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RECEIVED

1911

1. The first of the year was a very dry one, and the crops were much injured by the drought. The weather was very hot and the crops were much injured by the drought. The weather was very hot and the crops were much injured by the drought.

2. The second of the year was a very wet one, and the crops were much injured by the drought. The weather was very hot and the crops were much injured by the drought. The weather was very hot and the crops were much injured by the drought.

3. The third of the year was a very dry one, and the crops were much injured by the drought. The weather was very hot and the crops were much injured by the drought. The weather was very hot and the crops were much injured by the drought.

Affidavit on Application for Certiorari.

State of New Jersey, }
County of Hudson, } ss.:

EMANUEL GROSS, being duly sworn, on his oath deposes and says that he is the owner of the lands and premises situated on the Northwesterly corner of Bergen Square and Bergen Avenue, Jersey City, N. J., which comprises a lot of land approximately ninety-five (95) feet wide in front and rear, and one hundred and fifty (150) feet in depth; known as No. 895 Bergen Avenue; that proceedings were recently taken by the City of Jersey City, through its Commissioners of Assessments, for the condemnation of lands along the Easterly and Westerly sides of Bergen Avenue, for the widening of said avenue, from the Hudson County Boulevard to Bergen Square, and for the assessments of lands along said avenue for benefits claimed to have resulted to said lands from such widening of said avenue; that in the same proceeding, through its said Commissioners of Assessments, condemned lands along Sip Avenue, from Summit Avenue to Bergen Avenue, for the widening of said Sip Avenue; that of deponent's said lands, the said City of Jersey City proposes to take a strip the entire width thereof, to wit: about ninety-five (95) feet by a depth of five (5) feet, and have awarded to deponent for the land so taken, the sum of Forty-five hundred Eighty-

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Affidavit on Application for Certiorari.

10 nine Dollars and Fifty-seven Cents (\$4,589.57), and
 for the damage to the fence running along the
 front line thereof, the sum of Two hundred dol-
 lars (\$200.00), making in all an award of Forty-
 seven Hundred Eighty-nine Dollars and Fifty-
 seven Cents (\$4,789.57); that deponent was as-
 20 sessed for benefits as aforesaid against his remain-
 ing said property, the sum of Sixty-nine hundred
 Ninety-eight dollars and Fifty cents (\$6,998.50),
 making the charge against deponent's said lands
 Twenty-two hundred and Eight dollars and Nine-
 ty-three Cents (\$2,208.93) for benefits in excess of
 damages; that the report of the said Assessment
 Commissioners of Jersey City was filed with the
 City Clerk of said city on May 15, 1923, and such
 30 proceedings were had thereon; that the said re-
 port, award and assessment were confirmed by
 the Board of Commissioners of Jersey City on
 June 12, 1923, and on said date a bill was rendered
 to deponent by the said City of Jersey City, for
 Twenty-two Hundred and eight Dollars and Nine-
 ty-three Cents (\$2,208.93), upon which interest at
 the rate of six per cent (6%) is chargeable after
 thirty days from the date of said confirmation.

30 That the locality of said Bergen Avenue, where
 said widening is proposed to be made, is a resi-
 dential section of said city, and very little traffic
 emanates therefrom, and the said proposed widen-
 ing of said street is intended not for the benefit of
 the property abutting upon said street or avenue,
 but for the purpose of relieving the congestion of
 traffic coming to neighboring streets from else-
 where, and no benefit whatever will be derived
 40 by deponent, or his said property, from said
 widening.

Affidavit on Application for Certiorari.

Deponent further says that no part of the said improvement, for the widening of said Bergen Avenue, or Sip Avenue, has as yet been commenced, and that deponent is advised that no assessments for benefits may lawfully be made until the completion of said improvement, and that such condemnation and assessments for benefits may not be made in one proceeding such as was taken in this instance, and that it is improper and unlawful for the City of Jersey City to assess the property abutting upon said streets, so proposed to be widened, solely for the cost of the making of such improvement, but that same should be assessed against the city at large, or partly against the property abutting on streets neighboring the said improvement.

Deponent, therefore, prays that a Writ of Certiorari be issued out of the New Jersey Supreme Court, directly to the Board of Commissioners of the City of Jersey City requiring said Commissioners to certify the said proceedings to the said New Jersey Supreme Court for review.

EMANUEL GROSS (L. S.)

Sworn and subscribed to before me,
this 11th day of July, 1923.

Leo Blumberg,
Attorney at Law
of N. J.

Writ of Certiorari.

NEW JERSEY: SS.:

THE STATE OF NEW JERSEY, TO FRANK
 HAGUE, JOHN SAUL, A. HARRY MOORE,
 MICHAEL I. FAGEN and WILLIAM B.
 QUINN, BOARD OF COMMISSIONERS OF
 THE CITY OF JERSEY CITY, and THE MAY-
 OR and ALDERMEN OF JERSEY CITY, RE-
 SPONDENT: GREETING:

We being willing, for certain reasons, to be cer-
 tified of and concerning all proceedings, resolu-
 tions, ordinances, reports, schedules and maps, in
 the matter of the widening of Bergen Avenue, be-
 tween Hudson County Boulevard and Bergen
 Square, and of the widening of Sip Avenue, be-
 tween Summit Avenue and Bergen Avenue, in
 Jersey City, as is said, do command you that the
 said proceedings, resolutions, ordinances, reports,
 schedules and maps, in the matter of the widen-
 ing of Bergen Avenue, between Hudson County
 Boulevard and Bergen Square, and of the widen-
 ing of Sip Avenue, between Summit Avenue and
 Bergen Avenue, in Jersey City, with all things
 touching the same, together with this Writ, you do
 distinctly and openly send, under your hands and
 seals to our Justices of our said Supreme Court of
 Judicature, at Trenton, on the 30th day of July
 instant, that our said Justices may cause to be
 done thereupon what of right, and according to
 the laws and constitution of this State ought to be
 done.

Endorsement on Writ of Certiorari.

WITNESS, WILLIAM S. GUMMERE, ESQUIRE,
Chief Justice of our said Supreme Court, at Tren-
ton, this 12th day of July, nineteen hundred and
Twenty-three.

EDWARD J. KELLEHER,
Clerk.

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GROSS & GROSS,
Attorneys.

Endorsement on Writ of Certiorari.**NEW JERSEY SUPREME COURT.**

EMANUEL GROSS,
Prosecutor,

v.

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FRANK HAGUE, *et al.*, and the
MAYOR and ALDERMEN OF JERSEY
CITY,

Respondent.

WRIT OF CERTIORARI.

Returnable July 30, 1923.

GROSS & GROSS,
Attorneys of Prosecutor,
15 Exchange Pl.,
Jersey City, N. J.

30

Allocatur,
July 12, 1923,
F. J. Swayze,
J. S. C.

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Return to Writ.

TO THE HONORABLE, THE JUSTICES OF THE
SUPREME COURT OF JUDICATURE OF
NEW JERSEY:

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In obedience to the command of this Writ to Frank Hague, John Saul, A. Harry Moore, Michael I. Fagen, and William Quinn, Board of Commissioners of the City of Jersey City, and The Mayor and Aldermen of Jersey City, directed, I, City Clerk of Jersey City, acting on behalf of said Frank Hague, John Saul, A. Harry Moore, Michael I. Fagen and William B. Quinn, Board of Commissioners of the City of Jersey City, and The Mayor and Aldermen of Jersey City, do hereby certify and send to the Honorable Justices of the Supreme Court of Judicature of New Jersey, the ordinance

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passed by the said Board of Commissioners referred to in said Writ, and all papers, reports, schedules, maps, and things touching and concerning proceedings before said Commissioners, in the matter referred to in said Writ, as fully and entirely as they remain before the said Board of Commissioners and before me as Clerk of the said Board of Commissioners.

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IN WITNESS WHEREOF, I have hereunto set my hand and the seal of The Mayor and Aldermen of Jersey City this 28th day of July, 1923.

(SEAL)

N. E. FEURY,

Asst. City Clerk of The Mayor
and Aldermen of Jersey City.

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Return to Writ.

The following is a true copy of part of the minutes of the Board of Commissioners of the Mayor and Aldermen of Jersey City, of a meeting of said Board held in the Assembly Chamber, City Hall, Jersey City, January 23, 1923:

BY COMMISSIONER FAGEN:

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INTRODUCING an ordinance entitled: "An Ordinance to improve all that part of Bergen Avenue between Hudson Boulevard and Bergen Square and Sip Avenue between the westerly line of Summit Avenue and the proposed easterly line of Bergen Avenue, by widening same in accordance with the hereinafter mentioned descriptions."

(Said Ordinance hereinafter set forth.)

RECEIVED AND ORDERED PLACED ON FILE IN THE OFFICE OF THE CITY CLERK FOR A PERIOD OF TWO WEEKS FOR THE PURPOSE OF PUBLIC INSPECTION.

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Due proof of mailing of following notice filed:

PUBLIC NOTICE.

To all persons whose lands or buildings, or both, may be affected by, or who may be interested in the following improvement:

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"THE IMPROVEMENT OF ALL THAT PART OF BERGEN AVENUE BETWEEN HUDSON BOULEVARD AND BERGEN SQUARE, AND SIP AVENUE BETWEEN THE WESTERLY LINE OF SUMMIT AVENUE AND THE PROPOSED EASTERLY LINE OF BERGEN AVENUE BY WIDENING SAME,"

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and as more particularly shown on plan attached

Return to Writ.

to the original ordinance covering such improvement now on file in the Office of the City Clerk, City Hall, Jersey City, N. J.

Notice is hereby given as follows:

- 10 (1) An ordinance providing for such improvement was introduced at a meeting of the Board of Commissioners of Jersey City, Tuesday, January 23rd, 1923, said ordinance being as follows:

20 AN ORDINANCE to improve all that part of Bergen Avenue between Hudson Boulevard and Bergen Square and Sip Avenue between the westerly line of Summit Avenue and the proposed easterly line of Bergen Avenue, by widening same in accordance with the hereinafter mentioned description.

Whereas, it is deemed advisable by the Director of the Department of Streets and Public Improvements, that Bergen Avenue between Hudson Boulevard and Bergen Square, and Sip Avenue between the westerly line of Bergen Avenue, should be improved.

Therefore, the Board of Commissioners of Jersey City, do ordain:

- 30 That all that part of Bergen Avenue between Hudson Boulevard and Bergen Square and Sip Avenue between the westerly line of Summit Avenue and the proposed easterly line of Bergen Avenue in accordance with the proposed new widening shall be improved as follows:

Between Hudson Boulevard and Sip Avenue, the Avenue to be 56.16 feet in width at the Hudson Boulevard and 58 feet in width at Sip Avenue.

- 40 Between Sip Avenue and Bergen Square, the street to be 80 feet in width being 40.00 feet meas-

Return to Writ.

ured at right angles on either side of the following described center line.

Beginning at a point on the southerly line of Sip Avenue if extended in a westerly direction distant 23.14 feet westerly from the present southeasterly corner of Sip Avenue and Bergen Avenue; thence running in a southerly direction in a straight line parallel to the present line of Bergen Avenue 547.6 feet to Bergen Square.

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Sip Avenue between the westerly line of Summit Avenue and the proposed easterly line of Bergen Avenue to be 75 feet in width, being 37.50 feet measured at right angles in a southerly direction from the present northerly line of Sip Avenue.

The lands required to be taken for the making of said improvement, are located and described as follows (Here following particular descriptions, describing the lands proposed to be taken on the westerly side of Bergen Avenue as a strip approximately 547.6 feet in front on Bergen Avenue by about 5 feet in depth, including the lands of prosecutor).

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Also a description of lands proposed to be taken on the easterly side of Bergen Avenue describing a strip about 540 feet in front on Bergen Avenue by approximately 20 feet in depth.

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Follows also a description of lands proposed to be taken on the southerly side of Sip Avenue, describing a strip of land fronting about 695 feet on Sip Avenue by about 21 feet deep, and, running from the easterly side of Bergen Avenue to the westerly side of Summit Avenue.

After particular descriptions of above (which descriptions alone are here omitted, but above general descriptions substituted) the notice proceeds as follows:

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(2) It is the intention of the Board of Commissioners of said city, being the governing body, to consider the undertaking of such improvement on

TUESDAY, FEBRUARY 6, 1923

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at 3 o'clock p. m. in the Assembly Chamber, City Hall, Jersey City, N. J.

(3) At such time and place said governing body will also consider the said ordinance and determine upon its adoption or rejection.

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(4) All persons whose lands and buildings thereon may be affected by such proposed improvement, or who may be interested therein, may attend such hearing and be heard concerning such proposed improvement, in accordance with provisions of Chapter 152, P. L. 1917, and the various supplements thereto and amendments thereof, and also be heard upon the adoption of said ordinance.

30

(5) The said ordinance is now on file in the office of the City Clerk, City Hall, Jersey City, and open to public inspection.

By order of the Board of Commissioners of Jersey City.

Dated City Clerk's Office, Jersey City,
January 27, 1923.

EDWARD J. HOLLAND,
City Clerk.

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The following is a true copy of part of the

Return to Writ.

Minutes of the Board of Commissioners of The Mayor and Aldermen of Jersey City of a meeting of said Board held in the Assembly Chamber, City Hall, Jersey City, February 6, 1923.

IMPROVEMENT HEARING.

This time and place having been set out and advertised for the purpose of considering the adoption of an ordinance entitled "An Ordinance to improve all that part of Bergen Avenue between Hudson Boulevard and Bergen Square, and Sip Avenue between the westerly line of Summit Avenue and the proposed easterly line of Bergen Avenue by widening same," the City Clerk called for anyone who might desire to protest against the adoption of said ordinance. Mrs. Gardeen appeared and asked if her property would remain in the same status as it stood under the old ordinance, to which Commissioner Fagen responded that her property would retain its position as under the old proceedings.

No other persons appearing to protest and no written objections being received, Commissioner Fagen moved the adoption of the ordinance as follows:

RESOLVED, That the following ordinance do now pass:

AN ORDINANCE to improve all that part of Bergen Avenue between Hudson Boulevard and Bergen Square and Sip Avenue between the westerly line of Summit Avenue and the proposed easterly line of Bergen Avenue, by widening same in accordance with the hereinafter mentioned description.

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Return to Writ.

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Whereas, it is deemed advisable by the Director of the Department of Streets and Public Improvements, that Bergen Avenue between Hudson Boulevard and Bergen Square, and Sip Avenue between the westerly line of Bergen Avenue, should be improved.

Therefore, the Board of Commissioners of Jersey City, do ordain:

20

That all that part of Bergen Avenue between Hudson Boulevard and Bergen Square and Sip Avenue between the westerly line of Summit Avenue and the proposed easterly line of Bergen Avenue in accordance with the proposed new widening shall be improved as follows:

Between Hudson Boulevard and Sip Avenue, the Avenue to be 56.16 feet in width at the Hudson Boulevard and 58 feet in width at Sip Avenue.

Between Sip Avenue and Bergen Square, the street to be 80 feet in width being 40.00 feet measured at right angles on either side of the following described center line.

30

Beginning at a point on the southerly line of Sip Avenue if extended in a westerly direction distant 23.14 feet westerly from the present southeasterly corner of Sip Avenue and Bergen Avenue; thence running in a southerly direction in a straight line parallel to the present line of Bergen Avenue 547.6 feet to Bergen Square.

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Sip Avenue between the westerly line of Summit Avenue and the proposed easterly line of Bergen Avenue to be 75 feet in width,

Return to Writ.

being 37.50 feet measured at right angles in a southerly direction from the present northerly line of Sip Avenue.

The lands required to be taken for the making of said improvement, are located and described as follows like descriptions as above.

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The City Clerk read the foregoing ordinance as ready for final passage.

The roll being called, the ordinance was passed by the following vote:

Yeas—Commissioners Fagen, Moore, Quinn, Saul and Mayor Hague.

Nays: None.

By Commissioner Fagen:

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RESOLVED, That the hearing on the foregoing ordinance do now close.

ADOPTED.

Yeas—Commissioners Fagen, Moore, Quinn, Saul and Mayor Hague.

Nays—None.

PUBLIC NOTICE.

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To all persons whose lands may be affected by, or who may be interested in the following proposed improvement:

Take notice that the following ordinance entitled:

“An Ordinance to improve all that part of Bergen Avenue between Hudson Boulevard and Bergen Square, and Sip Avenue between the westerly line of Summit Avenue and the proposed easterly line of Bergen Avenue, by widening same,” in ac-

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Return to Writ.

cordance with the provisions of Chapter 152, Laws of 1917, and the various supplements thereto and amendments thereof, was passed by the Board of Commissioners of Jersey City at its meeting held February 6th, 1923.

10 By order of the Board of Commissioners of Jersey City.

Dated City Clerk's office, Jersey City, Feb. 9th, 1923.

Insert: Feb. 10th, 1923.

Send sworn proof and extra clippings.

EDWARD J. HOLLAND,
City Clerk.

PUBLIC NOTICE.

20 To Whom It May Concern: Pursuant to an ordinance setting forth the intention to widen Bergen Avenue, between Hudson Boulevard and Bergen Square, and to widen Sip Avenue, between the westerly line of Summit Avenue and the proposed easterly line of Bergen Avenue, presented to the Honorable Board of Commissioners of Jersey City, N. J., at a meeting held the 23rd day of January, 1923, and duly passed at a meeting held the 6th

30 day of February, 1923, all in conformity with the provisions of Chapter 152, of the Laws of 1917, and the various supplements thereto and amendments thereof, you are hereby notified that the Commissioners of Assessments for local improvements in and for Jersey City, N. J., will meet at their office, Room 40, City Hall, Jersey City, N. J., on Wednesday, the 7th day of March, 1923, at 2 o'clock P. M., to appraise and determine the value of the land

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Return to Writ.

and real estate to be taken, and the damages that may be sustained by reason of taking the same.

The land to be taken is described as follows: Bergen Avenue, between Hudson Boulevard and Sip Avenue, to be widened to 56.16 feet in width at Hudson Boulevard and 58 feet in width at Sip Avenue, the same requiring a strip of land, 10 feet in width, off the present westerly side of Bergen Avenue, between Hudson Boulevard and Sip Avenue.

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Bergen Avenue, between Sip Avenue and Bergen Square, to be 80 feet in width, being 40 feet, measured at right angles, on either side of the following described center line, to wit: Beginning at a point in the southerly line of Sip Avenue, if extended in a westerly direction, distant 23.14 feet, measured westerly from the present southeasterly corner of Sip Avenue and Bergen Avenue, from thence running in a southerly direction in a straight line, parallel to the present line of Bergen Avenue, 547.60 feet to Bergen Square.

20

Sip Avenue between the westerly line of Summit Avenue and the proposed easterly line of Bergen Avenue to be 75 feet in width, the center line thereof being 37.50 feet, measured at right angles in a southerly direction, from the present northerly line of Sip Avenue.

30

The land and real estate to be taken is more fully described and shown in detail, as will appear by reference to the said ordinance and map accompanying the same.

At which time and place, said Commissioners of Assessments will meet to hear all parties interested, who desire to be heard before them, on the value of the land and real estate to be taken and

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Return to Writ.

the damages that any owner, or owners, of such land or real estate, or of any interest therein, may sustain by reason of taking the same.

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JOHN F. KENNEDY,
THOMAS J. CARROLL,
FRANK M. MARTENS,
Commissioners of Assessments.

Dated Jersey City, N. J.,
February 21, 1923.

Due proof made of mailing above notice.

20

A hearing of the Commissioners of Assessment was held in Room 40, City Hall, Jersey City, N. J., on Wednesday, the 7th day of March, 1923, at 2 o'clock to appraise and determine the value of land and real estate to be taken and the damage that might be sustained by reason of taking the same, under an ordinance entitled "An Ordinance to improve all that part of Bergen Avenue between Hudson Boulevard and Bergen Square, and Sip Avenue between the westerly line of Summit Avenue and the proposed easterly line of Bergen Avenue, by widening same, in accordance with the hereinafter mentioned description."

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No appearance having been entered, and no communication having been received, from the prosecutor in this case, the minutes of said meeting are therefore omitted from this return.

Said minutes would only disclose the testimony taken at said hearing offered by the persons who appeared and their various witnesses respecting the value of land to be taken.

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Return to Writ.

In the Matter
of the

Widening of Bergen Avenue between Hudson County Boulevard and Bergen Square, and of the widening of Sip Avenue between the present westerly line of Summit Avenue and the proposed easterly line of Bergen Avenue.

Commissioners' Report.

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TO THE BOARD OF COMMISSIONERS OF THE
MAYOR AND ALDERMEN OF JERSEY CITY:

We, the undersigned, Commissioners of Assessment of the City of Jersey City, under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey entitled "An Act Concerning Municipalities, approved March 27, 1917," and the several Acts supplementary thereto and amendatory thereof, and pursuant to an ordinance setting forth the intention to make said improvement duly passed at a meeting of the Board of Commissioners of The Mayor and Aldermen of Jersey City, held on the 6th day of February, 1923, being charged with the duty of making assessments for benefits conferred by said improvement and the making of awards for damages for the taking of lands and real estate and such incidental damages as may be sustained by the taking as aforesaid for the purpose of said improvement, do certify and report as follows:

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30

That, having duly qualified as provided by law and having inspected the land and real estate to be taken, we did proceed to fix a time and place, to wit, the 7th day of March, 1923, at Room 40 in the

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Return to Writ.

City Hall, Jersey City, N. J., at 2 o'clock in the afternoon, for a public hearing when and where we would hear all parties in interest who should present themselves to be heard concerning said improvement.

10 That public notice of said meeting was duly published as required by law in the Jersey Journal and Hudson Observer, two newspapers circulating in the City of Jersey City.

20 That a copy of said notice published as aforesaid was mailed to the owners of all land and real estate affected by the proposed improvement, addressed to their last known post office address, a copy of said notice and proof of publication thereof having been duly filed in the office of the Commissioners of Assessments for Jersey City.

That on the 7th day of March, 1923, at the time and place fixed as aforesaid, the undersigned did meet and hear all persons who appeared having any interest in or concerning the lands or real estate affected by said improvement.

30 That after the completion of said hearing aforesaid this Board did meet on various dates for the purpose of making awards for the land and real estate taken, determining the damages to be sustained by reason of such taking, determining the total cost of the said improvement and the making of assessments for benefits conferred by reason of said improvements.

That the total cost of the whole work for such improvement is the sum of \$572,570.49.

40 That a schedule showing the names of the owners of land and real estate affected by said improvement, the amount of awards made and benefits derived for or by each lot or parcel of land and real estate affected as aforesaid, and the total cost of said improvement, together with two maps

Return to Writ.

showing each lot or parcel of land and real estate taken for said improvement, are hereto annexed and made part hereof.

That the total amount of the awards made to the owners of the lands or real estate taken or affected by said improvement is the sum of \$564,-120.49.

10

That the total amount of benefits assessed upon the lands and real estate actually, specially or peculiarly benefited by said improvement is the sum of \$268,560.00.

That the amount of the cost of the improvement in excess of the amount of benefits assessed is the sum of \$304,010.49, which sum is to be paid by the City at large and paid for in the manner provided by law.

20

That we have appraised and determined the value of the interest of each owner of land or real estate to be taken, and have made a just and equitable assessment of the amount of benefits conferred upon each parcel of land or real estate that has been benefited by said improvement.

That no lands or real estate other than those assessed for benefits have received or acquired any actual, peculiar or special benefits by reason of the said improvement.

30

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 14th day of May, 1923.

JOHN F. KENNEDY,
THOMAS J. CARROLL,
FRANK M. MARTENS.

Attest:

M. J. McEvoy,
Secretary.

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Above report verified.

Return to Writ.

PUBLIC NOTICE.

10 Notice is hereby given that the Commissioners of Assessments of Jersey City have filed with the City Clerk and Clerk of the Board of Commissioners of Jersey City their map, report and schedule of awards for the

20 WIDENING OF BERGEN AVENUE BETWEEN HUDSON COUNTY BOULEVARD AND BERGEN SQUARE, AND OF THE WIDENING OF SIP AVENUE, BETWEEN THE PRESENT WESTERLY LINE OF SUMMIT AVENUE AND THE PROPOSED EASTERLY LINE OF BERGEN AVENUE, in accordance with the provisions of Chapter 152, Laws of 1917, and the various supplements thereto and amendments thereof.

Said map, report and schedule, showing the lands to be taken, the awards for damages and the benefits assessed, are now on file in the Office of City Clerk, City Hall, Jersey City, N. J., for the purpose of public inspection.

Notice is hereby further given that the Board of Commissioners of Jersey City have fixed

30 TUESDAY, JUNE 5th, 1923,

at 3 o'clock p. m. (daylight saving time) in the Assembly Chamber, City Hall, Jersey City, N. J., as the time and place when and where public hearing will be given to all persons having interest therein; and at that or any subsequent meeting the Board of Commissioners, after considering all matters offered at said meeting, and the said map, report and schedule of awards, etc., may adopt and

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Return to Writ.

confirm, reject or alter the same as by them may seem proper.

By order of the Board of Commissioners of Jersey City.

Dated City Clerk's Office,
Jersey City, May 18, 1923.

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EDWARD J. HOLLAND,
City Clerk.

Due proof of mailing and publication of above notice filed.

The following is a true copy of part of the Minutes of the Board of Commissioners of The Mayor and Aldermen of Jersey City of a meeting of said Board held in the Assembly Chamber, City Hall, Jersey City, June 5th, 1923:

20

This time and place having been set and public notice advertised for the purpose of considering the confirmation of the final map, report and schedule of awards filed by the Commissioners of Assessments for the widening of Bergen Avenue between Hudson County Boulevard and Bergen Square, and of the widening of Sip Avenue between the present westerly line of Summit Avenue and the proposed easterly line of Bergen Avenue, in accordance with the provisions of Chapter 152, Laws of 1917, and the various supplements thereto and amendments thereof, the City Clerk called for anyone who desired to be heard thereon, and the following appeared:

30

Mr. Robert Carey, appeared representing John T. Rowland owner of property known as Lot B-2, Block 1866, Sip Avenue and submitted written statement with objections, and

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Mr. Darling, representing the Darling Realty Corp., also presented written objections;

Return to Writ.

Mr. John T. Gough presented written objections for James T. Gough and wife, and Edward S. Lynch and wife;

10 Counsellor Miller presented objections on behalf of E. F. Jones Est., Commissioner's #29, R. W. A. English Commissioner's #21, 22, 31 and Morgan Realty Company, Commissioner's #30 and 29, who stated that this is a general improvement and that the abutting property owners do not receive any special benefits and should be charged to the City at large.

20 Mr. Runyon, representing the Universal Security Company, appeared and stated that the assessment is confined to the area of widening alone and should be spread over a wider area and if not paid by the City at large should be spread over and along the abutting streets and side streets.

No other persons appeared to protest and no other written protests being received, Commissioner Fagen moved that the protests be referred to him for further consideration and that the hearing on the confirmation of the map and report and schedule of awards be adjourned and continued for one week.

30 BY COMMISSIONER FAGEN:

RESOLVED, That the protests presented this day upon the confirmation of the final map, report and schedule of awards for the widening of Bergen and Sip Avenue be referred to the Director of Streets and Public Improvements for further consideration, and that the hearing thereon be adjourned and continued for a period of one week

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to Tuesday, June 12th, 1923, at 3 o'clock p. m., in the Assembly Chamber, City Hall, Jersey City.

ADOPTED:

Yeas: Commissioners Fagen, Moore, Quinn, Saul and Mayor Hague.

Nays: None.

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The following is a true copy of part of the Minutes of the Board of Commissioners of The Mayor and Aldermen of Jersey City of a meeting of said Board held in the Assembly Chamber, City Hall, Jersey City, June 12th, 1923.

This time and place having been set for a continuation of hearing upon the confirmation of map, report and schedule of awards filed by the Commissioners of Assessments for the widening of Bergen Avenue between Hudson County Boulevard and Bergen Square, and of the widening of Sip Avenue between the present westerly line of Summit Avenue and the proposed easterly line of Bergen Avenue, the City Clerk called for any one who wished to be heard. No one appeared to protest and written protests being received, Commissioner Fagen moved the confirmation of said map, report and schedule.

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By Commissioner Fagen:

WHEREAS, this Board met on the 5th day of June, 1923, to hear, consider and adjudicate upon objections which might be presented against the confirmation of the map and report in the matter of acquiring lands for the widening of Bergen Avenue between Hudson Boulevard and Bergen Square, and Sip Avenue between the present westerly line of Summit Avenue and the proposed

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Return to Writ.

easterly line of Bergen Avenue, conformably to the provisions of Chapter 152, Laws of 1917, and the various supplements thereto and amendments thereof; and

10 WHEREAS, four protests were filed in writing, namely, that of John T. Rowland, Edward S. Lynch and wife, James T. Gough and wife, and Darling Realty Corporation; and

WHEREAS, this Board has considered each and all the protests presented at such meeting and have adjudicated upon the same and have determined that neither all or any of them are sufficient; therefore be it

20 RESOLVED, that the map and report as filed by the Commissioners of Assessment on the 15th day of May, 1923, and that the awards for lands to be taken be and the same are hereby approved and confirmed; and

30 FURTHER RESOLVED, that warrants be ordered drawn on the City Treasurer in favor of the following named persons for the amounts set opposite their respective names, and that the City Clerk be and he is hereby authorized to tender said warrants to the said persons in payment of said awards for lands taken, and that the tender and payment to said persons in the amounts set opposite their respective names be made under the supervision and direction of Corporation Counsel for the City:

Return to Writ.

	Block	Lot	Comm'rs	Damages in Excess of Benefits	
Owner's Name	No.	No.	No.		
William B. Harris, <i>et ux</i>	1871	4M	4	\$ 2617.36	
Rebecca Gardeen	"	4L	5	2540.31	
Est. of Max Ashkenas.....	"	4K	6	2456.32	
Edward S. Lynch, <i>et ux</i>	"	4B	7	2599.00	
The Boulevard Company....	1864	33B	12	4556.25	10
Mathias Last, <i>et ux</i>	1872	1A/2A	14	15887.50	
Elizabeth A. Bailey.....	"	3A	15	7152.75	
Sadie R. Tuttle and Marjorie Schermerhorn	"	4A	16	6950.25	
Anthony Michel	"	5A/6A	17	11109.00	
" "	"	A1	18	14503.50	
Darling Realty Corp.....	1868½	42E	19	39515.00	
Universal Security Co.....	"	42C	20	7391.50	
Thomas Fallon, Jr., <i>et ux</i>	"	1	21	46000.00	
R. W. A. English and Morgan Realty Company	"	1	21	30445.46	
R. W. A. English, <i>et ux</i>	"	2A	22	5896.00	20
Benj. A. Margulies, <i>et ux</i> , and Max Gerstenfeld, <i>et ux</i>	"	3	23	7700.00	
The Evening Journal Assn....	"	4/5	24	13556.00	
" " " " " " " " " " " "	"	6	25	8723.00	
Universal Security Co.....	"	7/8	26	16654.00	
" " " " " " " " " " " "	"	9/10	27	3606.00	
Plaza Apartment Hotel Corp.	1868	17/18	28	4591.00	
Estate of Enos F. Jones.....	"	19/20	29	18161.00	
Morgan Realty Company.....	"	21	30	11539.94	
R. W. A. English, <i>et ux</i>	"	22	31	14226.90	
A. Makray, Inc.....	1867	1A	32	11224.22	
Eliza G. Carell.....	"	3A	33	8476.38	
Mary F. Van Riper.....	"	4	34	6188.42	
Eliza G. Carell.....	"	45A	35	47971.30	30
Total				\$372238.36	

And be it FURTHER RESOLVED, that the City Clerk be directed to file a copy of said assessment map and schedule with the City Collector for collection June 12, 1923.

ADOPTED.

10 Yeas—Commissioners Fagen, Moore, Quinn and
Mayor Hague.
Nays—none.

By Commissioner Fagen:

20 RESOLVED, That the hearing on the confirmation of the map, report and schedule of awards for the widening of Bergen Avenue between Hudson County Boulevard and Bergen Square, and Sip Avenue between the present westerly line of Summit Avenue and the proposed easterly line of Bergen Avenue, be and the same do now close.

ADOPTED.

Yeas—Commissioners Fagen, Moore, Quinn and
Mayor Hague.
Nays—none.

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Reasons in Certiorari.

(Served and Filed August 8, 1923.)

NEW JERSEY SUPREME COURT,

EMANUEL GROSS,
Prosecutor,

v.

FRANK HAGUE, JOHN SAUL, A.
HARRY MOORE, MICHAEL I. FAGEN
and WILLIAM B. QUINN, BOARD
OF COMMISSIONERS OF THE CITY
OF JERSEY CITY, and the MAYOR
and ALDERMEN OF JERSEY CITY,
Respondents.

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The said prosecutor, EMANUEL GROSS, by
Gross & Gross, his attorneys, comes and prays that
the ordinance of the Board of Commissioners of
the City of Jersey City, providing for the widening
of Bergen Avenue, from Sip Avenue to Bergen
Square, and of Sip Avenue, from Summit Avenue
to Bergen Avenue, adopted June 12, 1923, and the
resolution of the said Board of Commissioners of
said City of Jersey City, approving the report and
schedules of the Assessment Commissioners of
Jersey City, passed on June 12th, 1923, for the
widening of said streets, and the assessments made
thereunder, as well as all the proceedings of said
City of Jersey City, the Assessment Commis-
sioner thereof, and the Board of Commissioners
of said City, resulting in said ordinance and reso-
lution, may be set aside and reversed and for noth-
ing holden, for the following reasons:

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Reasons in Certiorari.

1. That the said proceedings are improper and illegal and were not taken in conformity with lawful authority on the part of said City of Jersey City.

10 2. That therein and thereby the lands of the prosecutor and of others, abutting upon said streets so proposed to be widened, are assessed for benefits before any improvement has been commenced or contracted for.

20 3. That the said City of Jersey City, its Assessment Commissioners, and the Board of Commissioners thereof, have no lawful authority to impose assessments for benefits, and the making of the proposed improvement and the conferring of benefits upon adjoining lands thereby.

4. That the assessments are illegal because no benefits were in fact conferred upon the lands of the prosecutor and other owners of lands abutting upon said streets so proposed to be widened.

5. That the widening of said streets will not in fact confer any benefit upon the lands of the prosecutor, and the assessment against his lands, for any such supposed benefit, is illegal.

30 6. That no special benefit has accrued to the lands of the prosecutor by the proposed widening of said streets and the assessment against prosecutor's lands, for any such proposed or prospective benefits, is contrary to law.

40 7. The said ordinance and said resolution are in divers other respects illegal, unjust and oppressive, and should be set aside and be for nothing holden.

Stipulation.

8. That there was no legal and proper notice given to the prosecutor herein of any proceedings to impose assessments for benefits, in accordance with law.

Dated August 8th, 1923.

GROSS & GROSS,
Attorneys for Prosecutor.

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Stipulation.

(Filed July 31, 1923.)

NEW JERSEY SUPREME COURT.

EMANUEL GROSS, Prosecutor, <i>v.</i> FRANK HAGUE, <i>et al.</i>, and the MAYOR and ALDERMEN OF JERSEY CITY, Respondents.	}	On Certiorari.
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It is hereby stipulated and agreed, by and between the attorneys of the Prosecutor and Respondents, that the facts in this matter are as follows:

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The Prosecutor, Emanuel Gross, at and before the commencement of the proceedings sought to be reviewed on this Writ, was and now is the owner of a plot of land on the westerly side of Bergen Avenue, Jersey City, which plot of land is approximately ninety-six (96) feet in width along Bergen Avenue, by a depth of approximately one hundred fifty (150) feet, and adjoining Bergen

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Stipulation.

Square, and located at the extreme southerly end on the westerly side of Bergen Avenue, where the said street is proposed by the proceedings under review to be widened;

10 That by said proceedings a strip of land approximately ninety-six (96) feet in width, along Bergen Avenue by a depth of five (5) feet, is proposed to be taken by the City of Jersey City for the widening of said Bergen Avenue;

20 That in the same proceeding a strip of land twenty (20) feet in depth, is proposed to be taken by the City of Jersey City, on the southerly side of Sip Avenue, from the easterly side of Bergen Avenue to the westerly side of Summit Avenue, a distance of about three city blocks; that Sip Avenue intersects Bergen Avenue almost at right angles at the most northerly part of Bergen Avenue, where the latter street is proposed by the proceedings under review to be widened;

30 That in the same proceeding, a strip of land on the easterly side of Bergen Avenue, from Sip Avenue to Bergen Square, a distance of two city blocks, by twenty (20) feet in depth, is proposed to be taken for the widening of Bergen Avenue; that the widening of Bergen Avenue on both the westerly and easterly sides of said street as proposed will require the removal, total or partial destruction of buildings, fences and other structures, and the same will likewise be required on the southerly side of Sip Avenue;

40 That the map annexed to the return to the Writ shows the location of the property and streets, and intersecting streets, at the point or location where the said Bergen Avenue and Sip Avenue are proposed to be widened; that Bergen Avenue from Newkirk Street southerly to Bergen Square, being

Stipulation.

the block upon which the Prosecutor's property is located, is used exclusively for residential purposes on both sides of said street;

That the City of Jersey City has upon its records imposed a lien upon the lands of the Prosecutor for the sum of Twenty-two Hundred and Eight Dollars and Ninety-three Cents (\$2,208.93), upon which interest is charged from thirty days after June 12, 1923, the date of the confirmation of the report of the Assessment Commissioners of Jersey City, which said sum is the difference between the amount awarded the Prosecutor for his lands taken, and the assessment against the remainder of his lands in the proceeding sought by this Writ to be reviewed;

That no work of any character or description has been done for and toward the widening of either Bergen Avenue or Sip Avenue, nor has any contract been let therefor; and that both of said streets now are, in the same condition as they have been for many years past, and that no steps other than are shown by the return to the Writ have been taken toward the making of said proposed improvement;

That the City of Jersey City has adopted, and is governed by Chapter 152, Laws of 1917, known as the "Home Rule Act."

GROSS & GROSS,
Attorneys of Prosecutor.

THOMAS J. BROGAN,
Attorney of Respondent.

Opinion.**NEW JERSEY SUPREME COURT.**

JUNE TERM, 1923.

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EMANUEL GROSS, Prosecutor,	}	On Certiorari.
<i>v.</i>		
BOARD OF COMMISSIONERS OF JERSEY CITY,		
Defendant.		

Argued August 21, 1923. Decided August 29, 1923.

Before Justice BLACK under the statute.

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For the Prosecutor, Messrs. GROSS & GROSS.
For the Defendant, Mr. THOMAS J. BROGAN.

The opinion of the Court was delivered by BLACK, J.:

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A writ of certiorari was allowed in this case, to review the proceedings and confirmation by the Board of Assessment Commissioners of Jersey City made on June 12, 1923, for the widening of Sip Avenue from Summit Avenue to Bergen Avenue, and the widening of Bergen Avenue from the northerly side of Bergen Square to Sip Avenue, Jersey City, N. J. The Commissioners determined the total cost is \$572,570.49. The total amount of awards to landowners is \$564,120.49. The total amount of benefits assessed is \$268,560.00. Amount to be paid by the City at large is \$304,010.49.

The proceedings were taken under the provi-

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Opinion.

sions of an act of the Legislature concerning municipalities, P. L. 1917, p. 319, and P. L. 1921, p. 511, known as the Home Rule Act. By the latter act, P. L. 1921, p. 514, Sec. 42, it is provided: "Any owner of property assessed for benefits or awarded damages as incidental to the improvement, as distinguished from damages for land to be taken may, within thirty days after confirmation appeal from the same to the Court of Common Pleas of the county wherein such municipality is located." Appeals in this case have been taken, so, the only question before the Court under the writ allowed is the legality of the proceedings. So, the amounts of the awards are not involved. The prosecutor's assessment for benefits, exceeds the damages by the sum of \$2,208.93.

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The prosecutor attacks the legality of the proceedings and the confirmation of the awards. He argues four points in the brief. First: no notice was given by the Assessment Commissioners, that assessments for benefits would be made. Second: no improvements have been made; assessment for benefits should not have been made. Third: the resolution of the Board of Commissioners, as to the payment of awards does not conform with the report and schedules of the Commissioners of Assessment. Four: the report, map, and schedules are contrary to the provisions of the statute.

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There is no legal merit in the first ground of attack. The notice of January 27, 1923, providing for a public hearing for Tuesday, February 6, 1923, follows identically the language of the statute. The word "improvement" is used in both statute and notice, P. L. 1917, p. 374, Sec. 9. The word "improvement" is most comprehensive as defined in the statute, P. L. 1917, p. 370, Sec. 1:

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Opinion.

"A local improvement is one, the cost of which, or a portion thereof, may be assessed upon lands in the vicinity thereof benefited thereby." The notice recites the statute under which the improvement is to be made and under which assessments for benefits were levied.

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Second: No improvement has been made. The contention of the prosecutor is that, only upon the completion of the work on the ground may an assessment for benefits be levied. An assessment for benefits is provided for in P. L. 1917, Sec. 1, p. 370, Sections 14, 16 to 21, p. 377, and Section 30, p. 383. P. L. 1921, p. 511, Sec. 22, provides: "In addition to the making of assessments for benefits the said officer or board, or majority of such

20 board, shall also at the same time fix and determine the amount, if any, that any property is damaged incidentally to the making of the improvement, but exclusive of damages for land taken." None of the sections in the statute, in express words, indicate the time when the assessment for benefits is to be made, except in Sections 14, 18 and 20, "upon completion of any local improvement." That is, they do not state whether the assessment is to be made before

30 or after the work involved in the improvement is actually done. That it may be made before, at least, is a permissible construction of these sections of the statute, applied to an appropriate case, where the facts will justify it, such, as, here, where all the factors are known, from which an intelligent assessment for benefits and damages can be estimated. This is simply a case of widening an existing street or roadway. The completion

40 or cost of the work will not be a factor in the

Opinion.

estimation, as that is borne by the city at large. So, this point is without substantial merit. If such be a permissible construction of these sections of the statute the cases cited by the prosecutor in his brief are not applicable to the situation under investigation. At all events, a court of the first instance ought not to set aside municipal improvements on a doubtful construction of a statute, where it is not clear that the prosecutor has been injured. *McCarty v. Boulevard Commissioners of Hudson Co.*, 91 N. J. L., 143. This is particularly so, as Section 30, P. L. 1917, p. 383, provides, "all assessments for local improvements shall be presumed to have been regularly assessed and confirmed." Section 26, p. 463, provides, "in construing the provisions of this act, all courts shall construe the same most favorably to municipalities." It is a remedial statute of wide application for the government of the state, expanding and governing municipalities, and should be liberally construed. Sections 14, 18 and 20, P. L. 1917, p. 376, relied upon by the prosecutor, are not controlling.

Third: The resolution of the Board of Commissioners, as to the payment of awards does not conform with the report and schedule of the Commissioners of Assessment. The return to the certiorari shows that on July 12, 1923, the map and report as filed by the Commissioners of Assessment, on the 15th day of May, 1923, and the awards for lands to be taken, were approved and confirmed. Warrants were ordered drawn in favor of the following named persons for the amounts set opposite their respective names in payment of said awards for lands taken. The map shows some fifteen separate items opposite each owner's

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Rule for Judgment.

name. One heading is the "Value of the land taken"; another is, "Damages in excess of benefits," &c. This point is without legal merit.

10 The same is true as to the fourth reason, viz.: the report, map and schedule are contrary to the provisions of the statute. The specific point made under this head is the proceedings for the condemnation of lands and the proceedings for the assessment of benefits, cannot be combined. The answer to this is found in the statute, P. L. 1921, p. 511, Secs. 22 and 23. The provisions of the statute have been followed. It is difficult to see how such proceedings are rendered illegal, or how the prosecutor is injured by combining the two proceedings. These are all the points argued.

20 Reasons not argued in the brief will be taken as waived or abandoned. *Reinfeld v. Laden*, N. J. Adv. R., No. 16, p. 551.

The proceedings and the assessment for benefits are affirmed with costs.

Rule for Judgment.

NEW JERSEY SUPREME COURT.

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EMANUEL GROSS,
Prosecutor,

v.

BOARD OF COMMISSIONERS of the
MAYOR and ALDERMEN OF JERSEY
CITY,

Defendants.

} On Certiorari.

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This matter being opened to the court by Isaac Gross, Attorney for the Prosecutor, and Thomas

Rule for Judgment.

J. Brogan, for the defendant, and the court having heard the argument of counsel and having inspected and reviewed the return to the writ herein allowed as well, and having considered the reasons for reversal as same were argued by counsel, it is

Ordered that the proceedings taken hereinunder and the assessment for benefits in the matter of the widening of Bergen Avenue between Hudson County Boulevard and Bergen Square, and of the widening of Sip Avenue between the present westerly line of Summit Avenue and the proposed easterly line of Bergen Avenue, as filed by the Board of Assessment Commissioners, and as confirmed by the Board of Commissioners, of The Mayor and Aldermen of Jersey City, be and the same are hereby affirmed with costs, and that the writ heretofore allowed in this case be and the same hereby is dismissed.

Entered August 31, 1923.

On motion of

THOMAS J. BROGAN,
Attorney for Defendant.

A true copy.

EDWARD J. KELLEHER,
Clerk.

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Notice of Appeal and Grounds of Appeal.

(Served and filed Sept. 20, 1923.)

NEW JERSEY SUPREME COURT.

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EMANUEL GROSS,
Prosecutor,

v.

FRANK HAGUE, *et al.*, and the
MAYOR and ALDERMEN OF JERSEY
CITY,
Respondents.

On Certiorari.

To Thomas J. Brogan, Esquire,
Attorney of Respondents:

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TAKE NOTICE that the Prosecutor appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause, on the following grounds:

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1. That the Supreme Court erred in affirming the proceedings and the assessments for benefits brought up for review by the Writ of Certiorari in this case.

2. That the Supreme Court erred in refusing to set aside the proceedings and assessments for benefits brought up for review, and returned with the Writ herein.

3. That the Supreme Court erred in refusing to hold that the said proceedings and the assessments for benefits thereunder were illegal and void, and should be set aside.

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GROSS & GROSS,
Attorneys of Prosecutor.

New Jersey State Library







New Jersey Court of Errors and Appeals

EMANUEL GROSS,
Prosecutor-Appellant,

v.

FRANK HAGUE, JOHN SAUL, A.
HARRY MOORE, MICHAEL I.
FAGEN and WILLIAM B. QUINN,
BOARD OF COMMISSIONERS OF
THE CITY OF JERSEY CITY, and
THE MAYOR and ALDERMEN OF
THE CITY OF JERSEY CITY,
Respondents-Appellees.

On Certiorari.

On Appeal from
the Supreme
Court.

BRIEF OF PROSECUTOR-APPELLANT.

This is an appeal from a judgment of the Supreme Court, dismissing a writ of certiorari, which judgment was entered on the opinion of Mr. Justice Black, sitting as a single Justice. The writ was allowed to review the proceedings taken by the respondents, Board of Commissioners of Jersey City, for the widening of Bergen and Sip Avenues, in said City, and particularly the assessment for alleged benefits thereunder, and the questions which are presented are:

1. Can a municipality legally assess property for benefits before an improvement has been made or commenced, and before any benefits have been conferred?
2. Can such assessments for alleged benefits be imposed without notice being given to

the property owner charged, that assessments for benefits will be levied?

3. Do the report, map and schedule of the assessment commissioners in this case conform with the requirements of the statute?

4. Does the resolution of the Board of Commissioners in this case, as to the payment of awards, conform with the report and schedule of the Commissioners of Assessment?

We maintain that if either of these questions is answered in the negative, the proceedings should have been set aside and the learned Justice erred in dismissing the writ of certiorari.

Statement of Facts.

The return to the writ of certiorari (pp. 6 to 26), and the stipulation of facts (p. 29) show the following statement of facts:

The prosecutor is the owner of a plot of land situated on the westerly side of Bergen Avenue, having a frontage of approximately 96 feet by a depth of 150 feet, of which it is proposed to take a strip 96 feet in width along Bergen Avenue by 5 feet in depth. Bergen Avenue is a paved, curbed and fully improved street, of a width of 55 feet, which it is proposed to widen by the proceedings under review, to a width of 80 feet, by the taking of 5 feet of the lands on the westerly side of said street from Sip Avenue to Bergen Square, a distance of approximately 547 feet, and by the taking of a strip of 20 feet in depth on the easterly side of Bergen Avenue, from Sip Avenue to Bergen Square. Sip Avenue is likewise a paved, curbed and fully improved street, 55 feet in width, which it is proposed to widen by the proceedings under review to a width of about 75 feet, by the taking of

a strip approximately 21 feet in depth on the southerly side of Sip Avenue, from the easterly side of Bergen Avenue, to the westerly side of Summit Avenue, a distance of approximately 695 feet. Sip Avenue runs almost at right angles to Bergen Avenue, at its northerly end, as will be seen by map, part of return. Prosecutor's lands so abutting on Bergen Avenue, are located on a block used exclusively for residential purposes, and very little, if any traffic emanates there. The proceedings under review were instituted for the purpose of widening said streets so that the congestion of traffic which comes to the not distant Summit Avenue Tube Station of the Hudson and Manhattan Railway Co. may be relieved through these proposed more commodious arteries of traffic. The proceedings under review were instituted without application of property owners and were carried through over their protest (pp. 21-22). No work of any character on the proposed improvement has been done, nor has any contract been let therefor, although the same will necessitate the removal and destruction of buildings (p. 31, line 20, p. 30, line 28), and the grading, paving and curbing, and general improvement of the street, at least for its greater width.

The proceedings were initiated by notice, of which a copy appears in the record (p. 7, line 26), and returned with the writ. Such proceedings were had that on June 12th, 1923, the report, map and schedule of the Assessment Commissioners were confirmed by the Board of Commissioners of Jersey City, wherein and whereby the prosecutor was awarded the sum of \$4,789.57 for his lands taken, and was assessed for benefits the sum of \$6,998.50, resulting in a charge for alleged benefits in excess of damages of the sum of \$2,208.93, which sum was imposed as a lien upon his prop-

erty, payable as shown by bill rendered, and by the records of the City, with interest from July 12, 1923, being 30 days after the date of said confirmation. No moneys whatever were paid or tendered by the City to any of the owners, for lands so proposed to be taken.

Jersey City is governed by Chapter 152, Laws of 1917, and the proceedings under review were taken under that statute. The Assessment Commissioners determined and reported that the total cost of the work is the sum of \$572,590.49, and that the total amount of the awards made to owners of lands affected by said improvement is the sum of \$564,120.49, and that the total amount of benefits assessed upon the lands and real estate benefited is the sum of \$268,560.00; that the amount of the cost of the improvement in excess of the amount of benefits assessed is the sum of \$340,010.49, which sum is to be paid by the city at large (p. 18, line 34; p. 19).

The prosecutor's lands are now burdened of record with the lien of said assessment, and interest is accruing thereon from July 12th, 1923.

The Statute Law Applicable to the Case.

The proceedings under review were taken under Chapter 152, P. L. 1917. Article XX (p. 370) of that statute, as amended by Chap. 195, P. L. 1921 (p. 511), and by Chap. 112, P. L. 1922 (p. 201), govern this case. This article seems to deal with three situations:

a. Assessment for benefits where a local improvement is made (Sections 14, 15, 16, 17, 18, 19, 20, 21 and 24).

b. When, in the making of a local improvement for which assessments for benefits

may be made, incidental damage is caused, for which the land owner is entitled to be paid (Sec. 22).

c. Where lands are required to be taken for the purposes of an improvement under the right of eminent domain, for which the owner is entitled to compensation (Sec. 23).

Other sections, dealing with the effect of such assessment, will be hereinafter adverted to.

POINT I.

No improvement having been made or commenced, and no benefits having been conferred before the making of the assessment, the assessment is illegal.

It is stipulated, and not otherwise shown by the return, that Bergen Avenue is and has been a curbed, paved and fully improved street, for a width of 55 feet; that it is proposed by the proceedings under review to widen the same to a width of 80 feet, necessitating the removal and destruction of buildings and structures; paving and curbing to meet the conditions created by the proposed widened street will also be necessary; that no work of any character has been done thereon, and that the street is in precisely the same condition as it had been for several years last past and before the assessments were imposed, or the proceedings taken for the widening. That no moneys whatever were paid out by the municipality for and toward the proposed alleged improvement. We contend, therefore, that no benefits have been conferred upon the prosecutor's property for which assessments for benefits could be imposed as a lien upon his property.

Upon the question as to when assessments for

benefits can be made, we will set out the sections of the act applicable.

Chapter 152, P. L. 1917 (p. 376), Sec. 14, provides:

"Upon the completion of any local improvement, the board or body in charge thereof shall immediately notify the officer or board in the municipality that is charged with the duty of making the assessments for benefits, and request that a proper assessment be made on any lands or real estate that may have been benefited or increased in value by such improvement. The board in charge of such improvement shall furnish to the assessing officer or board a statement showing in detail the cost of such improvement, which shall include the cost of any land, real estate or right of way purchased or condemned in connection with the improvement, and also the cost of advertising, financing and inspecting the same and engineering expenses."

Section 18, page 377, provides:

"In any municipality where no such board is provided for by law or by such ordinance, the governing body may by resolution, upon the completion of any local improvement, appoint three discreet freeholders who shall be residents of the municipality and in no way interested in such improvement, in which instance the freeholders so appointed shall make the assessment for such particular improvement."

Section 20 provides:

"The officer or board charged with the duty of making assessments for benefits, when notified of the completion of a local improvement, shall examine the said work and view all lands and real estate in the vicinity of said local improvement benefited by such improvement. Said officer or board shall thereupon fix a time and place for the hearing of all

persons interested. Notice of the time and place of such hearing shall be given by at least one publication in a newspaper circulating in the municipality at least ten days before such hearing. Notice of such hearing shall be mailed to the owners of all lands affected, directed to the last known post-office addresses of such owners. Such notices shall be mailed and published by such clerk or official as the governing body may designate."

Section 24, page 380, provides:

"All assessments levied under this act for any local improvement shall in each case be as near as may be in proportion *to the peculiar benefit, advantage or increase in value which the respective lots and parcels of land and real estate shall be deemed to receive by reason of any such improvement, and in no case shall any assessment on any parcel of land exceed in amount such peculiar benefit, advantage or increase in value.*"

Section 28, page 382, provides:

"Where any assessment shall not be paid *within two months* after the date of confirmation thereof, interest thereon from the date of confirmation shall be imposed at the same rate as may be imposed upon unpaid taxes in said municipality."

Section 31, page 383 provides: That within two (2) months after the confirmation of such assessment, a record of all unpaid assessments shall be filed with the County Clerk, and shall thereupon constitute a lien upon the lands affected thereby; and under Section 32, page 384, the lands affected by such lien are made subject to sale by the municipality in cases where the assessment shall remain in arrears on the first day of July, at least six months after the filing of said list of unpaid assessments.

It is perfectly manifest that the prosecutor, whose lands have been subjected to the lien of the assessment in question, from the date of its confirmation, to wit, June 12, 1923, and upon which interest is accruing from July 12th, 1923, *one month* after the confirmation of the assessment, and his property subject to sale, is a person seriously aggrieved by the proceeding.

It is settled law that the power of a municipality in the matter of street improvements, is a specially delegated authority, and the acts of the city governed thereunder are legal only when they are strictly in conformity with its directions.

Terhune v. Passaic, 41 N. J. Law, 90;
App. v. Stockton, 61 N. J. Law, 520, at
 page 523.

A mere reading of the sections above set out, we believe, will convince the Court that a municipality may not levy assessments for benefits, *in limine*, and before the actual making of the improvement and the bestowal of the special, peculiar benefit or advantage.. Section 14 indicates when such assessment may be made; it provides: "Upon the completion of any local improvement." Also, "and request that proper assessment be made on any lands or real estate that *may have been benefited or increased in value by such improvement.*"

Section 18 authorizes the appointment of Freeholders to make such assessments, "Upon the completion of any local improvement."

Sec. 20 provides, that the board, "When notified of the *completion of a local improvement*, shall examine the said work and view all lands and real estate in the vicinity of said local improvement *benefited by such improvement.*"

And there is good reason for the form of this

legislation, for it is settled in this State, under constitutional requirements, that no assessment can be made against a landowner under our scheme of taxation, unless his lands have been actually and specially benefited by the improvement, for otherwise a landowner's property is taken for public use without just compensation.

In the case of *Jersey City v. Vreeland*, 43 N. J. Law, 638, this Court held (p. 639):

"But we think assessments of this kind are invalid, because not in harmony with the system of taxation prescribed by paragraph 12, §7, art. IV. of the amended constitution, which provides that 'property shall be assessed for taxes under general laws and by uniform rules, according to its true value.' This constitutional provision executed itself, and *propria vigore* abrogated all laws for laying taxes in a manner inconsistent therewith. *State, N. W. Nat'l. Bank, pros., v. Newark*, 10 Vroom, 380; *S. C.*, 11 *id.*, 558. Its repealing force reached the charter of Jersey City.

"Under this constitutional provision no tax can lawfully be laid upon property which is not determined either by a special benefit derived or by a valuation of the property with respect to which it is laid upon a uniform rule of valuation at its true value.

"The act under which this assessment was made does not conform to either essential of a valid tax law. The tax is laid on the class of property designated in the act neither in proportion to special benefits nor upon a valuation of the property with respect to which it is laid. The rates which shall be payable by the owners of property of the specified class are such as the board of public works in its discretion shall adopt, without regard to special benefits or valuations.

"For this reason we think the assessment was illegal, and that the judgment of the Supreme Court should be affirmed."

In the instant case, the municipality seems to contend that because in the proceedings under review, it condemned or sought to condemn lands for the purposes of the street widening, that that alone conferred a benefit in spite of the fact that there is not the slightest physical change of conditions. A similar contention was made in the case of *Speer v. Essex Road Board*, 47 N. J. Law, 101, where the Supreme Court, through Mr. Justice Van Syckel, at page 103, said:

"The condemnation of the franchise by the road board is not an improvement of the highway. Until work or reparation is done upon it, it in no respect undergoes improvement. It simply vests the franchise in a new owner, so that improvements may be projected and carried out, if desired.

"The legislature may authorize an assessment against land-owners for benefits conferred by taking land not before constituting a road-bed, because by such taking the advantage of a highway not before *in esse* is acquired. But here the easement was enjoyed as fully before the condemnation as afterwards."

In the case of *The Tide-Water Co. v. Coster*, 18 N. J. Eq., p. 518, it is said by this Court, at the bottom of page 528 and page 529:

"It is clear that the cost of the work and the value of the land in its altered condition are not easy of estimation; it is certain many enterprises of a similar character have proved abortive and have brought great losses upon their projectors; and it is enough, therefore, to say that the property owner cannot, without his consent, be made a party in the hazards of such an enterprise.

"This, as has been already stated, would be, in my opinion, equivalent to a condemnation of the land, without compensation, for the

public benefit, and as this may result from the natural operation of the statute, I am compelled to conclude that it is unconstitutional and void."

Again, in *State v. Jersey City*, 36 N. J. Law, page 56, Justice Depue, for the Supreme Court, said, at page 57:

"By the decision of the Court of Appeals in the Tide Water Company's case, it became the established law of the state that the power to assess the costs and expenses of public improvements on property peculiarly benefited, is limited in amount to the extent of the *benefit conferred*, and that an assessment beyond that limit is illegal and void, as a taking *pro tanto* of private property for public use without compensation."

In *State v. Elizabeth*, 37 N. J. Law, 332, the Supreme Court dealt with a sewer assessment. It held that in *State v. Newark*, 35 N. J. Law, 157, it had been substantially held that the benefit legalizing an assessment must be a *present benefit*, immediately accruing from the construction of the work in question.

In *Agens v. Newark*, 37 N. J. Law, 420, this Court held, at page 442:

"So far as the particularized property is specifically benefited, an exaction to that extent will not be a condemnation of property to the public use, because an equivalent is returned; and *this is the ground on which the abnormal burthen put upon the land-owner is justified.*"

In the *Matter of Drainage along Pequest River*, 39 N. J. Law, 436, it was said:

"The radical defect of this section, in my judgment, is, that land-owners may be assessed for intended benefits which will never be realized. *The work may never be com-*

pleted, or, if completed, may not benefit their lands. The result may be that they will be compelled to pay for the experiment of the projectors, and for speculative or visionary benefits. *The original act avoided this by waiting until the work was completed, so that the benefit was demonstrated.* (Italics ours.)

"Since the cases of *State, Agens, pros. v. Newark*, 8 Vroom, 415; *Passaic v. Del., Lack. & W. R. R. Co.*, 8 Vroom, 538; and other cases holding the same principle, it has been settled that special assessments for improvements must not exceed the benefits conferred; and where there are no benefits there can be no special assessments.

"Mere speculative benefits are not, in reality, benefits. *After the experience we have had of the disastrous results of many schemes of public improvement in burdening our citizens with taxation without adequate benefit, it is manifest that our courts have determined to keep them strictly within constitutional limitations.* There are cases holding that assessments may be made for improvements during the progress of the work (*Cooley on Taxation*, 462), for the very purpose that has induced the legislature to pass this supplemental section, that the money may be convenient to pay for the improvements as they progress, and to avoid the difficulty of borrowing or advancing the money. There may be no objection to this method of assessment in such improvements as paving and grading streets and building sewers, because the results are obvious and certain if the work be finished; but upon this no opinion is expressed, and it is contrary to the usual course of our legislation."

In *Morris v. Bayonne*, 53 N. J. Law, 305, it is said:

"Taking up the objections included in the first two classes mentioned, and applying these rules to the evidence before us, it is clear that some of the property of prosecutors has been

erroneously included in this assessment. Some of the property has and can have no present drainage of any kind through this sewer; other parts of the property, the surface water of which eventually reaches and goes through this sewer, *previously had as effective and complete surface drainage by nature as that now furnished.* With respect to such property, *there is no present benefit for which an assessment may be imposed."*

In *Vreeland v. Bayonne*, 58 N. J. Law, 128, the Supreme Court, in an opinion delivered by Mr. Justice Dixon, said:

"Although the act referred to does not attempt to make the sums now fixed a lien upon the land before the connecting sewers are laid, and so is not, on that account, obnoxious to the decision in *Kellogg v. Elizabeth*, 11 Vroom., 274, yet I deem it on this point invalid, for the reason *that it aims to submit to judicial determination a problem which is incapable of present solution.* The condition of the property when drainage is furnished, and the fair cost of materials and labor when the possibility of connection is afforded, are essential elements of an intelligent judgment, but are now indeterminable. Any present opinion must rest on mere conjecture, as to matters which will be ascertainable at the time when, according to this statute and constitutional requirements, the lien is to be established, and *until that time the determination of the sum to be charged should be postponed."*

The judgment in the last cited case was reversed by the Court of Errors and Appeals, 60 N. J. Law (31 Vr.), 169, but not upon the foregoing point, upon which it was affirmed. The Appellate Court said (p. 170):

"The benefits to flow from the construction of lateral or connecting sewers cannot be assessed until such lateral or connecting sewers are built.

"As to the latter benefits, the problem would be incapable of solution because the cost of the work would not be known until it was done."

In the instant case, we believe it is the contention of the municipality that benefits have in fact been conferred, because, through the mere proceeding here being reviewed, the street has in fact been widened without any physical change in its condition. We believe such contention untenable, for the reason that the prosecutor cannot be said to derive any benefit from the mere drawing of a line on a map. He has merely the use of the same street or easement as he had before, and nothing more.

Again referring to the case of *Speer v. Essex Road Board*, above cited:

"But here the easement was enjoyed as fully before the condemnation as afterwards."

None of the awards made for lands taken were paid or tendered, as required by Section 23 of the Act, as amended by Chapter 112, Laws of 1922 (p. 202), which, after setting forth the procedure where an improvement ordinance shall require the taking of lands or real estate, provides:

"When any award made under this section is confirmed by the governing body, the amount thereof *shall promptly after such confirmation be tendered to the person or persons entitled thereto and before the commencement of the work.* In case of uncertainty as to who is entitled thereto, or where the municipality is unable to tender any such award by reason of the incapacity or absence of any person entitled thereto, or otherwise, or where any person or persons refuse to accept or receive such award the same may be paid into the Court of Chancery and shall there be distributed to the person or persons entitled thereto according to law.

"Upon the acceptance of any such award, or payment of the same into the Court of Chancery, *title to such land and real estate or right or interest therein shall vest in the municipality, which may thereupon enter upon and take possession of such land, real estate or right of interest therein and remove all persons therefrom*, and a duplicate original of such award as confirmed, or a copy thereof certified by the clerk of the municipality as a true copy of the award as confirmed by the governing body, shall be recorded in the office in which deeds are recorded in the county in which such municipality is situated in the records of deeds for such county; &c."

This section also clearly indicates that before any work can be proceeded with, the land to be taken must be paid for, so as to vest the municipality with title thereto. This was not done and we contend that the municipality has not even acquired title to the strips of land proposed to be included in the roadway. Thus it is held, in *Meredith v. Perth Amboy*, 63 N. J. Law, p. 520, at p. 522:

"By the failure of the city to make and tender a valid award to the prosecutors for their land needed in the opening of the street, the city failed, also, to acquire a right to furnish to the prosecutors the special benefit for the enjoyment of which this assessment was levied. When the assessment was laid the city had not obtained, nor had it taken the proper steps to obtain, the power of opening the street. No equivalent, therefore, in the form of special benefits arising from a public improvement was offered to the prosecutors for the burden thus imposed upon their lands. Under such circumstances it is not within the constitutional power of the legislature to sanction a special assessment. *Agens v. Newark*, 8 Vroom., 415."

The recent case of *Robinson v. Borough of Edgewater*, 119 Atl. Rep., 7, is also in point. At page 8, Mr. Justice Minturn, speaking for this Court, says:

"The statutes upon the subject of land condemnation must be read in the light of this fundamental conception. Section 23 of the act of 1917 (Home Rule Act) deals entirely with the subject of land condemnation, and, as amended by the act of 1921 (page 511 *et seq.*), governs this situation, and provides that upon an appeal from an award the court 'shall thereupon order a trial by jury, to assess such damages anew.' The amendment to this section in 1921 uses the same language, including the word 'benefits.' The inclusion of this term in this connection is clearly without any cognate relation to the context of the act itself, and is inconsistent with the duties imposed by law upon the commissioners appointed to make an award in the first instance. Its use in this connection therefore assumes the previous adjudication by the commissioners to have comprehended the same subject-matter, while it becomes manifest from an inspection of the legislation that the duty of the commissioners was limited, in accordance with the traditionary policy of the law, to the consideration of the value of the lands taken and damages resulting therefrom to the remaining lands. The appeal given by statute is manifestly for the purpose of reviewing an award made upon the specific grounds considered by the commissioners, and to admit to the consideration of the appellate tribunal factors as to value which the lower tribunal was debarred by statute from considering would not consist with the legal conception of an appeal or a review, and would in essence constitute a trial *de novo*. It would also indicate that what the Legislature was conceding to an appellant was not, as the statute directs, a trial 'anew,' but an entirely different investigation, involving a new subject-matter and new factors of damage, not cognizable by

the tribunal of first instance. But it is also to be observed in this connection that the owner should be awarded the difference between the fair market value of the property immediately before the taking and the fair market value immediately after the taking; and this standard of comparison would seem to include any element of marketable value which could be legally cognizable as a factor in the computation of compensation; and the appellant could equitably ask no more under a legal conception, which is designed to concede to him simply *quid pro quo* for that which the public has taken. *Mangles v. Freeholders*, 55 N. J. Law, 88, 25 Atl., 322, 17 L. R. A., 785."

We believe that counsel for the municipality will contend that the instant case is unlike several cases cited dealing with assessments for sewer improvements, but we can see no distinction in principle. A municipality is specially authorized, by Sections 7 and 8, page 374 of the act, to raise money for the purposes of such improvement. Who can foretell, except by speculation, whether any benefits will be conferred upon the prosecutor's lands by the widening, or how much the benefits will be? Neither the Constitution nor the statutes admit the imposition of such assessments upon a basis of mere speculation. Then why should the prosecutor's lands be presently burdened with a lien for such assessment, and he be required to pay the amount thereof into the treasury of the municipality before it has expended one dollar in furtherance thereof? Then again, supposing the municipality abandons the proposed improvement, as it may do, under Section 23, as amended by Chapter 112, Laws of 1922 (at p. 204) :

"And such judgment shall be discharged (except as to costs) and the land freed from the award on filing in said court, within such

30 days, a certified copy of an ordinance repealing the improvement ordinance."

It might here be stated, as it was admitted below, that appeals from awards have been taken and are now pending in the Hudson County Circuit Court, so that the municipality would still have the power, within 30 days after the rendition of judgments on said appeals, to repeal the improvement ordinance *in toto*. Counsel for the municipality contended, in the court below, that the prosecutor might compel the making of the improvement by mandamus. If that is the municipality's position, it constitutes a confession that the improvement has not been made. Can the law require a land owner to pay an assessment for benefits not conferred because of a proposed improvement not made, and put him in the position where he must resort to proceedings by mandamus to compel the improvement which he has not sought, and does not require? The answer to such contention is that the law protects the landowner and requires, before his land can be burdened with the lien of an assessment that an equivalent benefit and advantage should be bestowed upon the remainder of his lands. That was not done in this case. Here the prosecutor's lands were taken and not only did he receive nothing for them, but in addition thereto had imposed a lien of \$2,208.93 upon his remaining property, payable with interest 30 days after confirmation, when Section 28 of the Act provides that it shall be two (2) months. But this property is also subject to the drastic remedy by sale, as provided for in the act.

The commissioners' report, returned with the writ of certiorari, on page 17 of the State of the Case, shows that the commissioners of assessment find that the total cost of the work for widening

said streets would be the sum of \$572,570.49; but there is also returned with the writ, on page 25 of the record as part of the proceedings, a list of the amounts of damages in excess of benefits ordered paid to the persons there named for which warrants were to be drawn by the city and aggregating in all the sum of \$372,238.36. This is all that the city is to pay out under its plan for the acquisition of all of the lands to be acquired for the widening of the streets. If \$372,238.36 is all that is required to be paid out for all thus far necessary to be acquired by the city, the lands, why does the report set forth that the cost of the work is \$572,570.49, when no work whatever has been done or contracted for. The report further shows that \$304,010.49 is to be paid by the city at large for and toward the alleged proposed improvement, and the balance between this last mentioned sum and the total alleged cost of the work is assessed against the property alleged to be benefited. Why should the property owners, before any improvement is made, be required to pay \$200,332.13, the difference between the amount of the awards ordered to be paid by the city, and the arbitrary sum of \$572,570.49 alleged to be the total cost of the work, and what is to become of that tremendous sum of money? The prosecutor is not only deprived of his land, but beyond that is required to pay over Twenty-two hundred dollars into the treasury of Jersey City, with which is to be done, he knows not what. Certainly if the City is to pay \$372,238.36 for lands by it to be acquired, it is no reason for requiring taxpayers to pay \$572,570.49, especially when no work has been done nor contracted for, and no improvement made, nor benefits conferred.

Much may be made by counsel for the city of the fact that the prosecutor is alleged to have taken

an appeal from the award made him for his lands proposed to be taken, but we respectfully submit that the taking or not taking of an appeal does not in the least affect the prosecutor's right in the premises. As pointed out in the early part of this brief, the proceedings for the taking of lands, and proceedings for the assessments for benefits, are entirely distinct and independent of each other. If the prosecutor is dissatisfied with the *amount* awarded him by the Assessment Commissioners, he may, under Section 23, as amended by Chapter 112, Laws of 1922, appeal to the Circuit Court where the question of the amount to which the appellant is entitled for his lands taken, is determined *by a jury*, and the municipality has the right to abandon the improvement ordinance within 30 days after the rendition of judgment upon such appeal.

Any person against whom assessment for benefits has been made who feels aggrieved thereby may, under Section 42, as amended by Section 42, Chapter 112, Laws of 1922, at page 204, appeal to the Circuit Court, where the question of the amount of the assessment leviable is determined by the *Court*. In either case the appeal is merely for the purpose of fixing the *amount* of the award or assessment, as the case may be. In the case of an appeal from an award, the matter is tried before a jury, "*as in other cases of trial by jury in condemnation actions*," but where the appeal is from an assessment, it is determined by the *Court*. Upon such appeals the Circuit Court would not possess the power or jurisdiction to pass upon the legality of the proceedings for the condemnation in the one case, or the legality of the assessment for benefits in the other. The legality of the assessment can only be determined upon certiorari. The prosecutor can, therefore, not have the relief

sought for by appeal, as he questions the validity and legality of the assessment. Furthermore, the report as confirmed shows that the prosecutor's remaining lands have been benefited in excess of the value of the lands taken, to the extent of \$2,208.93. (Line 1 of Schedule, following page 26.) This is the sum total of the finding against the prosecutor. It is hard to determine what sort of an appeal he could take therefrom. Or should he be obliged to take two appeals, one to be heard before a *jury* and another to be heard before the Court? This \$2,208.93, imposed as a lien against prosecutor's remaining lands, is the excess of the assessment over the award. The statute does not provide for any appeal under such circumstances, because, as we contend, such proceeding is unauthorized. But, as above indicated, since the legality of the assessment is questioned, certiorari is the only and appropriate remedy.

Mr. Justice Black, in writing the opinion below, intimates that the prosecutor has not been injured by the setting off of prospective benefits against the award for lands taken, but it is very difficult for us to conceive of a case where the injury is more pronounced. The prosecutor's lands are taken, and, beyond that, he finds his remaining lands assessed in a considerable sum for alleged benefits which have not been conferred and may never be conferred. If the proceedings under review are set aside and it is held that no assessment can *now* be made, it may subsequently be shown, when the work is an accomplished fact, if ever, that no improvement has been made, nor any benefits conferred. He may show that traffic conditions on the present streets require no wider thoroughfare, and that the bringing of considerable vehicular traffic there burdens the highway easement and constitutes a damage instead of a benefit to

this residential block. Furthermore it is certainly an injury to him to presently assess prosecutor's remaining lands and make it chargeable with interest, subject to the power of sale for non-payment, before any improvement has been made or benefit bestowed.

Before Justice Black, in the court below, counsel for the municipality contended that because, in his opinion, the prosecutor and other property owners whose lands are being here condemned, cannot now convey the condemned portions thereof, and that therefore their property now fronted on a wider street than it did before. But that does not follow. In the first place, as shown by the cases here cited, title to the property sought to be taken has not vested and cannot vest in the municipality until it has tendered the owners the amounts awarded to them, which has not been done. But, assuming that the City had paid for these lands, and the property owners thereby were deprived of their title, the assessment would nevertheless be unjustified until the actual widening of the street had taken place. The mere transfer of title from the owner to the municipality, without the slightest change of the physical property by the widening or improvement of the street, constitutes no improvement and confers no benefit, for which by our law a property owner may be assessed for benefits.

But the municipality may contend that under Section 22, as amended by Chapter 195, Laws of 1921, the proceeding is justified. We contend that that section has no application to the instant case, and this takes us to

POINT II.

Section 22, Chapter 195, Laws of 1921, deals merely with a case where incidental damage is suffered by a land-owner, because of the making of an improvement, and has no application to this case.

Section 22, as amended, reads as follows:

“In addition to the making of assessments for benefits, the said officer or board, or majority of such board, shall also at the same time fix and determine the amount if any, that any property, *is damaged incidentally to the making of the improvement, but exclusive of damages for land taken.* The amount of such *incidental damages* accruing to any parcel of land or real estate shall be deducted from the amount of any benefits assessed thereon. In case the amount of such damages as confirmed by the governing body shall exceed the benefits assessed upon any parcel of land or real estate, or in case no benefit shall accrue thereto, the balance or the amount of such damages may be raised as provided by law, and shall be paid by the municipality to the owner of any such parcel of land or real estate so damaged. In case there is an uncertainty as to the person who is entitled to receive any award of such damages, the amount thereof may be paid into the Court of Chancery, and shall there be distributed according to law to the person or persons entitled thereto. Any person feeling aggrieved by any such assessment or award for *incidental damages* may, after the same has been confirmed either with or without alteration by the governing body, appeal therefrom as provided in section forty-two of this article.”

This section merely lays down the ordinary rule of damages applicable in actions at law (and some of which may be cited in the brief of counsel for

the municipality), that where the amount of damages to a land-owner's property is to be estimated, there must be taken into consideration the resulting benefits, if any. This section would apply to a case where a street was graded, and in the work of grading, paving or otherwise improving the same, a land-owner was damaged incidental to the making of the improvement. The land-owner should be compensated for his damage, but the amount to be allowed him therefor may be offset by assessments for special benefits conferred upon his property. That is equitable. But the section in question expressly excludes damages for land taken. It says: "But exclusive of damages for land taken."

It throughout deals with damages, "Incidental to the making of the improvement." If the prosecutor's lands are taken by the power of eminent domain, he is to be awarded such an amount as will compensate him for the value of the land taken, taking into consideration the damage, if any, to the residue.

Mangles v. Hudson City Board of Free-Holders, 55 N. J. Law, 88.

An award fixes the total of the damages suffered by the land-owner; but if a land-owner's property is taken by the power of eminent domain today and he is compensated for the same under the above stated rule, that does not preclude the municipality from assessing for benefits bestowed next month, if in the interim improvements have been made and special benefits and advantage have been conferred upon the residue thereby. But that does not authorize the taking of the property without paying the award, and with the same stroke of the pen, writing down an assessment against the residue immediately, and before improvements have been made to justify it.

We maintain that Section 22 does not apply to the case, and that the statute does not authorize the taking of lands by condemnation, and assessing for benefits, offsetting the one against the other before improvements have been made and benefits conferred. Were such a procedure permissible, it is very easy to conceive a case where, as here, the assessments may by far exceed the amount required to be paid for the lands taken, and even a speculative estimate of the cost of a proposed improvement, and such excess paid into the city treasury, and no improvements whatever be made.

Every element necessary for the making of a valid intelligent and proper assessment is here lacking.

The alleged improvement has not been made so that it cannot be determined, with any degree of certainty, that benefits will result; the cost of the improvement is indeterminate and therefore the amount chargeable is uncertain. The plans may be changed; the cost of labor and materials may either increase or decrease, in which event we cannot see how the land-owner could claim a refund of the excess, or the municipality impose a second and additional assessment for such increased cost. If assessments for benefits were permitted to be made in advance of the performance of the work, why could not the City fix some fictitious fabulous estimate of the cost, and charge the lands of the property-owners upon that basis, without the property-owner having an opportunity of checking up the figures. The municipality would also have the right and power of altering its plans for improvement and after the imposition and payment of the assessments, could so alter the plans for improvement, as to cut the cost thereof considerably. This would open wide the opportunities for wrong-doing, and furnish corrupt

officials with temptation and opportunity for the commission of frauds of no inconsiderable magnitude. We contend that our statutes have wisely provided against such course by requiring the completion of the improvement before assessment might legally be levied, so that it may then be ascertained whether benefits have been conferred, and the property owner also given the opportunity of checking up the actual cost of the making of the improvement, and to determine whether the charge made against his lands by way of assessment, is fair and reasonable.

POINT III.

No notice, as required by law, that assessments would be made, was given, and the assessment is therefore void and should be set aside.

Section 20, Chapter 152, Laws of 1917 (at p. 377), after providing that the officer or board, charged with the duty of making assessments for benefits when notified of the completion of a local improvement, shall examine the work and view all the lands benefited thereby, provides that the officer or board shall fix a time and place for the *hearing* of all persons interested, and that notice of the time and place of *such hearing* shall be published and also mailed to the owners of lands affected. Section 21, includes a provision:

“The said officer or board may adjourn from time to time; they shall give all parties interested or affected by the improvement ample opportunity *to be heard upon the subject of the assessment.*”

Power is given to examine witnesses under oath, and then:

"He or they shall thereupon make a just and equitable assessment of the benefits conferred upon any lands or real estate by reason of such improvement, as the case may be, having due regard to the rights and interests of all persons concerned, as well as to the value of the lands and real estate benefited."

What sort of notice is here provided for, when in Section 20, it says:

"For the hearing of all persons interested."

"Notice of the time and place of such hearing shall be given."

"Notice of such hearing shall be mailed to the owners of all lands affected."

And in Section 21:

"They shall give all parties interested or affected by the improvement, ample opportunity to be heard upon the subject of the assessment."

Certainly it is intended that notice shall be given the land-owner that the subject to be considered at such hearing is the probable assessment of his lands for benefits.

The only notice given of hearing before the Assessment Commissioners is that returned with the writ (on pp. 14-16). That is a notice that the Commissioners of Assessments will meet on March 7th, 1923,

"to appraise and determine the value of the land and real estate to be taken, and the damages that may be sustained by reason of taking the same."

It is a notice of a hearing to determine what shall be paid to the land-owner for his lands proposed to be taken. It is nowhere intimated that any question of assessment for benefits is to be discussed. That question is entirely independent

of the one for which the notice of the hearing was given. It involves entirely different considerations and other evidence and proof. A land-owner who is notified that an assessment lien may be imposed upon his property, and that a hearing is to be held to determine the amount thereof, might very readily attend with counsel and witnesses and try to convince the Assessment Commissioners of the amount, if any, which should be assessed *against his* property, and not more. He might convince the commissioners by proof and argument that his lands are not specially benefited or not assessable. He is certainly entitled to be heard upon that question, and is not accorded a hearing thereon where the notice fails to apprise him that a hearing is to be held upon that proposition.

In *Groel v. Newark*, 78 N. J. Law, 144, it is said:

"It is the right of a land-owner specially affected by a public improvement, to be informed, either by actual or constructive notice, of the time and place appointed for the meeting of council to consider their proposed action. This is so because the act is judicial in character; it being contrary to natural justice that a person should be bound by proceedings of a judicial character affecting his person or property without having an opportunity to be heard. *Camden v. Mulford*, 2 Dutcher, 49; *State v. Orange*, 3 Vroom, 49; *State v. Jersey City*, 5 *Id.*, 31; *West Jersey Traction Co. v. Board of Public Works of Camden*, 27 *Id.*, 431; *Landis v. Vineland*, 31 *Id.*, 264; *Sears v. Atlantic City*, 43 *Id.*, 435; affirmed, 44 *Id.*, 710.

"This right was denied the prosecutor, for there was no notice, either actual or constructive, to him. The public meeting of November 12th, 1903, did not amount to notice of an intention to pass an ordinance which might put a burden upon the property of the prosecutor."

In the instant case the first intimation that was given that any assessment for benefits would be made is in the notice of the *City Commissioners* of the filing of the map, report and schedule. That was after the land-owners were deprived of a hearing before the Assessment Commissioners, and it was that map, report and schedule which was confirmed by the city commissioners by the resolution under review.

The return to the writ, in the last paragraph, on page 16, indicates that the general understanding was that the hearing was confined to the question of the value of lands to be taken. Our position now is that the notice given confined the inquiry to that question alone, and that no notice was given that assessments for benefits would be levied.

Furthermore, Section 1 of Article XX of Chapter 152, Laws of 1917 (at p. 370), in speaking of IMPROVEMENTS, provides:

“A *local improvement* is one the cost of which, or a portion thereof, may be assessed upon lands in the vicinity thereof benefited thereby.”

It is only in the case of a *local improvement* that assessments for benefits may be made. In none of the notices given in this case was there any intimation given that this proposed widening project was to be regarded as a *local improvement*. For all that appeared, it was to be a general improvement, as it in fact may be, when completed.

In the opinion of Mr. Justice Black below it is said substantially that since notice was given that an improvement would be made, the word “improvement” was comprehensive enough under the definition thereof, in P. L. 1917, p. 370, to include assessments for benefits. He also states that be-

cause the notice referred to the statute under which the improvement is to be made and under which assessment for benefits might be levied, the notice was sufficient. Upon that theory, a municipality may be authorized to do the great many things dealt with by that statute by the mere giving of notice informing one whose interests may be affected thereby, that action is to be taken and work done under the act, without conveying any specific idea of what specifically is proposed. We maintain, with due deference, that such a notice is farcical as tending to convey an idea to a party whose property rights are to be affected, that a hearing is to be held, upon the outcome of which his lands may be assessed for alleged benefits, as required by our fundamental law. And this, although the notice did not set forth that a "local improvement" was intended.

But when it is considered that under Article XX, Section I, Subdivision J. of Chapter 152, Laws of 1917, at p. 371, the improvements may be paid for by general taxation; and that under Section 7, p. 374, of the same act, the City may raise the moneys necessary for the making of such improvement, by the issuance of improvement notes or permanent bonds, the objection is given even greater force. Notice that an improvement is to be made does not necessarily convey to the landowner the idea that he may be specially assessed therefor; for the cost thereof may be defrayed by genral taxation or by borrowing. The land-owner is entitled to a hearing on the question where his property is to be charged with an extraordinary burden by assessment, and he is not accorded a hearing where he is not given notice specifying that a hearing is to be held upon that question. He may have been entirely satisfied under the no-

tice given in this case to take what would be awarded him for his lands proposed to be taken, but he might not have been content to let the matter rest without a hearing, upon the question of assessing him for proposed benefits.

It is respectfully submitted that the notice given herein is not a notice required by the statute or by our decisions, and is not consonant with due process of law.

POINT IV.

The resolution of the Board of Commissioners as to the payment of awards does not conform with the report and schedule of the Commissioners of Assessment.

The resolution provides, not for payments of awards for lands to be taken, but for the amounts of the damages in excess of benefits. (See Schedule, State of Case, p. 25, and Schedule following p. 26 of State of Case.) The report of the Commissioners of Assessment is that the total amount of awards made to the owners of the lands or real estate taken or affected by the improvement, is the sum of \$564,120.49. The resolution of the Commissioners is that the awards for lands to be taken be and the same are hereby approved and confirmed, but the amounts of the warrants are not for the amounts of the awards, but for the difference between the assessments and awards and only for the aggregate amount of \$372,238.36.

POINT V.

The report, map and schedule are contrary to the provisions of the statute.

As is indicated in the case of *Robinson v. Borough of Edgewater*, 119 Atl. Rep., 7, hereinbefore referred to, the proceedings under the Home Rule Act for the condemnation of lands are separate and apart from proceedings for the assessment for benefits. No authority is found in the statute for combining the two proceedings, and, were it found, it could not be sanctioned, we contend, by any reported case, for until and unless a benefit is conferred, how can it be estimated? It would be contrary to constitutional principles to impose a lien upon a property owner's lands before any benefit has actually been bestowed upon them. It is stipulated in this case that all that the municipal authorities did in the way of making the improvement was to put through the ordinances under review. No work has been done nor contracted for (p. 31, line 20).

It is also stipulated that the streets sought to be widened are in precisely the same condition as they have been for years past, and before these proceedings were instituted (p. 31, line 23).

Certainly the mere fact that the City has condemned lands, and proposes to take them for a widening project, and nothing more, can impose no special or peculiar benefit upon lands not taken.

In *Clausen v. Ridgefield*, 91 N. J. L. (6 Gummere) 238, the Court noted the question as debatable; but in its construction of the statute under which the present proceedings are being conducted, it indicated clearly in the *Robinson* case, *supra*, that so far as proceedings for awards for lands taken are concerned, neither the Assessment Commissioners nor the Circuit Court was, under the statute, to

concern themselves with the question of supposed benefits to the lands not taken.

The mere fact that the Assessment Commissioners say in their report that they have made a just and equitable assessment of the amount of benefits conferred upon each parcel of land or real estate that has been benefited by said improvement, cannot make it so, when, in fact, no improvement has been made, and conditions are as they had been.

It is held in numerous cases that the report must show affirmatively that the assessment does not exceed the benefits. The report of the Assessment Commissioners under review does not so state.

Del. &c., R. R. Co. v. Passaic, 37 N. J. Law, 137; 37 N. J. Law, 538;

Morris, &c., R. R. Co. v. Jersey City, 36 N. J. Law, 56;

Roselle v. Neptune City, 68 N. J. Law, 509.

Neither can an award be credited against an assessment for benefits as was done in this case.

Hoboken Land Improvement Co. v. Hoboken, 36 N. J. Law, 291.

POINT VI.

The proposed improvement, not being local in character, should be charged against the city at large.

The block upon which the prosecutor's property is located is used exclusively for residential purposes. The proposed widening is intended for the relief of traffic which comes to the nearby Summit Avenue Tube Station of the Hudson & Manhattan R. R. Co. The project is undertaken by the City

with that object in view, and without the consent or wishes of property owners to be affected, and over their protest. The result of a widening of the streets, should such widening ever be accomplished, will be that the prosecutor's property and the property of other land owners affected, will be burdened with an additional easement for the accommodation of the greater traffic, and their residential property will be made uncomfortable by the increased noise, smoke and smells. Very little traffic emanates in the locality, and since it is proposed to widen these streets for the relief of traffic coming there generally, the burden should be borne by the City at large, by general taxation, but then only after the completion of the improvement. The property owner in the instant case should not have a strip of his property for which he was awarded by the Assessment Commissioners over Four Thousand Dollars, taken from him, and besides suffer an assessment of over Twenty-Two Hundred Dollars on his remaining property.

POINT VII.

It is respectfully submitted that the judgment of the Supreme Court, affirming the proceedings under review and dismissing the writ of certiorari allowed in this case, be reversed, and that the proceedings brought up by the writ of certiorari be set aside and for nothing holden.

The municipality, in the instant case, has attempted to offset assessments for alleged benefits against awards for lands taken, and it is improbable that the municipality would carry through the alleged project, were the assessments alone to be set aside. It is one interwoven scheme upon the

basis of which the municipality undoubtedly considered what net money outlay would be required, and therefore the entire proceeding brought up by the writ of certiorari should be set aside.

Respectfully submitted,

GROSS & GROSS,
Attorneys and of Counsel with Prosecutor.

ISAAC GROSS,
Of Counsel.

[451]

Appeal Printing Co., 22 Thames St., N. Y. City

of which the following is a summary of the
 results of the investigation conducted by the
 committee on the subject of the
 will of the Government to the

The following is a summary of the

results of the investigation

A summary of the results of the investigation

The following is a summary of the

New Jersey Court of Errors and Appeals.

EMANUEL GROSS, <i>Prosecutor-Appellant,</i>	10
<i>vs.</i>	
FRANK HAGUE, JOHN SAUL, A. HARRY MOORE, MICHAEL I. FAG- GEN and WILLIAM B. QUINN, BOARD OF COMMISSIONERS OF THE CITY OF JERSEY CITY, and THE MAYOR AND ALDERMEN OF THE CITY OF JERSEY CITY, <i>Respondents-Appellees.</i>	On Cer- tiorari. On Appeal from the Supreme Court. 20

BRIEF FOR RESPONDENTS-APPELLEES.

The facts as recited in appellant's brief are in the main correct, except that the appellee denies that Bergen Avenue is used exclusively for residential purposes or that very little, if any, traffic emanates from there. It is also denied by the appellees that the proceedings were instituted over the protest of any property owners (see Minutes of the Board of Commissioners, Meeting of February 6th, 1923, p. 11, State of the Case).

POINT I.

Under the Home Rule Act benefits are assessed against appellant's property lawfully.

Appellant urges as his first reason for reversal, "that the said proceedings are improper and illegal and were not taken in conformity with lawful authority on the part of said City of Jersey City." This improvement is made under the authority of Chapter 152 of the Laws of 1917, with the amendments and supplements thereto, and particularly Chapter 195, P. L., 1921, p. 511; Chapter 112 P. L., 1922, p. 201 at 203, commonly known as the "Home Rule Act," and is a local improvement as defined by Section B of the first paragraph of Article 20 of said Act. The cost of the improvement is between \$600,000 and \$700,000, and in this particular improvement, thirty-five parcels of land—some quite extensive, others being the ordinary city lot—have been affected.

The Home Rule Act itself authorizes the very procedure, followed by the City appellee in this case. The procedure before the Assessment Commission after a hearing in full was to estimate the amount of damage done parties in interest by the taking of land, and estimate as well the amount of benefit conferred upon the land that remained in the parcel or tract, and deduct one from the other, showing in some cases an affirmative award because the benefits were less than the damage and in others an assessment for benefits only because a greater value accrued to the remaining land than the amount of damage sustained by reason of land having been taken. This procedure is *directed*

by the Act itself (see Sections 22 and 23 of Article 20). Section 22, as amended by Chapter 195, P. L. 1921, p. 511, sets out: "In case the amount of such damages as confirmed by the governing body shall exceed the benefits assessed upon any parcel of land or real estate, or in case no benefit shall accrue thereto, the balance or the amount of such damages may be raised as provided by law," etc., and further, the amount of such incidental damages accruing to any parcel of land or real estate shall be deducted from the amount of any benefits assessed thereon; and the statute further provides: "Any person being aggrieved by any such assessment or award or incidental damages may, after the same have been confirmed, either with or without alteration by the governing body, appeal therefrom, as provided in Section 42 of this article." This, then, is the procedure outlined by the statute itself.

Appellant recites Sections 14, 15, 16, 17, 18, 19, 20, 21 and 24 of the Home Rule Act in support of his contention that the improvement must be completed in the PHYSICAL sense before benefits may be assessed upon the land so benefited. An examination of these sections will disclose the fact that they are not controlling in this case. There is a great difference between these sections quoted by the appellant and Sections 22 and 23 relied upon by the appellees as the basis of the assessment. Counsel omits consideration of Sections 22 and 23, which we contend is the very nucleus of the issue in this case. The distinction lies in the fact that Sections 14 to 21 respecting *local* improvements all apply to improvements such as the grading of a street or the laying of a sewer, and where abutting land is enhanced by reason of the improvement. Section 23, however, has to do with local improvements where

LANDS are taken. So that after this *improvement procedure* is completed it cannot be gainsaid but that appellant's land area is lessened by the amount which the city has condemned for this widening. If appellant were to sell the land remaining, would he attempt to sell the plot as it existed prior to the institution of these proceedings, and if not, does it not follow as a

10 logical sequence that so far as the appellant is concerned, the remainder of his lands has in fact been peculiarly and specially benefited by reason of the improvement (a widened avenue)? Will it be denied that if the appellant were seeking to sell the remainder of his land that an element in his selling price would be the fact that the property is situated in this district which required this improvement because the narrow

20 avenue now widened was not adequate for the business needs and traffic of Bergen Avenue—which is this improvement?

Thus it will be seen that appellant's contention is not that the assessment was too large, or that the City has not a right to assess for benefits, but is narrowed to the proposition that such assessment was levied prematurely.

This objection we think is disposed of by the

30 opinion of Justice Collins in the case of *Randolph vs. Freeholders of Union*, 63 N. J. L., p. 155, wherein (at p. 161), the Court said:

“The power to condemn is challenged because of the direction of the statute that the Commissioners in estimating damages shall take into account the benefits conferred by the improvement on the remainder of any lot or tract of land partly taken * * *. But in any case, the doctrine does not exclude the taking into account of special

40 benefits to lands, a part of which only is taken, and those are as much involved in the ascer-

tainment of just compensation of the constitution as are the damages to such lands. How that compensation shall be paid is another matter. That such benefits may be so taken into account has been declared in many cases in this Court. Such declarations in *Swayze vs. New Jersey Midland Railway Company*, 7 Vroom, 295, 299; *Butler vs. Sewer Commissioners*, 10 id., 665; 669, and *Crater vs. Fritts*, 15 id., 374, were indeed obiter dicta, and perhaps may not be susceptible in their full extent when applied to a taking by a private corporation; but the decision in *Lowree vs. Newark* (9 Vroom, 151) is explicit as to a taking by a public corporation. In that case it was held that the Legislature may constitutionally provide that an assessment for benefits arising from a street opening, shall be set off against any award for land taken." 10

This principle was again reiterated in the case of *Mangles vs. Chosen Freeholders*, 26 Vroom, 88, wherein the Court (at p. 92) said: 20

"Just compensation for taking part of an entire tract of land for public use cannot, we think, be ascertained *without considering all the proximate effects of the taking*. These are the withdrawal of the part taken from the dominion of the former owner, the damage done to the residue by the separation and the benefits immediately accruing to the residue from the devotion of the part taken to a public use. *Just compensation is ascertained by combining the pecuniary value of all these facts*; if any be excluded, what is given is more or less than is just. *The value of the land taken is no more essential to just compensation than is satisfaction for the damage done to the residue, nor is it more exempt from diminution on account of the benefits conferred.*" 30

This, it seems to us, should be the true construction to be placed upon the statute under 40

discussion. While the appellant ignored the proceedings before the Assessment Commissioners, yet had he appeared, he would have, we suppose, urged that the remainder of his lot after the TAKING would suffer a diminution in value because this would be an element of his AWARD. If such a contention were urged it would be competent as an element of damage. And if competent, how can it be disputed that the Commissioners of Assessment should also take into consideration the benefit, if any, that in their judgment would ACCRUE to the remainder of the lot by virtue of the improvement?

There is nothing speculative about this widening. It is definitely set forth both in the ordinance providing for the improvement and in the maps accompanying said ordinance. It certainly enhances the value of the remainder of the land. This is a benefit and an assessment under the act lies for such benefit. If the Commissioners of Assessment arbitrarily refused to consider the market value of appellant's land, predicated upon sales adduced by testimony of experts with respect to the activity and demand for property in the locality in question, would it not now be urged that an award based on such reasoning did violence to the principles set forth by Justice Dixon in *Mangles vs. Chosen Freeholders* (supra)?

The appellant recites at length various decisions which support the theory that *assessments* for benefits can only be made after the completion of the work. An examination of these cases, all adjudicated prior to the Home Rule Act, as well as the case of *Robinson vs. the Borough of Edgewater*, 119 Atl., 7, which was decided under the Home Rule Act, were general improvement proceedings and not local improvements as here.

Appellant's recital of Section 31, Article 20, Chapter 152, P. L. 1917 (p. 7 of the brief) is without merit, for by Chapter 117 of the Laws of 1919, p. 280, Section 31, quoted in appellant's brief, has been repealed.

Appellant contends that none of the awards made for lands taken were paid or tendered as required by Section 23 of the Act, as amended by Chapter 112 of the Laws of 1922, and that accordingly the City has not even acquired title to the strips of land included in the improvement. This fact, even if true, would be immaterial. We think that in *Randolph vs. Freeholders of Union*, supra, this contention has already been passed upon, for the Court, in that opinion, in reciting the grounds assigned by the prosecutor in his attack upon the improvement (at p. 162), says:

"The grounds assigned are (1) that under our Constitution compensation for private property taken for public use must be made in money—not in benefits; and (2) that the challenge provision of the statute involves an assessment for benefits unequal in character. The case of *Carson vs. Coleman*, 3 Stock., 106, is cited as authority for the first proposition. That decision seems to relate only to general benefits, and whether so or not, rests on the postulate that compensation must precede the taking. Such is the case where property is taken for public use by an individual or a private corporation, but not where the taking is by the State itself or a public corporation."

It is therefore insisted that the statute provides for the NET PAYMENT of an award, if any, or the debiting of an assessment if the benefits exceed the award, and a reading of the case last quoted sustains this contention. If there need be any further proof or corroboration as to the right of the municipality to assess for benefits at the

same time that it makes awards for the taking of land, such substantiation is set forth in Section 23 of Article 20, Chapter 152, P. L., 1917, as amended by Chapter 112 of P. L., 1922, p. 201, wherein at page 203, under the marginal note "Appeals may be taken" it is provided:

10 "Any owner or owners of land or real estate taken for any such improvement may appeal to the Circuit Court of the county wherein such municipality is situated at any time within thirty days after the confirmation by the governing body of the award complained of. Such appeal may be taken in the manner prescribed in Section 23-A of this article. The Court to which appeal is had shall order a trial by a struck jury to *assess such damages and benefits anew.*"

20 Manifestly, the appellant's contention that benefits can only be assessed when the improvement is completed falls, because the WORK itself could not be begun until after the CONFIRMATION of the map and report of the Assessment Commissioners. Within thirty days after such confirmation an appeal may be taken and such appeal, under the language of the statute just quoted, is then tried before a struck jury, whose duty under this section is to assess "SUCH DAMAGES AND BENEFITS

30 ANEW." What is the meaning of the word "ANEW" with relation to the language "SUCH DAMAGES AND BENEFITS", unless it be, That awards for damages and assessments for benefits must be considered together.

The appellant on p. 20 of his brief omits mention of the jury's duty to "assess such damages and benefits anew", and tries in the argument to limit their province to the amount to

40 which the appellant is entitled for his lands taken only.

POINT II.

Appellant has received the notice required by Law and submitted himself to the jurisdiction by reason of his appeal to the Circuit Court.

The notice in this case is returned with the writ (see pp. 14 to 16, State of the Case), and it is therefore not necessary to recite said notice at length in this brief. The notice recites the statute under which the improvement is to be made and under which assessments for benefits were levied, as well as the passage of the ordinance and the property described in detail. We think that the language of the notice itself was a sufficient apprizal of the nature of the proceedings, particularly when the notice contains a recital of the intended consideration of the ordinance under and by virtue of the Home Rule Act. In this connection, see *Groel vs. Newark*, 78 N. J. L., p. 144. All that is required in such notice is that the person be fairly apprized of the nature and character of the proceeding. 10 20

We urge that the appellant here having appealed to the Circuit Court as provided by Sec. 23 of the Statute has submitted to the jurisdiction and cannot now question either the procedure he herein complians of or the constitutionality of the statute itself. (Notice of such appeal is appended to this brief and marked exhibit D-1.) 30

It should be remembered in construing this act that Section 26, P. L. 1917, p. 463, provides, inter alia, "and in construing the provisions of this act, our Court shall construe the same most favorably to municipalities, it being the intention hereof to 40

give all municipalities to which this act applies the fullest and most complete powers possible over the internal affairs of such municipalities for local self-government." And as pointed out in the opinion of the Supreme Court in this case: "It is a remedial statute * * * * and should be liberally construed."

10 In conclusion, and to sum up the position taken by the City in response to the points raised seriatim by the appellant herein:

Counsel says that Section 22 of the statute amended by Chapter 195 of the Laws of 1921 has no application to the present case. It is difficult to understand this reasoning. Confessedly, the statute does provide for incidental damage, but provides also that the amount "of such incidental damages * * * * shall be deducted from the amount of any benefits assessed thereon." That benefits are to be assessed is a *clear postulate in the statute itself*.

Any argument or reasoning in the appellant's brief which is addressed to Sections 14 to 21, inclusive, of the statute under consideration, is manifestly beside the question under discussion, because these sections deal with the making of improvements where land is NOT TO BE TAKEN. So that any reference to such sections is useless to the present discussion. This Court is concerned, in our judgment, with the construction of sections 22 and 23, which has to do with the making of a local improvement where lands ARE TO BE TAKEN, and we urge nothing could be plainer than that such sections not only contemplate, but direct the assessment of the benefits in the same proceeding at which awards for damages are made.

As to Point III, that no legal notice that

assessments were to be made was given property owners, we can only say, to use the language of the Supreme Court in this case: "The word '*improvement*' is used in both statute and notice, P. L. 1917, p. 374, Section 9. The word '*improvement*' is most comprehensive as defined in the statute, P. L. 1917, p. 370, Section 1. 'A local improvement is one, the cost of which, or a portion thereof, may be assessed upon the lands in the vicinity thereof benefited thereby.'"

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The notice recites the statute under which the improvement is to be made and under which assessment for benefits was levied. This language is absolutely dispositive of Point III of appellant's brief.

As to Point IV, that there is a non-conformity between the resolution of the Board in their adopting the awards and the schedule of the Commissioners, we say that a reference to the State of the Case, pp. 23, 24, 25 and 26, shows a proper legal ratification and an order of payments for the net amounts due the respective property owners who are entitled to awards for damages over and above the amount of the assessments levied for benefits.

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As to Point V, that the report, etc., are contrary to the provisions of the statute, we again adopt the language of Justice Black, who, in his opinion, says the answer to this is found in the statute, P. L. 1921, p. 511, Sections 22 and 23.

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As to Point VI, that the proposed improvement should be charged against the City at large because it is not an improvement that is local in character, we reply that unfortunately for the argument of the appellant herein, the proper municipal officers have determined that the improvement under discussion is a local im-

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provement, which determination is fully sanctioned by the statute itself at p. 370, Section 1, paragraph B, which defines a local improvement.

It is respectfully urged that the reasons advanced by the appellant herein are without legal merit, and that the judgment of the Supreme Court be affirmed.

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THOMAS J. BROGAN,
Attorney for Respondents-Appellees.

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Exhibit D-1.**HUDSON COUNTY CIRCUIT COURT.**

IN THE MATTER

of

The Appeal of Emanuel Gross,
 from the Report, Schedule and
 Map made by the Commission-
 ers of Assessments of Jersey
 City, for the widening of Ber-
 gen Avenue between Hudson
 County Boulevard and Bergen
 Square, and of the widening of
 Sip Avenue, between the pres-
 ent Westerly line of Summit
 Avenue, and the proposed East-
 erly line of Bergen Avenue,
 which report, award, map and
 schedule were confirmed by the
 Board of Commissioners of Jer-
 sey City June 12, 1923.

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Notice of
 Appeal of
 Emanuel
 Gross.

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To the Honorable Board of Commissioners of the
 City of Jersey City; or Thomas J. Brogan,
 Esq., their attorney:

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TAKE NOTICE, That Emanuel Gross, of Jersey
 City, Hudson County, New Jersey, appeals to the
 Circuit Court of the County of Hudson, from the
 award made by the Commissioners of Assess-
 ments of Jersey City, for the taking of the prop-
 erty of the said Emanuel Gross, situate on the
 Westerly side of Bergen Avenue, as shown on
 the report, map and schedule of said Commis-
 sioners of Assessments of Jersey City, filed with
 the City Clerk of said City, and duly confirmed
 by the Board of Commissioners of Jersey City on

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June 12, 1923, wherein and whereby the said Emanuel Gross was awarded for his lands so taken the sum of Forty-seven hundred Eighty-nine 57/100 Dollars; and

10 TAKE FURTHER NOTICE, That on Friday, July 27, 1923, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, we shall apply to the Hon. Willard W. Cutler, Judge of the Hudson County Circuit Court, at the Circuit Court Room, at the Court House, in the City of Jersey City, to frame the issue, and to fix a day for striking a jury, and a day for the trial of said appeal.

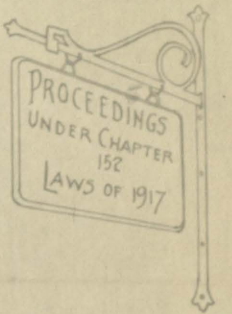
GROSS & GROSS,
Attorneys for Appellant,
Emanuel Gross.

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SCHEDULE of AWARDS and BENEFITS accompanying MAPS and REPORT for the Widening of BERGEN AVENUE between HUDSON BOULEVARD and BERGEN SQUARE and the Widening of SIP AVENUE between the present Westerly line of SUMMIT AVENUE and the proposed Easterly line of BERGEN AVENUE.



Owners Name	Block No	Lot No	Commrs No	Square feet of land taken	Value of land taken	Award for Building taken	Award for part of Building taken	Award for Moving Buildings	Award for Alteration of Building	Award for Moving Fences etc.	Damage to Owner	Total Damages	Total Benefits	Damages in Excess of Benefits	Benefits in Excess of Damages
Emanuel Gress, et ux	1871	2	1	470.72	4,589.57	0	0	0	0	200	0	4,789.57	6,998.50	0	2,208.93
Frederic A. Finn, et ux	"	3A	2	125.20	1,220.70	0	0	0	0	3.15	0	1,223.85	2,400	0	1,176.15
Universal Security Company	"	3B	3	250.40	2,441.40	0	0	0	0	5.70	0	2,447.10	5,475	0	3,027.90
William B. Harris, et ux	"	4A	4	86.89	843.86	0	0	3,447.50	0	0	225	4,516.26	1,899	2,617.36	0
Rebecca Gordon	"	4B	5	84.78	826.31	0	0	3,447.50	0	0	225	4,498.21	1,958.50	2,540.31	0
Estate of Max Ashkenas	"	4C	6	84.72	825.82	0	0	3,447.50	0	0	225	4,498.22	2,042	2,456.32	0
Edward S. Lynch, et ux	"	4D	7	86.22	838.50	0	0	3,697.50	0	0	225	4,761	2,162	2,599	0
James T. Gough, et ux	1871	4A	8	218.825	2,725.21	0	0	0	0	6.60	0	2,741.91	5,829.50	0	3,087.59
Eliza G. Carroll	1869	15	9	125.20	1,962.50	0	0	0	200	70	100	2,432.50	4,182	0	1,749.50
Trust Company of New Jersey	"	15A	10	125.20	5,519.33	0	1,820	0	2,200	0	450	9,299.33	12,632	0	3,332.67
"	1869	15A	11	125.20	9,279.27	0	0	0	0	0	0	9,279.27	18,582	0	9,302.73
The Boulevard Company	1864	23B	12	1651.20	28,897.75	0	0	0	0	0	0	28,897.75	24,241.50	4,656.25	0
Mayor & Aldermen of Jersey City	1872	5	13	187.22	0	0	0	0	0	0	0	0	0	0	0
Mathias Lask, et ux	"	12A	14	1000.22	9,750	0	400	7,700	0	260	2,200	20,410	4,522.50	15,887.50	0
Elizabeth A. Bailey	"	3A	15	500.22	4,875	0	0	4,392.75	0	0	450	9,717.75	2,965	7,152.75	0
Sadie R. Tuttle & Marjorie Schermerhorn	"	4A	16	500.22	4,875	0	0	4,392.75	0	0	450	9,717.75	2,787.50	6,930.25	0
Anthony Michel	"	5A	17	700.22	7,875	0	0	6,706	0	0	300	14,971	3,862	11,109	0
"	1872	A	18	1206.22	13,567.50	0	0	8,128	0	0	225	21,920.50	7,417	14,503.50	0
Darling Realty Corporation	1868	42B	19	2000.22	28,000	0	0	5,250	0	0	315	58,565	19,850	38,715	0
Universal Security Company	"	42B	20	1213.40	15,167.50	0	0	5,175	0	0	525	20,867.50	13,478	7,389.50	0
Thomas Fallon, Jr., et ux	"	1	21	0	0	0	0	0	0	0	0	45,000	0	45,000	0
R.W.A. English & Morgan Realty Company	"	1	21	1016.119	33,537.26	0	0	0	0	0	4,569.70	28,106.96	7,661.50	20,445.46	0
R.W.A. English, et ux	"	2A	22	525.22	7,875	0	0	2,901	0	0	809	11,585	5,889	5,696	0
Ben A. Margulies & Max Gardenfeld, et ux	"	3	23	525.22	7,875	0	0	4,800	0	0	675	13,350	5,650	7,700	0
The Evening Journal Association	"	4/5	24	1050.22	15,750	0	0	7,821	0	0	675	24,256	10,700	13,556	0
"	"	6	25	420.22	6,300	0	0	5,941	0	0	300	12,541	3,810	8,731	0
Universal Security Company	"	7/8	26	840.22	11,240	0	0	11,882	0	0	600	23,872	7,168	16,704	0
"	1868	9/10	27	840.22	10,880	0	0	0	0	70	0	10,150	6,544	3,606	0
Plaza Apartment Hotel Corporation	1868	17/18	28	257.22	10,887	0	0	0	0	0	0	10,887	6,266	4,621	0
Estate of Ezra F. Jones	"	19/20	29	1922.22	11,592	0	0	15,717	0	0	600	27,909	9,748	18,161	0
Morgan Realty Company	"	21	30	943.11	3,772.41	0	0	10,669	0	0	275	14,816.44	3,776.50	11,039.94	0
R.W.A. English, et ux	1868	22	31	1955.12	7,820.40	0	0	10,773	0	0	275	18,368.40	4,741.50	13,626.90	0
A. Makray, Inc.	1867	1A	32	841.58	3,366.72	0	0	6,500	0	0	2,120.50	11,997.22	773	11,224.22	0
Eliza G. Carroll	"	2A	33	841.58	2,345.88	0	0	4,796	0	0	1,205	8,946.88	479.50	8,467.38	0
Mary F. Van Riper	"	4	34	561.12	1,965.92	0	0	3,834	0	0	540	6,340.92	152.50	6,188.42	0
Eliza G. Carroll	1867	45A	35	2244.22	8,883.80	0	0	0	0	0	4,279.50	46,228.30	257	47,971.30	0
Summit Plaster Realty Corp.	1866	34A	36	0	0	0	0	0	0	0	0	0	228	0	228
Isaac M. Shaker, et al.	"	35A	37	0	0	0	0	0	0	0	0	0	100	0	100
"	"	32A	38	0	0	0	0	0	0	0	0	0	250	0	250
"	"	31A	39	0	0	0	0	0	0	0	0	0	400	0	400
"	"	30A	40	0	0	0	0	0	0	0	0	0	550	0	550
"	"	29A	41	0	0	0	0	0	0	0	0	0	1507	0	1507
Universal Security Company	"	28A	42	0	0	0	0	0	0	0	0	0	2848.50	0	2848.50
The Holland Company	"	27B	43	0	0	0	0	0	0	0	0	0	4781	0	4781
Public Service Railway Company	"	26A	44	0	0	0	0	0	0	0	0	0	19,420	0	19,420
John T. Rowland, Jr., et ux	1866	8A	45	0	0	0	0	0	0	0	0	0	16,200	0	16,200
Totals				285,149.84	108	965	2,220	141,428.50	2,500	715.45	23,141.70	564,120.49	268,560	372,700.38	76,617.87

Total Cost of Improvement.	
Total Awards for Land Taken, etc.	564,120.49
Advertising, etc.	11,200
Total	575,320.49
Less amount likely to be realized from sale of buildings taken	2,750
Total Cost	572,570.49
Total Benefits	268,560
Total Amount on Gift or Lease	304,010.49

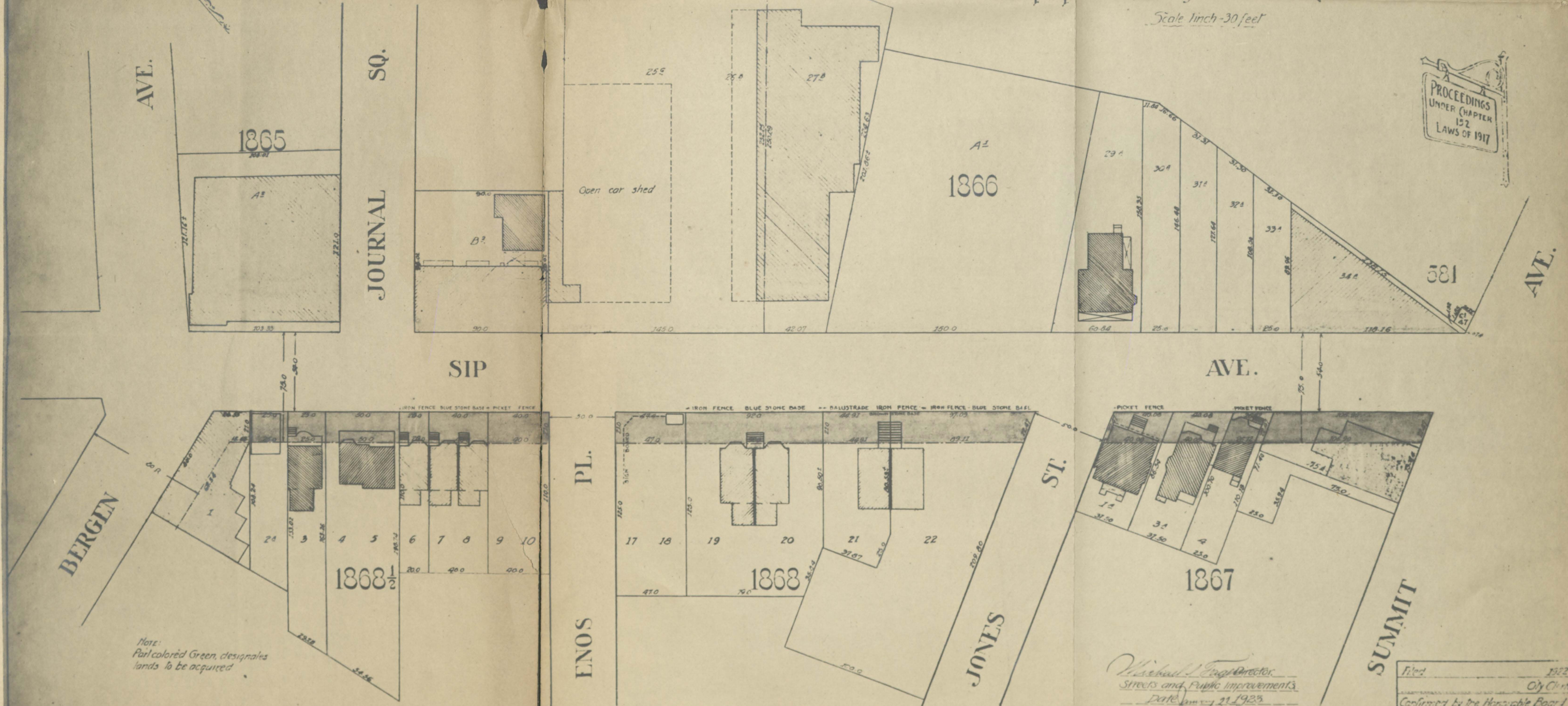
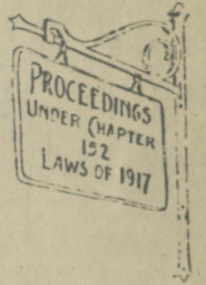
Commissioners of Assessments
John F. Kennedy
Thomas C. Carroll
Frank W. Montross

Attest: *M. J. M. Barry* Secretary

Filed	1871/13/1923
City Clerk	
Confirmed by the Honorable Board of Commissioners	1923
City Clerk	

Map showing lands to be acquired for the Widening of
SIP AVENUE
 between the present Westerly line of SUMMIT AVENUE
 and the proposed Easterly line of BERGEN AVENUE

Scale 1 inch = 30 feet



Michael J. [Signature]
 Streets and Public Improvements
 Date Jan'y 21 1923

Filed	1923
City Clerk	
Confirmed by the Honorable Board of Commissioners	
City Clerk	