

24

Order Discharging Order to Show Cause,  
IN CHANCERY OF NEW JERSEY.

Between

Barbara Kesteven Meigs, Dec.  
Complainant

and

M. & N. Construction Company,  
Defendant.

This matter coming on to be heard upon an order to show cause made in the above entitled cause on the 23rd day of March, 1927, regarding the defendant M. & N. Construction Company to show cause before this court why an injunction pending the determination of this suit should not be granted by the complainant pursuant to the prayer of the bill of complaint herein, and the court having read the bill of complaint and affidavits submitted on behalf of the complainant, and the affidavits submitted on behalf of the defendant, and having heard the arguments of Elmer W. Demarest, of counsel with the complainant, and of Isaac Gross, of counsel with the defendant; It is, on this 4th day of April, 1927, on motion of Gross & Gross, of counsel with the defendant:

Ordered, that the application for said injunction pending the determination of this suit, be and the same is hereby denied, and the said order to show cause discharged with costs, to abide the final disposition of the cause.

Respectfully advised,

K. B. Walker,  
C.

James P. Palmer,  
V-C.

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WRIT OF CERTIORARI.

NEW JERSEY, ss.

The State of New Jersey to Charles F. Wise, clerk of the County of Camden,  
GREETINGS We being willing for certain  
(Seal) reasons to be certified of a certain petition filed by State Highway Commission in the office of the county clerk of the County of Camden on or about the eighteenth day of February, 1926, for the appointment of commissioners to examine and appraise the lands and premises described in said petition owned by Taylor-White Extracting Company, and fix the compensation to be paid for the taking of the lands and premises of the prosecutor described in said petition, for the purposes designated therein, and the order made thereon appointing said Commissioners, and all proceedings taken in said matter. 10 20

We do command you that the aforesaid petition and order, and all other proceedings touching and concerning the same, as fully and entirely as before you they remain, to our Justices of the Supreme Court of Judicature at Trenton, on the fifth day of July next, you certify and send, together with this writ, that therein may be done what of right and justice according to the laws and constitution of this State ought to be done.

Witness, WILLIAM S. GUMMERE, Esquire, Chief Justice of our Supreme Court at Trenton this 16th day of June, in the year of our Lord one thousand nine hundred and twenty-six. 30

E. J. KELLEHER,  
*Clerk.*

STARR, SUMMERILL & LLOYD,  
*Attorneys for Prosecutor.*

*To the Justices of the Supreme Court of New Jersey:*

In obedience to the command of this writ, I, Charles F. Wise, clerk of the County of Camden, within named, do hereby certify and send to you, the Honorable Justices of the Supreme Court, the  
10 petition and order, and all other proceedings touching and concerning the same, as fully as they remain before me, by the schedule hereto annexed appears.

In witness whereof, I have hereto set my hand and affixed the seal of the said county, this third day of July, A. D. nineteen hundred and twenty-six.

20 (Seal) CHARLES F. WISE,  
*Clerk of the County of Camden.*

[ENDORSED]

30 This writ is allowed upon the condition that it shall not operate as a stay of the proceedings under review. Let it be sealed this 16 day of June, 1926.

Frank S. Katzenbach, Jr.,  
Justice of the Supreme Court.  
July 1, 1926.  
Due and legal service of a true copy

of the within writ of certiorari is hereby acknowledged.

Edward L. Katzenbach,  
Attorney-General of N. J.  
Fred W. DeVoe,  
Counsel of State Highway  
Commission.  
July 2, 1926.

Due and legal service of writ of certiorari is hereby acknowledged. 10

Charles F. Wise,  
Clerk of the County of Camden.

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PETITION.

NEW JERSEY SUPREME COURT.  
CAMDEN COUNTY.

10 In the matter of the petition of the STATE HIGHWAY COMMISSION OF THE STATE OF NEW JERSEY for the condemnation of lands of TAYLOR-WHITE EXTRACTING COMPANY, a corporation of New Jersey.

Petition.

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To his Honor, Frank S. Katzenbach, one of the Justices of the Supreme Court of New Jersey:

The petition of the State Highway Commission, acting for and in the name and behalf of the State of New Jersey, respectfully shows unto your Honor that your petitioner was created and exists by virtue of an Act of the Legislature of the State of New Jersey entitled, "An Act to establish a State Highway Department and to define its powers and duties and vesting therein all the powers and duties now devolved by law upon the Commissioner of Public Roads and the existing State Highway Commission and Highway Commission," approved March 13, A. D. 1917, and the several acts supplementary thereto and amendatory thereof:

That in and by the act aforesaid and the said supplements and amendments, it is provided as follows:

1. A State Highway Department is hereby established and the same shall be governed by a board to be known as the State Highway Commission, which shall consist of four members, no more than two of whom shall belong to the same political party. They shall be residents of the State.

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8. The State Highway Department shall succeed to and exercise all the powers and perform all the duties now exercised or performed by or conferred and charged upon the State Commissioner of Public Roads, or the State Highway Commission or Highway Commission, by virtue of any existing law or laws, and shall have full control and direction of all projects or work on State Highways.

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12. In addition to and not in limitation of its general powers, the State Highway Commission shall have power:

(a) To determine and adopt rules, regulations and specifications and to enter into contract covering all matters and things incident to the acquisition, construction, reconstruction, maintenance and repair of State highways;

(b) To widen, straighten and regrade any State highway and to acquire any lands or rights therein by gift, device, purchase or condemnation, according to the procedure as contained in an act entitled, "An act to regulate the ascertainment and payment of compensation of property condemned or taken for public use" (Revision of 1900), approved March twentieth, one thousand nine hundred, and vacate

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any State highway or any part thereof. The State Highway Commission shall have the right and power to enter upon and take property in advance of making compensation therefor in any case where it cannot acquire lands or other property by agreement with the owner, whether by reason of disagreement as to price or the legal incapacity or absence of the owner or his inability to convey valid title, or by reason of any other cause. In any such case, upon the said Highway Commission exercising this right and entering upon and taking land in advance of making compensation therefor, it shall present a petition and proceedings shall be had to fix the compensation to be paid to the owner as provided in the said act entitled, "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use" (Revision of 1900), approved March twentieth, one thousand, nine hundred. To do and perform all acts now required by law to be done and performed by the State Commissioner of Public Roads, The State Highway Commission or the Highway Commission. These powers are to be liberally construed.

That in and by and Act of the Legislature of the State of New Jersey entitled, "An Act to establish a State highway system and to provide for the improvement, betterment, reconstruction, resurfacing, maintenance, repair and regulation of the use thereof," approved March 13, A. D. 1917, and the several acts supplementary thereto and amendatory thereof, it is provided as follows:

1. The State Highway Commission shall as soon as practicable lay out routes for a State highway system as follows:

Route No. Extension of Routes, 2, 3 and 6, of the

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approach or entrance to the bridge proposed to be constructed over the Delaware River by the States of New Jersey and Pennsylvania.

10. In the construction, maintenance and repair of highways forming a part of the State highway system, the said Commission shall possess and exercise, in addition to those conferred by this act, all those rights and powers, not incompatible with its functions, nor prohibited by law, which are now exercised by overseers of roads and boards of chosen freeholders in road construction, repair and maintenance.

And your petitioner, in furtherance of the purposes for which it was created, has determined to construct, widen, straighten and regrade State Highway Route No. as in the aforesaid act set forth, and to that end has caused to be prepared and has adopted plans and specifications for such work, and for the purposes aforesaid has determined to acquire in the name of the State of New Jersey, as per resolution adopted by such State Highway Commission at a meeting of said Commission held on the thirteenth day of October, 1925.

All that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Camden, County of Camden, and State of New Jersey, more particularly described as follows:

Parcels 50A and 50B.

BEGINNING in the riparian line of the left bank of Cooper River and Corner to lands of Taylor-White Extracting Company and lands now or formerly of the Public Service Electric Company and running thence (1) along said riparian line, North, fifty-seven degrees, fifty-seven minutes and fifty seconds East, one hundred and thirty-four feet and

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five tenths of a foot (134.5) to an angle in the same; thence (2) still along the same, South, seventy-two degrees, four minutes and fifty seconds East, two hundred and twenty-five (225) feet, to the extension of the line of lands of Taylor-White Extracting Company, and lands now or formerly of the Parkside Land Company to said riparian line; thence (3) along said property line, South, five degrees, thirty-one minutes and fifty seconds East, three hundred and seventeen feet and forty-seven one hundredths of a foot (317.47), to the mean low water line of the proposed relocation of Cooper River; thence (4) along said mean low water line, North, eighty-four degrees, thirty-eight minutes and twenty seconds West, two hundred and three feet and sixty-seven one-hundredths of a foot (203.67) to the lands now or formerly of the Public Service Electric Company; thence (5) along said lands, North, five degrees, thirty one minutes and fifty seconds West, thirty-six feet and sixty-one one hundredths of a foot (36.61) to an angle point; thence (6) still along said line, North, thirty degrees, thirty one minutes and fifty seconds West, three hundred (300) feet to the point and place of Beginning; CONTAINING in area eighty-nine thousand, five hundred and fifty-one (89,551) square feet, more or less.

Your petitioner further shows that the owner of record of said lands and premises is Taylor-White Extracting Company, a corporation of New Jersey and that no other person or corporation appears of record to have any interest in said premises except John F. Williams, by reason of a judgment entered in the Camden County Court of Common Pleas under date of April 2, 1918, which said judgment is still open of record and by reason of which John F. Williams, has or may claim to have an interest

in said lands and premises; and the City of Camden, a municipal corporation of New Jersey, which by reason of certain taxes and assessments, duly levied and assessed, has or may claim to have an interest in said land or premises.

That your petitioner has been unable to acquire the said lands and premises for the aforesaid purposes because of the fact that it has been unable to agree with the owner thereof as to the amount of compensation to be paid by your petitioner for the taking of the said lands and premises; that your petitioner has made to said owner a *bona fide* offer in writing to pay a just and reasonable sum of money as such compensation, which said offer said owner has failed to accept.

Wherefore your petitioner prays that your Honor may appoint three Commissioners, disinterested freeholders, residents of the said County of Camden, to examine and appraise the said lands and premises and to fix the compensation to be paid therefor, and to fix a time and place for the hearing of this petition, and further that your Honor may direct the manner in which the notice required by the statute to be given to the owner and persons interested, may, in the present case be given.

And your petitioner will ever pray, etc.

EDWARD L. KATZENBACH,  
*Attorney-General of New Jersey.*

FRED W. DEVOE, 30  
*Counsel to State Highway Commission,  
Attorneys of Petitioner.*

Dated February 11, 1926.

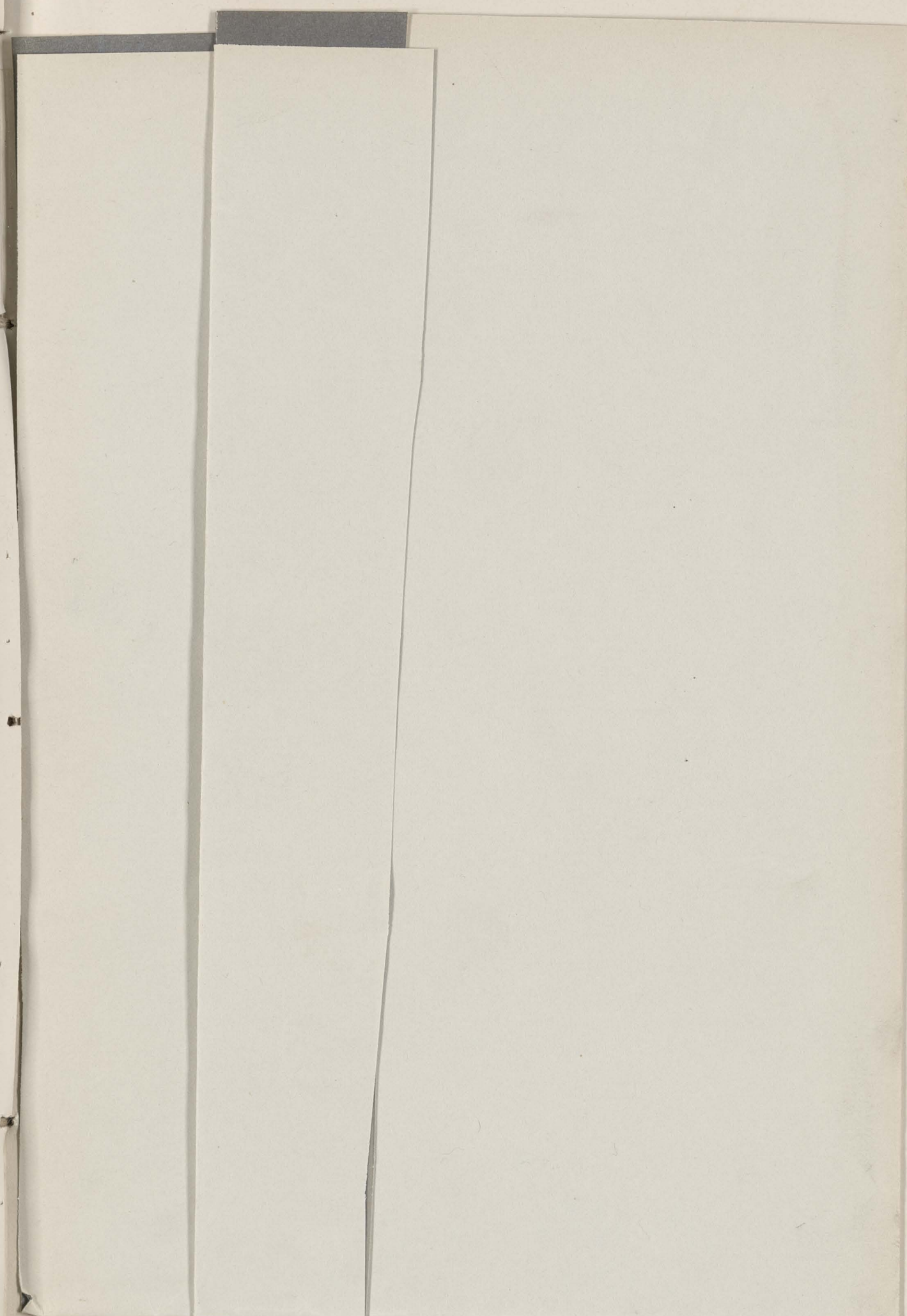
STATE OF NEW JERSEY, }  
COUNTY OF MERCER, } ss.

WILLIAM G. SLOAN, of full age, being duly sworn according to law, on his oath says that he is the State Highway Engineer of the State of New Jersey, duly appointed by the State Highway Commission, the petitioner in the foregoing matter; that he  
10 has read the foregoing petition, that the matters therein referred to are within his knowledge and information and that he verily believes the statements therein contained are true; that the map hereto annexed and marked "Exhibit A" shows the premises described in the foregoing petition and was prepared under the direction of deponent; that it is necessary to acquire the said premises for the constructing, straightening, widening, and regrading of the State Highway route and No. ,  
20 named in Section one of an Act of the Legislature of the State of New Jersey, "An Act to establish a State Highway system and to provide for the improvement, betterment, reconstruction, reservicing, maintenance, repair and regulation and use thereof," approved March 13, 1917, its supplements and amendments; that the owner of record of said lands and premises is Taylor-White Extracting Company a corporation of New Jersey and that the said State Highway Commission has failed to acquire the said  
30 lands and premises by agreement of the owner, for the reasons as set forth in the foregoing petition.

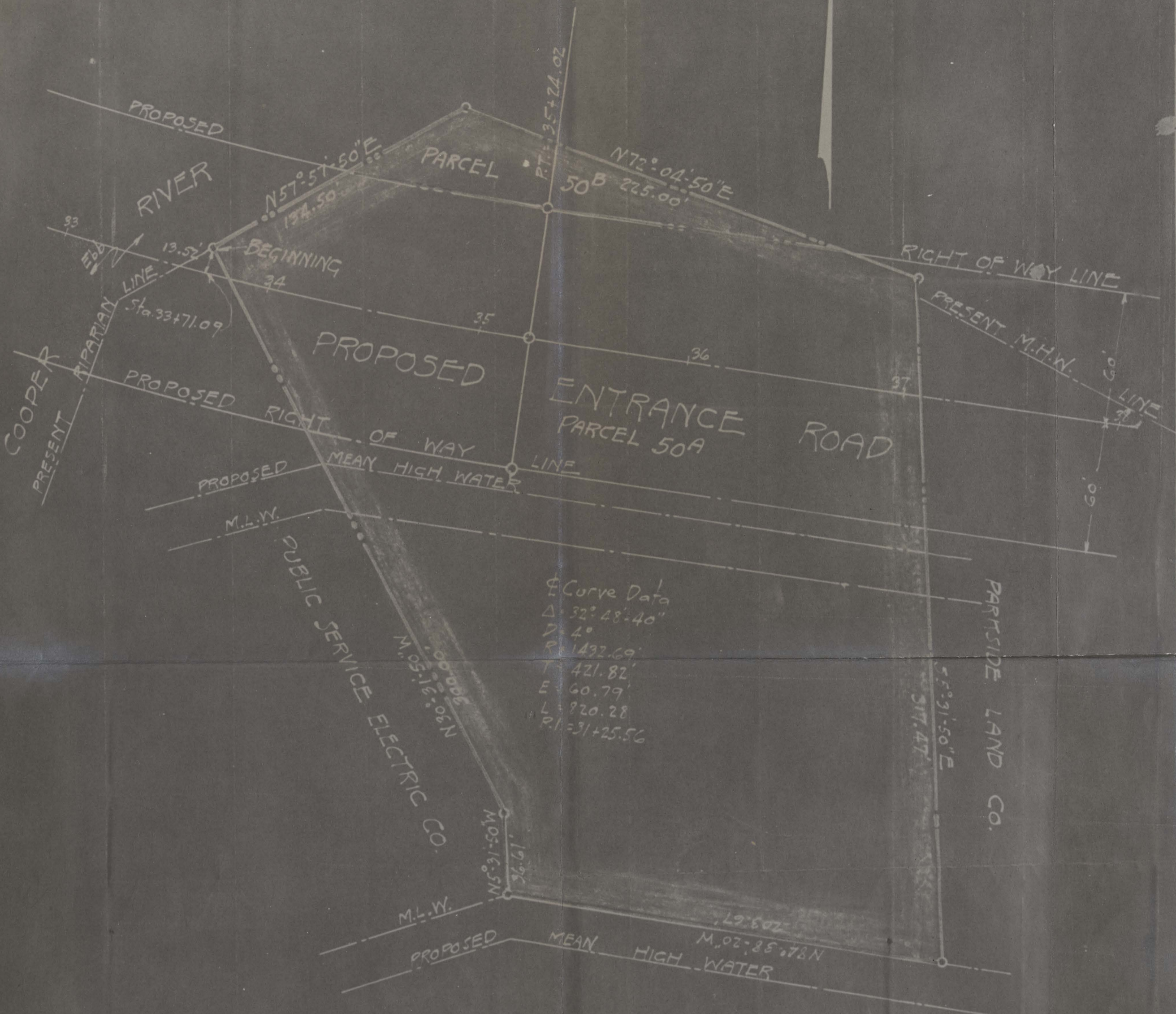
WILLIAM G. SLOAN.

Sworn and subscribed before me this eleventh day of February, A. D. 1926.

EMILY JANECEK,  
Notary Public of New Jersey.



PARCEL N° 50A & 50B  
ENTRANCE RD. - SECTION - 2



Curve Data  
 $\Delta = 32^\circ 48' 40''$   
 $D = 4'$   
 $R = 1492.69'$   
 $T = 421.82'$   
 $E = 60.79'$   
 $L = 820.28'$   
 $PI = 31+25.56$

NEW JERSEY  
 STATE HIGHWAY DEPARTMENT  
 CAMDEN EXTENSION DIVISION  
 ENTRANCE ROAD  
 PROPERTY TO BE ACQUIRED FROM  
**TAYLOR-WHITE EXTRACTING CO.**  
 CITY OF CAMDEN

AREA TO BE ACQUIRED = 89551 SQ. FT.

SCALE 1"=50' JAN. 1926

ORDER FIXING TIME AND PLACE.

NEW JERSEY SUPREME COURT.  
CAMDEN COUNTY.

10 In the matter of the petition of the STATE HIGHWAY COMMISSION OF THE STATE OF NEW JERSEY for the condemnation of lands of TAYLOR-WHITE EXTRACTING COMPANY, a corporation of New Jersey.

Order Fixing Time and Place.

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The petition of the State Highway Commission setting forth the authority of the said Commission in the name of the State of New Jersey to acquire by condemnation certain lands and premises lying in the City of Camden in the County of Camden and State of New Jersey, and the determination of the said Commission to acquire said lands and premises for the use of the State of New Jersey in the construction, widening, straightening and regrading of State Highway Route No. , as provided in Chapter 14, P. L. 1917; that Taylor-White Extracting Company, a corporation of New Jersey is the owner of record of the lands and premises described in said petition and that the said Commission is unable to acquire the said lands and premises by agree-

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ment with said owner, and praying for the appointment of three Commissioners, disinterested freeholders, residents of the said County of Camden to examine and appraise said lands and premises and to fix the compensation to be paid therefor and damages, if any, caused by reason of the taking thereof; having been presented to me, F. S. Katzenbach one of the Justices of the Supreme Court of the State of New Jersey, and I having considered the same.

It is, on this eighteenth day of February, A. D. 10 1926, ordered that Monday, the twenty-ninth day of March, A. D. 1926, at the hour of eleven o'clock (Eastern Standard Time) in the forenoon of said day, be assigned and fixed as the time, and the Court House in the City of Camden in the County of Camden and State of New Jersey, as the place, for the hearing of said petition before me, and that notice thereof be given to the owner of said lands and premises and the persons interested therein, as set forth in said petition, which notice, together 20 with a copy of said petition and of this order, neither of which need be certified, shall be served upon the parties in interest at least six days before the date hereinabove fixed for the hearing of said petition, in the manner following:

Upon John F. Williams either personally or by leaving the same at their place of residence within this State with some person over the age of fourteen years.

Upon Taylor-White Extracting Company, a corporation of New Jersey; the City of Camden, a municipal corporation of New Jersey, by serving said notice upon the registered agent or one of the officers of said corporation within this State or by leaving the same at the principal office of said corporation within this State with the person in charge of said office. 30

Upon John F. Williams by publishing said notice embodying a description of said lands and premises in Post Telegram a newspaper published in the said County of Camden and State of New Jersey, for not less than one week, and by mailing such notice to the parties in interest whose place of residence outside this State can be ascertained.

And it is further ordered that the said petition and this order be filed in the office of the clerk of 10 the County of Camden.

FRANK S. KATZENBACH,  
*Justice of the Supreme Court.*

[ENDORSED]

NEW JERSEY SUPREME COURT.  
Camden County.

20 In the matter of the petition of the State Highway Commission of the State of New Jersey for the condemnation of lands of Taylor-White Extracting Company, a corporation of New Jersey.

ORDER FIXING TIME AND PLACE.

Filed Feb. 23, 1926, 10.22 A. M.

Wm. D. Brown,  
County Clerk.

ORDER APPOINTING COMMISSIONERS.

NEW JERSEY SUPREME COURT.  
CAMDEN COUNTY.

In the matter of the petition of the STATE HIGHWAY COMMISSION OF THE STATE OF NEW JERSEY for the condemnation of lands of TAYLOR-WHITE EXTRACTING COMPANY, a corporation of New Jersey.

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Order Appointing Commissioners.

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Whereas the State Highway Commission of the State of New Jersey under and by virtue of "An Act to establish a State Highway Department and to define its powers and duties, and vesting therein all the powers and duties now devolving by law on the Commissioner of Public Roads, and the existing State Highway Commission and Highway Commission," approved March 13, 1917, and the several supplements thereof and amendments thereof, and under the authority of "An Act to establish a State Highway System and to provide for the improvement, betterment, reconstruction, resurfacing, maintenance, repair, and regulation of the use thereof," approved March 13, 1917, and the several supplements thereto, and amendments thereof, have made

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application to me in writing, by petition duly filed in the clerk's office of Camden County, to appoint three disinterested freeholders, residents of the said County of Camden, Commissioners to appraise the said lands and premises and to assess the damages which the owners of the land set forth in said petition, and hereinafter particularly described, have sustained or shall sustain by reason of the taking of said land for public use by the State of New Jersey, and to do whatever else the said Commissioners so to be appointed are by law authorized or required to do; which said lands are more particularly described as follows:

All that certain lot, tract, or parcel of land and premises situate, lying and being in the City of Camden, in the County of Camden and State of New Jersey, more particularly described as follows:

Parcels 50A and 50B.

20 BEGINNING in the riparian line of the left bank of Cooper River and corner to lands of Taylor-White Extracting Company and lands now or formerly of the Public Service Electric Company, and running thence (1) along said riparian line, North, fifty-seven degrees, fifty-seven minutes and fifty seconds East, One hundred and thirty-four feet and five tenths of a foot (134.5) to an angle in the said; thence (2) along the same, South, seventy-two degrees, four minutes and fifty seconds East, two hundred and twenty-five (225) feet, to the extension of the line of lands of Taylor-White Extracting Company and lands now or formerly of the Parkside Land Company to said riparian line; thence 30 (3) along said property line, South, five degrees, thirty-one minutes and fifty seconds East, three hundred and seventeen feet and forty-seven one

hundredths of a foot (317.47) to the mean low water line of the proposed relocation of Cooper River; thence (4) along said mean low water line, North, eighty-four degrees, thirty-eight minutes and twenty seconds West, two hundred and three feet and sixty-seven one hundredths of a foot (203.67) to the lands now or formerly of the Public Service Electric Company; thence (5) along said lands North, five degrees, thirty-one minutes and fifty seconds West, thirty-six feet and sixty-one one hundredths of a foot (36.61) to an angle point; thence 10 (6) still along said line, North, thirty degrees, thirty-one minutes and fifty seconds West, three hundred (300) feet to the point and place of Beginning; CONTAINING in area, eighty-nine thousand, five hundred and fifty-one (89,551) square feet, more or less.

AND WHEREAS, by my order made the eighteenth day of February, A. D. 1926, I appointed Monday the twenty-ninth day of March, A. D. 1926, at the hour of eleven o'clock in the forenoon of said day, and the Court House in the City of Camden, County of Camden and State of New Jersey, as the time and place to hear said petition. 20

AND WHEREAS, it appears to my satisfaction by the affidavit of Fred W. DeVoe and Milton D. Swackhamer, that due notice of this application for the appointment of commissioners and of the time and place of hearing the same has been served upon Taylor-White Extracting Company, a corporation of New Jersey; the City of Camden, a municipal corporation of New Jersey; John F. Williams, and the said State Highway Commission, appearing by their capital counsel, Hon. Edward L. Katzenbach, attorney-general, upon the return of said order at the time and place named therein and assigned, and 30

having heard and considered the matter and being satisfied that the said commissioners should be appointed and no cause shown to the contrary.

I, Frank S. Katzenbach, Jr., one of the Justices of the Supreme Court, of the State of New Jersey, by virtue of the power and authority vested in me by law, do hereby on this twenty-ninth day of March, A. D. 1926, appoint: Robert J. T. Paul, Joseph E. Nowrey and Joseph Walworth, and three disinterested  
 10 freeholders of the County of Camden, and State of New Jersey, commissioners to examine and appraise the said lands of Taylor-White Extracting Company, a corporation of New Jersey, as set forth in said petition, necessary and required to be taken by the State of New Jersey for the public use for the construction of State Highway Route No. as provided in said Act entitled, "An Act to establish State Highway System and to provide for the improvement, betterment, reconstruction, resurfacing, maintenance, repair and regulation of the use  
 20 thereof," approved March 13, 1917, its supplements and amendments as in said petition set forth, and to assess the damages to be sustained by the person or persons interested in the taking or condemning of the said lands or property for public use by the State of New Jersey and for the purposes set forth in said petition and to proceed therein in all respects as is directed an Act entitled, "An Act to regulate the ascertainment and payment of Com-  
 30 pensation of property condemned or taken for public use" (Revision of 1900), approved March 20, 1900, its supplements and amendments.

And I do direct said Commissioners to cause to be given to the State Highway Commission and Taylor-White Extracting Company, a corporation of New Jersey; the City of Camden, a municipal cor-

poration of New Jersey, and John F. Williams, six days' notice in writing of the time and place when and where they will meet and proceed their duties under this appointment, which said notice, for the State Highway Commission, may be served upon William G. Sloan, State Highway Engineer, personally, or by leaving the same at the office of the said State Highway Engineer at Trenton, or upon the counsel of the said State Highway Commission, the  
 10 Attorney-General of the State of New Jersey; and upon Taylor-White Extracting Company, a corporation of New Jersey; the City of Camden, a municipal corporation of New Jersey; by serving said notice upon the registered agent or one of the officers of said corporation within this State or by leaving the same at the principal the said corporation with-  
 20 in this State with the person in charge of said office; upon John F. Williams by publishing said notice in the "Camden Daily Courier" a newspaper published in the said County of Camden and State of New Jersey, for not less than one week and by mailing such notice to the party in interest whose place of residence outside this State can be ascer-  
 30 tained.

And it is further ordered that the said Commissioners shall file their report with the clerk of the County of Camden on or before the fourth day of June, A. D. 1926.

FRANK S. KATZENBACH,  
*Justice of the Supreme Court.* 30

[ENDORSED]

NEW JERSEY SUPREME COURT.  
Camden County.

In the matter of the petition of the State Highway Commission of the State of New Jersey, for the condemnation of the lands of Taylor-White Extracting Company, a corporation of New Jersey.

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ORDER APPOINTING COMMISSIONERS.

Filed Mar. 31, 1926.

Charles F. Wise,  
County Clerk.

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PROOF OF SERVICE.

NEW JERSEY SUPREME COURT.  
CAMDEN COUNTY.

In the matter of the petition of the STATE HIGHWAY COMMISSION OF THE STATE OF NEW JERSEY for the condemnation of lands of TAYLOR-WHITE EXTRACTING COMPANY, a corporation of New Jersey.

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Proof of Service.

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

FRED W. DEVOE, of full age, being duly sworn according to law, on his oath deposes and says that he is counsel to the State Highway Commission of the State of New Jersey, being the Commission named in the foregoing entitled cause, and as such counsel served a notice of the time and place when and where the petition filed in the foregoing entitled cause is to be heard upon John F. Williams, by causing said notice to be published in the "Camden Post Telegram," a newspaper published in the County of Camden, and State of New Jersey for one week, at least six days prior to the date fixed for the hearing of said petition, a copy of which

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*Proof of Service*

notice, together with the affidavit of the publisher of said newspaper is hereto annexed and mailing the same to the parties in interest whose place of residence this State could be ascertained.

FRED W. DeVOE.

Sworn and subscribed before me this 22nd day of March, A. D. 1926.

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EMILY B. JANECEK,  
*Notary Public of New Jersey.*

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NOTICE.

NEW JERSEY SUPREME COURT.  
CAMDEN COUNTY.

In the matter of the petition of the STATE HIGHWAY COMMISSION OF THE STATE OF NEW JERSEY for the condemnation of lands of TAYLOR-WHITE EXTRACTING COMPANY, a corporation of New Jersey.

Notice.

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*To Taylor-White Extracting Company, a corporation of New Jersey; the City of Camden, a municipal corporation of New Jersey; John F. Williams; and to whom it may concern:*

Please take notice that application has been made by the State Highway Commission of the State of New Jersey to the Honorable Frank S. Katzenbach, one of the Justices of the Supreme Court of the State of New Jersey, upon its petition, which petition has been duly filed in the office of the clerk of Camden County, for the appointment of three disinterested freeholders, residents of the County of Camden, as Commissioners to appraise and fix the compensation to be paid for a certain tract of

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land situate, lying and being the City of Camden, County of Camden, and State of New Jersey, more particularly described as follows:

BEGINNING in the riparian line of the left bank of Cooper River and corner to lands of Taylor-White Extracting Company and lands now or formerly of the Public Service Electric Company, and running thence (1) along the said riparian line, North, fifty-seven degrees, fifty-seven minutes and  
 10 fifty seconds East, one hundred and thirty-four feet and five tenths of a foot (134.5) to an angle in the same; thence (2) still along the same, South, seventy-two degrees, four minutes and fifty seconds East, two hundred and twenty-five (225) feet, to the extension of the line of lands of Taylor-White Extracting Company and lands now or formerly of the Parkside Land Company to said riparian line; thence, (3) along said property line, South, five de-  
 20 grees, thirty-one minutes and fifty seconds East, three hundred and seventeen feet and forty-seven one hundredths of a foot (317.47) to the mean low water line of the proposed relocation of Cooper River; thence (4) along said mean low water line, North, eighty-four degrees, thirty-eight minutes and twenty seconds West, two hundred and three feet and sixty-seven one hundredths of a foot (203.67) to the lands now or formerly of the Public Service Electric Company; thence (5) along said lands, North, five degrees, thirty-one minutes and forty  
 30 seconds West, thirty-six feet and sixty-one one hundredths of a foot (36.61) to an angle point; thence (6) still along same line, North, thirty degrees, thirty-one minutes and fifty seconds West, three hundred (300) feet to the point and place of Beginning; CONTAINING in area eighty-nine thousand, five hundred and fifty-one (89,551) square feet, more

or less; of which lands and premises the Taylor-White Extracting Company, a corporation of New Jersey is the owner of record, and to make such decision and award as to such Commissioners so to be appointed shall seem just and proper and to do whatsoever else said Commissioners are by law authorized to do in the premises.

10

Take further notice that an order was made by said Justice on the eighteenth day of February, 1926, fixing Monday, the twenty-ninth day of March, A. D. 1926, at the hour of eleven o'clock in the forenoon of said day, and the Court House in the City of Camden, County of Camden, and State of New Jersey, as the time and place when the said petition will be heard, at which time you should appear if you desire to be heard.

20

EDWARD L. KATZENBACH,  
*Attorney-General of New Jersey.*

FRED W. DEVOE,  
*Counsel to State Highway Commission,  
 Attorneys of Petitioner.*

Dated March 1, 1926.

30

[ENDORSED]

NEW JERSEY SUPREME COURT.  
Camden County.

In the matter of the petition of the State Highway Commission of the State of New Jersey for the condemnation of lands of Taylor-White Extracting Company, a corporation of New Jersey.

10

PROOF OF SERVICE.

Filed Mar. 31, 1926.

Charles F. Wise,  
County Clerk.

20

30

PROOF OF SERVICE.

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY.

In the matter of the petition of the STATE HIGHWAY COMMISSION OF THE STATE OF NEW JERSEY for the condemnation of lands of TAYLOR-WHITE EXTRACTING COMPANY, a corporation of New Jersey.

Proof of Service.

10

20

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

MILTON D. SWACKHAMER, of full age, being duly sworn according to law, on his oath deposes and says that on March 4, 1926, he served a notice, of which the annexed is a true copy, together of the petition filed in the foregoing entitled cause and the order fixing time and place for hearing said petition, in the following manner:

30

Upon the Taylor-White Extracting Company, a corporation of New Jersey, by leaving the same at the office of said corporation in the City of Camden, County of Camden, and State of New Jersey,

with H. N. Scheirer, assistant treasurer and secretary of said corporation; upon the City of Camden, a municipal corporation of New Jersey, by leaving the same at the office of said corporation in the City of Camden, aforesaid, with H. A. Simpson, clerk of said City of Camden.

MILTON D. SWACKHAMER.

Sworn and subscribed before me this 19th day of 10 March, A. D. 1926.

EMILY B. JANEIEK,  
*Notary Public of New Jersey.*

NOTICE.

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY.

In the matter of the petition of the STATE HIGHWAY COMMISSION OF THE STATE OF NEW JERSEY for the condemnation of lands of TAYLOR-WHITE EXTRACTING COMPANY, a corporation of New Jersey.

Notice.

*To Taylor-White Extracting Company, a corporation of New Jersey; the City of Camden, a municipal corporation of New Jersey, John F. Williams; and to whom it may concern;*

Please take notice that application has been made by the State Highway Commission of the State of New Jersey to the Honorable Frank S. Katzenbach one of the Justices of the Supreme Court of the State of New Jersey, upon its petition, which petition has been duly filed in the office of the clerk of Camden County, and a true copy of which is hereto annexed, for the appointment of three disinterested freeholders, residents of the County of

Camden, as Commissioners to appraise and fix the compensation to be paid for a certain tract of land situate, lying and being in the City of Camden, in the County of Camden, and State of New Jersey, and assess the damages, if any, caused by reason of the taking thereof, which lands are more particularly described in said petition, and of which lands and premises Taylor-White Extracting Company, a corporation of New Jersey, are the owners of record, and to make such decision and award as to such Commissioners, so to be appointed, shall seem just and proper, and to do whatever else said Commissioners are by law authorized and required to do in the premises.

Take further notice that an order was made by said Justice on the 18th day of February, A. D. 1926, a true copy of which order is hereto annexed, fixing Monday the 29th day of March, A. D. 1926, at the hour of eleven o'clock (Eastern Standard Time) in the forenoon of said day at the Court House, in the City of Camden, in the County of Camden, and State of New Jersey, as the time and place when said petition will be heard, at which time you should appear if you desire to be heard.

EDWARD L. KATZENBACH,  
*Attorney-General of New Jersey.*

FRED W. DEVOE,  
*Counsel to State Highway Commission,  
Attorneys of Petitioner.*

[ENDORSED]

NEW JERSEY SUPREME COURT.  
Camden County.

In the matter of the petition of the State Highway Commission of the State of New Jersey for the condemnation of lands of Taylor-White Extracting Company, a corporation of New Jersey.

PROOF OF SERVICE.

Filed Mar. 31, 1926.

Charles F. Wise,  
Clerk.

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30

ORDER EXTENDING TIME.

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY.

10

In the matter of the petition of the STATE HIGHWAY COMMISSION OF THE STATE OF NEW JERSEY for the condemnation of lands of TAYLOR-WHITE EXTRACTING COMPANY, a corporation of New Jersey.

Order Extending Time.

20

It appearing that upon application duly made, on the day fixed for the hearing of the petition filed in this matter, on evidence satisfactory to me, of the service or publication of notices, as required by law and the order fixing time and place for such hearing, heretofore made were appointed to examine and appraise the lands and premises described in said petition and to assess the damages done said lands by reason of the taking thereof for public use by the State of New Jersey, and that a day was by me fixed on or before which said Commissioners must file their report, and it being represented to me that said Commissioners will not be able to file their said report on or before the first

day of June, A. D. nineteen hundred and twenty-six, as hereinbefore ordered.

It is hereby on this 25th day of May, A. D. nineteen hundred and twenty-six, for a good cause shown, ordered that the day limited for the filing of said report be extended to the first day of August, A. D. nineteen hundred and twenty-six.

FRANK S. KATZENBACH,  
Justice of the Supreme Court.

10

[ENDORSED]

NEW JERSEY SUPREME COURT.

Camden County.

In the matter of the petition of the State Highway Commission of the State of New Jersey, for the condemnation of lands of Taylor-White Extracting Company, a corporation of New Jersey.

20

ORDER EXTENDING TIME.

Filed May 27, 1926. 7.13 o'clock.

Charles F. Wise,  
County Clerk.

30

## REASONS FOR REVERSAL.

## NEW JERSEY SUPREME COURT.

|    |                                     |                      |                              |
|----|-------------------------------------|----------------------|------------------------------|
| 10 | TAYLOR-WHITE EXTRACTING<br>COMPANY, | } <i>Prosecutor,</i> | } Reasons for Re-<br>versal. |
|    | v.                                  |                      |                              |
|    | STATE HIGHWAY COMMIS-<br>SION,      | } <i>Respondent.</i> |                              |

The prosecutor assigns the following reasons for  
20 the reversal of the order removed by the writ of  
certiorari in this cause:

1. The petition for the appointment of Commis-  
sioners is defective in that it does not state that  
the land, described therein, is necessary for the  
purposes set forth in the petition.
2. The said petition is defective in that it does  
not set forth that it is the purpose of the defendant  
30 to use all the land described therein for the con-  
struction of a highway or/and that a part of such  
land, as described, will, when the highway is com-  
pleted, be outside of the limits thereof.
3. The petition should define the burden to be  
imposed upon the owner's land and the rights to be

acquired should be specifically stated, so as to leave  
no doubt as to the exact purposes for which the  
Commission desires to acquire the land.

4. The petition does not state the necessity for  
taking lands outside of the line of the highway, in  
the following particulars:

(a) If the purpose is to use any portion of the  
lands, described in the petition, for the relocation  
of the river, this fact should be stated. 10

(b) If it is the purpose of the Commission to  
turn over any of the land to third persons, even if  
the taking of such land is reasonably necessary for  
the construction of the highway, this fact should  
be stated.

(c) If it is the purpose of the Commission to use  
any portion of the land outside of the line of the  
highway for construction purposes and by the mak-  
ing of slopes to fortify and protect the highway and  
that after such construction work is finished, the  
same would not be subject to public use, this fact  
should be stated. 20

(d) If the use to which any portion of the land is  
to be put is merely temporary and not intended to  
be made a part of the public highway, this fact  
should also be set forth.

5. The real purpose of the Commission is to se-  
cure the prosecutor's land with three objects in  
view: 30

(a) To construct an actual bed of the highway one  
hundred twenty (120) feet wide.

(b) To devote a portion of the land thus acquired  
for the benefit of another agency of the State in  
the relocation of the river.

(c) To turn over to the South Jersey Gas, Elec-

tric & Traction Company and the estate of S. H. French four parcels of land, which will abut the highway when completed, the reason for which is made perfectly clear by the testimony.

6. The defendant has no authority under the law to acquire any portion of the prosecutor's land for the purpose of relocating Cooper River or/and for the purpose of turning the same, or any part thereof, over to the South Jersey Gas, Electric & Traction Company and the S. H. French Company. 10

7. There is no authority under the law to justify the Commission in taking lands of the prosecutor for any other purpose than for the construction of a highway.

8. The petition is defective in that it does not state the exact purpose for which the land, or various portions thereof, is to be used, particularly when it is manifest that three separate and distinct uses are contemplated. 20

9. The petition is defective for the reason that all jurisdictional facts justifying the appointment of Commissioners are not set forth.

10. The action taken by the Commission authorizing the condemnation of the prosecutor's land was irregular, defective and unlawful in that there was no definition of the various purposes for which the said Commission intended to use the land of the prosecutor, when acquired, and if it was intended to use any of the said lands for purposes, other than the construction of a highway, the resolution authorizing the condemnation should have so stated. 30

AMENDMENT OF REASONS FOR REVERSAL.  
NEW JERSEY SUPREME COURT.

TAYLOR-WHITE EXTRACTING  
COMPANY,

*Prosecutor,*

v.

STATE HIGHWAY COMMIS-  
SION,

*Defendant.*

On Certiorari.  
Amendment of Rea- 10  
sons for Reversal.

Counsel consenting:

It is ordered that the reasons for reversal heretofore filed in this cause be amended by adding the following: 20

12. The resolution passed by the State Highway Commission with respect to the condemnation of the prosecutor's lands is defective and irregular for the reason that it did not specify the exact purposes for which the Commission intended to use the lands of the prosecutor, about to be condemned.

We consent.

STARR, SUMMERILL & LLOYD,  
*Attorneys of the Prosecutor.*

FRED W. DEVOE, 30  
*Attorney for Defendant.*

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11. The proceedings removed by this writ are otherwise defective, irregular and impertinent.

STARR, SUMMERILL & LLOYD,  
*Attorneys of Prosecutor.*

[ENDORSED]

July 12, 1926.

10

Due and legal service of a copy of within reasons for reversal is hereby acknowledged.

Fred W. DeVoe,  
Attorney of Respondent.

20

30

## DEPOSITIONS.

The following depositions, taken under a rule of the Supreme Court, are, by consent of the parties, to be considered under the writ issued herein.

10

|                                     |   |              |
|-------------------------------------|---|--------------|
| TAYLOR-WHITE EXTRACTING<br>COMPANY, | } | Depositions. |
| <i>Prosecutor,</i>                  |   |              |
| v.                                  |   |              |
| STATE HIGHWAY COMMIS-<br>SION,      | } |              |
| <i>Respondent.</i>                  |   |              |

20

Transcript of proceedings taken in the above entitled cause before BARTON B. HUTCHINSON, Esq., Supreme Court Commissioner, at Trenton, New Jersey, on Monday, June 7th, 1926.

## APPEARANCES:

30 MESSRS. STARR, SUMMERILL and LLOYD, GEORGE PURNELL, for the prosecutor.  
FRED W. DEVOE, MARK A. SULLIVAN, for the defendant.

(Marion H. Sweetman sworn as stenographer.)

Mr. Hutchinson: Are you going to stipulate, gentlemen, that the depositions be not signed and the stenographer sworn?

Mr. Devoe: My suggestion is, that we stipulate that the testimony be taken stenographically and the signatures waived.

Mr. Hutchinson: Then you had better enter that on the record. 10

Mr. Starr: That is satisfactory.

Mr. Devoe: It is consented that the testimony be taken before Barton B. Hutchinson, Esq., as Supreme Court Commissioner instead of Frank Transue.

(Marion H. Sweetman sworn as stenographer.) 20

WILLIAM G. SLOAN, called as a witness in behalf of the prosecutor, first being duly sworn, testified as follows:

Direct examination.

By Mr. Starr: 30

Q. What is your place of business?

A. I live in Lawrence Township, Mercer County.

Q. And by profession are you an engineer?

A. I am.

Q. A civil engineer?

A. Yes.

Q. And have you any official connection with the State Highway Commission of New Jersey.

A. I am a State Highway engineer of New Jersey.

Q. How long have you been a state highway engineer?

A. A little over three years, three years and one month.

10 Q. And what are your duties as state highway engineer for the commission?

A. I am in charge of the carrying out of the work of the commission in the design and construction and maintenance of the state highways of the State, and make supervision and inspection of such work as done by counties and other authorities as is done under State aid.

20 Q. Have you had anything to do with the construction of the supposed entrance road from the Crescent Boulevard through Camden to the bridge plaza?

A. I have.

Mr. Starr: I offer in evidence the notice and copy of petition which was served upon the Taylor, White Extracting Co. as a basis for the proceedings to take land belonging to that corporation for highway purposes, and will ask to have it marked.

30 Mr. Devoe: No objection to that.

(Received and marked Exhibit P1.)

Q. Now, Mr. Sloan, will you take that petition, please, and tell me whether or not you are the William G. Sloan who verified that petition by the affidavit attached to it?

A. I am.

Q. I call your attention to this paragraph on the second page of the petition which reads as follows: "And your petitioner in furtherance of these purposes for which it was created has determined to construct, widen, straighten and regrade State Highway Route as in the aforesaid act set forth and to that end has caused to be prepared and has adopted plans and specifications for such work, and for the purposes aforesaid has determined to acquire in the name of the State of New Jersey as per resolution adopted by the State Highway Commission, at a meeting of said commission held on the 13th day of October, 1925," after which follows the description of certain lands and premises. Were plans and specifications for the work as contemplated by that paragraph prepared under the direction of the State Highway Commission? 10

A. They were.

Q. Will you kindly produce them. 20  
Mr. Starr: While waiting for the witness to produce the plans and specifications, I will ask some further questions.

Q. I show you a proposed agreement which is marked "Entrance Road, Section 2, Parcels Nos. 50, 52, 55, 56, 57 and 58, Agreement to convey land," and call your attention to the various blueprints attached to that agreement and ask you whether those blueprints were prepared under the direction of the State Highway Commission? 30

A. Yes.

Q. They were?

A. They were.

Q. And were they adopted by the State Highway Commission as showing the various parcels of land which the commission desires to acquire for the

purpose of constructing the road about which we are speaking?

A. They were.

Mr. Starr: I ask this be marked.

Mr. Devoe: Are you offering it?

Mr. Starr: Yes.

10

Mr. Devoe: We object to them, to the agreement and blueprints as not being material.

The Commissioner: All right, the agreement and blueprints are offered and the offer is objected to by Mr. Devoe, because he states they are immaterial.

(Received and marked Exhibit P2.)

20

Q. Now, Mr. Sloan, was this paper, P2, which constitutes an agreement and various blueprints, prepared under your direction for the purpose of acquiring the land necessary to construct that road?

A. They were.

Q. And does this agreement show the various tracts of land necessary to be acquired for that purpose in Camden?

A. Only partly so, I think.

30

Q. What portion of the road is included in this agreement with the blueprints attached?

Mr. Devoe: What is it you want?

The Witness: A key map that shows these parcels by number.

Mr. Devoe: Here is one.

(Map handed to witness.)

A. Parcels 50, 52, 55, 56, 57 and 58. Well, it is approximately between stations 34 and 37, approximately.

Q. Now, you are reading from a blueprint which you produced which is called "General Property Key Map Showing the Proposed Property to be Acquired Between Cooper River and Baird Boulevard in the City of Camden, Marked 1925." 10

A. Yes.

Q. And now I show you a blueprint, a copy of that, is that the same map?

A. The same map.

Mr. Devoe: No objections.

(Received and marked Exhibit P3.)

20

Q. And now I call your attention to Exhibit P3 and particularly the parcel which is marked 50. Is that the same parcel that is marked 50 in Exhibit P2?

A. The same parcel.

Q. And is that the same parcel which is marked on Exhibit P3 "Name of Owner, Taylor White Extracting Co. to be Acquired by South Jersey, Electric and Traction Co.?" 30

A. The same parcel.

Q. I now call your attention to parcel 52 on Exhibit P3 and ask you if that is the same parcel which is indicated on Exhibit P2 as the parcel 52?

A. The same parcel.

Q. And that is the parcel which is to be acquired by the State Highway Commission, is it not?

A. Yes.

Q. For the bed of the road—the bed of the highway?

A. What do you mean by the bed of the highway?

Q. It is marked on the map "Parcel 52, Proposed Entrance."

A. Proposed Entrance Road.

Q. Is that to be used for the construction of the highway?

10 A. Yes.

Q. I call your attention to parcel 55 on Exhibit P3 and ask you whether that is the same parcel designated as 55 on Exhibit P2?

A. That is correct.

Q. And that, according to Exhibit P3, is to be acquired by the State Board of Commerce and Navigation?

A. I do not know whether it is or not. Those are contemplated suggestions.

20 Q. It is indicated on P3 that is to be acquired by the State Board of Commerce and Navigation?

A. It is so stated there.

Q. Calling your attention to parcel 56 indicated on Exhibit P3, I ask you if that is the same parcel which is designated as 56 on Exhibit P2?

A. Yes, the same parcel.

30 Q. And also the same parcel which is indicated on Exhibit P3 as being owned by the Taylor, White Extracting Co., and to be acquired by the South Jersey Gas, Electric and Traction Co.?

A. It is the same parcel so indicated on that map.

Q. I call your attention to parcel marked as No. 57 on Exhibit P3 and ask you whether that is the same parcel as designated as parcel 57 on Exhibit P2?

A. The same parcel.

Q. And that parcel is designated on Exhibit P3 as being owned by the Taylor, White Extracting Co., and acquired by S. H. French Co.

A. Yes.

Q. I again call your attention to Exhibit P3, the parcel designated as No. 58. Is that the same parcel that is referred to in Exhibit P2 as No. 58?

A. Yes, the same parcel.

Q. And is it the same parcel that is indicated on Exhibit P3 as being owned by the Taylor, White 10 Extracting Co. and to be acquired by the S. H. French Co.?

A. The same thing.

Q. What is the width of the proposed entrance road to be constructed through the property of the Taylor, White Extracting Co.?

A. It has a graded width of one hundred and twenty feet.

Q. Now, again calling your attention to Exhibit P2, which is this agreement, was that agreement 20 prepared for the purpose of acquiring the various tracts of land for the construction of the proposed entrance road between stations approximately 34 and 37 as shown on key map Exhibit P3?

Mr. Devoe: I would like to interpose an objection to the statement that it is an agreement, as I understand that it never was an agreement.

Mr. Starr: I shall modify the statement then 30 by using the words "proposed agreement."

Mr. Devoe: Just so we can keep it straight on the record.

A. It was.

Q. How far has the work progressed in the construction of the proposed entrance road?

Mr. Devoe: I object to that as immaterial in these proceedings.

The Witness: Do you mean the percentage of work completed?

10 Mr. Starr: Yes.

Mr. Sullivan: Have you got your last weekly report on that?

The Witness: Do you mean through the lands, Judge Starr?

Mr. Starr: Yes.

20 A. That is a difficult question to answer.

Q. What work has been done through these lands as incident to the construction of this proposed entrance road?

A. A considerable amount of dredging for the new channel and a considerable amount of fill.

Q. The dredging has been where?

A. The dredging has been on the proposed new channel.

30 Q. As shown on the key map P3 and also the blueprint attached to Exhibit P2?

A. Well, now, the channel or the road are not shown on that key map. They are shown on the drawing. I can answer that by saying there has been a considerable amount of dredging done on this section of the road, the dredging having been done on parcel 55, marked "Proposed Bed of Co-

per River," and the fill having been placed on parcel 52.

Q. Mr. Sloan, I call your attention to the key map and particularly to parcel 55; does that cover lands which it is proposed by the commission to turn over by conveyance or otherwise to the State Board of Commerce and Navigation?

Mr. Devoe: We object to this question on the ground that this witness is not in a position to state what will be the ultimate disposition of parcel 55, inasmuch as that disposition rests entirely with the State Highway Commission. 10

A. Parcel 55 is occupied by the bed in the new channel of Cooper River, I do not know whether the title to it will go to the Board of Commerce and Navigation or not.

Q. It is to be used, however, for the bed of the relocated line of the river? 20

A. Yes.

Q. There has been no change in your plans with respect to the use of that particular parcel 55?

A. No, sir.

Q. Now, with reference to the parcel 50, as shown on Exhibit P3, is that parcel to be used for the construction of the highway?

A. Yes, sir.

Q. Within the line of the highway?

A. Yes, sir. 30

Q. Is it the purpose of the commission to transfer by conveyance or otherwise that parcel 50 on Exhibit P3, to the South Jersey Gas, Electric and Traction Co.?

Mr. Devoe: I object, because this witness is not

qualified to state what will be the action of the State Highway Commission, not only with reference to this parcel but as to all parcels. This witness can only state what the present plan is of the State Highway Commission.

The Commissioner: The objection will be noted on the record.

10 The Witness: I will answer that by saying I do not know.

Q. Parcel 50, Exhibit P3, is outside of the limits of the proposed entrance road as shown on that map? Is it not?

A. No, sir.

Q. It is not?

A. It is outside of the limits of the graded width, the top width, but it comes within the slope necessary to construct that highway.

20 Q. Have you any plans or blueprints showing that method of construction?

A. Yes, sir.

Q. I wish you would show it to me.

A. I have had two cross sections taken at two points outside of parcels 50 for the purpose of showing where the slope of the highway would come in reference to the limits of that parcel, which showed that in both cases the slope falls outside  
30 of the property line.

Q. When was that map prepared?

A. That map was prepared last week.

Q. After these proceedings were started?

A. Yes, sir.

Q. If that was so, what was the object of preparing this agreement to have the Taylor, White

Extracting Co. convey parcels 50 and 56 to the South Jersey Gas, Electric Traction Co.?

Mr. Devoe: We interpose an objection to that. In the first place it is not an agreement and I do not see how it is material to these proceedings.

A. The question of transfer of that property has been brought up by the Public Service Corporation—what did you call it? 10

Mr. Starr: The South Jersey Gas, Electric and Traction Co.

A. (Continuing.) The South Jersey Gas, Electric and Traction Co. They have at various times requested that such transfer be made and these were drawn to see whether it could be carried out. I do not know whether it received the approval of the commission or not. 20

Q. Have you any other plan or map to show the slope of the new highway as indicated on this map which you have just produced?

A. I do not know that we have.

Q. Has the Highway Commission any agreement with the South Jersey Gas, Electric and Traction Co. with reference to parcels 50 and 56?

A. Not to my knowledge.

Q. Is there any agreement with S. H. French Co. with reference to parcels 57 and 58, as indicated  
30 on plan P3?

A. Not to my knowledge.

Q. Has the Highway Commission ever taken any action with respect to what disposition was to be made of parcels 50, 56, 57 and 58 after they are acquired by the commission?

Mr. Devoe: We interpose the same objection we did before. Of course we understand it is fruitless to interpose those objections here, but it is the same, that this witness is not qualified to state.

A. They have not.

Cross-examination.

10 By Mr. Sullivan:

Q. What is the character of this highway, Mr. Sloan, where it goes through the property of the Taylor, White Extracting Co. I mean is it a surface road or is it built on an embankment, or what is the character of the road?

A. The highway at that point will consist of a graded embankment having a top width of one hundred and twenty feet, on which will be placed a  
20 seventy-eight-foot concrete pavement. The grade of the highway is considerable, maybe four, five or six feet, above the grade of the meadow land in the vicinity but about the same grade as the improved street and the improved property.

Q. With reference to parcel 50, Exhibit P3, and parcel 58 on the same Exhibit P3, is that meadow land?

A. At the present time it is under water. It is within the river bed.

30 Q. And does the river extend northerly or to the north of those two parcels?

A. Yes.

Q. How wide is the river at that point, approximately?

A. About one hundred and ninety feet.

Mr. Sullivan: We have some photographs here, Judge Starr. Will you please look at them.

Mr. Starr: Mr. Purnell knows more about them than I do.

Mr. Devoe: They are not all very important. This one is. Here is the important one.

By Mr. Sullivan:

10

Q. I show you a photograph. There is a number on the back 4528, which has some red lines marked thereon. What do those red lines represent, and what does the photograph represent?

A. The photograph is a photograph of that portion of Cooper River, which is under discussion at the present time. The outside red lines, that is the lines nearest the center of the river, must indicate the bulkhead line or the line to which the riparian  
20 grants extend. The balance of the red line indicates the several parcels of property which are shown on the blueprint.

Q. On Exhibit P3?

A. Yes.

Q. And do those parcels shown in red on the photograph coincide with the same number parcels shown on Exhibit P3?

A. They do.

Q. And that photograph is taken with the camera looking east. Is that right. Approximately?  
30

A. Yes, that is looking east.

Q. Now, are those red lines on that photograph placed in the exact position in which they belong, according to Exhibit P3 here, the blueprint?

A. As nearly as it is possible to do so on a photograph.

Q. So that those parcels 50 and 58 are wholly under water?

A. Yes, sir.

Q. Did you have anything to do with the taking of that photograph, Major?

A. No.

Q. Do you know whether the photograph was taken at high water or low water?

A. This photograph was not taken at high water.  
10 I cannot say that it is absolutely low water, but it is not high water.

Mr. Sullivan: I offer the photograph in evidence.  
(Received and marked Defendant's Exhibit "A.")

Q. I show you another photograph, Major, bearing the number on the back 4287, and which bears upon the face of the photo certain red lines, and  
20 also the legion, "Taylor White Extracting Co., at High Tide." Is that delineation of parcels 50 and 58, an accurate delineation so far as it was possible to make it on that photograph?

A. Yes, sir.

Q. And does parcel 50 and 58 on that photograph coincide with 50 and 58 as it appeared on Exhibit P3?

A. It does.

Q. Do you know whether that photograph was  
30 taken at high tide outside of the fact that it states so on the face of it?

A. Other than that I have the word of the man who took it that it was taken at high tide. Otherwise I do not know it.

Mr. Starr: I ask that testimony be stricken out as to the "word of the man who took it."

Mr. Sullivan: I will offer it.

(Received and marked Defendant's Exhibit B.)

Q. Major, was P3 prepared at the same time or about the same time as the proposed agreement, which has been marked in evidence as P2?

A. Well, I do not know as to that. Will you let me see that, Judge Starr, the proposed agreement P2?  
10

(Paper handed to witness.)

A. (Continuing.) The general key map and the property plans, of course, were drawn about the same time, but as to date of this proposed agreement, I do not know.

Q. Can you tell about when this proposed agreement, P2 and the blueprint P3, were made. That is the proposed agreement and the blueprint?  
20

A. The drawings are dated March, 1925. I have no way of knowing when this agreement was made.

Q. Do you mean the drawings attached to the proposed agreement?

A. And to this general key map P3.

Q. Was there a subsequent blueprint made showing the lands to be condemned by the State Highway Commission for the purpose of this highway and owned by the Taylor, White Extracting Co.?

A. There was, I think, but I am not sure.  
30

Q. Well, I show you a blueprint. Do you recognize that?

A. I do.

Mr. Sullivan: That is the blueprint attached to the petition, Judge Starr.

Q. When was that blueprint prepared?

A. January, 1926.

Q. Prior to the preparation of this blueprint, had there been any resolution passed by the State Highway Board, as far you know, determining to acquire this property delineated on that blueprint?

A. There had not.

10 Mr. Sullivan: Read that question, please. I think that he misunderstood the question.

(Question repeated by stenographer.)

Mr. Devoe: It is attached to the petition P1.

Mr. Sullivan: Now we will include that in the question.

20 A. When I made that statement, what I meant was there had been a resolution by the board for the condemnation of this property in connection with which I assume that this drawing was made. Whether the drawing was made immediately subsequent to the resolution or just before, I do not know.

30 The Commissioner: I call attention now that there were a number of blueprints attached to that proposed agreement and I do not think that the question specifies which.

Mr. Sullivan: The proposed agreement is P2, but P1 is the petition for condemnation.

The Commissioner: Very well, I misapprehended.

Q. Now, referring to the blueprint that is attached to P1, what are the numbers of the parcels of land owned by the Taylor, White Extracting Co., that are being condemned as they appear?

A. Parcel 50-B and 50-A.

Q. What does 50-B on that blueprint contain, referring to Exhibit P3?

A. I think that it contains 50 and 58. Parcels 50 and 58.

Q. And what does 50-A on the blueprint, Exhibit 10 P1, contain, referring to Exhibit P3?

A. Parcels 52, 56, 57 and 58.

Q. Now, you have produced, Major Sloan, this drawing, which is marked "Cross section, scale, horizontal 1" — 5' 0", and vertical 1"—5' 0". What does that drawing represent?

A. The conditions which obtain at that point, immediately opposite parcel 50-B.

Q. And does it show the outside limit of the slope 20 of the highway?

A. It does.

Q. How is it shown on this drawing?

A. It is shown in two ways. In the first place by a green line approximately parallel to the center line of the road, which represents the foot or toe of the slope.

Q. And is it so marked?

A. Marked "Toe of Slope." And again is shown on the cross sections of the highway down at two points on which the property line is shown as being 30 inside of the toe of the slope.

Q. Property line of what?

A. Property line of parcel 50-B.

Q. Now, have there ever been any other plans showing construction at this point, outside of the one that is produced here now?

A. Showing the particular details of construction, I think not.

Q. That is the only plan that has ever been prepared by your office?

A. So far as I know. The data and information from which to do it was all in the office, but so far as I know no plan had ever been prepared, showing the actual detail.

10 Mr. Sullivan: We offer it in evidence.

(Received in evidence and marked Defendant's Exhibit C.)

Q. So that there may be no mistake about it, has there been anything in these plans for the slope at that point?

A. No.

20 Q. Major, for the purposes of constructing the supposed entrance road, is it necessary to acquire parcel 50-B as shown on Exhibit P1?

A. It is.

Q. And is it necessary also to acquire parcel 5-A as shown on Exhibit P1, in connection with the construction of the proposed entrance road?

A. It is.

Mr. Sullivan: That is all.

30 Re-direct examination.

By Mr. Starr:

Q. Major, if it were necessary to have 50-B acquired for the construction of the road, why did the State Highway Commission attempt to have the

Taylor, White Extracting Co. convey that parcel, 50-B to the South Jersey Gas, Electric and Traction Co.

Mr. Devoe: I object to that question because this witness is not qualified to answer it.

A. So far as I know, there has been no attempt on the part of the State Highway Commission to have such transfer made. There has been a request by the Electric Co. that the land be turned 10 over to them and it has received consideration, but no decision has been reached as to whether or not it will be carried out.

Q. Did not the State Highway Commission make a request of the Taylor-White Extracting Co. to execute Exhibit P2?

A. It may be that they did in consideration of the request made of them by the electric company.

Q. What was the request made of the Highway Commission by the electric company? 20

A. That the property be placed at their disposal by a transfer to them.

Q. Transfer to the South Jersey Gas, Electric and Traction Co.?

A. Yes.

Q. As the river is now located, the South Jersey Gas, Electric and Traction Co. have a frontage on the old location of the river?

A. Yes.

Q. A relocation of that river will take that frontage away from them? 30

A. Yes.

Q. And the purpose of this agreement, P2, was to restore a frontage to the South Jersey Gas, Electric and Traction Co.?

A. That was the basis of it.

Mr. Devoe: Without objecting to each one of your questions we ask a general objection to all that testimony.

Q. This agreement, P2, was prepared by you under instructions of the State Highway Commission for that purpose, wasn't it?

A. That agreement was prepared in the office. I do not think it ever went before the State Highway Commission.

Q. Did you have knowledge of it?

A. I knew there were feelers being made as to whether this thing could be done.

Q. And were you or not acting in accordance with your general powers as chief engineer?

A. I was acting under my general powers.

Mr. Starr: I think that is all.

20 Re-cross-examination.

By Mr. Sullivan:

Q. Is there any way you can fix when the proposed agreement P2 was drawn?

A. I can have it looked up.

Q. You say that blueprints were made that are attached to it and the blueprints P3 about March, 1925. With relation to the making of these blueprints, can you say?

A. I can inquire and find out. Obviously it must have been made after the blueprints were made.

Q. Will you find out, please.

A. Yes.

Re-direct examination.

By Mr. Starr:

Q. One other question. The key map, which is Exhibit P3, shows the ownership of property on the north side of the river?

A. Yes.

Q. Before there was any relocation of it?

A. Yes.

Q. And S. H. French Co. is the owner of the land abutting the river on its north side?

A. Yes.

Q. And the French property adjoined the South Jersey Gas, Electric and Traction Co.?

A. Yes.

The Witness: Do you want that information now?

Mr. Sullivan: Yes.

Mr. Devoe: Suppose the Major answers the question like this, "The proposed agreement was prepared "on or about," and then we can fill in the answer.

The Commissioner: Yes.

ROBERT A. MEEKER, called as a witness in behalf of the prosecutor, first being duly sworn, testified as follows:

Direct examination.

By Mr. Starr:

10 Q. Mr. Meeker, are you connected with the State Highway Commission?

A. I am.

Q. In what capacity?

A. As right of way engineer.

Q. How long have you been right of way engineer for the commission?

A. About six years.

Q. Did you have anything to do with making an effort to acquire right of way for the proposed en-

20 trance road in Camden.

A. I did.

Q. I show you Exhibit P2, and ask you whether or not you presented that agreement to the Taylor-White Extracting Co.?

A. I did.

Q. Do you remember when it was?

A. Several times between January and May, I think.

Q. Of what year?

30 A. 1926.

Q. For what purpose was it presented to the Taylor-White Extracting Co.?

A. For the purpose of negotiations.

Q. How many times did you see anybody connected with the company?

A. A number of times. I did not count them.

Q. Do you remember who you interviewed?

A. Mr. Jesse White.

Q. And from whom did you get the paper to bring to Mr. White?

A. From Mr. Griffin.

Q. May I ask who Mr. Griffin is?

A. He was resident engineer in charge of construction.

Q. Resident where?

A. Camden. Or division engineer in charge of 10 construction.

Q. Do you remember the first time that you presented the document to Mr. White for his consideration? I am speaking now of Exhibit P2.

A. I do not. It was so many times.

Q. Before or after the first of the year 1926?

A. I am not sure about the date, because I saw Mr. White so many times.

Q. Now, at the same time, did you leave with Mr. White this blueprint, P3? 20

A. I left that one or a similar one.

Q. And in presenting these papers to Mr. White, under whose authority were you acting, Mr. Meeker?

A. The State Highway Commission.

Mr. Starr: That is all.

Cross-examination.

By Mr. Sullivan: 30

Q. Did I understand you to say that you presented this proposed agreement, P2, to the Taylor-White Extracting Co. for the first time after the first of January, 1926?

A. Oh, no. It was so many times.

Q. Well, can you say that you presented it to them at all after January first, 1926?

A. I left it with them, or they had had it in their possession in 1925.

Q. But your answer to Judge Starr was that you presented it to them many times between January and May, 1926. Now, is that so?

A. No, I think it was in 1925 and the papers were left there and I saw him, I think, again in 1926.

10 Q. Well, can you say approximately when that agreement was first presented by you to the Taylor, White Extracting Co.?

A. I cannot.

Q. With relation to the dates that the blueprints bear that are attached to it, can you say?

A. The blueprints were prepared some time before I interviewed Mr. White.

Q. You are connected with Major Sloan's office, are you not, Mr. Meeker?

20 A. Yes, sir, I am.

Re-direct examination.

By Mr. Starr:

Q. Mr. Meeker, did you interview Mr. White about the acquisition to this land, prior to the time you presented Exhibit P2 to him for signature?

A. I took it to him.

30 Q. The first time.

A. I left it with him.

Q. And you left it with him?

A. I left it with him. He wanted time to consider it.

Mr. Starr: I think that is all. May I ask the Major Sloan another question, please.

WILLIAM G. SLOAN, recalled as a witness in behalf of the prosecutor, having been previously sworn, testified as follows:

Direct examination.

By Mr. Starr:

Q. Major, when this improvement about which we have been speaking, is eventually completed, and the work on the road is finished, how wide will be the entrance road as a public highway? What will be its width? 10

A. One hundred and twenty feet.

Q. That is in accordance with the plans which have been made by you?

A. Yes.

Cross-examination.

By Mr. Sullivan: 20

Q. Does that include the slope?

A. No, that is the graded width on top.

Q. What is the entire width of the road?

A. That varies entirely with the width of the fill, the higher the fill the slope runs on further.

Q. Do you know now or have you ascertained, when the proposed agreement P2 was prepared?

A. The agreement was prepared in the summer of 1925. 30

Q. Was anybody from your office sent to negotiate with the Taylor-White Extracting Co. along the lines of that agreement, subsequent to the passage of the resolution for condemnation in this matter?

A. Subsequent?

Q. Yes, after the resolution of the board to condemn as shown on Exhibit P1?

A. I understand that agreement was still in their hands at the time of the passage of the resolution. I do not know whether we negotiated further on that or not, but the resolution for condemnation was passed, of course, in the fall of 1925, and these papers may not have come back until after that.

10 Q. Do you know whether Exhibit P3 was ever formally presented to the State Highway Commission?

A. It never was.

Re-direct examination.

By Mr. Starr:

20 Q. Do I understand you that the width of this proposed entrance road when finally completed, the width will be open to the public of how many feet?

A. One hundred and twenty feet.

Mr. Starr: That is all. I want to recall Mr. Meeker for a moment.

ROBERT A. MEEKER, recalled as a witness in behalf of the prosecutor, having been previously sworn, testified as follows:

Direct examination.

By Mr. Starr:

Q. Mr. Meeker, do you recall being in my office about the first of January of this year, when Mr. White, Mr. Purnell here, Mr. Neutze, the assistant solicitor of Camden, and Mr. Frank Hitchner were present? 10

A. I do.

Q. This agreement, P2, was there, wasn't it, under discussion?

A. I presume so. I did not look at it closely.

Q. What was the object of your being at that conference? 20

A. To hear what you had to say.

Q. Did you make any effort to have Mr. White execute this agreement? Weren't you there for that purpose?

A. Yes, if possible.

Q. Now, do you recall when that was?

A. I do not exactly.

Q. Tell me approximately. Was not it around the first of January of this year? 30

A. It was after the first of January, I think. Yes, I know that it was.

Q. Do you remember what happened at the termination of that conference?

A. I do not remember anything in particular.

Q. Don't you remember that the conference adjourned with the idea of having Mr. Neutze furnish

us with a copy of the agreement between the city and the Highway Commission?

A. I think that he agreed to do something of that kind.

Q. And there were no further conferences with reference to the matter after that time between you and the White Co.?

A. I saw Mr. White once afterward.

10 Q. Then how long did you continue your negotiations in an effort to have this agreement, P2, executed?

A. I saw him once after that conference to which you refer.

Q. And what was the object of that visit?

A. Simply to explain to him what the situation was.

Q. Did you make any effort to have him sign the agreement?

20 A. No. I only explained to him what the action of the commission meant.

Re-cross-examination.

By Mr. Sullivan:

Q. How soon after the conference in Mr. Starr's office was it that you saw Mr. White?

A. I think it was the following week.

30 Q. Some time in January, then, that would be?

A. Yes.

A. LEE GROVER, called as a witness in behalf of the prosecutor, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Starr:

Q. Mr. Grover, what is your official connection with the State Highway Department? 10

A. Secretary and chief clerk of the State Highway Commission.

Q. How long have you been secretary?

A. Since the organization of the State Highway Commission in 1917.

Q. Have you the minutes of the commission?

A. I have.

Q. I show you what purports to be a copy of resolution of the State Highway Commission, passed, I think, the 13th of October. Is that a copy prepared by you or under your direction? 20

A. It is.

Mr. Starr: I offer that in evidence.

Mr. Sullivan: No objections.

(Received and marked Exhibit P4.)

30

Q. You have examined the minutes of the State Highway Commission, haven't you?

A. I have.

Q. Is there a record of any other action taken by the State Highway Commission in formal meeting

with respect to the construction of the proposed entrance road in Camden?

A. With respect to the general construction?

Q. Yes, with respect to general construction.

A. Yes, there are a number of references to the general construction, and approval of specifications, the contract and so forth.

Q. Now, you can limit that to any other action taken by the Highway Commission with respect to the property to be acquired from the Taylor-White  
10 Extracting Co.?

A. There are none.

Q. I also ask you whether there is a record of any proceedings taken by the Highway Commission with respect to any agreement with the South Jersey Gas, Electric and Traction Co.?

A. From my memory there were no proceedings.

Q. Have you an index?

A. Yes.

20 Q. Would you mind referring to the index?

A. By referring to the file, I can locate it much sooner. I will have to go out to the file. Shall I?

Q. Yes. That is the South Jersey Gas, Electric and Traction Co.; the Public Service Electric Co., or the Public Service Co. Either of those three concerns.

A. Nothing has come before the commission.

30 Mr. Starr: That is all.

Cross-examination.

By Mr. Sullivan:

Q. Can you turn to the resolution, laying out this highway through the lands of the Taylor-White Extracting Co.?

A. The general description?

Q. The general description of the highway. I want the resolution, Mr. Grover, that approving of the construction plans of the manner of going through these lands here.

Mr. Starr: These are the plans here, (indicating) Mr. Sullivan?

Mr. Sullivan: Yes.

10

The Witness: Shall I read that resolution?

Q. Yes.

A. The minutes of September 8th, 1925, page 3991, read as follows: Subject, "Connecting and Entrance Road, Camden." "The State Highway engineer reported the completion of plans and specifications for construction grading of Delaware  
20 River Bridge connecting Road Sections 1 and 2 in the Borough of Pensauken and the Delaware River entrance road Section 2 in the City of Camden, together with the relocation of Cooper River, and recommended approval of advertisement for the work. On motion by Mr. Kidde, seconded by Mr. Stewart, the Commission adopted the following Resolution. 'RESOLVED that the plans and specifications for the construction grading of the Delaware River Bridge connecting road sections 1 and  
30 2 in the Borough of Pensauken and the Delaware Bridge entrance road Section 2 in the City of Camden, together with the relocation of the Cooper River be and the same are hereby approved, and be it further RESOLVED that the chairman is authorized to sign the necessary papers and the chief clerk be directed to place necessary advertisements

for the work after approval by said Highway engineer.' ”

Q. Now, are those plans that were so approved, in the resolution here? (Indicating.)

A. They are.

Mr. Sullivan: I offer them in evidence.

10 (Received and marked Defendant's Exhibit D.)

Q. I show Exhibit P2, being a proposed agreement with the Taylor-White Extracting Co. and the State Highway Commission, State of New Jersey, and various other people, to which there is attached certain blueprint. Has the State Highway Commission ever formally authorized the execution of that agreement on its behalf?

A. They have not.

20 Q. Has it ever been before the State Highway Commission, so far as you know, formally—this agreement?

A. This agreement has not.

Re-direct examination.

By Mr. Starr:

30 Q. At any meeting at which you were present, was this agreement or the subject matter of this agreement touched upon by the members of the commission?

A. Yes, I believe so. Not as an official action, however. In conference, that is.

Q. What was the discussion?

A. I don't remember just what the discussion

was. It was in general relation to the manner of construction of the entrance road section 2.

Q. Was there anything said with reference to the acquisition of this property from the Taylor-White Extracting Co. and the reconveyance to the South Jersey Gas, Electric and Traction Co.?

A. I do not recall that a discussion of that subject was had with the commission.

Q. Well, do you know who prepared the agreement P2? 10

A. Yes, I know in whose office it was prepared. Do you mean the actual writing of it?

Q. Under whose direction was it prepared?

A. Under the immediate direction of Mr. Newark in the construction division.

Q. He has what to do in connection with the Highway Commission?

A. He is highway engineer in the office of Mr. Bidwell.

Q. Was there ever any discussion with the commission in your presence with reference to the transfer of title of any of these lands to the South Jersey Gas, Electric and Traction Co. or to the Department of Commerce and Navigation of the State of New Jersey? 20

A. Not that I recall.

Re-cross-examination.

By Mr. Sullivan: 30

Q. Since the adoption of this resolution, P4, Mr. Grover, has there been any discussion even between members of the Highway commission, regarding the execution of P2?

A. Not that I recall.

Q. So that the discussions that you were talking to Mr. Starr about, were all prior to the adoption of the Resolution Exhibit P4? Is that so?

A. No, I do not know that that is a fact, but the discussions that I recall refer to the general situation and not with any specific reference to particular property of the Taylor-White Extracting Co.

Q. So that even in these discussions that you did speak of, you did not want us to understand that they were with particular reference to the Taylor-White Extracting Co. land?

A. No, I did not want that understood.

HAROLD W. GRIFFIN, called as a witness in behalf of the prosecutor, being first duly sworn, testified as follows:

20

Direct examination.

By Mr. Starr:

Q. Are you an employee of the State Highway Commission?

A. I am.

Q. In what capacity?

A. As field engineer.

30

Q. Located where?

A. Trenton.

Q. I wish you would look at Exhibit P2 and I ask whether or not you ever saw that document before?

A. I have.

Q. Mr. Meeker has said that he received the paper from you, is that a fact?

A. I think that he received it in the office at Camden, yes.

Q. Did you have anything to do with the preparation of that paper?

A. Yes.

Q. What?

A. Why, I prepared the outline of the proposed agreement and the blueprints were prepared under my direction.

Q. Under whose authority did you prepare the agreement? 10

A. This was being worked out tentatively, I do not know that I received any particular instructions to prepare this.

Mr. DeVoe: Of course we would like it understood that we continue to object to the statement that it is an agreement. We state that it is only a proposed agreement. 20

The Commissioner: I think that it is pretty well understood that it is understood only as a proposed agreement.

Q. Did you actually dictate the information contained in that paper?

A. Yes.

Q. Did you talk to Mr. Sloan about it?

A. No, I had talked it over generally with Mr. Bidwell. 30

Q. Who is Mr. Bidwell?

A. Construction engineer.

Q. And then you gave it to Mr. Meeker for execution?

A. I sent it to Trenton, and I think Mr. Newmark went over it and made some minor changes and sent

it back to the Camden office where Mr. Meeker obtained it.

Q. For what purpose did you give it to Mr. Meeker?

A. It was proposed to work out this arrangement in accordance with this map, Exhibit P3, and it was given to Mr. Meeker with the idea of attempting to work it out along that line.

10 Cross-examination.

By Mr. Sullivan:

Q. Was it worked out along that line?

A. As far as I know it has not been.

Q. And when was the agreement prepared, approximately?

A. I do not know, but I judge it was in the late spring or nearly summer of 1925.

20

Mr. Sullivan: That is all.

Re-cross-examination.

By Mr. Starr:

Q. Do you know when it was?

A. No, I do not.

Q. Do you know when you handed it to Mr. Meeker?

30

A. No, I do not.

Mr. Starr: I offer in evidence the deed or grant from the State of New Jersey to Taylor-White Extracting Co. for all of the locus quo involved in this altercation.

WILLIAM G. SLOAN, called in behalf of the defendant, having been previously sworn, testified as follows:

Direct examination.

By Mr. Sullivan:

Q. I call your attention to this proposed agreement, P2, which, from the evidence, was prepared some time in your office, what authorization did you have from the commission to prepare any such agreement as this? 10

A. I consider that the authority to proceed with the work carries with it the direction to secure the necessary property for the construction. The policy of the department in matters of this kind is that when a piece of work is authorized for construction to go out and attempt to agree with the property owners for acquisition of the necessary property and these agreements were prepared in accordance with the usual procedure. The agreement having been secured so far as the property owner is concerned, the agreement is then submitted to the State Highway Commission for approval. These agreements do not come before the commission until they have been executed on the part of the property owner. 20

Q. Do I understand that this agreement as prepared, as we have it here today, this P2, was prepared without any consultation with the commission, whatever? 30

A. It was.

Q. And without any consultations with Mr. DeVoe as to the legality of the situation?

A. It was. I believe that I did take the matter up with Mr. Coulon, the assistant attorney-general.

Q. Was that with reference to the title to the bed of the river?

A. Yes, the whole matter seemed to be complicated as between the Board of Commerce and Navigation and the State Highway, and these property owners, and I in a general manner discussed the matter with them.

Q. But you had no consultation with him as to the legality of the kind of agreement that had been prepared?

A. Oh, no.

Mr. Starr: I object to the question.

Mr. Sullivan: I will withdraw it.

20 Q. Is that the only thing you consulted Mr. Coulon about, the matter of the title to the bed of the river?

A. Yes, I think it was. My object in going to him was to find out who was the owner of the bed of the river.

Q. Did you receive reports back from your man as to the progress of the negotiations that were attempted to be entered into in P2?

A. I did.

30 Q. And were those reports received prior to the adoption by the commission of its resolution P4?

Mr. Starr: I object to that as immaterial, irrelevant, incompetent and improper.

A. It was my advice to the commission that I did

not seem to be making any progress, and I recommended that they commence condemnation.

Q. And the resolution of condemnation, was this set out in P4?

A. It was.

Q. Now, is that a usual method of procedure for you to take, Major?

A. It is.

Q. That is, this case is no different from any other case where you are laying out a new road? 10

A. Except that we had more difficulty than usual.

Cross-examination.

By Mr. Starr:

Q. Do you know whether or not there were any proposed agreements prepared for submission to the South Jersey Gas, Electric and Traction Co.?

A. I do not know of any being prepared and submitted to them. I understand that they had submitted some proposed agreements. 20

Q. The Highway Commission and themselves?

A. Between the Highway Commission and the City of Camden.

Q. Had it to do with the general construction work of this entrance road into Camden?

A. It had.

Q. Had the commission ever received from the South Jersey Gas, Electric and Traction Co. or the S. H. French Co. any waiver of their right as abutters to the old line of Cooper River? 30

A. Not to my knowledge.

Mr. DeVoe: We ask that the question and answer be stricken out as immaterial. I should have

objected to the question before he answered it. We also object to that as not being proper cross-examination.

Mr. Sullivan: Just one other question we want to ask with reference to the recommendation.

Re-direct examination.

10 By Mr. Sullivan:

Q. Major, did you make a recommendation to the State Highway Commission for the condemnation of parcels 50-B and 50-A on the blueprint Exhibit P1?

A. I did.

Mr. Starr: It seems to me we ought to have the recommendation if it is to be of any force. I do not  
20 know what is in it or anything about it.

Mr. Sullivan: All right.

Q. Have you any original recommendation in your files?

A. It is on file in the office.

Q. Will you produce it?

A. Yes.

Q. Can you tell when it was made?

30 A. October 13th.

Q. What year?

A. 1925.

Mr. Starr: May I ask you, Major, another question.

Re-cross-examination.

By Mr. Starr:

Q. I show you Exhibit P3, and ask you whether or not the State Highway Commission has acquired from the S. H. French Co. the right of way of the land indicated on this map No. 59?

Mr. DeVoe: I think that is very immaterial. I think we ought to interpose an objection on that  
10 score.

A. My recollection is that we have not. I would like to check that up with the record. I think I am correct in saying that we have not yet settled with French.

Q. I ask you the same question with reference to the South Jersey Gas, Electric and Traction Co. with reference to parcels 49?

A. That I should like to look up.

20

Q. Have you ever had any agreement at all with the South Jersey Gas, Electric and Traction Co. with reference to the right of this road?

A. My recollection is that no agreement has ever been consummated.

Q. Also with reference to section 45?

A. All of the Public Service property the negotiations have not yet been consummated.

Mr. DeVoe: We enter the same objection to all  
30 of that testimony.

Q. Have not condemnation proceedings been started against either French or the South Jersey Gas, Electric and Traction Co.?

A. I shall want to look that up as regards French. As regards the Electric Co. no condemnation has been started against them.

Mr. Starr: Is that a fact, Mr. DeVoe?

Mr. DeVoe: As regards French, I think not.

10 Mr. Starr: Will you stipulate that?

Mr. DeVoe: We have a condemnation against S. H. French, I think, but not against S. H. French Co. I cannot tell now whether it is the same land or not.

Mr. Purnell: The estate is further up the creek.

20 Mr. DeVoe: That is all the information I can give you on that.

Re-direct examination.

By Mr. Sullivan:

Q. I show you a paper, Major Sloan, and ask you what that is?

30 A. That is my recommendation to the State Highway Commission requesting authority to make an offer to the Taylor-White Extracting Co., and in the event of their failure to accept to acquire these properties by condemnation.

Mr. Sullivan: I offer that in evidence. I think we can read that into the record. "For State Highway Action. A. Lee Grover, Secretary, October 9,

1925. The State Highway engineer submits report and appraisal together with map and description on Camden extension entrance road, Section No. 2, Parcels 50, 52, 55, 57 and 58, the Taylor-White Extracting Co. Authority is requested to make the offer of \$7,164.08 official, and in the event of failure to accept to acquire this property by condemnation. Signed W. G. Sloan, State Highway Engineer. From C. S. Bedwell, construction engineer. Action taken. Offer \$7,164.08 or condemned. Date 10 of meeting October 13th, 1925. A. LEE GROVER, Secretary."

Mr. DeVoe: We will stipulate that there is no condemnation against S. H. French & Co. and the South Jersey Gas, Electric and Traction Co.

20

30

## NEW JERSEY SUPREME COURT.

TAYLOR-WHITE EXTRACTING  
COMPANY,  
*Prosecutor,*

v.

10 STATE HIGHWAY COMMISS-  
SION,  
*Defendant,*

## APPEARANCES:

MESSRS. STARR, SUMMERILL and LLOYD for the  
prosecutor.

FRED W. DEVOE, ESQUIRE, and MARK A. SULLIVAN,  
ESQUIRE, for the defendant.

20

The further taking of the testimony in this matter was continued by consent of counsel on this seventeenth day of September, 1926, at the offices of the New Jersey State Highway Department, Broad Street Bank Bldg., Trenton, New Jersey, at 10:30 o'clock in the forenoon; before Barton B. Hutchinson, Supreme Court Commissioner.

30

It is stipulated and agreed between the attorneys for the prosecutor and for the State Highway Commission that the oath of the stenographer be waived, and also the signature of witnesses.

## APPEARANCES:

MESSRS. STARR, SUMMERILL and LLOYD for the  
prosecutor.

FRED W. DEVOE, ESQUIRE, and MARK A. SULLIVAN,  
ESQUIRE, for the defendant.

ALFRED R. WHITE, SWORN.

Direct examination.

By Mr. Starr:

Q. Mr. White, where do you reside?

A. 432 Chambers Avenue, Camden.

Q. Do you hold any official position in the City of  
Camden? 10

A. Yes, sir.

Q. What position?

A. City clerk.

Q. How long have you held that position?

A. Since April 17, 1923.

Q. As city clerk, have you the custody of the books  
and records of the city?

A. I have.

Q. You have been requested to produce the copy  
or originals of any agreements between the City  
of Camden and either the South Jersey Electric  
and Gas or Public Service Electric and Gas Co.,  
or any of its affiliated companies, with relation to  
the relocation of the Cooper River and the entrance  
road of the state. Have you such papers here? 20

A. Yes, we have.

Q. Is this one of the papers on file?

A. It is.

Q. Witness being shown paper with map attached  
he is asked is this is one of the papers that you have  
produced? 30

A. Yes, sir.

Q. Is it from the records of the City of Camden?

A. Yes, it is.

(I offer in evidence the agreement dated the sev-

enth day of May, 1926, between the Public Service Electric and Gas Co., and the City of Camden, which is marked P1, Sept. 17, 1926.)

Mr. Devoe: Objected to on the ground that this paper offered in evidence is not material to the issued. We would like to add to that objection, sir, that the State Highway Commission, of course, cannot be bound by any agreement between the City of Camden and the Public Service Electric and Gas Co., and such agreement has no bearing on this case.

Q. Did you find any other agreement between the Public Service Electric and Gas Co., and the City of Camden?

A. No, there are no others.

Q. I ask you if you find any other agreement?

A. Not to my knowledge. There were no others.

Q. There are two agreements you found, one dated May 7, 1926, which has already been produced and marked P1, and you also produce another one dated the second of August, 1926?

A. That is right.

Q. Dated the second day of August, 1926, between the Public Service Electric and Gas Co., and the City of Camden?

Mr. Devoe: Objected to upon the same grounds as to the former exhibits.

(Agreement offered in evidence and marked Exhibit P2, September 17, 1926.)

Q. Do you know whether or not there is any agreement between the City and S. H. French Company, with respect to the subject matter of these agreements?

A. No, I do not know. Not to my knowledge.

No cross-examination.

E. LEE GROVER, a witness previously sworn, recalled on the part of the board.

Direct examination.

10

By Mr. Starr:

Q. Mr. Grover, you have been requested to present any agreements in writing between the City of Camden and the State Highway Commissioners, with reference to the construction of the entrance road and the re-location of Cooper River, have you such paper?

A. I have the last one. You want that one which includes the original agreement and the one that was presented at the last hearing. There is an agreement under date of August 19, 1926, since the last hearing was held on this matter. Do you want the first one, too?

20

Mr. Starr: I want all of the agreements between the Highway Commission and the City. I don't think any other was offered or presented at the prior hearing.

30

A. I will get them. I have the original which is fastened with other papers and a copy which I can certify is a true copy. This is the original agreement entered into between the State Highway Commission and the City of Camden.

Q. Did you find another agreement between the State Highway Commission and the City of Camden?

A. I did.

Q. Will you produce that, please?

A. Yes, sir. Dated March 10, 1925.

Q. Dated March 10, 1925?

A. Yes.

10 (Agreement dated March 10, 1925, offered in evidence and marked Exhibit P3, September 17, 1926.)

(I also offer in evidence the agreement dated the nineteenth day of August, 1926, between the State Highway Commission and the City of Camden, and the original agreement presented by Mr. Grover, which is marked Exhibit P4, September 17, 1926.)

20 Q. Mr. Grover, will you tell me whether or not there is any agreement in your files as secretary of the Commission, between the Commission and the Public Service Corporation with reference to the construction of the entrance road of Camden or the re-location?

A. There is.

Q. Will you please produce that?

A. I have here a copy of the agreement between the State Highway Commission and the Public Service. The original is in the county clerk's office for recording.

30 Q. Will you permit this to be marked as an exhibit?

A. I offer the same in evidence.

Mr. Devoe: What is this?

A. Agreement dated the seventh day of May, 1926,

between the Public Service Electric and Gas Co., and the State of New Jersey.

(Agreement dated May 7, 1926, offered in evidence and marked Exhibit P5, September 17, 1926.)

Q. Agreement executed by the State of New Jersey by Walter Kidde, Chairman of the State Highway Commission, *pro tem*?

A. Yes.

No cross-examination.

10

ABRAHAM JELIN, a witness, sworn.

Direct examination.

By Mr. Starr:

Q. Are you one of the State Highway Commissioners of the State of New Jersey? 20

A. I am.

Q. How long have you been a member of the Commission?

A. Four years next March.

Q. As a member of the Commission, are you familiar with the proceedings which have been instituted on the authority of the Commission to condemn land in Camden belonging to the Taylor-White Extracting Company? 30

A. I am.

Q. Are you familiar with the area of the land sought to be taken in condemnation proceedings?

A. Somewhat.

Q. I show you a copy of the petition in condemnation to which is attached a map and ask you if that

will recollect your memory and if that is an exact description of the area of the land sought to be condemned under these proceedings?

A. Yes.

Q. What disposition does the Commission propose to make of the triangular piece of land as shown on this map and included in the entire area outside of that portion which is to be devoted to the construction of the proposed entrance road and the re-located line of Cooper River?

Mr. Devoe: I object to the question, first on the ground that there is anything to show that the Commission proposes to do anything with the triangular plot of ground except that which appears in the agreement and secondly, that this witness cannot answer as to what the future acts of the Commission will be.

20 A. I do not know. We condemn land on the recommendation of the engineer. In a good many cases, probably twenty-five per cent of the cases, we take entirely the word of the chief engineer. He says he needs this land for the construction of this road and we condemn it for that purpose.

Q. Then the Commission has not as yet made any determination as to the use to be put of the land outside of the line of the road and the creek?

30 Mr. Devoe: I object to that. This is not the way to prove what the Commission has done.

A. The minutes will speak for itself. I can't recollect everything that was done.

Q. Do you recall whether or not the Commission has taken any action whatever as to the disposition to be made of the land outside of the road and the creek and river?

Mr. Devoe: I object to the statement. There is no evidence before us that there is any land at all outside of the road and the creek, unless Judge Starr refers, when he says "outside of the road and creek" to "outside of the paving width." There is a difference between the paving width and the entire width of the road.

Q. Mr. Jelin, note, that there may not be any misunderstanding of situation, I call your attention to 10 the blue print which is attached to the petition and the proposed entrance road is given as 125 feet wide and the width of the re-located line of the river is also indicated. My question is directed entirely to the land outside of the lines of the road and the creek as indicated on this map. Do you understand that?

A. Yes.

Q. With that in view, I ask you whether or not there has been any action taken by the Commission 20 as to the use of that parcel of land numbered 50-b on the map?

A. No.

Mr. Hutchinson: Have we clearly upon the record what you are examining on?

Judge Starr: The paper exhibited to the witness is marked P1, June 7, 1926, which is an exhibit in 30 the prior hearing.

Q. I refer now to 50-b, a triangular piece, one of the parcels that is outside of the road and the creek. With that modification, I see where the Commission has taken any action with respect to the disposition of that parcel of land.

A. I do not know whether there is any parcel of land that is not in the particular road. I am sure that we have not taken any position on it or any action to dispose of it.

Q. Has there been any discussion with you and your fellow members as to the disposition of that ground?

10 Mr. Devoe: I object on the ground that that is immaterial.

A. I do not remember. We have discussions of thousands of different lands.

Q. Do you say there have been no discussions?

A. I say, I do not remember.

20 Q. Do you know of any effort made by the engineers on behalf of the Commission to secure an agreement with Taylor-White Extracting Co., to convey parcel 50-b of this property or portion of it to South Jersey Gas Electric and Traction Company?

A. Do I know whether there was any effort made? I do not.

30 Q. Do you have any knowledge that an effort was being made by your engineers on behalf of the Commission to acquire a deed from the Taylor-White Extracting Co, to the Public Service or the South Jersey Gas Electric and Traction Co, for any portion of 50-b?

A. I have not.

Q. Did you ever hear, or have you been told, that an effort was made by the engineers on behalf of the Commission to obtain a deed from the Taylor-White Extracting Company? Is any portion of the area shown on the blue print?

Mr. Devoe: I object to that on the ground that it is immaterial.

A. You asked me that. I said I have not.

Q. Is it the purpose of the Commission upon the acquisition of title to the land under condemnation proceedings, to convey any portion of it to the Public Service Electric and Gas Co., or any of its allied companies?

10 Mr. Devoe: I object on the ground that this witness cannot say what the future of the Commission will be. The minutes of the Commission must be

A. I cannot say what the purpose is until it comes before us. It is not before us and has not been before us. How can we act on something that we do not know anything about?

20 Q. Do you mean to say, that there has not been any action with reference to the disposition to be made of any portion of this?

A. I cannot say about the other Commissioners, but not by me.

Q. Has there been no consideration by the Commissioners at the times when you were present?

A. No.

30 Q. I ask you whether or not, if that question comes before the Commission with reference to the ultimate disposition of any portion of the entire area shown on this blue print Exhibit P1 not used actually for the construction of the road or the relocated line of the river, if you will consent to the transfer of the title to the Public Service Electric and Gas Company?

Mr. Sullivan: I object to that on the ground that

it is immaterial and that this witness cannot say what the future action will be it seems to me.

A. You can't expect me to answer that, Judge.

Q. You decline to answer?

A. No. It is not expected. You can't expect a man to answer if it does come up, what he will do with it.

10 Judge Starr: All right, we will rest that way.

No cross-examination.

MR. GROVER, recalled.

Q. You have custody of the minute book of the Commission, have you not?

20 A. I have.

Q. Do you recall whether or not, since the first of June of this year, any action has been taken by the Commission with reference to the lands being acquired under condemnation proceedings belonging to Taylor-White Extracting Co., or as to the ultimate disposition of those lands?

A. There has been none.

Judge Starr: That is all.

30

HUGH L. SCOTT, a witness, sworn.

Direct examination.

By Judge Starr:

Q. You are one of the Highway Commissioners, are you not?

A. Yes.

Q. You have been a member of the Commission how long? 10

A. Since the 15th of March, 1922.

Q. As a member of the Commission, are you familiar with the proceedings which have been instituted on behalf of the Commission to condemn land of the Taylor-White Extracting Co., in Camden?

A. In a general way.

Q. What do you mean by that, General?

A. Whenever any action is taken by this board it requires three votes. I have been absent for some time in Montana, and what happened during that time I do not know. 20

Q. You knew, did you not, that the Commission authorized the institution of condemnation proceedings against Taylor-White Extracting Co. for this land?

A. Yes. I meant to say in a general way. I don't go and examine a very small plot of ground that this Commission condemns. There are hundreds of these small parcels all over the state that the Commission does not examine. 30

Q. Did you know, that prior to the institution of the condemnation proceedings, an effort had been made by the engineers on behalf of the Commission, to acquire any portion of this condemned area from

Taylor-White Co., and have it conveyed to the Public Service Corporation, or one of its allied companies?

A. No.

Q. You had no knowledge of that?

A. I do not know.

Q. What do you mean by that answer?

A. I said I had no knowledge.

Q. You did not know that had been done then?

10 A. No.

Q. I call your attention to the blue print attached to Exhibit P1 which purports to be the entire area being condemned in these proceedings, and also to the line of the proposed entrance road, 120 feet wide and the line of the width of the re-located creek and ask you whether or not or what disposition the board proposes to make of the land outside of the road and the creek when the title is acquired, if it is acquired from the Taylor-White Company?

20

Mr. Sullivan: I object to that. Of course, the board is not bound by any answer General Scott may give to that question. The board determines in future what disposition it will make, if any, of that land.

A. I cannot give an answer to that.

30 Q. You are not willing to commit yourself now, as to what the ultimate disposition of that land will be?

A. When I got this subpoena to appear here today, I inquired what is this case and they told me that that is the case of parcel 50-b. I said what is the desire of the engineers to use this for? I was told it was to be used for slopes on this road. That is as far as my knowledge goes.

Q. Do you understand it to be the purpose of the Commission to convey any portion of the land that slopes to the Public Service or its allied companies?

Mr. Sullivan: Objected to.

A. Not to my knowledge.

Q. Has that been discussed with your fellow Commissioners?

Mr. Sullivan: I object to that.

10

A. I asked the engineers what this was for and was told that it was for sloping.

Q. Do you commit yourself as to what ultimate disposition will be made?

Mr. Sullivan: My objection was that the condemnation proceedings are an ultimate disposition of the road.

20

A. I can't predicate on any action of the board on which I have but one vote.

Q. If you have a vote, may I ask whether you would consent as a member of the board, to have any portion of this property condemned, to be transferred to the Public Service Corporation or its allied companies?

Mr. Sullivan: I object to that on the ground that it is immaterial whether it would or not. It is not binding upon the board. I want a further objection to that, that an answer can be a mere speculation.

30

A. I have no such intention now. No reason why I should consider it.

Q. Why do you qualify the answer, General, that you have no such intention now?

A. Such question has not been put up to me. I have not considered it and there is no reason why I should consider it.

Q. Do you mean to say that there has never been any discussion between the members of the board and the engineers, with reference to the ultimate disposition of this condemned area?

10 A. I asked and he said for sloping of that road.

Q. Did your discussion with him include what should be done with that strip after the road was completed?

Mr. Sullivan: Objected to on the ground that there is anything in this case or that there is anything further to be done with this strip except to be used as a road.

20 A. Was there any discussion between myself and the engineer? It is going to be used as slopes of the road.

Q. Don't you understand General, that the road is to be 120 feet wide?

A. I imagine they must have sides to it.

Q. Don't you know that that portion outside of the line of the road is now being filled in with mud excavated from the line of the river?

A. Yes.

30 Q. So that eventually it will be level with the road and the adjoining property. What do you propose to do with that triangular piece after the road is completed?

A. The engineer tells me that it is going to be used as the slopes.

Q. The used portions of that road would be limited

to 120 feet and this area is outside of that and what use do you propose to make of it?

A. Only what he told me. I do not have anything to do with it.

No cross-examination.

PERCY H. STEWART, a witness, sworn. 10

Direct examination.

By Judge Starr:

Q. Are you a member of the board?

A. Yes, sir.

Q. And have been so for how long?

A. Since the 13th of March, 1923.

Q. Are you familiar with the proceedings which have been instituted on behalf of the Commissioners to condemn the land of Taylor-White Extracting Co.? 20

A. I am familiar with it. I don't know the details. With most the Highway Commission passed a resolution for condemnation. As to all the details of it, I have not followed it.

Q. Do you know anything about the area covered by the Commission? 30

A. Only as shown on the map.

Q. Do you know that there is a portion of this land sought to be condemned which is located outside of the actual width of the highway and the width of the new line of the creek?

A. Only as I see it on the map there.

Q. What disposition does the board intend to make of the land outside of the highway and the creek?

Mr. Sullivan: Objected to on the ground that there is nothing in evidence that the board is to do anything further with it than condemn it. Secondly, that this witness cannot say what the future action of the board will be.

A. We follow necessarily the recommendation of the engineers.

Q. Outside of that, you are not willing to commit  
10 yourself as to the ultimate disposition of the land outside of the road?

A. I assume it is to be used for highway purposes.

Mr. Devoe: Can't we have noted on the record at this time, our objections to the statement by Judge Starr, as to the disposition of the land outside of the road and creek, because it is our understanding that the testimony to date shows that this is all inside of the road. That can be entered.

20

Q. In order that there may be no misunderstanding as to the land outside of the road and creek, I mean, outside of the limits of the used portion of the highway?

A. I assume that whatever is shown on the map is to be used for highway purposes.

Q. Can you give any basis for that assumption in view of the fact that the engineer has already stated that the width of the proposed entrance road  
30 when completed, will be open to the public one hundred and twenty feet?

Mr. Sullivan: I want to object to that on the ground as to the used portion or the paving portion.

A. Only what I see on the map there and my recollection. I am simply giving my recollection.

Q. Recollection about what?

A. Recollection that the engineer has said that the land will be used for highway purposes or uses connected with the road.

Q. Did he say how it was to be used for highway purposes outside of the road?

A. I am giving you my recollection of conversation, that it was to be used for slope rights.

Q. After the road was completed, what disposition is to be made outside of that used for road purposes?  
10

Mr. Sullivan: Objected to on the around that this witness cannot say what disposition is to be made and that he cannot bind the Commission and that it is part of the highway if it is used for slope purposes.

A. I do not know what disposition will be made.

Q. You are not willing to commit yourself at the  
20 present time?

A. Commit myself. I can only give my vote in case the matter came before us.

WALTER KIDDE, a witness, sworn.

Q. Mr. Kidde, you are a member of the State Highway Commission?  
30

A. Yes.

Q. You have been a member how long?

A. March 13, 1923.

Q. Are you familiar with the condemnation proceedings on the authority of the Commission against the Taylor-White Company, at Camden?

A. Yes, sir.

Q. And did you know that an effort had been made prior to the institution of the proceedings, to secure a conveyance from the Taylor-White Company for part of the condemned area to the South Jersey Gas, Electric and Traction Corporation?

A. I do not know.

Q. That matter was never brought to your attention?

10 A. No, sir.

Q. Then, of course, you do not know the purpose of making that effort?

A. No, sir, I do not know of the effort.

Q. It appears by the blue print attached to P1, that certain portions of the condemned area which are outside of the line of the proposed entrance road and also the re-located line of the river, what disposition is to be made of that land on the outside?

20

Mr. Sullivan: I object to the question on the ground heretofore given that first of all there is nothing in the evidence that anything outside is to be used and second, that this witness cannot prognosticate what the action of the Commission will be at some future time.

A. I am not able to tell what will be done with it.

Q. What do you mean by that?

30 A. I have but one vote. If the matter should come up, I should want to know all the facts.

Q. Then you are not willing to commit yourself as to what disposition will be made of that land?

Mr. Sullivan: Same objection.

A. My information is that it is acquired for slope rights.

Q. Did you know that the land in the triangular piece shown on the blue print above referred to, is outside of that portion of the road which the engineer has said will be open to the public?

A. I have understood that it is necessary for highway purposes. My answer is that I presume it is necessary for highway purposes.

Q. You are not answering the question?

A. I do not.

Q. How wide do you understand the road will be open to the public? 10

A. I have understood the width of the road is to be one hundred and twenty feet, but that this parcel was necessary in order to maintain the slope.

Q. It is your understanding that the portion used by the public after the completion of the road, is in excess of 120 feet? Is it?

A. From this drawing it would appear so.

Q. Here is the proposed entrance road with 120 feet. Isn't it a fact, that the triangular piece is outside of the width of one hundred and twenty feet? 20

A. I say it appears so.

Q. Well, now, with that knowledge, I ask you what disposition is to be made of the land outside of the used area used for the road?

A. To be used for sloping.

Q. Well, that outside area is not used by the public, is it?

A. In the sense that it is necessary to support the road, it is. 30

Q. And you know that now the work is going on of filling in that triangular piece with mud excavated from the river?

A. I do not.

Q. You know nothing about that situation?

A. No.

FRED C. CLAUSS, a witness, sworn.

Q. Mr. Clauss, you are one of the resident engineers of the State Highway Commission, located in Camden?

A. Yes.

10 Q. You have to do with the work now being carried on with reference to the construction of the new entrance road and the excavation for the re-located line of the river?

A. Partly. Very slightly.

Q. You had a lot to do with it when you testified the other day?

A. I do not have much to do with it. My work is to do with designing.

Q. You were present from time to time at the scene of the excavation and also for the filling for the new road, were you not?

20 A. From time to time, yes, sir.

Q. What is being done with the mud which is excavated for the new line of the river?

A. It is being dumped up on the side of the banks at the present time.

Q. There is about 150,000 cubic yards of mud to be taken out of that excavation for the river?

A. I understand so. Yes, sir.

30 Q. That mud is being used to build up the line of the road and to fill in the low land to the north, is it not?

A. Yes, sir. It will be used for that. It is not being used for that yet.

Q. Eventually the mud thus excavated will be used for the purpose of making the bed of the proposed road and filling in the low land to the north?

A. Which is the old bed of Cooper River. C

Q. That is being filled in from the line of the river?

A. That is about as far.

Q. How far?

A. I do not know.

Q. I show you a blue print attached to Exhibit P1 and call your attention to the triangular piece which is marked 50-b; will that area be filled with the mud excavated from the new line of the creek?

A. No, I do not think so. That will be filled with new dirt in the slopes. 10

Q. Isn't it your purpose to fill in the low land toward the land beyond the triangular piece?

A. Yes, perhaps you do not understand. The slope will run down from our right of way, then the low land will be filled in.

Q. The low land will be filled in to what height?

A. We had the height fixed but I do not recall. It will be slightly under the elevation of the road. How much, I do not know. 20

Q. Any proximation?

A. Three or four feet.

Q. How far has the work of filling in progressed to the present time?

A. You are speaking of the excavated portion through the channel?

Q. Yes.

A. I would say twenty-five or thirty feet. I do not know. 30

Cross-examination.

By Mr. Devoe:

Q. Mr. Clauss, you were asked the question of 120,000 cubic yards of fill being taken out. Is all of that fill being taken out of the Taylor-White land?

A. No, sir, that is all the re-located channel for 150 feet.

Q. About how many cubic yards from the Taylor-White Company for excavating the channel?

A. Approximately 120,000 yards.

10 MR. GROVER, recalled by Mr. Devoe for defendant.

We will call Mr. Grover as to the procedure to how they condemn; the method by which the Commission gets its reports and authorizations.

Examination by Mr. Sullivan:

20 Q. Mr. Grover, what is the method by which the Commission determines what land is necessary for the construction of any of the highway that it is building in the State of New Jersey?

30 A. A report is submitted with recommendation or a certification by the State Highway Engineer that such parcel is required for highway purposes. That report comes to the Commission and is considered at its regular meeting and includes a record of any negotiations that may have been carried on in reference to it. Then further recommendation of condemnation be instituted if the negotiations have not been successful in procuring the property. The Commission then considers the matter and authorizes an official offer to be made and in event that the official offer and whatever amount may be determined by the Commission is not accepted, that condemnation proceedings be instituted. There is written into the minutes a description of the property to be acquired from the reports submitted and then a record is transmitted to the right of way

division, or a report advising the right of way division that an official offer on the certain parcel has been authorized and in the event that it is not considered that condemnation shall proceed.

By Mr. Starr:

Q. Does this report of the board to the Commission contain a particular description of the lands necessary for the road? 10

Mr. Sullivan: I object to that, Mr. Starr. It seems to me that it would be bound by a report of the state and the engineers be limited.

A. The full report contains a map and description. Of course, the schedule report is handed to all the members of the Commission, is usually by parcel number reference.

Q. Is that the procedure followed in the case of the lands of the Taylor-White Extracting Company? 20

A. It was.

I, BARTON B. HUTCHINSON, one of the Supreme Court Commissioners of the State of New Jersey do hereby certify that the foregoing depositions were taken in my immediate presence and hearing by a stenographer and that I believe they accurately state the evidence given. 30

Supreme Court Commissioner.

EXHIBIT P2.

6/7/26 M. S.

Entrance Road—Section 2  
Parcels Nos. 50, 52, 55, 56,  
57 and 58

Agreement to convey land.

10 AGREEMENT MADE  
BETWEEN THE TAYLOR-WHITE EX-  
TRACTING COMPANY, of the City of Camden,  
in the County of Camden, and State of New Jersey,  
of the first part,

AND THE STATE OF NEW JERSEY of the  
second part,

20 WITNESSETH that the party of the first part  
agrees to convey unto the party of the second part,  
or its assigns, by deed of warranty, free and clear  
of all encumbrances whatsoever, and the party of  
the second part agrees to purchase from the party  
of the first part for the sum of.....

..... certain lands and premises,  
situate, lying and being in the City of Camden,  
in the County of Camden, and State of New Jersey,  
and more particularly described as follows:

BEGINNING in the riparian line of the left bank  
of Cooper River and corner to lands of grantor and  
Public Service Electric Company; and running

30 Thence (1) along said riparian line, North fifty-  
seven degrees, fifty-seven minutes, fifty-seconds East  
(N 57° 57' 50" E), one hundred thirty-four and five-  
tenths (134.5) feet to an angle in the same;

Thence (2) still along the same, South seventy-  
two degrees four minutes, fifty seconds East (S 72°  
04' 50" E), two hundred twenty-five (225) feet to  
the extension of the line of lands of grantor and the  
Parkside Land Company to said riparian line;

Thence (3) along said property line, South five  
degrees, thirty-one minutes, fifty seconds East (S  
5° 31' 50" E), three hundred seventeen and forty-  
seven hundredths (317.47) feet to the mean low  
water line of the proposed relocation of Cooper  
River;

Thence (4) along said mean low water line, North  
eighty-four degrees, thirty-eight minutes, twenty  
seconds West (N 84° 38' 20" W), two hundred three  
and sixty-seven hundredths (203.67) feet to the lands  
of the Public Service Electric Company; 10

Thence (5) along said lands, North five degrees,  
thirty-one minutes, fifty seconds West (N 5° 31' 50"  
W), thirty-six and sixty-one hundredths (36.61)  
feet to an angle point;

Thence (6) still along the same, North thirty de-  
grees, thirty-one minutes, fifty seconds West (N 30°  
31' 50" W), three hundred (300) feet to the place of  
Beginning;

20 Being a tract of land on the left bank of Cooper  
River as now located between the lands of Public  
Service Electric Company and Parkside Land Com-  
pany, and on the left bank of the proposed relocated  
channel of Cooper River;

CONTAINING in area eighty-nine thousand, five  
hundred fifty-one (89,551) square feet, more or less;

AND the party of the second part agrees to obtain  
for the party of the first part the riparian right  
on the left bank of Cooper River as relocated, run-  
ning along the fourth course as above described; 30

It is hereby understood and agreed that the party  
of the first part will convey the land hereinabove  
described in several deed as directed by the State  
Highway Commission as follows:

To the State Highway Com-  
mission Parcels 52

To the State Board of Commerce & Navigation

Parcels 55

To the South Jersey Gas, Electric & Traction Co.

Parcels 50 and 56

To the S. H. French Company

Parcels 57 and 58

This agreement is conditioned upon the final acceptance of the proposed location of the highway after final approval of the plans by the United States War Department.

10

DELAWARE RIVER BRIDGE ENTRANCE ROAD

SECTION NO. 2

Description of Parcel No. 50

TAYLOR-WHITE EXTRACTING COMPANY

to

SOUTH JERSEY GAS, ELECTRIC & TRACTION COMPANY

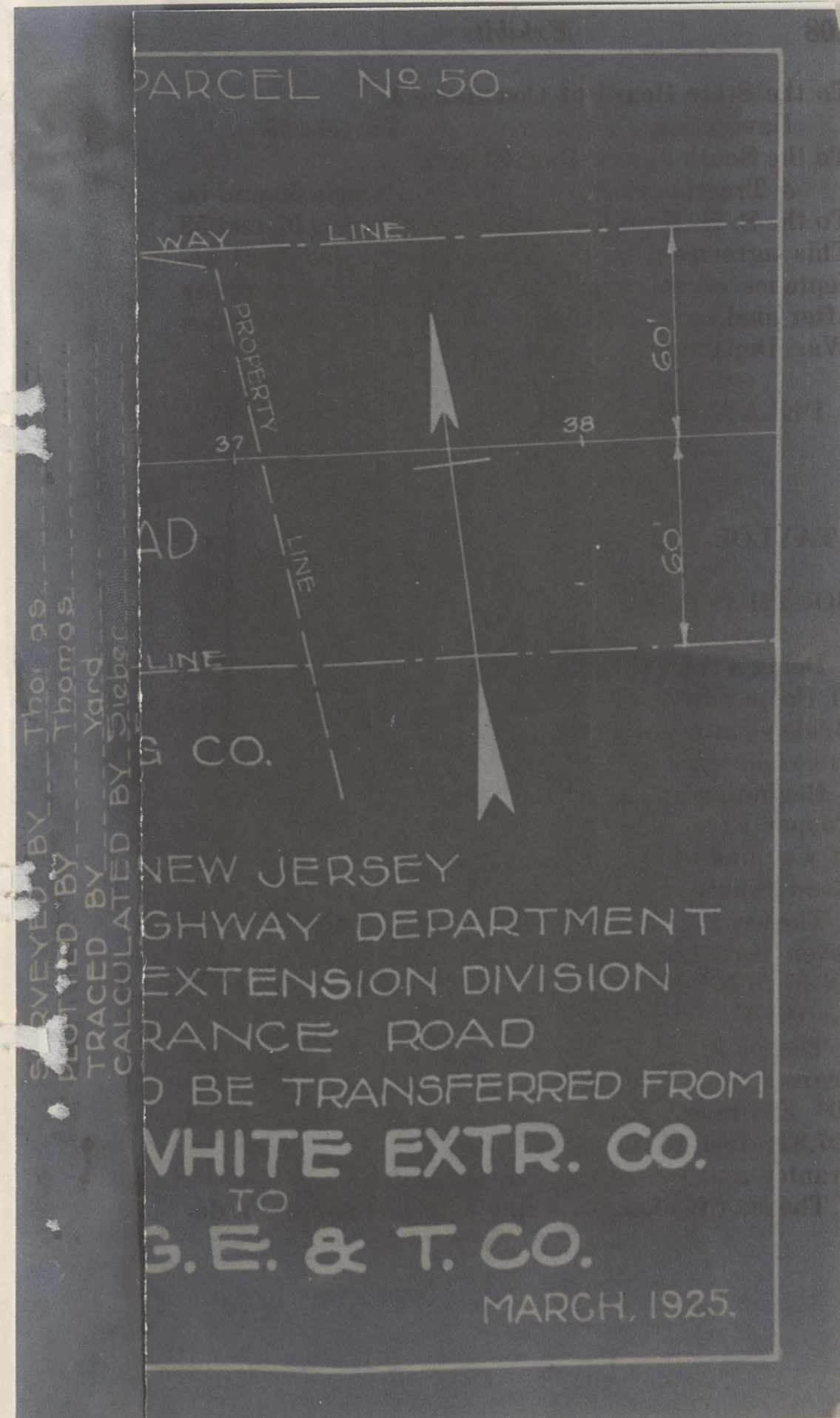
Being a tract of land between the present left bank of Cooper River and the proposed Delaware River Bridge Entrance Road adjoining other land about to be conveyed to grantee, and described as follows:

Beginning in the riparian line on the left bank of Cooper River and in the proposed northerly right of way line of the Delaware River Bridge Entrance Road running:

30 Thence (1) along said riparian line north fifty-seven degrees, fifty-seven minutes, fifty seconds east (N 57-57'50" E) sixty-five and sixty-seven hundredths (65.67) feet to an angle in same;

Thence (2) still along the same south seventy-two degrees, four minutes, fifty seconds east (S 72-04'-50" E) ninety-seven and eighty-two hundredths (97.82) feet to the extension of the line between grantee and the Samuel H. French Co.

Thence (3) along said line extended south ten de-

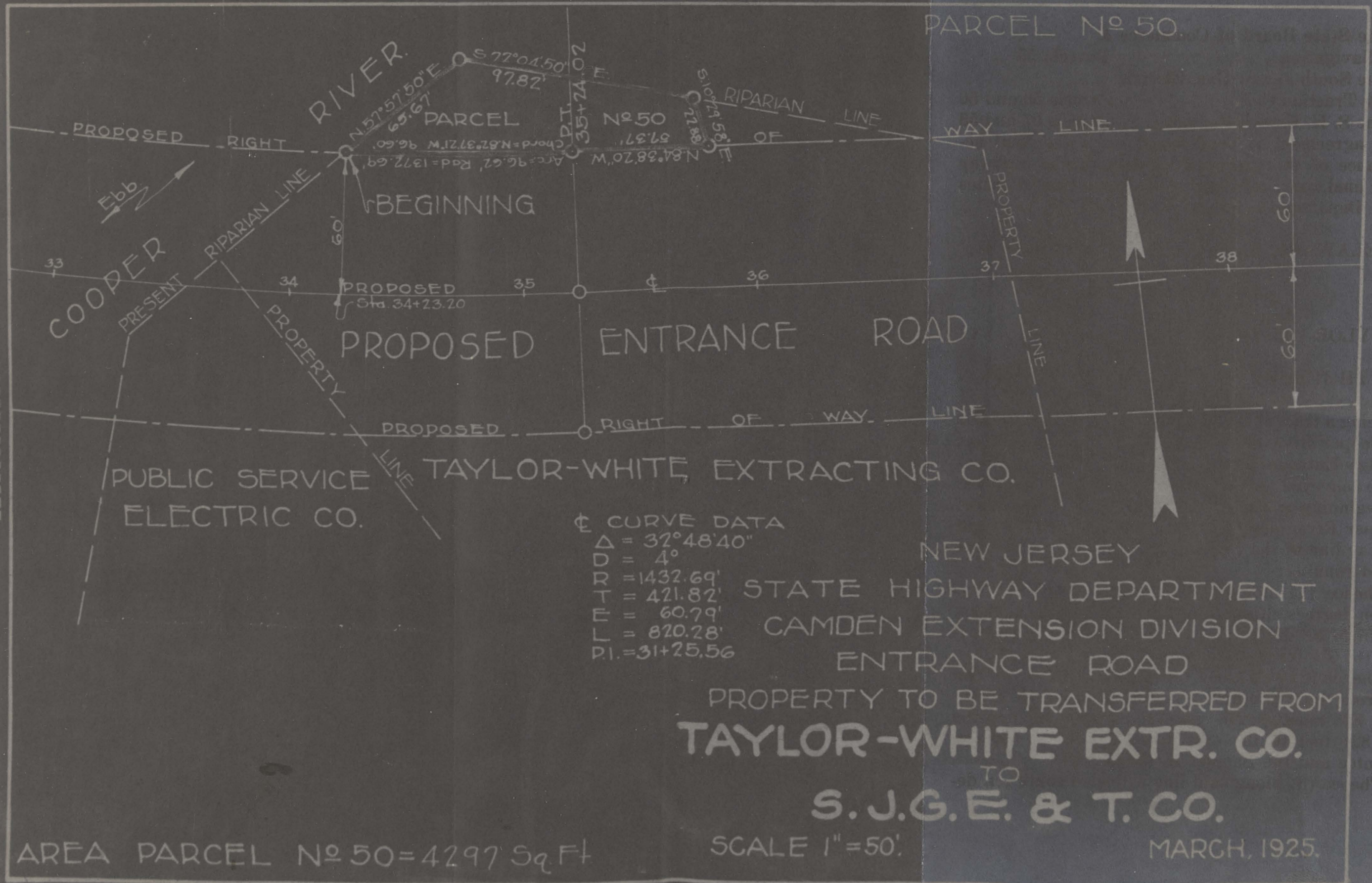


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SURVEYED BY Tho. G. Thomas  
 PLOTTED BY Thomas  
 TRACED BY Yard  
 CALCULATED BY Diebge  
 CHECKED BY Funk



CURVE DATA  
 $\Delta = 32^\circ 48' 40''$   
 $DD = 4^\circ$   
 $RR = 1432.69'$   
 $T = 421.82'$   
 $E = 60.79'$   
 $L = 820.28'$   
 $PI = 31+25.56$

NEW JERSEY  
 STATE HIGHWAY DEPARTMENT  
 CAMDEN EXTENSION DIVISION  
 ENTRANCE ROAD  
 PROPERTY TO BE TRANSFERRED FROM  
**TAYLOR-WHITE EXTR. CO.**  
 TO  
**S. J. G. E. & T. CO.**

AREA PARCEL No 50 = 4297 Sq. Ft

SCALE 1" = 50'

MARCH, 1925.

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grees, twenty-nine minutes, fifty-eight seconds east (S 10-29'-58" E) twenty-two and eighty-eight hundredths (22.88) feet to the proposed northerly right of way line of the Delaware River Bridge Entrance Road;

Thence (4) along said right of way line north eighty-four degrees, thirty-eight minutes, twenty seconds west (N 84-38'-20" W) fifty-seven and thirty-seven hundredths (57.37) feet to a point of curve;

Thence (5) still along same curving to the right with a radius of thirteen hundred, seventy-two and sixty-nine hundredths (1372.69) feet distant along the arc ninety-six and sixty-two hundredths (96.62) feet (the chord for this course bearing north eighty-two degrees, thirty-seven minutes, twenty-one seconds west (N 82-37'-21" W) and being ninety-six and six tenths (96.6) feet long) to the place of beginning;

CONTAINING in area forty-two hundred ninety-seven (4297) square feet more or less lying to the northerly side of the proposed Delaware River Bridge Entrance Road and extending to the present riparian line of Cooper River and

Consisting of the release or abandonment of riparian rights one hundred, sixty-three and forty-nine hundredths (163.49) feet in length;

Subject to the right of the State of New Jersey to build and maintain slopes over this tract as may be necessary in the construction of the above mentioned highway; said right of maintenance to remain in effect only for such period as may be necessary on account of the variation of the level of adjacent lands from the level of said highway;

The grantee hereby retaining the right to use such lands providing such use does not interfere with said slopes or endanger said highway.

DELAWARE RIVER BRIDGE ENTRANCE  
ROAD  
SECTION NO. 2

Description of Parcel No. 52  
TAYLOR-WHITE EXTRACTING CO.

to

STATE OF NEW JERSEY

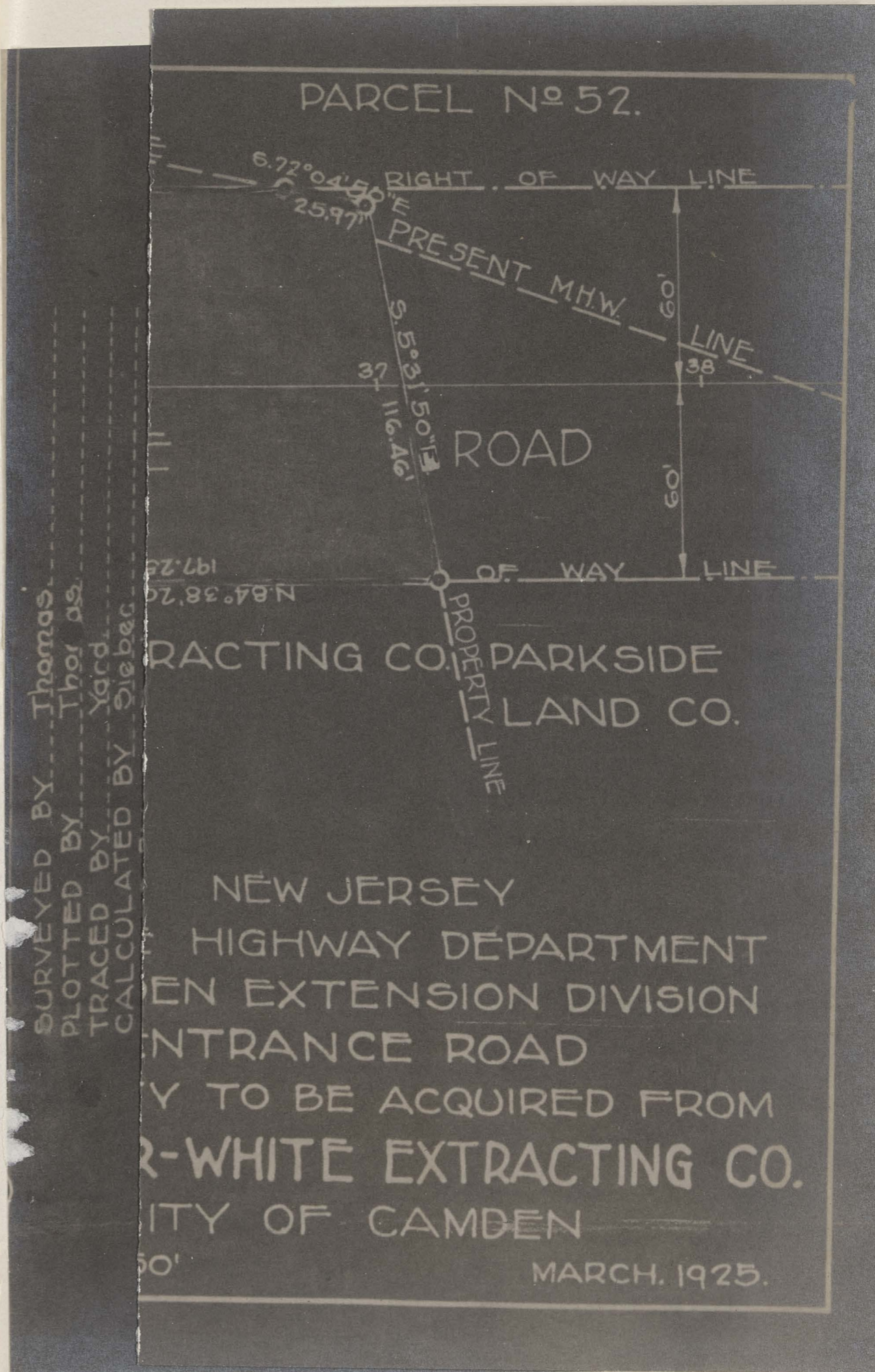
Being a tract of land on the left bank of Cooper  
10 River needed for highway purposes including re-  
lease of riparian rights for that portion fronting  
on the river and described as follows:

Beginning in the riparian line of the left bank of  
Cooper River and corner to lands of grantor and  
the Public Service Co. and running;

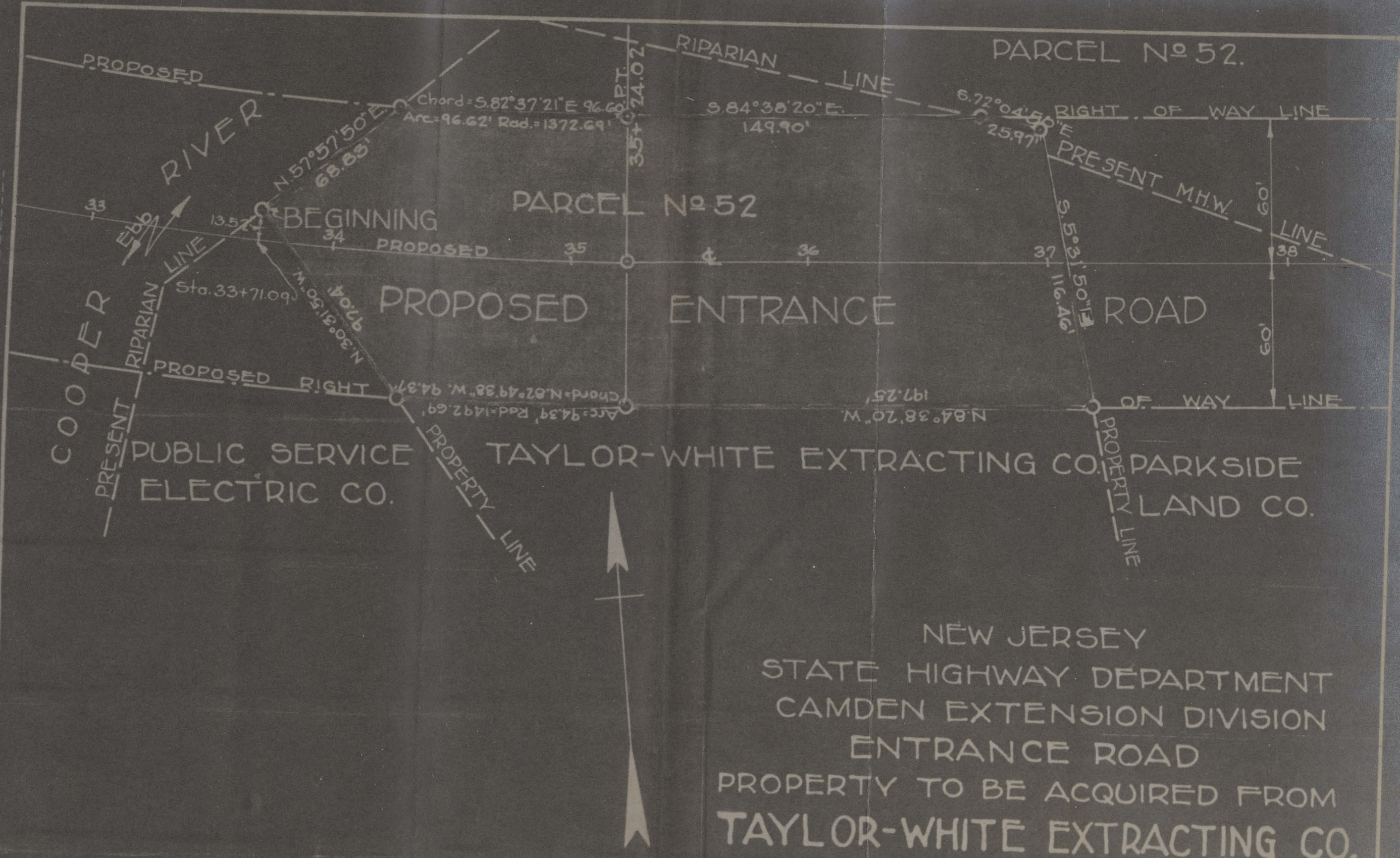
Thence (1) along said riparian line north fifty-  
seven degrees, fifty-seven minutes, fifty seconds east  
(N 57-57'-50" E) sixty-eight and eighty-three hun-  
dredths (68.83) feet to the proposed northerly right  
20 of way line of the Delaware River Bridge Entrance  
Road;

Thence (2) along said right of way line and  
through the lands of grantor of which this tract  
about to be conveyed is a part curving to the left  
with a radius of thirteen hundred seventy-two and  
sixty-nine hundredths (1372.69) feet distant on the  
arc ninety-six and sixty-two hundredths (96.62) feet  
(the chord for this course bearing south eighty-two  
degrees, thirty-seven minutes, twenty-one seconds  
30 cast (S 82-37'-21" E) and being ninety-six and six  
tenths (96.6) feet long) to a point of tangency;

Thence (3) still along the same south eighty-four  
degrees, thirty-eight minutes, twenty seconds east  
(S 84-38'-20" E) one hundred forty-nine and nine  
tenths (149.9) feet to another point in the above  
mentioned riparian line;



SURVEYED BY Thomas  
 PLOTTED BY Thoras  
 TRACED BY Yard  
 CALCULATED BY Sieber  
 CHECKED BY Funk



NEW JERSEY  
 STATE HIGHWAY DEPARTMENT  
 CAMDEN EXTENSION DIVISION  
 ENTRANCE ROAD  
 PROPERTY TO BE ACQUIRED FROM  
**TAYLOR-WHITE EXTRACTING CO.**  
 CITY OF CAMDEN

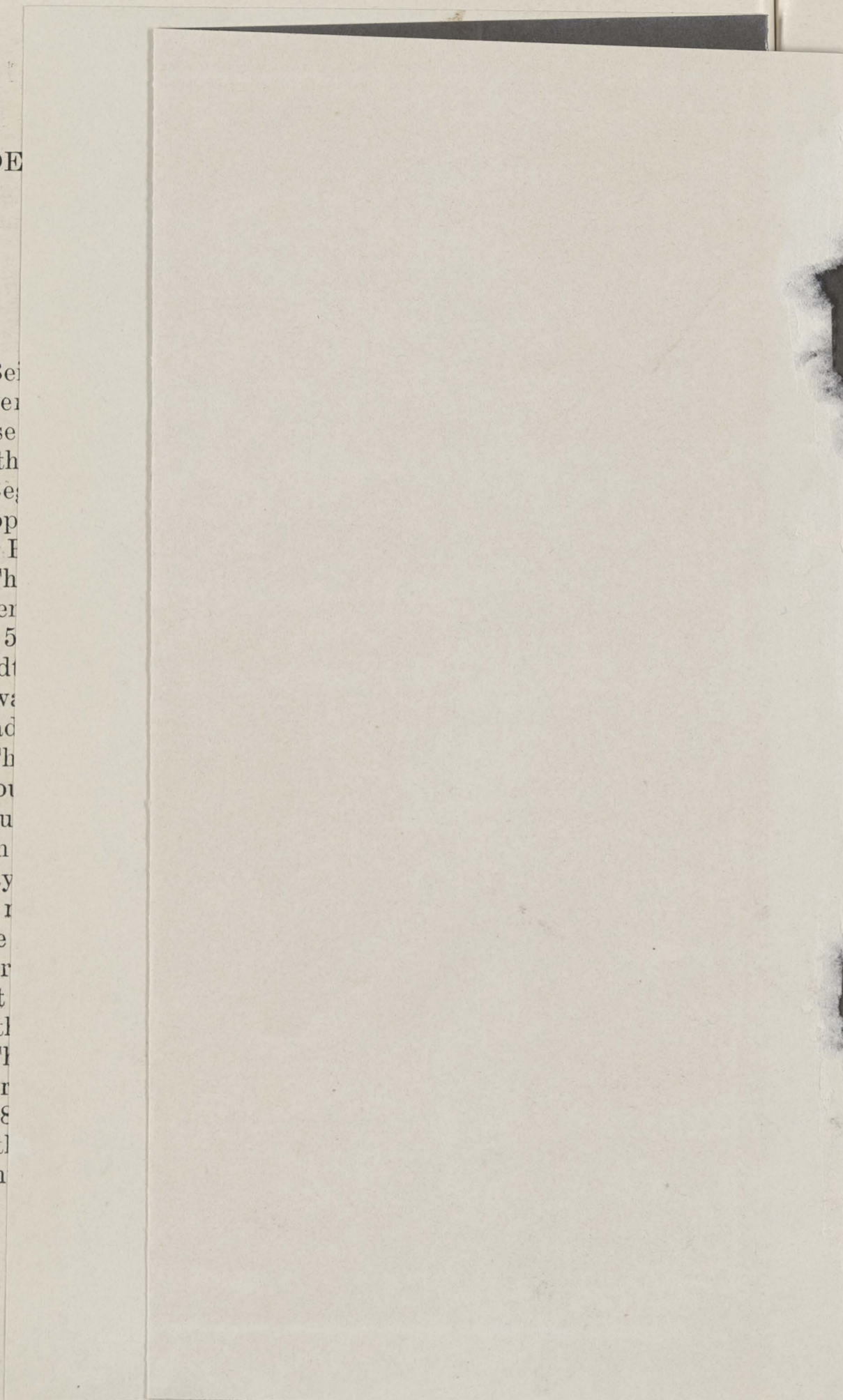
AREA PARCEL No 52 = 37022 Sq. Ft.

SCALE 1"=50'

MARCH, 1925.

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Thence (4) along said riparian line south seventy-two degrees, four minutes, fifty seconds east (S 72-04'-50'' E) twenty-five and ninety-seven hundredths (25.97) feet to the line of lands of the Parkside Land Co. as extended to the riparian line;

Thence (5) along the line of lands of the grantor and Parkside Land Co. south five degrees, thirty-one minutes, fifty seconds east (S 5-31'-50'' E) one hundred sixteen and forty-six hundredths (116.46) feet to the proposed southerly right of way line of the Delaware River Bridge Entrance Road;

Thence (6) along said right of way line and through lands of grantor north eighty-four degrees, thirty-eight minutes, twenty seconds west (N 84-38'-20'' W) one hundred ninety-seven and twenty-five hundredths (197.25) feet to a point of curve;

Thence (7) still by the same curving to the right with a radius of fourteen hundred ninety-two and sixty-nine hundredths (1492.69) feet distant on the arc ninety-four and thirty-nine hundredths (94.39) feet (the chord for this course bearing north eighty-two degrees, forty-nine minutes, thirty-eight seconds west (N 82-49'-38'' W) and being ninety-four and thirty-seven hundredths (94.37) feet long) to the line of lands of the Public Service Electric Co.

Thence (8) along line of lands of grantor and said Public Service Co. north thirty degrees, thirty-one minutes, fifty seconds west (N 30-31'-50'' W) ninety-seven and four hundredths (97.04) feet to the place of beginning;

CONTAINING in area thirty-seven thousand twenty-two (37,022) square feet more or less lying within the proposed right of way lines of the Delaware River Bridge Entrance Road and between the lands of the Public Service Electric Co. and the Parkside Land Co. and

Consisting of a release of riparian rights ninety-four and eight tenths (94.8) feet in length,

TOGETHER with the rights to form and maintain slopes over adjoining lands of grantor as may be necessary for the construction of said highway, said rights of maintenance to remain in effect only for such period as may be necessary on account of 12856 Starr 13B Frank W 4

10 the variation of the level of the adjacent lands from the level of said highway;

The grantor hereby retaining the right to use such land providing such use does not interfere with said slopes or endanger said highway.

DELAWARE RIVER BRIDGE ENTRANCE  
ROAD

SECTION NO. 2

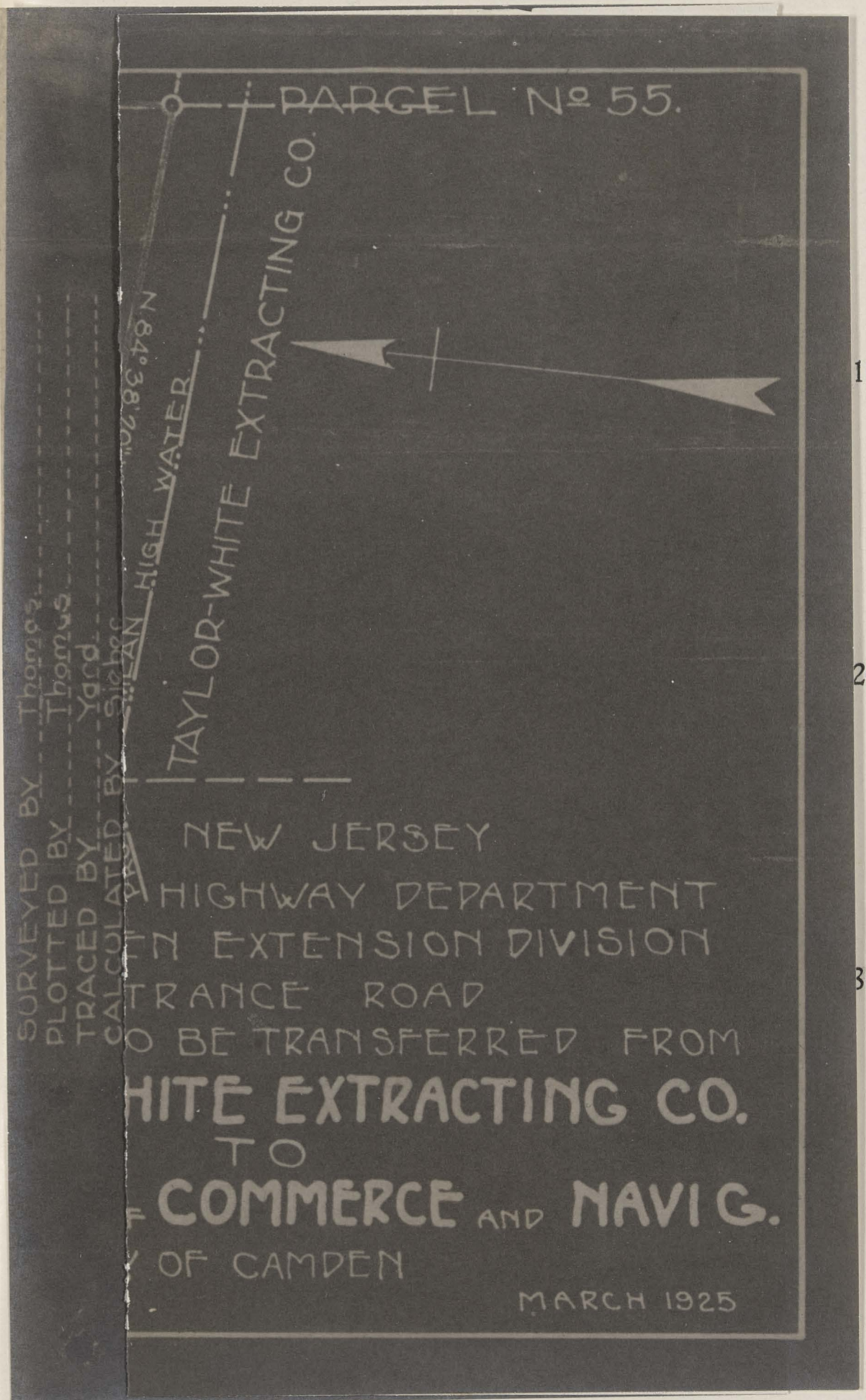
Description of Parcel No. 55  
TAYLOR-WHITE EXTRACTING CO.

20 TO  
NEW JERSEY STATE BOARD OF COMMERCE  
& NAVIGATION

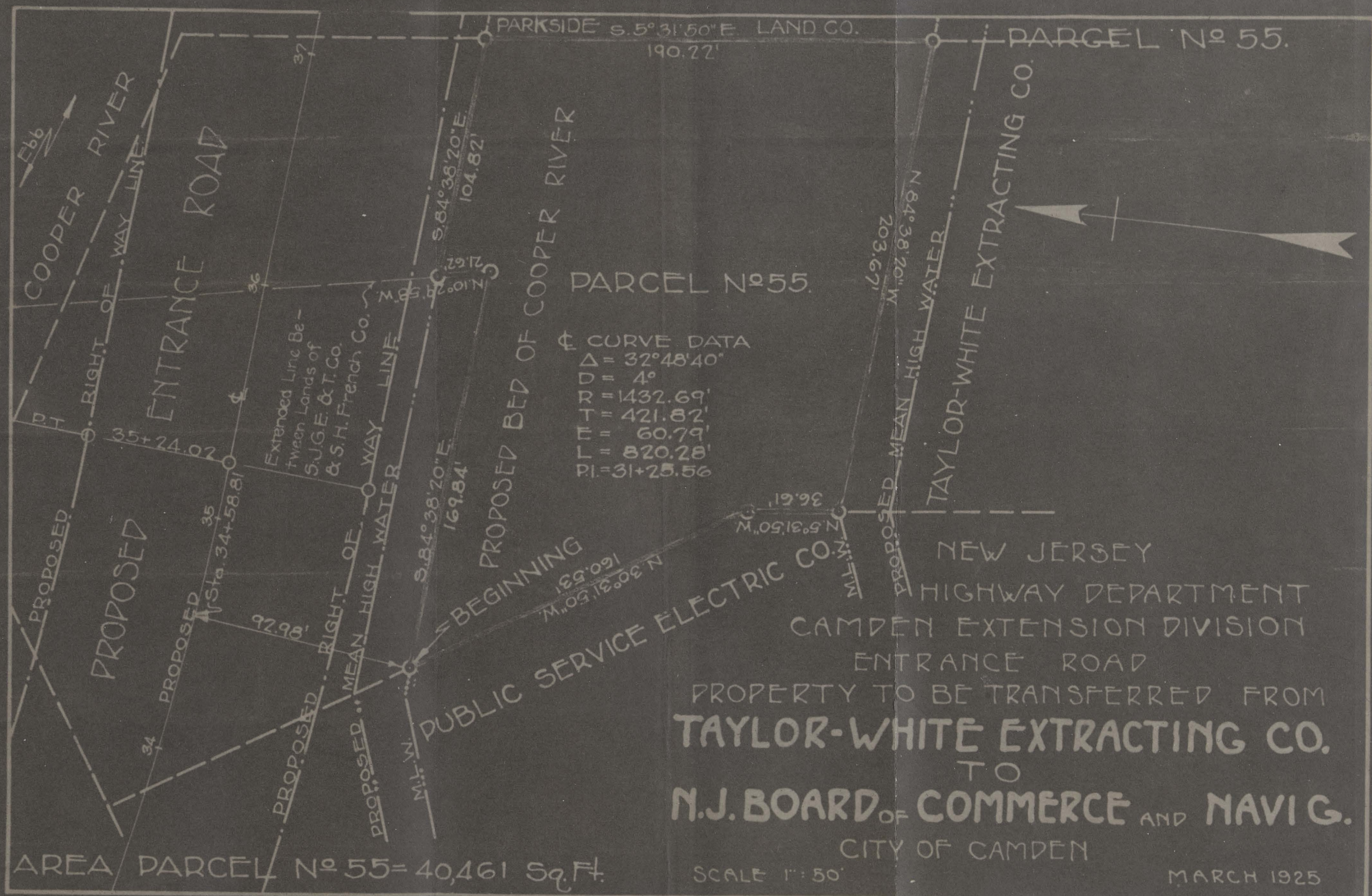
Being a tract of land lying in the proposed bed of Cooper River and between lands of Public Service Electric Co. and Parkside Land Co. being conveyed for the purpose of relocating bed of Cooper River and described as follows:

30 Beginning at the intersection of the line of lands of Public Service Electric Co. and the grantor with the proposed mean low water line on the right bank of the proposed bed of Cooper River and running;

Thence (1) along said proposed mean low water line south eighty-four degrees thirty-eight minutes twenty seconds east (S 84-38'-20" E) one hundred sixty-nine and eighty-four hundredths (169.84) feet to the extension of line between lands of South Jer-



SURVEYED BY Thomas  
 PLOTTED BY Thomas  
 TRACED BY Yard  
 CALCULATED BY Sieber  
 CHECKED BY Funk



☛ CURVE DATA

|          |                         |
|----------|-------------------------|
| $\Delta$ | $= 32^{\circ} 48' 40''$ |
| $D$      | $= 4^{\circ}$           |
| $R$      | $= 1432.69'$            |
| $T$      | $= 421.82'$             |
| $E$      | $= 60.79'$              |
| $L$      | $= 820.28'$             |
| $PI$     | $= 31+25.56$            |

AREA PARCEL No 55 = 40,461 Sq. Ft.

NEW JERSEY  
 HIGHWAY DEPARTMENT  
 CAMDEN EXTENSION DIVISION  
 ENTRANCE ROAD  
 PROPERTY TO BE TRANSFERRED FROM  
**TAYLOR-WHITE EXTRACTING CO.**  
 TO  
**N.J. BOARD OF COMMERCE AND NAVIG.**  
 CITY OF CAMDEN

SCALE 1" = 50'

MARCH 1925

sey Gas, Electric & Traction Co. and S. H. French Co.;

Thence (2) along said extended line north ten degrees twenty-nine minutes fifty-eight seconds west (N 10-29'-58" W) twenty-one and sixty-two hundredths (21.62) feet to the proposed mean high water line on the right bank of the proposed bed of Cooper River;

Thence (3) along said proposed mean high water line south eighty-four degrees, thirty-eight minutes 10  
twenty seconds east (S 84-38'-20" E) one hundred four and eighty-two hundredths (104.82) feet to line of land of Parkside Land Co.

Thence (4) along said line south five degrees thirty-one minutes fifty seconds east (S 5-31'-50" E) One hundred ninety and twenty-two hundredths (190.22) feet to the proposed mean low water line on the left bank of the proposed bed of Cooper River;

Thence (5) along said proposed mean low water 20  
line and other land of grantor north eighty-four degrees thirty-eight minutes twenty seconds west (N 84-38'-20" W) two hundred three and sixty-seven hundredths (203.67) feet to the line of land of Public Service Electric Co.

Thence (6) along said line north five degrees thirty-one minutes fifty seconds west (N 5-31'-50" W) thirty-six and sixty-one hundredths (36.61) feet to an angle;

Thence (7) still along same north thirty degrees 30  
thirty-one minutes fifty seconds west (N 30-31'-50" W) one hundred sixty and fifty-three hundredths (160.53) feet to the place of beginning;

CONTAINING forty thousand four hundred sixty-one (40,461) square feet more or less, lying within the proposed bed of Cooper River and between lands

of Public Service Electric Co. and Parkside Land Co.

Except that the right to form and maintain slopes over this tract as may be necessary in the construction of said road is reserved to the State of New Jersey, said right of maintenance to remain in effect only for such period as may be necessary on account of the variation of the level of the adjacent lands from the level of said road;

10 The grantee hereby retaining the right to use such land providing such use does not interfere with said slopes or endanger said highway.

DELAWARE RIVER BRIDGE ENTRANCE ROAD SECTION NO. 2

Description of Parcel No. 56

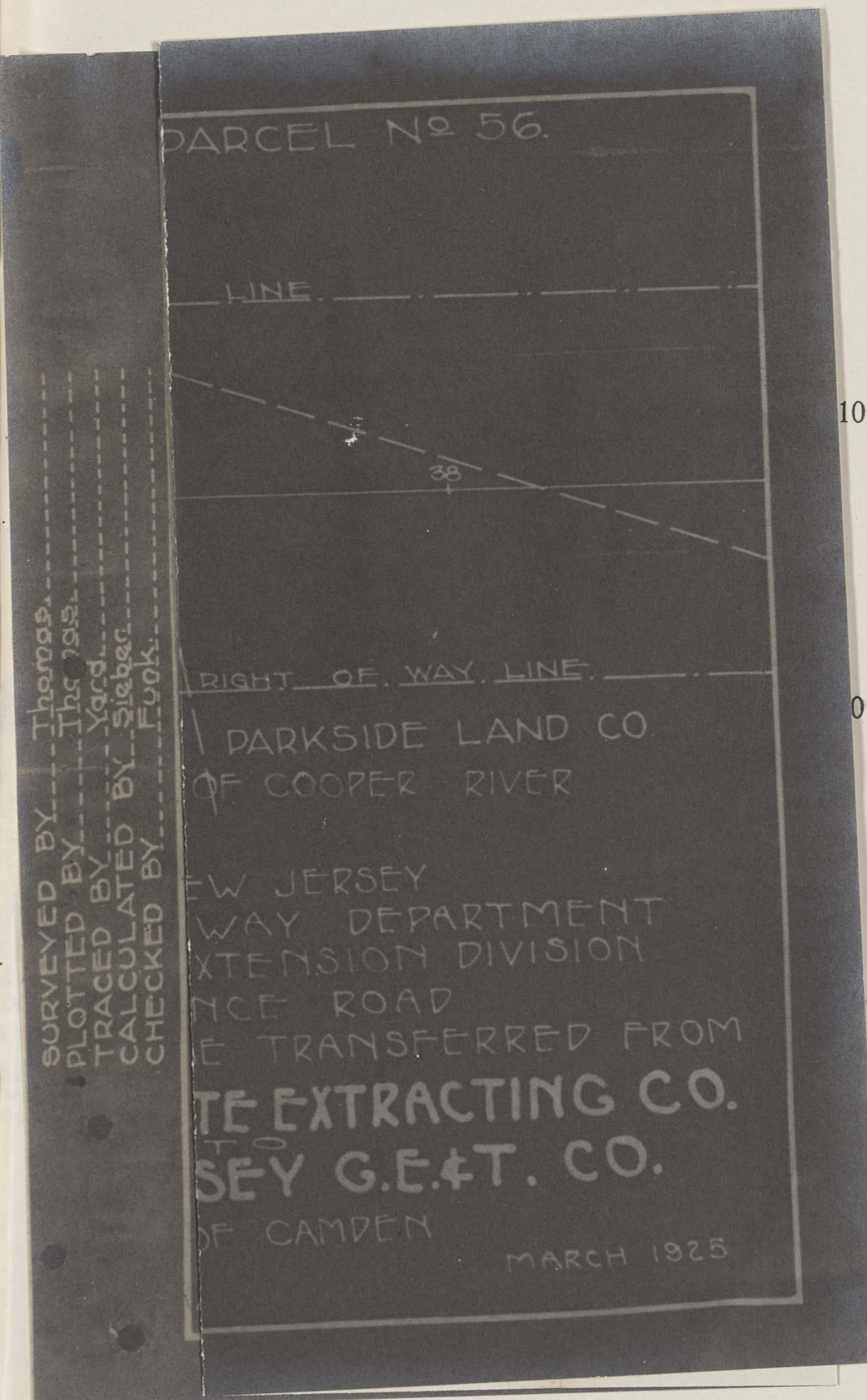
TAYLOR-WHITE EXTRACTING COMPANY TO

20 SOUTH JERSEY GAS, ELECTRIC & TRACTION COMPANY

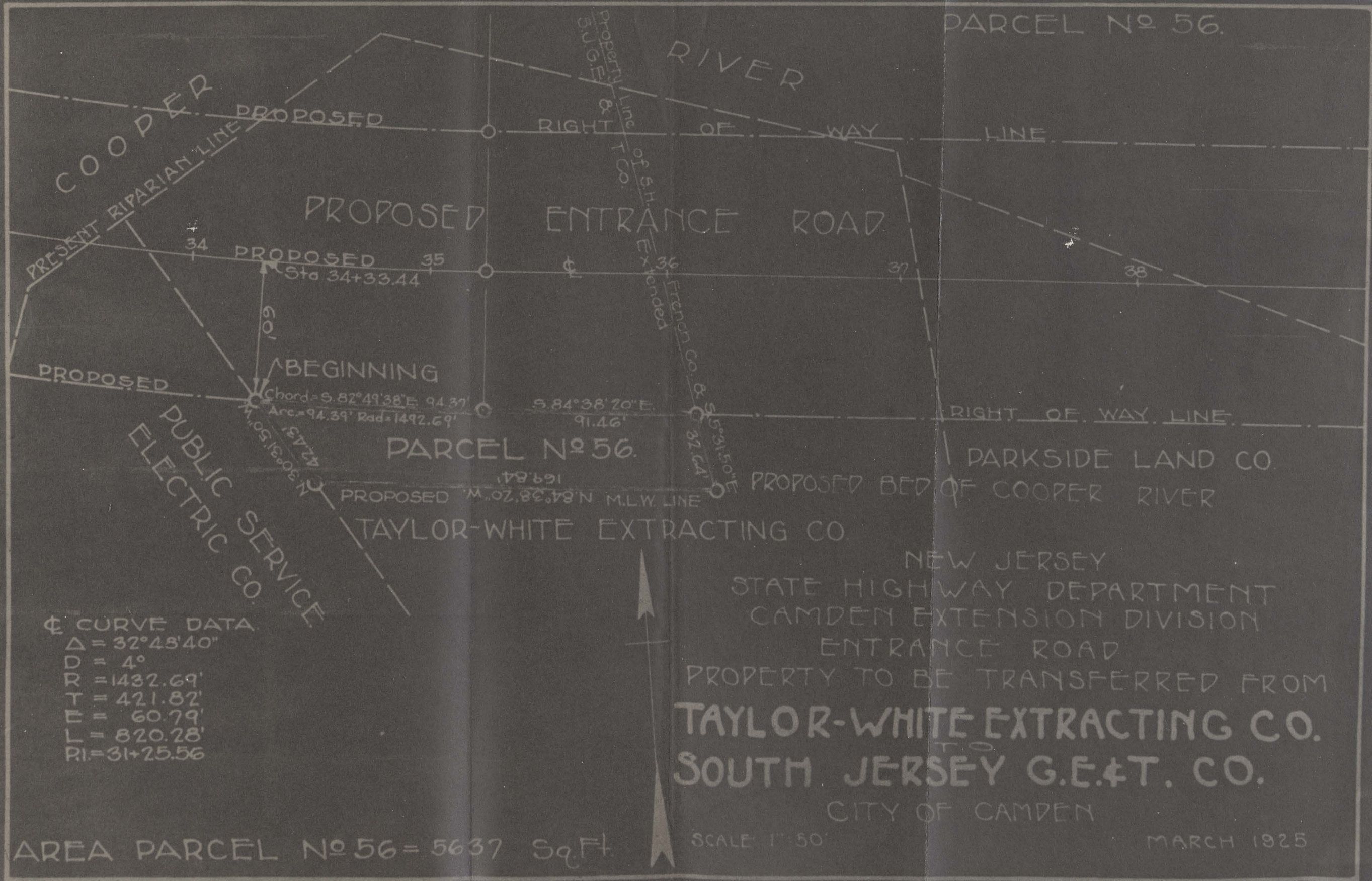
Being a tract of land lying between the proposed Delaware River Bridge Entrance Road and the proposed bed of Cooper River being conveyed for the purpose of reestablishing water frontage for the grantee on the south side of the said entrance road and opposite lands about to be conveyed to the grantee and described as follows:

30 Beginning at the intersection of the proposed southerly right of way line of the Delaware River Bridge Entrance Road with the line of lands of Public service Co. and grantor and running;

Thence (1) along said proposed southerly right of way line of the Delaware River Bridge Entrance Road curving to the left with a radius of fourteen hundred ninety-two and sixty-nine hundredths



SURVEYED BY Thomas  
 PLOTTED BY The 1915  
 TRACED BY Yard  
 CALCULATED BY Sieber  
 CHECKED BY Funk



☺ CURVE DATA  
 $\Delta = 32^\circ 48' 40''$   
 $D = 4^\circ$   
 $R = 1432.69'$   
 $T = 421.82'$   
 $E = 60.79'$   
 $L = 820.28'$   
 $PI = 31+25.56$

of Public Service Electric Co.

Except that the right over this tract as may be... tion of said road is res... Jersey, said right of ma... only for such period as... of the variation of the... from the level of said

10 The grantee hereby r... land providing such... said slopes or endange

DELAWARE RIVER

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Description

TAYLOR-WHITE

20 SOUTH JERSEY GA... C

Being a tract of la... Delaware River Brid... posed bed of Cooper... purpose of reestabli... grantee on the south... and opposite lands... grantee and describe

30 Beginning at the... southerly right of v... Bridge Entrance Ro... lic service Co. and

Thence (1) along... way line of the De... Road curving to th... hundred ninety-tw

(1492.69) feet distant along the arc ninety-four and thirty-nine hundredths (94.39) feet (the chord for this course bearing south eighty-two degrees forty-nine minutes thirty-eight seconds east (S 82-49'-38" E) and being ninety-four and thirty-seven hundredths (94.37) feet long) to the end of curve;

Thence (2) still along same right of way line south eighty-four degrees thirty-eight minutes twenty seconds east (S 84-38'-20" E) ninety-one and forty-six hundredths (91.46) feet to the intersection with the extension of line of lands between South Jersey Gas, Electric & Traction Co. and S. H. French Co.;

Thence (3) along said extended line south five degrees thirty-one minutes fifty seconds east (S 5-31'-50" E) thirty-two and sixty-four hundredths (32.64) feet to the proposed mean low water line on the right bank of the proposed bed of Cooper River;

Thence (4) along said proposed mean low water line north eighty-four degrees thirty-eight minutes twenty seconds west (N 84-38'-20" W) one hundred sixty-nine and eighty-four hundredths (169.84) to the line of lands of Public Service Electric Co.

Thence (5) along said line north thirty degrees thirty-one minutes fifty seconds west (N 30-31'-50" W) forty-two and forty-three hundredths (42.43) feet to the point of beginning.

CONTAINING in area five thousand six hundred thirty-seven (5,637) square feet more or less, lying between the proposed Delaware River Bridge Entrance Road and the proposed bed of Cooper River and between land of Public Service Electric Co. and extended line of land between South Jersey Gas, Electric & Traction Co. and S. H. French Co.

Except that the right to form and maintain slopes over this tract as may be necessary in the construc-

tion of said road is reserved to the State of New Jersey, said right of maintenance to remain in effect only for such period as may be necessary on account of the variation of the level of the adjacent lands from the level of said road;

The grantee hereby retaining the right to use such land providing such use does not interfere with said slopes or endanger said highway.

10 DELAWARE RIVER BRIDGE ENTRANCE ROAD  
SECTION NO. 2

Description of Parcel No. 57  
TAYLOR-WHITE EXTRACTING COMPANY  
TO  
S. H. FRENCH CO.

20 Being a tract of land lying between the proposed Delaware River Bridge Entrance Road and the mean high water line of the right bank of proposed bed of Cooper River, for the purpose of reestablishing water frontage for the said grantee on the south side of said entrance road and opposite lands about to be conveyed to the said grantee and described as follows:

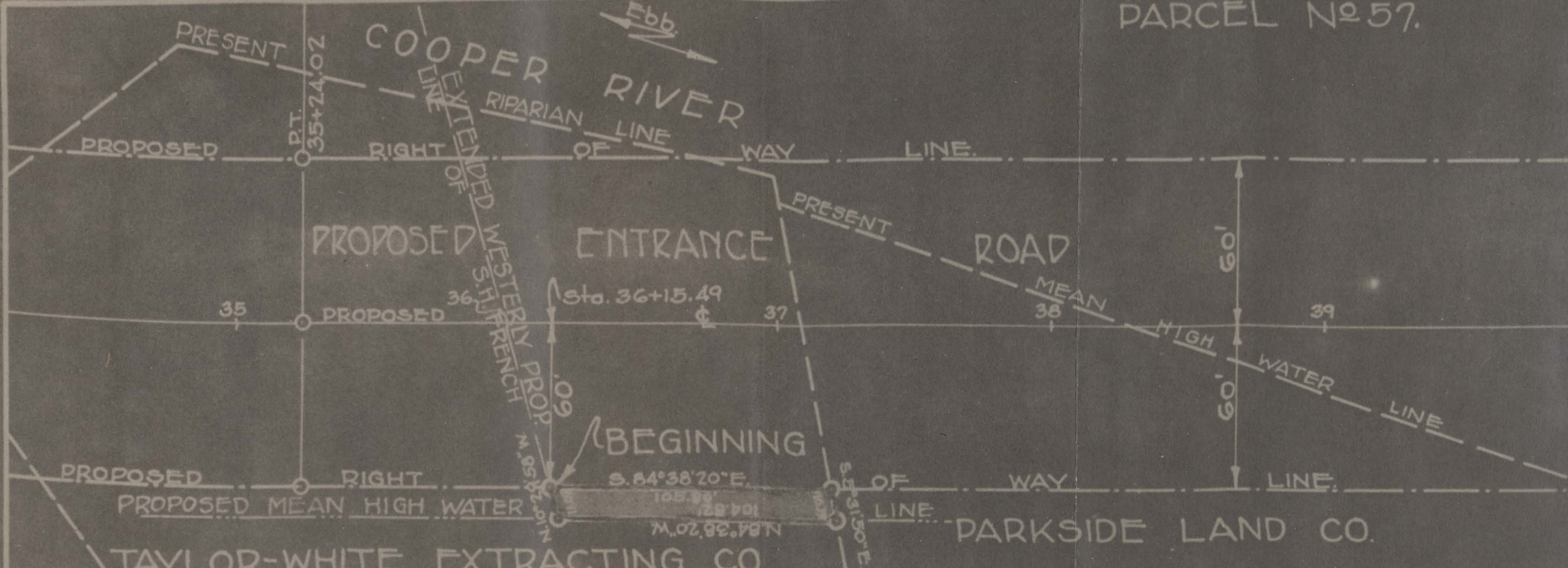
30 Beginning at the intersection of the proposed southerly right of way line of the Delaware River Bridge Entrance Road with the extended westerly line of land of S. H. French Co. and South Jersey Gas, Electric & Traction Co. and running;

Thence (1) along said right of way line south eighty-four degrees thirty-eight minutes twenty seconds east (S 84-38'-20" E) one hundred five and eight tenths (105.8) feet to the line of land of Parkside Land Co.

Thence (2) along said line south five degrees thirty-one minutes fifty seconds east (S 5-31'-50" E)



PARCEL No 57.



SURVEYED BY [unclear]  
 PLOTTED BY [unclear]  
 TRACED BY [unclear]  
 CALCULATED BY Sieber  
 CHECKED BY Fuok

TAYLOR-WHITE EXTRACTING CO.  
 PROPOSED BED OF COOPER RIVER

NEW JERSEY  
 STATE HIGHWAY DEPARTMENT  
 CAMDEN EXTENSION DIVISION  
 ENTRANCE ROAD  
 PROPERTY TO BE TRANSFERRED FROM  
**TAYLOR-WHITE EXTRACTING CO.**  
 TO  
**S.H. FRENCH CO.**  
 CITY OF CAMDEN

AREA PARCEL No 57 = 1116 Sq. Ft.

SCALE 1"=50'

MARCH 1925

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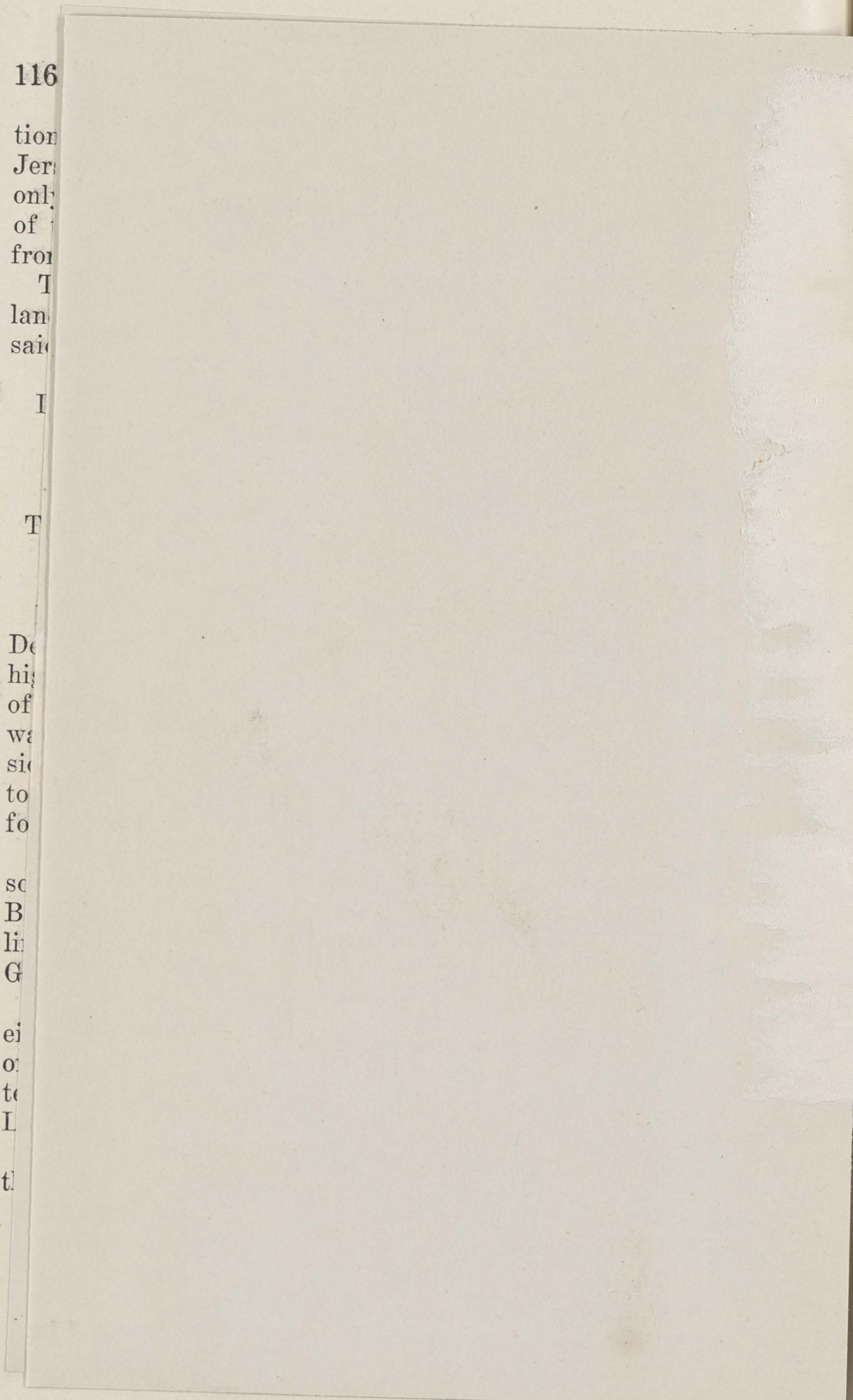
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ten and seventy-nine hundredths (10.79) feet to the proposed mean high water line on the right bank of the proposed bed of Cooper River;

Thence (3) along said proposed mean high water line north eighty-four degrees thirty-eight minutes twenty seconds west (N 84-38'-20" W) one hundred four and eighty-two hundredths (104.82) feet to the extended line of lands of South Jersey Gas, Electric and Traction Co. and grantee;

Thence (4) along said line of land north ten degrees, twenty-nine minutes, fifty-eight seconds west (N 10-29'-58" W) eleven and two hundredths (11.02) feet to the place of beginning;

CONTAINING in area one thousand one hundred sixteen (1116) square feet more or less lying between the proposed Delaware River Bridge Entrance Road and the proposed bed of Cooper River and between the extended line of land between the South Jersey Gas, Electric & Traction Co. and S. H. French Co. and the Parkside Land Co.

Except that the right to form and maintain slopes over this tract as may be necessary in the construction of said road is reserved to the State of New Jersey, said rights of maintenance to remain in effect only for such period as may be necessary on account of the variation of the level of adjacent land from the level of said highway; the grantee hereby retaining the right to use such land providing such use does not interfere with said slopes or endanger said highway.

DELAWARE RIVER BRIDGE ENTRANCE  
ROAD  
SECTION NO. 2  
Description of Parcel No. 58  
TAYLOR-WHITE EXTRACTING COMPANY  
TO  
S. H. FRENCH CO.

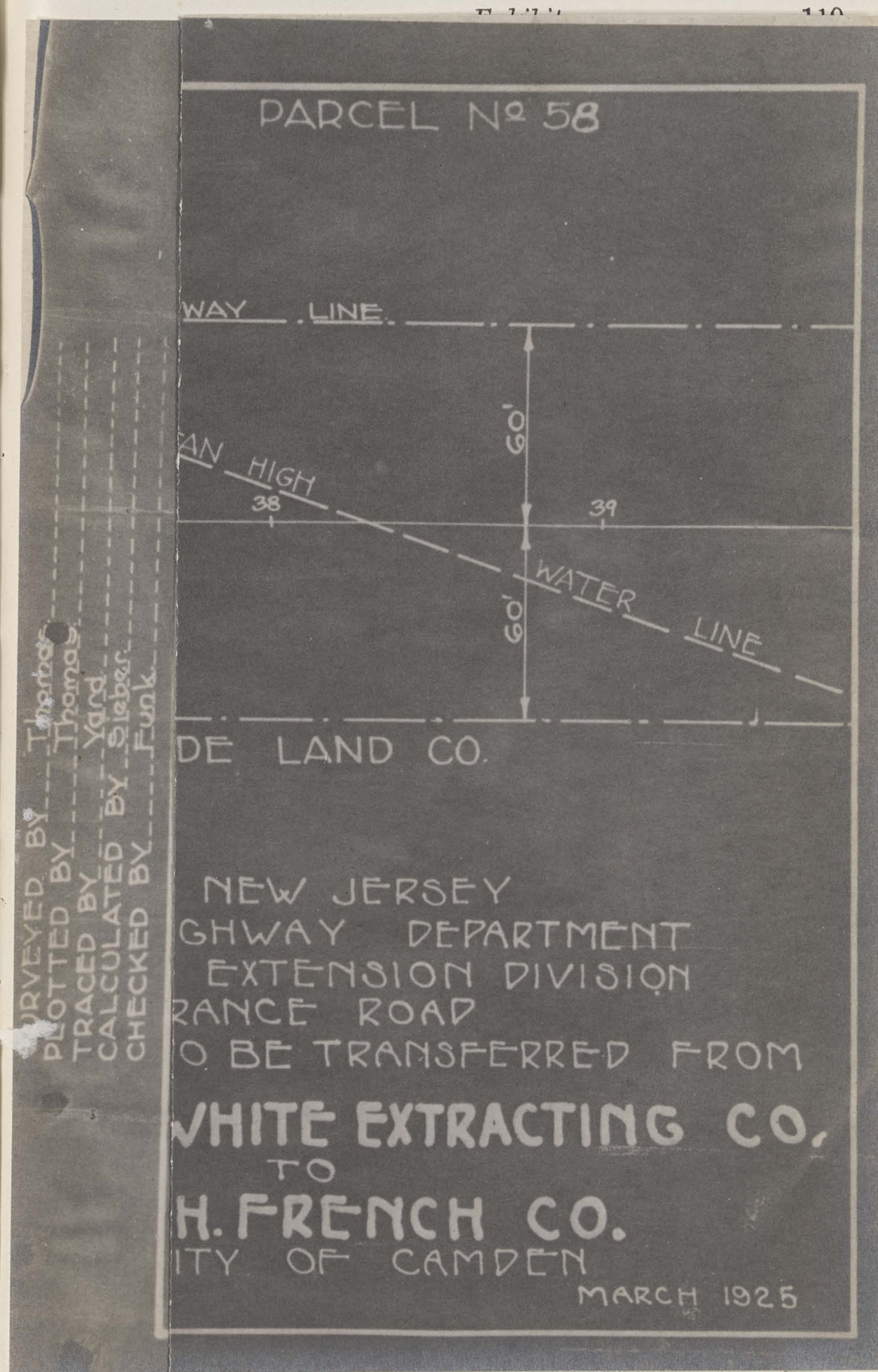
10 Being a tract of land lying between the proposed Delaware River Bridge Entrance Road and the present riparian line on the left bank of Cooper River conveyed for the purpose of extending to the Delaware River Bridge Entrance Road other land about to be conveyed to the grantee and described as follows:

20 Beginning at the intersection of the northerly right of way line of the Delaware River Bridge Entrance Road with the extension of line of land between South Jersey Gas, Electric & Traction Co. and grantee and running;

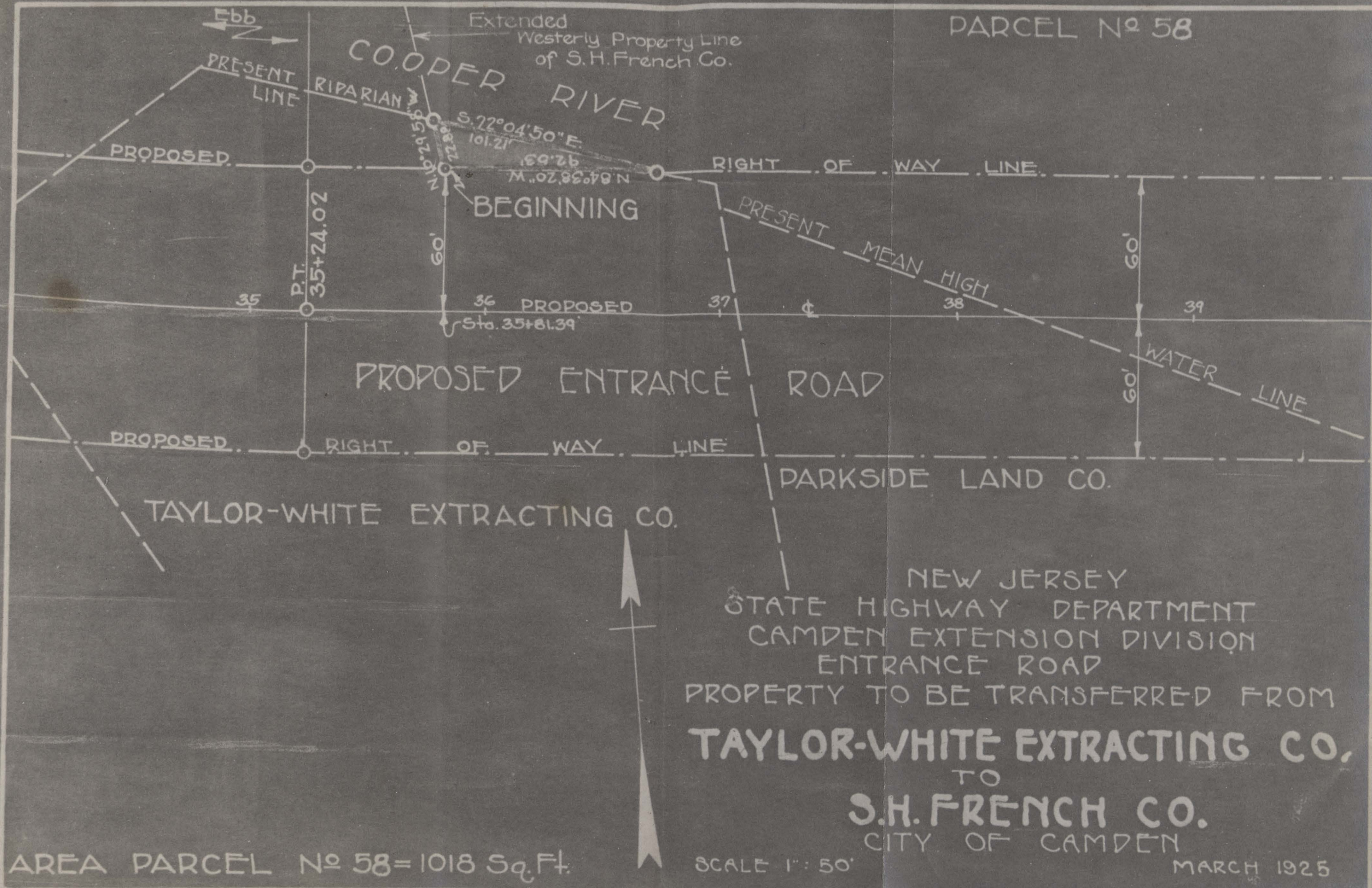
Thence (1) along said line north ten degrees, twenty-nine minutes, fifty-eight seconds west (N 10-29'-58" W) twenty-two and eighty-eight hundredths (22.88) feet to the present riparian line on the left bank of Cooper River;

30 Thence (2) along said riparian line south seventy-two degrees, four minutes, fifty seconds east (S 72-04'-50" E) one hundred one and twenty-one hundredths (101.21) feet to the proposed northerly right of way line of the Delaware River Bridge Entrance Road;

Thence (3) along said proposed right of way line north eighty-four degrees thirty-eight minutes twenty seconds west (N 84-38'-20" W) ninety-two and fifty-three hundredths (92.53) feet to the place of beginning;



PARCEL No 58



SURVEYED BY Thomas  
 PLOTTED BY Thomas  
 TRACED BY Yard  
 CALCULATED BY Sieber  
 CHECKED BY Funk

NEW JERSEY  
 STATE HIGHWAY DEPARTMENT  
 CAMDEN EXTENSION DIVISION  
 ENTRANCE ROAD  
 PROPERTY TO BE TRANSFERRED FROM  
**TAYLOR-WHITE EXTRACTING CO.**  
 TO  
**S.H. FRENCH CO.**  
 CITY OF CAMDEN

AREA PARCEL No 58 = 1018 Sq. Ft.

SCALE 1" = 50'

MARCH 1925

DELAWARE RI  
SE  
Descripti  
TAYLOR-WHITE

S. H

10 Being a tract of l  
Delaware River Bric  
ent riparian line on  
conveyed for the pu  
ware River Bridge  
to be conveyed to th  
lows:

Beginning at the  
right of way line of  
trance Road with t  
tween South Jerse  
and grantee and ru  
20 Thence (1) along  
twenty-nine minutes  
29'-58" W) twenty-  
(22.88) feet to the  
bank of Cooper Riv

Thence (2) along  
two degrees, four n  
04'-50" E) one hu  
dredths (101.21) fe  
30 of way line of the  
Road;

Thence (3) along  
north eighty-four  
twenty seconds we  
and fifty-three hun  
of beginning;

CONTAINING in area one thousand eighteen  
(1018) square feet more or less, lying between the  
Delaware River Bridge Entrance Road and adja-  
cent land about to be conveyed to the grantee;

Except that the right to form and maintain slopes  
over this tract as may be necessary in the con-  
struction of said road is reserved to the State of  
New Jersey, said rights of maintenance to remain  
in effect for such period as may be necessary on ac-  
count of the variation of the level of the adjacent  
lands from the level of said highway; the grantee  
hereby retaining the right to use such land provid-  
ing such use does not interfere with such slopes or  
endanger said highway.

Subject to the release or abandonment of riparian  
rights one hundred one and twenty-one hundredths  
(101.21) feet in length.

EXHIBIT P4.

20

6/7/26

MS

I hereby certify the within to be a true copy of a  
resolution adopted by the State Highway Commis-  
sion at a meeting held Oct. 13, 1925.

A. Lee Grover

Secretary

Entrance Road, Section #2

On recommendation of the State Highway Engin-  
eer, Commissioner Stewart moved that an offer of 30  
\$7164.08 be made to the Taylor White Extracting  
Co. for Parcels 50, 52, 55, 56, 57 and 58, on Cam-  
den Extension Entrance Road, Section 2, and in the  
event of its refusal that condemnation proceedings  
be institutted in accordance with the following  
resolution:

RESOLVED, that this Commission hereby determines to acquire in the name of the State of New Jersey, for public use in the construction of State Highway Entrance Road, Section #2, ALL that certain Lot, tract or parcels of land and premises situate, lying, and being in the State of New Jersey, and more particularly described as follows:

Parcel #50

- 10 Beginning in the riparian line on the left bank of Cooper River and in the proposed northerly right of way line of the Delaware River Bridge Entrance Road and running:

Thence (1) along said riparian line north fifty-seven degrees, fifty-seven minutes, fifty seconds east (N 57-57'-50" E) sixty-five and sixty-seven hundredths (65.67) feet to an angle in same. Thence (2) still along the same, south seventy-two degrees, four minutes, fifty seconds east (S72-04'-50" E) 20 ninety-seven and eighty-two hundredths (97.82) feet to the extension of the line between grantee and the Samuel H. French Co. Thence (3) along said line extended south ten degrees, twenty-nine minutes, fifty-eight seconds east (S 10-29'-58" E) twenty-two and eighty-eight hundredths (22.88) feet to the proposed northerly right of way line of the Delaware River Bridge Entrance Road; Thence (4) along said right of way line north eighty-four degrees, thirty-eight minutes, twenty seconds west (N 84-38'-20" W) 30 fifty-seven and thirty-seven hundredths (57.37) feet to a point of curve; Thence (5) still along same curving to the right with a radius of thirteen hundred, seventy-two and sixty-nine hundredths (1372.69) feet distant along the arc ninety-six and sixty-two hundredths (96.62) feet "the chord for this course bearing north eighty-two degrees,

thirty-seven minutes, twenty-one seconds west" (N 82-37'-21" W) and being ninety-six and six tenths (96.6) feet long) to the place of beginning;

CONTAINING in area forty-two hundred ninety-seven (4297) sq. ft. more or less lying to the northerly side of the proposed Delaware River Bridge Entrance Road and extending to the present riparian line of Cooper River and

Consisting of the release or abandonment of riparian rights one hundred, sixty-three and forty-nine 10 hundredths (163.49) feet in length;

Subject to the right of the State of New Jersey to build and maintain slopes over this tract as may be necessary in the construction of the above mentioned highway, said right of maintenance to remain in effect only for such period as may be necessary on account of the variation of the level of adjacent lands from the level of said highway.

Parcel #52

Beginning in the riparian line of the left bank of Cooper River and corner to lands of grantor and the Public Service Electric Co. and running;

1/2 Thence (1) along said riparian line north fifty-seven degree, fifty-seven minutes, fifty seconds east (N 57-57'-50" E) sixty-eight and eighty-three hundredths (68.83) feet to the proposed northerly right of way line of the Delaware River Bridge Entrance Road; Thence (2) along said right of way line and through the lands of grantor of which this tract about to be conveyed is a part curving to the left 30 with a radius of thirteen hundred seventy-two and sixty-nine hundredths (1372.69) feet distant on the arc ninety-six and sixty-two hundredths (96.62) feet (the chord for this course bearing south eighty-two degrees, thirty-seven minutes, twenty-one seconds east(S 82-37'-21" E) and being ninety-six and six

tenths (96.6) feet long) to a point of tangency; Thence (3) still along the same south eighty-four degrees, thirty-eight minutes, twenty seconds east (S 84-38'-20" E) one hundred forty-nine and nine tenths (149.9) feet to another point in the above mentioned riparian line; Thence (4) along said riparian line south seventy-two degrees, four minutes, fifty seconds east (S 72-04'-50" E) twenty-five and ninety-seven hundredths (25.97) feet to the line of lands of the Parkside Land Co. as extended to the riparian line; Thence (5) along the line of lands of the grantor and Parkside Land Co. south five degrees, thirty-one minutes, fifty seconds east (S 5-31'-50" E) one hundred sixteen and forty-six hundredths (116.46) feet to the proposed southerly right of way line of the Delaware River Bridge Entrance Road; Thence (6) along said right of way line and through lands of grantor north eighty-four degrees, thirty-eight minutes, twenty seconds west (N 84-38'-20" W) one hundred ninety-seven and twenty-five hundredths (197.25) feet to a point of curve; Thence (7) still by the same curving to the right with a radius of fourteen hundred ninety-two and sixty-nine hundredths (1492.69) feet distant on the arc ninety-four and thirty-nine hundredths (94.39) feet (the chord for this course bearing north eighty-two degrees, forty-nine minutes, thirty-eight seconds west (N 82-49'-38" W) and being ninety-four and thirty-seven hundredths (94.37) feet long) to the line of lands of the Public Service Electric Co. Thence (8) along the line of lands of grantor and said Public Service Co. north thirty degrees, thirty-one minutes, fifty seconds west (N 30-31'-50" W) ninety-seven and four hundredths (97.04) feet to the place of beginning;

CONTAINING in area thirty-seven thousand

twenty-two (37,022) square feet more or less lying within the proposed right of way lines of the Delaware River Bridge Entrance Road and between the lands of the Public Service Electric Co. and the Parkside Land Co. and

Consisting of a release of riparian rights ninety-four and eight tenths (94.8) feet in length,

TOGETHER WITH the right to form and maintain slopes over adjoining lands of grantor as may be necessary for the construction of said highway, said rights of maintenance to remain in effect only for such period as may be necessary on account of the variation of the level of the adjacent lands from the level of said highway;

The grantor hereby retaining the right to use such land providing such use does not interfere with said slopes or endanger said highway.

Parcel #55

Beginning at the intersection of the line of lands of Public Service Electric Co. and the grantor with the proposed mean low water line on the right bank of the proposed bed of Cooper River, and running;

Thence (1) along said proposed mean low water line south eighty-four degrees thirty-eight minutes twenty seconds east (S 84-38'-20" E) one hundred sixty-nine and eighty-four hundredths (169.84) feet to the extension of line between lands of South Jersey Gas, Electric & Traction Co. and S. H. French Co. Thence (2) along said extended line north ten degrees twenty-nine minutes fifty-eight seconds west (N 10-29'-58" W) twenty-one and sixty-two hundredths (21.62) feet to the proposed mean high water line on the right bank of the proposed bed of Cooper River; Thence (3) along said proposed mean high water line south eighty-four degrees thirty-eight minutes twenty seconds east (S 84-38'-20" E) one

hundred four and eighty-two hundredths (104.82) feet to the line of land of Parkside Land Company. Thence (4) along said line south five degrees thirty-one minutes fifty seconds east (S 5-31'-50" E) One hundred ninety and twenty-two hundredths (190.22) feet to the proposed mean low water line of the left bank of the proposed bed of Cooper River; Thence (5) along said proposed mean low water line and other land of grantor north eighty-four degrees  
 10 thirty-eight minutes twenty seconds west (N 84-38'-20" W) two hundred three and sixty-seven hundredths (203.67) feet to the line of land of Public Service Electric Co. Thence (6) along said line North five degrees thirty-one minutes fifty seconds west (N 5-31'-50" W) thirty-six and sixty-one hundredths (36.61) feet to an angle; Thence (7) still along same north thirty degrees thirty-one minutes fifty seconds west (N 30-31'-50" W) one hundred sixty and fifty-three hundredths (160.53) feet to the place of beginning;  
 20

CONTAINING forty thousand four hundred sixty-one (40,461) square feet more or less, lying within the proposed bed of Cooper River and between lands of Public Service Electric Co. and Parkside Land Co.

30 Except that the right to form and maintain slopes over this tract as may be necessary in the construction of said road is reserved to the State of New Jersey, said right of maintenance to remain in effect only for such period as may be necessary on account of the variation of the level of the adjacent lands from the level of said road;

The grantee hereby retaining the right to use such land providing that such use does not interfere with said slopes or endanger said highway.

## Parcel #56

Beginning at the intersection of the proposed southerly right of way line of the Delaware River Bridge Entrance Road with the line of lands of Public Service Electric Co. and grantor and running;

Thence (1) along said proposed southerly right of way line of the Delaware River Bridge Entrance Road curving to the left with a radius of fourteen hundred ninety-two and sixty-nine hundredths (1492.69) feet distant along the arc ninety-four and thirty-nine hundredths (94.39) feet (the chord for this course bearing south eighty-two degrees forty-nine minutes thirty-eight seconds east (S 82-49'-38" E) and being ninety-four and thirty-seven hundredths (94.37) feet long) to the end of curve; Thence (2) still along same right of way line South eighty-four degrees thirty-eight minutes twenty seconds east (S 84-38'-20" E) ninety-one and forty-six hundredths (91.46) feet to the intersection with the extension of  
 10 line of lands between South Jersey Gas, Electric & Traction Co. and S. H. French Co.; Thence (3) along said extended line south five degrees thirty-one minutes fifty seconds east (S 5-31'-50" E) thirty-two and sixty-four hundredths (32.64) feet to the proposed mean low water line on the right bank of the proposed bed of Cooper River Thence (4) along said proposed mean low water line north eighty-four degrees thirty-eight minutes twenty seconds west (N 84-38'-20" W) one hundred sixty-nine and  
 20 eighty-four hundredths (169.84) feet to the line of lands of Public Service Electric Co. Thence (5) along said line north thirty degrees thirty-one minutes fifty seconds west (N 30-31'-50" W) forty-two and forty-three hundredths (42.43) feet to the point of beginning.  
 30

CONTAINING in area five thousand six hundred thirty-seven (5,637) square feet more or less, lying between the proposed Delaware River Bridge Entrance Road and the proposed bed of Cooper River and between land of Public Service Electric Co. and extended line of land between South Jersey Gas, Electric & Tracton Co., and S. H. French Co.

10 Except the right to form and maintain slopes over this tract as may be necessary in the construction of said road is reserved to the State of New Jersey, said right of maintenance to remain in effect only for such period as may be necessary on account of the variation of the level of the adjacent lands from the level of said road.

Parcel 57

Beginning at the intersection of the proposed southerly right of way line of the Delaware River Bridge Entrance Road with the extended westerly line of land of S. H. French Co. and South Jersey  
20 Gas, Electric & Traction Co., and running;

Thence (1) along said right of way line south eighty-four degrees thirty-eight minutes twenty seconds east (S 84-38'-20" E) one hundred five and eight tenths (105.8) feet to the line of land of Parkside Land Co. Thence (2) along said line south five degrees thirty-one minutes fifty seconds east (S 5-31'-50" E) ten and seventy-nine hundredths (10.79) feet to the proposed mean high water line on the right bank of the proposed bed of Cooper River;  
30 Thence (3) along said proposed mean high water line north eighty-four degrees thirty-eight minutes twenty seconds west (N 84-38'-20" W) one hundred four and eighty-two hundredths (104.82) feet to the extended line of lands of South Jersey Gas, Electric & Tracton Co. and grantee; Thence (4) along said line of land north ten degrees, twenty-nine minutes,

fifty-eight seconds West (N 10-29'-58" W) eleven and two hundredths (11.02) feet to the place of beginning;

CONTAINING in area one thousand one hundred sixteen (1116) square feet more or less lying between the proposed Delaware River Bridge Entrance Road and the proposed bed of Cooper River and between the extended line of land between the South Jersey Gas, Electric & Traction Co. and S. H. French Co. and the Parkside Land Co. 10

Except that the right to form and maintain slopes over this tract as may be necessary in the construction of said road is reserved to the State of New Jersey, said rights of maintenance to remain in effect only for such period as may be necessary on account of the variation of the level of adjacent land from the level of said highway; the grantee hereby retaining the right to use such land providing such use does not interfere with said slopes or endanger  
20 said highway.

Parcel #58

Beginning at the intersection of the northerly right of way line of the Delaware River Bridge Entrance Road with the extension of line of land between South Jersey Gas, Electric & Traction Co. and grantee and running;

Thence (1) along said line north ten degrees, twenty-nine minutes fifty-eight seconds west (N 10-29'-58" W) twenty-two and eighty-eight hundredths (22.88) feet to the present riparian line on the left  
30 bank of Cooper River; Thence (2) along said riparian line south seventy-two degrees, four minutes, fifty seconds east (S 72-04'-50" E) one hundred one and twenty-one hundredths (101.21) feet to the proposed northerly right of way line of the Delaware River Bridge Entrance Rd., Thence (3) along said

proposed right of way line north eighty-four degrees thirty-eight minutes twenty seconds west (N 84-38'-20" W) ninety-two and fifty-three hundredths (92.53) feet to the place of beginning;

CONTAINING in area one thousand eighteen (1018) square feet more or less, lying between the Delaware River Bridge Entrance Road and adjacent land about to be conveyed to the grantee;

10 Except that the right to form and maintain slopes over this tract as may be necessary in the construction of said road is reserved to the State of New Jersey, said right of maintenance to remain in effect only for such period as may be necessary on account of the variation of the level of the adjacent lands from the level of said highway; the grantee hereby retaining the right to use such land providing such use does not interfere with said slopes or endanger said highway.

20 Subject to the release or abandonment of riparian rights one hundred one and twenty-one hundredths (101.21) feet in length.

30 The State Highway Engineer is hereby authorized and directed on behalf of this Commission, to make an offer of the sum of \$7164.08 to the owner or owners of said lands and premises for the conveyance of the same to the State of New Jersey free and clear of all encumbrances, and, upon the failure of such owner or owners to accept such offer, or if for any other reason said lands and premises cannot be immediately acquired by agreement with such owner or owners, then the Attorney General of the State of New Jersey is hereby authorized and directed to institute condemnation proceedings for the acquisition of said lands and premises.

## EXHIBIT P1.

Sept. 17, 1926.

THIS AGREEMENT, made this seventh day of May, in the year of our lord one thousand nine hundred and twenty-six, between PUBLIC SERVICE ELECTRIC AND GAS COMPANY, a corporation of the State of New Jersey, hereinafter called "Company," of the first part, and the CITY OF CAMDEN, a municipal corporation of said State, hereinafter called "CITY," of the second part. 10

WHEREAS, Company in its own right and as lessee of South Jersey Gas, Electric and Traction Company owns and possesses certain real estate, property and rights in the City of Camden, County of Camden and State of New Jersey, through which the Highway Commission of the State of New Jersey proposes to construct an entrance road, Section 20 No. 2, as an approach to the Delaware River Bridge, and City, in the rearrangement which is being done by said State Highway Commission of certain highways in the City of Camden is desirous of changing the location of said highway through the City of Camden, and is desirous of acquiring certain real estate owned or controlled by Company, and is to cause to be conveyed certain other pieces of property and real estate to Company, and changes in the plant and property of Company are to be 30 made, the aforesaid changes of highways, among other things, requiring the change of the course of Cooper River, to accomplish which will require the doing of the matters and things hereinafter particularly stated and set out; and

WHEREAS, the parcels or tracts of land con-

cerned herein are more particularly shown and described on the map entitled "New Jersey State Highway Department, Camden Extension, Entrance Road, Section #2, General Property Key Map, showing properties to be acquired between Cooper River and Baird Boulevard, City of Camden, dated March 1, 1925, signed Fred C. Claus, Resident Engineer," said map and detail maps and descriptions thereof being hereto attached and made a part hereof, the same being marked and designated as  
 10 Parcels Nos. 42, 44, 51, 72, 53, 54, 69, 70, 45, 48, 49, 62, 75, 56, and 74;

NOW, THEREFORE, in consideration of the sum of One dollar (\$1.), and of the premises, and the making of the conveyances hereinafter referred to, and the doing and completion of the various steps, processes and proceedings hereinafter particularly specified, the said parties hereto have mutually bargained and agreed, and by these presents do  
 20 mutually bargain and agree as follows, that is to say:

FIRST: All the matters and things herein contained are interdependent, and it is necessary that all and singular the engagements and undertakings herein entered into shall be kept and performed, and the delivery and execution of all of the same are to be simultaneously done so far as the grants, conveyances and the like are concerned, and the agreed upon work shall be commenced.

30 SECOND: All the tracts or parcels of land and premises herein agreed to be conveyed are to be conveyed clear of all encumbrance, by deed of warranty, with covenants against the grantors, so as to grant, convey and assure an estate in fee simple free of all liens and encumbrances, and to that end any and all necessary releases, acquittances, quit-

claims and discharges are to be made and secured so that the respective grantees shall and may possess and have an estate in fee simple therein, free and clear of all encumbrance.

THIRD: Company shall grant and convey, or cause to be granted and conveyed, to the State of New Jersey, its successors and assigns, Parcels Nos. 42, 44, 51 and 72; to the State Board of Commerce and Navigation, or whomsoever said Board directs conveyances to be made to, Parcels Nos. 53, 54 and 69; and to the Keystone Leather Company, Parcel No. 70. 10

FOURTH: City shall grant and convey, or cause to be granted and conveyed, to Company, or to whomsoever, it shall designate to take and receive the same, Parcels Nos. 45, 48, 49, 62, 75, 56 and 74.

FIFTH: City will procure the legal vacation of Fifteenth, Mickle and Stevens Streets and two unnamed alleyways as the same now exist and are laid out and dedicated through property now owned or to be conveyed to Company. 20

SIXTH: City is to cause to be properly conveyed and assured to Company full and complete Riparian rights in Cooper River as relocated in front of all of the land which is to be conveyed and assured to Company and lands now owned by Company fronting on relocated Cooper River; to secure from the State of New Jersey permanent rights for any extension necessary for discharge pipe from the Power Station of Company over lands not now owned by Company to the new relocated river, and all necessary rights for gas mains and cables under and across the lands of others and in the bed of said relocated river; and to secure from the State of New Jersey the necessary tunnels and conduit construc- 30

tion to accommodate two (2) twelve inch (12") high pressure gas mains and submarine cables.

SEVENTH: Company agrees to assume, at its own expense, the cost of constructing and rebuilding a new intake well and pipe to its present station, the rearrangement of the discharge flume within the lines of its own property to connect with an extension of an outlet to be constructed by the State extending to the new relocated river, and the rearrangement of its tracks and coal storage yard.

10 EIGHTH: The proper deeds, conveyances, releases and other documents, to be approved by the City Counsel of the City of Camden and the Board of Commissioners of said City so far as concerns those to be taken and received by City and to be approved by counsel of Company so far as they are to be taken by Company, after said City Counsel and the counsel of Company, after said City Counsel and the counsel of Company are satisfied with 20 the title to said premises, are to be exchanged at within nine months from the day of the date hereof.

IN WITNESS WHEREOF, Company hath hereunto set its corporate seal and caused these presents to be signed by its Vice-President and attested by its Assistant Secretary, and City, by virtue of a resolution of its Board of Commissioners, hath hereunto set its corporate seal and caused these presents to be signed by its Mayor and attested by its City 30 Clerk; dated the day and year first above written.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY,  
By GEORGE BARKER  
Vice President

Attest:  
W. T. CRUDGE  
(SEAL) Asst. Secretary

CITY OF CAMDEN,  
By VICTOR KING  
Mayor

Attest:  
A. R. WHITE  
(SEAL) City Clerk.

Attached to this agreement is a copy of Map #56 which is printed in connection with Exhibit P2.

10

EXHIBIT P2

Sept. 17, 1926.

THIS AGREEMENT, made this second day of August, in the year of our Lord one thousand nine hundred and twenty-six, between PUBLIC SERVICE ELECTRIC AND GAS COMPANY, a corporation of the State of New Jersey, hereinafter called "Company," of the first part, and the CITY OF CAMDEN, a municipal corporation of said State, hereinafter called "City," of the second part. 20

WHEREAS, Company in its own right and as lessee of South Jersey Gas, Electric and Traction Company owns and possesses certain real estate, property and rights in the City of Camden, County of Camden and State of New Jersey, through which the Highway Commission of the State of New Jersey proposes to construct an entrance road, Section No. 2, as an approach to the Delaware River Bridge, and City, in the rearrangement which is being done by said State Highway Commission of certain highways in the City of Camden is desirous of changing the location of said highway through the City of Camden, and is desirous of acquiring certain 30

real estate owned or controlled by Company, and is to cause to be conveyed certain other pieces of property and real estate to Company, and changes in the plant and property of Company are to be made, the aforesaid changes of highways, among other things, requiring the change of the course of Cooper River, to accomplish which will require the doing of certain matters and things in contracts previously entered into; and

10 WHEREAS, as a part of said exchange and adjustment of properties and accomplishment of the object hereinbefore set forth the City of Camden, in addition to the matters and things in said other contract mentioned, has agreed to convey or cause to be conveyed to said Company a tract or parcel of land more particularly shown and described on the map entitled "New Jersey State Highway Department, Camden Extension, Entrance Road, Section #2, General Property Key Map, showing properties to be acquired between Cooper River and Baird Boulevard, City of Camden, dated March 1, 20 1925, signed Fred C. Claus, Resident Engineer," said map is attached to said other contract, and detail maps and descriptions thereof being hereto attached and hereby made a part hereof, the same being marked and designated as parcel No. 50.

30 NOW, THEREFORE, in consideration of the premises, and of other good and valuable considerations, the receipt whereof is hereby acknowledged, the said City of Camden hereby agrees that it shall grant and convey, or cause to be granted and conveyed, by a good and sufficient deed, to Public Service Electric and Gas Company, its successors and assigns, within one year from the day of the date hereof, said parcel of land more particularly shown and described on the map entitled "New Jer-

sey State Highway Department, Camden Extension, Entrance Road, Section No. 2, General property Key Map, showing properties to be acquired between Cooper River and Baird Boulevard, City of Camden, dated March 1, 1925, signed Fred C. Claus, Resident Engineer," the same being marked and designated as parcel No. 50.

IT IS FURTHER COVENANTED AND AGREED that the said parcel or tract of land and premises herein agreed to be conveyed or caused to be conveyed is to be conveyed free of all encumbrance, by a good and sufficient deed, with covenants against the grantor, so as to grant, convey and assure an estate in fee simple free of all liens and encumbrances, and to that end any and all releases, acquittances, quitclaims and discharges necessary are to be made and secured, so that the respective grantees shall and may possess and have an estate in fee simple therein, free and clear of all encumbrances. 10 20

AND IT IS FURTHER COVENANTED AND AGREED by the parties hereto that in the event of the failure of the said City of Camden to deliver the specific property hereinbefore particularly described, it will pay and cause to be paid to said Public Service Electric and Gas Company an amount equal to that which the appraisers appointed to condemn the said land may find to be the value thereof and to be due therefor in such proceedings, instituted by the State of New Jersey; and in case no appraisers are appointed under condemnation proceedings to ascertain the value of said land and to make allowance therefor, then the parties hereto mutually covenant and agree that the said City of Camden shall appoint one arbitrator and the said Company shall appoint another, to appraise the 30

value of said parcel No. 50, and if the said two appraisers thus appointed shall be unwilling or unable to agree upon the value of said parcel, then said two appraisers shall appoint a third appraiser to act with them in ascertaining said value, and the judgment of said appraisers so appointed or of any two of them, so that the same shall be made in writing, signed by said appraisers or any two of them, shall be stood to, abided by and performed 10 by the parties hereto, which said award shall be ready to be delivered to the said parties or such of them as shall demand the same on or before the first day of August, next.

IN WITNESS WHEREOF, Company hath hereunto set its corporate seal and caused these presents to be signed by its Vice-President and attested by its Assistant Secretary, and City, by virtue of a resolution of its Board of Commissioners, hath hereunto set its corporate seal and caused these presents 20 to be signed by its Mayor and attested by its City Clerk; dated the day and year first above written.

PUBLIC SERVICE ELECTRIC  
AND GAS COMPANY,  
By GEORGE BARKER  
Vice President

Attest:

W. T. CRUDGE,  
Asst. Secretary

30

CITY OF CAMDEN,  
By VICTOR KING  
Mayor.

Attest:

A. R. WHITE  
City Clerk.

#### DESCRIPTION OF PARCEL NO. 50

BEING a tract of land between the present left bank of Cooper River and the proposed Delaware River Bridge Entrance Road adjoining other land about to be conveyed to grantee, and described as follows:

BEGINNING in the riparian line on the left bank of Cooper River and in the proposed northerly right of way line of the Delaware River Bridge Entrance Road, and running thence (1) along said riparian line north fifty-seven degrees fifty-seven minutes fifty seconds east sixty-five and sixty-seven hundredths feet (65.67') to an angle in same; thence (2) still along the same south seventy-two degrees four minutes fifty seconds east ninety-seven and eighty-two hundredths feet (97.82') to the extension of the line between grantee and the Samuel H. French Co.; thence (3) along said line extended south ten degrees twenty-nine minutes fifty-eight 20 seconds east twenty-two and eighty-eight hundredths feet (22.88') to the proposed northerly right of way line of the Delaware River Bridge Entrance Road; thence (4) along said right-of-way line north eighty-four degrees thirty-eight minutes twenty seconds west fifty-seven and thirty-seven hundredths feet (57.37') to a point of curve; thence (5) still along same curving to the right with a radius of thirteen hundred seventy-two and sixty-nine hundredths feet (1372.69) distant along the arc ninety- 30 six and sixty-two hundredths feet (96.62') (the chord for this course bearing north eighty-two degrees thirty-seven minutes twenty-one seconds west and being ninety-six and six tenths feet (96.6') long) to the place of beginning.

CONTAINING in area forty-two hundred ninety-

seven (4297) square feet, more or less, lying to the northerly side of the proposed Delaware River Bridge Entrance Road and extending to the present riparian line of Cooper River and consisting of the release or abadonment of riparian rights one hundred sixty-three and forty-nine hundredths feet (163.49') in length.

10 SUBJECT to the right of the State of New Jersey to build and maintain slopes over this tract as may be necessary in the construction of the above mentioned highway; said right of maintenance to remain in effect only for such period as may be necessary on account of the variation of the level of adjacent lands from the level of said highway;

The grantee hereby retaining the right to use such lands providing such use does not interfere with said slopes or endanger said highway.

20 Attached to this agreement is a copy of Map #50 which is printed in connection with Exhibit P2.

EXHIBIT P3

Sept. 17, 1926.

30 THIS AGREEMENT, made and entered into this 10th day of March 1925, by and between the State of New Jersey, acting through its State Highway Commission, party of the first part, and the City of Camden, acting through its City Commission, party of the second part:

WITNESSETH: That, whereas, under a law passed on April 12, 1921, (Chapter 322) and under a law passed on March 16, 1922 (Chapter 253), extending Routes 2, 3, and 6 to the Bridge Plaza, and

WHEREAS, the State Highway Commission has made surveys and plans showing such proposed extension of said routes to the Bridge Plaza, and are now prepared to proceed with the work of constructing same, and

WHEREAS, the City of Camden has in contemplation certain improvements in connection with the construction of a proposed civic centre and other matters, and

10 WHEREAS, it is desirable to so modify the plans made on the part of the State and on the part of the City as to harmonize same for the best interests of both parties, and

WHEREAS, in so doing, certain additional elements of cost have been imposed upon the construction projected by the State Highway Commission, which additional elements of cost should be a proper charge against the City of Camden,

20 NOW, THEREFORE, in consideration of the sum of \$1.00, by each to the other in hand paid, the receipt of which is hereby acknowledged, the parties hereto have agreed and do agree as follows:

FIRST: The party of the first part will proceed with the construction of the Boulevard leading from the easterly line Eleventh Street to an intersection with the proposed Crescent Route, approximately in accordance with the line marked "Line C" on the plan attached hereto.

30 SECOND: The party of the second part agrees at its sole cost and expense to widen and pave for a width of forty-seven feet between curbs the streets of Penn and Linden, for the distance extending from the Bridge Plaza to the easterly side of Eleventh Street, the said work of widening and paving to be commenced forthwith and completed as soon as possible.

THIRD: The party of the second part shall convey to the State by proper and satisfactory instrument of conveyance, and without expense to the State, any property now owned or controlled by the City of Camden, which shall be necessary for the right of way as established by the party of the first part, between the easterly line of Eleventh Street and the intersection with the proposed Crescent Route, and shall save the party of the first part harmless from any damage or claims for damage to abutting property, owned or controlled by the party of the second part.

FOURTH: The party of the second part shall pay to the party of the first part the sum of One Hundred and Fifty Thousand Dollars (\$150,000.00), to be applied toward the expense involved in the separation of the grades of the proposed Boulevard and Federal Street, said amount to be due and payable upon the completion of the raising of Federal Street to the proposed new grade to such a point as to make its use available for traffic.

FIFTH: The party of the second part shall cooperate with the party of the first part in every way which may be necessary or desirable for any reason or purpose in negotiating with private and corporate interests affected and in the providing of the necessary franchises and other legal requirements which may be necessary in the carrying out of the work as contemplated and authorized in the law above referred to.

IT IS FURTHER AGREED and certified by the party of the second part that all things required by the law to be done and performed by it to enable it to enter into this agreement have been fully done and performed.

IN WITNESS WHEREOF, the party of the first part has caused these presents to be signed by the

Chairman of its State Highway Commission, and attested by the Secretary of said Commission, and the party of the second part has caused these presents to be signed by its Mayor and attested by its City Clerk, thereunto duly authorized, the day and year first above written.

STATE HIGHWAY COMMISSION

By H. L. Scott  
Chairman.

Attest:

By A. LEE GROVER  
Secretary.

City of Camden  
By Victor King  
Mayor

Attest:

By A. R. White  
City Clerk.

EXHIBIT P4.

Sept. 17, 1926.

CITY OF CAMDEN AGREEMENT  
CAMDEN EXTENSION

THIS AGREEMENT, made and entered into this 19th day of August, A. D. 1926, by the STATE HIGHWAY COMMISSION, acting for and in the name of the State of New Jersey, party of the first part, and the CITY OF CAMDEN, a municipal corporation of the State of New Jersey, party of the second part;

WHEREAS, under date of March 10, 1925, the parties hereto entered into an agreement for the lo-

cation and division of responsibility and cost for the construction of the Bridge Boulevard or Entrance Road from the Crescent or Connecting Road to the Camden Plaza of the Delaware River Bridge, being the extension of State Highway Routes Nos. 2, 3, and 6 to said bridge, and

WHEREAS, the party of the second part desires a change in the location of said road where it passes through the property of the party of the second  
10 part, and

WHEREAS, such change of location affects the properties of the Public Service Corporation, or its subsidiaries, the Keystone Leather Company, the S. H. French Company, and Valentine Liebig, hereinafter referred to as the "owners," in that transfer of property and certain items of construction to facilitate the operation of the respective properties are necessary, and

WHEREAS, the "owners" are or may be desir-  
20 ous of a written agreement between the City of Camden, a municipal corporation, setting forth what has been agreed should be done for said "owners" resulting from the construction and laying out of said new road or highway, and

WHEREAS, the items set forth below are not within the province of the City of Camden to agree to do for the said "owners" unless and until the said State Highway Commission agrees to and with the City of Camden, that it, the said State Highway  
30 Commission, will do each and everything set forth below;

NOW THEREFORE, WITNESSETH, that for and in consideration of the sum of One Dollar, by each to the other in hand paid, the receipt of which is hereby acknowledged, the parties hereto have agreed and do agree as follows:

FIRST. That the party of the first part will make the change in location of said road requested by the party of the second part;

SECOND. That the party of the first part will fill to the grade of the road that land lying between the said road and the properties of the "owners" along the north bank of Cooper River, the cost of said work to be borne by the party of the first part;

THIRD. That the party of the first part will effect or assist in so far as it is possible for it so to do, in the making of transfers of title to the lands  
10 mentioned in the above second clause, to the abutting property "owners," each to acquire that land lying between the existing property lines extended to said road;

FOURTH. That the party of the first part will effect or assist in so far as it is possible for it so to do, in the transfer of title to lands lying between the road and Cooper River, as relocated, together with the exchange in riparian rights, to the abutting  
20 property "owners," each to acquire that land and those riparian rights lying between existing property lines extended across said road to said river.

Provided that no riparian rights be transferred to an "owner" who has not acquired riparian rights on the old stream.

FIFTH. That the party of the first part does hereby give permission to the Keystone Leather Company to construct on and over said new road or highway, a suitable conveyor to be properly pro-  
30 tected and acceptable to the State Highway Commission, provided that the entire cost and expense of such conveyor shall be borne and paid for by the said Keystone Leather Company; and it is further understood that the Keystone Leather Company agrees to carry liability and accident insurance on

said conveyer in companies and amounts suitable to the said State Highway Commission,

SIXTH. That the party of the first part obtain for the abutting property "owners" aforementioned any necessary permits for the utilization of the waterfront along their properties, subject to the regulation of the proper granting agency,

SEVENTH. That the State Highway Commission will endeavor to secure for the Keystone Leather Company, a corporation permission to build a suitable wharf on Cooper River as relocated, of sufficient size for all unloading and loading purposes, the remainder of the frontage on Cooper River, as relocated, to be banked by the State Highway Commission, at its sole cost and expense. In the event the Keystone Leather Company desires to build or erect a bulkhead or retaining wall in place of the said embankment, then same shall be constructed at the sole cost and expense of the said Keystone Leather Company.

EIGHTH: The width of said wharf and frontage on the relocated channel of Cooper River shall be ten feet running the entire length of the property owned by the Keystone Leather Company, being approximately two hundred and ninety-two (292) feet; the greater part of said strip of land is now owned by the City of Camden and will be conveyed by said City to the Keystone Leather Company without cost, but a small area within said strip now owned by the Public Service Corporation or its subsidiaries, shall be conveyed by that "owner" to the Keystone Leather Company without cost to the Keystone Leather Company; and the City of Camden and the State Highway Commission, do hereby agree to secure such conveyance from that "owner" to the Keystone Leather Company.

NINTH. That all existing pipe lines and flumes now discharging into Cooper River will be extended to the relocated Cooper River by and at the expense of the party of the first part,

TENTH. That the party of the second part will bear any expense in connection with the performance by the party of the first part of the Third, Fourth and Sixth clauses to this agreement.

It is understood and agreed that any of the terms of this agreement shall be null and void if compliance therewith by either of the parties thereto is not possible for any reason outside of the control of either or both parties.

It is further understood and agreed that all the covenants and terms of the aforementioned agreement of which this is a modification shall remain in full force and effect in every detail except as modified herein.

IN WITNESS WHEREOF, the parties hereto have duly legally and properly executed this instrument, after resolutions first adopted, the day and year first above written.

STATE OF NEW JERSEY, STATE  
HIGHWAY COMMISSION  
By Abraham Jelin, Chairman pro tem.

Attest:

A. Lee Grover, Secretary  
The CITY OF CAMDEN  
By Victor King, Mayor

Attest:

A. R. White.

## EXHIBIT P5.

Sept. 17, 1926.

THIS AGREEMENT made this Seventh day of May, in the year of our Lord one thousand nine hundred and twenty-six between PUBLIC SERVICE  
 10 ELECTRIC AND GAS COMPANY, a corporation of the State of New Jersey, hereinafter called "Company," of the first part, and the STATE OF NEW JERSEY, hereinafter called "State," of the second part.

WHEREAS, Company in its own right and as lessee of South Jersey Gas, Electric and Traction Company owns and possesses certain real estate, property and rights in the City of Camden, County of Camden and State of New Jersey, and State, in the rear-  
 20 rangement which is being done by the State Highway Commission of certain highways in the City of Camden, is desirous of acquiring certain real estate owned or controlled by Company, and is to cause to be conveyed certain other pieces of property and real estate to Company, and changes in the plant and property of Company are required to be made, the aforesaid changes of highways, among other things, requiring the change of the course of Cooper's River, to accomplish which will require  
 30 the doing of the matters and things hereinafter particularly stated and set out; and

WHEREAS, the parcels or tracts of land concerned herein are more particularly shown and described on the map entitled "New Jersey State Highway Department, Camden Extension, Entrance Road, Section #2, General Property Key Map, showing properties to be acquired between Cooper

River and Baird Boulevard, City of Camden, dated March 1, 1925, signed Fred C. Claus, Resident Engineer," said map and detail maps and descriptions thereof being hereto attached and made a part hereof, the same being marked and designated as parcels Nos. 42, 44, 45, 48, 49, 51, 53, 54, 56, 62, 69, 70, 72, 74 and 75;

NOW, THEREFORE, in consideration of the sum of One dollar (\$1.), and of the premises, and the making of the conveyances hereinafter referred to, and the doing and completion of the various steps, processes and proceedings hereinafter particularly specified, the said parties hereto have mutually bargained and agreed, and by these presents do mutually bargain and agree as follows, that is to say:

FIRST: All the matters and things herein contained are interdependent, and it is necessary that all and singular the engagements and undertakings herein entered into shall be kept and performed, and the delivery and execution of all of the same are to be simultaneously done so far as the grants, conveyances and the like are concerned, and the agreed upon work shall be commenced.

SECOND: All the tracts or parcels of land and premises herein agreed to be conveyed are to be conveyed clear of all encumbrance, by deed of warranty, with covenants against the grantors, so as to grant, convey and assure an estate in fee simple free of all liens and encumbrances, and to that end any and all necessary releases, acquittances, quit-claims and discharges are to be made and secured so that the respective grantees shall and may possess and have an estate in fee simple therein, free and clear of all encumbrance.

THIRD: Company shall grant and convey, or

cause to be granted and conveyed, to the State of New Jersey, its successors and assigns, Parcels Nos. 42, 44, 51 and 72; to the State Board of Commerce and Navigation, or whomsoever said Board directs conveyances to be made to, Parcels Nos. 53, 54 and 69; and to the Keystone Leather Company, Parcel No. 70.

10 FOURTH: There is to be conveyed to Company or to whomsoever it shall designate to take and receive the same by the State Board of Commerce and Navigation, parcels Nos. 45, 48, 49, 62 and 75; by State Highway Commission of the State of New Jersey, parcel No. 56; and by David Baird, parcel No. 74.

20 FIFTH: State is to cause to be properly conveyed and assured to Company full and complete riparian rights in Cooper's River as relocated in front of all the land which is to be conveyed and assured to Company and lands now owned by Company fronting on relocated Cooper's River. State is to properly fill to a level above mean high water the area of the land conveyed and assured to Company.

SIXTH: It is understood between the parties hereto that State is to obtain the approval of the Government of the United States by whatever agency or agencies are required, to the change of Cooper's River, as aforesaid.

30 SEVENTH: State is to construct a tunnel under Cooper's River as the same is relocated, and to lay two (2) twelve-inch (12") high pressure gas mains therein, lay two (2) twelve-inch (12") high pressure gas mains across the old river bed after the fill has been partly made to a proper depth for such mains, which are to be placed on pile foundation, remove the old gas mains which now cross where the new

location of Cooper's River channel is to be, and make and maintain such temporary connections as may be necessary to permit the continuous use of said mains, and convey aforesaid mains and tunnels, with connecting shafts, to Company; and shall also construct a temporary discharge outlet pending relocation of the river and the construction of permanent discharge outlet from the property of Company, which shall be satisfactory to Company.

EIGHTH: State shall remove the two (2) cable 10 houses, the two (2) towers and wires, and shall build alongside and outside of the aforesaid tunnel a submarine electrical conduit of concrete, in and through which electric cables are to be run, said conduit to have all electrical equipment so as to connect with the pole line on the south side of the relocated Cooper's River, and to give and grant to Company a right in perpetuity to maintain electric conduit construction under the new State Highway.

20 NINTH: It is further agreed that State shall grant to Company perpetual right and privilege to connect the present discharge outlet with the extension under the State Highway in order to reach the new location of Cooper's River, which extension is to be constructed and maintained by State.

TENTH: It is understood and agreed that State will procure the legal vacation by the City of Camden of Fifteenth, Mickle and Stevens Streets and two unnamed alleys as the same now exist laid out and dedicated through the property of the Company, 30 as shown on the said maps and descriptions attached hereto.

ELEVENTH: The proper deeds, conveyances, releases and other documents to be approved by the Attorney-General of the State of New Jersey and the Comptroller of the Treasury so far as concerns

those to be taken and received by State, and to be approved by counsel of Company, the party of the first part, so far as they are to be taken by Company, after said Attorney-General and said counsel are satisfied with the title to said premises, are to be exchanged at the office of the State Highway Commission in the City of Trenton within nine months from the day of the date hereof.

10 IN WITNESS WHEREOF, Company hath hereunto set its corporate seal and caused these presents to be signed by its Vice-President and attested by its Assistant Secretary, and State hath caused the seal of the State Highway Commission to be hereto affixed and these presents signed by the Chairman thereof and attested by the Secretary; dated the day and year first above written.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY,

20 By (Sgd) GEORGE BARKER  
Vice President

Attest:

(Sgd) W. T. Crudge  
Asst. Secretary.

SEAL OF THE PUBLIC SERVICE ELECTRIC AND GAS CO.

30 STATE OF NEW JERSEY  
By

(sgd) Walter Kidde  
Chairman  
State Highway Commission  
Pro tem.

Attest:

sgd) A. Lee Grover  
Secretary  
State Highway Commission  
Signed for the State of  
New Jersey on August 31, 1926.

L. F.

JNB-5/3/26

HKF-5/3/26

EA & NW

Approved by the Cabinet

3-9-25

10

Exhibits offered at first taking of depositions.  
Exhibits of prosecutor.

P1 petition for appointment of Commissioners printed with return to writ of certiorari.

P2 proposed agreement with prosecutor printed herewith. 20

P3 key map will be presented to Court at argument.

P4 resolution of Commission printed herewith.

P4 Riparian deed to prosecutor will be presented to Court at argument.

Exhibits of respondent

A, B, C and D, will be presented at argument

Additional exhibits offered on behalf of the prosecutor at second taking of depositions are printed herewith. 30

P1, September 17, 1926, agreement dated May 7, 1926, between Public Service Gas & Electric Company and the City of Camden.

P2, September 17, 1926, agreement dated August 2, 1926, between Public Service Gas & Electric Company and the City of Camden.

P3, September 17, 1926, agreement dated March 10, 1925, between State Highway Commission and the City of Camden.

P4, September 17, 1926, agreement dated August 19, 1926, between State Highway Commission and the City of Camden.

P5, September 17, 1926, agreement dated May 7, 1926, between Public Service Electric & Gas Company and the State of New Jersey.

10

20

30

OPINION.

(Filed February 7, 1927.)

NEW JERSEY SUPREME COURT.

No. 266. January Term, 1927.

10

TAYLOR-WHITE EXTRACTING  
Co.,

*Prosecutor,*

v.

THE STATE HIGHWAY COM-  
MISSION OF THE STATE OF  
NEW JERSEY,

*Defendant.*

On Certiorari.

20

Argued January 18th, 1927; Decided February  
7th, 1927.

Before JUSTICES BLACK and CAMPBELL.

30

For the Prosecutor: MESSRS. STARR, SUMMERILL &  
LLOYD.

For the Defendant: MESSRS. EDWARD L. KATZEN-  
BACH, Attorney-General, and FRED W. DEVOE,  
Assistant Attorney-General.

## PER CURIAM:

A certiorari was allowed by Mr. Justice Katzenbach on June 16, 1926, to review an order made by him on the petition of the State Highway Commission of the State of New Jersey dated March 29th, 1926, appointing commissioners to examine and appraise lands required to be taken by the State for a public use in the construction of the State Highway in the City of Camden. The writ was allowed upon condition, that it shall not operate as a stay of the proceedings under review.

The prosecutor writes down eleven reasons for setting aside the order.

These are argued under two heads in the prosecutor's brief.

First: Whether the form and contents of the petition and the resolution authorizing the action are sufficient to justify the appointment of the commissioners?

Second: There is no authority under the law to justify the commission in taking lands of the prosecutor for any other purpose than for the construction of a highway. This latter goes to the purpose of the condemnation and the ultimate use and disposition of the property sought to be condemned.

As to the first point: All jurisdictional facts are alleged and shown in the petition. It recites that the land is to be taken for the purposes recited therein, to wit, the construction, maintenance and repair of a State Highway. The petition complies with the Statute; *the Eminent Domain Act; 2 Comp. Sts. of N. J., 2183, sec. 2; P. L. 1900, p. 79.* This is sufficient *Philadelphia &c. Ferry Co. v. Inter-City Link R. R. Co., 73 N. J. L. 86; affirmed 74 ib. 594.*

The petition and proofs presented to the Justice are not required to make recitals of matters which

the Eminent Domain Act does not require to be set forth. Such recitals are not essential, *ib.*

So, the resolution authorizing condemnation, is in accordance with section one of the above Act; *2 Comp. Sts. of N. J., p. 2182, sec. 1.* The commission was appointed by an order of the Supreme Court Justice on March 29, 1926; the certiorari was allowed on June 16, 1926, rather late to raise questions as to form or substance of the petition and resolution. There is no legal merit in this point. The prosecutor can take nothing under this head.

The petition of the State Highway Commission to which is attached a map or diagram describes the land to be taken as Parcels 50A and 50B; also, described by metes and bounds containing 89,551 square feet of land. This is the same land as is designated by the numbers 50, 52, 55, 56, 57 and 58. Testimony taken under the rule of the Supreme Court which, by consent, is to be considered under the writ of certiorari. A proposed agreement was put in evidence and designated as Entrance Road Section 2 Parcels Nos. 50, 52, 55, 56, 57 and 58 Exhibit P2 between the Taylor-White Extracting Company and the State of New Jersey. This agreement provides that the Taylor-White Extracting Company will convey Parcel No. 52 to the State Highway Commission. Parcel No. 55 to the State Board of Commerce and Navigation. Parcels Nos. 50 and 56 to the South Jersey Gas & Electric & Traction Co. Parcels Nos. 57 and 58 to the S. H. French Co.

The agreement is conditioned upon the final acceptance of the proposed location of the highway after final approval of the plans by the United States War Department.

The point made by the prosecutor is that parcels 50, 56, 57 and 58 are outside the graded limits of

the highway, the graded limits of the highway being within the bounds of parcel 52, but the State Highway Engineer has determined that such parcels are necessary for the support of the new road. This is within the discretion of the commission.

The construction plans for such new road shows that the sides of the road are to be sloped to or beyond the limits of parcels Nos. 50, 56, 57 and 58.

10 The powers of the State Highway Commission are found in *P. L. 1923*, p. 521 (e), to construct, build, improve, widen, straighten, &c., "and for any use incident thereto or connected therewith, to acquire any lands," &c., "by gift, devise, purchase or by condemnation," &c. These powers have been upheld by this Court in *Cox v. State Highway Commission*, 133 Atl. 419. The Act should be liberally construed to effect the purpose of the Act for building of State Highways.

20 We find no legal reason for disturbing these proceedings. The land is being taken for the public benefit and taken in accordance with the Statute. The machinery of the law is adequate to provide just compensation for the value of the land taken and damages to the remainder, if any. The general scheme has been agreed upon, and, to use the words of the brief of the Attorney-General: "No one citizen should be permitted to upset these proceedings for any technical reason which does not interfere with his substantial rights."

30 The writ of certiorari is dismissed with costs.

## ORDER.

(Filed April 13, 1928.)

## NEW JERSEY SUPREME COURT.

|  |                      |                |
|--|----------------------|----------------|
| TAYLOR-WHITE EXTRACTING<br>Co.,                                  | } <i>Prosecutor,</i> | 10             |
| v.   |                      |                |
| THE STATE HIGHWAY COM-<br>MISSION OF THE STATE OF<br>NEW JERSEY, | } <i>Defendant.</i>  | On Certiorari. |

This matter having been opened before the Court on January 18, 1927, by Messrs. Starr, Summerill & Lloyd, for the prosecutor, and by Messrs. Edward L. Katzenbach, Attorney-General, and Fred W. DeVoe, Assistant Attorney-General, for the defendant, and the Court having decided on February 7, 1927, January Term, 1927, that the writ of certiorari is dismissed with costs. 20

It is ordered that the writ of certiorari is dismissed with costs.

Entered this thirteenth day of April, 1928.

EDWARD L. KATZENBACH, 30  
*Attorney-General of New Jersey.*  
FRED W. DEVOE,  
*Assistant Attorney-General.*  
*Counsel for Defendant.*

A true copy.

FRED L. BLOODGOOD,  
*Clerk.*

NOTICE OF APPEAL FROM JUDGMENT OF  
SUPREME COURT.

(Filed April 23, 1928.)

NEW JERSEY SUPREME COURT.

10

TAYLOR-WHITE EXTRACTING  
Co.,

*Prosecutor,*

v.

THE STATE HIGHWAY COM-  
MISSION OF THE STATE OF  
NEW JERSEY,

*Defendant.*

On Certiorari.  
Notice of Appeal  
from Judgment of  
Supreme Court.

20

*To Edward L. Katzenbach and Fred W. DeVoe, At-  
torneys of the Defendant:*

Take notice that the prosecutor appeals to the  
Court of Errors and Appeals from the whole of the  
judgment entered April 13, 1928, in this cause.

30

STARR, SUMMERILL & LLOYD,  
*Attorneys for and of Counsel with  
the Appellant.*

GROUND OF APPEAL.

(Filed May 28, 1928.)

COURT OF ERRORS AND APPEALS OF  
NEW JERSEY.

10

TAYLOR-WHITE EXTRACTING  
Co.,

*Prosecutor-Appellant,*

v.

THE STATE HIGHWAY COM-  
MISSION OF THE STATE OF  
NEW JERSEY,

*Respondent.*

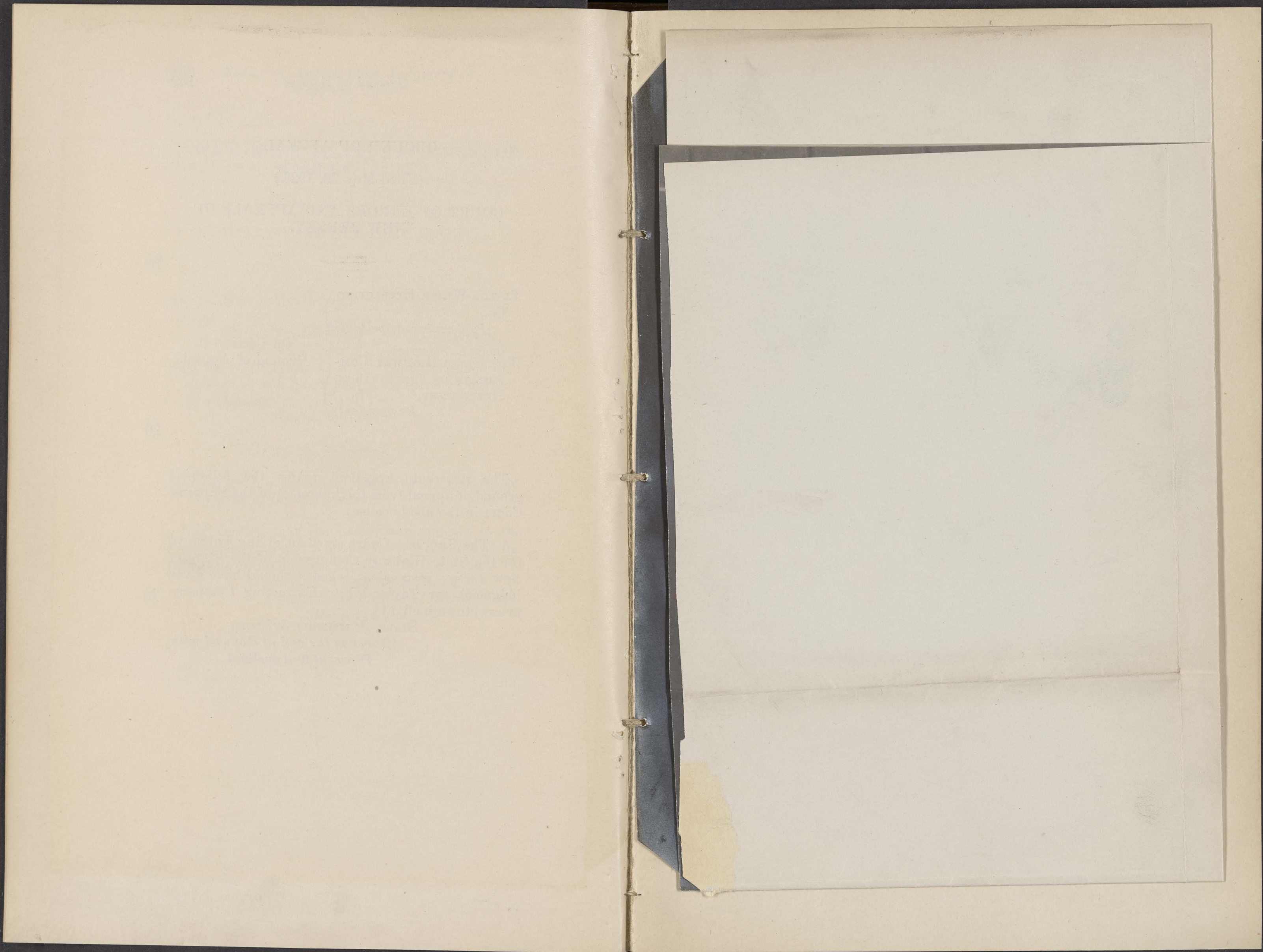
On Certiorari.  
Ground of Appeal.

20

The prosecutor-appellant states the following  
ground of appeal from the judgment of the Supreme  
Court in the above cause:

1. The Supreme Court erred in giving judgment  
for the State Highway Commission of the State of  
New Jersey, respondent, when it should have given  
judgment for Taylor-White Extracting Company, 30  
prosecutor-appellant.

STARR, SUMMERILL & LLOYD,  
*Attorneys for and of Counsel with  
Prosecutor-Appellant.*



PARCEL N<sup>o</sup> 50A & 50B  
ENTRANCE RD. - SECTION - 2



Red = Land to be acquired to be conveyed to other  
 yellow = Land to be acquired for relocated  
 bed of Cooper River  
 Blue = new highway

NEW JERSEY  
 STATE HIGHWAY DEPARTMENT  
 CAMDEN EXTENSION DIVISION  
 ENTRANCE ROAD  
 PROPERTY TO BE ACQUIRED FROM  
**TAYLOR-WHITE EXTRACTING CO.**  
 CITY OF CAMDEN

AREA TO BE ACQUIRED = 89551 SQ. FT.

SCALE 1"=50'

JAN. 1926

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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October Term, 1928.

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TAYLOR-WHITE EXTRACTING COMPANY,  
*Prosecutor-Appellant,*  
v.  
STATE HIGHWAY COMMISSION,  
*Respondent.*

---

ON APPEAL FROM ORDER DISMISSING CERTIORARI.

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BRIEF ON BEHALF OF THE APPELLANT.

---

The writ of certiorari in this matter, allowed June 16, 1926, after a rule to show cause had been allowed and testimony taken, removes an order, made by Mr. Justice Katzenbach, appointing Commissioners to examine and appraise certain lands and premises, in Camden, belonging to the appellant, as described in the petition filed for such appointment, and to fix the compensation to be paid for taking said lands.

The proceedings were originally initiated by the State Highway Commission to exercise a right of eminent domain claimed to be vested in it.

The reasons, relied upon for reversal in the Supreme Court, are printed on page 34 of the case, and may be said to cover two general heads:

First. That the form and contents of the petition and the resolution authorizing the action are not sufficient to justify the appointment of Commissioners for the taking of the appellant's lands under the right of eminent domain, which objections are raised under the 1st, 2nd, 3rd, 4th, 8th and 9th causes for reversal; and

Second. Which questions the purposes for which the Commission is attempting to condemn the appellant's land and the ultimate use and disposition thereof, namely, that the Commission intends, in addition to building the highway, to turn over a portion of appellant's land to Public Service Corporation, or its subsidiaries and to S. H. French Co., and to devote a portion thereof to the relocation of Cooper River, as manifestly and obviously appears by the testimony taken and the various agreements entered into between the Commission, the City of Camden and allied companies of the Public Service Corporation, being raised by the 5th, 6th, 7th and 10th reasons.

---

#### FACTS.

The petition for the appointment of Commissioners describes a parcel of land containing in area 89,551 square feet more or less, and is designated in the petition as Parcels 50-A and 50-B (C. p. 7). This land is owned by the appellant and is designated

upon a map attached to the petition, a copy of which appears between pages 10 and 11 of the printed case. The premises concerned in this inquiry are shown on general property key map, prepared by the Highway Commission, which describes the premises in question as parcels Nos. 50, 52, 55, 56, 57 and 58, and which was introduced in evidence at one of the hearings, and a copy thereof will be presented at the argument.

The various parcels involved are as follows:

No. 50, which is now owned by the appellant and located on the southerly side of Cooper River, as it existed prior to the improvements, and when the improvements are completed, will be located adjoining the new highway abutting thereon and which the appellant contends it is the intention of the Commission to convey to Public Service Corporation, or one of its subsidiaries.

No. 52, which is land now owned by the appellant and sought to be ultimately used as part of the new highway.

No. 55, now owned by the appellant, and which is sought to be taken for a part of the proposed new channel of Cooper River.

No. 56, now owned by the appellant, and which will be located between the southerly line of the new highway, when constructed, and immediately adjacent thereto, and the northerly line of the new bed of the river, and abutting thereon, and with regard to which land, the prosecutor contends, it is the intention of the Commission to convey to the Public Service, or one of its subsidiaries.

No. 57, which is owned by the appellant adjoins No. 56 on the east, and is located similarly with respect to the new highway and proposed bed of the river as No. 56, which the appellant claims is to be conveyed to the S. H. French Company.

No. 58, which is owned by the appellant and is in the same general location as No. 50, which the appellant contends is to be ultimately conveyed to the S. H. French Co.

With this brief will be furnished a copy of the map attached to the condemnation petition, showing the various parcels of land involved in this controversy, prepared with different colored crayons. That part, or No. 52, to be acquired for the proposed highway is colored with blue and the part colored in yellow, No. 55, is to be appropriated for the new bed of the river and those parcels colored in red Nos. 50, 56, 57 and 58 are to be conveyed to the Public Service and the S. H. French Co.

As the situation existed prior to the initiation of the condemnation proceedings, the appellant's land abutted the river on the south and the lands of the Public Service and French joined the river on the north.

Upon the completion of the new highway, without any change in the ownership of the various parcels of land involved, the appellant's land would be located on both sides of the new highway, and also between the latter and the new bed of the river, and on the south side of the river.

The scheme for the construction of the highway and the change in the course of the river designed by the Highway Commission, in conjunction with the City of Camden and the Public Service, would have the effect of depriving the appellant of its frontage along both sides of the highway and the north side of the river, leaving to the prosecutor only one frontage on the south side of the river as relocated, transferring to the Public Service and French, lands

now belonging to the appellant, thus giving to the Public Service and French frontage on both sides of the new highway and on the north side of the river as relocated. The effect of this scheme is to deprive the appellant of its frontage on the new highway and the north side of the river, which appellant would have if it were not for the condemnation of its lands not to be used for the contemplated improvement, which frontage will be turned over to the Public Service and French.

That this is the purpose of the Commission is shown by the general property key map, above referred to, on which appears a schedule and list of the various parcels owned by the appellant and the statement that, of the appellant's land, parcel 50 is to be acquired by the Public Service, parcel No. 52 is to be acquired by the Highway Commission, parcel No. 55 is to be acquired by the State Board of Commerce & Navigation; parcel No. 56 is to be acquired by the Public Service, and parcels Nos. 57 and 58 are to be acquired by the S. H. French Company.

To carry out this plan, the Highway Commission submitted to the appellant a proposed form of agreement to convey, and requested the execution of the same. Such agreement is Exhibit P2, page 106, *et seq.* Attached thereto are descriptions of the properties, which the Commission requested the appellant to convey to the various persons involved, to wit: No. 50 to the South Jersey Gas, Electric & Traction Co., which is one of the Public Service subsidiaries; No. 52 to the State; No. 55 to the State Board of Commerce & Navigation; No. 56 to the said South Jersey Co.; Nos. 57 and 58 to S. H. French Co.

Naturally the appellant refused to approve of

this arrangement. As a result thereof, the Highway Commission, on October 13, 1925 (C. p. 119, l. 22 to 28), passed a resolution for the condemnation of the lands of the appellant, which resolution designated the lands as parcels 50, 52, 55, 56, 57 and 58, which are the very numbers of the parcels designated on the said key map to be acquired by the State for highway and river purposes, and to be conveyed to the Public Service and French.

Both prior and subsequently to the passage of the resolution for condemnation, various agreements referring to the appellant's land had been entered into between the Highway Commission, the City of Camden and the Public Service.

These agreements, in their chronological order, are as follows:

1st. Dated March 10, 1925, between State Highway Commission and the City of Camden. [Exhibit P3 (9/17/26), C. p. 138, l. 26.]

2nd. Between the Public Service Electric & Gas Co. and the State of New Jersey, dated May 7, 1926. [Exhibit P5 (9/17/26), C. p. 146.]

3rd. Between Public Service Electric & Gas Co. and the City of Camden, dated May 7, 1926. [Exhibit P1 (9/17/26), C. p. 129.]

4th. Between Public Service Electric & Gas Co. and the City of Camden, dated August 2, 1926. [Exhibit P2 (9/17/26), C. p. 133, l. 17.]

5th. Between the Highway Commission and the City of Camden, dated August 19, 1925. [Exhibit P4 (9/17/26), C. p. 141, l. 25.]

Apparently no agreement had been made up to the time the last testimony was taken between the Highway Commission or the City of Camden and S. H. French Co. with reference to parcels Nos. 57 and 58 of the appellant's land which the French

Company is to receive, should the Commission be successful in acquiring title to the lands of the appellant. That these parcels are to be conveyed to S. H. French Company is disclosed, however, by the agreement between the Highway Commission and City of Camden, dated August 19, 1925. [Exhibit P4 (9/17/26), C. p. 142, l. 14, and p. 143, l. 9 to 25.]

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## ARGUMENT.

### FIRST.

As to the reasons which are directed toward the form and contents of the petition and resolution, it seems to us that the petition does not sufficiently comply with the rules applicable to proceedings of this character.

Paragraph 10 of the petition (C. p. 7, l. 13) avers that the Commission has decided to construct, widen, straighten and re-grade a State Highway Route Nos. 2, 3 and 6 and has adopted plans and specifications for such work, and determined to acquire, in the name of the State of New Jersey, as per resolution adopted October 13, 1925, the lands of the appellant described in the petition as parcels 50A and 50B. The petition then sets forth that the Commission has been unable to acquire said lands because of the fact that it has been unable to agree with the owner thereof as to the amount of compensation to be paid for the taking thereof.

It will be observed that the petition does not state that the land described therein is necessary for the purposes set forth in the petition.

The map attached to the petition definitely defines the width of the proposed new highway, and the testimony (C. p. 63, l. 10, and 64, l. 12) shows that it is not the purpose of the Commission to appropriate, for highway use, any land other than a strip one hundred twenty feet wide. The petition does not define the use to which the remaining land is to be applied.

The petition contains no averment whatever as to what is ultimately to be done or what disposition is to be made of the lands admittedly outside of the specifically defined limits of the new highway of one hundred and twenty feet in width. The petition does not make any allegation with reference to the burden to be imposed upon the appellant's land. We submit that the petition must state the use for which the rights are to be obtained so as to leave no doubt as to the exact purpose to which the Commission proposes to appropriate the land when acquired. Manifestly, all of the land is not to be used for highway purposes.

The Commission, in an effort to secure the appellant's land, had three objects in view:

(a) To construct a new highway, the actual width of which will be one hundred twenty feet.

(b) To devote a portion of the land, for the benefit of another agency of the State in the relocation of the river.

(c) To turn over to the Public Service and French four parcels of land, which will abut both the highway and the river, when the improvements are completed.

The first two of these three objects are admitted by the Commission. The third is not directly admitted, but neither is it denied, and its truth is conclusively proved by the various agreements and

maps entered into and made by the Commission, enumerated on pages 5 and 6 of this brief, from which it plainly appears that parcels Nos. 50, 56, 57 and 58 of appellant's property are intended to be conveyed to Public Service and French.

It is elementary law that property cannot be taken by eminent domain, except for a public purpose, and as to parcels Nos. 50, 56, 57 and 58, the Commission did not and cannot show that they are to be devoted to the public use.

Until about June 1, 1926, which was about a year and a quarter after definite plans for the use of appellant's property had been made by the Commission, and nearly eight months after the passage of the resolution of the Commission authorizing condemnation of appellant's property, the Commission made no attempt to show that parcels Nos. 50, 56, 57 and 58 were required for a public purpose. About June 1, 1926, the State Highway engineer, for the first time, prepared a plan to show that these parcels were necessary in the construction of the road to accommodate slopes that would have to be built to support the road, due to its being constructed through marsh land. In testifying on June 7, 1926, Major Sloan, the State Highway engineer, frankly admitted that the plans showing these slopes had been made the preceding week and that they were the only maps or plans that had been prepared showing the slopes (C. p. 48, l. 32; p. 49, l. 21; p. 55, l. 34; and p. 55, ll. 1-10). Thus, by this happy though somewhat delayed thought about these slopes, the Commission seeks to establish the necessity for the condemnation of parcels 50, 56, 57 and 58 and to show the public use to which they are to be put. However, an examination of the facts in evidence shows beyond any doubt that these slopes were in-

vented, not to support the road, but, rather, to support the Commission's case, when it became apparent that the matter was to be litigated by appellant. These slopes have come to be the most important factor in the Commission's case. Without them the Commission must surely lose, for there is no other pretense of a public use for parcels Nos. 50, 56, 57 and 58. If these slopes were truly necessary for the support of the road, why did it take the Commission a year and a quarter to find it out? As early as March, 1925 (C. p. 58, l. 28), blue-prints were prepared by the Commission showing that *all* of appellant's land which, when the improvement was completed, would lie north of the road (i. e., parcels Nos. 50 and 58), and *all* of appellant's land which would lie between the road and the river as relocated (i. e., parcels Nos. 56 and 57), and would have to be taken away from appellant. These are the parcels which it is now said are to be occupied by these slopes. How was it possible to determine, in March, 1925, what portion of appellant's land would be required for these slopes when the plans showing the slopes were not prepared until June, 1926? Obviously, it was impossible, and the real truth must be that the slopes were not thought of at all until their creation became necessary to lend color to these condemnation proceedings.

There is another point that will not stand scrutiny. The proposed highway is to be built through marsh land at this point, but the marsh land is not confined to the property of the appellant. (See testimony of Major Sloan, C. p. 50, l. 17, and the so-called general property key map—Exhibit P3.) This being the case, it would seem that the slopes would be required wherever the road passed over the low land and that property of other owners abutting the road

in such locations would have to be acquired for these slopes. Strangely enough, such is not the case. The general property key map, Exhibit P3 above referred to, shows that of all property which would abut the new road on the north, only that of the appellant is to be taken. No other owner is obliged to surrender his frontage on the road to accommodate these slopes.

This new map showing the slopes was marked Exhibit C (C. p. 56, l. 10) and was admittedly made after the proceedings were started (C. p. 48, l. 32; p. 49, l. 21). Major Sloan was compelled to admit that regardless of this plan, the new highway, or at least that portion thereof which would be subject to public travel, would be limited to a width of one hundred twenty feet (C. p. 63, l. 10).

These slopes are apparently necessary because the road is being constructed through meadow land (C. p. 50, l. 22). While such slopes may be necessary during the construction of the road, it is quite apparent that on the north side of the road at least there will be no slopes when the improvement is completed, for the land to the north of the road is to be filled to the level of the road. The agreement between the State Highway Commission and the City of Camden (Exhibit P4, of September 17, 1926) provides as follows (C. p. 143, l. 4):

“Second: That the party of the first part will fill to the grade of the road that land lying between said road and the properties of the ‘owner’ along the north bank of Cooper River, the cost of said work to be borne by the party of the first part.”

As to land which would lie between the new highway and the new channel of the river, including

parcels Nos. 56 and 57 of the appellant's land, while there may be some slope maintained from the edge of the paved portion of the highway down to the water line of the river, it is clearly shown by the agreement above referred to between Highway Commission and City of Camden (Exhibit P4, of September 17, 1926): first, that the State Highway Commission will effect or assist in the transfer of title to lands lying between the road and Cooper River as relocated, together with the exchange in riparian rights, to the abutting property owners (C. p. 143, l. 16)—the abutting property owners include Public Service Corporations or its subsidiaries and S. H. French Company (C. p. 142, l. 12)—and, second, that the frontage on the relocated channel of the river so to be conveyed to the abutting property owners, is "to be banked by the State Highway Commission at its sole cost and expense" (C. p. 144, l. 14). If the land of the appellant lying between the new road and the relocated channel of the river must be taken from the appellant for slope purposes, why should the State Highway Commission enter into an agreement to convey this land or assist in the conveyance of it to Public Service Corporation and S. H. French Company and to secure riparian rights for these concerns in front of these lands on the relocated river?

Further, if the State Highway Commission intends to acquire and retain title to these lands for slope purposes, the result will be a strip of land on either side of the highway some forty feet in width belonging to the State. Property owners to the north of the highway would have this strip intervening between their property and the road and would thus have no frontage on or access to the road and on the south of the highway this strip would

intervene between the river and the road and make it impossible, without trespass upon the land of the State, to pass from the river to the road or the road to the river.

Under these circumstances, therefore, we submit that the petition is fatally defective in that it does not state the necessity of taking lands outside of the actual line of the highway in the following particulars:

(a) If it be the purpose to use any portion of the land as described in the petition for the relocation of the river, such fact should be stated.

(b) If it be the purpose of the Commission to use any portion of the land outside of that which will constitute the width of one hundred twenty feet, to be used eventually as a public highway, for construction purposes merely, or for making slopes to fortify and protect the highway, and after such construction work is finished, the lands, employed for that purpose, will not be subject to public use, these facts should be expressly stated.

(c) If the use to which any portion of the land is to be put is merely temporary and not intended to be made a permanent part of the public highway, this fact should be set forth.

(d) If it be the purpose of the Commission to turn over any of the land to other persons, even if the taking of said lands be reasonably necessary for the construction of the highway, this fact should be stated.

It will be further observed that the petition merely states that the Commission is determined to acquire the land. This statement must be taken in conjunction with the further fact expressly stated that the purpose is to construct, widen, straighten and re-grade a State highway. Without further averment it would seem that the use of the land thus sought to be acquired, would be limited to the construction of the highway itself, which, admittedly, is only one hundred twenty feet in width. There can be no logical reasoning why the petition should not have stated that a portion of the land was to be taken to re-locate the Cooper River and that some other portion thereof was to be used merely for construction purposes. This, of course, is independent of the other important requirement that appropriate averments should be made to support the claim of a right in the Commission to secure lands to be turned over to other parties.

Assuming, for the purpose of this argument, but not so conceding, that the Commission may have authority to acquire the temporary use of land beyond the limits of the proposed highway merely for construction purposes, where such lands do not eventually become devoted to public use, by constituting a part of the highway, and also to acquire land to be used by another agency of the State for public purposes, it is perfectly manifest that the land owner should be apprised of the several uses to which his land is to be devoted. Furthermore, the purpose should be specifically stated in the petition so that it may be definitely shown what rights are to be used for either public purpose, and that the rights acquired in the land abutting the actual width of the highway, will, when construction is completed, revert to the owner.

Whether the Commission may acquire land in fee is doubtful, but certainly, if it be the purpose to attempt to acquire a fee simple title to the land involved, and not merely an easement for public use, we contend that this information should be conveyed to the land owner by appropriate averments in the petition.

As a general rule, an easement only is acquired of property intended for a public highway (15 Cyc. 1020, *et seq.*).

*Wright v. Carter*, 27 Law 76;

*Currie v. Transit Co.*, 66 Equity 313;

*Starr v. R. R.*, 24 Law 592;

*Rogers v. Warrington*, 90 Law 653.

Consequently, upon any abandonment of the use for which the property is intended, the land would revert to the former owner.

The other object of the petition is to apprise the land owner of the character of the public use contemplated. The petition constitutes a sort of pleading upon which the Commissioners act in appraising the value of the land condemned, and the rights taken. There is obvious reason for requiring this to be done, so that the land owner may know, in presenting his claim to the appraisers, whether his land is to be taken absolutely for all purposes, or the use of the same is to be limited for specific purposes after the abandonment of which use the land will revert to the land owner.

Furthermore, the petition does contain the limitations and provisions as to temporary use set forth in the resolution for condemnation.

c. p. 121 l. 12 - c. p. 123, l. 8 - c. p. 124 l. 8  
c. p. 127 l. 11 - c. p. 128 l. 8.

A careful examination of the statutes conferring authority upon the State Highway Commission, to construct highways, does not disclose any authority to acquire land, as in this instance, for use in re-locating a public waterway of the State. The appellant is an abutter on the present line of the river, and if this land be taken generally for such purpose in this proceeding, and the Highway Commission subsequently determines not to so use the same or to make other use thereof, the appellant will lose its right of adjacency.

It is obvious that the Highway Commission cannot acquire land for one purpose and then devote it to another public or private use. This statement, which certainly cannot be controverted, is an additional reason why it is absolutely essential that the necessity for acquiring the land and the exact purposes for which the same is to be used, should be specifically set forth in the petition. Such specification of purposes, when stated, would prevent the Commission from making other or improper and unwarranted uses thereof, after the title is acquired.

“The petition should disclose the specific purpose to which it is intended to apply the land,  
 “that the purpose for which the land is to be taken and the use to which it is to be devoted  
 “are public within the meaning of the constitutional provisions, that such purpose is within the powers conferred upon the petitioner  
 “and that it is necessary to take the land for the intended purpose.”

15 Cyc. 852.

The sufficiency of allegations in petitions to condemn under the right of eminent domain have been

considered in various cases in New Jersey, which we contend, undoubtedly, show that the petition in this case is defective.

See *N. Y. &c. Telephone Co. v. Droom*, 50 L. 432;  
*Winter v. Telephone Co.*, 51 L. 83;  
*P. R. R. v. National Docks*, 53 L. 217;  
*P. R. R. v. National Docks*, 57 L. 86.

In the *Winter* case, which was a proceeding to condemn land for telephone purposes, it was held as follows:

“There must also be a proper description of  
 “the poles and premises to be occupied by them,  
 “so that the burden to be imposed upon the  
 “land owner and the rights to be acquired by  
 “the company shall be defined and settled.”

These cases, we contend, are authority for the proposition that the Highway Commission must have, in this proceeding, designated specifically the purposes for which the lands, sought to be taken, are to be devoted, particularly when it is manifest that under no circumstances are all of the lands to be appropriated for direct highway purposes.

It was also held by this Court, in *Board of Education v. New Jersey Water Supply Commission*, 132 Atl. 83, as follows:

“Petition in condemnation proceedings must  
 “show all jurisdictional facts, and unless right  
 “of condemning party to exercise power of eminent domain is shown, an order appointing  
 “Commissioners to condemn cannot properly be  
 “made. Power to condemn land must not rest  
 “on inference, but must be made affirmatively  
 “to appear, and if there is a failure to show  
 “it, order on petition is nugatory.”

To the same effect is *Wendell v. Board of Education of Hoboken*, 76 L. 499, and *Arlington Beach Co. v. Seaside Heights*, 110 Atl. 122.

The resolution of the Commission, authorizing the condemnation of the appellant's lands is Exhibit P1 (6/7/26, C. p. 119), and states that the Commission determines to acquire, in the name of the State, for public use in the construction of State Highway Road No. 2, the lands therein described, and the highway engineer is authorized to offer to the land owner the sum of \$7164.09, and if the offer be declined, then the Attorney-General is authorized and directed to institute condemnation proceedings for the acquisition of said lands and premises (C. p. 128, l. 21).

The following cases show that even ordinances or resolutions for condemnation of land must indicate the use for which the land is to be taken, and the extent thereof.

*State v. Jersey City*, 36 L. 166;

*Seidler v. Hudson County*, 39 L. 632 at 639.

If this be the rule, and there seems to be no doubt about it, there would be no right, under the resolution of condemnation, to acquire any lands which are not to be used strictly for highway purposes, and for the construction of the road specifically designated in the resolution.

Manifestly, a part of the lands sought to be taken for highway purposes are outside of the limits of the highway. Therefore, the very purpose of the Commission in condemning a large area of land, which is outside the limits of the highway, for highway purposes, as indicated, even if it be for the

relocation of the bed of the river, would be frustrated. Giving the language of the resolution its reasonable and logical interpretation, the land, should it be acquired by the Highway Commission, could not be used for any purpose other than the construction of the highway.

This situation renders it legally impossible for the Commission to devote the lands to the purpose for which, admittedly, they are to be used, to wit: temporary occupancy while building slopes to the actual highway, as to a portion, and for the relocation of the river as to the balance. The existence of this situation renders it incumbent upon the Commission to specifically state in the petition the particular purposes to which the lands are to be devoted. Under the resolution of the Commission, they could only be devoted to highway purposes, and there is no pretense but that a very considerable area of the land sought to be taken is to be used otherwise.

Manifestly, there was no power or authority exercised by the Highway Commission in the resolution above mentioned, to acquire the lands for any other than highway purposes, and it being made to appear, beyond question, that different uses are contemplated, the order under review must be set aside.

#### SECOND

It is manifest that the real and honest-to-goodness purpose of the Highway Commission is to secure the appellant's lands, with three objects in view:

1. To construct an actual bed of the highway one hundred twenty feet wide.
2. To devote a portion of the land to the relocated bed of the Cooper River, for the benefit of another agency of the State.
3. To turn over to the Public Service and French four parcels of land, now owned by appellant, which, when the highway and river are completed, will make them abutters thereon.

These purposes of the Commission are manifested by the following:

(a) Form of proposed contract between the Commission and the appellant, Exhibit P2 (C. p. 106), on the second page of which appears the following:

“It is hereby understand and agreed that the party of the first part will convey the land hereinabove described in several deeds as directed by the State Highway Commission as follows:

|                                  |             |
|----------------------------------|-------------|
| “To the State Highway Com-       |             |
| “mission . . . . .               | Parcels 52  |
| “To the State Board of Com-      |             |
| “merce & Navigation . . . . .    | “ 55        |
| “To the South Jersey Gas,        |             |
| “Electric & Traction Co. . . . . | “ 50 and 56 |
| “To S. H. French Company         | “ 57 and 58 |

“This agreement is conditioned upon the final acceptance of the proposed location of the highway after final approval of the plans by the United States War Department.”

(b) The key map, Exhibit P3, which is one of the plans prepared by the Commission, and recited in the petition, shows the names of the owners and the persons by whom the particular parcels of land are to be acquired, to wit: parcel 50 is to go to South Jersey Company; parcel 52, which is the bed of the proposed highway, to the State Highway Commission; parcel 55, the bed of the river, to the Board of Commerce and Navigation; parcel 56 to the Public Service, and parcels 57 and 58 to S. H. French Company.

(c) The resolution authorizing the condemnation, Exhibit P4, describes the land in the various parcels referred to in Exhibit P2, indicating that it is still the purpose of the Commission to make the disposition of the land, when acquired, in accordance with the original plan.

(d) Negotiations carried on by the duly accredited representatives of the Highway Commission with the appellant, after the resolution for condemnation was passed, in an effort to secure the execution of the contract, P2 (C. p. 60, l. 1, *et seq.*).

(e) The various agreements between the Commission, Public Service and City of Camden, to which reference has above been made.

A very careful consideration of these several agreements will demonstrate beyond question that it is the purpose of the Commission, when title may be acquired with respect to parcels 50 and 56, that they are to be turned over to the Public Service, and that parcels 57 and 58 are to be likewise transferred to French.

The agreement dated March 10, 1925 (page 138), made between the City of Camden and the State

Highway Commission, refers to certain contemplated improvements, and the creation of routes to the plaza at the Camden end of the new Delaware Bridge. The City agreed to co-operate with the Commission in every way necessary or desirable, for any reason or purpose in negotiating with private and corporate interests affected by the improvement, and in providing the franchises and other legal requirements, which may be necessary in carrying out the work as contemplated and authorized by law.

It will be observed that the routes referred to are Nos. 2, 3 and 6, which are also designated in the petition of condemnation (C. p. 6, l. 33). This agreement showed that the State Highway Commission and the city were in absolute harmony and the former agreed to co-operate in every way to bring about the improvement.

The abandonment of the original line of Cooper River and the relocation of the bed thereof could not be accomplished without the consent of the Public Service or the condemnation of its rights as owner of land on the north side of the river, and as an abutter thereto.

The next steps in the negotiations between the Public Service, the Highway Commission and the City of Camden is indicated by two agreements, both dated May 7, 1926, the one between the Public Service, and the City, found on page 129 of the case, and the other between the Public Service and the Highway Commission, found on page 146, of the case. The former recites the ownership of lands by the South Jersey Gas, Electric & Traction Company, a Public Service subsidiary, and the arrangement with the Highway Commission as to certain highways in the city, which are sought to be changed, and that the Commission is anxious to ac-

quire certain real estate controlled by the Public Service, and that certain other parcels are to be conveyed to the Public Service, required by the change in the course of Cooper River. This agreement does not specifically apply to parcel 50, but there is, however, a covenant that the city shall grant and convey, or cause to be granted and conveyed, to the Public Service, parcel 56, which is now owned by the appellant, and which will be located between the new bed of the river and the new highway, when the improvements are complete. Then follows the very significant clause (C. p. 131, l. 24):

“City is to cause to be properly conveyed and  
 “assured to company full and complete ripar-  
 “ian rights in Cooper River as relocated in  
 “front of all of the land which is to be conveyed  
 “and assured to company and lands now owned  
 “by company fronting on relocated Cooper  
 “River; to secure from the State of New Jersey  
 “permanent rights for any extension necessary  
 “for discharge pipe from the power station of  
 “company over lands not now owned by com-  
 “pany to the new relocated river, and all neces-  
 “sary rights for gas mains and cables under  
 “and across the lands of others and in the bed  
 “of said relocated river; and to secure from the  
 “State of New Jersey the necessary tunnels  
 “and conduit construction to accommodate two  
 “(2) twelve-inch (12”) high pressure gas mains  
 “and submarine cables.”

Parcel 56 is included in the lands to be acquired by condemnation on application of the Highway Commission and this covenant provides for the conveyance, to the Public Service, of this parcel, either from the State directly, or that the city will cause the same to be so conveyed.

The companion agreement, dated the same day (C. p. 146), between the Public Service and the State Highway Commission, recites that the Highway Commission is desirous of acquiring certain real estate necessary for the construction of the highway, and the re-arrangement of the river, and that one of the lots concerned in the arrangement is No. 56 above referred to and owned by the appellant.

The fourth and fifth paragraphs of this agreement are as follows (C. p. 148, l. 8):

“There is to be conveyed to company or to whomsoever it shall designate to take and receive the same by the State Board of Commerce and Navigation, parcels Nos. 45, 48, 49, 62 and 75; by State Highway Commission of the State of New Jersey, parcel No. 56; and by David Baird, parcel No. 74.

“State is to cause to be properly conveyed and assured to company full and complete riparian rights in Cooper’s River as relocated in front of all the land which is to be conveyed and assured to company and lands now owned by company fronting on relocated Cooper’s River. State is to properly fill to a level above mean highwater the area of the land conveyed and assured to company.”

These two paragraphs contain an express obligation on the part of the Highway Commission to convey to the Public Service parcel No. 56, now owned by appellant, and also to assure to the Public Service full and complete riparian rights in Cooper River as relocated in front of all the land which is to be conveyed and assured to the company and all lands now owned by the company fronting on the relocated river.

So far as parcel 56 is concerned, these two agreements, dated May 7, 1926, constitute an assent by the city to the relocation of streets, etc., for the benefit of the Public Service, which is to convey certain lands and consent to the relocation of the river, in consideration of which the Public Service is to have parcel No. 56 of appellant’s land conveyed to it.

Nothing could be plainer than the establishment of an agreement on the part of the Commission to eventually convey parcel No. 56 to the Public Service, which parcel is now owned by the appellant. Upon the consummation of the terms of this agreement, the Public Service would acquire title to lands located between the south side of the new highway and the north side of the relocated bed of the river. As before observed, these three last mentioned agreements, as far as appellant’s land is concerned, refer only to parcel 56.

Parcel 50, which is also owned by the appellant and included in the land sought to be condemned, being located on the south side of the original line of the river, and when the course of the latter is changed and the new highway constructed will be located on and abut the north line of the highway, is the subject-matter of subsequent agreements, which will now be referred to.

The agreement dated August 2, 1926, between the Public Service and the city (C. p. 133) contains substantially the same recitals as in the earlier agreement between the Public Service and the city, dated May 7, 1926 (C. p. 129), and was evidently executed to provide for the same disposition of parcel No. 50 as theretofore arranged respecting parcel 56. The agreement of August 2, 1926, states that, as part of the adjustment and accomplishment of the object of the city, as therein set forth, the city has agreed

to convey, or cause to be conveyed, parcel No. 50, as designated on the general property key map, above referred to. The city then agrees to convey or cause to be granted and conveyed to the Public Service said parcel No. 50, and in the event of the city being unable to secure the transfer to the Public Service of such parcel, the city will pay to the Public Service an amount equal to that which the appraisers appointed to condemn said land may find to be the value thereof, and to be due therefor, in any proceedings instituted by the State of New Jersey, and in case no such proceedings are taken, arbitrators are to be appointed to appraise the value of parcel No. 50.

It must be remembered, that at the time of the execution of this agreement, August 2, 1926, the condemnation proceedings removed by this writ, had been started by the Highway Commission. Parcel 50 was then and is now owned by the appellant.

This agreement constitutes an obligation on the part of the city to secure parcel 50 for the Public Service.

After the execution of the agreement between the Public Service and the city, dated August 2, 1926, another agreement was made between the Highway Commission and the city, dated August 19, 1926 (C. p. 141), which recited an agreement dated March 10, 1926, and the desirability of a change in location of the highway through the city. It then recited that the change of location affected the rights, *inter alia*, of the Public Service, or its subsidiaries and French, all referred to in the agreement as owners and that transfer of property to facilitate the operation is necessary. Also recites that the owners, which include the Public Service and French, desire written agreements with the city, setting forth certain con-

ditions, which had been agreed upon, and that such agreements are not within the province of the city, unless the State Highway Commission agrees with the latter to do and perform everything set forth in said agreement.

Accordingly, the Commission agrees to do and perform the things required.

The pertinent portions of the agreement, as affecting this question are the following (C. p. 143, l. 4):

“SECOND. That the party of the first part  
“will fill to the grade of the road that land lying  
“between the said road and the properties of  
“the ‘owners’ along the north bank of Cooper  
“River, the cost of said work to be borne by  
“the party of the first part”;

“THIRD. That the party of the first part  
“will effect or assist in so far as it is possible  
“for it so to do, in the making of transfers of  
“title to the lands mentioned in the above sec-  
“ond clause, to the abutting property ‘owners,’  
“each to acquire that land lying between the  
“existing property lines extended to said road;

“FOURTH. That the party of the first part  
“will effect or assist in so far as it is possible  
“for it so to do, in the transfer of title to lands  
“lying between the road and Cooper River, as  
“re-located, together with the exchange in ri-  
“parian rights, to the abutting property ‘own-  
“ers,’ each to acquire that land and those ri-  
“parian rights between existing property lines  
“extended across said road to said river.”

“Provided that no riparian rights be trans-  
“ferred to an ‘owner’ who has not acquired  
“riparian rights on the old stream.”

The manifest purpose of these covenants is to obligate the State Highway Commission, which is the party of the first part in the agreement, at the request of the City of Camden, to transfer to the owners therein mentioned, of which the Public Service is one, title to the lands which the city had theretofore agreed with the Public Service should be transferred to the latter, as consideration for the concessions made, as indicated in the prior contracts. The city already had agreed with the Public Service to turn over parcels 50 and 56, now belonging to the appellant. The State Highway Commission stipulated that when title to such lands be acquired, they were to be disposed of in accordance with the agreement of the city. This agreement applies with equal force to parcels 57 and 58 of appellant's land, which, if the agreement is completely carried out, will pass to the French Company.

These several agreements demonstrate, with absolute certainty, that not only is it the purpose of the Highway Commission to convey to the Public Service and to the French Company, lands now owned by the appellant and sought to be condemned in the proceeding aforesaid, but the Commission has evidenced such agreement by the formal written contracts above referred to.

No authority has been discovered which would justify a taking of the appellant's lands under the guise of condemnation proceedings for highway purposes, and the subsequent disposal of such lands,

when the title may be acquired under the right of eminent domain, to third parties, which lands are not to be used at all for public purposes. Even if it be contended from the very ample powers conferred upon the State Highway Commission, in the establishment and construction of a state-wide system of public highways, that, by implication, lands of the appellant may be taken under the power of eminent domain and then conveyed to the Public Service for purposes unconnected with any use by the public, such legislation would be unconstitutional. Mr. Justice Story, speaking for the United States Supreme Court, in *Wilkinson v. Leland*, 27 U. S. 658, says, "We know of no case in which a legislative act to transfer the property of A to B without his consent has ever been held a constitutional exercise of legislative power in any State in the union. On the contrary, it has been constantly resisted as inconsistent with just principles by every judicial tribunal in which it has been attempted to be enforced." To the same effect are the following cases:

- Coster v. Tide Water Co.*, 18 Eq. 54, 518;
- Scudder v. Falls Co.*, 1 Eq. 695;
- Bloom v. Koch*, 63 Eq. 10 at 21, 50 Atl. 621;
- Associates of Jersey Co. v. Jersey City*, 34 Law 31 at 43;
- Brennan v. United Hatters*, 73 Law 729-65, Atl. 165;
- Penna. Mutual Life Co. v. Philadelphia*, 88 Atl. 904 (Supreme Court of Pennsylvania);
- Larabee v. Dolley*, 175 Federal 365;
- Loan Ass'n. v. Topeka*, 20 Wallace 655;
- Barkensburg v. Brown*, 106 U. S. 487;
- Cole v. La Grange*, 113 U. S. 1;

*No. Pacific Railway v. Nebraska*, 164 U. S. 403;

*Minneapolis Electric Co. v. Minneapolis*, 194 Federal 215 at 221.

While the individual members of the Commission disclaimed any present intention of turning parcels 50 and 56 over to the Public Service and indicated that no decision has been reached as to the ultimate disposition of these parcels, if acquired in condemnation proceedings, it is perfectly manifest from the agreements above referred to that not only have they reached such a conclusion, but have manifested the same, in writing and by formal and definite contracts, made with the various interests involved. The fact that the members of the Commission denied what was later made manifest by the several agreements referred to would seem to indicate that the Commission itself is not so sure of its ground in taking appellant's land under such circumstances.

We submit, therefore, that the order appointing the Commissioners should be set aside.

STARR, SUMMERILL & LLOYD,  
*Attorneys for and of Counsel*  
*with the Appellant, Taylor-*  
*White Extracting Co.*  
CURRY & PURNELL,  
*Of Counsel.*

## New Jersey Court of Errors and Appeals

October Term, 1928

|  |   |                |
|--|---|----------------|
| TAYLOR-WHITE EXTRACTING<br>COMPANY,<br>Prosecutor-Appellant, | } | On Certiorari. |
| vs.  |   | On Appeal from |
| STATE HIGHWAY COMMISSION,<br>Respondent-Appellee.            |   | Supreme Court. |

### BRIEF ON BEHALF OF RESPONDENT- APPELLEE

#### The Facts.

The State Highway Commission, the respondent-Appellee in this matter, under the Legislative authority conferred upon it in Chapter 253 of the Laws of 1922 found at p. 612, laid out an entrance road leading from the Delaware River Bridge Plaza in the City of Camden to a connection between State Highway Routes 2, 3 and 6. Said entrance road was necessarily through the heart of the City of Camden and many public hearings and conferences with the City authorities were held in order to determine what would be the route that would be of the greatest benefit to the public generally. The State Highway Commission, through the State Highway Engineer, then laid out this entrance road and found it necessary, in the course thereof, to project said road along the bed of a navigable stream called Cooper River, which runs through the City of Camden. As a part of the project of building the road, it thus became necessary

to move the river to a point sufficiently far south of its present bed to permit the highway to be constructed on the filled in bed of the old river. It also became necessary to acquire certain lands of the Prosecutor, a portion of which lands were taken for the new bed of the river, and the remaining portion to actually construct the highway thereon. Negotiations were entered into between the Right-of-way Department of the State Highway Commission and the Prosecutor, in an endeavor to acquire title to this property without the necessity of condemnation, and it was found impossible to come to an agreement. The State Highway Commission then, on recommendation of the State Highway Engineer, made a formal offer to the Prosecutor for the land necessary for the carrying out of this project and upon refusal by the Prosecutor to accept the same, condemnation proceedings were instituted, which proceedings are here under the writ allowed in this case.

The writ was allowed upon condition that it should not operate as a stay in the proceedings, and the condemnation has proceeded to an award by the condemnation commissioners, which has been appealed. The work on the improvement has proceeded to the extent that Cooper River has already been diverted to its new channel over the land of the Prosecutor and others; the old bed of the Cooper River has been filled in, and the road constructed thereon. The entire work is finished.

#### Argument.

The Prosecutor sets forth some twelve reasons why the proceedings should be set aside, which in his brief he has grouped into two points (see p. 2 of brief).

The first goes to the form and contents of the

Resolution authorizing condemnation and the petition in condemnation, and the second goes to the purpose of the condemnation and the ultimate use and disposition of the property sought to be condemned.

#### As to Point I.

The Prosecutor does not raise any question as to the right of the State Highway Commission to condemn land. It concedes such right.

The petition in condemnation actually follows the wording of Section 1 of the statute of Eminent Domain when it says that the State Highway Commission has determined to acquire the property of the Prosecutor for the purposes recited in the petition. (See 2 C. S. p. 2182, Sec. 1). The fact of such determination implies the necessity of such condemnation.

The Court's attention is directed to Exhibit P-4, 6/7/26 on p. 119 of the State of the Case, which is the Resolution of the State Highway Commission authorizing the condemnation in this matter. In addition thereto, the affidavit of the State Highway Engineer attached to the petition (see State of Case, p. 10) states, "that it is necessary to acquire the said premises for the constructing, straightening, widening and re-grading of the State Highway route."

No better argument can be advanced on the question of necessity, than the fact that the State Highway Commission has gone upon the land of the Prosecutor and has actually made the contemplated improvement thereon.

It is also argued by Prosecutor that the petition does not contain any averment as to the purpose for which the land is to be condemned or the burden to be imposed thereon. Prosecutor is in error in making this statement as the petition specifically recites that the land is to be taken

for the purposes recited therein, to wit, the construction, maintenance and repair of a state highway.

In any event, the petition as filed complies with Section 2 of the Eminent Domain Act (2 C. S. 2183) and this Court has held in *Philadelphia & Camden Ferry Co. v. Inter-city Link Railroad Co.*, 73 N. J. L. 86, "The necessary contents of such a petition and the requisite verification are prescribed by the second section of our Eminent Domain Act". Affd. unanimously without opinion, 74 N. J. L. 594.

The cases cited by Prosecutor in this connection are not applicable for the reason that they are based upon special acts of the Legislature and not under the Eminent Domain Act.

All **jurisdictional** facts are shown in the petition in condemnation before the Court (Case p. 4).

As to the resolution authorizing condemnation, it sets out the recommendation of the State Highway Engineer, determines upon the acquisition of Prosecutor's lands in accordance with such recommendation, specifically describing them by metes and bounds, and authorizes a bona fide offer for them, and, in the case of rejection of such offer, condemnation. This is in accordance with Section 1 of the Eminent Domain Act (2 C. S. 2182) and nothing further is required to be set out in such resolution. The cases cited by Prosecutor are not applicable.

We submit that the form and contents of the resolution authorizing condemnation and the petition in condemnation are sufficient in law for the appointment of Commissioners.

#### As to Point II.

Turning to the reasons grouped under the second point in Prosecutor's brief, which ques-

tions the purpose of the condemnation and the ultimate use and disposition of the property, the Court's attention is called to the fact that the purposes are manifest. The undisputed fact is that the river has been diverted across a portion of Prosecutor's land acquired in this proceeding and the balance of the lands of the Prosecutor acquired in this proceeding, not occupied by the re-located river, have been used and are now being used by the new highway.

The brief of the Prosecutor deals exclusively with parcel numbers appearing on the Key Map (P-3). In this connection we call the Court's attention to the fact that parcel 55 has been used and is now being used for the new bed of the Cooper River and parcels 56 and 57, 52, 50 and 58 have been used and are now being used for the new highway.

It is true, as Prosecutor contends, that parcels 50, 56, 57 and 58 are outside the graded limits of the highway, the graded limits of the highway being within the bounds of parcel 52, but the State Highway Engineer has determined that such parcels are necessary for the support of the new road and the construction plans for such new road show that the sides of the road are to be sloped to or beyond the limits of parcels 50, 56, 57 and 58. The new road where it crosses Prosecutor's land is approximately six feet higher than the lands adjacent thereto and necessarily it will have to have supporting sides or embankments. The State Highway Engineer has determined such embankments to be necessary and the construction plans of said highway provide for them (Case, p. 55; Slope Map Exhibit C and Construction Plans Exhibit D).

The Appellant gives much weight to the fact that a certain plan or map, showing the slopes with respect to the property in question, was not made until June 1, 1926. (Brief of Appellant, Page 9). This is immaterial. The making of

the plan or map did not determine the need of the slopes. That was determined when the construction plans were prepared by the State Highway Engineer and approved by the State Highway Commission, by proper resolution adopted on September 8, 1925. (See Case, Page 69). The construction plans required the building of the road above the grade of the adjacent lands, and the road was built in accordance therewith. The building thereof made necessary the slopes in question. The mere making of a small detailed plan or map, by the State Highway Engineer, to show these slopes, and the effect thereof, had nothing to do with the building of the road.

What is the power of the State Highway Commission in the premises? It is found in Chapter 204 of the Laws of 1923, p. 521, which is an amendment of the original act. It provides:

"In addition to and not in limitation of its general powers the State Highway Commission shall have power;

\* \* \* \* \*

e. To construct, build, improve, widen, straighten and regrade any State Highway and for such purpose **and for any use incident thereto or connected therewith, to acquire any lands**, bridges or approaches thereto and rights therein by gift, devise, purchase or **by condemnation**, etc. \* \* \* To do and perform whatever may be necessary or desirable to effectuate the object and purposes of this act. \* \* \* These powers are to be liberally construed."

These powers have been upheld by this Court in *Cox v. State Highway Commission*, 133 Atl. 419.

The entire question of the rights and powers

of the State Highway Commission was reviewed, and favorably determined, in the most recent case of the State Highway Commission v. City of Elizabeth. 6 N. J. A. R. 246. (140 A. 335). Vice Chancellor Berry, at Page 252, said:

"Therefore, when the State of New Jersey through its Legislature says that the State Highway Commission shall have power 'to do and perform whatever may be necessary or desirable to effectuate the object and purposes' of the act of its creation, it is but another way of saying: 'You are our agent and representative; and we invest you with all of our powers in furtherance of the objects and purposes for which you are created and this declaration of authority shall be liberally construed.' What more could be asked? By what language could broader powers be given? Under these terms the state highway commission might well say, in the words of a famous French monarch, 'L'E'tat c'est moi.' The state highway commission is not a separate and distinct entity upon which the power of eminent domain has been conferred, but it is to all intents and purposes, and within the scope of its authority, the state itself; and its powers within the sphere of its activities are limited only by the powers of the State."

'It is immaterial whether the grant of power is contained in the express words of the statute or arises by necessary implication. Its force and value, when established, are no more potent in the one case than in the other.' *Van Reipen v. Jersey City*, supra."

An appeal was taken by the City of Elizabeth to this Honorable Court. The matter was submitted on briefs at the May Term, 1928. No

opinion has been rendered at the time of the preparation of this brief.

Can it be reasonably argued that the slopes necessary for the support of the main highway are not incident thereto or connected therewith?

Prosecutor raises the question of the right of the State Highway Commission to condemn any portion of his lands for the purpose of the re-location of Cooper River. We concede that the State Highway Commission would have no right to condemn lands for the re-location of a river if such re-location was not incident to or connected with the construction, repair or maintenance of a highway, but we respectfully contend that where the shifting of the bed of a river becomes necessary, as in this case, for the actual construction of the highway and carrying out a general scheme of roadway building involving millions of dollars, that the State Highway Commission has such power under the statute herein before referred to.

The Court must view the problem that confronted the State Highway Commission and the scheme that was devised to solve it, as a whole.

The Legislature commanded the building of a road or roads through the City of Camden to connect the new Delaware River bridge with Highway Routes 2, 3, and 6 (Chap. 253, Laws 1922, p. 612). In the laying out of such a road or roads great consideration should, of course, be given to the desires of the City of Camden and such new road or roads should be made to conform to any general improvement scheme adopted by such City if such conformation were reasonable. With these considerations apparently in view, the State Highway Commission and the City of Camden entered into the agreement of March 10, 1925 (P. 3, 9/17/26—p. 138). In the carrying out of said agreement and in conformity with its duty, the State Highway Commission laid out a route known as the En-

trance Road, Section 2 of which passes through the property of Prosecutor in the manner depicted on the Key Map (P-3). At this point the road as laid out occupies for a distance of several hundred feet, the entire bed of Cooper River, a navigable stream, and also cuts off a bend in said river. Manifestly, the road could not reasonably be built longitudinally along the bed of a river without destroying the navigability of the river and the State Highway Engineer devised the plan portrayed on the Key Map (P-3) of moving the bed of the river a short distance to the south of its old location in order that the Entrance Road might occupy the old river bed. Without such moving of the river, the road could not be built in the location agreed upon by the State Highway Commission and the City of Camden, therefore, the moving of the river was necessary for the construction of the road. But the State Highway Commission has the power to condemn lands for any use incident to or connected with the building of a State Highway (Chap. 204, Laws 1923, p. 521, Sec. 8). Is it not plain then that the condemnation of parcel 55 of Prosecutor's land which is taken for the bed of the relocated river is entirely lawful and justified.

Prosecutor also makes a point as to what the ultimate use and disposition of the lands outside of the travelled bed of the highway are going to be. As to the ultimate use, it is obvious that so long as the highway and the river remain in their present position, said lands will be used as they are now being used. So far as the ultimate disposition of the title to the lands is concerned, we respectfully submit that this question cannot be raised in these proceedings. It is our understanding that the only questions brought up on this writ are (1) the authority of the State Highway Commission to condemn; (2) the necessity of these lands for public use.

There is no attack upon the authority of the State Highway Commission to condemn. The necessity of these lands for public use is apparent because they are actually being used for highway purposes or a use incident thereto or connected therewith. There is no legal evidence that the State Highway Commission contemplates a reconveyance of any of the property in question. Admitting for the sake of argument, but not conceding it to be true, that the State Highway Commission contemplates a reconveyance of a portion of these lands when this improvement has been completed, this would not vitiate the condemnation proceedings so long as the purpose of the condemnation is the acquisition of the lands for public use followed, as in this case, by actual public use.

A condemnor can convey property acquired in condemnation proceedings to a third party subject to the use contemplated in those proceedings. 20 C. J., p. 548. The right of the State Highway Commission to convey lands theretofore acquired for highway purposes is found in Chap. 96, Laws 1926, p. 152.

### Conclusion

As a practical proposition, we cannot lose sight of the fact that the entire work is finished, as previously stated. The road in question, supported by the slopes referred to, and which are upon Parcels 50, 56, 57, 58' is now one of the main arteries to the Delaware River Bridge, and one of the most travelled highways in the State. As a matter of fact, the necessary fill, which made the slopes, was finished before this case was argued in the Supreme Court on January 18, 1927.

The various contentions of the Appellant fall under the weight of the fact that all of the land described in the condemnation petition is

actually being used for the road and the slopes in support thereof.

May we ask the Court to bear in mind that it is the State of New Jersey that is the condemning party in this proceeding; that the land being taken is for the public benefit and taken in accordance with the legislative fiat; that the Prosecutor-Appellant herein will receive the fair market value of its property and damages to the remainder; that the State Highway Engineer, the State Highway Commission, the City of Camden, the Board of Commerce and Navigation and the United States Government have all agreed upon this general scheme and no one citizen should be permitted to upset these proceedings for any technical reason which does not interfere with his substantial rights.

We respectfully submit the appeal should be dismissed.

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Dated October 4, 1928.

