feet and forty five (58.45) one hundredths of a foot to the high water line in the easterly shore of the Hackensack River; thence (5) south forty nine (49) degrees, thirty five (35) minutes east, seven hundred and ninety six feet and sixty nine one hundredths (796.69) of a foot to a point distant south forty nine (49) degrees, thirty five (35) minutes east five hundred (500) feet from the southeasterly line of Duffield Avenue; thence (6) parallel with Duffield Avenue north thirty one (31) degrees, twenty four (24) minutes east one hundred and thirty five feet and six one hundredths of a foot (135.06) to the place of beginning.

EXCEPTING AND RESERVING from the above described tract all rights the public may have, if any, in a strip of land sixty (60) feet in width, known as Duffield Avenue; and also all rights, easements and interests, if any, acquired by John B. Barbour and the Standard Oil Com-

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Exhibit C. 27.

pany, or either of them, for the purposes of a pipe line in said strip of land known as Duffield Avenue or through said tract.

- 10 TOGETHER with the lands under water lying between the exterior line for solid filling and the exterior line for piers, as fixed by the Riparian Commissioners of the State of New Jersey, and all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. AND ALSO all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above described premises and every
- 20 part and parcel thereof, with the appurtenances, TO HAVE AND TO HOLD all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, its successors and assigns, to its and their own proper use, benefit and behoof forever.

- 30 AND the said party of the first part for itself and its successors, does covenant, grant and agree, to and with the said party of the second part, its successors and assigns, that the said party of the first part at the time of the sealing and delivery of these presents, is lawfully seized in its own right of a good, absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted, bargained and described premises, with the appurtenances, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid.

Exhibit C. 27.

AND that the said party of the second part, its successors and assigns, shall and may at all times hereafter peaceably and quietly have hold, use, occupy, possess and enjoy, the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first part, its successors or assigns, or of any other person or persons lawfully claiming or to claim the same. 10

AND that the same now are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature or kind soever, except as aforesaid, AND ALSO, that the said party of the first part, and its successors and all and every other person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest, of, in or to the hereinbefore granted premises, by, from, under or in trust for it or them, shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, its successors and assigns; make, do, and execute, or cause or procure to be made, done or executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said party of the second part, its successors and assigns forever, as by the said party of the second part, its successors or assigns, or its or their counsel learned in the law, shall be reasonably devised, advised or required. 20 30 40

Exhibit C. 27.

10

20

by D. Stuart Dodge,

Attest

Recorded April 29, 1904

Book No. 871, Page 109, Hudson County.

Recorded Book 871, p. 109

30

Exhibit C. 28.

EXHIBIT C. 28.

THIS INDENTURE, made the thirtieth day of March, in the year one thousand nine hundred and seventeen, between DODGE AND BLISS COMPANY, a corporation and body politic of the State of New Jersey, party of the first part and THE HOLLAND COMPANY, a corporation and body politic of the State of New Jersey, party of the second part, WITNESSETH, That the said party of the first part, for and in consideration of the sum of One Dollar and other valuable consideration lawful money of the United States of America, to it in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part and its successors forever released and discharged from the same by these presents has granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to its successors and assigns, forever, ALL that certain tract or parcel of land and premises, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey, described as follows:

BEGINNING at a point on the easterly line of Duffield Avenue where the same is intersected by the southerly line of a tract of land conveyed by Dodge and Bliss Company to North Jersey Street Railway Company, by deed dated April 26th, 1904 and recorded in the office of the Register of Deeds for Hudson County, in book 871 of deeds, page 109 etc.; thence (1) along said

Exhibit C. 28.

southerly line of said lands of the North Jersey Street Railway Company south forty-nine degrees and thirty five minutes east (S. $49^{\circ} 35'$ E.) five hundred (500') feet; thence (2) south thirty-one degrees and twenty-four minutes west (S. $31^{\circ} 24'$ W.) parallel with Duffield Avenue two hundred and two feet and fifty hundredths of a foot (202.50') to a point two hundred (200') feet southerly measured at right angles to said first course; thence (3) north forty-nine degrees and thirty-five minutes west (N. $49^{\circ} 35'$ W.) parallel with said first course and two hundred (200') feet southerly measured at right angles therefrom eight hundred and thirty feet and thirty-eight hundredths of a foot (830.38') to the exterior line for solid filling established by the Riparian Commissioners of the State of New Jersey; thence (4) along said exterior line for solid filling north twenty-six degrees ten minutes and thirty seconds east (N. $26^{\circ} 10' 30''$ E.) one hundred and thirty-two feet and ninety-seven hundredths of a foot (132.97') to an angle in said exterior line; thence (5) still along said exterior line for solid filling north eighteen degrees and forty-six minutes east (No. $18^{\circ} 46'$ E.) fifty-three feet and thirty one hundredths of a foot (53.31') to the aforesaid southerly line of lands of the North Jersey Street Railway Company; thence (6) along the said southerly line of lands of the North Jersey Street Railway Company south seventy-one degrees and fourteen minutes east (S. $71^{\circ} 14'$ E.) fifty-eight feet and forty-five one hundredths of a foot (58.45') to an angle in said southerly line at high water line in the easterly shore of the Hackensack River; thence (7) still along the aforesaid southerly line of lands of the North

Exhibit C. 28.

Jersey Street Railway Company south forty-nine degrees and thirty-five minutes east (S. 49° 35' E.) two hundred and ninety-six feet and sixty-nine hundredths of a foot (296.69') to the aforesaid easterly line of Duffield Avenue and point and place of beginning.

EXCEPTING AND RESERVING from the 10
above described tract, all rights the public may have, if any, in a strip of land sixty (60) feet in width, known as Duffield Avenue; and also all rights, easements and interest, if any, acquired by John B. Barbour and the Standard Oil Company, or either of them, for the purposes of a pipe line in said strip of land, known as Duffield Avenue or through said tract.

TOGETHER with the lands under water lying 20
between the exterior line for solid filling and the exterior line for piers, as now or hereafter fixed by the Riparian Commissioners of the State of New Jersey.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and revisions, remainder and remainders, rents, issues and profits thereof. AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, 30
as well in law as in equity, of the said party of the first part, of, in or to the above described premises and every part and parcel thereof, with the appurtenances, TO HAVE AND TO HOLD all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, its successors and assigns, to its and their own proper use, benefit and behoof forever.

Exhibit C. 28.

AND the said party of the first part for itself and its successors does covenant, grant and agree, to and with the said party of the second part, its successors and assigns, that the said party of the first part at the time of the sealing and delivery of these presents, is lawfully seized
10 in its own right of a good, absolute and indefeasible estate of inheritance in fee simple, of and in all singular the above granted, bargained and described premises, with the appurtenances, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid.

AND that the said party of the second part, its successors and assigns, shall and may at all times hereafter, peaceably and quietly have,
20 hold, use, occupy, possess and enjoy, the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance, of the said party of the first part, its successors or assigns, or of any other person or persons lawfully claiming or to claim the same.

AND that the same now are free, clear, discharged and unincumbered, of and from all former and other grants, titles, charges, estates,
30 judgments, taxes, assessments and encumbrances of what nature or kind soever, except as aforesaid.

AND ALSO, that the said party of the first part, and its successors and all and every other person or persons whomsoever lawfully or equitably deriving any estate, right, title, or interest, of, in or to the hereinbefore granted premises, by, from, under or in trust, for itself or them, shall and will at any time or times hereafter,
40 upon the reasonable request, and at the proper

Exhibit C. 28.

costs and charges in the law, of the said party of the second part, its successors and assigns, make, do and execute, or cause or procure to be made, done or executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said party of the second part, its successors and assigns forever, as by the said party of the second part, its successors or assigns, or its counsel learned in the law, shall be reasonably devised, advised or required. 10

AND the said party of the first part, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, its successors and assigns, against the said party of the first part, its successors and assigns and against all and every person or persons, whomsoever, lawfully claiming or to claim the same shall and will Warrant and by these presents forever Defend. 20

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed by its President and its corporate seal to be hereto affixed, attested by its Secretary, the day and year first above written. 30

DODGE AND BLISS COMPANY

By D. Bliss,
President.

Attest:

Albert G. Isley,
Secretary.

(SEAL)

Exhibit C. 28.

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

10 BE IT REMEMBERED, That on this second day of
April, in the year one thousand nine hundred
and seventeen, before me, the subscriber, a
Master in Chancery of New Jersey, personally
appeared ALBERT G. ISLEY, who being by me
duly sworn doth depose and make proof to my
satisfaction that he well knows the corporate
seal of the DODGE AND BLISS COMPANY,
the grantor named in the foregoing deed; that
the seal thereto affixed is the proper corporate
seal of the said company; that the same was so
affixed thereto, and the said deed signed and
delivered by DELOS BLISS who was at the
20 date and execution thereof the President of said
company, in the presence of the said deponent,
as the voluntary act and deed of the said com-
pany, and that the said deponent thereupon
signed the same as subscribing witness.

ALBERT G. ISLEY.

Sworn and subscribed before me,
at Jersey City, the date aforesaid.

30 JAMES T. FIELDER,
Master in Chancery of New Jersey.

Received in the office of the Register of the
County of Hudson on the 3rd day of April A. D.,
1917, at 9:31 o'clock A. M., and recorded in
Book 1252 of Deeds for said County, page 216 &c.

JOHN J. McMAHON,
Register.

Exhibit C. 29.

EXHIBIT C. 29.

THIS INDENTURE, made this 19th day of May, in the year of our Lord one thousand nine hundred and twenty-six, between DODGE & BLISS COMPANY, a Corporation of the State of New Jersey, of the first part, and PUBLIC SERVICE ELECTRIC & GAS COMPANY, also a Corporation of said State, of the second part. 10

WHEREAS, the party of the second part hath applied to the party of the first part for a grant of a right to construct, maintain and use a twelve (12) 4" duct conduit with four (4) manholes through the property of the party of the first part in the City of Jersey City, County of Hudson, and State of New Jersey, shown on the annexed diagram, the size of the duct to be outside 16½ inches wide, except within 10 feet at either end of manholes where duct will be flared to 22½ inches in width, and manholes to be 11 feet 6 inches long and 6 feet 6 inches wide, outside dimensions, running east and west in length, from a point indicated by the letter "A" to a point indicated by the letter "B" thereon, along Van Keuren Avenue, on the line indicated on the blue print hereunto annexed and made a part hereof, the distance between said points indicated by said letters being approximately one thousand three hundred feet (1,300'), said duct to be connected at both ends with other ducts heretofore constructed or hereafter to be constructed by the party of the second part, and said duct when constructed to be maintained and used by the party of the second part in its business of generating and distributing electric current for light, heat and power; 20 30 40

Exhibit C. 29.

NOW, THEREFORE, THIS INDENTURE
WITNESSETH:

10 FIRST: The party of the first part, for and
in consideration of the sum of One Dollar (\$1)
and other valuable considerations, the receipt
of which is hereby acknowledged, hereby grants
and conveys to the party of the second part the
right to construct, maintain and use said duct
through its property between the points indi-
cated by the letters "A" and "B" on the dia-
gram hereto annexed which is made a part
hereof.

20 SECOND: Said duct and the cable or cables
installed therein shall be laid and constructed
in a prudent and workmanlike manner, and
maintained in good order and repair by the
party of the second part.

30 THIRD: In constructing said duct the same
shall be installed so that the grade of the ground
shall not be changed except during the work of
construction, and thereafter shall be kept and
maintained by the party of the second part in
the same condition, so as not to impair the use
of said property by the party of the first part
for other purposes. The party of the first part
shall have the right to change the grade from the
present grade to any grade that may be deemed
desirable by the party of the first part, and if
this change of grade involves any changes in
manholes, or in any other way changes conditions
above the duct, the party of the second part
agrees at its own expense to make the changes
necessary to conform to such newly established
grade.

40 FOURTH: After said duct shall have been
constructed no excavation shall be made within
the limits of the land of the party of the first

Exhibit C. 29.

part, except in case of emergency, for the purpose of repairing or examining said duct, without five (5) days' notice shall have been given to the party of the first part, and all work on said land shall be done under the supervision of a duly authorized agent of the party of the first part, if it should desire to appoint any one for that purpose. 10

FIFTH: Said party of the second part shall and hereby does indemnify and agree to save harmless said party of the first part from and against any and all expense or damage it may incur or suffer, or be in anywise subjected to by reason of the construction, maintenance, existence and use of said duct laid in and through its said property in pursuance hereof.

SIXTH: This grant shall inure to the benefit of and be obligatory upon the respective parties hereto, and the successors of the parties hereto and their legal representatives. 20

IN WITNESS WHEREOF, the said parties hereto have hereunto set their corporate seals and caused these presents to be signed by their respective Presidents or Vice-Presidents, and attested by their respective Secretaries or Assistant Secretaries; dated the day and year first above written. 30

DODGE AND BLISS COMPANY,

By Wm. F. Brown,
Prest.

(SEAL)

Attest:

Douglas Brown,
Secretary.

Exhibit C. 29.

PUBLIC SERVICE ELECTRIC & GAS
COMPANY,

(SEAL)

By Edgar Allegaert,
Vice-President.

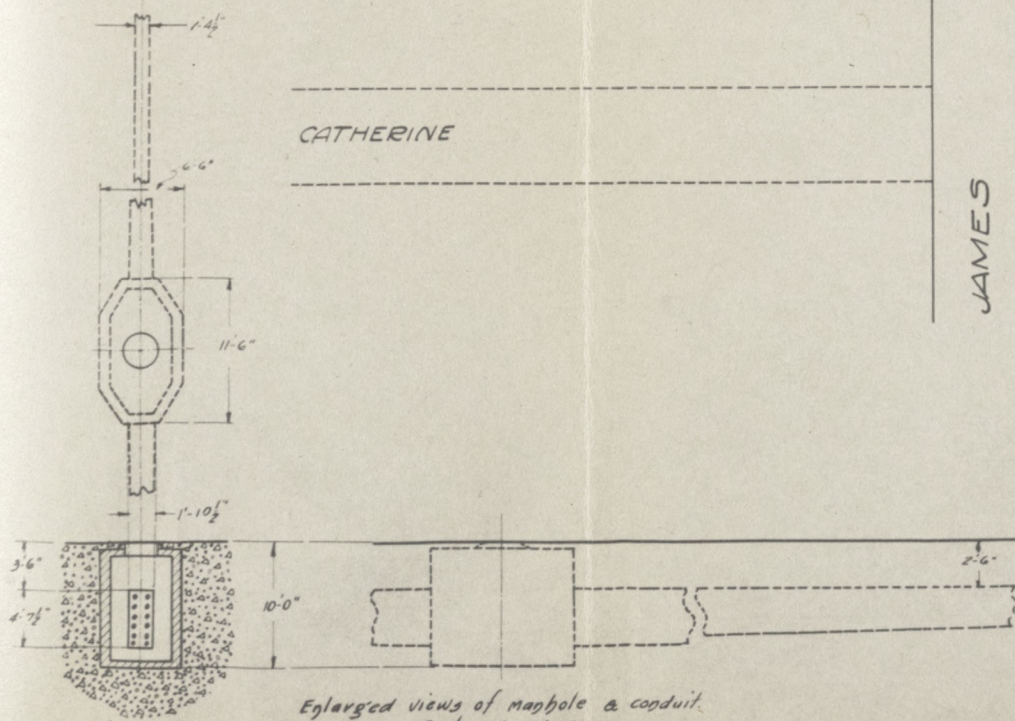
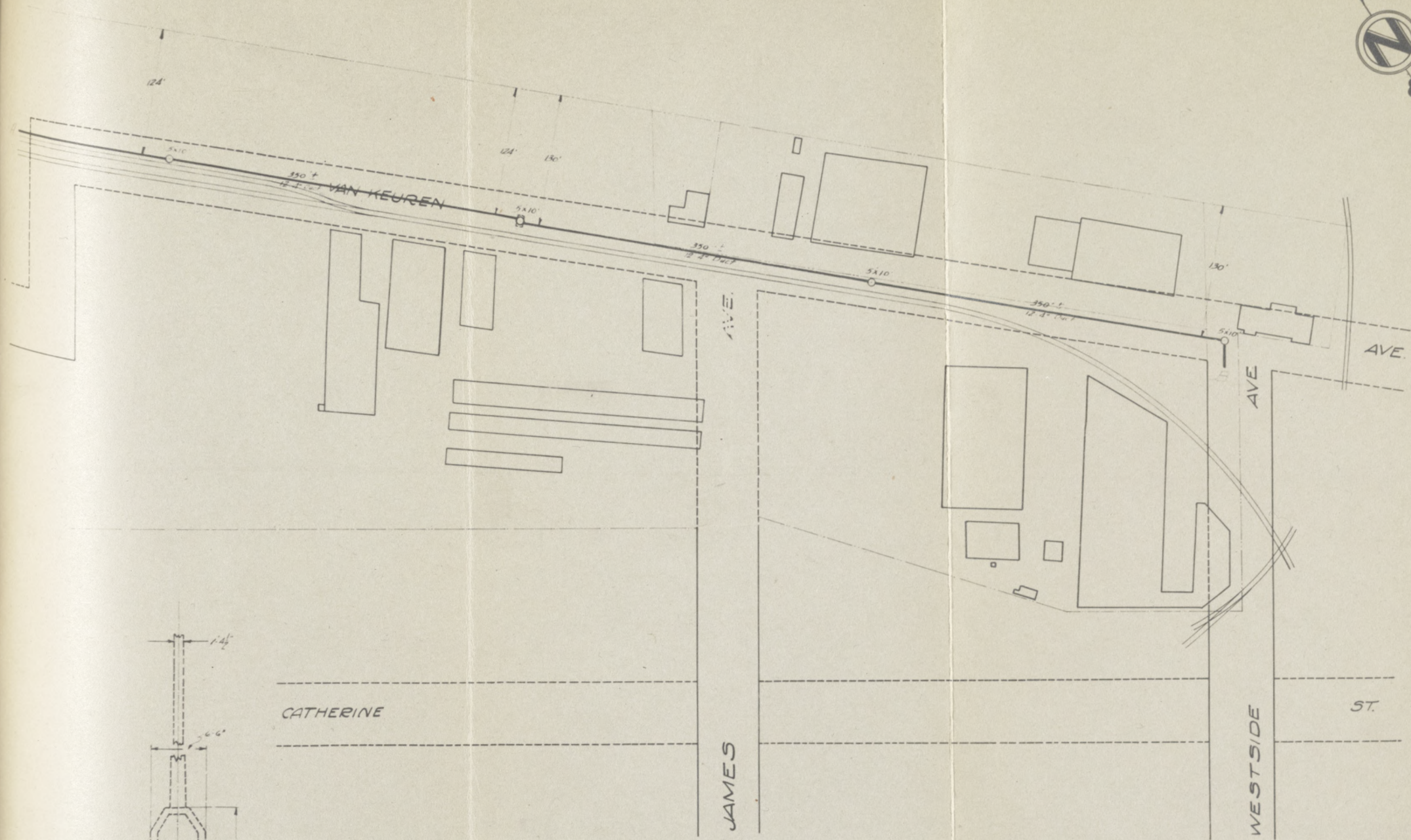
Attest:

10 Charles M. Breder,
Secretary.

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Enlarged views of manhole & conduit.
Scale 1" = 10'-0"

PUBLIC SERVICE ELECTRIC & GAS CO.
Location of conduits in Van Keuren Ave. through
property of Dodge and Bliss Co.,
Jersey City, N.J.

Drawn by: JVDomaleski Scale: 1" = 80' Date: 4-12-26

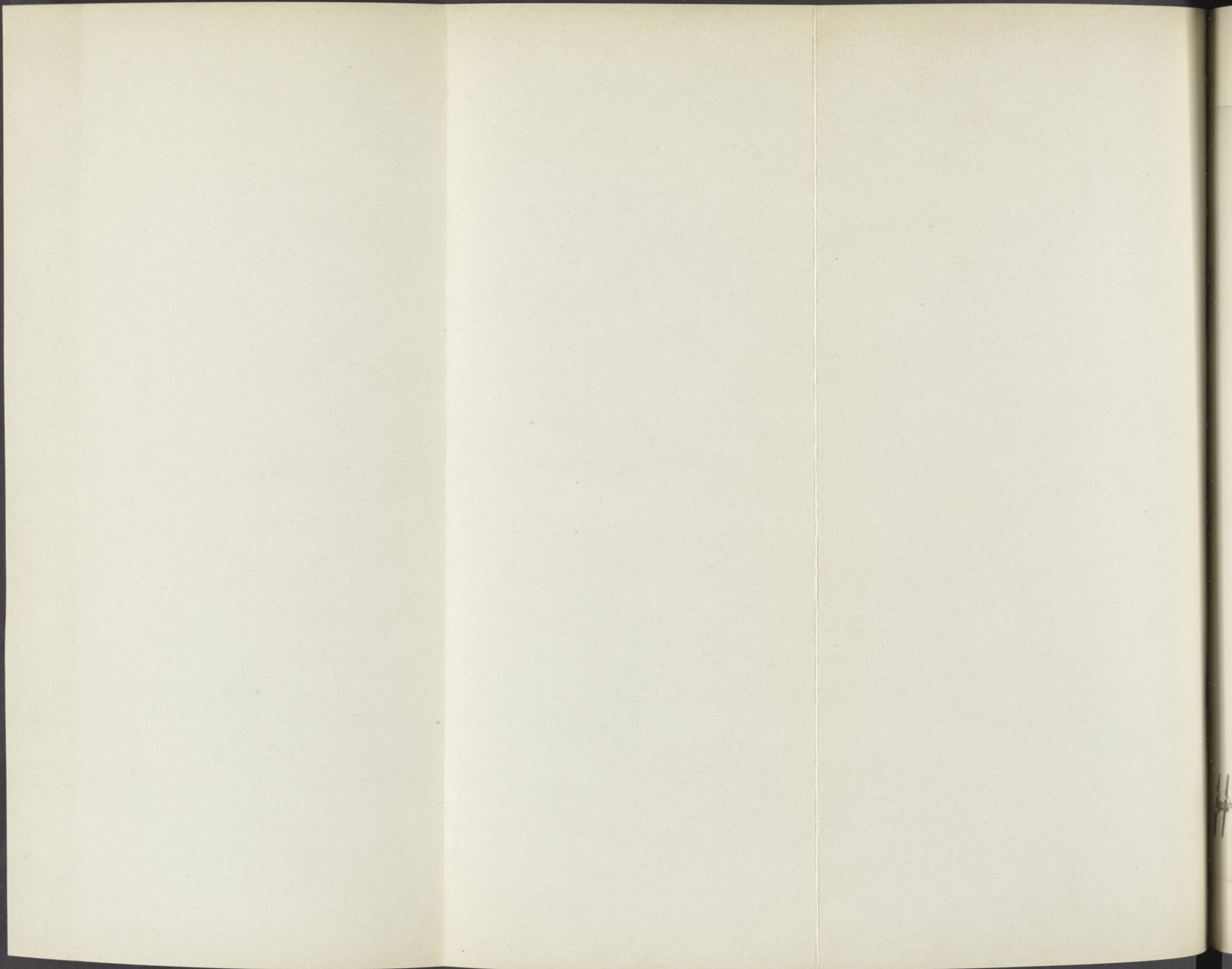




EXHIBIT D. 1.

Looking South on Westside Ave. from
Point in front of D. & B. Co. on Westside Ave.



EXHIBIT D. 2.
Looking North from James Ave.
on Westside Ave.

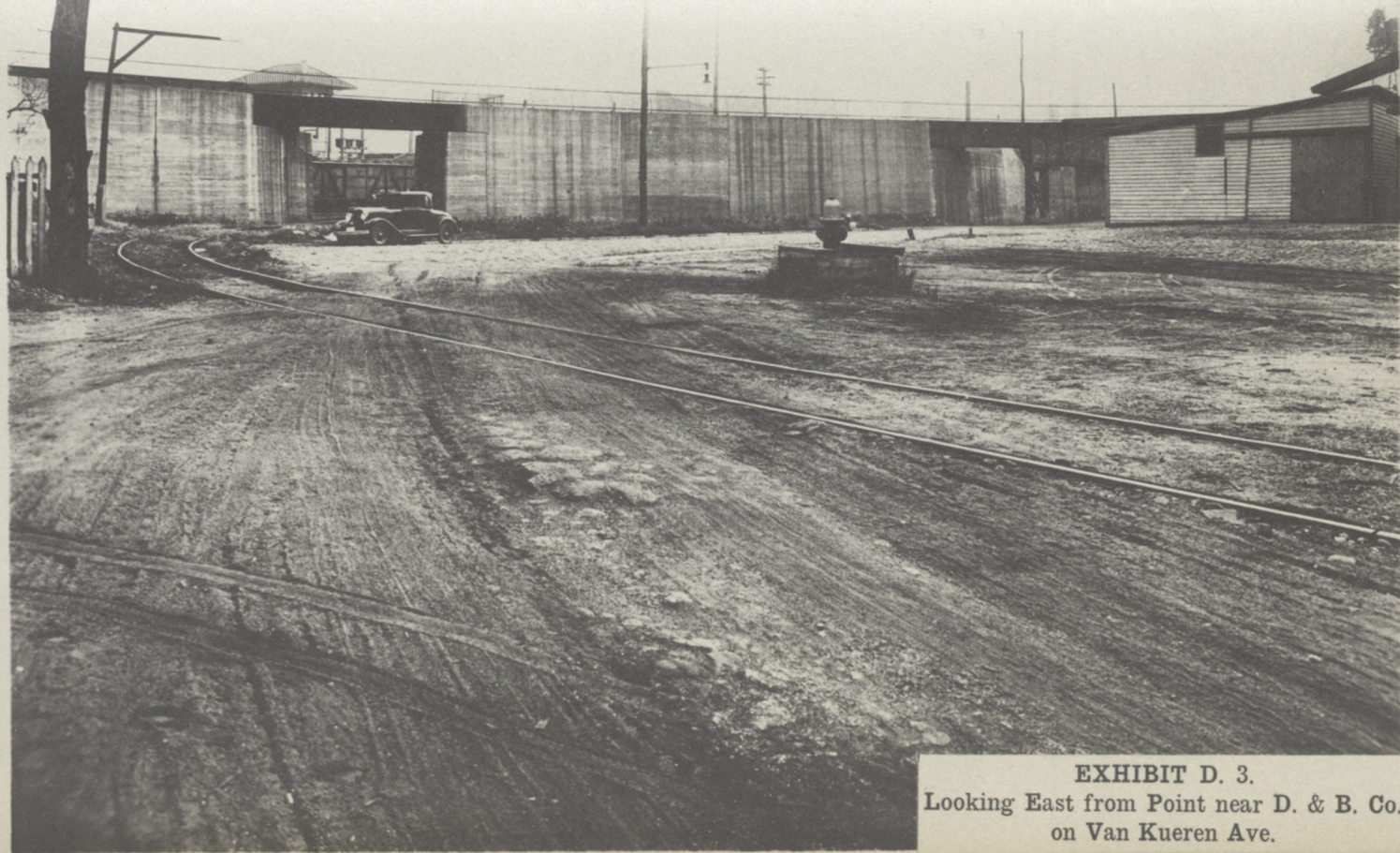


EXHIBIT D. 3.
Looking East from Point near D. & B. Co.
on Van Kueren Ave.

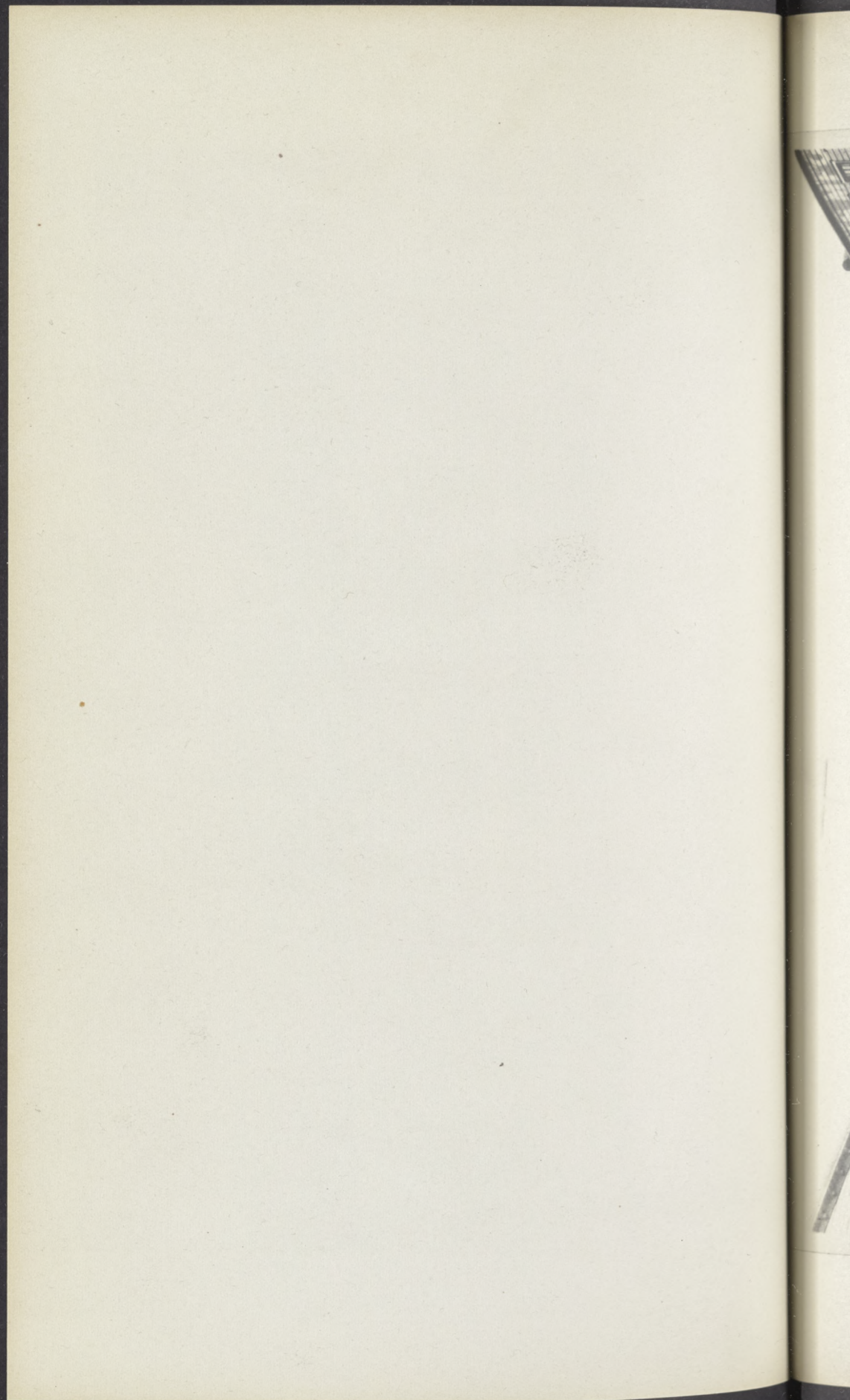




EXHIBIT D. 4.
Looking West on Van Kueren Ave.
From Point near Westside Ave.

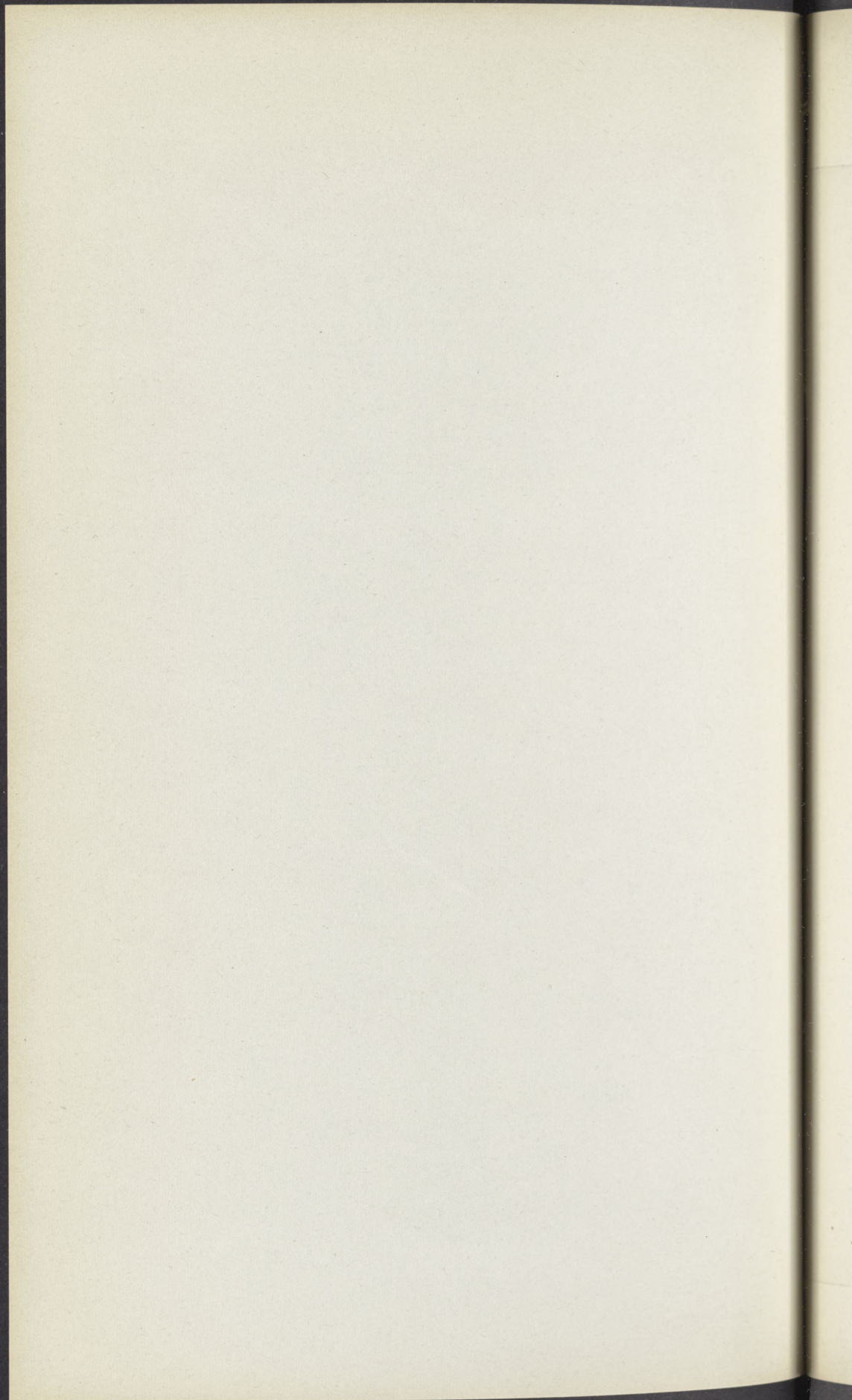
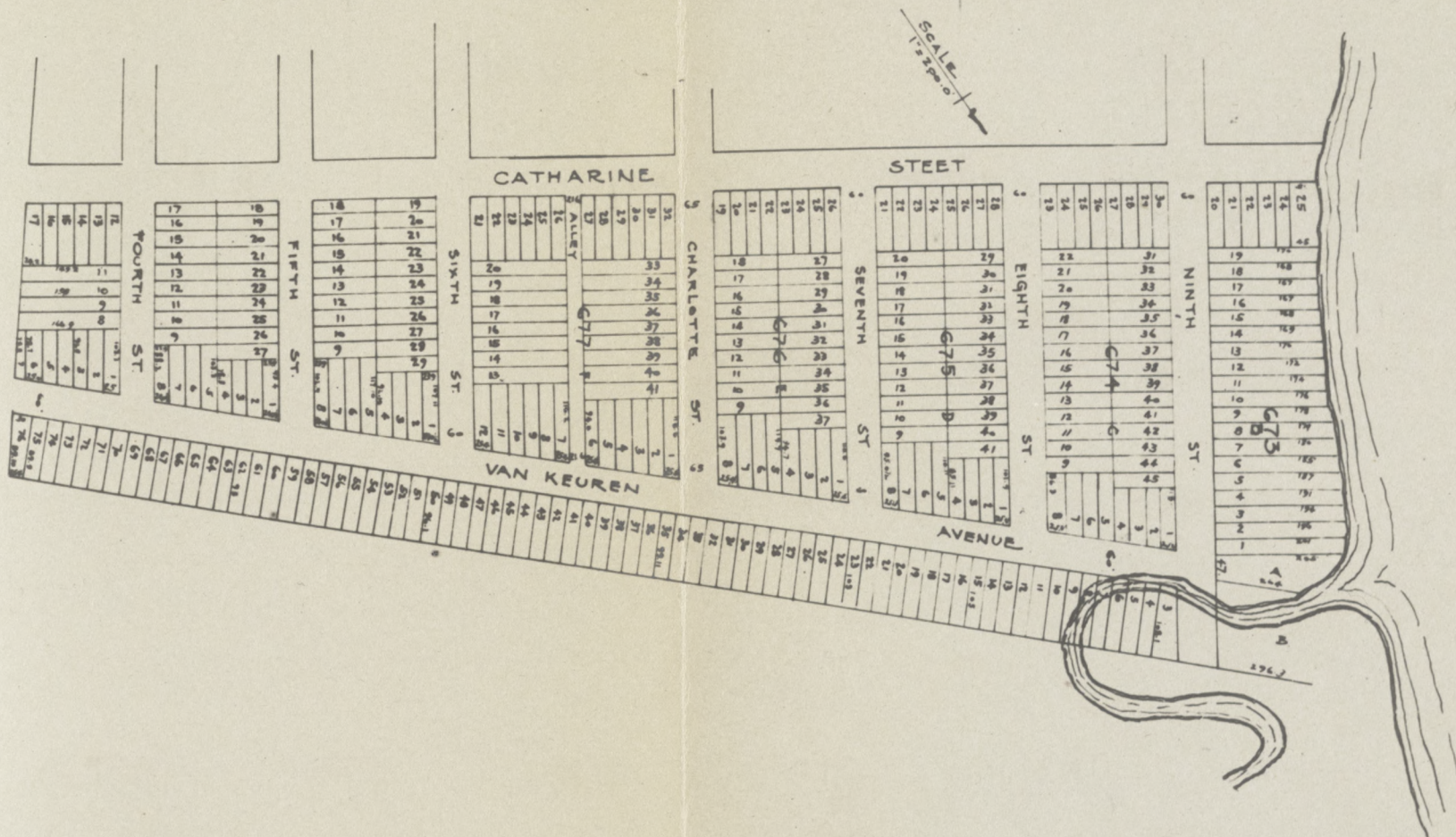


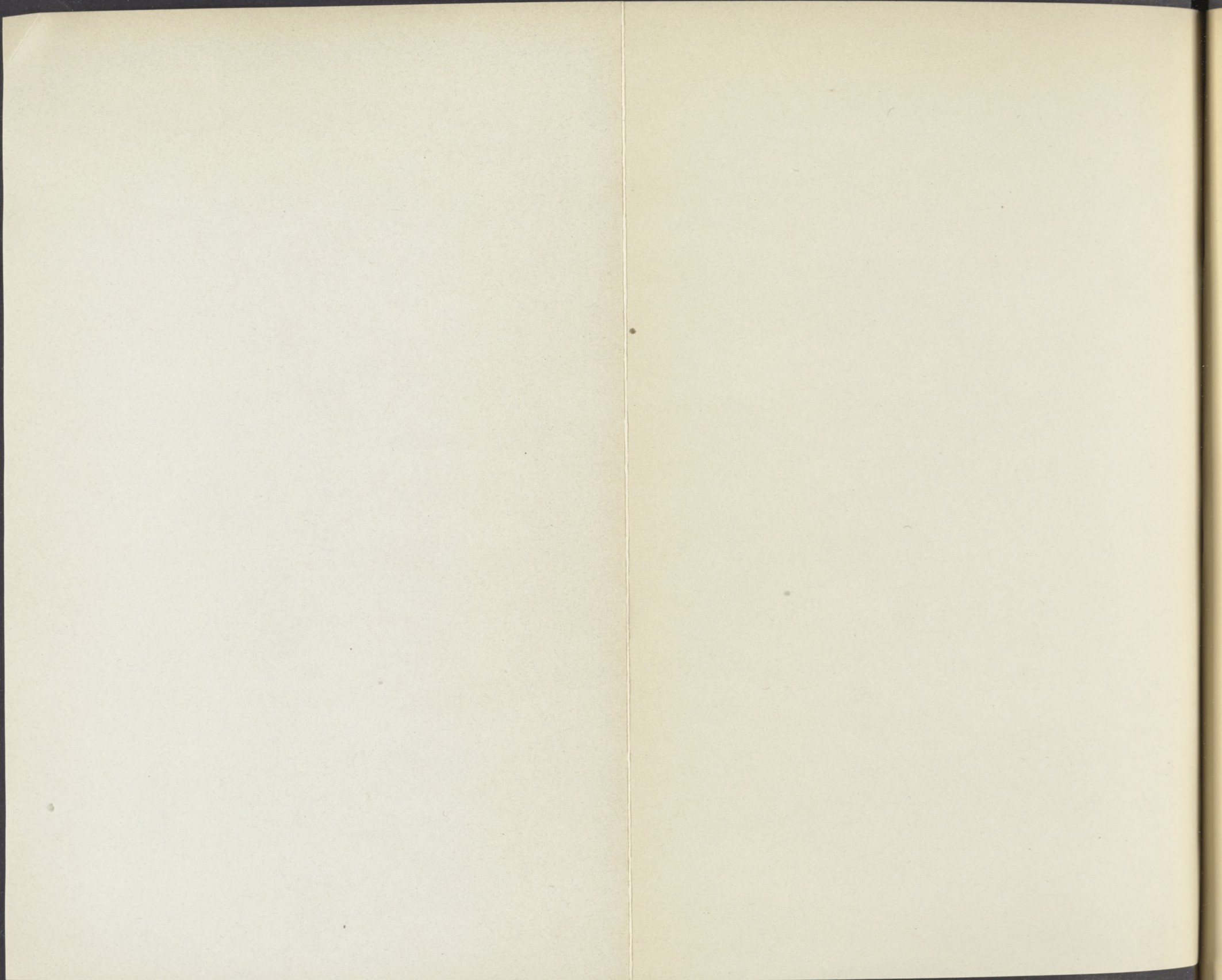


EXHIBIT D. 5.
Looking East on Van Kueren Ave.
From Point near P. S. Co. on Duffield Ave.

18. 11

SECTION OF
 Map of the 9th, 10th, 11th, 12th Wards of Jersey City, formerly City of Hudson. made for the
 Mayor and Aldermen of Jersey City. 1871. Made by LEVI W. POST, City Surveyor.





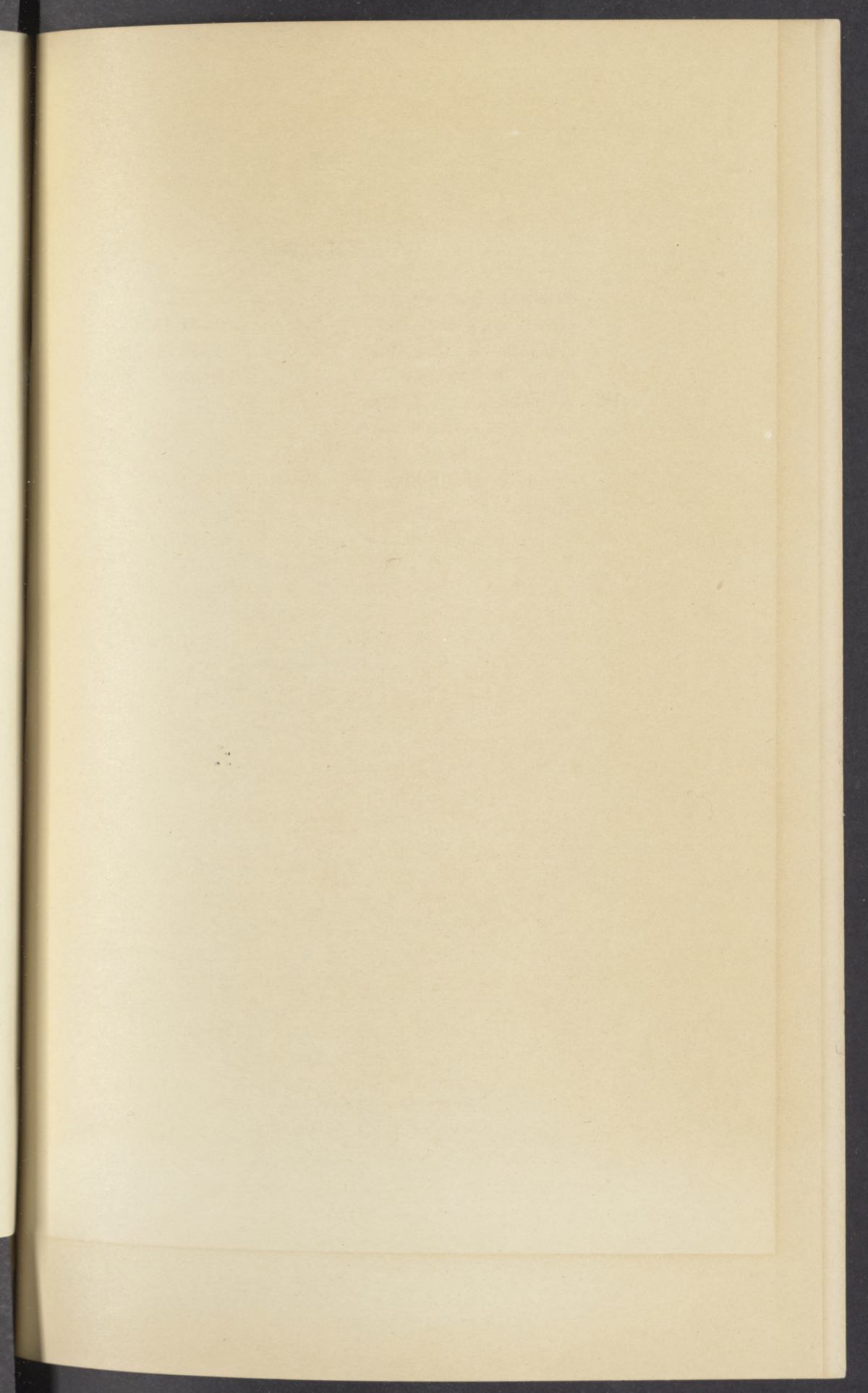


Exhibit D. 8.

EXHIBIT D. 8.

William Keeney and
Lydia A., his wife,
William H. Bumsted
and Martha his wife,

—DEED—

Dated: July 8, 1871.
Rec'd. Nov. 21, 1871,
Liber 234 page 488

10 William Van Keuren
and Sarah J. his wife,
to
John R. Halladay.

20 Conveys all those twenty certain lots, pieces
or parcels of land situate, lying and being in
Jersey City (that part formerly known as Hud-
son City) County of Hudson and State of New
Jersey, which on a map now on file in the office
of the Clerk of Hudson County entitled "Map
of property belonging to Stephen Morgan and
J. V. H. Van Reypen in the 10th Ward of Jersey
City, 1870" are designated as lots numbered 57,
58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71,
72, 73, 74, 75 and 76 in Block marked A, bounded
and described as follows:

30 Beginning at a point in the northwesterly line
of a certain street or right of way granted to
C. C. Van Reypen by the Erie Railway Co. by
deed heretofore recorded in Hudson County
Clerk's office where said line is intersected by
the northeasterly line of Van Keuren Avenue;
thence running northwesterly along the line of
Van Keuren Avenue 510 feet more or less to line
of lot 56; thence northeasterly along the line of
lot 56 at right angles with the line of Van Keuren
Avenue 94 feet 7 inches more or less to lands of

40 O'Brien; thence along said lands on
a course south 49 degrees 14 inches east 500 feet
4 inches more or less to the aforesaid right of
way; thence along the said right of way in a

Exhibit D. 9.

southerly direction 89 feet 10 inches more or less to point or place of beginning.

EXHIBIT D. 9.

William Van Keuren	—DEED—	10
and Sarah J. his wife,	Dated: Aug. 7, 1871	
William Keeney and	Rec'd. Mar. 15, 1872	
Lydia A. his wife,	Liber 237 page 414	
William H. Bumsted		
and Martha his wife,		
to		
The New Jersey Mid-		
land Railway Company		

Conveys all that certain piece or parcel of land and premises situate, lying and being in the City of Jersey City, County of Hudson and State of New Jersey, is described as follows: BEGIN-
 NING at a point on the westerly boundary of the right of way of the Paterson and Hudson Railroad where the same is intersected by the center line of Van Keuren Avenue and from thence running westerly along the center line of Van Keuren Avenue 50 feet 2 inches thence southerly and parallel with the westerly line of said right of way 341 feet 4 inches to line of lands of J. V. H. Van Reypen; thence easterly along said Van Reypen line 14 feet 11 inches to the center line of Catherine Street; thence easterly along the center line of Catherine Street 35 feet 7 inches to the westerly line of said right of way; thence north 35 degrees 38 minutes east along the westerly side of the right of way 338 feet 8 inches to place of beginning. Said strip of land being 50 feet wide at right angles from the side line thereof and containing six and 709/1000 lots of 2500 square feet each.

Exhibit D. 10.

EXHIBIT D. 10.

	William Keeney and	—DEED—
	Lydia A., his wife,	Dated: June 14, 1872,
	William H. Bumsted	Rec'd. June 25, 1872
	and Martha his wife,	Liber 242 page 428
10	William Van Keuren	
	and Sarah J. his wife,	
	to	
	John R. Halladay.	

Conveys all those two certain lots, pieces or parcels of land situate, lying and being in Jersey City, (that part formerly known as Hudson City) in the County of Hudson and State of New Jersey, which on a map now on file in the office of the Clerk of Hudson County entitled "Map of property belonging to Stephen Morgan and J. V. H. Van Reyphen in the 10th Ward of Jersey City, January 1870" are designated as lots numbered 55 and 56 in Block marked A. Said lots are each 25 feet in width about 94 feet 10 inches in depth and front on Van Keuren Avenue as laid down upon the aforesaid map.

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*Exhibit D. 11.***EXHIBIT D. 11.**

William Van Keuren
and Sarah J. his wife,
William Keeney and
Lydia A. his wife,
William H. Bumsted
and Martha his wife,

—DEED—

Dated: June 1, 1872,
Rec'd. Aug. 16, 1872,
Liber 246 page 145.

10

to

The New Jersey Mid-
land Railway Company
of New Jersey.

Conveys all those certain lots, pieces or parcels
of land situate, lying and being in the City of
Jersey City, County of Hudson and State of New
Jersey, and which on a map entitled "Map of
property belonging to Stephen Morgan and
J. V. H. Van Reyphen in the 10th Ward of Jersey
City, January 1870" in Block I and is described
as follows: BEGINNING at a point on the
southerly side of Van Keuren Avenue and in
the westerly side of the right of way of the party
of the second part and from thence running (1)
westerly and along the southerly side of Van
Keuren Avenue 111 feet 4 inches to the easterly
side of Fourth Street; thence (2) along the east-
erly side of Fourth Street 300 feet 4 inches to
the division line of land of the party of the sec-
ond part; thence (3) southeasterly along said
division line about 25 feet to the northerly line
of Catherine Street; thence (4) easterly along
the northerly line of Catherine Street 66 ft. 3
inches to the westerly side of the right of way
of the said party of the second part; thence (5)
northerly and along said right of way 312 feet
3 inches to the place of beginning. Being all

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Exhibit D. 12.

the remainder of Block I not heretofore conveyed to the said Railway Company as shown on said map.

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EXHIBIT D. 12.

Stephen Morgan
to
Charles Schultz.

—DEED—

Dated: Mar. 23, 1871
Rec'd. in Liber 224
page 518

Conveys all that piece or parcel of land and premises situate, lying and being in Jersey City, (formerly the City of Hudson) in the County of Hudson and State of New Jersey, more particularly described as follows, viz; BEGINNING at the most northerly point in the westerly side of Ninth Street as the same is laid down on a Map entitled "Map of property belonging to Stephen Morgan and J. V. H. Van Reyphen in the 10th Ward of Jersey City, January 1870, Levi W. Post City Surveyor" and duly filed in the office of the Clerk of Hudson County on the thirteenth day of December 1870, being the same point where the westerly line of said Ninth Street meets the division line between the land and premises mentioned in said deed and premises next adjoining northerly thereto being the land late of Ann Romaine as laid down on said map; thence along the westerly line of Ninth Street south 31 degrees 16 minutes west 207 feet $5\frac{1}{4}$ inches; thence (2) north 49 degrees west 152 feet $2\frac{1}{4}$ inches; thence (3) south 31 degrees 16 minutes west 100 feet; thence (4) North 58 degrees 44 minutes west 40 feet to highwater line of the Hackensack River; thence (5) northerly along

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Exhibit D. 12.

the highwater line of the Hackensack River the several courses thereof to the said line of the land and premises late of Ann Romaine as laid down on said map; thence (6) along said line south 49 degrees 14 minutes east 279 feet 6 inches to the point of beginning, and which is shown on the map hereto annexed, being a part of the same premises first described in said deed.

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*Exhibit D. 13.***EXHIBIT D. 13.**

DIVISION OF WATER SURVEY

OCT. 26th, 1928

REPORT SHOWING REPAIRS ON MAINS, HYDRANTS, ETC.,
IN VICINITY OF THE PLANT OF DODGE & BLISS CO.

Date	Type of Repairs	Location
Repaired		
12/ 9/21	Packing Gate	James Av. near Van Keuren
12/14/21	Wasting 2 hydrants	Van Keuren Av. bet. James & Duffield
3/11/22	Repairing hydrant	Van Keuren near James Av.
3/14/22	Trenching for leak	Van Keuren E. of James Av.
3/15/22	" " "	" " and West Side
3/17/22	" " "	" " near James Av.
5/20/22	Leak on Main	James Av. near Van Keuren
6/17/22	Trenching	West Side bet. St. Paul's and Van Keuren Av.
8/10/22	Leak on Main	James Av. near Van Keuren
9/14/22	New Gate Box	James Av. Near Van Keuren
9/15/22	New Gate Box	James Av. near Van Keuren
9/18/22	New Gate Box	James Av. near Van Keuren
3/14/23	Removing Hydrant	Van Keuren in front of Barnes Mfg. Co.
3/15/23	Putting in "	" " " " "
3/19/23	Locating leak	" " " " "
3/20/23	Leak on Main	Van Keuren Av. near James Av.
3/21/23	Repairing leak on main	" " " " Duffield Av.
4/25/23	Putting in new hydrant	" " " " James Av.
5/21/23	Leak on Main	" " " " Duffield Av.
5/29/23	Leak on Main	" " " " James Av.
6/15/23	Leak on Main	" " " " " "
8/13/23	Leak on Main	" " " " Duffield Av.
10/30/23	Broken Gates	" " and Duffield
6/14/24	Operating Gates	" " Aves.
6/26/25	Repairing leak 8" Main	" " and Duffield Av.
6/27/25	" " 8" "	" " " " "
10/16/25	Trenching to locate main	" " " " "
10/19/25	6 x 6 Sleeve and Gate	Van Keuren about 200 ft. East of Duffield Ave.
10/20/25	6 x 6—1 hydrant	
	Lgth. Pipe—1 Gate Box	Van Keuren 200 ft. east of Duffield
12/21/27	Repairing Hydrant	Ft. of Van Keuren at Duffield
12/31/27	" "	Ft. of Van Keuren at Duffield

4D-14

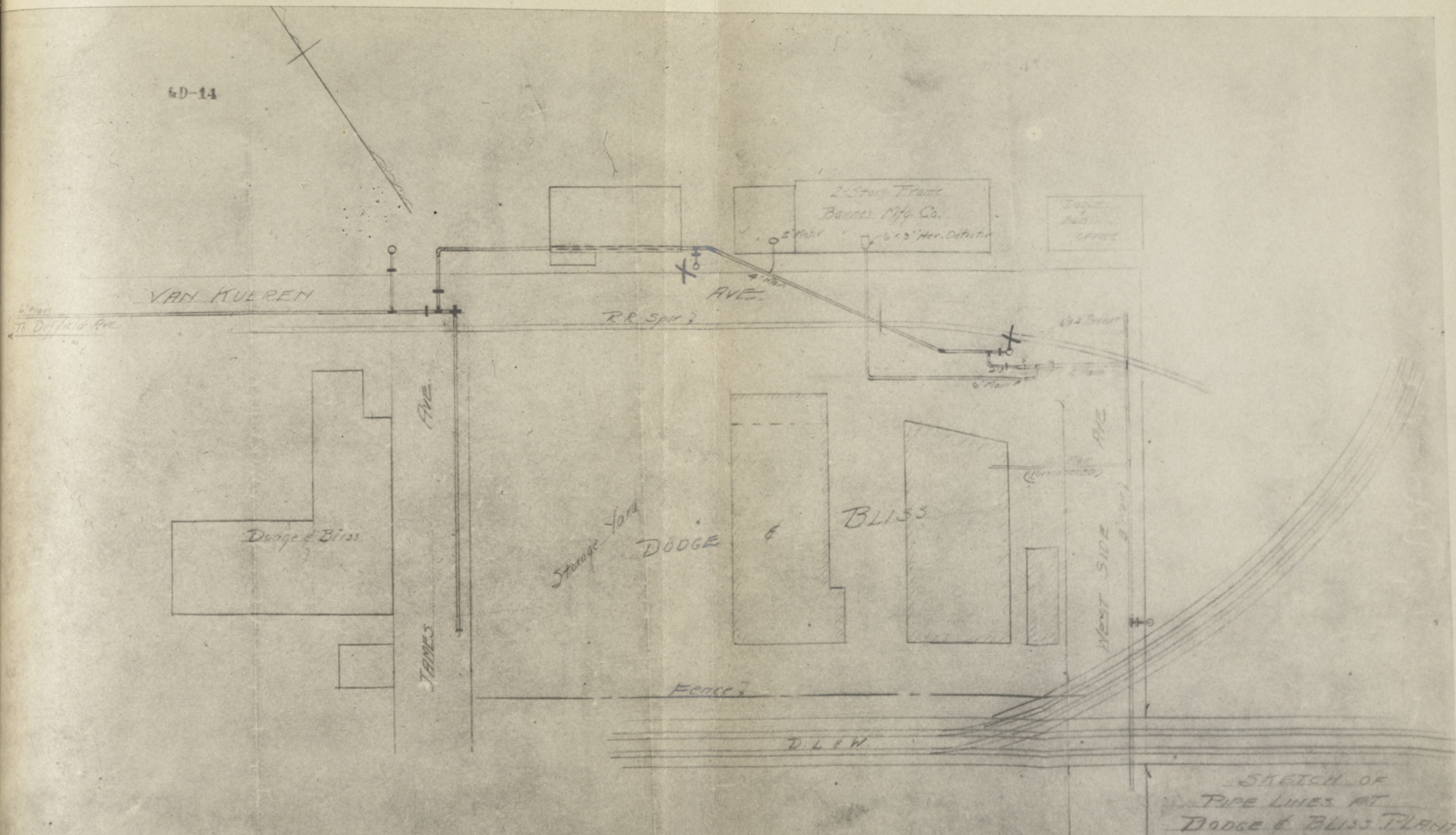


EXHIBIT D. 14.

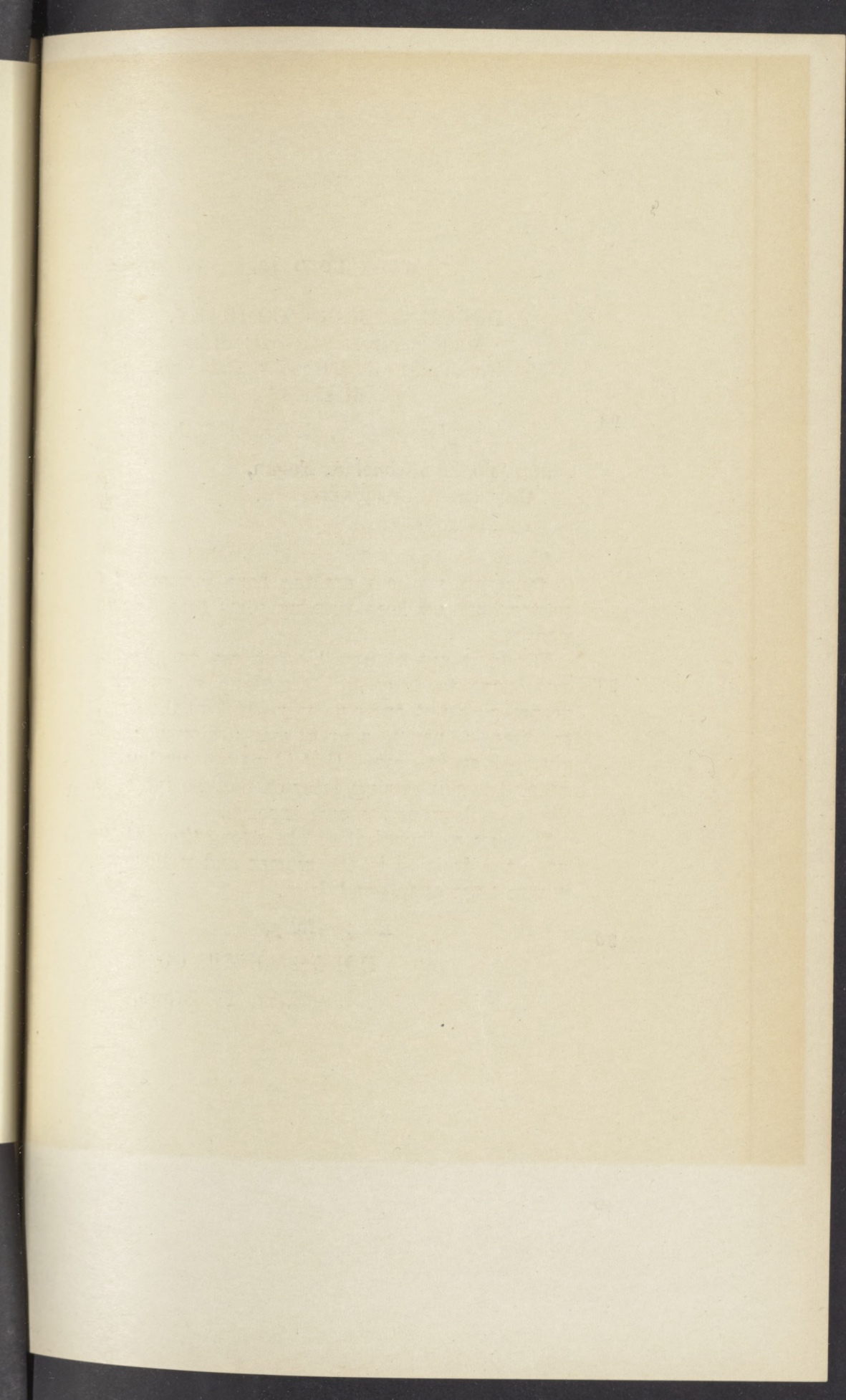


Exhibit D. 15.

EXHIBIT D. 15.

DODGE & BLISS COMPANY,
Manufacturers and Dealers in
Wooden Boxes, Box Shooks and Lumber
of all kinds

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Jersey City, N. J. Oct. 15th, 1918

Commissioner Michael A. Fagan,
City Hall, Jersey City.

My dear Commissioner:—

About the James Avenue street that we want
to fence up, we hear nothing from you and the
matter has now been running some four or five
months.

20

Would it not be possible for you to give us
permission to fence this street up so we may
properly protect our property which at the pres-
ent time is open to a great many thieves, we to
give you an assurance that if we are not legally
entitled to this closing, later on that we will take
the fence down at our own expense.

It seems as though it will be a long time before
we get a decision in the matter and writer has
this to suggest in good faith.

30

Respectfully,

DODGE & BLISS CO.

Wm. F. Brown,
Prest.

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Exhibit D. 16.

EXHIBIT D. 16.

TO THE BOARD OF COMMISSIONERS OF
JERSEY CITY:

The undersigned, DODGE & BLISS COMPANY, hereby objects to and protests against the granting of the petition of the Public Service Electric Company for the vacation of that portion of Van Keuren Avenue lying west of the westerly line of the property owned by the undersigned, on the following grounds, viz: 10

1. The undersigned owns the property adjoining the premises mentioned in the said petition, and the granting of the said application will be injurious to the undersigned.

2. There is no such street or avenue as Van Keuren Avenue west of the N. Y. S. & W. R. R., or at the place mentioned in the said petition. 20

3. There was never any dedication of Van Keuren Avenue west of the N. Y. S. & W. R. R.

4. The property alleged in the petition to be a part of Van Keuren Avenue was covered by a mortgage before and at the time of any alleged dedication.

5. The mortgage referred to was foreclosed and any alleged street or avenue was thereby vacated. 30

Dated, February , 1920.

Yours respectfully,
Dodge & Bliss Co.

REPORT OF THE

COMMISSIONER OF THE

LAND OFFICE

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New Jersey Court of Errors and Appeals

DODGE & BLISS COMPANY, a corporation,
Complainant-Appellee,

vs.

THE MAYOR AND ALDERMEN OF
JERSEY CITY, a municipal corporation, and PUBLIC SERVICE
ELECTRIC AND GAS COMPANY, a corporation,
Defendants-Appellants.

*On Bill to
Quiet Title.*

SUPPLEMENT TO STATE OF CASE.

	PAGE
Order Amending Petition of Appeal.....	1
Additional Part of Exhibit C. 9.....	3
Additional Part of Exhibit D. 16.....	4

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New Jersey Court of Errors and Appeals

DODGE & BLISS COMPANY, a corporation, Complainant-Appellee, vs. THE MAYOR AND ALDERMEN OF JERSEY CITY, a municipal corporation, and PUBLIC SERVICE ELECTRIC AND GAS COMPANY, a corporation, Defendants-Appellants.	<i>On Bill, &c.</i> <i>On Appeal from the Court of Chancery.</i> <i>Order Amending Petition of Appeal.</i>	10
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On consent of Herbert Clark Gilson, solicitor for and of counsel with complainant-appellee, given in open court and on the application of William H. Speer, solicitor for and of counsel with Public Service Electric and Gas Company, defendant-appellant, it is on this twenty-ninth day of May, nineteen hundred and twenty-nine, ORDERED that the petition of appeal of said defendant-appellant be amended by adding to the grounds of appeals therein stated the following:

(i) That complainant-appellee has not shown the requisite title and possession to entitle it to maintain this suit. 30

(j) That complainant-appellee is estopped to maintain this suit or to have a decree by the deeds in its own chain of title.

(k) That the decree deprives defendant-appellant Public Service Electric and Gas Company of rights appurtenant to its property and of its property without compensation and in violation of its rights under the

Order Amending Petition of Appeal.

Constitutions of the United States and of
the State of New Jersey.

By the Court.

Wm S. Sumner
The above order is hereby consented to.

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HERBERT CLARK GILSON,
Solicitor for and of Counsel with Complainant.

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*Additional Part of Exhibit C. 9.***Additional Part of Exhibit C. 9.**

And it is mutually covenanted and agreed by and between the said parties to this indenture for themselves, and for their respective heirs, executors, administrators, successors and assigns that the division line between their respective lands and properties in said Fourth Aldermanic District of the City of Jersey City aforesaid so far as the same are situated between the west side of Duffield Avenue, and the Hackensack River is and shall be and forever remain as follows, to wit:

Beginning at a point on the Westerly side of Duffield Avenue one hundred and fifty seven (157) feet northerly from the corner formed by the intersection of the westerly side of Duffield Avenue with the northerly side of Catherine Street as shown on the aforesaid map but which street is now legally vacated and closed as aforesaid and running thence north fifty degrees (50°) and twenty one minutes ($21'$) west one hundred and seventy (170) feet more or less to the Hackensack River at a point distant one hundred and eighty one feet and seventy eight one hundredths of a foot ($181\frac{78}{100}$ ft.) northerly from a line drawn in continuation westerly of the said northerly side of said Catherine Street (now vacated and closed as aforesaid) measured on a line at right angles to such line in continuation thereof

and that said map and Catherine Street as shown thereon are referred to in this indenture merely for convenience in description and that such reference shall not be deemed or construed as admitting the existence of any street or avenue shown on said map or as dedicating any such street or avenue.

*Additional Part of Exhibit D. 16.***Additional Part of Exhibit D. 16.**

To the Honorable Board of Commissioners of
Jersey City:

10 In the enlargement and increase of our Marion
Power Station in the City of Jersey City, in
order to meet the growing demands of manu-
facturers and others for electric power, Public
Service Electric Company finds it necessary to
build a switch house in the location shown on
the map or plan hereto attached. As shown on
said plan, a portion of Duffield Avenue and Van
Keuren Avenue delineated on said plan inter-
feres therewith as now located. Your petitioner
owns and controls the fee of the property indi-
cated as such avenues and also the property on
20 both sides thereof. Your petitioner wishes your
honorable body to re-locate said avenues, and
for that purpose desires that portion of said
avenues indicated on the map or plan in red
vacated, and prays your honorable body so to do.

30 It hereby agrees, in consideration of such vaca-
tion and before the same shall legally take effect,
to dedicate as a public street or highway that
portion of the land shown on said map marked
in yellow, or equal area to the portion herein
asked to be vacated, and have said avenues re-
located thereon; such vacation to be on condition
that the same shall not take effect or be made
use of until the portion so dedicated is graded
and improved to an extent at least equal to the
present condition of that portion vacated, and
the same is thrown open for public use. While
such vacation will prove a convenience and ad-
vantage to your petitioner, it will be of equal
advantage to the City and the general public
40 in enabling your petitioner to better serve them,

Additional Part of Exhibit D. 16.

and the change in the highway will work no disadvantage whatsoever to any of the users thereof.

Dated, December 9, 1919.

Very respectfully,

PUBLIC SERVICE ELECTRIC COMPANY,

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By FARLEY OSGOOD,
Vice-President and General Manager.

To the Honorable Board of Commissioners of
Jersey City:

Supplemental to the petition of this Company, dated December 9th, 1919, we submit herewith a description of the streets desired to be vacated as shown on the map or plan attached to the application, and also a description of the streets as it is desired that the same be re-located, as shown on said plan, that is to say, the part to be vacated is all that strip of land beginning at a point in the division line between lands of The Holland Company and lands of the Dodge & Bliss Company, where the same is intersected by the westerly line of Duffield Avenue; thence (1) along said westerly line of North thirty-one degrees twenty-four minutes East (N. $31^{\circ} 24'$ E.) two hundred and thirty-two feet and eighty-eight one hundredths of a foot (232.88') to where said westerly line is intersected by the northerly line of Van Keuren Avenue prolonged; thence (2) along said northerly line and its prolongation South forty-nine degrees thirty-five minutes East (S. $49^{\circ} 35'$ E.) five hundred and sixty feet and seventy-five one-hundredths of a foot (560.75') to the division line between said lands of The

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Additional Part of Exhibit D. 16.

- Holland Company and the Dodge & Bliss Company; thence (3) along said division line South thirty-one degrees twenty-four minutes West (S. $31^{\circ} 24'$ W.) sixty feet and seventy-five one-hundredths of a foot (60.75') to the southerly line of Van Keuren Avenue; thence (4) along
- 10 said southerly line North forty-nine degrees thirty-five minutes West (N. $49^{\circ} 35'$ W.) five hundred feet (500') to the easterly line of Duffield Avenue; thence (5) along said easterly line South thirty-one degrees twenty-four minutes West (S. $31^{\circ} 24'$ W.) one hundred and seventy-two feet and thirteen one-hundredths of a foot (172.13') to the first mentioned division line between lands of The Holland Company and the
- 20 Dodge & Bliss Company; thence (6) along said division line North forty-nine degrees thirty-five minutes West (N. $49^{\circ} 35'$ W.) sixty feet and seventy-five one-hundredths of a foot to the point and place of beginning; all as is shown and indicated marked in red on the said map or plan; and the location of the streets desired to be made is as follows: All that strip of land beginning at a point on the westerly line of Duffield Avenue where the same is intersected by
- 30 the division line between lands of The Holland Company and the Dodge & Bliss Company; thence (1) along said westerly line North thirty-one degrees twenty-four minutes East (N. $31^{\circ} 24'$ E.) sixty feet and seventy-five one-hundredths of a foot; thence (2) South forty-nine degrees thirty-five minutes East (S. $49^{\circ} 35'$ E.) parallel with and sixty feet distant northerly from the aforesaid division line five hundred feet (500'); thence (3) North thirty-one degrees twenty-four minutes East (N. $31^{\circ} 24'$ E.) one hundred and
- 40 seventy-two feet and thirteen one-hundredths of a

Additional Part of Exhibit D. 16.

foot (172.13') to the northerly line of Van Keuren Avenue; thence (4) along said northerly line South forty-nine degrees thirty-five minutes East (S. 49° 35' E.) sixty feet and seventy-five one-hundredths of a foot (60.75') to the division line between lands of The Holland Company and lands of the Dodge & Bliss Company; thence (5) 10
 along said division line South thirty-one degrees twenty-four minutes West (S. 31° 24' W.) two hundred and thirty-two feet and eighty-eight one-hundredths of a foot to the first mentioned division line between lands of The Holland Company, and lands of the Dodge & Bliss Company; thence (6) along said division line North forty-nine degrees thirty-five minutes West (N. 49° 35' W.) five hundred and sixty feet and seventy-five one-hundredths of a foot (560.75') to the westerly line of Duffield Avenue and point and place of beginning. All as shown and described on the map or plan attached to the said petition, and marked in yellow, and made a part thereof. 20

Dated: January 15th, 1920.

Very respectfully,

PUBLIC SERVICE ELECTRIC COMPANY,

By FARLEY OSGOOD,
 Vice-President and General Manager. 30

AN ORDINANCE changing the location of a part of Duffield and Van Keuren avenues in Jersey City, and vacating the same upon the opening and improvement of portions in lieu thereof, which are hereby accepted.

WHEREAS, Public Service Electric Company, being the owner in fee of abutting lands, as well as the lands on which that part of Duffield and Van Keuren avenues, as shown on the map or 40

Additional Part of Exhibit D. 16.

plan hereto attached and made a part hereof, hereinafter described and located, having by petition, applied to the Board of Commissioners of Jersey City for the re-location of said parts of said avenues by laying the same in another location and vacating the portion of the same now occupied; and the matter having regularly come before this Board; and public notice of the intention to consider the same having been given by the Board at least ten days before the passage of this ordinance in
 10 newspapers circulating in Jersey City; which notice designated the time and place when and where such Board would consider such ordinance; and at the time and place so designated and at the time to which the matter was adjourned, all
 20 persons whose lands were affected by such ordinance, and all who were interested therein, were given an opportunity to be heard; and there also being no objection to the passage of this ordinance, and it seeming proper so to do; therefore

THE BOARD OF COMMISSIONERS of the City of Jersey City do ordain as follows:

1. The location of Duffield and Van Keuren avenues in the city of Jersey City is hereby
 30 changed so that hereafter the location thereof shall be as follows, that is to say; All that strip of land beginning at a point on the westerly line of Duffield Avenue where the same is intersected by the division line between lands of The Holland Company and the Dodge & Bliss Company; thence (1) along said westerly line N. 31° 24' E. 60 feet and 75/100 of a foot; thence (2) S. 49° 35' E. parallel with and 60 feet and seventy-five one-hundredths of a foot distant northerly from the
 40 aforesaid division line 500 feet; thence (3) N. 31°

Additional Part of Exhibit D. 16.

24' E. 172 feet and 13/100 of a foot to the northerly line of Van Keuren Avenue; thence (4) along said northerly line S. $49^{\circ} 35'$ E. 60 feet and 75/100 of a foot to the division line between lands of The Holland Company and lands of the Dodge & Bliss Company; thence (5) along said division line S. $31^{\circ} 24'$ W. 232 feet and 88/100 of a foot to the first mentioned division line between lands of The Holland Company and lands of the Dodge & Bliss Company; thence (6) along said division line N. $49^{\circ} 35'$ W. 560 feet and 75/100 of a foot to the westerly line of Duffield Avenue and point and place of beginning. All as shown and described on the map or plan hereto attached, and marked in yellow, and made a part hereof, in place and stead of the present location thereof, which is hereby vacated, and is described as follows, that is to say: all that strip of land beginning at a point in the division line between lands of The Holland Company and lands of the Dodge & Bliss Company, where the same is intersected by the westerly line of Duffield Avenue; thence (1) along said westerly line N. $31^{\circ} 24'$ E. 232 feet and 88/100 of a foot to where said westerly line is intersected by the northerly line of Van Keuren Avenue prolonged; thence (2) along said northerly line and its prolongation S. $49^{\circ} 35'$ E. 560 feet and 75/100 of a foot to the division line between said lands of The Holland Company and the Dodge & Bliss Company; thence (3) along said division line S. $31^{\circ} 24'$ W. 60 ft. and 75/100 of a foot to the southerly line of Van Keuren Avenue; thence (4) along said southerly line N. $49^{\circ} 35'$ W. 500 feet to the easterly line of Duffield Avenue; thence (5) along said easterly line S. $31^{\circ} 24'$ W. 172 feet and 13/100 of a foot to the first mentioned division line between lands of The

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Additional Part of Exhibit D. 16.

Holland Company and the Dodge & Bliss Company; thence (6) along said division line N. 49° 35' W. 60 ft. and 75/100 of a foot to the point and place of beginning; all as is likewise shown and indicated marked in red on the said map or plan.

10 2. Before such vacation as herein provided for shall take effect, Public Service Electric Company shall open and improve that portion of the said avenues as herein re-located at least equal to the present improvement and that portion of the said avenues hereby vacated, to the satisfaction of the Director of Streets and Public Improvements.

20 3. Upon the filing of a certificate of the Director of Streets and Public Improvements, in writing, with the Clerk of Jersey City, that said avenues as re-located have been thrown open to public use, then and from thenceforth that portion of said Duffield and Van Keuren avenues first herein described is accepted in lieu and place of the present location thereof which is secondly hereinbefore described.

4. Public Service Electric Company shall pay for the expense of the publication of said notice and this ordinance which shall take effect immediately.

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New Jersey Court of Errors and Appeals

DODGE & BLISS COMPANY, a corporation,

Complainant-Appellee,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY, a municipal corporation, and PUBLIC SERVICE ELECTRIC AND GAS COMPANY, a corporation,

Defendants-Appellants.

*On Bill to
Quiet Title.*

BRIEF OF DEFENDANTS-APPELLANTS.

The complainant-appelle herein by its bill seeks to quiet title to certain premises therein described as being in the City of Jersey City, County of Hudson and State of New Jersey, within the boundaries of which are certain public streets, including the northerly extremity of West Side avenue, part of Duffield avenue, Van Keuren avenue, James avenue and other streets in the area between West Side avenue and Duffield avenue.

By stipulation, the complainant-appellee eliminated Duffield avenue and West Side avenue from consideration in this cause, by accepting and recognizing the rights of the public in these streets.

In December in the year 1870, there was filed in the office of the Clerk of Hudson County, a map entitled "Map of property belonging to Stephen Morgan and J. V. H. Van Reyepen in the 10th Ward of Jersey City, January, 1870, E. W. Post, City Surveyor" (Exhibit C. 17, State

of Case, p. 259). A year later there was also filed in the office of the Clerk of Hudson County, a map entitled "Map of the 9th, 10th, 11th, 12th Wards of Jersey City, formerly City of Hudson, made for the Mayor and Aldermen of Jersey City, 1871. Made by Levi W. Post, City Surveyor" (Exhibit D. 7, State of Case, p. 281).

The lands plotted upon each of these maps are laid out in streets with lots and lot numbers and among the streets thereon delineated are Van Keuren avenue and Ninth street, the name of which was later changed to Duffield avenue; Sixth street, the name of which was changed to James avenue; and Fourth street, the name of which was changed to West Side avenue. The question of the title to the lands lying in the bed of Duffield avenue, of West Side avenue, and of certain other streets has been eliminated from consideration in this suit, and there now remains but to consider the status of Van Keuren avenue, elimination of the use of which would work a tremendous hardship upon the public and these defendants-appellants.

At the end of the first trial day, the defendant Jersey City asked leave to present evidence of public user of Van Keuren avenue in order to be certain that this street be kept open as a public highway. Counsel for the City thereupon called upon Public Service Electric and Gas Company, which is the owner of an electric generating station known as The Marion Station at the westerly end of Van Keuren avenue and the easterly end of Duffield avenue. This was the first notice that the defendant-appellant, Public Service Electric and Gas Company, had received of the institution of the present suit. Upon an examination of the status of Van Keuren avenue with regard to the use of its property, it became

evident that if Van Keuren avenue were closed, this Company would be precluded from the use of one of the highways leading directly to its property and upon the use of which it had relied in purchasing its property and in establishing its generating station thereon. By consent of the parties, it was made a party defendant to the suit and appeared at later hearings before the Vice-Chancellor.

The decree directed by the Vice-Chancellor, among other things, quieted the title to the property found in the bed of Van Keuren avenue and thereby prohibited its use by the public and these defendants-appellants. Consideration of the importance of this decision made it necessary that an appeal be taken and the defendants-appellants will here set forth the reasons why the decree of the Vice-Chancellor should be reversed and a decree entered permitting the use of this street by the public and these defendants-appellants.

The filing of the two maps above referred to and the references thereto in all subsequent deeds which compose the chain of title of complainant-appellee established a dedication of said Van Keuren avenue to the public use, and the complainant-appellee is estopped to maintain this suit or to have a decree in its favor. It also conclusively established property rights appurtenant to the lands and property of Public Service Electric and Gas Company, a deprivation of which without compensation therefor to said company would be violative of its constitutional rights. The facts of the case and an analysis of the conveyances making up the chain of title of the complainant-appellee clearly demonstrate that the property in the bed of this street is subject to

the public use and to said appurtenant property rights of Public Service Electric and Gas Company.

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The title to the property in question for the purposes of this suit can be considered as vested originally in one Susanna Smith, who gave a mortgage to Cornelius Van Reypen on the property in question as security for the payment of her obligation. Susanna Smith in turn sold this property to William Van Keuren and William Batty. These gentlemen, being in financial straits, conveyed the property by deed of trust to Stephen Morgan, presumably for the benefit of their creditors. This deed was dated Jan. 5, 1870, and was recorded in Book 207 of Deeds for Hudson County, on page 183. (See State of Case, Exhibit C. 1, at p. 220.) It declared that on a written request to the said trustee within two years, signed by William H. Bumsted, William Keeney, Charles Schultz, and William Batty, or any three of them or the survivors, he should convey in fee simple by proper deeds for that purpose either or both "of the above described pieces or parcels of land and premises as may be designated in said request" to the said trustee and for the price or prices mentioned in said request, and to apply the net proceeds in the manner in said deed of trust indicated. This deed of trust thereby created the said four parties or the portions of them therein provided for either the general agents of the owners of the land or, more likely, endowed them with a power to direct the time, manner, price and other necessary details of the transfer which they were thereby authorized to make.

A deed of request by William H. Bumsted, William Keeney and Charles Schultz to Stephen Morgan, trustee, was executed March 24, 1871, and recorded in Book 224, page 516 (State of Case, p. 224). Prior to this time, to wit, in January, 1870, Stephen Morgan, the trustee, and J. V. H. Van Reypen, who owned adjoining property, had caused a map of their two properties to be made, entitled "Map of Property belonging to Stephen Morgan and J. V. H. Van Reypen in the 10th Ward of Jersey City, January 1870, E. W. Post, City Surveyor," which map was duly filed in the office of the Clerk of Hudson County on December 13, 1870.

Bearing in mind that the deed of request bears date March 24, 1871, and is therefore considerably later in point of time than the filing of said map in the office of the County Clerk, it becomes very significant that the three donees of the power hereinbefore mentioned in said deed of request in which they had requested, as under said deed of trust they were empowered to do, that the property should be conveyed to two of them, to wit, William H. Bumsted and William Keeney, and to another party, William Van Keuren, thereby confirmed, recognized, ratified and adopted the acts of the trustee Stephen Morgan, by specifically stating in said deed of trust that a previous conveyance (Exhibit D. 12, State of Case, p. 286) which they had requested should be made to Charles Schultz, the third of those who signed said deed of request, should be excepted and reserved from the conveyance which they were then requesting to be made, and expressly alluded to the said map in the language following: "Beginning at the most northerly point in the westerly side of Ninth street as the same is laid down on a map entitled 'Map of

property belonging to Stephen Morgan and J. V. H. Van Reypen in the tenth ward of Jersey City, January 1870, Levi W. Post, City Surveyor,' and duly filed in the office of the Clerk of Hudson County on the thirteenth day of December, 1870." This recognition is confirmed and emphasized by Exhibit C. 3, which is the deed from Stephen Morgan, trustee, to William H. Bumsted, William Keeney and William Van Keuren, pursuant to said request, which deed again refers to "Map of property belonging to Stephen Morgan and J. V. H. Van Reypen, in the 10th ward of Jersey City, January 1870, Levi W. Post, City Surveyor."

On the question of approval and ratification also see Exhibits D. 8, D. 9, D. 10 and D. 11, which were deeds from the said Keeney, Bumsted and Van Keuren, to whom Morgan, upon request, conveyed the trust property by deed, Exhibit D. 3, and in each one of which either the Morgan and Van Reypen map or Van Keuren avenue, or both, is the sole means of locating and describing the property.

The deed Exhibit C. 4, being the Master's deed, recorded in book 333, page 396, and Exhibit C. 5, being the Sheriff's deed, recorded in book 467, page 50, both refer, by way of exceptions, to this same map, as does the deed Exhibit C. 6, from Daniel Toffey *et ux* to Charles S. Dodge and Edward K. Meigs, partners trading as Dodge & Company, recorded in book 467, page 57, and this deed, in addition to the exception referring to and recognizing said map, contains this illuminating language in the *habendum* clause, "Subject nevertheless to the public easement in any street or streets crossing or projected across said lands, if any such right of way or public easement ex-

ists—and also subject to the said rights and interests, if any there be, of and pertaining to the said pipe line hereinbefore mentioned, by whatever name the same may be known and however the said rights may be found to be secured.”

The deed Exhibit C. 7, from John R. Halladay *et ux* to Charles S. Dodge and Edward K. Meigs, in the direct chain of title upon which complainants in this suit must rely, expressly conveys the land therein transferred *by a description which refers to the map in question*—“*Map of property belonging to Stephen Morgan and J. V. H. Van Reyphen in the tenth ward of Jersey City, January, 1870,*” and then proceeds to designate and identify the lots by said deed conveyed by numbers, as laid down on said map, which description in said Halladay deed would be unintelligible unless reference to said map should be made; and in addition to a reference to identification of property conveyed by lots numbers, the description expressly recognizes Van Keuren avenue as laid down upon the *aforesaid map*, and then proceeds to declare that the property conveyed is “*part of the same land conveyed to said John R. Halladay from William Keeney and wife, William H. Bumsted and wife, and William Van Keuren and wife, by deed dated July 8, 1871, which deed is recorded in the office of the Register of Hudson County in book 234 of deeds for said county, p. 488, &c.*”

It is perfectly obvious that this last-mentioned deed is in the direct chain of title with the deed from Stephen Morgan to William H. Bumsted, William Keeney, and William Van Keuren, which is Exhibit C. 3 in this case, which last-mentioned deed expressly and particularly recognizes and refers to the map of property belonging to Stephen Morgan and J. V. H. Van Reyphen, etc.

We then come to Exhibit C. 8, which is a deed from Charles S. Dodge *et al.* to Dodge & Bliss Box Co., dated October 12, 1891, recorded December 10, 1891, in book 541, p. 519. By Charles S. Dodge *et al.* is meant Charles S. Dodge and Edward K. Meigs and their respective wives, as will be demonstrated by a reference to Exhibit C. 11, at the bottom of page 251 of the State of Case. This deed is of extreme importance in this controversy, since by referring thereto at page 245 of the State of Case (at top of said page) it will be found that the description in the pertinent part reads as follows: "*Beginning at a point in the center line of Fourth street (now West Side avenue) as the same is shown on a map entitled Map of the 9th, 10th, 11th and 12th wards of Jersey City, formerly the City of Hudson, made for the Mayor and Aldermen of Jersey City, 1871.*" This map will be found in the State of Case, marked Exhibit D. 7, and on it will be found outlined Van Keuren avenue as the same is also laid down on the above-mentioned Morgan and Van Reypen map.

Exhibit C. 9, which is a deed from American Lumber Co. to Charles S. Dodge *et ux. et al.*, recorded in book 585, page 427, dated November 20, 1891, includes a piece of the land in question, and also expressly refers to said map of Morgan and Van Reypen, and recognizes by name Catherine street and Duffield avenue, as well as James avenue. Counsel for complainant contends that this exhibit, found on page 246 of the State of Case, omitted to mention that the reference to this map was expressly declared to be by way of description. The effect of such an argument on his part would simply indicate what is undoubtedly the law, that if the recognition of the map is made only for descriptive purposes, it

must be expressly so stated in the deed; but he has neither the same nor any other explanation for the unqualified reference in the other deeds to this and the other map.

Of course, anything which appears in the deeds subsequent to those hereinbefore mentioned, in which conveyance was expressly made by reference to the Morgan and Van Reypen map, could not undo the original dedication, if one had been accomplished. This is made clear by section 45 of 18 C. J., page 61, "Attempted restriction of dedication already accomplished. If an owner of land effected a dedication to public use of a strip of land by filing of a map of platted land including it and afterward disposed of the platted property with reference to the map, whatever may have been written in contracts or deeds relating to the land would not avail to restrict the dedication already accomplished, nor would the acceptance by purchasers of lots, of deeds, or of contracts relating to the use of the dedicated strip affect it."

Exhibit C. 10, which is a deed from Charles S. Dodge *et ux.*, *et al.* (*et al.* being Edward K. Meigs), who are described as partners trading as Dodge & Co., contains by way of exceptions references to three parcels of the land in question, each of which refers to the map of property belonging to Morgan and Van Reypen, etc., and completely recognizes the same not only by way of exception but, as will be found on page 250 of the State of Case, by incorporating into the deed itself, Exhibit C. 7, which is the deed from Halladay and wife to Charles Dodge and Edward Meigs, which last-mentioned deed conveys property by express reference to said map and the lot numbers thereon delineated, because it is said in C. 10, "Being the same premises conveyed to said

Charles S. Dodge and Edward K. Meigs, partners trading as Dodge & Company, by John R. Halladay and Mary E. Halladay, his wife, by deed dated the eighteenth day of July 1890 and recorded in the Hudson County Register's office on the 18th day of September, 1890 in book 562 of deeds, page 275."

Exhibit C. 11, which is a deed from Dodge & Bliss Box Co. to Dodge & Bliss Co., recorded in book 655, at page 448, dated November 19, 1894, conveys out of Dodge & Bliss Box Co. to Dodge & Bliss Co., complainant in this suit, the title which the Box Company obtained from Charles S. Dodge and Edward K. Meigs by deed Exhibit C. 8, and which brings into the direct chain of complainant-appellee's title, the description of the property conveyed in the Halladay deed (*supra*) as "Beginning at a point in the center line of Fourth street (now West Side avenue) as the same is shown on a map entitled Map of 9th, 10th, 11th and 12th wards of Jersey City, formerly the City of Hudson, made for the Mayor and Aldermen of Jersey City, 1871," and which Exhibit D. 7 conveys with direct reference to Van Keuren avenue with lots marked out and facing thereon as the same are delineated on map of Morgan and Van Reypen.

And in confirmation and incorporation of said deed on page 252 of the State of Case, it is recited in said deed: "Being the same premises conveyed to the party of the first part by Charles S. Dodge and Edward K. Meigs and their respective wives by deed bearing date the 12th day of October, 1891 and recorded in the office of the Register of the County of Hudson, New Jersey on the 10th day of December 1891 in book 541 of deeds, page 519."

The mortgage Exhibit C. 14, from Daniel Toffey and George C. Toffey to Cornelius C. Van Reypen, was foreclosed, and the property sold thereunder by Sheriff's deed of Sept. 19, 1888 (Exhibit C. 5, page 237 of State of Case), which Sheriff's deed expressly excepts from the sale under the said mortgage the bulk, if not all, of the property involved in the present controversy, and excepts the same by reference to the Morgan and Van Reypen map and refers to the deeds from Halladay and others.

The mortgage from Daniel Toffey and wife to Cornelius C. Van Reypen, Exhibit C. 15, page 255, State of Case, recorded in Book 135, page 615, bears date April 18, 1879, and is of course long subsequent to the Morgan and Van Reypen map, and also expressly excepts from its terms the property conveyed to Halladay, and identifies the property covered by the mortgage as being "the same premises conveyed to said Daniel Toffey and Edward H. Wilson by William P. Douglass, Master in Chancery," under foreclosure of the prior mortgage.

POINT 1.

Van Keuren Avenue has been and still remains dedicated to the public use.

The leading early case upon the subject of dedication and one whose authority has persisted through all the cases subsequently decided and which settles practically all of the questions involved in the present controversy, *Trustees of M. E. Church, Hoboken, v. Council of Hoboken*, 33 N. J. L. 13, held that when the owner of lands procures them to be laid off in blocks, streets and squares and has made a map on which are delineated such streets and squares which he files

among the public records of the County, and by reference to which he makes sales of lots, the streets and squares as laid down on such map become thereby dedicated to public use.

In 4 Thompson on Real Property, page 298, section 3197, it is said, that in case land is laid out in blocks and lots as represented on a map or plat and lots are sold bounded upon the projected streets, the deed passes the fee to the center of the street adjoining such land. The grantor in such case is regarded as dedicating the ways to use as streets or ways, so far as his grantees are concerned, and he is not allowed afterwards to say that they are not streets or ways. His deeds thus operate not only to create a street, but also, through the presumption arising from the fact that there is a street, to extend the grant to its center. And in support of this statement, numerous cases are cited, including several New Jersey authorities.

In the case of *Trustees of M. E. Church of Hoboken v. Council of Hoboken*, 33 Law, *supra*, it is said: "It may be stated, as a general rule, that where the owner of urban property, who has laid it off into lots, with streets, avenues, and alleys intersecting the same, sells his lots with reference to a plat in which the same is so laid off, or where, there being a city map on which this land is so laid off, he adopts such maps by a reference thereto, his acts will amount to a dedication of the designated streets, avenues and alleys to the public. *Angel on Highways*, section 149."

In 18 C. J., section 43, page 58, it is said: "Where the owner of real property makes a plat of it and divides the land into lots and blocks, intersected by streets and alleys, and sells any of the lots with reference to such plan, or where

he sells with reference to the map of a town or city, in which his land is so laid off, he thereby dedicates the streets and alleys to the use of the public. * * *” On page 60 we read: “*It is not essential that the plat should have been made by the owner of the land; it is sufficient that he recognizes and approves a plat by another, making sales with reference thereto.*”

In the case of *Martinez v. Dallas*, 109 S. W. (Texas) 287, 113 S. W. 1167, we find the following language: Where the owner of land makes a plat thereof as an addition to a city and records it, and then executes deeds of lots therein described as being in such addition, there is a dedication of a strip in the addition, clearly indicated by the map as intended as a street or an open way reserved for the public, whether or not the purchasers buy with special view to that particular strip.

See also the case of *Hall et al. v. Breyfogle*, 70 N. E. (Ind.) 883, where it is said that *the acts of proprietors in recognizing an unauthorized and invalid plat recorded on the proper public record and selling lots or blocks with reference thereto and as marked thereon is an adoption of such plat so far as to constitute a dedication to the public of the streets and alleys indicated thereon, which is effectual as to lots purchasers.*

The Vice-Chancellor in his decision in this case completely misconceived the law when he decided that inasmuch as he believed the filing of the Morgan and Van Reypen map was invalid, that therefore all references thereto by subsequent grantors in the chain of title involved in this suit were inefficacious to ratify the original invalid act of Morgan, the trustee. The law is perfectly clear that the question of the validity or invalidity of the original filing of a map or plat is

inconsequential, since the dedication and estoppel which arise from the conveyance of land with reference to such a map or plat derives its vitality and validity from the act of the party referring thereto and adopting it as his own, rather than from any original validity or vitality which it might have contained. This is clear from the cases hereinbefore cited, and notably that of *Hall et al. v. Breyfogle*. It is also found in 18 C. J., section 45, page 60, hereinbefore quoted.

Indeed, it is everyday's practice and was followed in the instant case, to refer to a city map or plat, and to thereby adopt the same by making conveyances with respect thereto. This and practically all the other questions involved in the present controversy were decided in the masterly opinion of Mr. Justice Parker, speaking for this Court, in the case of *Camden v. McAndrews*, 85 N. J. L. 261.

Another case which is a classic in the law relating to dedication as involved in the case now *sub judice* is *Hoboken Land & Improvement Co. v. Mayor, etc. of Hoboken*, 36 N. J. Law 540. This latter case has a direct bearing upon certain of the features of the case now under consideration, such as the action of certain officers and engineers of the city, which, it is claimed, indicated an abandonment by the city of these streets. Justice Depue in this case said: "The local corporate authorities have no power in the absence of legislative authority to release the public right in a dedicated street. Lapse of time, however long the public right in a street is suspended, though coupled with an user by the owner, which would otherwise be adverse, will not make title by prescription against the public. The legislature alone has the power to release the dedicated lands and discharge the public servitude."

Another case bearing directly upon these points and which disposes adversely to complainant-appellee of most of the issues raised in the present case, is that of *Long Branch v. Toovey*, 140 Atl. 415. In that case, which is the last authoritative expression of the Court of Errors and Appeals upon the pivotal questions in the present case, the Court held that, "Where owners of lands procured them to be laid off in streets and lots, had a map made on which streets and lots were dedicated, and filed it among the public records of the county, subsequently making lot sales in reference thereto, *held* that streets thereby became dedicated to the public." "Dedication of streets to public became irrevocable the instant of dedication where the concession was not expressly rejected by the lawfully constituted authorities, *so that city's acceptance of taxes thereon and other acts allegedly inconsistent with public's claim were immaterial on question of public's rights therein.*" "The exercise of the public right of actual possession and dominion over properties dedicated to the public may be suspended and lie dormant until such time as, in the judgment of proper legal authority, the public exigencies require their possession and use." And it was further held that "Failure of city officials to use and keep in repair streets dedicated to the public *held* not to result in estoppel *in pais* to bar the efforts of the lawfully authorized body of the municipality, intrusted with the maintenance of the public right, to bring its action in ejectment against persons claiming private right thereto."

This case is of paramount importance in the consideration of the questions involved in the case pending, because in the reported case it appears by the statement of facts therein, "It was further insisted that the present demand of the city is inconsistent with the acts of its officers in accepting taxes assessed upon the *locus in quo*, and the act of its engineer in giving lines to adjacent owners of property for the laying of curbs on an intersecting street, which acts are inconsistent with its present claim of ownership and possession, under the dedication. It was further contended that the *locus in quo* was allowed by the city to go into disuse and to become overgrown with wild verdure, to such an extent as to indicate an abandonment of any public concession created by the dedication, which conditions, it is argued, presented a factual question as to acceptance, by the city, to be determined by a jury."

But the Court of Errors and Appeals in a unanimous decision disposed of these questions by saying—

"The legal solution of the question thus mooted is not *res nova* in this jurisdiction, since by repeated adjudications in this court and the Supreme Court the law has been established contrary to the contentions of the defendant."

The Court then goes on to lay down the rules as hereinbefore cited, and concluded that the dedication was conclusive and the contention of the defendants against the claim of the City of Long Branch baseless. It said, in part—

"In the light of this status it is not conceivable upon any adequate legal conception of state territorial sovereignty, how, as contended, the unauthorized perfunctory or haphazard acts of administrative officials, occupied in an entirely different sphere of public

duty and in nowise charged by law with the responsibilities and conservation of the public domain, can be construed as a concession against the public interest, so as to result in an estoppel *in pais* to bar the efforts of the lawfully authorized body of the municipality intrusted with the maintenance of the public right. *Seabright v. Central R. R. Co.*, 73 N. J. L. 631, 64 A. 131."

Referring again to the statement that "It is not essential that the plat should have been made by the owner of the land; it is sufficient that he recognizes and approves a plat made by another making sales with reference thereto," see also *Hope v. Shiver*, 77 Ark. 177, 90 S. W. 1003; *Hall v. Breyfogle*, 70 N. E. 883. This rule is adhered to unswervingly by the courts even when the plat is unauthorized. And the courts go so far as to hold it is not essential the plat should have been filed. *Rudolph v. Birmingham*, 65 S. 1006; *O'Donnell v. Porter Co.*, 86 Atl. 281. Nor is it necessary that it should appear on the maps of the municipality. *Garvey v. Harbison-Walker Co.*, 62 Atl. 778. We call especial attention to the case of *Vanatta v. Jones*, 42 N. J. L. 561.

We wish also to call the Court's particular attention to the fact that after a dedication has been completed by the sale of property with reference to a map which has been filed, any attempted restriction by the deeds made by the grantee of the deed in which the reference to the filed map is made, is abortive. *East Birmingham Realty Co. v. Birmingham*, 49 So. 448.

In *Gillman v. Bloomfield*, 49 Vroom 69, a dedication is held to be effected even though a deviation from the line of the road as laid out exists. *Smith v. The State*, 3 Zab. 712; *Kiernan v. Jersey City*, 11 Vroom 483; *O'Brien v. King*, 20

Vroom 79; *N. Y. & L. B. R. R. Co. v. South Amboy*, 28 Vroom 252-258. By bounding the land conveyed on the street a dedication is wrought.

In the case of *Dodge v. Pennsylvania R. R. Co.*, 43 N. J. Eq. 354, it is said that the predecessors of the complainant laid out their unimproved lands, some of which were on high ground and others of which were under the tide waters of the Hudson River. The Court there held that streets, even though laid out on a map for property which was then under water, were nevertheless dedicated to the public use.

The Supreme Court in *Eddy v. Inhabitants of Elizabeth*, 6 Misc. 263 at page 266 states—

“It has been settled by many cases in the courts of this State that the making of deeds by land owners recognizing the existence of the street is conclusive evidence against them or those who claim under them of the dedication of the street to the public use.”

In the instant case it is to be remembered that the owners of the premises in question up until the time that the complainant obtained title sold with reference either to the Morgan and Van Reypen map or to the map of the 9th, 10th and 11th wards of Jersey City (noted *supra*), on both of which maps Van Keuren avenue is delineated as a street. There can certainly be no question but that Van Keuren avenue was dedicated to the public use long before the complainant obtained title to the property, and that no act of the complainant after it accepted its deeds referring to said maps and Van Keuren avenue could set aside this dedication.

In the case of *Jersey City v. Morris Canal Co.*, 1 Beasley 553, it was said in the opinion of the Court of Errors and Appeals: “There is a large class of cases where the acts of dedication

by the owner of the fee are of such a character as to preclude the owner from retracting the dedication, even before any act of acceptance on the part of the public. * * * Whenever the public, by an express municipal act, accepts the dedication, the public duty of putting the land to the use to which it was dedicated arises, but the acts of dedication may be so unequivocal as to be decisive before that time arrives against all right of the owner of the fee to withdraw. He may be bound, although the public may yet be free. * * * As the act of dedication does not of itself throw upon the corporate body the duty of repair, so the simple non-assumption by the corporate body of the duty of repair does not of necessity annul the dedication."

And with reference to the attempt of complainant to question the dedication, which will be more fully explained later, it is not a proper party to raise the question; it is neither one of those who made the deed of trust, nor one of those who made the deed of request, nor yet the *cestui que trust*, but is a total stranger. The dedication of Van Keuren avenue by the filing of a map and acceptance thereof by the then owners cannot be questioned by the complainant-appellee.

Power of the trustee to dedicate.

As to the power of Stephen Morgan as trustee, to file his map and dedicate certain parts of the premises covered by the same to the public use as streets and highways, there is no doubt that a trustee and even a mortgagee can make such disposition of property to which he has the title as will not be inconsistent with the purposes of the trust, especially where his act in reality

improves the property and makes it more valuable to the *cestuis que trust*.

The case of *Earle v. The Mayor and Common Council of New Brunswick*, 38 N. J. L. 47, is the leading case on this point in New Jersey and it was there held as follows:

“Executors having a general power to sell, laid out a tract of the testator’s land into building lots, fronting on proposed streets, and made and filed a map on which such streets were delineated. The deed from the executors to the plaintiff’s grantor for several of these lots, after a description by boundaries on such streets, contained also a grant of the land forming part of Townsend street, as marked on the map, ‘subject to the use at all times, of the same by the owners of lots on said map, and by the public generally, as and for the said Townsend street, as laid down on and according to the aforesaid map’—

“*Held*, that the lands conveyed within the lines of Townsend street were, by such description, dedicated to public use for a street, and that the public authorities could not be sued as trespassers for an entry on the lands to open the street.”

The opinion in the case was that of Chief Justice Beasley and Justices Depue and Knapp, and was pronounced by Justice Depue, who said, among other things:

“It is conceded that the filing of the map, and the making of conveyances by reference thereto, are such acts as would effect a dedication of this street. The contention is as to the power of the executors to make a dedication.

“It is insisted, that the right to dedicate lands to public uses belongs only to the owner of the fee.

"There is a class of cases which hold that a dedication made by tenant for years, of the owner of a particular estate, will not bind the reversioner or remainderman, or prevent them from repudiating the dedication, when they come into possession of their estates.

"The ground on which these cases rest is, that in order to give the public a right, the dedication must be made by the consent of the owner whose estate is affected, and that the owner of the preceding limited estate has no power to create easements, which shall bind the estate of the reversioner or remainderman, who does not acquire his title under or through him. His consent being the consent of one having a limited right, can continue only for the limited period. *Barker v. Richardson*, 4 B. & Ald. 579; *Wood v. Veal*, 5 *Ib.* 454; *Baxter v. Taylor*, 4 B. & Ad. 72.

"Decisions of this class are inapplicable to the present case. Executors having a power to sell by the will of the owner in fee represent their testator, and may convey his whole estate, and the purchaser, by accepting the deed, consents to the limitations and qualifications therein contained.

"There seems to be but little doubt as to the power of executors in selling lands, under a general power in the will, to divide it into lots, and lay out streets through it, and thus create easements of rights of way in the several purchasers, if the estate will be benefited by such a disposition of the property. Commissioners, in making partition, have been held to have the power to create easements, such as rights of way over a part of the joint property, to be enjoyed in common by all the owners after the partition. *Clark v. Parker*, 106 Mass. 554. And it is familiar law, that in assigning dower a right of passage to the premises assigned, over other lands of the husband, may be created, to continue until the estate in dower shall cease. 2 *Scribner on Dower*, 546; *Hoffman v. Sav-*

age, 15 Mass. 130. In *Rosenkrans v. Snover*, 4 C. E. Green, 420, Chancellor Zabriskie held that commissioners to make partition when directed to sell, had the power to sell one part with an easement in another part annexed to it, and to sell the servient part subject to such easement, and that such easement would be valid as between the purchasers at the sale; and easements created by administrators selling under an order of the court have been sustained in law. *Symmes v. Drew*, XXI Pick. 278; *Dyer v. Sanford*, IX Metc. 395.

"Commissioners to make partition or assign dower have only a naked power of no greater scope than executors selling under a power in a will. If they have the right to create easements in parts of the property coming under their authority where it may be for the advantage of those whose interests are committed to their charge, no reason founded on principle can be suggested why executors in the performance of their duties, under a power of sale, may not exercise the like discretion.

"But whatever the right of the heirs or beneficiaries under the will of the deceased might have been to have enjoined the executors from converting a part of the estate into streets, the defendant is estopped by his deed from repudiating their action or denying their power.

"The clause in the deed of conveyance made by the executors to Kilbourn, which declares that the strip forming part of Townsend street shall be subject to the use by the owners of other lots marked on said map, and by the public generally, 'as and for the said Townsend street, as laid down on and according to the aforesaid map,' creates an easement therein for the benefit of the grantors and the owners of other lots on the map, of a right of way to be used by the other owners, and by the public generally as a street."

It is, moreover, definitely settled by the decision of the Court of Errors and Appeals of New Jersey in the case of *Prudden v. Lindsley*, 29 N. J. E. 65, that "trustees who are the legal owners of land in fee may dedicate the land to public uses not inconsistent with the trust."

The Vice-Chancellor in his opinion seemed to feel that the condition and situation of the lands covered by the Morgan and Van Reyphen map were such that the establishment of lots and streets by means of the map would be of no value to the beneficiaries of the trust, and therefore not within the implied power of Morgan. In the opinion, pages 209-210 of the State of Case, the Vice-Chancellor says: "It requires but slight knowledge of real estate marketing to realize that it is not only highly desirable, but necessary, to provide public, perpetual ways in order to sell off small parcels of land to a large number of purchasers. But in Morgan's case he was dealing with land that was little better than swamp, on an extreme outlying section of what is now Jersey City, which at that time was so desolate and isolated that, according to the witness O'Brien, it was used years later for trapping wild animals. Certainly the establishing of a system of ordinary city streets in lands such as these was of no value to the beneficiaries of the trust, and therefore, was not within the implied power of Morgan, as it was in the executors in the New Brunswick case, or the school trustees in *Prudden v. Lindsley* (*supra*)."

(*Defendants-appellants' Note*:—As to O'Brien's full testimony, please see State of the Case, p. 135. It is most enlightening.)

We are compelled to take exception to the Vice-Chancellor's view on the precise question raised in the above quotation. The laying out of

streets and lots and the filing of the map were of an especial benefit to the beneficiaries of the trust, if it would increase the value of their lands, and this, of course, they were most interested in, as they desired to obtain as much for them as possible, the creditor beneficiaries, so that the obligations owed them might be fully paid, the debtor beneficiaries who were Batty and Van Keuren, so that there might be something left of their property or its proceeds to be returned to them. It cannot be doubted that the property laid out in streets and lots with a map thereof filed in the County Clerk's Office would be more valuable than so much vacant, unimproved and unmapped land. This being so, the rule enunciated by the Vice-Chancellor, that if the act of the trustee would be of benefit to the beneficiaries, he would be possessed of an implied power to have the map made and to file the same, is here applicable and is authority for saying that the trustee made a valid and unimpeachable dedication. (It is to be noted that that there can be no question as to the legal capacity of Van Reypen, the co-maker and filer of the map, to make such a map.)

In the case of *In re Philadelphia Parkway*, 95 Atl. 429, at page 430, the Court said, after citing a number of cases: "These cases do hold that the mere plotting of a street upon the city plan, without anything more, does not constitute a taking of land in the constitutional sense *so as to give an abutting owner the right to have damages assessed*; the theory being that the marking of a new street upon the city plan is nothing more than the expression of an intention to take the land when the occasion arises for opening the projected street as a public highway. The doctrine is founded upon equitable considerations

and a wise public policy. It is in aid of the development, growth and expansion of municipalities. *As applied to unimproved land in urban districts, it is beneficial to the owners of real estate, and in most instances greatly appreciates the value of the land remaining after the street is opened.* When the streets are plotted, land-owners, prospective purchasers, municipal authorities, and all interested persons have a definite chart to guide their future actions. Lots can be laid out and made available for sale; buildings can be erected so as to conform to the lines of projected streets; and in this way the expansion of the city and growth of its population can be facilitated. These considerations were given due weight when the rule as to plotted, but not opened, streets *was originally adopted.* As applied to the plotting of streets through unimproved land, or as to projected streets in sparsely settled urban communities, the principle is sound, and there is no disposition on the part of this court to make a departure from the settled rule of our cases."

There was certainly nothing inconsistent in the trust imposed upon Stephen Morgan with his having prepared and filing a map of the property entrusted to his care. Undoubtedly he was directed to make such a map for the value of the property as described in the fee simple deed to him would, of course, be greatly enhanced to the benefit of the creditors who were relying on this property as a means of securing to themselves some part or all of the money owed them and as to the debtors, of possibly receiving back some part of the security given to insure the payment of their obligations.

As to whether or not the act of Stephen Morgan was satisfactory to and approved by the parties having the control of this property and by all parties who were to benefit by this trust, we have but to refer to the facts in the case to see that this was so. The property was conveyed to Stephen Morgan, and on a written request signed by William H. Bumsted, William Keeney, Charles Schultz and William Batty, (the latter, one of the original owners of the property), or any three of them or the survivors, the trustee was to convey in fee simple, by proper deeds for that purpose, either or both of the tracts described in the deed to him, as might be designated in said request, and to apply the net proceeds in manner in said deed of trust indicated. This deed of trust thereby created the four parties or the portions of them therein provided for either the general agents of the owners of the land or, more likely, endowed them with the power to direct the time, manner, price and other necessary details of transfer which they were thereby authorized to make.

These four men, either as the owner's agents, as owners, or persons endowed with the power to direct the disposition of this property, proceeded to ratify, confirm, adopt and approve the act of the trustee by directing him to make conveyances with the said map of Stephen Morgan and J. V. H. Van Reypen and the streets delineated thereon as the basis of the description to be used in said deeds. In the deed to Charles Schultz, one of these four men, which is Exhibit D. 12, and also is found described in the exception to Exhibit C. 3, the map is the basis of the description, and Ninth street as delineated thereon is specifically referred to; and in the deed from Stephen Morgan to Bumsted, Keeney and

Van Keuren, the first two being two of those upon whose request Morgan was to make a conveyance, and the latter being one of the original owners of the property, which deed is Exhibit C. 3, State of the Case, page 227, the description used in the original conveyance to Stephen Morgan is used, and there is excepted out of that property the parcel conveyed to Charles Schultz as described above, which recites the map in question. Thereafter all deeds dealing with this property made by the grantees of Stephen Morgan, that is, by Charles Schultz, William Van Keuren, William Bumsted and William Keeney, either refer directly to the map in the description therein contained or describe the larger parcel and then except out by reference to the map the premises already conveyed by direct reference to said map; and whether the reference is directly to the map or recited in the exception, the map is certainly the basis of the making the description used in the deed as exceptions directly affect the premises conveyed.

Some of the deeds executed by Bumsted, Keeney and Van Keuren to whom Stephen Morgan, upon request, conveyed part of the premises deeded to him in trust, are set up in the State of the Case. Each one of these refers either to the Morgan and Van Reypen map, to Van Keuren avenue or to both, indicating approval and ratification of the act of Stephen Morgan in making and filing the Morgan and Van Reypen map.

Exhibit D. 8, State of the Case, page 282, is a deed from William Keeney and wife, William H. Bumsted and wife and William Van Keuren and wife to John R. Halladay and conveys:

“All those twenty certain lots, pieces or parcels of land, situate, lying and being in Jersey City (that part formerly known as Hudson City) County of Hudson and State of New Jersey, which on a map now on file in the office of the Clerk of Hudson County entitled ‘Map of property belonging to Stephen Morgan and J. V. H. Van Reyphen in the 10th ward of Jersey City, 1870,’ are designated as lots numbered 57 to 76 inclusive, in Block marked A, bounded and described as follows:

“Beginning at a point in the northwesterly line of a certain street or right of way granted to C. C. Van Reyphen by the Erie Railway Co. by deed heretofore recorded in Hudson County Clerk’s Office, where said line is intersected by the northeasterly line of Van Keuren Avenue; thence running northwesterly along the line of Van Keuren Avenue five hundred and ten (510) feet more or less to the line of lot 56; thence northeasterly along the line of lot 56 at right angles with the line of Van Keuren Avenue ninety-four (94) feet seven (7) inches more or less to lands of O’Brien; thence along said lands on a course south forty-nine (49) degrees fourteen (14) minutes east five hundred (500) feet four (4) inches more or less to the aforesaid right of way; thence along the said right of way in the southerly direction eighty-nine (89) feet ten (10) inches more or less to the point or place of beginning.”

Exhibit D. 9, State of the Case, p. 283, is a deed from William Van Keuren and wife, William Keeney and wife and William H. Bumsted and wife to The New Jersey Midland Railway Company and conveys:

"All that certain piece or parcel of land and premises situate, lying and being in the City of Jersey City, County of Hudson and State of New Jersey, described as follows: BEGINNING at a point on the westerly boundary of the right of way of the Paterson and Hudson Railroad where the same is intersected by the center line of Van Keuren Avenue and from thence running westerly along the center line of Van Keuren Avenue fifty (50) feet two (2) inches thence southerly and parallel with the westerly line of said right of way three hundred forty-one (341) feet four (4) inches to line of lands of J. V. H. Van Reyphen; thence easterly along said Van Reyphen line fourteen (14) feet eleven (11) inches to the center line of Catherine Street; thence easterly along the center line of Catherine Street thirty-five (35) feet seven (7) inches to the westerly line of said right of way; thence north thirty-five (35) degrees thirty-eight (38) minutes east along the westerly side of the right of way three hundred thirty-eight (338) feet eight (8) inches to place of beginning. Said strip of land being fifty (50) feet wide at right angles from the side line thereof and containing six and seven hundred nine one thousandths ($6\frac{709}{1000}$) lots of two-thousand five hundred (2500) square feet each."

Exhibit D. 10, State of the Case, p. 284, is a deed from the same parties to John R. Halladay and conveys:

"All those two certain lots, pieces or parcels of land situate, lying and being in Jersey City (that part formerly known as Hudson City), in the County of Hudson and State of New Jersey, which on a map now on file in the office of the Clerk of Hudson County entitled 'Map of property belonging to Stephen Morgan and J. V. H. Van Reyphen in the 10th Ward of Jersey City,

January 1870' are designated as lots numbered 55 and 56 in Block marked A. Said lots are each twenty-five (25) feet in width about ninety-four (94) feet and ten (10) inches in depth and front on Van Keuren Avenue as laid down upon the aforesaid map."

Exhibit D. 11, State of the Case, p. 285 is a deed from the same parties to The New Jersey Midland Railway Company of New Jersey and conveys:

"All those certain lots, pieces or parcels of land situate, lying and being in the City of Jersey City, County of Hudson and State of New Jersey, and which on a map entitled 'Map of property belonging to Stephen Morgan and J. V. H. Van Reyphen in the 10th Ward of Jersey City, January 1870' in Block I and is described as follows: BEGINNING at a point on the southerly side of Van Keuren Avenue and in the westerly side of the right of way of the party of the second part and from thence running (1) westerly and along the southerly side of Van Keuren Avenue one hundred eleven (111) feet four (4) inches to the easterly side of Fourth Street; thence (2) along the easterly side of Fourth Street three hundred (300) feet four (4) inches to the division line of land of the party of the second part; thence (3) southeasterly along said division line about twenty-five (25) feet to the northerly line of Catherine Street; thence (4) easterly along the northerly line of Catherine Street sixty-six (66) feet three (3) inches to the westerly side of the right of way of the said party of the second part; thence (5) northerly and along said right of way three hundred twelve (312) feet three (3) inches to the place of beginning. Being all of the remainder of Block I not heretofore conveyed to the said Railway Company as shown on said map."

This brings us to the next point which we desire to call to the attention of the Court.

POINT 2.

The complainant-appellee is estopped to maintain this suit or to have a decree by the deeds in its own chain of title.

The continued reference to and conveyances by complainant-appellee's predecessors in title to the Morgan and Van Reypen map definitely infers a dedication which the complainant-appellee is estopped from denying. The deed to Stephen Morgan, found in the State of the Case as Exhibit C. 1, conveyed the premises to him in trust, to re-convey upon request of the four parties enumerated above or any three of them. These parties, therefore, under the law were the only persons who could object to the dedication.

It has long been settled that the owner of real estate upon which there is a mortgage or a trust agreement can dedicate his equity subject only to the mortgage and to the objections of parties who could control him in the execution of his trust.

Hague v. West Hoboken, 23 N. J. E. 354;

Shane v. Moberly, 79 Mo. 41;

People ex rel. Weber v. Hertle, 96 Ill. 384;

Kiernan v. Jersey City, 80 N. J. L. 273,

and other cases mentioned in 31 L. R. A., N. S., 1023.

To the same effect we find the case of *State, Central R. R., prosecutor v. Bayonne*, 52 N. J. L. 503. It was held that a conveyance made while a railroad company was in the hands of a re-

ceiver (a corporation joining in the grant under a relaxation of the injunction in the receivership proceedings) will not prevent dedication being inferred.

In the first place then, the complainant is estopped from maintaining its suit because it is not a proper party and because it accepted its property subject to the easement in favor of the public to use the same (another ground of estoppel will appear later). The party raising the question of the dedication and use of Van Keuren avenue in the instant case is not either one of those who made the deed of trust nor one of those who made the deed of request nor yet the *cestui que trust*. It is a total stranger for the purpose of questioning the dedication established by the filing of the map, and ratified and confirmed by all the interested parties.

In the case of *Earle v. New Brunswick, supra*, it was attempted to question the dedication of certain streets dedicated by executors of the estate which owned the property on which the streets were located. The Court said: "But whatever the right of the heirs or beneficiaries under the will of the deceased might have been to have enjoined the executors from converting a part of the estate into streets, the defendant (City of New Brunswick and Mitchell, as Street Commissioner) is estopped by his deed from repudiating their action or denying their power."

It was in that case further held that the grantee of a deed *inter partes* is bound by the conditions, covenants, and stipulations therein on his part, although the deed is only signed by the grantor, and if those conditions be such as are legally sufficient to create an easement in the premises granted, the grantee takes the land subject to that servitude.

In other words, not only is the complainant a stranger and not one of the properly qualified parties to raise the question of dedication, but in addition it is bound by the deeds which it has accepted reciting the Morgan and Van Reyepen map and the map of the 9th, 10th, 11th and 12th wards of Jersey City, and has taken its land subject to the servitude of the rights of the public in Van Keuren avenue, and has thereby also become estopped from raising a question as to the dedication of that street.

In the second place, complainant is estopped from maintaining this suit and having a decree in its favor because it has not shown the requisite title and possession to entitle it to maintain the suit.

Under the act for quieting titles to real estate it is unnecessary for the complainant to set forth the particular character of the defendant's claim in the bill of complaint. If, however, in such a suit the defendant affirmatively pleads a legal title or shows some proper reason why the complainant should not be entitled to quiet the title to the lands involved in the suit, the complainant then files a pleading joining issue with the defendant and the burden is then placed on complainant of proving its title to the property in question, and the invalidity of the claim of defendant or defendants.

Fittichauer v. Metropolitan Fire Proofing Co., 70 N. J. E. 429.

The burden then being placed upon the complainant to prove its title, the first question that is asked in the instant case is, "What title or interest has the complainant in the property in the bed of Van Keuren avenue which will entitle it to maintain this suit and to question

the dedication of said streets to the public use?" On this point the defendants respectfully maintain that complainant possesses no title which will entitle it to maintain this suit, or if it does possess an interest in the lands found in the bed of Van Keuren avenue, such title or interest is subject to the public easement or right to use Van Keuren avenue. As has been pointed out previously, all the deeds to the complainant refer either to the Morgan and Van Reyden map or to the map of the 9th, 10th and 11th wards of Jersey City, or to Van Keuren avenue or both, and it is here pointed out that when the complainant took the deeds to this property it was at that time subject to the public use or subject to be taken for the public use at any time. The complainant is then estopped from maintaining this action in that it has not the requisite interest in the property in the bed of Van Keuren avenue. It never received the pure, legal and unencumbered title to said property and consequently has not the interest needed by a complainant in a bill to quiet title.

POINT 3.

The public has acquired the right to use the streets mentioned in the bill of complaint.

Testimony was offered at the trial by the City of Jersey City and Public Service Electric and Gas Company which demonstrated beyond a doubt that the public by the use of Van Keuren avenue for a period of over twenty years, adversely to the interest of the complainant, had acquired a right to use said Van Keuren avenue.

The testimony of these witnesses appears particularly in the State of the Case, beginning on page 88 and continuing to page 141. Particular

reference is made to the following: Witnesses for the Public Service Electric and Gas Company testified that Van Keuren avenue had been used by these men stationed at Marion Station for many years as a means of getting from the Marion Station to West Side avenue and other parts of Jersey City; that most of the material used in the construction of Marion Station had been brought in over Van Keuren avenue; that continually Van Keuren avenue was used by City fire engines, United States mail men and City police officers, whose patrol extended daily from West Side avenue through Van Keuren avenue to Duffield avenue, and along Duffield avenue to Newark avenue; that on many occasions passenger automobiles bearing New Jersey State licenses and licenses of other States used Van Keuren avenue without being stopped or molested by the complainant, especially when other streets in the vicinity, such as St. Paul avenue, were impassable because of rain.

Testimony was offered at the trial by Bernard Whalen, an employee of Jersey City for over thirty-seven years, that during the entire period of thirty-seven years down to the present date, Van Keuren avenue has been open to the public use from West Side avenue to Duffield avenue.

In addition to this testimony Mr. Mauzy, in charge of the Water Department of the City of Jersey City, stated that the premises in question contained a number of City water mains used for the purpose of supplying adjacent property owners, which were installed about the year 1888 by the City; that there are also connected with this water supply on the premises in question six fire hydrants; that the water mains and fire hydrants have been ever since their installation maintained and kept in repair by Jersey

City; and that there has never been any objection to the City's employees making such repairs or going on Van Keuren avenue for that purpose. This also was testified to by the witness Whalen (noted *supra*), who has been making such repairs for over thirty years.

The witness O'Brien testified that he was born in 1877; that he lived on or near the premises in question; and that he recalls that when he was seven or eight years of age Van Keuren avenue from West Side avenue to the Hackensack River was a street with dirt pavement, which was open to the public use and that this use has been continuous.

There was testimony offered that on Van Keuren avenue automobiles may comfortably pass over the same; that there is room for cars to pass two abreast, and according to the testimony of the defendant's witness Brown at some points Van Keuren avenue is forty feet wide, all north of the railroad siding of complainant, which is inside of Van Keuren avenue.

The pictures, Exhibits D. 1 to D. 6, show the actual physical conditions. It is a rather significant fact that Van Keuren avenue as actually used follows the line of Van Keuren avenue as laid out on the Morgan and Van Reypen map and the map of the 10th, 11th and 12th Wards of Jersey City (described *supra*).

It is undisputed law that an easement may be acquired by the public by continuous use for a period of twenty years, the same as such easement may be acquired by a private individual. The public user of the streets on the premises in question delineated on the maps above referred to and particularly Van Keuren avenue for its full length has been definitely proved.

POINT 4.

Public Service Electric and Gas Company has received and acquired the right to use **Van Keuren Avenue**.

As pointed out in the analyses of the deeds as set forth in the early part of this brief, all the owners of the premises on which is found Van Keuren avenue conveyed with reference to either the Morgan and Van Reypen map or the map of the 10th, 11th and 12th Wards of Jersey City, and in numerous of these deeds there is particular reference to Van Keuren avenue, and descriptions were made to refer to and run along that street. These deeds were all in the chain of title of Public Service Electric and Gas Company. It, of course, examined these deeds to see what its rights were, and believed and continues to believe that Van Keuren avenue, though the title to the same may be in the complainant, is subject to the servitude of an easement in favor of said Public Service Electric and Gas Company, even though the right of the public in general to use the same might be in doubt. The complainant in its deeds to Public Service Electric and Gas Company, although it did not mention Van Keuren avenue, in no way attempted to restrict Public Service Electric and Gas Company and the public in going to its plant by using Van Keuren avenue.

As will appear by the supplement to Exhibit D. 16 as found in the supplement to the State of the Case, Public Service Electric and Gas Company, when it desired to build its Marion Station and found that the plant according to the plans drawn would have to be built in the bed of Van Keuren avenue, petitioned the City of Jersey City for the vacation of said avenue, offering at the

same time to dedicate to the public use a substitute for Van Keuren avenue around its station. The City of Jersey City acted upon this petition, vacated that part of Van Keuren avenue lying in the property of Public Service Electric and Gas Company which then dedicated to the public use certain of its property to give to the public a through thoroughfare from West Side avenue to Duffield avenue. By its act of petitioning the City for the vacation of Van Keuren avenue it definitely indicated what its attitude had been as regards Van Keuren avenue and that it regarded it as a public thoroughfare.

Public Service Electric and Gas Company, having relied upon the references in its deeds to the maps noted above and the streets delineated thereupon, and having accepted its property, relying upon the added utility and favorable situation of the same and having paid a greater consideration because of this outlet from its property, cannot now be deprived of this vested right appurtenant to its property. The closing of Van Keuren avenue to its use would deprive it of its property without due process of law in violation of the Constitutions of the State of New Jersey and of the United States.

In the brief and in the oral argument before the Vice-Chancellor, complainant contended that as late as May 19, 1926, Public Service Electric and Gas Company recognized that Van Keuren avenue was the private property of complainant, when it paid \$5,000 to complainant for a right of way for a conduit in Van Keuren avenue. This right of way is Exhibit C. 29, State of Case, p. 277. No attention, however, was paid to this claim by the Vice-Chancellor in his opinion.

The basis of the claim, as stated by counsel for complainant, was that in the agreement for the easement it was set forth that the party of the second part, Public Service Electric and Gas Company, had applied to the party of the first part, Dodge & Bliss Company, for a grant of a right through the property of the party of the first part, indicated on the attached blue print, through Van Keuren avenue; and that if Van Keuren avenue was a public street, all that was necessary for the conduit was to obtain municipal authority to lay it, just as gas and water pipes are installed where those commodities are supplied by private corporations. This argument is unsound for two conclusive reasons, at least.

First. If, as is contended by defendants, a dedication of Van Keuren avenue has been made, that dedication is not complete, so as to bind the public, unless it is accepted and until its acceptance by the public. In *Darling v. Jersey City*, 73 N. J. Eq. 318, it was held that, "While a tender of a dedication of streets and alleys on platted land cannot be revoked, but may be accepted by the municipality at any time, yet, until acceptance, the fee title and control of the property remain in the dedicator."

In *Pease v. Paterson, etc. Traction Co.*, 69 N. J. L. 166, it was held that "A street or avenue laid out by an owner upon his land and by him dedicated to the public use, in the absence of its acceptance by the public, is not a street or highway within the meaning of the Traction Act of 1893, and the supplement thereto. P. L., p. 302; Gen. Stat., p. 3235." "The owner of land in a street thus dedicated, but not accepted, is an owner of land within the meaning of section 14 of the Traction Act regulating the proceedings

to condemn lands." In that case plaintiff, by certiorari, sought to set aside the appointment of commissioners to condemn that portion of her lands contained within the filed location of defendant's railway, at Ridgewood, in Bergen County. The court said: "The allegation is that the the avenues in question are public highways, in the control of the board of trustees of the village, and, the municipality being no party to the proceedings, they must fail. * * * The case also shows that no formal dedication of the streets was ever made to the public authorities, and that there has been no acceptance of them as such by formal resolution or otherwise. Nor have the public authorities assumed any charge, care or responsibility for either of said streets. * * * The streets in question are not highways, in the sense used in the Traction Act, requiring consents from the municipality and the abutting owners before the company can lay down its tracks. And when they are streets by dedication only, but without such acceptance, the owner thereof *is the owner of land*, within the intent and meanings of the provisions of the Traction Act regulating condemnation proceedings. *DeGroot v. Jersey City*, 26 Vroom 120."

There is nothing inconsistent therefore in the position of Public Service Electric and Gas Company. If the City had not yet accepted the dedication of the property, it is perfectly clear that an effort on the part of Public Service Electric and Gas Co. to obtain from it the permission to lay its conduits underneath the surface of the road would have been unavailing; and even if such a right had been attempted to be granted by the City, it would have been of doubtful validity. But lastly, it is extremely unlikely, if an application had been made to the

City for such a right, that the City, in advance of an acceptance of the dedication by it, would have granted such a permission, which might well have been construed to have amounted to an acceptance of such dedication.

It is manifest in accordance with the principles laid down in the cases hereinbefore cited, that until acceptance, the fee title and control of the property remain in the dedicator, that he was properly described as the owner of the land, and that the same could accurately be called his property. It is furthermore clear that Public Service Electric and Gas Co., in the face of an unaccepted dedication and a desire on its part to install its conduit in the property claimed by the complainant beneath the surface of the street, would naturally, out of abundant caution and as an insurance against the future, have obtained an easement so to do from the supposed owner at that time.

Second. The second consideration is that if defendant Public Service Electric and Gas Co. is deemed to have a right of way over the surface of the street, as appurtenant to its property, as hereinbefore set forth, such a right of passage and repassage over the surface of said street would give it no right to put conduits for the transmission of electricity underneath the surface thereof. It was therefore perfectly consistent and necessary, in order to avoid future difficulty upon that point, for it to contract for a right to do the same with the person claiming to be the owner of the subsoil.

From whichever viewpoint, therefore, we look at the contention of complainant, no comfort for said complainant can be derived from the instrument C. 29, which purported to grant and convey

to Public Service Electric and Gas Company the right to construct, maintain and use said duct.

This brief is a joint brief filed by both appellants for the convenience of the court, the appellant, the Mayor and Aldermen of Jersey City contends that the public easement in Van Keuren avenue is paramount, and therefore, does not join in Point 4 of this brief as to the claim for private easement of the Public Service Electric and Gas Company.

* * * * *

It is therefore respectfully submitted that the Decree of the Court of Chancery should be reversed.

Respectfully submitted,

WILLIAM H. SPEER and
LELAND TALIAFERRO,
Solicitors for and of Counsel with
Public Service Electric and Gas Co.

THOMAS J. BROGAN,
Solicitor for The Mayor and Aldermen
of Jersey City.

CHARLES A. ROONEY,
Of Counsel,
Defendants-Appellants.

New Jersey Court of Errors and Appeals

DODGE & BLISS COMPANY, a corporation,

Complainant-Appellee,

vs.

THE MAYOR AND ALDERMEN OF
JERSEY CITY, a municipal corporation, and PUBLIC SERVICE
ELECTRIC AND GAS COMPANY,
a corporation,

Defendants-Appellants.

*On Bill to
Quiet Title.*

After reading the answering brief of the respondent in the above-entitled cause, it was felt that some confusion might result from the manner in which some of the questions involved in this case were presented by the respondent, and that the appellants could be of assistance to the court in clarifying these matters. This reply brief is therefore presented for the attention of the court. We will proceed at once and briefly to a discussion of the points involved.

A.

On page three of the answering brief of respondent, lines seven and eight, respondent states that the Vice-Chancellor decided that "the complainant was not estopped from denying a dedication" (of Van Keuren avenue). Neither the references to the State of the Case there made nor an examination of the entire opinion of the Vice-Chancellor discloses that the Vice-Chancellor either considered or passed upon this point.

B.

On page six, paragraph four, on page seven, top of page and on page fifteen, first paragraph, respondent has referred to acts of employees of the City of Jersey City, such as leaving Van Keuren avenue off of Fowler's map of 1894, and a statement in the office of the custodian of maps that Van Keuren avenue was vacated by foreclosure of mortgage. The respondent did this presumably in an effort to show that these employees of the City had eliminated Van Keuren avenue as a public street in that City and failed to recognize it as such.

In answer to this point it is sufficient to say that acts of city employees who are not duly authorized to so act, cannot bind the city or take away the rights of the public in strips of land which are, or may become, by acceptance, public streets.

"The exercise of the public right of actual possession and dominion over properties dedicated to the public may be suspended and lie dormant until such time as, in the judgment of proper legal authority, the public exigencies require their possession and use. * * * Failure of city officials to use and keep in repair streets dedicated to the public held not to result in estoppel *in pais* to bar the efforts of the lawfully authorized body of the municipality, intrusted with the maintenance of the public right, to bring its action in ejectment against persons claiming private right thereto * * * and the city's acceptance of taxes thereon and other acts allegedly inconsistent with public claim were immaterial on the question of the public rights therein."

"In the light of this status it is not conceivable upon any adequate legal conception of state territorial sovereignty, how as contended, the unauthorized perfunctory or haphazard acts of administrative officials, occupied in an entirely different sphere of public duty and in nowise charged by law with the responsibilities and conservation of the public domain, can be construed as a concession against the public interest, so as to result in an estoppel *in pais* to bar the efforts of the lawfully authorized body of the municipality intrusted with the maintenance of the public right. *Seabright v. Central R. R. Co.*, 73 N. J. L. 631; 64 A. 131."

Long Branch v. Toovey, 140 Atl. 215.

C.

On page seven, we call the court's attention to the first paragraph as an indication that there has been and may still be some doubt even in the mind of the respondent as to the status of Van Keuren avenue. We quote paragraph one.

"In August, 1922, the complainant filed a petition with the municipality praying that it surrender its rights, if any, in the strip of land described in the petition and called 'Van Keuren avenue,' but no action was taken thereon by the defendant (Exs. C. 24 and p. 200)."

D.

On page eight, respondent says:

"In the instant case Morgan had no power or capacity to convey to anyone except the nominees named by the persons mentioned in the trust deed," that an act of dedication would be inconsistent with the trust imposed upon Morgan

for it would be giving away property which was held for the creditors mentioned in the trust deed.

Defendant's counsel labors to meet the point made by the appellants on pages 19 to 31 of appellants' brief. We here reiterate that the persons named on whose request Morgan was to convey, were possessed of a power to direct conveyances and to approve or disapprove of any acts of Morgan and that not only did these persons make no objection to the filing of the map and dedication of Van Keuren avenue thereby but they and also the creditors, who were the only persons under the reasoning of respondent, who could object to the filing of the map, recognized, adopted, ratified and confirmed the act of Morgan in filing the map by accepting and permitting the giving and acceptance of deeds which referred to and were based on the Morgan and Van Reypen map and recited and preserved Van Keuren avenue as a street.

An act of dedication would not be inconsistent with the trust. It would not mean giving away property which was held for the creditors mentioned in the trust deed but would be an act entirely consistent with the trust as it would be an endeavor to improve the trust property and increase its value for the benefit of the creditors.

"Trustees who are the legal owners of land in fee may dedicate the land to public uses not inconsistent with the trust."

Pruden v. Lindsley, 29 N. J. E. 65.

E.

On pages 9, 11 and 16 and top of page 18 of its brief, respondent, arguing under Point I, "There was no dedication of Van Keuren avenue," and notwithstanding the fact that the learned Vice-Chancellor who decided the case *sub judice* did not rely thereon or refer thereto, has quoted the case of *Kiernan v. Jersey City*, 80 N. J. L. 273; 31 L. R. A. (N. S.) 1023, and that of *Hague v. West Hoboken*, 23 N. J. E. 354, and 18 C. J. 46, with the design of influencing the Court to believe that the foreclosure of the mortgage or mortgages mentioned rendered any attempted dedication void, and that the foreclosure of the deed of trust executed prior to the attempted dedication voids the dedication and the purchaser buys free from it.

The facts of this case are so clearly and conclusively against this claim, and the cases and authorities cited are so overwhelmingly opposed to it, that it is not strange that it was unnoticed by, although argued to, the Vice-Chancellor.

The language quoted from *Kiernan v. Jersey City*, *supra*, is to the effect that "Their (the mortgagors') acts of dedication unassented to by the mortgagees, created no more than an equity in the public to have the land opened for a highway, provided this did not interfere with the security of the mortgagees." Before dealing with this excerpt, we wish to point out that respondent on the trial before the Vice-Chancellor did not deem it necessary, or else deemed it unwise, to offer in evidence the record of the foreclosure suits, but contented itself with offering in evidence only the deeds made by the special master and the sheriff, respectively. Of course, it is trite law that the conveyance made by the court

officer must correspond with the decree made by the court ordering the sale, and these deeds, from which in this reply brief we shall quote fully, expressly recognize the existence of the Morgan and Van Reypen map and make exceptions of property bounding the same upon the streets laid down on said map, including Van Keuren avenue. It is thus clear that if, as is laid down in *Kiernan v. Jersey City, supra*, the acts of dedication, unassented to by the mortgagees, created no more than an equity in the public to have the land opened for a highway, provided this did not interfere with the security of the mortgagees, yet it did create an equity, which equity was in no way foreclosed or voided by the decree and sale thereunder of the property covered by the said mortgages, but on the contrary expressly recognized the same and excepted them from the operation of said decrees and deeds.

It is also to be borne in mind that even if the mortgagors' acts of dedication, when unassented to by the mortgagees, would have the effect mentioned, yet it is clear in the case now *sub judice* that the mortgagees, by accepting the decree and the sale thereunder and not objecting thereto, but apparently and in all likelihood expressly assenting thereto—as could in all likelihood be shown, had respondent at the trial introduced the record of the proceedings—must be taken to have assented thereto and to have recognized the Morgan and Van Reypen map and the recitals and exceptions which expressly recognized the existence of the map and the delineations thereon.

Not only this, but in the excerpt from *Kiernan v. Jersey City, supra*, it is also said that the act of dedication created no more than an equity in

the public to have the land opened for a highway, *provided this did not interfere with the security of the mortgagees*. In this case it is clear that the creation of the equity in the public to have the land opened for a highway did not interfere with the security of the mortgagees, because the decree must have contained a provision, as the deed following the same indicates, that the security of the mortgagee was entirely preserved without the necessity for avoiding the dedication, inasmuch as the deeds themselves expressly except these streets.

The applicable portions of the deeds which were apparently made pursuant to the decrees of foreclosure are as follows:

1. Exhibit C. 4; William Van Keuren et ux., et al., defendants by William P. Douglass, M. C. C. of N. J., to Daniel Toffey et al.; deed dated April 18, 1879, conveys

ALL that certain parcel of land and premises situate lying and being in the City of Hudson now Jersey City in the County of Hudson and State of New Jersey bounded easterly by land of the Paterson and Hudson River Railroad Company southerly by lands of John V. H. Van Reyphen late John G. Van Horne westerly by the Hackensack River and northerly by lands of James O'Brien and lands late of Jim Romine containing twenty three acres and one eighth, together with the right of way of thereto as granted to said Cornelius C. Van Reyphen by the Erie Railway Company by deed recorded in Hudson County Clerks office before May 1 1869 except the tracts described as follows:

First: ALL that portion of said mortgaged premises beginning at the most northerly point in the westerly side of Ninth street as the same

is laid down on a map entitled Map of property belonging to Stephen Morgan and J. V. H. Van Reyphen in the tenth ward of Jersey City Jan. 1870 Levi W. Post City Surveyor and duly filed in the office *of the office* of the Clerk of Hudson County 13th Dec. 1870, being the same point where the westerly line of said Ninth street meets the division line between the lands and premises mentioned in said mortgage and the lands and premises next adjoining Romine as laid down on said map thence along the westerly line of Ninth street south thirty one degrees sixteen minutes west two hundred and seven feet five and one quarter inches thence north forty nine degrees west one hundred and fifty two feet two and one quarter inches thence 3. south thirty one degrees sixteen minutes west one hundred feet thence 4. North fifty eight degrees forty four minutes west forty feet to high water line of the Hackensack River thence 5. Northerly along the highwater line of the Hackensack River the several courses thereof to the said line of lands and premises late of Ann Romine thence 6. along said line south forty nine degrees and fourteen minutes east two hundred and seventy nine feet six inches to the point of beginning as described in a deed made by Stephen Morgan to Charles Schultz dated March 23, 1871 and recorded in book 224 of deeds for Hudson County on page 518 &c.

SECOND: ALL that other portion of said mortgaged premises which on the map aforesaid is known and distinguished as lots numbered from fifty seven (57) to seventy six (76) both inclusive as described in a deed made by William Keeney and others to John R. Halladay dated July 8th 1871 and recorded in Book 234 of deeds for Hudson County on page 488 &c.

THIRD: ALL that other portion of said mortgaged premises BEGINNING at a point in the westerly boundary line of the right of way of the Paterson and Hudson River Railroad where the same is intersected by the centre line of Van Keuren avenue and from thence running West-erly along the centre line of Van Keuren avenue fifty feet two inches thence southerly and parallel with the westerly line of said right of way of said Paterson and Hudson River Railroad three hundred and forty one feet and four inches to the line of lands of John V. H. Van Reyphen thence easterly along said Van Reyphen's line fourteen feet eleven inches to the centre line of Catherine street thence easterly along the centre line of Catherine street thirty-five feet seven inches to the westerly line of said right of way of said Paterson and Hudson River Rail Road thence north thirty three degrees thirty eight minutes east along the westerly side of said right of way of said Rail Road three hundred and thirty eight feet and eight inches to the place of beginning as the same is described in a deed made by William Van Keuren and others to the New Jersey Midland Railway Company dated August 7, 1871 and recorded in Book 237 of Deeds for Hudson County on page 414 &c.

FOURTH ALL that other portion of said mortgage premises known and distinguished on the map aforesaid as lots numbered fifty five (55) and fifty six (56) as the same are described in a deed made by William Van Keuren and others to John R. Halladay dated June 14 1872 and recorded in Book 242 of deeds for Hudson County on page 428 &c.

FIFTH ALL that other part of said mortgaged premises BEGINNING at a point in the southerly side of Van Keuren avenue and on

the westerly side of the right of way of the New Jersey Midland Railway Company and from thence running 1st, westerly and along the southerly side of Van Keuren avenue one hundred and eleven feet four inches to the easterly side of Fourth street thence 2nd, along the easterly side of Fourth street three hundred feet four inches to the division line of lands of the party of the first part thence 3rd, southeasterly along said division line about twenty five feet to the Northerly line of Catherine street thence 4th easterly along the northerly side of Catherine street sixty six feet three inches to the westerly side of the right of way of the New Jersey Midland Railway Company thence 5th northerly and along said right of way three hundred and twelve feet three inches to the place of beginning. BEING all of the remainder of block I on said map not heretofore conveyed to Railroad Company as shown on said map as the same is described in a deed made by William Van Keuren and others to the New Jersey Midland Railway Company dated June 1, 1872 and recorded in Book 246 of deeds for Hudson County on page 145 &c.

SECOND PARCEL ALL those two lots of land in Jersey City aforesaid which on a map entitled map of property belonging to Stephen Morgan and J. V. H. Van Reyphen in the Tenth Ward of Jersey City Jan. 1870 Levi W. Post City Surveyor filed in the office of the Register of Hudson County are known and distinguished as lots numbered fifty five (55) and fifty six (56) in block W as described in a deed made by William Van Keuren and others to John R. Halladay dated June 14, 1872 and recorded in Book 242 of deeds for Hudson County on page 428 &c.

THIRD PARCEL ALL that tract of land in Jersey City aforesaid beginning at the most northerly point in the westerly side of Ninth street as the same is laid down on a map entitled "Map of property belonging to Stephen Morgan and J. V. H. Van Reyphen in the Tenth Ward of Jersey City Jan. 1870 Levi W. Post City Surveyor and duly filed in the office of the Register of Hudson County 15th December 1870 being the same point where the westerly line of said Ninth street meets the division line between the lands and premises mentioned in said mortgage and the lands and premises next adjoining northerly thereto being the land late of Jim Romine as laid down on said map thence along the westerly line of Ninth street south twenty one degrees sixteen minutes west two hundred and seven feet five and a quarter inches thence (2) north forty nine degrees west one hundred and fifty two feet two and a quarter inches thence (3) south thirty nine degrees sixteen minutes west one hundred feet thence (4) north fifty eight degrees forty four minutes west forty feet to high water line of the Hackensack River thence (5) northerly along the highwater line of Hackensack River the several courses thereof to the said line of the land and premises late of Ann Romine thence (6) along said line south forty nine degrees fourteen minutes east two hundred and seventy nine feet six inches to the place of beginning, as the same is described in a deed made by Stephen Morgan to Charles Schultz dated March 23 1871 and recorded in Book 224 of deeds for Hudson County on page 518 &c.

2. Exhibit C. 5, Sheriff's deed, Robert Davis, Sheriff, to Daniel Toffey, dated September 19, 1888, under foreclosure of mortgage set up as Exhibit C. 15, conveys

ALL that certain parcel of land and premises situate, lying and being in Jersey City (formerly the City of Hudson) in the county of Hudson and State of New Jersey bounded easterly by land of the Paterson and Hudson River Railroad Company, southerly by lands of John V. H. Van Reyphen, late John G. Van Horne, Westerly by the Hackensack River and northerly by lands of James O'Brien and lands late of Ann Romaine,—containing twenty-three acres and one eighth together with the right of way thereto as granted to said Cornelius C. Van Reyphen, by the Erie Railway Company by deed recorded in Hudson County Clerks Office before May 1, 1869,—Excepting however the three parcels described as follows:— ALL that portion of said premises which on a map entitled “Map of property belonging to Stephen Morgan and J. V. H. Van Reyphen in the Tenth Ward of Jersey City, Jan. 1870 Levi W. Post, City Surveyor”, is known and distinguished as lots numbered from fifty seven (57) to seventy six (76) both inclusive as described in a deed made by William Keeney and others to John R. Halladay, dated July 8, 1871 and recorded in Book 234 of Deeds for Hudson County page 488 beginning at a point in the westerly boundary line of the right of way of the Paterson and Hudson River Railroad where the same is intersected by the center line of Van Keuren avenue and from thence running westerly along the centre line of Van Keuren avenue, fifty feet two inches; thence southerly and parallel with the westerly line of said right of way of said Paterson and Hudson River Railroad three hundred and forty one feet and four inches to the line of land of John V. H. Van Reyphen; thence Easterly along said Van Reyphen's line, fourteen feet eleven inches to the centre line of Catharine street; thence easterly along the centre

line of Catharine street, thirty five feet seven inches to the westerly line of said right of way of said Paterson and Hudson River Railroad; thence north thirty five degrees thirty eight minutes east along the westerly side of said right of way of said railroad three hundred and thirty eight feet and eight inches to the place of beginning as the same is described in a deed made by William Van Keuren and others to the New Jersey Midland Railway Company, dated August 7, 1871 and recorded in Book 237 of Deeds for Hudson County, on page 414 &c.

Also all that other part of said premises, beginning at a point in the Southerly side of Van Keuren avenue and on the westerly side of the right of way of the New Jersey Midland Railway Company, and from thence running (1st) West-erly and along the Southerly side of Van Keuren avenue one hundred and eleven feet four inches to the Easterly side of Fourth street; thence (2nd) along the Easterly side of Fourth street three hundred feet four inches to the division line of lands of the party of the first part; thence (3rd) Southeasterly along said division line about twenty five feet to the northerly line of Catharine street; thence 4th Easterly along the Northerly side of Catharine street sixty six feet, three inches to the Westerly side of the right of way of the New Jersey Midland Railway Company; thence (5th) Northerly and along said right of way three hundred and twelve feet three inches to the place of beginning, being all of the remainder of Block I on said map not heretofore conveyed to said railroad company as shown on said map; as the same is described in a deed made by William Van Keuren and others to the New Jersey Midland Railway Company dated June 1, 1872 and recorded in Book 246 of Deeds for Hudson County, on page 145 &c.

3. It is also to be noted that the mortgage known as Exhibit C. 15 which was foreclosed as just noted, likewise recognizes the Morgan and Van Reypen map and Van Keuren avenue. The description in the mortgage reads as follows:

ALL that certain parcel of land and premises situate lying and being in Jersey City (formerly in the City of Hudson) in the County of Hudson and State of New Jersey, bounded easterly by land of Paterson and Hudson River Railroad Company, southerly by lands of JOHN V. H. VAN REYPEN, late of JOHN G. VAN HORNE, westerly by the Hackensack River and northerly by lands of JAMES O'BRIEN AND LANDS LATE OF ANN ROMAINE, containing twenty three acres and one eighth.

TOGETHER with the right of way thereto as granted to said CORNELIUS C. VAN REYPEN by the ERIE RAILWAY COMPANY by deed recorded in Hudson County Clerk's Office, before May 1, 1869, excepting however the three parcels described as follows:

ALL that portion of said premises which on a map entitled "Map of property belonging to STEPHEN MORGAN AND J. V. H. VAN REYPEN, in the Tenth Ward of Jersey City, Jan. 1870 LEVI W. POST, CITY SURVEYOR", is known and distinguished as lots numbered from fifty seven (57) to seventy-six (76) both inclusive as described in a deed made by WILLIAM KEENEY and others to JOHN R. HALLADAY dated July 8, 1871 and recorded in Book 234 of deeds for Hudson County page 488 &c. ALSO all that other portion of said premises beginning at a point in the westerly boundary line of the right of way of the Paterson and Hudson River Railroad where the same is intersected by the

centre line of Van Keuren avenue and from thence running westerly along the centre line of Van Keuren avenue fifty feet two inches, thence southerly and parallel with the Westerly line of said right of way of said Paterson and Hudson River Railroad, three hundred and forty one feet and four inches to the line of land of JOHN V. H. VAN REYPEN thence easterly along said Van Reypen's line fourteen feet and eleven inches to the centre line of CATHERINE STREET, thirty five feet seven inches to the westerly line of said right of way of said Paterson and Hudson River Railroad, thence north thirty five degrees thirty eight minutes east along the westerly side of said right of way of said railroad three hundred and thirty eight feet and eight inches in the place of beginning as the same is described in a deed made by WILLIAM VAN KEUREN and others to the New Jersey Midland Railway Company dated August 7, 1871 and recorded in Book 237 of Deeds for Hudson County on page 414 &c. ALSO all that other part of said premises beginning at a point in the southerly side of Van Keuren avenue and on the westerly side of the right of way of the New Jersey Midland Railway Company, and from thence running 1st westerly and along the southerly side of Van Keuren avenue one hundred and eleven feet four inches to the easterly side of Fourth street, thence 2nd along the easterly side of Fourth street, three hundred feet four inches to the division line of lands of the party of the first part, thence 3rd southeasterly along said division line about twenty five feet to the northerly line of Catherine street thence 4th easterly along the northerly side of Catherine street sixty six feet three inches to the westerly side of the right of way of the New Jersey Midland Railway Company, thence 5th northerly and along said right of way three

hundred and twelve feet three inches to the place of beginning.

BEING ALL of the remainder of Block I on said map not here before conveyed to said Railroad Company, as shown on said map as the same is described in a deed made by WILLIAM VAN KEUREN and others to the New Jersey Midland Railway Company dated June 1, 1872 and recorded in Book 240 of deeds for Hudson County on page 145 &c.

BEING the same premises, conveyed to said DANIEL TOFFEY and EDWARD H. WILSON by WILLIAM P. DOUGLAS MASTER IN CHANCERY by deed bearing even date herewith this mortgage being given to secure a part of the purchase money therein mentioned.

The fact that the mortgage and the deeds made pursuant to the decree of foreclosure recite the Morgan and Van Reyppen map and refer to Van Keuren avenue not only in the exceptions as well but also in the main conveying part of those instruments is even greater evidence of the acceptance and adoption of the Morgan and Van Reyppen map than if the map and Van Keuren avenue had been referred to only in the main part of the description and not in the exception, for the existence of the map and street is definitely adopted, recognized and preserved for the benefit of subsequent grantees. (See particularly Ex. C. 4, *supra*, where the map and Van Keuren avenue are referred to in description of the parcels conveyed and also in the exceptions.)

And not only did the mortgagees, by accepting the decree in foreclosure which required that the deeds be drawn with descriptions as indicated above, raise no objection to the filing of the map

and the dedication of Van Keuren avenue but, as just indicated, they actually accepted, adopted and ratified the filing of the map and the dedication of Van Keuren avenue.

In the instant case, the mortgagee, before foreclosing his mortgage, knew of the dedication of the lands, the making of the map, the sale of lands with reference thereto and the delineation on the map of lots and streets. They were therefore taken dedicated to public uses with the knowledge and consent of the mortgagee and were by him released and discharged from all legal and equitable claims of said mortgagee upon said property. His knowledge is actually written into the deeds by the sheriff and master who made the conveyances, and the streets created by said dedication, appurtenant to lands bounding thereon, are expressly recognized and excepted from the foreclosure.

Kiernan v. Jersey City, 80 N. J. L. 278.

Throughout the brief of respondent and in the opinion of the Vice-Chancellor, there runs an error of a dual character. Both of them seem to think it is necessary to a dedication that a valid map should have been filed and that unless such a map shall have been filed by the owner of the property, that a dedication cannot take place. This bifurcated error is completely answered by the decision in the case of *Camden v. McAndrews & Forbes Company*, 85 N. J. L. 264, where Mr. Justice Parker, speaking for a unanimous Court of Errors and Appeals, used the following language:

"The next point for consideration relates to the effect of deeds bounding the property therein conveyed on Winslow street without reference to any map. There are three such deeds, one to West in 1881 of property bounded by Winslow, Jefferson and Fourth

streets and Broadway. As between the parties this is plainly a dedication of Winslow street in front of the premises conveyed, and doubtless as far as the nearest cross street. In *Clark v. Elizabeth*, *supra*, there was express reference to the city plat, and this supported a dedication of the street as appearing on that plat. In fact almost all of the reported cases are based on either the promulgation of a layout of lots by the owner or his adoption of an official plat."

As to the acceptance of the map and dedications thereunder by the grantees under the deeds just recited, namely Daniel Toffey et al, who was the immediate predecessor in title to Charles S. Dodge & Edward K. Meigs, partners trading as Dodge & Company, another rule laid down in the case of *Camden v. McAndrews and Forbes Company*, *supra*, is here applicable. The court there found the dedication of Winslow street in a deed to The Manufacturers Land and Improvement Company which gave description bounding and running along said Winslow street. The court said:

"This appears to be an out and out recognition of Winslow street from Third street to a point two hundred feet west of the westerly line thereof. True, the deed was not made by the land company as grantor, but it was accepted by it as grantee, and that acceptance operated as an assent by the grantee to the devotion of the land to any public uses defined in or arising from the language of the deed. Mayor, &c. of Jersey City *v. Morris Canal Company*, 1 Beas. 547; New Jersey &c. R. R. Company *v. Drummond*, 15 Vr. 511; affirmed 17 *Id.* 644; Central R. R. Co. *v. Elizabeth*, 8 *Id.* 432. The land company could convey no more than it took; and if it took, subject to a dedication which might be accepted by the City at any time in the future, such acceptance is in-

ferred from the bringing of this ejectment suit. *Atlantic City v. Groff*, 35 Vr. 527."

See also *Clark v. Elizabeth*, 11 Vr. 172, where the owner made deeds by reference to the City Map and it was held by this Honorable Court that his deed was conclusive evidence of dedication and that parole evidence of an intent not to dedicate was not competent.

F.

As to Point II in respondent's brief, that respondent is not estopped to maintain this suit, it is sufficient to call the court's attention to the reasoning and cases set forth in the brief of appellants on pages 31 to 34 inclusive and to say that if the persons nominated to control the trust property and the creditors for whose benefit it was probably placed in trust did not raise an objection to the filing of the Morgan and Van Reyppen map and the dedication of Van Keuren avenue, it does not lie in the mouth of the respondent to raise this point. It is estopped by the deeds in its chain of title and by the acceptance by its predecessor of the deed from Daniel Toffey and the deed from John R. Halladay, both of whom accepted their property subject to the dedication.

G.

In answer to the statement at the top of page 17 of respondent's brief that the *locus in quo* was not urban property but was wild, waste land in the meadows and in reference to the statement of the Vice-Chancellor that the property was used years later for trapping wild animals, the court is again respectfully referred to the testimony of the witness O'Brien found on page 35

of the State of the Case, on whose testimony the Vice-Chancellor based his statement. There is absolutely no ground, as an examination of his testimony will show, for the statements made by counsel for the respondent and by the Vice-Chancellor. The statement as to crabbing and shooting which is the only one that could be used as a basis for the statement of the Vice-Chancellor indicates nothing more than that crabbing was carried on in the Hackensack and adjacent Rivers and that shooting was undoubtedly one of two kinds, either trap or pleasure shooting at targets, or shooting in the meadows beyond and across the Hackensack River. It was probably the former as the witness stated that it took place on Sundays.

If the testimony of the witness O'Brien and of a number of the other witnesses indicate anything, it is that, of all the streets delineated on the Morgan and Van Reypen map, Van Keuren avenue is the one street that has been used through all the years since the filing of the Morgan and Van Reypen map, being marked and traversed as a well defined, filled-in street, available for use of wagons. It was marked and created by the making and filing of the Morgan and Van Reypen map and has continued to exist in its original location, always open to the use of and used by the public, even to the present time.

H.

As to the point that the appellant Public Service Electric and Gas Company has acquired no right to use Van Keuren avenue, the court is respectfully referred to Point IV of appellants' brief and to the testimony of the witnesses in the

case. As to the statement quoted from appellants' brief that it "believed and continues to believe that Van Keuren avenue, though the title to the same may be in the complainant, is subject to the servitude of an easement of said Public Service Electric and Gas Company, even though the right of the public in general to use the same might be in doubt," the respondent appears to be grasping at straws in an effort to answer the point raised by the appellants in their brief. If this quotation is read in conjunction with the full context of a statement made by appellants in their brief, it is evident that the inference attempted to be made by respondent, has no foundation.

The full context of the brief pertinent to this point is found on page 37 of appellants' brief and is here set forth for the convenience of the court. Subsequent reasoning on this point will be found on pages immediately following page 37. The attitude that Public Service has always maintained, that Van Keuren avenue was an appurtenant property right to its real estate holdings in the vicinity and that it relied on the use of this street in purchasing its property is also there set forth. The full context in question reads as follows:

"As pointed out in the analyses of the deeds as set forth in the early part of this brief, all the owners of the premises on which is found Van Keuren avenue conveyed with reference to either the Morgan and Van Reypen map or the map of the 10th, 11th and 12th Wards of Jersey City, and in numerous of these deeds there is particular reference to Van Keuren avenue, and descriptions were made to refer to and run along that street. These deeds were all in the chain of title of Public Service Electric and Gas Company. It, of course, examined

these deeds to see what its rights were, and believed and continues to believe that Van Keuren avenue, though the title to the same may be in the complainant, is subject to the servitude of an easement in favor of said Public Service Electric and Gas Company, even though the right of the public in general to use the same might be in doubt. The complainant in its deeds to Public Service Electric and Gas Company, although it did not mention Van Keuren avenue, in no way attempted to restrict Public Service Electric and Gas Company and the public in going to its plant by using Van Keuren avenue."

Where the state of facts shows that a map has been filed and that all deeds with the exception of one, refer to that map without any attempt to restrict the reference to mere descriptive uses, it is evident that there has been an adoption of this map by the grantors and the grantees of the deeds in question, especially where the map has been definitely adopted by deeds prior to the one which says that the map was referred to merely for descriptive purposes. Any attempt on the part of a later grantor to limit the use of the map to descriptive purpose will be absolutely unavailing for the map has already been adopted by his predecessors in title and he has accepted his deed subject to the dedication of the streets thereon delineated to the public use.

I.

As to the statements made in Point III that there was no public user of Van Keuren avenue, and in the Conclusion that there is no necessity for a public street on the strip called Van Keuren avenue, the court is respectfully referred to the testimony of all of the witnesses as found in the State of the Case and to Points III and IV of the

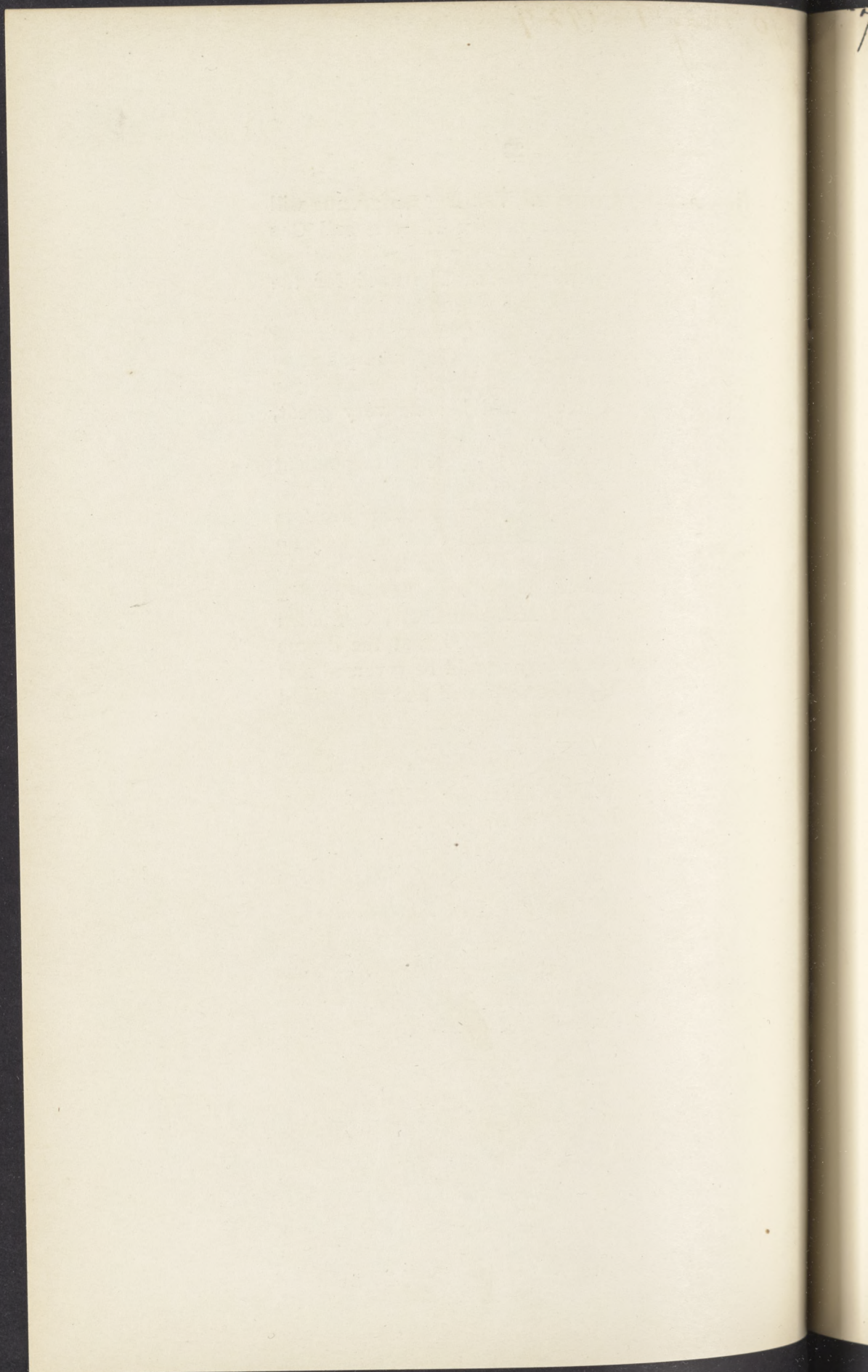
brief of the appellants. Van Keuren avenue will not only serve Public Service Electric and Gas Company but has been serving and will continue to serve the general public. The need for the same is growing greater and greater and as time passes and additional developments in this and adjoining vicinities of Jersey City take place, to say, as has the respondent, that if the need for Van Keuren avenue should become very great, it will be possible to condemn a street for the use of the public, is most unworthy of the respondent and shows an entire lack of interest in the public rights and needs. Van Keuren avenue now exists and is used by the public and there need be no necessity for any future condemnation with consequent inconvenience and expense to the public. The street should be maintained and continued and it is respectfully submitted that the decree of the Court of Chancery should be reversed and the rights of the public respected and maintained for all time.

Respectfully submitted,

WILLIAM H. SPEER and
LELAND TALIAFERRO,
Solicitors for and of Counsel with
Public Service Electric and Gas Co.

THOMAS J. BROGAN,
Solicitor for the Mayor and
Aldermen of Jersey City.

CHARLES A. ROONEY,
Of Counsel, Defendants-Appellants.



70 May T-1929

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

DODGE & BLISS COMPANY, a corporation,

Complainant-Appellee,

vs.

THE MAYOR AND ALDERMEN OF
JERSEY CITY, a municipal corporation, and PUBLIC SERVICE
ELECTRIC AND GAS COMPANY,
a corporation,

Defendants-Appellants.

*On Bill to
Quiet Title.*

After reading the answering brief of the respondent in the above-entitled cause, it was felt that some confusion might result from the manner in which some of the questions involved in this case were presented by the respondent, and that the appellants could be of assistance to the court in clarifying these matters. This reply brief is therefore presented for the attention of the court. We will proceed at once and briefly to a discussion of the points involved.

A.

On page three of the answering brief of respondent, lines seven and eight, respondent states that the Vice-Chancellor decided that "the complainant was not estopped from denying a dedication" (of Van Keuren avenue). Neither the references to the State of the Case there made nor an examination of the entire opinion of the Vice-Chancellor discloses that the Vice-Chancellor either considered or passed upon this point.

B.

On page six, paragraph four, on page seven, top of page and on page fifteen, first paragraph, respondent has referred to acts of employees of the City of Jersey City, such as leaving Van Keuren avenue off of Fowler's map of 1894, and a statement in the office of the custodian of maps that Van Keuren avenue was vacated by foreclosure of mortgage. The respondent did this presumably in an effort to show that these employees of the City had eliminated Van Keuren avenue as a public street in that City and failed to recognize it as such.

In answer to this point it is sufficient to say that acts of city employees who are not duly authorized to so act, cannot bind the city or take away the rights of the public in strips of land which are, or may become, by acceptance, public streets.

"The exercise of the public right of actual possession and dominion over properties dedicated to the public may be suspended and lie dormant until such time as, in the judgment of proper legal authority, the public exigencies require their possession and use. * * * Failure of city officials to use and keep in repair streets dedicated to the public held not to result in estoppel *in pais* to bar the efforts of the lawfully authorized body of the municipality, intrusted with the maintenance of the public right, to bring its action in ejectment against persons claiming private right thereto * * * and the city's acceptance of taxes thereon and other acts allegedly inconsistent with public claim were immaterial on the question of the public rights therein."

"In the light of this status it is not conceivable upon any adequate legal conception of state territorial sovereignty, how as contended, the unauthorized perfunctory or haphazard acts of administrative officials, occupied in an entirely different sphere of public duty and in nowise charged by law with the responsibilities and conservation of the public domain, can be construed as a concession against the public interest, so as to result in an estoppel *in pais* to bar the efforts of the lawfully authorized body of the municipality intrusted with the maintenance of the public right. *Seabright v. Central R. R. Co.*, 73 N. J. L. 631; 64 A. 131."

Long Branch v. Toovey, 140 Atl. 215.

C.

On page seven, we call the court's attention to the first paragraph as an indication that there has been and may still be some doubt even in the mind of the respondent as to the status of Van Keuren avenue. We quote paragraph one.

"In August, 1922, the complainant filed a petition with the municipality praying that it surrender its rights, if any, in the strip of land described in the petition and called 'Van Keuren avenue,' but no action was taken thereon by the defendant (Exs. C. 24 and p. 200)."

D.

On page eight, respondent says:

"In the instant case Morgan had no power or capacity to convey to anyone except the nominees named by the persons mentioned in the trust deed," that an act of dedication would be inconsistent with the trust imposed upon Morgan

for it would be giving away property which was held for the creditors mentioned in the trust deed.

Defendant's counsel labors to meet the point made by the appellants on pages 19 to 31 of appellants' brief. We here reiterate that the persons named on whose request Morgan was to convey, were possessed of a power to direct conveyances and to approve or disapprove of any acts of Morgan and that not only did these persons make no objection to the filing of the map and dedication of Van Keuren avenue thereby but they and also the creditors, who were the only persons under the reasoning of respondent, who could object to the filing of the map, recognized, adopted, ratified and confirmed the act of Morgan in filing the map by accepting and permitting the giving and acceptance of deeds which referred to and were based on the Morgan and Van Reypen map and recited and preserved Van Keuren avenue as a street.

An act of dedication would not be inconsistent with the trust. It would not mean giving away property which was held for the creditors mentioned in the trust deed but would be an act entirely consistent with the trust as it would be an endeavor to improve the trust property and increase its value for the benefit of the creditors.

"Trustees who are the legal owners of land in fee may dedicate the land to public uses not inconsistent with the trust."

Pruden v. Lindsley, 29 N. J. E. 65.

E.

On pages 9, 11 and 16 and top of page 18 of its brief, respondent, arguing under Point I, "There was no dedication of Van Keuren avenue," and notwithstanding the fact that the learned Vice-Chancellor who decided the case *sub judice* did not rely thereon or refer thereto, has quoted the case of *Kiernan v. Jersey City*, 80 N. J. L. 273; 31 L. R. A. (N. S.) 1023, and that of *Hague v. West Hoboken*, 23 N. J. E. 354, and 18 C. J. 46, with the design of influencing the Court to believe that the foreclosure of the mortgage or mortgages mentioned rendered any attempted dedication void, and that the foreclosure of the deed of trust executed prior to the attempted dedication voids the dedication and the purchaser buys free from it.

The facts of this case are so clearly and conclusively against this claim, and the cases and authorities cited are so overwhelmingly opposed to it, that it is not strange that it was unnoticed by, although argued to, the Vice-Chancellor.

The language quoted from *Kiernan v. Jersey City*, *supra*, is to the effect that "Their (the mortgagors') acts of dedication unassented to by the mortgagees, created no more than an equity in the public to have the land opened for a highway, provided this did not interfere with the security of the mortgagees." Before dealing with this excerpt, we wish to point out that respondent on the trial before the Vice-Chancellor did not deem it necessary, or else deemed it unwise, to offer in evidence the record of the foreclosure suits, but contented itself with offering in evidence only the deeds made by the special master and the sheriff, respectively. Of course, it is trite law that the conveyance made by the court

officer must correspond with the decree made by the court ordering the sale, and these deeds, from which in this reply brief we shall quote fully, expressly recognize the existence of the Morgan and Van Reyppen map and make exceptions of property bounding the same upon the streets laid down on said map, including Van Keuren avenue. It is thus clear that if, as is laid down in *Kiernan v. Jersey City, supra*, the acts of dedication, unassented to by the mortgagees, created no more than an equity in the public to have the land opened for a highway, provided this did not interfere with the security of the mortgagees, yet it did create an equity, which equity was in no way foreclosed or voided by the decree and sale thereunder of the property covered by the said mortgages, but on the contrary expressly recognized the same and excepted them from the operation of said decrees and deeds.

It is also to be borne in mind that even if the mortgagors' acts of dedication, when unassented to by the mortgagees, would have the effect mentioned, yet it is clear in the case now *sub judice* that the mortgagees, by accepting the decree and the sale thereunder and not objecting thereto, but apparently and in all likelihood expressly assenting thereto—as could in all likelihood be shown, had respondent at the trial introduced the record of the proceedings—must be taken to have assented thereto and to have recognized the Morgan and Van Reyppen map and the recitals and exceptions which expressly recognized the existence of the map and the delineations thereon.

Not only this, but in the excerpt from *Kiernan v. Jersey City, supra*, it is also said that the act of dedication created no more than an equity in

the public to have the land opened for a highway, *provided this did not interfere with the security of the mortgagees.* In this case it is clear that the creation of the equity in the public to have the land opened for a highway did not interfere with the security of the mortgagees, because the decree must have contained a provision, as the deed following the same indicates, that the security of the mortgagee was entirely preserved without the necessity for avoiding the dedication, inasmuch as the deeds themselves expressly except these streets.

The applicable portions of the deeds which were apparently made pursuant to the decrees of foreclosure are as follows:

1. Exhibit C. 4; William Van Keuren et ux., et al., defendants by William P. Douglass, M. C. C. of N. J., to Daniel Toffey et al.; deed dated April 18, 1879, conveys

ALL that certain parcel of land and premises situate lying and being in the City of Hudson now Jersey City in the County of Hudson and State of New Jersey bounded easterly by land of the Paterson and Hudson River Railroad Company southerly by lands of John V. H. Van Reyphen late John G. Van Horne westerly by the Hackensack River and northerly by lands of James O'Brien and lands late of Jim Romine containing twenty three acres and one eighth, together with the right of way of thereto as granted to said Cornelius C. Van Reyphen by the Erie Railway Company by deed recorded in Hudson County Clerks office before May 1 1869 except the tracts described as follows:

First: ALL that portion of said mortgaged premises beginning at the most northerly point in the westerly side of Ninth street as the same

is laid down on a map entitled Map of property belonging to Stephen Morgan and J. V. H. Van Reyphen in the tenth ward of Jersey City Jan. 1870 Levi W. Post City Surveyor and duly filed in the office *of the office* of the Clerk of Hudson County 13th Dec. 1870, being the same point where the westerly line of said Ninth street meets the division line between the lands and premises mentioned in said mortgage and the lands and premises next adjoining Romine as laid down on said map thence along the westerly line of Ninth street south thirty one degrees sixteen minutes west two hundred and seven feet five and one quarter inches thence north forty nine degrees west one hundred and fifty two feet two and one quarter inches thence 3. south thirty one degrees sixteen minutes west one hundred feet thence 4. North fifty eight degrees forty four minutes west forty feet to high water line of the Hackensack River thence 5. Northerly along the highwater line of the Hackensack River the several courses thereof to the said line of lands and premises late of Ann Romine thence 6. along said line south forty nine degrees and fourteen minutes east two hundred and seventy nine feet six inches to the point of beginning as described in a deed made by Stephen Morgan to Charles Schultz dated March 23, 1871 and recorded in book 224 of deeds for Hudson County on page 518 &c.

SECOND: ALL that other portion of said mortgaged premises which on the map aforesaid is known and distinguished as lots numbered from fifty seven (57) to seventy six (76) both inclusive as described in a deed made by William Keeney and others to John R. Halladay dated July 8th 1871 and recorded in Book 234 of deeds for Hudson County on page 488 &c.

THIRD: ALL that other portion of said mortgaged premises BEGINNING at a point in the westerly boundary line of the right of way of the Paterson and Hudson River Railroad where the same is intersected by the centre line of Van Keuren avenue and from thence running West-erly along the centre line of Van Keuren avenue fifty feet two inches thence southerly and parallel with the westerly line of said right of way of said Paterson and Hudson River Railroad three hundred and forty one feet and four inches to the line of lands of John V. H. Van Reyphen thence easterly along said Van Reyphen's line fourteen feet eleven inches to the centre line of Catherine street thence easterly along the centre line of Catherine street thirty-five feet seven inches to the westerly line of said right of way of said Paterson and Hudson River Rail Road thence north thirty three degrees thirty eight minutes east along the westerly side of said right of way of said Rail Road three hundred and thirty eight feet and eight inches to the place of beginning as the same is described in a deed made by William Van Keuren and others to the New Jersey Midland Railway Company dated August 7, 1871 and recorded in Book 237 of Deeds for Hudson County on page 414 &c.

FOURTH ALL that other portion of said mortgage premises known and distinguished on the map aforesaid as lots numbered fifty five (55) and fifty six (56) as the same are described in a deed made by William Van Keuren and others to John R. Halladay dated June 14 1872 and recorded in Book 242 of deeds for Hudson County on page 428 &c.

FIFTH ALL that other part of said mortgaged premises BEGINNING at a point in the southerly side of Van Keuren avenue and on

the westerly side of the right of way of the New Jersey Midland Railway Company and from thence running 1st, westerly and along the southerly side of Van Keuren avenue one hundred and eleven feet four inches to the easterly side of Fourth street thence 2nd, along the easterly side of Fourth street three hundred feet four inches to the division line of lands of the party of the first part thence 3rd, southeasterly along said division line about twenty five feet to the Northerly line of Catherine street thence 4th easterly along the northerly side of Catherine street sixty six feet three inches to the westerly side of the right of way of the New Jersey Midland Railway Company thence 5th northerly and along said right of way three hundred and twelve feet three inches to the place of beginning. BEING all of the remainder of block I on said map not heretofore conveyed to Railroad Company as shown on said map as the same is described in a deed made by William Van Keuren and others to the New Jersey Midland Railway Company dated June 1, 1872 and recorded in Book 246 of deeds for Hudson County on page 145 &c.

SECOND PARCEL ALL those two lots of land in Jersey City aforesaid which on a map entitled map of property belonging to Stephen Morgan and J. V. H. Van Reyphen in the Tenth Ward of Jersey City Jan. 1870 Levi W. Post City Surveyor filed in the office of the Register of Hudson County are known and distinguished as lots numbered fifty five (55) and fifty six (56) in block W as described in a deed made by William Van Keuren and others to John R. Halladay dated June 14, 1872 and recorded in Book 242 of deeds for Hudson County on page 428 &c.

THIRD PARCEL ALL that tract of land in Jersey City aforesaid beginning at the most northerly point in the westerly side of Ninth street as the same is laid down on a map entitled "Map of property belonging to Stephen Morgan and J. V. H. Van Reyppen in the Tenth Ward of Jersey City Jan. 1870 Levi W. Post City Surveyor and duly filed in the office of the Register of Hudson County 15th December 1870 being the same point where the westerly line of said Ninth street meets the division line between the lands and premises mentioned in said mortgage and the lands and premises next adjoining northerly thereto being the land late of Jim Romine as laid down on said map thence along the westerly line of Ninth street south twenty one degrees sixteen minutes west two hundred and seven feet five and a quarter inches thence (2) north forty nine degrees west one hundred and fifty two feet two and a quarter inches thence (3) south thirty nine degrees sixteen minutes west one hundred feet thence (4) north fifty eight degrees forty four minutes west forty feet to high water line of the Hackensack River thence (5) northerly along the highwater line of Hackensack River the several courses thereof to the said line of the land and premises late of Ann Romine thence (6) along said line south forty nine degrees fourteen minutes east two hundred and seventy nine feet six inches to the place of beginning, as the same is described in a deed made by Stephen Morgan to Charles Schultz dated March 23 1871 and recorded in Book 224 of deeds for Hudson County on page 518 &c.

2. Exhibit C. 5, Sheriff's deed, Robert Davis, Sheriff, to Daniel Toffey, dated September 19, 1888, under foreclosure of mortgage set up as Exhibit C. 15, conveys

ALL that certain parcel of land and premises situate, lying and being in Jersey City (formerly the City of Hudson) in the county of Hudson and State of New Jersey bounded easterly by land of the Paterson and Hudson River Railroad Company, southerly by lands of John V. H. Van Reyphen, late John G. Van Horne, Westerly by the Hackensack River and northerly by lands of James O'Brien and lands late of Ann Romaine,—containing twenty-three acres and one eighth together with the right of way thereto as granted to said Cornelius C. Van Reyphen, by the Erie Railway Company by deed recorded in Hudson County Clerks Office before May 1, 1869,—Excepting however the three parcels described as follows:— ALL that portion of said premises which on a map entitled “Map of property belonging to Stephen Morgan and J. V. H. Van Reyphen in the Tenth Ward of Jersey City, Jan. 1870 Levi W. Post, City Surveyor”, is known and distinguished as lots numbered from fifty seven (57) to seventy six (76) both inclusive as described in a deed made by William Keeney and others to John R. Halladay, dated July 8, 1871 and recorded in Book 234 of Deeds for Hudson County page 488 beginning at a point in the westerly boundary line of the right of way of the Paterson and Hudson River Railroad where the same is intersected by the center line of Van Keuren avenue and from thence running westerly along the centre line of Van Keuren avenue, fifty feet two inches; thence southerly and parallel with the westerly line of said right of way of said Paterson and Hudson River Railroad three hundred and forty one feet and four inches to the line of land of John V. H. Van Reyphen; thence Easterly along said Van Reyphen's line, fourteen feet eleven inches to the centre line of Catharine street; thence easterly along the centre

line of Catharine street, thirty five feet seven inches to the westerly line of said right of way of said Paterson and Hudson River Railroad; thence north thirty five degrees thirty eight minutes east along the westerly side of said right of way of said railroad three hundred and thirty eight feet and eight inches to the place of beginning as the same is described in a deed made by William Van Keuren and others to the New Jersey Midland Railway Company, dated August 7, 1871 and recorded in Book 237 of Deeds for Hudson County, on page 414 &c.

Also all that other part of said premises, beginning at a point in the Southerly side of Van Keuren avenue and on the westerly side of the right of way of the New Jersey Midland Railway Company, and from thence running (1st) Westerly and along the Southerly side of Van Keuren avenue one hundred and eleven feet four inches to the Easterly side of Fourth street; thence (2nd) along the Easterly side of Fourth street three hundred feet four inches to the division line of lands of the party of the first part; thence (3rd) Southeasterly along said division line about twenty five feet to the northerly line of Catharine street; thence 4th Easterly along the Northerly side of Catharine street sixty six feet, three inches to the Westerly side of the right of way of the New Jersey Midland Railway Company; thence (5th) Northerly and along said right of way three hundred and twelve feet three inches to the place of beginning, being all of the remainder of Block I on said map not heretofore conveyed to said railroad company as shown on said map; as the same is described in a deed made by William Van Keuren and others to the New Jersey Midland Railway Company dated June 1, 1872 and recorded in Book 246 of Deeds for Hudson County, on page 145 &c.

3. It is also to be noted that the mortgage known as Exhibit C. 15 which was foreclosed as just noted, likewise recognizes the Morgan and Van Reypen map and Van Keuren avenue. The description in the mortgage reads as follows:

ALL that certain parcel of land and premises situate lying and being in Jersey City (formerly in the City of Hudson) in the County of Hudson and State of New Jersey, bounded easterly by land of Paterson and Hudson River Railroad Company, southerly by lands of JOHN V. H. VAN REYPEN, late of JOHN G. VAN HORNE, westerly by the Hackensack River and northerly by lands of JAMES O'BRIEN AND LANDS LATE OF ANN ROMAINE, containing twenty three acres and one eighth.

TOGETHER with the right of way thereto as granted to said CORNELIUS C. VAN REYPEN by the ERIE RAILWAY COMPANY by deed recorded in Hudson County Clerk's Office, before May 1, 1869, excepting however the three parcels described as follows:

ALL that portion of said premises which on a map entitled "Map of property belonging to STEPHEN MORGAN AND J. V. H. VAN REYPEN, in the Tenth Ward of Jersey City, Jan. 1870 LEVI W. POST, CITY SURVEYOR", is known and distinguished as lots numbered from fifty seven (57) to seventy-six (76) both inclusive as described in a deed made by WILLIAM KEENEY and others to JOHN R. HALLADAY dated July 8, 1871 and recorded in Book 234 of deeds for Hudson County page 488 &c. ALSO all that other portion of said premises beginning at a point in the westerly boundary line of the right of way of the Paterson and Hudson River Railroad where the same is intersected by the

centre line of Van Keuren avenue and from thence running westerly along the centre line of Van Keuren avenue fifty feet two inches, thence southerly and parallel with the Westerly line of said right of way of said Paterson and Hudson River Railroad, three hundred and forty one feet and four inches to the line of land of JOHN V. H. VAN REYPEN thence easterly along said Van Reypen's line fourteen feet and eleven inches to the centre line of CATHERINE STREET, thirty five feet seven inches to the westerly line of said right of way of said Paterson and Hudson River Railroad, thence north thirty five degrees thirty eight minutes east along the westerly side of said right of way of said railroad three hundred and thirty eight feet and eight inches in the place of beginning as the same is described in a deed made by WILLIAM VAN KEUREN and others to the New Jersey Midland Railway Company dated August 7, 1871 and recorded in Book 237 of Deeds for Hudson County on page 414 &c. ALSO all that other part of said premises beginning at a point in the southerly side of Van Keuren avenue and on the westerly side of the right of way of the New Jersey Midland Railway Company, and from thence running 1st westerly and along the southerly side of Van Keuren avenue one hundred and eleven feet four inches to the easterly side of Fourth street, thence 2nd along the easterly side of Fourth street, three hundred feet four inches to the division line of lands of the party of the first part, thence 3rd southeasterly along said division line about twenty five feet to the northerly line of Catherine street thence 4th easterly along the northerly side of Catherine street sixty six feet three inches to the westerly side of the right of way of the New Jersey Midland Railway Company, thence 5th northerly and along said right of way three

hundred and twelve feet three inches to the place of beginning.

BEING ALL of the remainder of Block I on said map not here before conveyed to said Railroad Company, as shown on said map as the same is described in a deed made by WILLIAM VAN KEUREN and others to the New Jersey Midland Railway Company dated June 1, 1872 and recorded in Book 240 of deeds for Hudson County on page 145 &c.

BEING the same premises, conveyed to said DANIEL TOFFEY and EDWARD H. WILSON by WILLIAM P. DOUGLAS MASTER IN CHANCERY by deed bearing even date herewith this mortgage being given to secure a part of the purchase money therein mentioned.

The fact that the mortgage and the deeds made pursuant to the decree of foreclosure recite the Morgan and Van Reypen map and refer to Van Keuren avenue not only in the exceptions as well but also in the main conveying part of those instruments is even greater evidence of the acceptance and adoption of the Morgan and Van Reypen map than if the map and Van Keuren avenue had been referred to only in the main part of the description and not in the exception, for the existence of the map and street is definitely adopted, recognized and preserved for the benefit of subsequent grantees. (See particularly Ex. C. 4, *supra*, where the map and Van Keuren avenue are referred to in description of the parcels conveyed and also in the exceptions.)

And not only did the mortgagees, by accepting the decree in foreclosure which required that the deeds be drawn with descriptions as indicated above, raise no objection to the filing of the map

and the dedication of Van Keuren avenue but, as just indicated, they actually accepted, adopted and ratified the filing of the map and the dedication of Van Keuren avenue.

In the instant case, the mortgagee, before foreclosing his mortgage, knew of the dedication of the lands, the making of the map, the sale of lands-with reference thereto and the delineation on the map of lots and streets. They were therefore taken dedicated to public uses with the knowledge and consent of the mortgagee and were by him released and discharged from all legal and equitable claims of said mortgagee upon said property. His knowledge is actually written into the deeds by the sheriff and master who made the conveyances, and the streets created by said dedication, appurtenant to lands bounding thereon, are expressly recognized and excepted from the foreclosure.

Kiernan v. Jersey City, 80 N. J. L. 278.

Throughout the brief of respondent and in the opinion of the Vice-Chancellor, there runs an error of a dual character. Both of them seem to think it is necessary to a dedication that a valid map should have been filed and that unless such a map shall have been filed by the owner of the property, that a dedication cannot take place. This bifurcated error is completely answered by the decision in the case of *Camden v. McAndrews & Forbes Company*, 85 N. J. L. 264, where Mr. Justice Parker, speaking for a unanimous Court of Errors and Appeals, used the following language:

“The next point for consideration relates to the effect of deeds bounding the property therein conveyed on Winslow street without reference to any map. There are three such deeds, one to West in 1881 of property bounded by Winslow, Jefferson and Fourth

streets and Broadway. As between the parties this is plainly a dedication of Winslow street in front of the premises conveyed, and doubtless as far as the nearest cross street. In *Clark v. Elizabeth*, *supra*, there was express reference to the city plat, and this supported a dedication of the street as appearing on that plat. In fact almost all of the reported cases are based on either the promulgation of a layout of lots by the owner or his adoption of an official plat."

As to the acceptance of the map and dedications thereunder by the grantees under the deeds just recited, namely Daniel Toffey et al, who was the immediate predecessor in title to Charles S. Dodge & Edward K. Meigs, partners trading as Dodge & Company, another rule laid down in the case of *Camden v. McAndrews and Forbes Company*, *supra*, is here applicable. The court there found the dedication of Winslow street in a deed to The Manufacturers Land and Improvement Company which gave description bounding and running along said Winslow street. The court said:

"This appears to be an out and out recognition of Winslow street from Third street to a point two hundred feet west of the westerly line thereof. True, the deed was not made by the land company as grantor, but it was accepted by it as grantee, and that acceptance operated as an assent by the grantee to the devotion of the land to any public uses defined in or arising from the language of the deed. Mayor, &c. of Jersey City *v. Morris Canal Company*, 1 Beas. 547; *New Jersey &c. R. R. Company v. Drummond*, 15 Vr. 511; affirmed 17 *Id.* 644; *Central R. R. Co. v. Elizabeth*, 8 *Id.* 432. The land company could convey no more than it took; and if it took, subject to a dedication which might be accepted by the City at any time in the future, such acceptance is in-

ferred from the bringing of this ejectment suit. *Atlantic City v. Groff*, 35 Vr. 527."

See also *Clark v. Elizabeth*, 11 Vr. 172, where the owner made deeds by reference to the City Map and it was held by this Honorable Court that his deed was conclusive evidence of dedication and that parole evidence of an intent not to dedicate was not competent.

F.

As to Point II in respondent's brief, that respondent is not estopped to maintain this suit, it is sufficient to call the court's attention to the reasoning and cases set forth in the brief of appellants on pages 31 to 34 inclusive and to say that if the persons nominated to control the trust property and the creditors for whose benefit it was probably placed in trust did not raise an objection to the filing of the Morgan and Van Reyepen map and the dedication of Van Keuren avenue, it does not lie in the mouth of the respondent to raise this point. It is estopped by the deeds in its chain of title and by the acceptance by its predecessor of the deed from Daniel Toffey and the deed from John R. Halladay, both of whom accepted their property subject to the dedication.

G.

In answer to the statement at the top of page 17 of respondent's brief that the *locus in quo* was not urban property but was wild, waste land in the meadows and in reference to the statement of the Vice-Chancellor that the property was used years later for trapping wild animals, the court is again respectfully referred to the testimony of the witness O'Brien found on page 35

of the State of the Case, on whose testimony the Vice-Chancellor based his statement. There is absolutely no ground, as an examination of his testimony will show, for the statements made by counsel for the respondent and by the Vice-Chancellor. The statement as to crabbing and shooting which is the only one that could be used as a basis for the statement of the Vice-Chancellor indicates nothing more than that crabbing was carried on in the Hackensack and adjacent Rivers and that shooting was undoubtedly one of two kinds, either trap or pleasure shooting at targets, or shooting in the meadows beyond and across the Hackensack River. It was probably the former as the witness stated that it took place on Sundays.

If the testimony of the witness O'Brien and of a number of the other witnesses indicate anything, it is that, of all the streets delineated on the Morgan and Van Reypen map, Van Keuren avenue is the one street that has been used through all the years since the filing of the Morgan and Van Reypen map, being marked and traversed as a well defined, filled-in street, available for use of wagons. It was marked and created by the making and filing of the Morgan and Van Reypen map and has continued to exist in its original location, always open to the use of and used by the public, even to the present time.

H.

As to the point that the appellant Public Service Electric and Gas Company has acquired no right to use Van Keuren avenue, the court is respectfully referred to Point IV of appellants' brief and to the testimony of the witnesses in the

case. As to the statement quoted from appellants' brief that it "believed and continues to believe that Van Keuren avenue, though the title to the same may be in the complainant, is subject to the servitude of an easement of said Public Service Electric and Gas Company, even though the right of the public in general to use the same might be in doubt," the respondent appears to be grasping at straws in an effort to answer the point raised by the appellants in their brief. If this quotation is read in conjunction with the full context of a statement made by appellants in their brief, it is evident that the inference attempted to be made by respondent, has no foundation.

The full context of the brief pertinent to this point is found on page 37 of appellants' brief and is here set forth for the convenience of the court. Subsequent reasoning on this point will be found on pages immediately following page 37. The attitude that Public Service has always maintained, that Van Keuren avenue was an appurtenant property right to its real estate holdings in the vicinity and that it relied on the use of this street in purchasing its property is also there set forth. The full context in question reads as follows:

"As pointed out in the analyses of the deeds as set forth in the early part of this brief, all the owners of the premises on which is found Van Keuren avenue conveyed with reference to either the Morgan and Van Reyden map or the map of the 10th, 11th and 12th Wards of Jersey City, and in numerous of these deeds there is particular reference to Van Keuren avenue, and descriptions were made to refer to and run along that street. These deeds were all in the chain of title of Public Service Electric and Gas Company. It, of course, examined

these deeds to see what its rights were, and believed and continues to believe that Van Keuren avenue, though the title to the same may be in the complainant, is subject to the servitude of an easement in favor of said Public Service Electric and Gas Company, even though the right of the public in general to use the same might be in doubt. The complainant in its deeds to Public Service Electric and Gas Company, although it did not mention Van Keuren avenue, in no way attempted to restrict Public Service Electric and Gas Company and the public in going to its plant by using Van Keuren avenue."

Where the state of facts shows that a map has been filed and that all deeds with the exception of one, refer to that map without any attempt to restrict the reference to mere descriptive uses, it is evident that there has been an adoption of this map by the grantors and the grantees of the deeds in question, especially where the map has been definitely adopted by deeds prior to the one which says that the map was referred to merely for descriptive purposes. Any attempt on the part of a later grantor to limit the use of the map to descriptive purpose will be absolutely unavailing for the map has already been adopted by his predecessors in title and he has accepted his deed subject to the dedication of the streets thereon delineated to the public use.

I.

As to the statements made in Point III that there was no public user of Van Keuren avenue, and in the Conclusion that there is no necessity for a public street on the strip called Van Keuren avenue, the court is respectfully referred to the testimony of all of the witnesses as found in the State of the Case and to Points III and IV of the

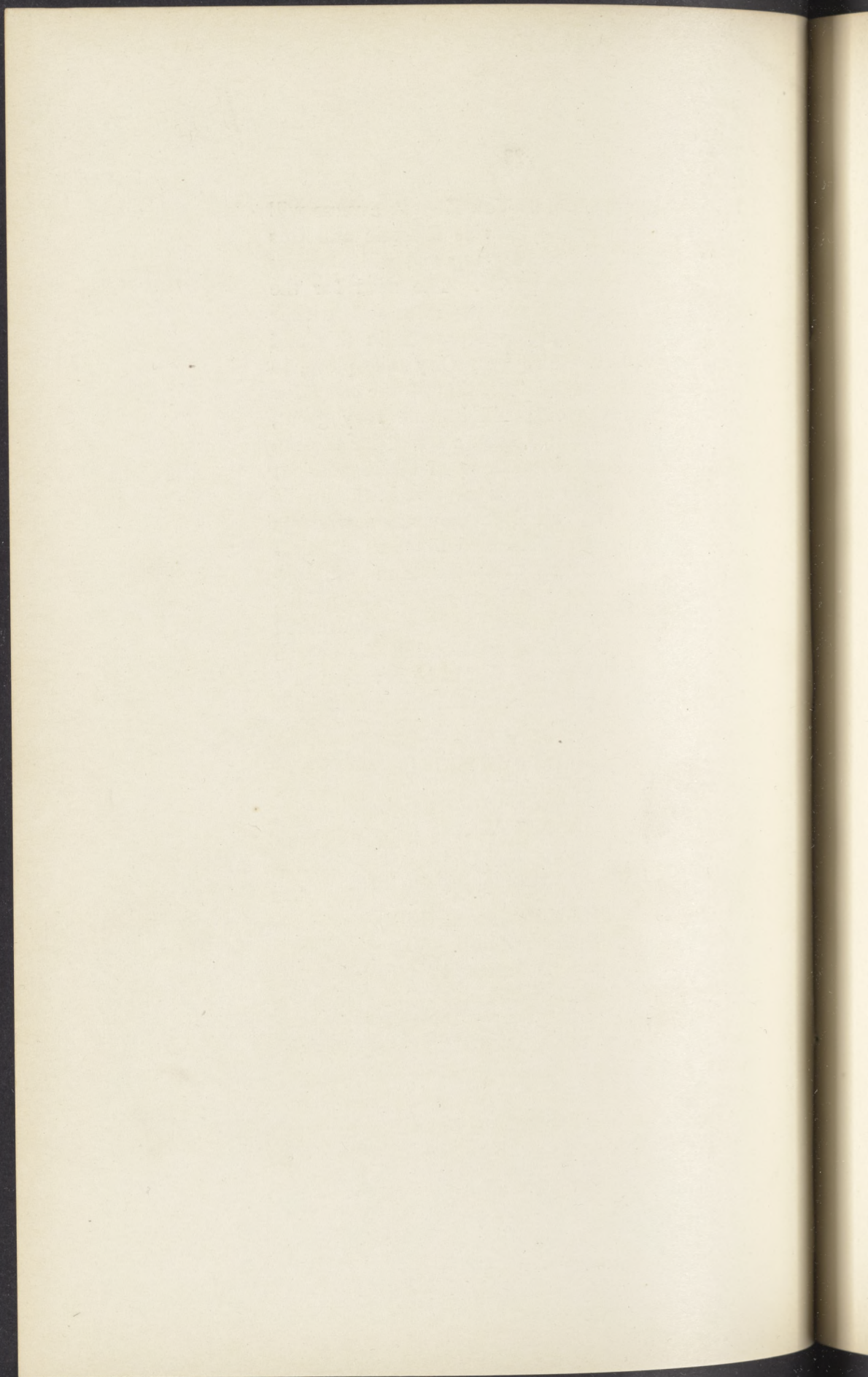
brief of the appellants. Van Keuren avenue will not only serve Public Service Electric and Gas Company but has been serving and will continue to serve the general public. The need for the same is growing greater and greater and as time passes and additional developments in this and adjoining vicinities of Jersey City take place, to say, as has the respondent, that if the need for Van Keuren avenue should become very great, it will be possible to condemn a street for the use of the public, is most unworthy of the respondent and shows an entire lack of interest in the public rights and needs. Van Keuren avenue now exists and is used by the public and there need be no necessity for any future condemnation with consequent inconvenience and expense to the public. The street should be maintained and continued and it is respectfully submitted that the decree of the Court of Chancery should be reversed and the rights of the public respected and maintained for all time.

Respectfully submitted,

WILLIAM H. SPEER and
LELAND TALIAFERRO,
Solicitors for and of Counsel with
Public Service Electric and Gas Co.

THOMAS J. BROGAN,
Solicitor for the Mayor and
Aldermen of Jersey City.

CHARLES A. ROONEY,
Of Counsel, Defendants-Appellants.



New Jersey Court of Errors and Appeals

Between

DODGE & BLISS COMPANY,
Respondent,

and

THE MAYOR and ALDERMEN OF JERSEY CITY, and PUBLIC SERVICE ELECTRIC & GAS COMPANY,
Appellants.

On Appeal
from
Chancery.

BRIEF OF RESPONDENT.

Statement.

The bill in this case was filed to quiet title to certain lands lying between the Hackensack River and West Side Avenue, Jersey City. The Mayor and Aldermen of Jersey City was the sole defendant originally, and by its answer it alleged "That there is a city street running through the land described in the first paragraph of the bill of complaint which has been dedicated to public use by the filing of a map in the office of the County Clerk (now Register) of Hudson County, which map is entitled 'Map of property of Stephen Morgan and J. V. H. Van Reyper, situate in the Tenth Ward of Jersey City dated January 1870', and filed December 13, 1870, upon which may there are certain streets delineated, one of which streets is known as Van Keuren Avenue, the area of which is contained in the description set forth in the premises described in the

first paragraph of the bill of complaint in this cause, which dedication was accepted by the defendant"; * * * and "That all the buildings erected on said tract and in the vicinity of said Van Keuren Avenue have been built so as to conform with the street line as shown on said map"; * * * and "That the above mentioned street, together with other streets have been expressly dedicated by the defendant or its predecessors in ownership by the filing of the aforesaid map defendant's rights thereon and thereto have been open, notorious and undisputed by the complainant, its predecessors in ownership, since the filing of said map and prior thereto" (Answer, pp. 21, 22).

After the testimony was closed on both sides, the Public Service Electric and Gas Company was admitted as a party defendant (pp. 85-87). Its answer in open court alleged, "first that there had been a dedication to the public of Van Keuren Avenue; secondly, there had been a dedication to the public and acceptance by the public of Van Keuren Avenue; and thirdly, that there had been a user which apart from its bearing on the question of dedication, is also plenary evidence of a prescription or prescriptive right in Van Keuren Avenue; and fourthly, that the Public Service Electric and Gas Company and the Public Service Railway Company have a private right of way over the property known as Van Keuren Avenue" (p. 83).

By stipulations in open court and by the answers, the issue was limited to the strip of land called "Van Keuren Avenue"; and in view of the fact that West Side, Duffield and James Avenues are continuations of public streets, James Avenue ending at respondent's property (see Fowler's Official Assessment Map, C-18), it was conceded that West Side Avenue and Duffield Avenue were public streets on the premises in question (pp. 51, 85). The evidence

showed that the Public Service Electric and Gas Company has a conduit right in the strip called "Van Keuren Avenue" by virtue of an agreement with respondent (C-29).

The cause was heard by Vice Chancellor Bentley, who decided there had been no dedication and that the complainant was not estopped from denying a dedication (p. 207, l. 36; p. 211, l. 34).

Appeals have been taken by both defendants from the decree advised by the learned Vice Chancellor.

Facts.

On January 5, 1870, the property described in the bill of complaint was conveyed to one Stephen Morgan to be held in trust for creditors of the grantors, and to be conveyed by the said Morgan upon the request of William H. Bumstedt, William Keeney, Charles Schultz and William Batty, or any three of them, as follows:

"In trust for the following and no other uses and purposes, viz: On a written request of the same to be made within two years signed William H. Bumstedt, William Keeney, Charles Schultz, and William Batty, or any three of them or the survivors to convey in fee simple by proper deeds for that purpose either or both of the above described piece or parcel of land and premises as may be designated in said request to the party or parties and for the price or prices mentioned in said request and to apply the net proceeds arising from such sale or sales Firstly towards the payment any of certain promissory notes which in pursuance of a compromise entered into on the twenty eighth day of December in the year eighteen hundred and sixty nine between the said William Van Keuren and William H. Batty and divers of their creditors were drawn by the said William Van Keuren and William H. Batty in favor of the said creditors payable in three, six and

nine months respectively and endorsed by the said William H. Bumstedt, William Keeney and Charles Schultz and William Batty or either of them which may not be paid according to the terms of said compromise and secondly to pay any balance there may be after all said notes are paid if arising from the sale of the piece or parcel of land and premises purchased by parties of the first part from Daniel Toffey and wife and George C. Toffey, being the premises hereinfore first described, then the profits or excess of the net proceeds of the sale over the amount laid out and expended by the said parties of the first part in or upon said premises to said William H. Bumstedt, William Keeney and Charles Schultz and any balance yet remaining together with any balance arising from the sale of three lots of land in Hudson City. Being the premises hereinfore secondly described to said William H. Van Keuren and William H. Batty and if said written request be not made within said two years, or if said request be for the sale of one only of the two pieces or parcels of land and premises hereinbefore described then to reconvey in fee simple by proper deed or deeds for that purpose to said William Van Keuren and William H. Batty their heirs and assigns both of said pieces or parcels of land and premises or the one not mentioned in said request as the case may be" (Ex. C-1).

The said conveyance to Morgan was also subject to a purchase price mortgage of \$23,000 (Ex. C-14; p. 254, l. 18).

On December 13, 1870, ~~the~~ Morgan and J. H. Van Reypen, caused a map of the said property to be filed in the office of the Clerk (now Register) of Hudson County dated January, 1870, on which several streets were delineated, one of which was "Van Keuren Avenue" (Map C-17).

On March 24, 1871, the property in question, excepting a small parcel theretofore conveyed by Mor-

gan, was conveyed by the said Morgan to William Keeney, William H. Bumsted and William Van Keuren, pursuant to the request mentioned in the deed to Morgan. (Exs. C-2; C-3). The property was still subject to the mortgage (C-14).

In 1879, the mortgage (C-14) was foreclosed and the property was conveyed by Special Master to Daniel Toffey, *et al* on April 18, 1879 (C-4).

The purchasers gave a purchase price mortgage for part of the consideration (C-15) and that mortgage was foreclosed and the property was purchased by Daniel Toffey at the Sheriff's sale on September 19, 1888 (C-5).

On September 24, 1888, the property in question was conveyed by Toffey to Complainant's predecessor in business (Charles S. Dodge and Edward K. Meigs, partners trading as Dodge & Company) (C-6).

On July 18, 1890, two of the three tracts excepted from the Toffey deed were conveyed by John A. Halladay, *et ux* to the said Dodge and Meigs (C-7).

On October 12, 1891, Dodge and Meigs conveyed part of the property described in the bill to the Dodge & Bliss Box Company (C-8).

On November 20, 1891, a small strip of the property described in the bill was conveyed by American Lumber Co. to the Dodge & Bliss Box Company (C-9).

On November 16, 1894, the complainant, Dodge & Bliss Company, was incorporated (Ex. C-16).

On November 17, 1894, the entire tract was conveyed by Meigs, *et al* and the Dodge & Bliss Box Company to the complainant, Dodge & Bliss Company (Exs. C-10; C-11).

On March 24, 1904, the riparian rights were conveyed by Dodge, *et ux* and Meigs, *et ux* to the complainant (Exs. C-12; C-13).

The property in question was meadow land and it was never developed as laid out on the map (p. 185). It has been used by complainant and its predecessors as a lumber yard and box factory ever since title was acquired in 1888. They filled in and made runways or alleys with planks for trucking. And in the year 1888, complainant's predecessor paid for a railroad switch built on the entire strip called "Van Keuren Avenue" and other parts of the property (pp. 182, 183). The complainant's predecessor also paid for water pipes and hydrants on the property (p. 186); and taxes have always been paid on the entire tract (Ex. C-20; p. 36).

The *locus in quo* has never been used by the public. For the past 12 or 15 years the complainant has maintained a "No thoroughfare" sign at the entrance to "Van Keuren Avenue" on its property (pp. 46, 184).

On January 7, 1919, on petition of complainant, the municipality passed a resolution directing the Police Department not to interfere with complainant in the erection of a fence across James Avenue, that being one of the streets shown on the Morgan and Van Reypen Map (Ex. C-21).

The official map (Fowler's 1894) does not show "Van Keuren Avenue" or any of the streets delineated on the Morgan Map except West Side, Duffield and James Avenues, the last mentioned street ending at complainant's property (Ex. C-18).

The Fowler map is the one which *shows the true condition* (not the paper condition), and it is the map from which all assessments are made (p. 34). Of all the city and county maps the only one showing "Van Keuren Avenue" is one dated 1871, in the office of the Custodian of Maps of Jersey City (D-7; p. 57). Counsel for Public Service Electric and Gas Company are mistaken when they say that that map was filed in the office of the Clerk of Hud-

son County. The custodian of maps is not even an official department of the city. But in the same office there is a record that "Van Keuren Avenue" was "vacated by foreclosure of mortgage" (pp. 60, 61). The entire tract has always been assessed by the city and the descriptions in the assessment books include the strip in question (p. 34; and Exs. C-18; and C-20).

In August, 1922, the complainant filed a petition with the municipality praying that it surrender its rights, if any, in the strip of land described in the petition and called "Van Keuren Avenue", but no action was taken thereon by the defendant (Exs. C-24 and p. 200).

The only buildings near the strip called "Van Keuren Avenue" are the ones owned by complainant and the building of the Barnes Manufacturing Company, a grantee of complainant, which has discontinued business, and the Public Service Electric & Gas Co. (p. 74).

The evidence also shows that some of the mesne conveyances refer to the Morgan & Van Reypen Map.

POINT I.

There was no dedication of "Van Keuren Avenue".

The question of dedication is mainly one of intent, either express or implied. It is conceded that where an owner of urban property files a map and makes conveyances by reference to the map, an intention to dedicate the street delineated on the map will be implied. The reason for that rule is that it would be unfair to grantees and their assigns to permit the owner who filed the map to revoke or

deny such intention (18 C. J. 60; *Vanatta v. Jones*, 42 N. J. L. 561).

When Morgan filed the map he held the property in trust, and it was also subject to a mortgage.

(a) The only person who can dedicate is the *absolute owner* of the property, or one who is acting in a representative capacity *with the consent and authority of those he represents*.

In the instant case Morgan had no *power or capacity* to convey to anyone except the nominees named by the persons mentioned in the trust deed. While he had the power to *convey a fee* it was *limited* to the persons nominated by the persons named in the trust deed. There was no request to Morgan to give or grant to the public any part of the property and, therefore, he could not have any legal intention to dedicate. Such an act (dedication) would be inconsistent with the trust for it would be giving away property *which was held for the creditors mentioned in the trust deed*. The same principle applies to a trustee as to any person holding property in a representative capacity.

"A party cannot give away what he does not own, any more than he can sell it."

"The grantee of one who made a *deed of trust* covering the land cannot give away for a street part of the property, any more than he could the whole, to the prejudice of the deed of trust, in subordination to which he held."

31 L. R. A. (N. S.) 1024 & 1027, notes on "Only owner may dedicate" citing numerous cases.

"As it is essential to its validity that a dedication create a *use unlimited* as to the time of its duration, and as it is the *very essence* of a dedication that the owner of the land has consented to abandon it, it is a *necessary conclusion* that no one except the owner of an *unlimited estate* or an estate in *fee simple*, or some

one by him expressly authorized, can make a dedication of land."

(18 C. J. 43.)

"In the present case, we encounter the further difficulty that this is a suit by an *executor and certainly as such he cannot dedicate lands*, the title to which is in the devisee or heir at law."

Paret v. Bayonne, 40 N. J. L. 333 at p. 336 (my italics).

In the case of *Prudden v. Lindsey*, 29 N. J. Eq. 615, cited by appellants, this Court was careful to point out that it was only where the trustee is vested with a discretion and the dedication was not inconsistent with the trust that such a dedication could be made. In that case, the property was held in trust for a school plot (*a public use*), and the dedication was of part of the property as a highway to reach the school, which was not only consistent but necessary. The dedication was in the furtherance of the trust.

In the case of *Earle v. New Brunswick*, 38 N. J. L. 47, also cited by appellants, the executors had express power of sale and therefore a plan for the development of the property was consistent with their duties. And as the learned Vice Chancellor said in distinguishing that case from the instant one, "the powers of the trustees were nothing at all like those confided to Morgan" (p. 209, l. 26).

(b) Nor could Morgan dedicate any part of the property without the consent of the mortgagee. That fact was evidently recognized by the municipality's corporation counsel when the resolution was advised by him directing the police not to interfere with the complainant in the erection of a fence on its property across the street called James Avenue on the Morgan map (C-24).

"Their (the mortgagors') acts of dedication unassented to by the mortgagees, created no more than an equity in the public to have the land opened for a highway, provided this did not interfere with the security of the mortgagees."

Kiernan v. Jersey City, 80 N. J. L. 273,
31 L. R. A. (N. S.) 1023.

Moreover, the foreclosure of the mortgage rendered any attempted dedication void, and the municipality was not a necessary party in the foreclosure suit. The property was conveyed to Morgan subject to a purchase price mortgage (C-14). Even if Morgan had been the absolute owner he could not have dedicated any part of the property without the consent of the mortgagee; and if he attempted to dedicate without that consent, it was an invalid act and the municipality acquired no rights. That was recognized by the municipality when it made the notation on its records that "Van Keuren Avenue" had been "vacated by foreclosure of mortgage" (pp. 60, 61).

"If a purchaser of a tract of land subject to a mortgage given by him for the consideration money, lays out the same in blocks and streets and sells lots by reference to the map by which it is laid out, and thus dedicates these streets to public use, as against himself, upon a foreclosure sale made under the mortgage in a suit where such purchaser is a party, the dedication is made void. The purchaser buys free from it."

Hague v. West Hoboken, 23 N. J. Eq. 354.

"So the foreclosure of a deed of trust executed prior to a quit-claim deed conveying part of the land to the city for use as a street revoked the offer to dedicate and, even had there been an acceptance, nullified such acceptance and put the title in the purchaser."

18 C. J. 46.

POINT II.

The references to the map in certain mesne conveyances do not estop complainant-respondent.

In some cases a reference to a map in a mesne conveyance will estop the grantee from denying there was a dedication of the streets delineated on the map. That is on the theory that the dedication has been ratified or the map has been adopted by an owner who had the power to dedicate. But where there was never a valid dedication there could be no ratification. As the learned Vice Chancellor said: "he (the grantee) certainly does not convert an invalid portion of an earlier deed into an enforceable one by his acceptance of a deed which does not contain an express ratification" (p. 211, l. 33).

And the only adoption of a map which could operate as a dedication is by an *owner* of the land embraced within the lines of streets delineated on the map.

The mere reference to a map in a deed does not constitute an adoption of the map, nor operate as an estoppel. The reference to a map in a deed is frequently for convenience or for descriptive purposes. It is said in the brief on behalf of appellants that if the recognition of the map is made only for descriptive purposes, it must be *expressly* so stated in the deed. But that is not the law. It may be *inferred* that the reference was for descriptive purposes.

"Notwithstanding a sale of lots by reference to a map or plat, there is, of course, no dedication of streets or alleys designated therein, where the conveyance expressly states that the

reference to streets or alleys is for purposes of description only, *or where it is otherwise manifest that this is the only purpose of the reference.*" (My italics.)

18 Corpus Juris 61; see also Ib. 58 & 121.

"At the time this map was filed there was no provision in the law therefor. It might have been filed with a title company or retained in the maker's possession, the effect would be the same in law.

"The filing in the Clerk's office where conveyances were recorded was a mere matter of *convenience* to the executors in selling and purchasers, in that if the lands were sold by lot and block number, according to the map, without a particular description the map was readily obtainable to establish the location of the lot conveyed." (My italics.)

Currie v. Jersey City, 95 N. J. Eq. 412, aff. 98 Ib. 689.

"When a reference in a deed to streets on a public plat is manifestly for the *purpose of location* only, it does not operate as a dedication of other streets shown on the plat but not mentioned in the deed." (My italics.)

Camden v. McAndrews & Co., 85 N. J. L. 260.

See also

Meredith v. Sayre, 32 N. J. Eq. 557.

"The language of a deed may be such that a jury question is raised as in *Atlantic City v. Groff*, 39 Vroom 670, when the deed spoke of the 'intended New York Avenue line'. So, if it be clear that the street is merely mentioned as a landmark, there is no dedication. *Meredith v. Sayre*, 5 Stew. Eq. 557. On the other hand, the recognition in a deed of the existence of a street in a deed is sometimes conclusive. * * *

"The question of dedication being mainly one of intent, its determination is ordinarily for the jury. 13 Cyc. 485. But *if the intent is plain from the language of a deed not denied to be the deed of the owner*, there is no call for the intervention of a jury." (My italics.)

Camden v. McAndrews & Co., 85 L. 260, 267.

Counsel for appellants also say that "the validity or invalidity of the original filing of a map or plat is inconsequential if a party adopt it as his own." But in order to constitute a dedication by the adoption of a map the person adopting the map would have to be the *owner* of the property dedicated.

In the instant case, the only *absolute* owner of the strip called "Van Keuren Avenue", prior to complainant's predecessor in 1888, was Toffey. In his deed to complainant's predecessor the tract was described by boundaries of the railroad and the river and properties of Van Reypen and O'Brien *which includes the strip called "Van Keuren Avenue"*, "containing twenty-three and one-eighth acres"; and there was *no reference to the Morgan map in the conveyancing part of the deed* (C-6). The reference to the map in the parcels *excepted* from the conveyance in the Toffey deed was for identification and convenience. In other words, Toffey expressly conveyed the strip called "Van Keuren Avenue" by including it in the land conveyed. It is, therefore, manifest that the reference to the map in the excepting part of the deed was merely for convenience with no intention to dedicate or to adopt the map.

The deed from Halladay to complainant's predecessor in 1890, conveyed part of the property excepted from the Toffey deed (C-7). The property abutted on the strip called "Van Keuren Avenue"

and while there was a reference to the Morgan map in the deed, the Halladays never owned any part of the strip and, therefore, could not dedicate it. Nor did complainant's predecessor have any intention to adopt the map by accepting the deed with the reference to the map. That is shown by the acts of the grantee. The property was purchased for a lumber yard and box factory in 1888; the railroad switch was immediately constructed longitudinally on the strip called "Van Keuren Avenue" (p. 45) and it has been there for 41 years. The complainant always exercised absolute dominion over the strip by putting up the "No Thoroughfare" sign, and by granting a conduit easement in the strip to the defendant, Public Service Electric and Gas Company (C-29) in the agreement for which the latter company expressly recognized the ownership of the complainant in the strip called "Van Keuren Avenue" and paid \$5000 for the easement (p. 146); and by selling to the Public Service subsidiary companies two parcels of the land including part of the strip called "Van Keuren Avenue" with descriptions by metes and bounds and without reference to any map (C-27, C-28, and p. 143); and by paying taxes on the entire tract since 1888. Those acts are competent evidence on the question of intent (18 C. J. 90 and 94).

The deed from American Lumber Company to complainant's predecessor in 1891, conveyed a small strip to straighten out one southerly line of the property and it was not near "Van Keuren Avenue" (C-9). There was a reference to the Morgan map in that deed, but it was expressly provided that such reference was "merely for convenience in description and that such reference shall not be deemed or construed as admitting the existence of any street or avenue shown on said map or as dedicating any such street or avenue" (Supplement to State of Case, p. 3, l. 37).

In the deed from complainant's predecessors (Dodge and Meigs, partners trading as Dodge & Co.) to the first corporation (Dodge & Bliss Box Co.) dated 1891, there was no reference to the Morgan map (C-8). It described the property by metes and bounds and, while it referred to a map of 1871 which had been used in the office of the custodian of maps of the city (D-7), that office had eliminated "Van Keuren Avenue" from its records by the notation that "Van Keuren Avenue" had been vacated by foreclosure; and that map was never used for assessments or for any other purpose.

Counsel for appellants say that the map of 1871 was filed in the office of the Clerk of Hudson County. But that is not the fact. It was in the office of the custodian of maps of Jersey City (p. 57), and no one making a search would look in that unofficial office. Therefore, the only map involved in the issue in this case is the Morgan map (*Schmidt v. Spaeth*, 82 N. J. L. 575, 578). ~~In~~ Any event, it is clear that there was no intention to adopt the map of 1871 by the reference in D-7, as shown by the acts of the parties hereinbefore stated.

The deed dated 1894, from complainant's predecessors (Dodge and Meigs, partners) to complainant for the properties acquired from Toffey, Halladay and American Lumber Co. which included the strip called "Van Keuren Avenue" did not refer to the Morgan map in the *conveyancing* part of the first tract. There were references to the map in the *excepting* part of the first tract, and also in the conveyancing parts of the second and third tracts (C-10). But all of the acts of the complainant and its predecessors in business show that they never intended to dedicate the strip in question nor to adopt the Morgan map. Moreover, the reason for the rule of estoppel does not obtain because the complainant and its predecessors acquired the en-

tire tract and no other grantee was interested or misled by any alleged paper street.

In the deeds from Keeney et al. to Halladay (D-8 and D-10) and from Van Keuren, Keeney et al. to N. J. Midland Railway Co. (D-11) and from Morgan (the trustee) to Schultz (D-12), all in 1871 and 1872, there were references to the Morgan map, but none of them conveyed any part of the strip called "Van Keuren Avenue". Moreover, the mortgage (C-14) was still open, and when it was foreclosed all of the said grantors and grantees were parties to the suit (C-4 at page 231). Even if the reference to the map in those deeds were not for convenience or descriptive purposes, any implied dedication was made void by the foreclosure of the mortgage (*Hague v. West Hoboken, supra*; *Kiernan v. Jersey City, supra*; and see 18 C. J. 46). And the only parcels near the strip called "Van Keuren Avenue" conveyed by those deeds (D-8, D-10, D-11 and D-12), were the ones to Halladay, who subsequently executed a deed to complainant's predecessor (C-7).

In the deed from Van Keuren, Keeney et al. to N. J. Midland Railway Co. in 1871, (D-9) there was no reference to the Morgan map, but "Van Keuren Avenue" was mentioned. But that parcel is not included in the premises described in the bill. It is the *easterly* end of the strip called "Van Keuren avenue" and it is not claimed by complainant. All of the evidence, as well as a plotting of the property described in the bill, show that the issue is with respect to the strip called "Van Keuren Avenue" *west* of West Side Avenue, and that West Side Avenue is west of the parcel described in D-9 (p. 37, ll. 23 & 31; p. 38, l. 12; p. 50, l. 13). That conveyance was also made while the mortgage (C-14) was still open, and the grantors and grantee were parties to the foreclosure suit (C-4, at p. 231).

Furthermore, the locus in quo was not *urban* property. It was wild, waste land in the meadows. The court below described it as "little better than swamp, on the extreme outlying section of what is now Jersey City, which at that time (when complainant's predecessor in business acquired it) was so desolate and isolated that, according to the witness O'Brien, it was used years later for trapping wild animals" (p. 209). The reasons for the rule with respect to dedication of streets in an urban community do not obtain in wild, waste land or country property.

"An intention to dedicate will be more readily presumed in regard to urban property than to country property, and in regard to well settled country rather than to wild, wood or waste land. *Wilke v. Pein*, 281 Ill. 130, 117, N. E. 849."

18 C. J. 94 note 90 (b).

And it would seem that this court has recognized that principle in the leading cases when it used the term "urban property" in stating the rule that the filing of a map by an owner and conveyances by him referring to the map, constitute a dedication of the streets delineated on the map (*Hoboken, M. E. Church v. Hoboken*, 33 N. J. L. 13 at p. 25; *Clark v. Elizabeth*, 40 Ib. 172, at p. 174).

Counsel for appellants argue that respondent "possesses no title which will entitle it to maintain this suit, or if it does possess an interest in the lands found in the bed of Van Keuren Avenue, such title or interest is subject to the public easement or right to use Van Keuren Avenue". The respondent proved affirmatively its title to the strip in question by the deed from Toffey to respondent's predecessor. In that deed the entire tract, which included the strip called "Van Keuren Avenue"

was conveyed (C-6). And Toffey was the only absolute owner who had the power to dedicate or adopt a map to constitute a dedication, from 1870 to the date of the deed.

It is also argued by counsel for appellants that the only persons who could object to the dedication by Morgan (the trustee) were the four persons mentioned in the deed of trust. But the property was not held in trust for them; it was held for certain creditors. Moreover, an attempted dedication by a trustee would not become valid by the silence of the beneficiaries. If it were an illegal act it would not be rendered legal because the beneficiaries did not object. The filing of the map was not a benefit to the creditors because the property was not adapted for development as lots. That idea was abandoned almost immediately and it has been used as a lumber yard for over 40 years.

POINT III.

There was no public user.

The answer of the municipality does not allege that it acquired any rights in the *locus in quo* by user. The theory of the municipality was that Morgan had expressly dedicated "Van Keuren Avenue" by the filing of the Morgan & Van Reypen map. But the Public Service Electric & Gas Company, which holds title to property at the foot of the strip called "Van Keuren Avenue", contends that there was an *acceptance* by the city of the alleged dedication; and also that there was a public user which amounted to a prescriptive right in "Van Keuren Avenue".

Even admitting, for the purpose of argument only, that there was a dedication, there was no

acceptance. An acceptance would have to be by *formal ordinance* or by acts from which an acceptance will be *presumed*, "proof of which must be unequivocal" (18 C. J. 72).

The acts which are alleged to constitute an acceptance or a right by prescription are: (a) the fact that there are water pipes and fire hydrants in "Van Keuren Avenue"; (b) an ordinance purporting to vacate the western end of "Van Keuren Avenue"; and (c) use by the city and by the public.

(a) In September, 1888, the water pipes were laid in *part of the strip* called "Van Keuren Avenue" and in *other parts* of the property (p. 71; and see diagram D-14). The complainant's evidence shows that the pipes and installation thereof were paid for by complainant. The records of complainant were destroyed in a fire in February 25, 1906, but the president of complainant testified that the payments were made and he was corroborated by a book with a memorandum of a payment by complainant to the city in September, 1902, for pipes and laying thereof and for digging, \$481.14 (pp. 54, 188).

The defendant's evidence shows that a search of the city records was made from 1901 to 1905 (not from 1888) and no entries of payment by complainant for the pipes, &c., could be found (p. 66).

From 1888 to 1904, the complainant was the only one interested or benefitted by the pipes. Since 1904, the complainant has sold two plots; one plot to The Holland Company (Public Service Corporation) and the other to Barnes Manufacturing Co. The Public Service Corporation has its water connection through Duffield Avenue, and not through the pipes in question; the latter pipes would merely act as an auxiliary in case of a break down on the Duffield Avenue line (p. 71). The Barnes Manufacturing Co. which formerly had a

connection with the pipes, has been out of business for 2 or 3 years (p. 74). The only other concern that ever had any connection with the pipes, is the Cinder Brick Co. a lessee of complainant, on the property of complainant (p. 74).

The pipes are also in "James Avenue" (See diagram D-14) where that so-called street is shown on the Morgan & Van Reyepen Map, and the defendant virtually admitted that it had no rights in that part of the property where that "street" is shown, when it passed the resolution with respect to James Avenue (C-21).

In any event, when the pipes were installed they were for the mutual benefit of complainant's predecessor and the city. The latter was benefitted by having a large industry on property which was then of very little value.

Where public rights in lands for streets are acquired by user, they must not only be continuous, *adverse to the owner and under claim of right in the public*, but also *unequivocal*.

"The public acquire no rights, nor is it subject to any burdens, by reason of the dedication, unless it be by some formal act of acceptance or by *unequivocal public user*" (*N. Y. & L. B. R. R. Co. v. South Amboy*, 57 N. J. L. 252, and see 29 C. J. 373).

At most the city had a permission to maintain the pipes on private property. It was a special use for fire protection and not for any use by the public generally.

In the case of *Robinson v. Meyer*, 59 N. J. Eq. 366, where the municipality maintained and paid for a *street light*, etc., it did not amount to a user. Vice Chancellor Emery said:

"The maintenance and lighting by the city of a lamp at the entrance of the alley into the courtyard, and the collection by the city scav-

enger of garbage and ashes from boxes in the court-yard or alley also relied on as public uses are, I think, manifestly to be considered rather as uses of the court in the way of police regulations and are not uses of a character to create a dedication to the public even as to the portions of the court where these uses were exercised, and they certainly afford no evidence of dedication of the court up to and across the defendant's line" (my italics).

And in *N. Y. & L. B. R. R. Co. v. South Amboy*, *supra*, the railroad had maintained a fence and platform across what was known as Henry Street. The city passed a resolution notifying the railroad to remove the fence and platform. ^{case} This came before the Supreme Court on certiorari. The Court said, at page 259:

"In this matter it appears that, up to the time of the occupation of this alleged street by the railroad company, and up to the year 1892 the public had made no claim to this street as a public highway; there had been no formal acceptance of it as a public highway, and *the use* made by the public was of an ambiguous and uncertain character. It is this uncertainty which now renders the claim made by the borough to it as a public highway of a very doubtful nature" (my italics).

(b) Even if the ordinance purporting to vacate the westerly end of "Van Keuren Avenue" on petition of the Public Service Electric & Gas Company in February, 1920, were admissible, it did not constitute an acceptance. That company has blown both hot and cold with respect to "Van Keuren Avenue". The complainant sold that company's holding corporation (p. 143) a tract of land including the westerly end of "Van Keuren Avenue" in 1917. The deed described the property by metes and bounds which included the westerly end of

the strip known as "Van Keuren Avenue" without mentioning it by name and without reference to any map (C-28). Three years after the said conveyance to the Public Service Electric & Gas Company (1920), it offered to give to the city a strip of the tract conveyed as aforesaid, to connect Duffield Avenue in a different way with "Van Keuren Avenue" provided the city would go on record as acknowledging that "Van Keuren Avenue" was a public street by vacating the westerly end of it (D-16, Supplement to Case, p. 4). The city naturally accepted the offer without giving up anything, for by surrendering its rights, if any, in that part of "Van Keuren Avenue" the city gave up nothing. But the Public Service accomplished its object and the city acquired a clear title to a strip of land for public use. When the application was made by the Public Service to the city, the complainant protested in writing to the city on the ground that "Van Keuren Avenue" was not a public street, the object of the protest being to avoid any inference that it acquiesced in the assertion that "Van Keuren Avenue" was a public street (D-16). But the ordinance vacating the westerly end of "Van Keuren Avenue" was not admissible in evidence because it is self-serving and not binding on complainant. If the other part of "Van Keuren Avenue" or any other private property could be taken on any such theory as that, it would be useless to have the constitutional provision that private property shall not be taken without just compensation.

Again in 1926, the Public Service Electric & Gas Co. recognized that "Van Keuren Avenue" was the property of complainant, and not public property, when it purchased a right of way for its conduit in "Van Keuren Avenue", in the agreement for which it recited that the strip was the property of complainant (C-29).

(c) The alleged public rights by prescription in "Van Keuren Avenue" are based upon use by a few of the employees of the Public Service Electric & Gas Co., and by truckmen, tradesmen and mail carriers making deliveries to that company and its employees, and by automobiles on a few occasions when violent rainstorms flooded Newark Avenue and St. Pauls Avenue for 2 or 3 hours.

There are no definite lines to "Van Keuren Avenue" (pp. 91, 92). It is full of holes or depressions with a railroad switch in it (p. 149). It is so rough that counsel for the city had difficulty in locating it (p. 49); and the court said: "no one who examined the exhibits in this case showing the surface of the ground would believe that any man in his right senses would have driven a motor vehicle over Van Keuren Avenue before the days of snubbers, shock-absorbers and semi-elliptical springs. Those accessories have all come into use within the last twenty years" (p. 208).

It is well settled that a street or highway can only be created by prescription where the use is by *the general public adversely and continuously* for 20 years in this state.

"To establish a highway by prescription the lands in question must have been used by the public with the actual or implied knowledge of the landowners, adversely under claim, or color of right, and not merely by the owner's permission and continually and uninterruptedly for the period required to bar an action for the recovery of possession of lands or otherwise prescribed by statute.

"To create a highway by prescription the user must be by the public generally as a way common to all. A user by a few individuals as such is not generally sufficient."

(29 C. J. 373.)

"Use of a road by people of the neighborhood does not as a rule create a highway."

(Ib. 374 note 99 (a) citing numerous cases.)

The Marion Plant of the Public Service Electric & Gas Co. is at the westerly end of "Van Keuren Avenue". The use by a few of the 300 employees of the Public Service Electric & Gas Co. (p. 119), was not adverse; nor was it under any claim or color of right. The complainant did not object to such use even though it put up the "No Thoroughfare" sign about the year 1913. Indeed the 8 employees testified that they were never requested not to use the property. If the use of property by employees of a concern as a "short cut" could create a public street under those circumstances there would be thousands of public streets across properties in the city.

The use by truckmen, tradesmen and mail carriers to make deliveries to the Public Service Electric & Gas Co. during and since the construction of its plant, was also a neighborly accommodation by the complainant. There is no evidence that there was any objection to such use, and the use by the fire and water departments was with the express permission of the complainant, although that was not necessary.

The only evidence of the use by part of the general public was the testimony of Dixon and Sullivan (employees of the Public Service Electric & Gas Co.) that when St. Paul's and Newark Avenues were flooded after a heavy rain several times during each summer some automobiles went through Duffield and "Van Keuren" Avenues to West Side Avenue. Dixon was there from 1926 to the present time (2 years) and Sullivan has been there since 1909 (19 years). But there were 6 wit-

nesses who testified that those conditions existed only in the past 2 years in cloudbursts, and then some of the automobiles wandered around complainant's lumber yard (pp. 143-174). And Officer Lindauer, who was stationed in that locality for about 10 years, never heard of automobiles using "Van Keuren Avenue" even in violent storms (p. 145). Such a use "due to temporary necessity" is not a public user. (*Kiernan v. J. C.*, 80 L. 273, 276.)

The testimony of James A. O'Brien that "Van Keuren Avenue" was used by hay wagons, etc., prior to 1904, does not establish anything inasmuch as it could only have been a private way without any defined lines or any use by the public.

As late as May 19, 1926, the Public Service Electric & Gas Co. recognized that "Van Keuren Avenue" was the private property of complainant when it paid \$5000 to complainant for a right of way for a conduit in "Van Keuren Avenue" (p. 146); and in the agreement for the easement it was set forth that "the party of the second part (Public Service Electric & Gas Co.) hath applied to the party of the first part (Dodge & Bliss Co.) for a grant of a right * * * through the property of the party of the first part" etc. indicated on the attached blue print form "A" to "B" through "Van Keuren Avenue" (Ex. C-29). If "Van Keuren Avenue" were a public street all that was necessary for the conduit was to obtain municipal authority to lay it, just as gas and water pipes are installed where those commodities are supplied by private corporations.

Even if there were no dispute as to the effect of the alleged uses they would not establish "Van Keuren Avenue" as a public street.

In the case of *Robertson v. Meyer*, 59 N. J. Eq. 366 where the alleged public uses were persons vis-

iting or serving the dwellings and factories, and peddlers and hucksters selling their wares, persons crossing the locus in quo to draw water from a pump, and drivers turning their wagons, collection by the city scavenger of garbage and ashes, and designating it as Maple Place, Vice Chancellor Emery said, at page 371:

"Giving to the defendants' evidence the full weight and effect it would be entitled to if standing alone in the case, I reach the conclusion that the uses shown, except so far as they may be considered as mere *licenses for neighborly accommodation* (such as getting water from the pump), are merely uses which are referable to private ways in connection with the houses, and *are not such general and undisputed public uses* of the court for access to all of the property around the court as is sufficient to overcome the evidence negating or excluding dedication, supplies by the erection and maintenance of the fence along the defendant's property." (My italics).

In *Wood v. Hurd*, 34, N. J. L. 87, a roadway was constructed on a private estate. It was worked and repaired exclusively by the owner. A few individuals of the neighborhood used it and there was some travel on foot and horseback. Mr. Justice Van Syckel said:

"These facts show that the user by neighbors was *allowed in a spirit of accommodation and a forbearance to exclude them*, and are not inconsistent with the fact indicated by the circumstances before mentioned, that the owner intended to retain absolute control over his estate." (My italics).

And in *N. Y. & L. B. R. R. Co. v. South Amboy*, 57 N. J. L. 252, the railroad had maintained a fence and platform across what was known as Henry Street for many years, and up to the year 1892, the

public had made no claim to the street as a public highway; "There had been no formal acceptance of it as a public highway; *and the use of it by the public was of an ambiguous and uncertain character.*" Mr. Justice Lippincott, speaking for the Supreme Court, said, at pages 259 and 261:

"At the time of the location of the railroad by the prosecutor in 1872, and from the time of the platting of the land into blocks and lots in 1836, up to the year 1888, the territory now included in the borough was entirely under a township government, and during the whole of that period the evidence, quite clearly indicates that these streets, as such *were very little used by the public as streets*; the public used the whole of these tracts, including the portions designated as streets, as a common without regard to the lines of the streets. In fact, there were in most instances, no visable *monuments* on the ground by which the streets or the lines thereof could be identified. * * * During all this period (1872 to 1892) the prosecutor has been in possession and use of this street at this point, and there never existed during this time *either on the part of the lot-owners or on the part of the public authorities*, any contention against the right and authority of the railroad company to maintain its platform and fence there, or *against the devotion of the street to these purposes.*" (My italics.)

POINT IV.

Public Service Electric & Gas Company acquired no right to use "Van Keuren Avenue" except for its conduit under the agreement with respondent.

In the brief on behalf of appellants it is said that Public Service Electric and Gas Company "believed and continues to believe that Van Keuren Avenue, though the title to the same may be in the complainant, is subject to the servitude of an easement of said Public Service Electric and Gas Company, *even though the right of the public in general to use the same might be in doubt*" (Appellants' Brief, p. ; my italics). It thus appears that in the preceding pages of their brief the appellants have failed to convince even themselves that "Van Keuren Avenue" is a public street. Indeed as late as 1926 the Public Service Electric and Gas Company admitted that the strip called "Van Keuren Avenue" was the property of respondent, for in the agreement for the conduit it expressly provided that it was "the property of the party of the first part", respondent (C-29; pp. 277 and 281). And, while it is true as appellants say, that the fee and control could remain in respondent until the alleged dedication was accepted by the municipality, the Public Service Electric and Gas Company would have had a clause with respect to public rights, if any, in the agreement, and would not have paid \$5000. for a conduit easement if it had believed that the respondent was not the *absolute* owner of the strip.

As further evidence that Public Service Electric and Gas Company never seriously believed that

"Van Keuren Avenue" had been dedicated, the deed from respondent to The Holland Company (the holding corporation for Public Service, p. 143) in 1917, described the land conveyed by metes and bounds *which included the westerly end of the strip called "Van Keuren Avenue", without reference to any map* (C-28).

The Public Service Electric and Gas Company is on a public street (Duffield Avenue), and it never used "Van Keuren Avenue" except during the construction of its plant to haul materials, and as a short-cut for 8 or 10 of its 300 employees. There can be no question of taking property without due process of law under those circumstances.

CONCLUSION.

There is no necessity for a public street on the strip called "Van Keuren Avenue". It would serve only one concern (The Public Service Electric & Gas Co.). There is another street (Catherine Street) close by, running parallel with "Van Keuren Avenue" which can be used as well as the latter street (p. 154; and see C-26). In any event, a necessity for a street does not give a municipality any greater or different rights in a private road. If a necessity exists a municipality can always condemn for a public street.

The other streets delineated on the Morgan & Van Reypen Map, so far as the complainant's property is concerned, have never been opened or used (Fifth Street, Sixth Street, Charlotte Street, Seventh Street and Eighth Street); and they are not involved.

It is respectfully insisted that there was no dedication or public user in the instant case and, therefore, "Van Keuren Avenue" is not a public street. It is private property subject only to the easements for the water pipes and the conduit. The decree should be affirmed.

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with Respondent.

