

New Jersey Court of Errors and Appeals

ERIE RAILROAD COMPANY AND
PATERSON AND RAMAPO RAILROAD
COMPANY,

Defendants in Error,

vs.

THE MAYOR AND ALDERMEN OF THE
CITY OF PATERSON,

Plaintiffs in Error.

10

In Error.

Upon the hearing of the above cause it appeared that the judgment in the Supreme Court had not been printed in the State of the case, and on motion the plaintiff in error was allowed to amend the printed case by adding the following.

JUDGMENT OF THE SUPREME COURT.

New Jersey Supreme Court,
February Term, 1905.

ERIE RAILROAD COMPANY AND
PATERSON AND RAMAPO RAILROAD
COMPANY

vs.

THE MAYOR AND ALDERMEN OF THE
CITY OF PATERSON.

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On certiorari.

*Rule of
Judgment.*

This case being regularly on the list for argument at the November Term, 1904, of this court, and the court having heard argument thereon, William H. Corbin appearing for the prosecutor, and Vivian M. Lewis for the defendant, and the court having considered the matter and being of the opinion that the ordinance, brought up by the writ, is invalid:

It is thereupon ordered that the said ordinance be set aside with costs.

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Entered March 11, 1905

On motion of

COLLINS & CORBIN,

Attorneys of Prosecutors.

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PATERSON AND RAMAPO RAILROAD
COMPANY,

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CITY OF PATERSON,

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In Error.

BRIEF OF EDWARD F. MERREY OF COUNSEL
WITH THE CITY OF PATERSON.

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The City of Paterson desires to open Sixth Avenue across the tracks of the Erie Railroad Company, and to do so, it must appropriate a strip of the railroad company's property sixty feet in width and about one hundred feet in length. The requisite ordinance was passed and was immediately taken to the Supreme Court, by certiorari, for review.

The company resists mainly on the ground that the strip sought to be taken is part of a freight yard, and the Supreme Court held

"The city of Paterson has no authority to lay out a street across the freight yard of a railroad company," citing *N. Y., S. & W. R. R. Co. vs. Paterson*, 32 Vroom 408.

This matter is of the greatest importance to the city because the term "yard" as used by railroad men is broad enough to cover any part of the property of the company, having alongside the main tracks, a siding, where cars may be unloaded.

Such condition exists on this railroad practically throughout its entire length through the city of Paterson, a distance of from three and one-half to four miles. Case p. 43 line 25.

10 If the company can successfully resist the opening of this street on the ground that a railroad yard exists at this point, they can prevent any more new streets being opened across their road in the city.

Sixth Avenue is in the northern section of Paterson, called Riverside. Population of Riverside about 12,000. Case p. 98 l. 10. The general direction of the railroad from New York to Buffalo being from east to west the railroad men call this section West Paterson. The railroad cuts off and isolates a large section of
 20 the city in the Riverside section lying between the railroad and the Passaic River. At present there is but one way the people living in this section can reach other parts of the city, and that is by way of River Street, which crosses the railroad three thousand feet to the south of Sixth Avenue. Six hundred feet north of Sixth Avenue a street called Fifth Avenue crosses the Railroad but is of no use to the people of the section because it does not connect with other street. Case p. 94 l. 20, 95 l. 15. The Passaic River is about five
 30 hundred feet north of Fifth Avenue. So that there is no available crossing between the Passaic River and River Street a distance of thirty-five hundred feet.

There exists a great necessity for the opening of this street as appears throughout all the testimony. This

is admitted by the witnesses of the railroad company as well as by those of the City. See testimony P. 116, L. 1; P. 120 to 122; P. 141, L. 35; P. 149, L. 15; P. 159, L. 12; P. 169, L. 3; P. 65, L. 30.

The present condition of affairs at this crossing is intolerable. The street is open on both sides of the railroad, and there are numerous factories in the vicinity. Men, women and children cross at this point in great numbers, estimated at from 500 to 3,000 people crossing several times daily. People are now compelled to climb over and crawl under cars to pass and repass. To go by way of River Street crossing means a detour of almost a mile. Testimony. Fire engines can only reach this section by making a long detour. Case p. 121, l. 30; p. 96, l. 1; 109, l. 10; p. 150, l. 10. There appears from the testimony to have been great agitation amongst the people of this section in regard to the crossing, and the great necessity of the street being opened is conceded by all. The railroad company offers to pay part of the expense of an overhead crossing, provided the city builds approaches and pays damages. An over head crossing is impracticable. Testimony p. 116, l. 25; p. 188, l. 20-35; p. 189-190.

The Supreme Court in its opinion says:

"That the city of Paterson has no authority to lay out this street across the freight yard of a railroad company, has been decided by this Court. N. Y., S. & W. R. R. Co. vs. Paterson 32 Vr. 408."

The decision in the Susquehanna case (32 Vr. 408) was not nearly so broad. It was held in that case

"The city is not empowered to lay out a street across the lands used by a railroad company as a freight yard *when it will deprive the company of the beneficial use of the freight yard and compel it to transfer its freight business to another locality.*"

In this case, while it is contended by the company that the opening of the proposed street will inconvenience the company, there is no testimony, whatever, that the opening of the said street will deprive the company of the use of the freight yard or that it will compel the company to transfer its freight business to another locality.

Case P. 28, L. 30; P. 35, L. 28; P. 62, L. 22; P. 65, L. 23; P. 78, L. 25; P. 189, L. 18; P. 152, L. 20; P. 149, L. 25; P. 126, L. 20.

From the maps and testimony (P. 133, L. 10; 134, L. 20) there is ample room in the vicinity for the extension of the company's yard if it so desires. Opening of this street will not deprive the company of the use of the yard, if it may be called a yard. At the most the street will only take up the room occupied by from eight to ten cars, but the company's tracks will remain and it can still use them. There may be some inconvenience caused to the company, but there is inconvenience caused by every street crossing a railroad. Testimony P. 78, L. 25; P. 189, L. 30; P. 184, L. 16.

And in the Susquehanna case at page 410 the Court says "There is no doubt that the city may lay out a street over the right of way of a railroad corporation."

The first case in this state in which a city was prevented from opening a street on this principle seems to be *New Jersey Southern R. Co. vs. Long Branch* 10 Vr. 28.

The Court relied upon this case in deciding the *Susquehanna* case, but in the *Susquehanna* case went much further than in the *Long Branch* case.

The *Long Branch* case is summed up in its syllabus as follows:

1. A municipal corporation, under authority to con-

demn lands for public streets, has no power to lay a street *longitudinally* over grounds acquired by a railroad company, under its charter, on which is laid a track in use for the deposit and unloading of freight cars.

2. Under the condemnation of a right to lay streets across a railroad track, or to lay the track of one railroad across another, nothing is acquired but a right of way; the place of crossing will remain in common use of the parties for the exercise of their several franchises. 10
A right affecting so slightly the exercise of the franchises of the corporation whose track is crossed may be deduced from a mere grant of the power of condemnation.

3. But where the uses for which the condemnation is prosecuted are of such a nature as necessarily to require the exclusive possession and occupation of the lands condemned, lands of a railroad company acquired under legislative authority and in actual use for corporate purposes, cannot be taken for such uses under 20
the simple grant of the power of condemnation.

In the Long Branch case, the opening of the street would have deprived the company altogether of the use of its property and would necessarily have required the removal of the railroad tracks and the exclusion of the company from the use of the premises. (10 Vr. 30).

In all cases heretofore where a municipality has been prevented from laying a street across the property of a railroad company, or a railroad company or like corporation has been prevented from taking by condem- 30
nation the property of a municipal or other railroad corporation, the taking would have excluded the second corporation from all use of the property sought to be acquired.

M. & E. R. R. Co. vs. Newark. 2
Stockton 352.

M. & E. R. R. vs. Blair, 1 Stockton 635.

Jersey City vs. Montclair R. R. 6 Vr. 328.

The matter of the B. & A. R. R. Co.
53 N. Y. 574.

Albany R. R. vs. Brownell. 24 N. Y. 345.

“The city charter (P. L. 1871 sec. 92) contains all
the authority on this subject, which is to lay out, open,
10 vacate, straighten, widen or alter any street, and to take
such lands and real estate as may be necessary therefor,
upon making compensation in the maner therein pre-
scribed. No special provision is made for taking the
lands of a railroad company. There is no doubt that,
under this general authority, the city may lay out a
street over the right of way of a railroad corporation.”
Susquehanna vs. Paterson. 22 Vr. at 410.

“The right of a municipality to lay streets across a
railroad track, or of one railroad to lay its tracks across
20 another, is justified on the ground of an authority
arising by necessary implication.” M. & E. R. R. Co.
vs. Central. 2 Vr. 205.

State, National R. R. Co. vs. E. & A.
R. R. Co. 7 Vr. 182.

N. J. & S. R. R. vs. Long Branch. 10
Vr. 32.

In Jersey City vs. Montclair R. R. Co. 6 Vr. at 330
the court in speaking of the power of a railroad com-
pany to cross a highway under general power of the
30 legislature says: “The power is derived by necessary
implication from the scope of the franchises granted
and in order to give them effect. In New Jersey this
has not yet been applied to the taking of a highway
longitudinally by a railroad company. It may, how-
ever, be conceded that it may arise where in applying

the route to the territory through which it is to pass it could be located in no other practical way than upon a highway; but that it should not be a mere question of expediency or comparative expense, but of a practical necessity in order to give effect to the franchise granted."

Under the above reasoning as a matter of necessity I think it must be implied that the legislature intended to give the city of Paterson power to open streets across railroad property where great necessity for a crossing 10 exists. Can it be said that the Legislature meant that the railroad company by putting down a few side tracks could prevent streets being laid across the tracks for a space 3,500 feet long? I think that on account of the great necessity for this crossing that it is implied that the Legislature intended to give the city the right to cross this railroad even though a so-called yard exists there.

In the Susquehanna case the court quotes from the Long Branch case, the principles which controls the 20 decisions in this class of cases.

"Where the use for which the condemnation is prosecuted is of such a character as necessarily to require for its enjoyment the exclusive possession and occupation of the premises, it is manifest the condemnation will be utterly futile, unless it may also operate to extinguish the right of the corporation whose title is condemned to use the land for its corporate purposes. A condemnation that will accomplish this result will destroy, pro tanto, the franchises of the corporation, and 30 impair, to that extent, the powers granted by the Legislature. The power to invade the privileges of a corporation in such manner will not be inferred from a naked power to condemn. It can only be derived from a power granted either in express terms or

arising by a necessary implication; and the legislative intent to authorize such an interference with the rights and privileges of another corporation, whichever way it may be manifested, must be plainly perceived."

"The railroad company cannot be deprived of the beneficial use of its freight yard and be constrained to transact its freight business elsewhere, unless clear authority is given to the city of Paterson to require it to do so."

10 So that the present case differs from the Susquehanna case in two important particulars.

In that case it does not appear that there was great necessity for the opening of the street, at least the necessity for the opening was not great enough to lead the court to imply a legislative intent to justify it.

In that case the testimony was that the opening of the street would destroy the yard; there is no such testimony in the present case. The company will be able to use the yard as heretofore, but will be put to
20 some inconvenience.

From the questions of counsel I think I am justified in saying that the company objects more to the crossing of the main tracks of the railroad than it does to the crossing of the side tracks. And there is no question of our power to open the street across the main tracks.

II.

30 The second, third and fourth reasons of the prosecutor go to the formality of the proceedings in passing the ordinance.

The Board of Aldermen of Paterson is a continuous body; the changes in the individuals who compose it have no effect upon it as an entity, nor to change its

purpose, that of acting as an agent for the municipality it represents. Hence it is immaterial if an act was conceived by a Board of Aldermen in 1903 and consummated by a Board of Aldermen composed of different individuals in 1904. The whole act, from its inception to completion, would be an act of the city of Paterson.

“Where the law required the reading of the ordinance on three different days, the fact that the third reading was after the annual election and entrance upon office of a new mayor and four new aldermen, was held to be a sufficient compliance with it.” McGraw vs. Whitson 69 Iowa 348. 10

“Where there is a council or governing body—the corporation must act, and can be bound only through the medium of this body. Therefore authorized acts done by the council are not their acts, but those of the corporation. The council is a body that is constantly changing; it is simply the agent of the corporation.” 20
Dillons Municipal Corporations, Vol. 1 p. 341 par. 259
Fourth Ed.

The charter of the city vests in the Board of Aldermen the power to establish its own rules of procedure (P. L. 1871, p. 817 sec. 23) and the Board was acting in conformity with that power when it laid over the ordinance from time to time until its final passage. Sec. 24, 17, 98, 25, 26, of Paterson City Charter, P. L. 1871 pages 815-848.

The notice given was in conformity with the charter. Sec. 98 P. L. 1871 page 848, and no further notice was necessary, the ordinance having come up at regular meetings of the Board under the head of unfinished business until its passage. 30

The railroad company was heard in the matter. Case P. 8, Line 28. L. 1. So that it must have had notice as required by the statute.

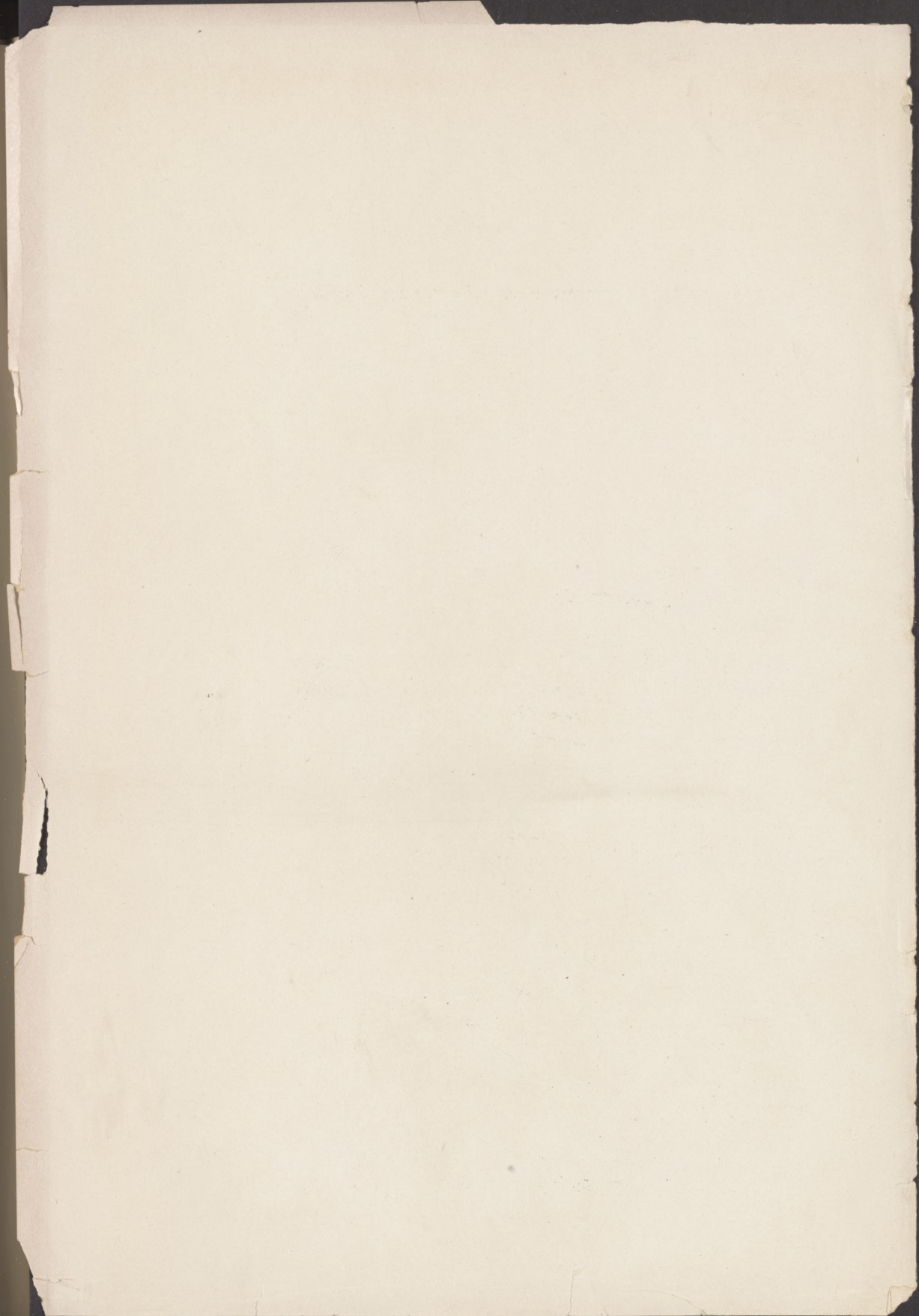
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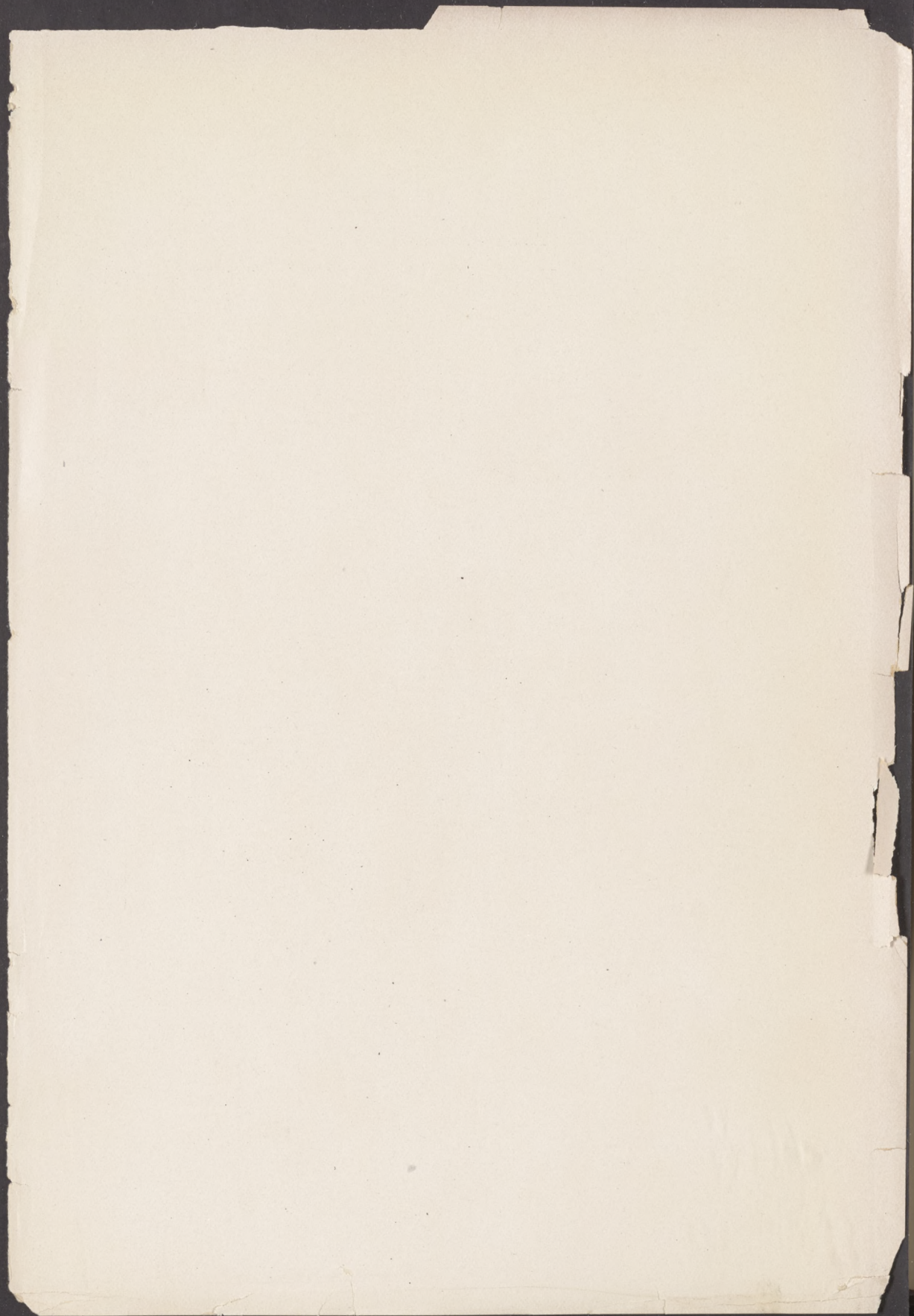
EDWARD F. MERREY,
Of Counsel with Plaintiff in Error.

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New Jersey Court of Errors and Appeals.

PATERSON AND RAMAPO RAILROAD
COMPANY and ERIE RAILROAD
COMPANY,

Defendants in Error,

vs.

THE MAYOR AND ALDERMEN OF THE
CITY OF PATERSON,
Plaintiff in Error.

On Error to
Supreme Court.

BRIEF ON BEHALF OF PATERSON AND RAMAPO RAILROAD COM- PANY AND ERIE RAILROAD COM- PANY, DEFENDANTS IN ERROR.

Writ of error was sued out by the plaintiff in error to review a judgment in the Supreme Court setting aside an ordinance of the plaintiff in error entitled "An Ordinance to lay out and open Sixth Avenue across the right of way of the lands of the Erie Railroad Company," which had been brought before the Supreme Court for review by writ of *certiorari* allowed on application of the defendants in error. The writ was argued before Justices DIXON and SWAYZE, and the latter delivered the opinion of the Court, as follows :

"The evidence in this case satisfies us that the point at which the proposed street crosses the railroad tracks is, properly speaking, a freight yard. There are side tracks, cars are unloaded and trains made up at this point and it is used as a storing yard. All the tracks have been there and the present use has been continued for twenty-three years. That

“ the City of Paterson has no authority to lay out a street across the freight yard of a railroad company “ has been decided by this Court. *N. Y. S. & W. R. R. Co. vs. Paterson*, 32 Vr., 408. The ordinance “ should be set aside with costs.” (Case, p. 192 ; 43 Vr., 112).

The assignments of error are :

(1) Because the Supreme Court decided that the point at which the proposed street crosses the railroad track is, properly speaking, a freight yard.

(2) Because the said Court decided that the City of Paterson has no authority to lay out a street across the freight yard of a railroad company.

I.

The decision of the Supreme Court on questions of fact, if sustained by competent testimony, is final.

The Supreme Court found, as a matter of fact, that the point at which the proposed street crosses the railroad tracks was a freight yard. “ The facts show that the point where the proposed street is to cross the railroad is the prosecutors’ freight yard.” (43 Vr. 112, headnote.) The decision of the Supreme Court on this point, if sustained by competent evidence, is final, and cannot be further reviewed in this Court.

Moran vs. Jersey City, 29 Vr., 653.

Vreeland vs. Bayonne, 31 Vr., 168.

Morris vs. Bayonne, 33 Vr., 185.

Beecker vs. Newark, 36 Vr., 307, Affirming 35 Vr., 475.

Suburban Co. vs. Vailsburg, 39 Vr., 311.

Dean vs. Paterson, 39 Vr., 664.

Yellow Pine Co. vs. State Board of Assessors, 43 Vr., 182.

D. L. & W. R. R. Co. vs. Newark, 34 Vr., 310.

The first assignment of error cannot, therefore, be sustained, unless it is shown that there was no evidence to justify this finding of fact. That the evidence not only justified such finding but precluded any other finding will be demonstrated by a mere reading of the same. It is practically undisputed. At the point of the proposed crossing, the right of way of the Paterson and Ramapo Railroad Company, purchased in 1847, is sixty-six feet in width. Its successor, the Erie Railway Company, in 1864 bought an additional strip of twenty feet on each side, making a total width of one hundred and six feet at this place. It was admitted that the title of the Erie Railway Company was afterwards transferred to the Erie Railroad Company, one of the plaintiffs in *certiorari* (pp. 31, 32). There are six tracks—two main line tracks and four additional tracks for a yard, the latter being used for storing and shifting empty cars and for unloading freight from cars onto wagons. Cars are stored in this yard for the purpose of making more room in the main or lower yard at Paterson, which is near the Market Street station. There is no other yard in the City for doing this work. On an average twenty-four hundred empty cars a month are handled at this yard (pp. 33, 34).

Mr. Wood, the freight agent, says that if the yard were cut in two at Sixth Avenue, it would work greatly to the disadvantage of the Company and would seriously interfere with its business, besides making a very dangerous crossing (p. 35, line 25, to p. 36, line 5). The danger comes from the fact that there are one hundred and seven regular trains passing that point every twenty-four hours, besides an average of fifteen extra trains; and, moreover, the shifting engine works there almost continually (p. 36, lines 5-15). There is not sufficient room in this yard to store the empty cars—not room enough to do the Company's business. "We are continually holding cars out that should be brought in; for instance, we have one hundred and forty-five cars standing at Port Jervis coming to Paterson with loads; at Hawthorne we have fifty-two cars loaded, at

Ferndale Pitt we have sixty-seven cars and from the East there are seventy cars with freight all coming to Paterson" (p. 36, lines 30-35).

"Q. Is that state of affairs exceptional or common?

"A. Common.

"Q. Why can't they come to Paterson?

"A. We have no room for them; our yard is full; all our delivery tracks are filled with cars to be unloaded, or waiting to be placed to be unloaded" (p. 37, lines 1-10).

The railroad unloads about one hundred and fifty cars a day in Paterson and loads about twenty-four cars per day (p. 37, lines 20-30).

The following is a summary of the other testimony bearing on this point:

Sharkey, Yardmaster, says that he has known of the existence of the yard for twenty years; that a switch engine works there day and night, sometimes two or three (p. 45, lines 10-30). The tracks in the yard are used for storing cars and for unloading same (p. 46).

"Q. If that yard were cut in two, how would it affect your operations there?

"A. It would absolutely break that yard all up.

"Q. Would it be possible to operate it as you now operate it if that were done?

"A. No, sir, you couldn't do it.

"Q. What do you think as to safety at that yard, if that were done?

"A. It would be a very dangerous crossing, I think" (p. 47, lines 15-20).

Joyce, Track Supervisor, says that he has known of this yard, being the same as it is now for seventeen years past (p. 57). The tracks at Fifth Avenue are used for storage of all kinds of freight cars (p. 58, lines 10-15). "As a rule, it is always full" (p. 59, line 5). The tracks outside of the gates are used for unloading. "It acts as a delivery track for that part of the City, and any individual that lives in the City or around that part of the City" (p. 60, line 10). The opening of the street would materially interfere with

the use of the switching facilities. " It would break up all of thirty cars, which would almost take the use of one track away " (p. 63, lines 10-20).

Boozan, Track foreman, says that he knows of the West Paterson yard at Sixth Avenue ever since he started to work for the Company twenty-three years ago. All the tracks were there just the same for twenty-three years past (p. 64). " They are full all the time ; they might be clear for an hour or so when shifting trains, but they are filled right up again " (p. 65, line 15).

Wilson, Division Freight Agent, says that the present facilities for unloading freight at Paterson are inadequate. From seventy-five to one hundred cars a day are held back.

" Q. What is it that is lacking ; what is inadequate ?

" A. We lack space to put our deliveries,—to place them for unloading ; we have one main yard and the Sixth Avenue yard and they are both crowded.

" Q. If this West Paterson yard were entered here and this street opened, what effect would it have upon your present facilities there ?

" A. It would break up our operations there.

" Q. How is that West Paterson yard important to you ?

" A. It is very important for making up our empty trains ; placing empty cars to be taken West ; classification of these cars ; sorting out the different cars ; for example, refrigerator or flat cars ; that is all done at that yard ; it must be done there ; we have no other place to do it ; on the eastbound or west side we have a delivery track from which the mills that do not have private switches in Paterson are served " (pp. 68, 69).

Von Moschzisker, Real Estate Agent, says : " I know the condition is such in Paterson that our yard facilities are insufficient to do the business of the company at that point, and, by reason of this fact, I have been endeavoring, on behalf of the company, to obtain additional land in the City of Paterson for the construction of a yard in that vicinity adjacent to that property " (p. 72).

The only evidence produced by the City on this point of the case was that of some of the inhabitants who lived in the neighborhood, who said that they never "heard" this place called a "yard." One of the witnesses was a stonecutter (Grundy) (p. 128); another was a lawyer (Marelli) (p. 162); and a third was a manufacturer (Edwards) (p. 179).

It would be just as easy to produce three hundred witnesses as three in the City of Paterson who had never heard of this place being called a railroad yard; and, on the other hand, the plaintiffs in *certiorari* could easily produce several hundred employees who had never heard it called anything else but a yard. Of course, the test is not what people hear or what they think, but the actual use to which the tracks were put; and the evidence as to the use of the tracks is undisputed. The evidence brings the case literally within the definition of a railroad yard given in *Harley vs. Louisville, &c., R. Co.*, 57 Fed., 145, cited by plaintiff in error in the Supreme Court as an authority in favor of the City:

"The yard of the Company * * * consists of side tracks upon either side of the main tracks and adjacent to some principal station or depot grounds, where cars are placed for deposit, and where arriving trains are separated and departing trains made up. It is the place where such switching is done as is essential to the proper placing of cars either for deposit or for departure."

But, even if there were any dispute in the evidence as to the use of these tracks and as to whether they constituted a railroad yard, yet such dispute has been resolved by the Supreme Court in favor of the defendants in error, and its finding cannot be further reviewed.

II.

**The City of Paterson had no authority,
under its charter, to pass the ordinance.**

The second assignment of error is that the Supreme Court decided that the City of Paterson had no authority to lay out a street across the freight yard of a railroad company. The Supreme Court in its opinion, after stating it found as a fact that the point at which the proposed street crosses the railroad tracks is a freight yard, directs that the ordinance be set aside under the decision in the case of *N. Y. S. & W. R. R. vs. Paterson*, 32 *Vr.*, 408.

The charter provision is as follows :

“The department of streets and sewers shall be charged with the execution of the following powers of the Board of Aldermen of said city, which powers are hereby conferred on said Board, namely : 1. To lay out, open, vacate, straighten, widen or alter any street, avenue, road, highway or alley within said City, and to take such lands and real estate as may be necessary therefor, upon making compensation in a manner therein prescribed.”

P. L. 1871, Section 92.

There is no express provision with reference to the taking of lands of a railroad company.

The *N. Y. S. & W. R. R.* case decides that a railroad company cannot be deprived of the beneficial use of its freight yard, and be constrained to transact its freight business elsewhere, unless clear authority be given to the City to require it to do so. “No such authority appears in this case, and it cannot be inferred from the general power given to lay out and open streets. Until the legislature bestow such power upon a municipality, a company cannot be compelled to abandon its freight yard and seek another locality for the transaction of its daily business.” The court relied upon the cases of *N. J.*

Southern R. R. Co. vs. Long Branch Commissioners, 10 Vr., 28 ; and *Mayor, etc., of Jersey City vs. Montclair Ry. Co.*, 6 Vr., 328.

The former case was decided in the Supreme Court by Justices DEPUE, VAN SYCKEL and KNAPP (opinion by DEPUE). The principle upon which the decision rests is that where the use for which the condemnation is prosecuted is of such a character as necessarily to require for its enjoyment the exclusive possession and occupation of the premises, it is manifest the condemnation will be utterly futile unless it may operate also to extinguish the right of the corporation whose title is condemned, to use the land for its corporate purposes. "A condemnation that will accomplish this result will destroy, *pro tanto*, the franchises of the corporation, and impair to that extent the powers granted by the legislature. Especially will that be the case where the land has been improved and applied to the designated use by making a roadway, or the construction of tracks and improvements upon it. Still more obviously will the legislative intent be defeated where priority of location confers priority of right. The power to invade the privileges of a corporation in such manner will not be inferred from a naked grant of the power to condemn. It can only be derived from a power granted either in express terms or arising by a necessary implication ; and the legislative intent to authorize such an interference with the rights and privileges of another corporation—whichever way it may be manifested—must be plainly perceived." The facts of the case were that the defendant intended to construct upon a part of the land which was in use by the railroad company for its purposes a public street, laying the same longitudinally over said land ; and it may be argued by the plaintiff in error that therein it differs from the case in hand ; but the principle laid down is the same whether the proposed street is laid out on the railroad land, either longitudinally or at some angle, provided it appears that the opening of the street will deprive

the railroad of the beneficial use of its lands for its corporate purposes. This case has been approved by the Court of Chancery in *Burlington vs. Penn. R. R.*, 11 Dick., 259, 261 ; and by the Courts of Errors and Appeals in *National Docks Co. vs. United Companies*, 24 Vr., 217, 321 ; and *Morris & Essex R. R. vs. Orange*, 34 Vr., 252, 256.

In the case of *Mayor, etc. of Jersey City vs. Montclair R. Co.*, 6 Vr., 328, the same principle was applied to a case where a railroad attempted to condemn and take for its tracks a strip of land through property acquired by the City for the purpose of a reservoir.

These decisions are amply supported by other authorities.

The principle based is thus stated in a recent publication :

“ Where property has been legally condemned or acquired by purchase for a public use, and has been or is about to be appropriated for such use, it cannot be taken for another public use which will totally destroy or materially impair or interfere with the former use, unless the intention of the legislature that it should be so taken has been manifested in express terms or by necessary implication.”

15 Cyc., 614.

In *People vs. N. Y. Central R. R. Co.*, 156 N. Y., 570, there were eight tracks to be crossed by the proposed streets, four of which were main line or running tracks, and four of which constituted a connection between two freight yards of the railroad. Held that this constituted a freight yard, and that a general act permitting cities to lay out streets across railroad tracks would not apply.

In *Prospect Park R. R. vs. Williamson*, 91 N. Y., 552, held that a town cannot open a highway across a station terminus of a railroad which is filled with tracks, and is necessary to the operation of the road.

In *Cincinnati, &c., R. Co. vs. City of Anderson*, 139 Ind., 490, 38 N. E., 167, the Court held that a street

cannot be extended through the yards and across the tracks of a railroad company where to do so would require the destruction and removal of a turntable, water tank, engine house and coal dock, though such structures might be rebuilt and conveniently used on other land of the railroad in the vicinity. The Court said :

“ Under the general law permitting cities to establish streets, we have no doubt of the implied power to extend streets transversely across the right of way of a railroad when in doing so the uses for which such right of way is employed are not materially injured or destroyed, and where such uses and those for a street may coexist without impairment of the first uses. But where such uses cannot so coexist, or where the first use is materially impaired or destroyed, it is well settled in this state and elsewhere that the second public use will be denied.”

To the same effect are :

City of Valparaiso vs. Chicago & St. L.
R. R., 123 Ind., 467.

Milwaukee & St. Paul R. Co. vs. Faribault,
23 Minn., 167.

St. Paul Depot Co. vs. St. Paul, 30 Minn.,
359.

Bellaire & O. R. R. Co. vs. City of Bellaire,
7 Ohio Decs., 607.

It may be argued that it would be competent for the legislature to authorize the opening of streets across the right of way and other lands of a railroad company without regard to the use to which they were devoted ; but assuming without admitting this, it is clear that no such power has been given by the legislature to the City of Paterson ; and in this respect will be found the distinction between the cases decided in the N. J. Supreme Court and the cases cited from other jurisdictions in the brief of the plaintiff in error in the Supreme Court.

Thus in *Delaware, &c., R. Co. vs. Village of Whitehall*, 90 N. Y., 21, there was a statute which authorized the laying out of “ any street and highway across

the track of any railroad." It is held that the word "track" included the entire roadbed, including turn-outs and switches used for passing engines and cars from one line of rails to another. Moreover, it appeared in that case that the tracks were not used for storing cars or for deliveries of freight, *i. e.*, the place in question was not a yard. The tracks that were to be crossed were merely "extra" tracks.

In *Boston, &c., R. Co. vs. Village of Greenebush*, 52 N. Y., 510, the same statute referred to in the Whitehall case was considered and it was held that the opening of a street across railroad tracks was authorized under the statute when it appeared that the tracks were used for passing trains and for switching off cars and making up trains, and the Court said in its opinion that the act would not apply to tracks which were used for storing cars or exclusively for making up trains. This distinction was pointed out in the later case of *People vs. N. Y. Central R. R. Co., Supra*.

In *Ill. Central R. Co. vs. Chicago*, 141 Ill., 586, there was a statute which provided: "The City Council shall have power, by condemnation or otherwise, to extend any street, alley or highway over or across, or to construct any sewer under or through any railroad track, right of way, or land of any railroad company within the corporate limits." The same statute was construed in the cases of *Chicago, &c., R. Co. vs. Chicago*, 140 Ill., 309, 29 N. E., 1109 and *Ill. Central R. Co. vs. Chicago*, 138 Ill., 453, 28 N. E., 740. The difference between such a statute and the charter provision of the City of Paterson is obvious.

The case of *Ill. Central R. R. Co. vs. Chicago, &c., R. Co.*, 122 Ill., 473, did not involve the question of the opening of a street across railroad property by municipality. The question there was between two railroad companies and it was held that by virtue of an express power given in the statute, one railroad could condemn the right of way across another.

In the case of *Commissioners vs. Detroit R. Co.*, 93 Mich., 58, held that the railroad could not convert

its right of way into a store room for its cars and thus prevent a street from crossing its right of way. The evidence in this case did not clearly establish that the place of crossing was a "yard."

Another case cited on brief of the plaintiff in error in the Supreme Court was *Cincinnati, &c., R. Co. vs. City of Anderson*, 139 Ind., 490, 38 N. E., 167. But this case, as is heretofore shown, is very strong authority in favor of the defendant in error. It cites among other authorities the case of *N. J. Southern R. R. vs. Long Branch Commissioners*, *supra*.

III.

The ordinance is void because it was allowed to lapse.

The proceedings commenced April 6th, 1903 (p. 6), by resolution directing the Street Commissioner to advertise the intention of the Board of Aldermen to lay out and open Sixth avenue across the right of way.

On June 1st, 1903, it was reported that advertisement had been made, and petitions for and objections against the opening were received, the Erie Railroad Company being one of the objectors (pp. 6, 7, 8).

On June 1st, the ordinance was passed to a second reading (p. 12).

On June 15th, the ordinance was laid over to "the next meeting of the Board" (p. 80).

Similar action was taken at the regular meetings, July 6th and 20th, and on August 3d, the ordinance was put on passage and lost, and afterwards the vote was reconsidered, and the ordinance placed back on second reading.

The ordinance was laid over on August 17th, Sep-

tember 14th and September 21st. On October 5th, a regular meeting was held (p. 82), and adjourned to October 8th, when the ordinance was again laid over; and again, on October 19th, it was laid over.

On November 2d, a regular meeting was held. There being no quorum present, the meeting adjourned until the next Monday, November 9th, when the Aldermen met. At that meeting the ordinance in question was not referred to (p. 83).

Afterwards, on November 16th, December 7th, and December 21st, action was taking laying the ordinance over until the next meeting of the Board (p. 83).

On January 1, 1904, the new Board met and was organized (p. 84). At this meeting there was no reference to the ordinance (p. 89).

On January 4th, 1904, the new Board met again, and the ordinance in question was finally passed (pp. 19, 86).

The Board of Aldermen, which consisted of twenty-two members, after its reorganization on January 1st, 1904, contained six new members (pp. 86-88).

The Charter of Paterson requires that "every ordinance shall be read three times before its final passage, and not more than twice at one meeting of the Board" (Section 24).

From the foregoing statement it will be observed that the third reading and final consideration of the ordinance was postponed on October 19th to the regular meeting on November 2d, when, there being no quorum, the Board adjourned until the next Monday evening, November 9th. The ordinance had been explicitly deferred for action at the meeting on November 2d, but was neither taken up nor referred to at that meeting, nor at the adjourned meeting (p. 83). Again, on December 21st, the consideration of the ordinance was laid over "until the next regular meeting of the Board." The Board regularly met January 1st, 1904, and elected officers and proceeded to other business, but did not refer to the ordinance. Afterwards

they met on January 4th and passed the ordinance (p. 86).

We therefore submit that the ordinance was allowed to lapse and is consequently void.

“ It was not in the power of the Council to take it up at some subsequent day at its pleasure and pass it, notwithstanding the hiatus between the date last fixed and the date of its action. There must be continuity in municipal action. The public have the right to know when action upon an ordinance is to be taken ; and if by failure to act, or other cause, an ordinance is stayed in its progress to final passage, through a failure of proper continuance by the Council, it dies with the end of the last vitalizing action.”

Jersey City, Hoboken and Paterson Railroad Company vs. City of Passaic, 39 Vr., 110.

IV.

The ordinance under the circumstances is unreasonable and oppressive and therefore void.

The city proposes to lay out and open a street across the company's six tracks at grade at a busy place where the operation of the railroad will be seriously interfered with and where great danger will be created, and this in spite of the fact that the company has offered and stands ready to bear the entire expense of constructing a bridge over its tracks for the use of the city, at a cost of forty-one thousand dollars, if the city would carry the street over (p. 72). It is not the opening of a street already dedicated. The

ordinance proposes that there shall be "laid out and established" a street across the railroad tracks. There is another street parallel to the proposed street, only 500 feet distant (see map). The neighboring buildings are factories, coal yards, etc. The proposed street, while it might be useful, is not necessary; and to force it through with a grade crossing under these conditions is both unreasonable and oppressive as against the railroad company.

The circumstances in each case are to be taken into consideration in determining what is a reasonable and proper ordinance. This ordinance would practically create a nuisance in the shape of a dangerous crossing.

In *Read vs. Camden*, 25 Vr., 347, which involved a scheme for the carrying of a street over the tracks of the railroad, the Court held that an ordinance for the abolishing of grade crossings in Camden was void because it presented unreasonable means of conducting public travel through the street over the railroad, and this, although it was conceded by the Court that the Council had full power to vacate and alter the grades of the streets. The Court held that the ordinance had been so drawn that it would prove abortive and not affect the highly beneficent purpose which the statute allowing such changes was intended to promote. The Court looked into the actual outcome of the changes proposed, to determine their reasonableness and the consequent validity of the ordinance.

In the case of *Long vs. Jersey City*, 8 Vr., 348, the Court passed upon the reasonableness of an ordinance regulating the standing of trains across a public street. In that case the Court sustained the ordinance, holding it to be reasonable, saying that: "In determining whether an ordinance is reasonable or not it has been well remarked, that the Court will have regard to the particular city or corporation, the objects sought to be attained, and the necessity which exists for the ordinance. Regulations proper for a large and popular city might be

“absurd and oppressive in a small and sparsely populated town or in the country. Dill. Mun. Cor., 283, “§ 261.”

It is a well settled principle of law that an ordinance which is oppressive in its character is void. *Dill. Mun. Cor., No. 321*. It may regulate, but it cannot restrain trade. The extent to which the municipality may go in requirements of a railroad company is limited by the reasonableness and fairness of the ordinance under the circumstances of the particular case. In the direction of safeguarding railroad crossings and preventing accidents the Courts have sustained heavy requirements of the railroad companies, but it has been done on the ground that the exercise of the police power was reasonable in view of the facts.

D. L. & W. R. R. Co. vs. East Orange, 12 Vr., 127.

Red Star Steamship Co. vs. Jersey City, 45 Vr., 246, 250.

Trenton Horse Railroad vs. Trenton, 24 Vr., 132, 140.

The principle that an ordinance which is unjust and oppressive in its character and operation is invalid, is also laid down in *Elliott on Public Corporations*, § 230, and is illustrated by the case of *Hawes vs. Chicago, 158 Ill., 653*, where an ordinance compelling the substitution of a cement sidewalk in place of a plank walk recently laid in front of a twenty acre lot, was held void because unreasonable, unjust and oppressive.

An unfair, discriminating, oppressive ordinance is void.

City of Buffalo vs. N. Y. L. E. & W. R. R. Co., 152 N. Y., 276, 282.

In that case, an ordinance required the railroad company to stop all trains before crossing certain streets, and, while the ordinance was sustained, it was because of defects in the procedure attacking it, the Court being of opinion that such an ordinance was invalid.

It is submitted that while the courts are favorable to ordinances for the protection and safety of the public and will make presumptions in their favor, there is no leaning towards an ordinance such as is now presented, which obviously creates new dangers and will probably establish a public nuisance.

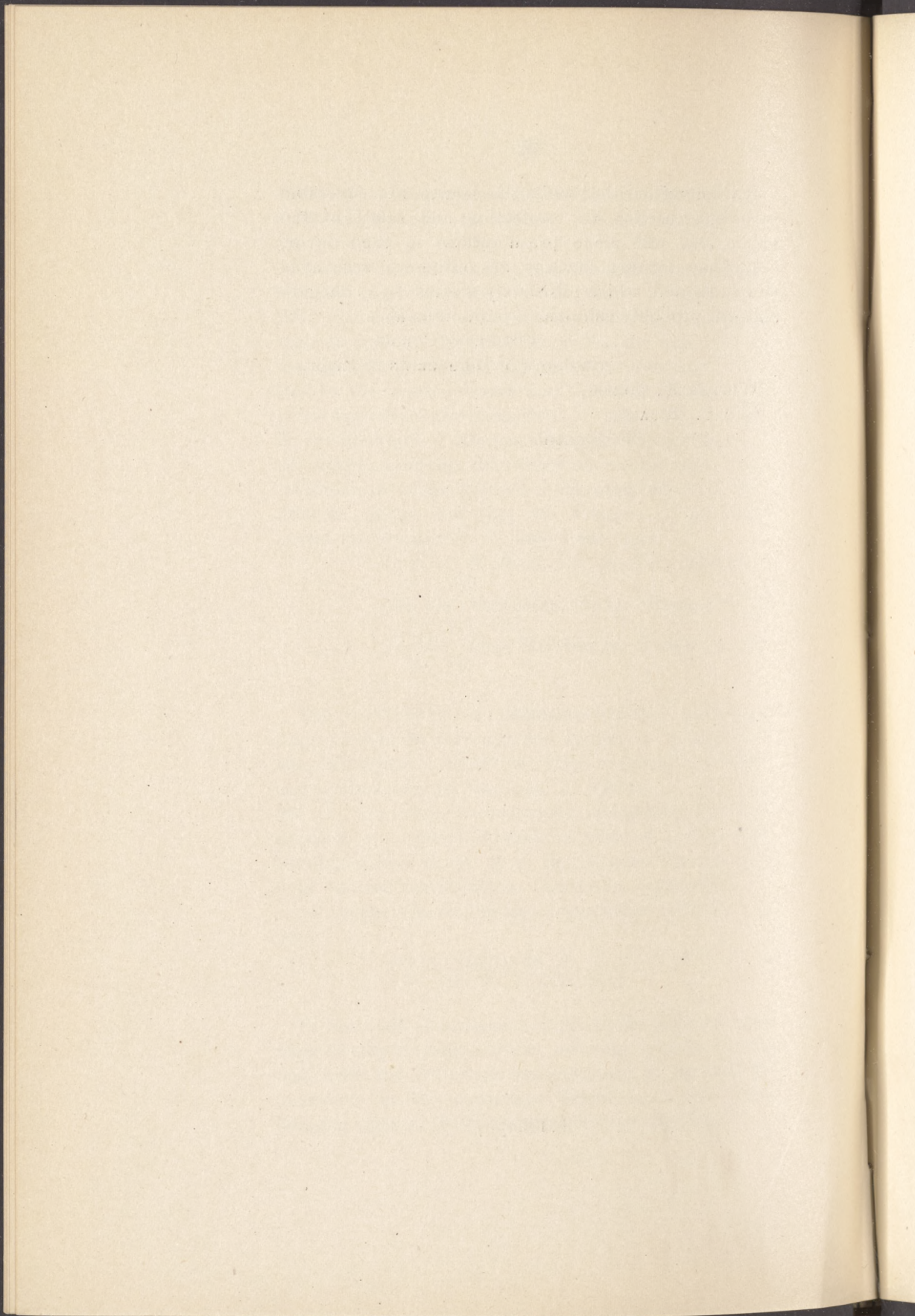
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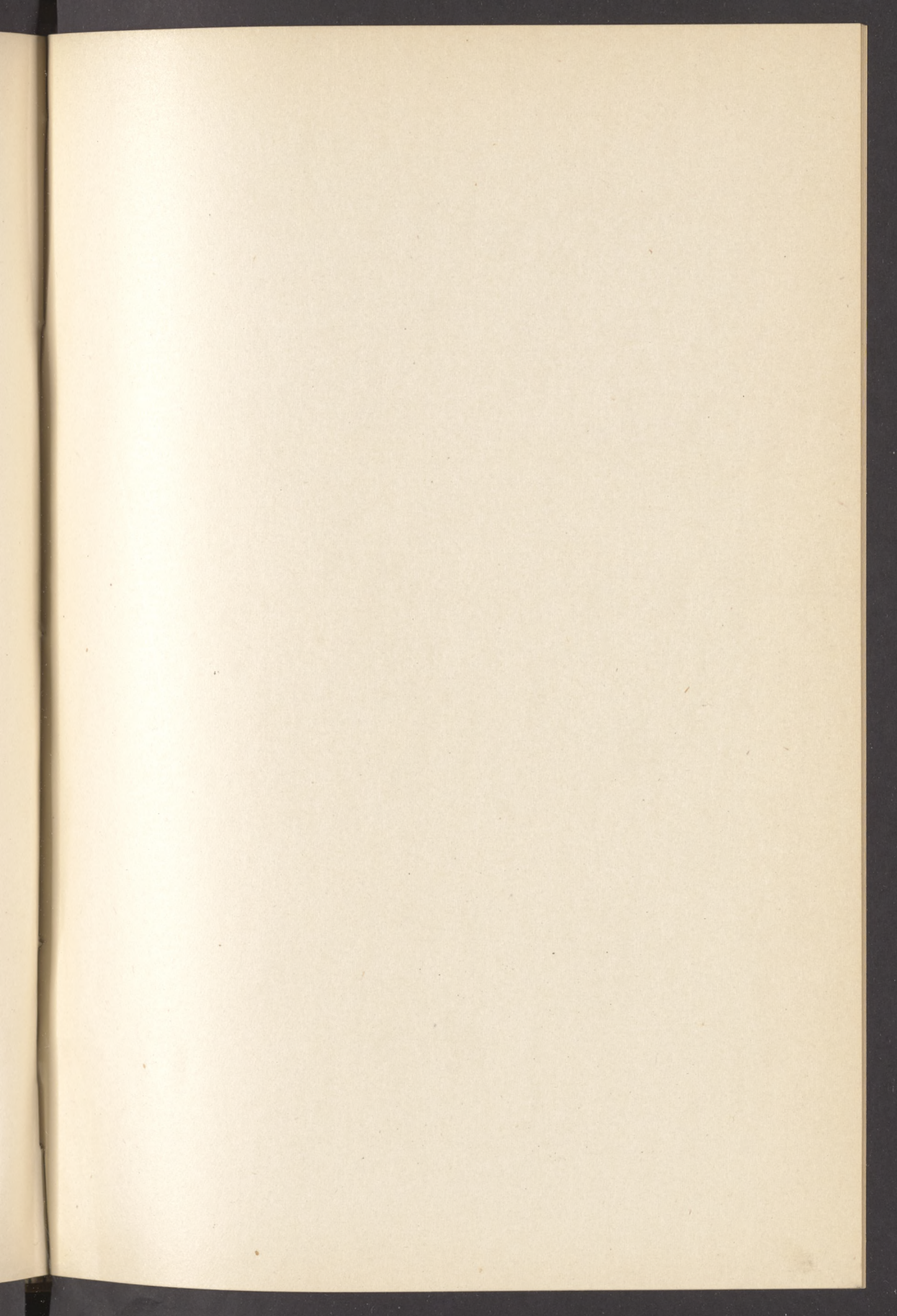
Attorneys of Defendants-in-Error.

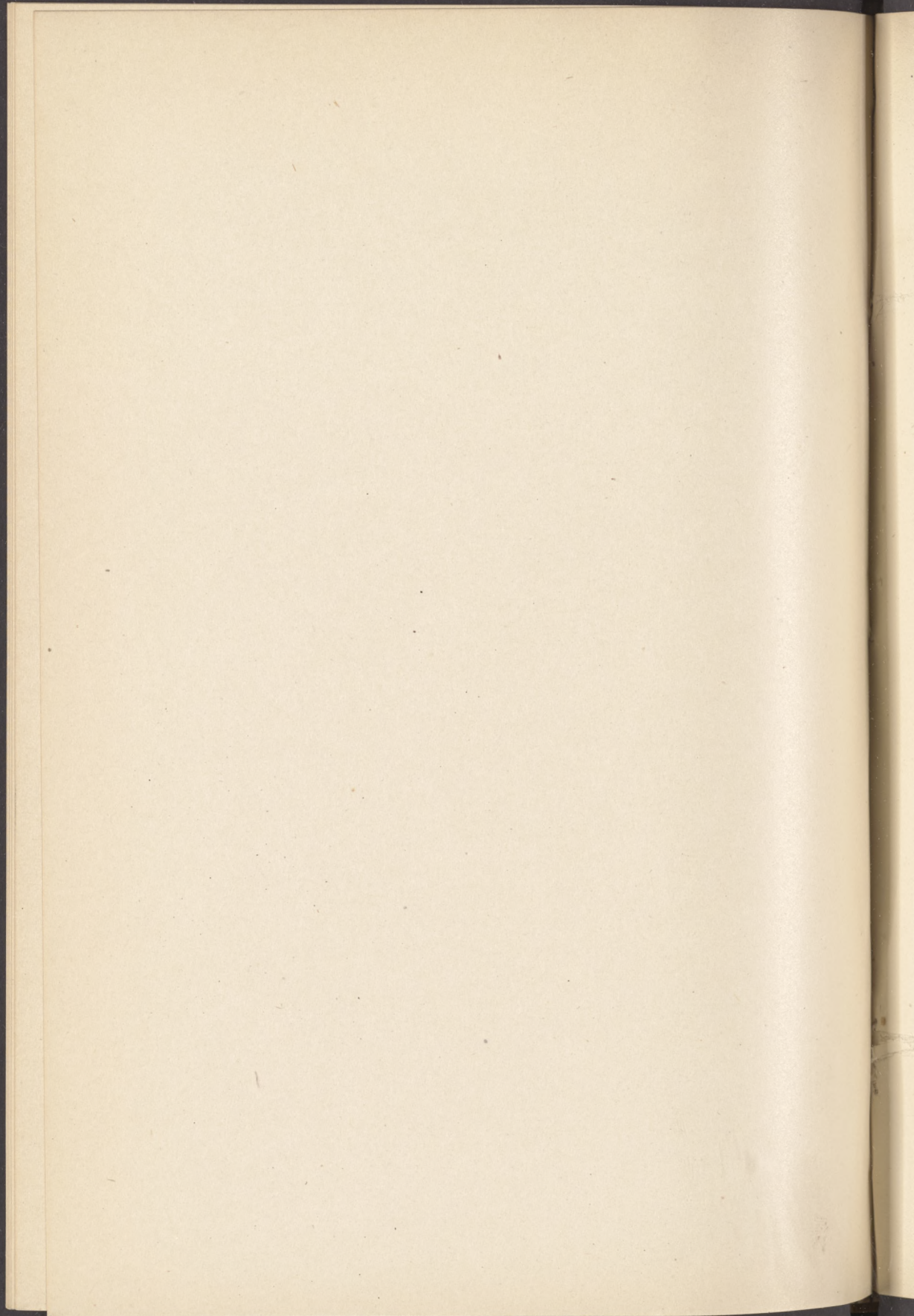
WILLIAM H. CORBIN,

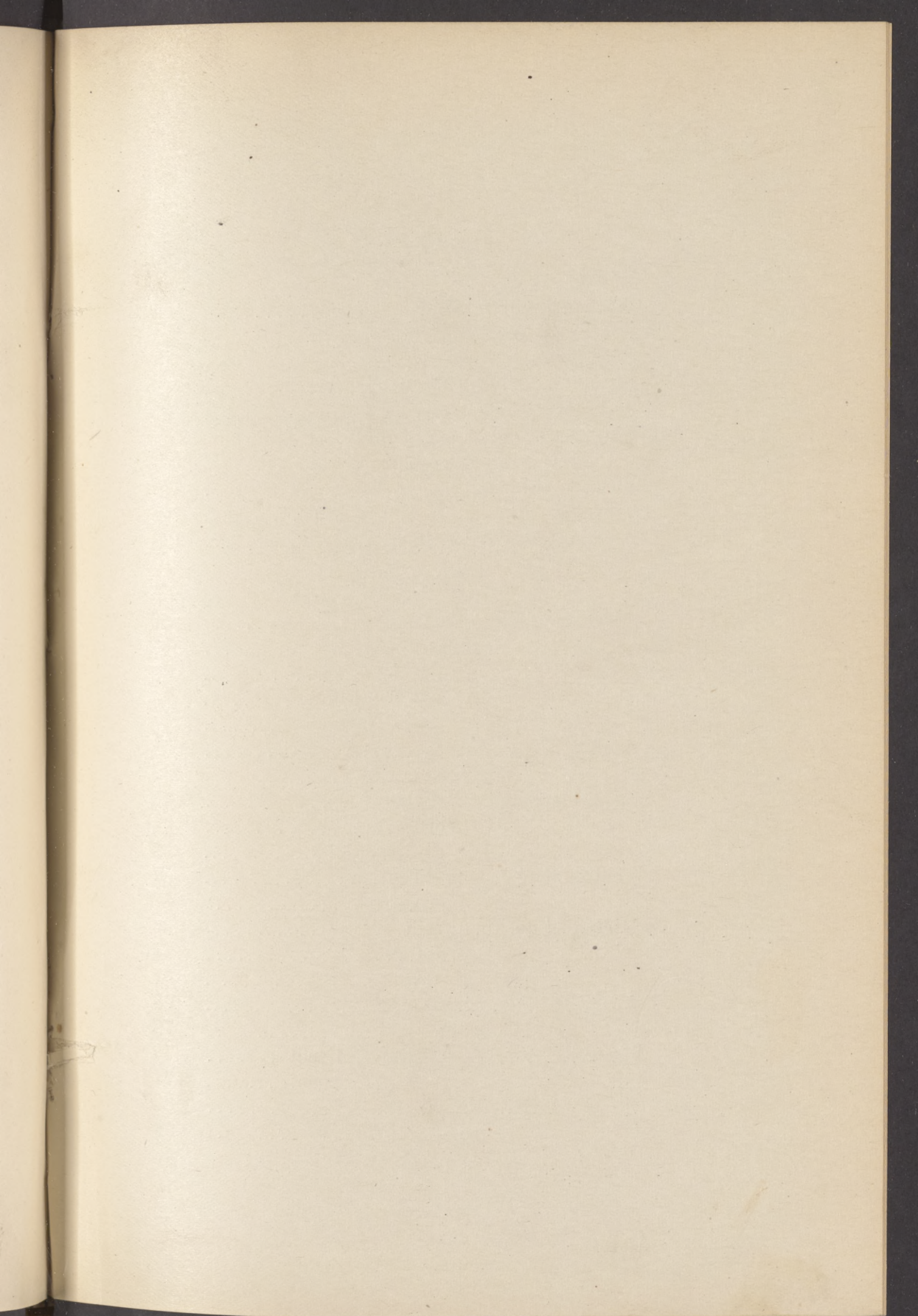
GEO. S. HOBART,

Of Counsel.









INDEX.

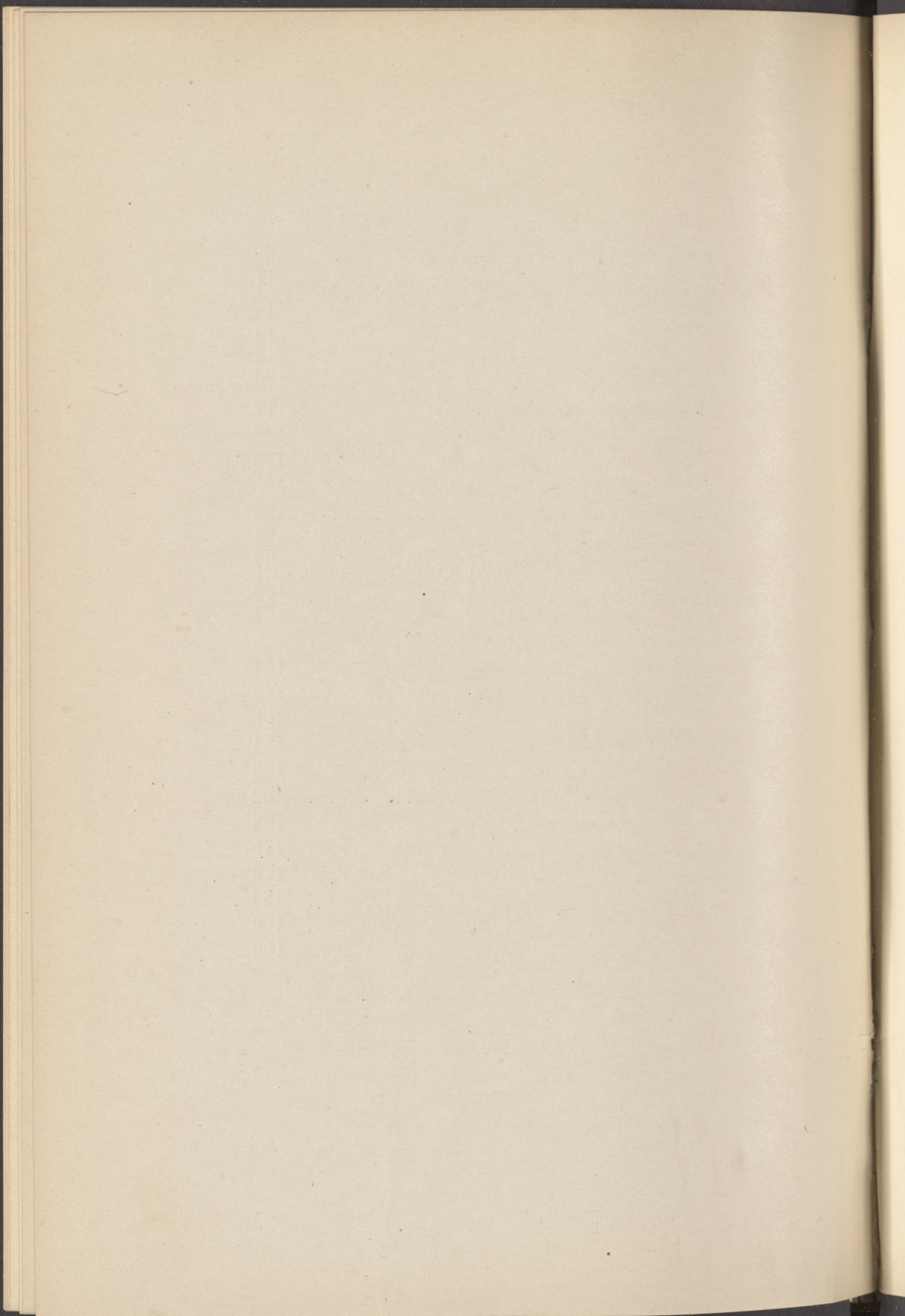
Writ of Error to Supreme Court.....	1
Return to Writ of Error.....	3
Writ of Certiorari.....	4
Return to Writ of Certiorari.....	6
Prosecutors' Reasons.....	23
Minutes of meetings of Board of Aldermen offered in evidence.....	80
List of Aldermen.....	86
Opinion.....	191
Assignments of Error.....	193

TESTIMONY.

Orvill Kellogg, direct.....	26
cross.....	27
re-direct.....	30
re-called, direct.....	43
cross.....	44
Seeley Wood, direct.....	32
cross.....	38
Nicholas Sharkey, direct.....	44
cross.....	47
re-direct.....	56
Christopher Joyce, direct.....	57
cross.....	57
Michael Boozan, direct.....	63
cross.....	64
re-direct.....	67
Harry Wilson, direct.....	68
cross.....	70
Frank A. Von Moschzisker, direct.....	70
cross.....	74
Henry F. Bell, direct.....	89
cross.....	98

II

Martin Curley, direct.....	106
cross	111
Harold J. Harder, direct.....	112
cross	115
re-direct.....	115
re-cross.....	116
Nicholas Warmolts, direct.....	117
cross.....	122
re-direct.....	126
re-cross.....	127
John Grundy, direct.....	128
cross.....	134
re-direct.....	137
James H. Grundy, direct	138
cross.....	142
re-direct.....	143
re-cross	144
Bernard J. Roegiers, direct.....	146
cross.....	150
Patrick Walsh, direct	154
cross.....	159
re-direct.....	162
Henry Marelli, direct	162
cross.....	170
Edward G. Edwards, direct.....	179
cross.....	184
re-direct.....	190
re-cross.....	190



New Jersey Court of Errors and Appeals.

THE ERIE RAILROAD COMPANY
AND PATERSON AND RAMAPO
RAILROAD COMPANY,

Defendants in Error,

vs.

THE MAYOR AND ALDERMEN OF
THE CITY OF PATERSON,

Plaintiff in Error.

*On Writ of Error
to the Supreme
Court.*

10

Writ of Error.

NEW JERSEY, SS :

20

The State of New Jersey to
our Justices of the Supreme
Court, Greeting :

Because in the record and proceedings, and
also in giving of the judgment in a plaint, which
was in our said Supreme Court before you, be-
tween The Erie Railroad Company and The
Paterson and Ramapo Railroad Company, prose-
cutors, and The Mayor and Aldermen of the
City of Paterson, defendants, on a writ of cer-
tiorari issued out of our said Supreme Court to
the said defendants, as is said, manifest error
hath intervened to the great damage of the said
The Mayor and Aldermen of the City of Pater-

30

son, prosecutors, as aforesaid as by its plaint we are informed, we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you that if judgment be thereupon given, then you send distinctly and openly, under your seal, the records and proceedings and plaint aforesaid with all things touching and concerning the same to our Court of Errors and Appeals before the judges thereof on the twenty-eighth day of March next and this writ and that the records and proceedings aforesaid being inspected, we may cause to be further done thereupon what of right and according to law ought to be done.

Witness, William J. Magie, Chancellor and President Judge of our said Court of Errors and Appeals at Trenton, this ninth day of March, A. D., nineteen hundred and five.

S. D. DICKINSON,

VIVIAN M. LEWIS,

Clerk.

Attorney.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

THE ERIE RAILROAD COMPANY
AND PATERSON AND RAMAPO
RAILROAD COMPANY,

Defendants in Error,

vs.

THE MAYOR AND ALDERMEN OF
THE CITY OF PATERSON,

Plaintiff in Error.

On Writ of Error 10
to the Supreme
Court.

Return.

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

WILLIAM S. GUMMERE,

C. J.

30

NEW JERSEY SUPREME COURT.

PATERSON AND RAMAPO RAIL-
ROAD COMPANY AND ERIE
RAILROAD COMPANY,

Prosecutors,

vs.

THE MAYOR AND ALDERMEN OF
THE CITY OF PATERSON,

Defendants.

*Writ of
Certiorari.*

10

Returnable February 2nd, 1904.

COLLINS & CORBIN,

Attorneys for Prosecutors.

20

This writ is allowed on condition that it be
brought to hearing at the February term, 1904.

Dated January 21, 1904.

MAHLON PITNEY,

J. S. C.

30

NEW JERSEY, ss :

The State of New Jersey,
to the Mayor and Alder-
men of the City of Pater-
son, GREETING :

[L. s.]

We, being willing, for
certain reasons, to be certified of a certain

ordinance entitled "An Ordinance to lay out and open Sixth avenue across the right of way of the lands of the Erie Railroad Company," approved January 12, 1904, passed by the Board of Aldermen of the City of Paterson, do command you that the said ordinance, together with the proceedings for the passage of the same, and all notices and other matters connected therewith, together with all things touching and concerning the same, as fully and entirely as before you they remain or in your custody or under your control, you do certify and send, together with this writ, to our Justices of our Supreme Court of Judicature at Trenton, on the first Tuesday of February next, that we cause to be done thereupon, what of right and according to law ought to be done.

10

Witness His Honor William S. Gummere, Chief Justice, at Trenton, the twenty-first day of January, Nineteen Hundred and Four.

20

WILLIAM RIKER, JR.,

Clerk.

COLLINS & CORBIN,

Attorneys for Prosecutors.

30

NEW JERSEY SUPREME COURT.

THE ERIE RAILROAD COMPANY,

Prosecutors,

vs.

10

THE MAYOR AND ALDERMEN OF

THE CITY OF PATERSON,

Defendants.

Return.

COPY OF RESOLUTION.

20

From the minutes of the Board of Aldermen of the meeting of April 6, 1903.

By Alderman Roegiers—That the City Street Commissioner be directed to advertise that it is the intention of the Board of Aldermen to open Sixth avenue across the right of way of the Erie railway, was adopted unanimously.

30

From the minutes of the meeting of the Board of Aldermen of June 1, 1903.

The Committee on Streets and Sewers reported the following :

To the Board of Aldermen : Gentlemen—Your Committee on Streets and Sewers respectfully report that it has received a written report from

the City Street Commissioner of having advertised in keeping with the requirements of the City Charter, that it is the intention of the Board of Aldermen to have Sixth avenue laid out and opened across the right of way of the lands of the Erie Railroad, and having received written objections from the Erie Railroad and others, which are hereto annexed. The Committee reports that it has given full consideration to the objection, also to the petitions from property owners and residents of that section of the City, and recommend that the report of the City Street Commissioner be received and filed and that the City Counsel be and is hereby requested to draft an ordinance that will provide for said opening at grade. On motion of Alderman Drew the report was declared carried.

George H. Drew,
Charles W. Morgan,
John H. Wenting,
David Young,

Committee on Streets and Sewers.

The following property owners presented petitions to the Board to have Sixth avenue opened across the Erie Railroad :

Helvetia Silk Mill,
The G. W. Graham Company,
Johnson, Cowdin & Company,
Sutherland & Edwards Company,
The Henry Muhs & Co.,
Bolton Bros. Silk Dyeing Co.,
The Lamond & Robertson Co.,
J. B. Ryer Son & Company,
Ryenauer Mills,
Henry F. Bell,
Kearns Brothers,
Ashley & Bailey Company,
Business Men's Association et al.

The following objections were received against the proposed opening of the Sixth avenue crossing :

Erie Railroad Company,
 Nicholson File Company,
 The Weidmann Silk Dyeing Company et als.

10

COPY OF REPORT OF CITY STREET COMMISSIONER.

Office of the City Street Commissioner,
 City Scales, 36 Bridge St.,

Paterson, N. J., May 12, 1903.

To the Committee on Streets and Sewers.

20 Gentlemen :—This is to certify that the notice of intention of the Board of Aldermen to lay out and open Sixth avenue across the right of way of the lands of the Erie Railroad Company, has been advertised in accordance with the provisions of the City Charter for twenty (20) days in two (2) daily newspapers printed and circulated in this city (Call and Guardian), and objections have been received from the Erie Railroad Company and a number or others, which are hereto annexed.

30

Respectfully submitted,

JOHN T. BRETT,

City Street Commissioner,

Per John Rainey.

OPENING OF SIXTH AVENUE.

Department of Streets and Sewers,
Office of the City Street Commissioner,
City Scales, 36 Bridge Street,
Paterson, N. J., April 10th, 1903.

Notice is hereby given that it is the intention of the Board of Aldermen to lay out and open Sixth avenue across the right of way of the lands of the Erie Railroad Company, beginning in the center line of Sixth avenue, where it is intersected by the easterly line of the right of way of the Erie Railroad Company, and running from thence westerly in a prolongation of the center line of Sixth avenue, as now laid out, east of the Erie Railroad, one hundred (100) feet more or less to the westerly line of the right of way of the said Erie Railroad Company. The above described line is the centre line of Sixth avenue across the right of way of the Erie Railroad, and said avenue shall be thirty (30) feet in width on each side of the above described center line, as shown on a map on file in the office of the city engineer.

All persons interested who may object to the proposed opening of said avenue are required to present their objections in writing at the office of the City Street Commissioner, 36 Bridge street, on or before the expiration of twenty (20) days from the date of this notice.

JOHN T. BRETT,
City Street Commissioner.

Call & Guardian,
4 folios, 20 days.

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

10 James M. Holt, of full age, being duly sworn, on his oath saith that he is the Superintendent of The Call Printing and Publishing Company, and that the annexed notice was published on April 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, May 1, 2 and 4, 1903, in The Morning Call, a newspaper printed and published at Paterson, in this state.

JAMES M. HOLT.

Sworn and subscribed before me, this 10th day of February, 1904.

JOHN TOOLE,
Notary Public of N. J.

20

OPENING OF SIXTH AVENUE.
 Department of Streets and Sewers,
 Office of the City Street Commissioner,
 City Scales, 36 Bridge Street,
 Paterson, N. J., April 10th, 1903.

30

Notice is hereby given that it is the intention of the Board of Aldermen to lay out and open Sixth avenue across the right of way of the lands of the Erie Railroad Company, beginning in the center line of Sixth avenue where it is intersected by the easterly line of the right of way of the Erie Railroad Company, and running from thence westerly in a prolongation of the center line of Sixth avenue, as now laid out, east of the Erie Railroad, one hundred (100) feet

more or less to the westerly line of the right of way of the said Erie Railroad Company. The above described line is the center line of Sixth avenue across the right of way of the Erie Railroad, and said avenue shall be thirty (30) feet in width on each side of the above described center line, as shown on a map on file in the office of the city engineer.

All persons interested who may object to the proposed opening of said avenue are required to present their objections in writing at the office of the City Street Commissioner, 36 Bridge street, on or before the expiration of twenty (20) days from the date of this notice. 10

JOHN T. BRETT,
City Street Commissioner.

Call & Guardian,
4 folios, 20 days.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC. } ss. 20

Oliver W. Merrill, of full age, being duly sworn on his oath, according to law deposes and says that the annexed notice was published in the Paterson Daily Guardian, a newspaper printed and published at Paterson in said county and state, on April 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, May 1, 2, A. D., 1903. 30

OLIVER W. MERRILL.

Sworn and subscribed before me this 10th day of February, A. D., 1903.

H. L. BERDAN,
Notary Public N. J.

Proceedings of the Board of Aldermen of the City of Paterson, New Jersey, concerning the passage of an ordinance entitled, "An ordinance to lay out and open Sixth avenue across the right of way of the lands of the Erie Railroad Company."

10 At a regular meeting of the Board of Aldermen held on June 1, 1903, the minutes show that there were present at said meeting President George A. Fischer, Thomas J. Fitzmaurice, Aldermen Joseph M. Daly, George H. Drew, William R. Harding, John Johnson, Abram Kamerling, Thomas E. Kelly, Joseph MacDonald, Rudolph H. Matthies, James Miller, Charles W. Morgan, James H. Muth, Thomas Quigley, James Roe, Bernard J. Roegiers, Samuel M. Schoonmaker, Nicholas E. Warmolts, John H. Wenting, John Wright and David Young, 21; and under the head of "New Business" show
20 the following proceedings were taken :

"An ordinance to lay out and open Sixth avenue across the right of way of the lands of the Erie Railroad Company," was introduced and read, and on motion of Alderman Roegiers the said ordinance was passed to a second reading.

30 At a regular meeting of the Board of Aldermen held on Monday evening, June 15, 1903, the minutes, under the head of "Unfinished Business," show the following :

"An ordinance to lay out and open Sixth avenue across the right of way of the lands of the Erie Railroad Company," came up on second reading. Alderman Roegiers moved to lay said

ordinance over until the next regular meeting of the Board. Alderman Miller offered an amendment that the Board proceed to consider the ordinance. President Fischer ruled the amendment out of order as the City Counsel stated to Alderman Roegiers that there was a flaw in the ordinance. The motion to lay over, however, was put and declared carried, 16 members voting for Alderman Roegiers' motion and Aldermen Daly, Kelly, Miller and Roe voting no. 10

At a regular meeting of the Board of Aldermen held on the evening of July 6, 1903, the minutes show the following :

“An ordinance to lay out and open Sixth avenue across the right of way of the lands of the Erie Railroad Company,” was read a second time. Alderman Roegiers moved to amend section 2 of said ordinance by striking out after the word “Opened” in the second line the following words: “and the lands within the said lines thereof taken.” The amendment was declared carried. On motion of Alderman Roegiers the said ordinance as amended was passed to a third reading. The ordinance was then read a third time as amended. Alderman Roegiers moved to finally pass the ordinance. The motion was duly put and declared lost, twelve members voting in the affirmative and nine in the negative, the members voting as follows: Ayes—Aldermen Drew, Fitzmaurice, Harding, Johnson, Kamerling, MacDonald, Matthies, Morgan, Muth, Wenting, Wright and President 20 30

Fischer, 12 ; nays—Aldermen Daly, Kelly, Miller, Quigley, Roe, Roegiers, Schoonmaker, Warmolts and Young, 9. Alderman Roegiers then moved to reconsider the vote by which the said ordinance passed its third reading. The motion was declared carried by the following vote : Ayes—Aldermen Drew, Fitzmaurice, Harding, Johnson, Kamerling, MacDonald, Matthies, Morgan, Muth, Roegiers, Warmolts, 10
 10 Wenting, Wright and Young and President Fischer, 15 ; nays—Aldermen Daly, Kelly, Miller, Quigley, Roe and Schoonmaker, 6. A motion of Alderman Roegiers to lay the ordinance over until the next regular meeting of the board was declared carried.

At a regular meeting of the Board of Aldermen held on the evening of July 20, 1903, the minutes, under the head of "Unfinished Business," show the following :
 20

"An ordinance to lay out and open Sixth avenue across the right of way of the lands of the Erie Railroad Company" was on motion of Alderman Roegiers laid over until the next regular meeting of the board.

At a regular meeting of the Board of Aldermen held on the evening of August 3, 1903, the minutes, under the head of "Unfinished Business," show the following :
 30

"An ordinance to lay out and open Sixth avenue across the right of way of the lands of the Erie Railroad Company" was taken up. Alderman Roegiers moved to pass the said ordinance

to third reading. The motion was declared carried. Alderman Roegiers then made a further motion that the ordinance finally pass, which was declared lost, the members voting as follows: Ayes—Aldermen Drew, Fitzmaurice, Harding, Johnson, MacDonald, Matthies, Morgan, Muth, Wright, Young and President Fischer, 11; nays—Aldermen Daly, Kamerling, Kelly, Miller, Quigley, Roe, Roegiers, Schoonmaker, Warmolts, Wenting, 10. Alderman Warmolts then moved to reconsider the vote by which the said ordinance failed to finally pass. The motion was declared carried, seventeen members voting in the affirmative and Aldermen Kamerling, Kelly, Miller and Roe voting no. On motion of Alderman Roegiers the said ordinance was then placed on second reading. 10

At a regular meeting of the Board of Aldermen held on the evening of August 17, 1903, the minutes, under the head of "Unfinished Business," show the following: 20

"An ordinance to lay out and open Sixth avenue across the right of way and lands of the Erie Railroad Company" was on motion of Alderman Roegiers laid over until the next regular meeting of the Board.

At a regular meeting of the Board of Aldermen held on the evening of September 7, 1903, the minutes, under the head of "Unfinished Business," show the following: 30

"An ordinance concerning the opening of Sixth avenue" was on motion of Alderman Roe-

giers laid over until the next regular meeting of the Board.

At an adjourned meeting of the Board of Aldermen held on the evening of October 8, 1903, the minutes, under the head of "Unfinished Business," show the following :

10 "An ordinance to lay out and open Sixth avenue across the right of way and lands of the Erie Railroad Company" was on motion of Alderman Warmolts laid over until the next regular meeting of the Board.

At a regular meeting of the Board of Aldermen held on the evening of October 19, 1903, the minutes, under the head of "Unfinished Business," show the following :

20 "An ordinance to lay out and open Sixth avenue across the right of way of the lands of the Erie Railroad Company" was on motion of Alderman Roegiers laid over until the next regular meeting of the Board.

At a regular meeting of the Board of Aldermen held on the evening of November 16, 1903, the minutes, under the head of "Unfinished," show the following :

30 "An ordinance to lay out and open Sixth avenue across the right of way of the lands of the Erie Railroad Company" was on motion of Alderman Roegiers laid over until the next regular meeting of the Board.

At a regular meeting of the Board of Alder-

men held on the evening of December 7, 1903, the minutes, under the head of "Unfinished Business," show the following :

"An ordinance to lay out and open Sixth avenue across the right of way and lands of the Erie Railroad Company" was on motion of Alderman Roegiers laid over until the next regular meeting of the Board.

At a regular meeting of the Board of Aldermen held on the evening of December 21, 1903, the minutes, under the head of "Unfinished Business," show the following :

10

"An ordinance to lay out and open Sixth avenue across the right of way of the lands of the Erie Railroad Company" was on motion of Alderman Roegiers laid over until the next regular meeting of the Board.

At a regular meeting of the Board of Aldermen held on the evening of January 4, 1904, the minutes under the head of "Unfinished Business," show the following :

20

"An ordinance to lay out and open Sixth avenue across the right of way of the lands of the Erie Railroad Company" was taken up, and on motion of Alderman Warmolts was passed to a third reading. The said ordinance was then read a third time, and a further motion of Alderman Warmolts to finally pass the ordinance was put and declared carried by the following vote : Yeas—Aldermen Boylan, Downey, Fischer, Fitzmaurice, Harding, Kerwin, MacDonald, Matthies, Morgan, Muth, Roegiers, Smith, War-

30

molts, Wenting, Young and President Drew, 16; nays—Aldermen Kelly, Daly, Quigley, Schoonmaker, Vermeulen, 5. Alderman Cannon was excused from voting.

10 Afterwards the said ordinance as passed was duly signed by George H. Drew, president of the Board of Aldermen, and on January 12, 1904, approved by William H. Belcher, Mayor, and attested by John Keegan, City Clerk, and said ordinance is recorded in book of ordinances of the City of Paterson, on page 129, and the following is a copy thereof :

AN ORDINANCE TO LAY OUT AND OPEN SIXTH AVENUE
ACROSS THE RIGHT OF WAY OF THE LANDS OF THE
ERIE RAILROAD COMPANY.

20 *The Board of Aldermen of the City of Paterson do ordain as follows :*

30 Section 1. That Sixth Avenue across the right of way of the lands of the Erie Railroad Company in said city shall be and the same is hereby laid out and established in accordance with the map and profile thereof made by Harold J. Harder, City Engineer, and dated May 29th, 1903, beginning in the centre line of Sixth avenue where it is intersected by the easterly line of the right of way of the Erie Railroad Company, and running from thence westerly in a prolongation of the centre line of Sixth avenue, as now laid out east of the Erie Railroad, one hundred (100) feet more or less to the westerly line of the right of way of the said Erie Railroad

Company, and said avenue shall be thirty (30) feet wide on each side of the above described centre line.

Section 2. That Sixth Avenue between the points so laid out and established shall be opened and the assessments for benefits and awards for damages made in accordance with the provisions of the City Charter.

Passed January 4, 1904.

10

GEORGE H. DREW,

President of the Board of Aldermen.

Approved, January 12, 1904.

W. H. BELCHER,

Mayor.

Attest: JOHN KEEGAN,

20

City Clerk.

And afterwards the said ordinance was published in a newspaper printed and published in the city of Paterson, to wit: which said newspaper was printed and published for more than two years prior to the 12th and 13th days of January, 1904, and as will appear by the affidavit hereunto annexed.

30

AN ORDINANCE TO LAY OUT AND OPEN SIXTH AVENUE
ACROSS THE RIGHT OF WAY OF THE LANDS OF THE
ERIE RAILROAD COMPANY.

*The Board of Aldermen of the City of Paterson do
ordain as follows :*

Section 1. That Sixth Avenue across the right
of way of the lands of the Erie Railroad Com-
pany in said city shall be and the same is here-
by laid out and established in accordance with
10 the map and profile thereof made by Harold
J. Harder, City Engineer, and dated May 29th,
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nue where it is intersected by the easterly line
of the right of way of the Erie Railroad Com-
pany and running from thence westerly in a
prolongation of the centre line of Sixth Avenue,
as now laid out east of the Erie Railroad, one
hundred (100) feet more or less to the westerly
line of the right of way of the said Erie Railroad
20 Company, and said avenue shall be thirty (30)
feet wide on each side of the above described
center line.

Section 2. That Sixth Avenue between the
points so laid out and established shall be
opened and the assessments for benefits and
awards for damages made in accordance with
the provisions of the City Charter.

Passed January 4, 1904.

30 GEORGE H. DREW,
President of the Board of Aldermen.

Approved, January 12, 1904.

W. H. BELCHER,
Mayor.

Attest: JOHN KEEGAN,
City Clerk.

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

John B. Spear, being by me duly sworn according to law, on his oath saith, that the notice, of which the annexed is a copy, was published in the "Evening News," a newspaper printed and published at Paterson, in said County, on the 12th and 13th days of January, A. D., 1904.

JOHN B. SPEAR.

10

Sworn and subscribed this 27th day of January, at Paterson, before me.

EDWARD B. HAINES,
Notary Public.

I, John Keegan, City Clerk of the City of Paterson, New Jersey, do hereby certify that the foregoing are all of the proceedings of record in my office, had by the Board of Aldermen of the City of Paterson in regard to the passage of the ordinance above set forth, entitled "An ordinance to lay out and open Sixth avenue across the right of way of the lands of the Erie Railroad Company"; and after its passage, and after being signed by the President of the Board of Aldermen, the said ordinance was on January 12, 1904, duly approved by William H. Belcher, Mayor of the said City of Paterson, and attested by John Keegan, City Clerk; and that said ordinance was duly published as hereinbefore stated,

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as required by law, and is now in full force and effect.

In testimony whereof, I have hereunto set my hand and affixed the seal of said City of Paterson, the twenty-seventh day of January, nineteen hundred and four.

(signed) JOHN KEEGAN,

City Clerk.

[SEAL]

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NEW JERSEY SUPREME COURT.

ERIE RAILROAD COMPANY AND PATERSON & RAMAPO RAIL- ROAD COMPANY, <i>Prosecutors,</i>	}	<i>On Certiorari.</i>	10
 <i>vs.</i> THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, <i>Defendants.</i>			

Prosecutors' Reasons.

The plaintiffs in certiorari declare the following reasons why the ordinance removed to this Court by the writ should be set aside and for nothing holden : 20

1. By the said ordinance the City of Paterson proposes to open a public street across the lands of the prosecutors and across their tracks used as a freight yard at the same grade as the tracks, and thereby to deprive the company of the beneficial use of such freight yard and compel it to transfer its business to another locality without any legislative authority so to do. 30

2. The said ordinance was introduced to the Board of Aldermen of the year nineteen hundred

and three and by them passed, or attempted to be passed through some of its preliminary stages, but was not passed or finally adopted when that Board of Aldermen expired, by statute, on December 31st, 1903. The final passage of the ordinance was attempted to be made by another Board of Aldermen which was organized on January 1st, 1904, which second Board of Aldermen had no power to take up and adopt the said ordinance which had been left unacted upon by the former Board, and their action in so doing was unlawful and ineffectual.

3. The action of the Board of Aldermen of the year nineteen hundred and three was informal and unlawful in that they repeatedly laid over said ordinance from one meeting to another definitely stated meeting, and then neglected at such stated meeting to take the same up, or to act upon the same in any manner, and afterwards took up the ordinance at other meetings and pretended to act upon the same, which was unlawful.

4. Because lawful notice was not given of the introduction of the ordinance and of the various steps taken in the advancing and passing of the same.

5. Because in divers other respects
 6. The ordinance is unreasonable and oppressive.

COLLINS & CORRIE

Attorneys of Prosecutors.

and three and by them passed, or attempted to be passed through some of its preliminary stages, but was not passed or finally adopted when that Board of Aldermen expired, by statute, on December 31st, 1903. The final passage of the ordinance was attempted to be made by another Board of Aldermen which was organized on January 1st, 1904, which second Board of Aldermen had no power to take up and adopt the said ordinance which had been left unacted upon by the former Board, and their action in so doing was unlawful and ineffectual.

10
3. The action of the Board of Aldermen of the year nineteen hundred and three was informal and unlawful in that they repeatedly laid over said ordinance from one meeting to another definitely stated meeting, and then neglected at such stated meeting to take the same up, or to act upon the same in any manner, and afterwards took up the ordinance at other meetings and pretended to act upon the same, which was unlawful.

20
4. Because lawful notice was not given of the introduction of the ordinance and of the various steps taken in the advancing and passing of the same.

30
5. Because in divers other respects the said ordinance and proceedings for the passage of the same were irregular, unlawful and void.

Dated January 25, 1904.

COLLINS & CORBIN,
Attorneys of Prosecutors.

NEW JERSEY SUPREME COURT.

ERIE RAILROAD COMPANY AND
PATERSON AND RAMAPO RAIL-
ROAD COMPANY,

Prosecutors,

vs.

THE MAYOR AND ALDERMEN OF
THE CITY OF PATERSON,

Defendants.

On Certiorari.

10

Depositions of witnesses taken on the part of the Prosecutors in the above matter, before William G. E. See, a Supreme Court Commissioner, at my office, No. 15 Exchange Place, Jersey City, N. J., on Friday, January 29th, 1904, at half past ten o'clock in the forenoon, pursuant to notice hereto annexed, in the presence of William H. Corbin, Attorney of Prosecutors, and Vivian M. Lewis, Attorney for Defendant.

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The taking of testimony was adjourned to Friday, February 5th, 1904, at 10.30 a. m., at the same place.

30

Present:

MR. CORBIN for Prosecutors.

MR. LEWIS for Defendants.

It is agreed that the testimony be taken stenographically and the signatures of the witnesses thereto waived.

ORVILLE KELLOGG, being duly sworn according to law, on his oath says :

By Mr. Corbin :

- 10 Q. State your residence and occupation.
 A. I reside in Brooklyn, and am a civil engineer.
 Q. In whose employ?
 A. The Erie Railroad Company's.
 Q. And have you made a survey and map of the Erie Railroad and its tracks in Paterson?
 A. Yes, sir.
 Q. And is this the map you produce?
 A. Yes, sir.
 20 Q. When was it made?
 A. January, 1904.
 Q. What is the scale?
 A. Fifty feet to the inch.
 Q. It shows correctly the present situation of the right of way and tracks in Paterson?
 A. Yes.
 Q. From the Passaic river on the north to Riverside station, or Putnam street, on the south?
 30 A. Yes, sir.
 Q. How many tracks are there opposite Sixth avenue?
 A. Six north.

Map produced is offered in evidence,

entitled "Erie Railroad, West Paterson Yard. Div. Eng'rs' Off., Jan., 1904. Scale, 1 in.=60 ft."

Marked Exhibit P 1.

Cross Examination by Mr. Lewis :

- Q. Did you make this map from a survey ?
 A. Yes, the map of the tracks. 10
 Q. You made it from a survey ?
 A. Yes, sir.
 Q. You are familiar with the surroundings of these tracks ?
 A. Yes ; with the railroad part of it.
 Q. You are familiar with the factories located about the tracks ?
 A. Their names and location, yes, sir.
 Q. The Kearney & Foot File Works ?
 A. Its location, yes, sir.
 Q. Are you familiar with the use to which this track is put on the easterly side of Sixth avenue ? 20
 A. Yes ; from what I observed there.
 Q. Where does it extend into ?
 A. Into a trestle where they unload coal. I have seen coal cars standing there.
 Q. Does it go into their yard ?
 A. Into this point (indicating on the map) ; their fence extends to this point (indicating).
 Q. Are you familiar with this siding that extends west from Erie street, are you familiar with that part of the switch ? 30
 A. Yes.
 Q. With the works there ?
 A. Not specially.

Q. Do you know whose works are on this point of property here ?

A. No, sir ; I do not.

Q. Are you familiar with this switch indicated on the extreme northerly side ?

A. Yes.

Q. Do you know to what use that is put ?

A. It is a switch for the unloading of coal.

10 Q. When you were down there to make your survey, did you notice the condition of the switching facilities there ?

A. No, sir.

Q. Was it congested or otherwise ; were there a large number of cars there ?

A. There were a number of cars in there.

Q. How did you get across there ; where did you get through ?

A. Between cars, over cars.

20 Q. They were not jammed up one against the other ?

A. Yes, sir ; there were open places, of course.

Q. Did you notice on the switch any of the open places between the cars ?

A. No, sir ; some places I went under cars, some places through the cars.

Q. What is the width of Sixth avenue at the crossing ?

A. It is 50 feet here (indicating) and 60 feet on the westerly side of the track.

30 Q. From your observation while making your survey, did you notice that without using this 50 feet or 60 feet space there, the Erie could have stored its cars ?

Objected to as not proper cross examination.

A. Without storing on Sixth avenue ; I should think so.

Q. Therefore, you did not think that place there was necessary for the cars you saw there ?

Same objection.

A. It was necessary to get them in there.

Q. You did not think it was necessary to have them all lined up on that cross-way ?

A. I don't know that they were.

10

Q. They were not, probably, on the day you were there ?

A. I could not say that they were.

Q. Are you in any way familiar with the surroundings ?

A. Some of the tracks.

Q. Are you familiar with Fifth avenue ?

A. Yes.

Q. In your investigations did you notice the condition of Fifth avenue ; was it open much beyond the Erie tracks, west of the Erie ?

20

A. No, sir ; it extended to here (indicating on map).

Q. Was this avenue opened at all ?

A. Yes, sir.

Q. How far ?

A. I don't know ; it runs down to the river ; I don't know how far it is used.

Q. You don't know whether it is private or public land from the end of your line as indicated ?

30

A. No, sir.

Q. Indicate to me on the map the main tracks.
(The witness indicates.)

Q. Besides the main track, how many are there crossing Sixth avenue ?

A. Four others ; those outside of the main tracks are switches.

Q. Do they all lead into private factories, mills or workshops ?

A. Yes ; that is, they are tracks that lead into tracks that lead into them.

10 Q. Did you in your work down there notice whether Sixth avenue was built up to the tracks—on either side of the crossing—were there houses and factories there ?

A. There were factories here and there (indicating).

Q. Did you go beyond that ?

A. No.

Q. Did you notice any houses along Sixth avenue ?

A. No, sir.

20 Q. You don't know whether Fifth avenue is extended to the river ?

A. No.

Q. You don't know anything about Fifth avenue ; you did not go down to the river ?

A. No.

By Mr. Corbin :

30 Q. You have been asked a number of questions about surroundings and other property ; your examination, as I understand, was with a view to locating the Erie railroad and its tracks ?

A. Yes.

Q. You have indicated a few factories ?

A. Yes ; what I saw.

Q. You made no investigation to inform yourself as to these things counsel has been asking you about?

A. No, sir.

Counsel for prosecutors offers in evidence certified copy of deed dated September 13th, 1847, made by James Van Blarcom and wife to the Paterson & Ramapo Railroad Company, conveying a strip of land in Paterson 66 feet wide, the centre line of which is 10 chains and 51 links in length; recorded in Book Q of Deeds, page 312. 10

Marked Exhibit P 2.

Also offers in evidence a warranty deed, dated February 10th, 1864, from William West and wife to the Erie Railway Company, for a strip of land in Paterson adjacent to the Paterson & Ramapo Railroad, containing 231-1000 of an acre, the strip being 20 feet wide and running from the land of Edward Van Houten northwardly to Cornelius Van Winkle's line along the westerly boundary of the right of way of the Paterson & Ramapo Railroad Company; recorded in Book Q 2 of Deeds, page 453. 20 30

Marked Exhibit P 3.

Also offers in evidence deed from

10 John Hogencamp to the Erie Railway Company, dated February 11th, 1864, conveying a strip of land in Paterson along the easterly side of the Paterson & Ramapo Railroad, in length 1126 feet, being 20 feet wide ; also another strip 672 feet long, 20 feet wide, along the easterly side of the Paterson & Ramapo Railroad ; recorded in Book Q 2 of Deeds, page 445.

Marked Exhibit P 4.

It is admitted by counsel that the title of the Erie Railway Company obtained by the last two mentioned deeds, has been since, by foreclosure and conveyance, transmitted to the present Erie Railroad Company.

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SEELEY WOOD, being duly sworn according to law, on his oath says :

By Mr. Corbin :

Q. Where do you reside ?

A. 776 Madison avenue, Paterson.

Q. What is your occupation ?

30 A. Freight agent, employed by the Erie Railroad Company at Paterson.

Q. How long have you been in the service of the Erie Railroad ?

A. Eighteen years.

Q. How long have you been in your present position ?

A. Since September 1st last.

Q. Are you familiar with the West Paterson yard ?

A. Yes, sir.

Q. From where to where does it extend ?

A. What we call the West Paterson yard—there are two portions of it—one on the east and one on the west side of the main tracks.

Q. Where does each one extend ?

A. The one on the west side extends from a point below Sixth avenue ; we call it the west bound side, because all our cars on there are moving towards the west ; it is the east side of the track what we call our west bound yard. On the east side, the east bound side extends from River street station up to Fifth avenue. 10

Q. How many tracks are there at Sixth avenue ?

A. Six.

Q. How many of the six tracks are the main line or running tracks of the railroad ? 20

A. Two.

Q. What are the other four used for ?

A. Freight purposes.

Q. What are the purposes for which you actually use the tracks ?

A. For making deliveries of freight and the stuff to be moved in our empty cars.

Q. Where are the deliveries of freight made in that yard ? 30

A. We make deliveries on the east bound side at any point between River street station right up to Fifth avenue.

Q. How are they made there ?

A. They drive right up to the cars placed on the tracks for unloading.

Q. They drive up alongside of the cars and take the freight out?

A. Yes; and on the west bound side we do likewise, but not to so great an extent as on the east side.

10 Q. What are the other purposes for which you use the tracks, outside of the deliveries of freight—you spoke of other cars?

A. For storing empty cars to be sent west, that relieves the situation in the lower yard, our main yard.

Q. Where is the lower yard?

A. Down in the vicinity of Market street depot.

Q. Have you any other yard in Paterson to do your work in except what you call your main yard and West Paterson yard?

20 A. No, sir.

Q. To what extent do you store empty cars in this yard?

A. For the month of January we handled 2400 cars.

Q. Is that a fair average?

A. Yes, empty cars.

Q. Those cars are placed there for what purpose?

30 A. To be sent west for additional loads; they come to Paterson loaded.

Q. They are empty going west and loaded coming east?

A. Yes; these cars are unloaded at Paterson and stored up here in the West Paterson yard to be sent west for additional loads.

Q. Your tonnage east is greater than that west ?

A. Yes.

Q. Much greater ?

A. Yes.

Q. You move many cars west unloaded ?

A. Yes.

Q. About how many empty cars does the yard accommodate ?

A. Sixty, on an average.

10

Q. How many will it accommodate ? A. Sixty.

Q. Outside of these six tracks ?

A. Yes ; that is only on the west side.

Q. Is there shifting done there ?

A. There is an engine working there almost all the time, night and day.

Q. Do you know how long that yard has been in existence there ?

A. No, sir.

20

Q. Was it there when you first came to the Erie Company eighteen years ago ?

A. I could not say, I am not positive.

Q. It has been there some years ?

A. Yes, sir ; it has.

Q. If this yard were cut in two at Sixth avenue, by the opening of that avenue, what effect would that have on your operations there ?

A. It would work greatly to our disadvantage.

30

Q. Could you conduct your operations there as they are conducted now ?

A. No, sir ; it would seriously interfere with our business.

Q. What kind of a crossing would it be, in your judgment, whether safe or otherwise?

A. It would be a very dangerous crossing.

Q. Why?

A. From the fact there are so many trains moving there a day, and they are always under great headway there; we have on our schedule fifty-one trains east and fifty-six trains west passing that point in twenty-four hours, making a total of one hundred and seven trains, and we have extra trains not on the schedule.

Q. How many a day for instance?

A. I should judge fifteen, besides our shifting engine working there almost continually; and these extra trains are not counted on the time table either.

Q. Have you had increased freight business of late?

A. Higher than ever before, and it is constantly on the increase.

Q. In this auxiliary yard alone you have 2400 cars a month to handle?

A. Yes, sir.

Q. Have you sufficient room in this yard to store your empty cars?

A. No, sir.

Q. Have you with this yard and the other facilities room to do your business now?

A. No, sir; we are continually holding cars out that should be brought in; for instance, we have 145 cars standing at Port Jervis coming to Paterson with loads; at Hawthorne we have 52 cars loaded, at Ferndale Pit we have 67 cars, and from the east there are 70 cars with freight, all coming to Paterson.

Q. All these cars are loaded and bound for Paterson ?

A. Yes, sir.

Q. Is that state of affairs exceptional or common ?

A. Common.

Q. Why can't they come to Paterson ?

A. We have no room for them ; our yard is full ; all our delivery tracks are filled with cars to be unloaded, or waiting to be placed to be unloaded. 10

Q. Have you anything else in the way of facilities to take the place of this yard if this avenue is opened ?

A. Not without excluding some cars from the yard.

Q. These delays you speak of with your present facilities, how long are cars kept out that way ?

A. Sometimes two or three days. 20

Q. How many cars have you facilities to discharge in a day ?

A. We unload about 150 cars a day.

Q. And you load up some to go out ?

A. Yes.

Q. About how many ?

A. About two dozen.

Q. Your incoming freight is much greater than the outgoing freight ?

A. Yes, sir. 30

Q. You say your main yard is not far from the Market street station ?

A. Our main freight yard begins there.

Cross Examination by Mr. Lewis :

Q. In what capacity do you serve the Erie Railroad ?

A. Freight agent.

Q. You are familiar with the yard and switches along the Erie Railroad ?

A. Yes.

10 Q. Do I understand you to say that there are other yards besides what you have spoken of ?

A. What we term our main yard.

Q. Where is that located ?

A. East of the passenger station.

Q. And extends how far ?

A. Almost up to the Cooke Locomotive Works.

Q. Have you been in that yard within the last few days ?

A. Yes, sir.

20 Q. Have you noticed whether it is congested or not ?

A. Badly congested.

Q. Is it not true that there were large spaces on the switching facilities unoccupied for the last few days ?

A. We leave that for switching room ; we have to have that ; it would not do to fill every switch ; of course we have what we term our leads.

30 Q. For the last few days has every inch of the switching facilities in that yard been occupied ?

A. No ; we have to leave our leads open ; all the other room has been filled.

Q. You could not say the condition was congested ?

- A. It is congested.
- Q. All the actual yard facilities ?
- A. Yes, sir ; from a railroad man's point of view ; a layman could see lots of room ; he would not know what the room was there for.
- Q. This yard you call the West Paterson yard ?
- A. Yes, sir.
- Q. You entered the employ of the railroad when ? 10
- A. 1886.
- Q. When did you take this position which gives you sort of supervision over this yard ?
- A. September 1st, 1903.
- Q. When did you visit the West Paterson yard last ?
- A. Last Tuesday.
- Q. What was the condition there then—congested ?
- A. Yes, sir. 20
- Q. Many cars there ?
- A. It was full.
- Q. By full, do you mean every inch of the trackage between the northerly and southerly line of the switching facilities was occupied ?
- A. Yes, sir.
- Q. Are you sure of that ?
- A. Yes, sir.
- Q. How do people get across there ?
- A. We left crossings. 30
- Q. Space between the cars ?
- A. People do not have to cross there.
- Q. You left crossings for the public between those cars ?
- A. No, sir ; only at Fifth avenue.

Q. You leave space there ?

A. Yes.

Q. Don't you leave space at Kearney & Foot's ; Sutherland & Edwards ; how do they get through there ?

A. Walk around the ends of the track.

Q. In front of the engine on the switch ?

A. I presume so ; I never was there to see how they get through.

10 Q. You never observed them crossing there ?

Objected to as not proper cross examination.

A. No, sir.

Q. You never observed them crawling under the cars and over the cars ?

A. No, sir.

20 Q. You say that this is a very dangerous crossing, and you tell the number of cars that pass there each day—don't they pass every other grade crossing in Paterson ?

A. No, sir ; some are Newark and some are main line trains ; they don't all pass over all grade crossings, some do, others do not.

Q. They do at Market street ?

A. Yes.

Q. And Van Houten street ?

A. Yes.

30 Q. All those trains as testified to cross Sixth avenue ?

A. They are at a higher rate of speed up there.

Q. They go at a higher rate of speed over the Fifth avenue crossing, which is a public crossing ?

A. Yes ; more than they do in the city.

Q. You speak of being familiar with the switching facilities, do you know when any of those switches were put in ?

A. No.

Q. Were any put in since you have been employed by the company ?

A. I don't know.

Q. Since you have been in the employ of the company wasn't the Grasselli switch put in ? 10

A. No.

Q. Have you any freight station down there ?

A. We have a freight station at River street.

Q. No turning table or any other facilities of that kind ?

A. No.

Q. I mean in the vicinity of Sixth avenue where the switches are, have you any freight house ?

A. No, sir. 20

Q. You are familiar with the location of those switches ?

A. Yes, sir.

Q. Can you tell me where the switch on the westbound side extends into ?

A. Kearney & Foot.

Q. That is a private corporation ?

A. Yes.

Q. Doing business there ?

A. Yes ; making files. 30

Q. There is another private corporation there ?

A. Yes ; Sutherland & Edwards ; they are located down there.

Q. That switch is used by them ?

A. Yes.

Q. You say there are two main tracks and four switches ?

A. Yes, sir.

Q. The main tracks are four actual rails ?

A. Yes.

Q. Are you familiar with the locality there ?

A. Yes.

Q. Sixth avenue is built up there ?

10 A. Some portions ; I never took particular notice.

Q. You don't know anything about the houses along there ?

A. No.

Q. You are a resident of the city ?

A. Yes, sir.

Q. You don't know anything about it being built up there as a residential section ?

A. I don't think it is very thickly populated.

Q. Isn't every lot occupied ?

20 A. I don't think it is, not down in here (indicating on map).

Q. Did you ever walk down Sixth avenue to the bridge ?

A. No.

Q. Are you familiar with the length of this so-called yard of yours from north to south ?

A. I don't know the exact distance.

30 Q. Don't you know it would be quite feasible for the public to have a highway across there without interfering with your works ?

A. No, sir ; not without disrupting our entire yard.

Q. You say if this was opened it would cut the yard in two ?

A. If we have to leave it open there it would deprive us of room for many cars.

Q. You would have to locate gates there also ?

A. Yes.

Q. As an actual fact you could run the cars there just as well ?

A. No, sir ; we could not.

Q. With the gates down ?

A. Yes, possibly.

Q. It would not cut the yard in two ?

10

A. Yes, sir.

Q. You don't mean by that that the space occupied by the crossing would be so great as to cut the yard in two ?

A. It would not on the west side ; it would on the east.

Q. You don't know the width of Sixth avenue ?

A. No, sir.

20

ORVILL KELLOGG recalled.

By Mr Corbin :

Q. What is the length of the Erie railroad through the city of Paterson ?

A. Between three and a half and four miles.

Q. What is the distance from Riverside station to Sixth avenue ?

A. About 2,400 feet, approximately.

Q. And from Sixth avenue to the Market street station ?

30

A. I should say in the neighborhood of a mile and a half.

By Mr. Lewis :

Q. What is the distance from Sixth avenue to Fifth avenue ?

A. About 600 feet.

NICHOLAS SHARKEY, being duly sworn according to law, on his oath says :

10 *By Mr. Corbin :*

Q. Where do you live ?

A. 421 Straight street, Paterson.

Q. What is your business ?

A. Yard master.

Q. In whose employ ?

A. Erie Railroad Company's.

Q. How long have you held that position ?

A. About one year.

20 Q. How long have you been in the employ of the company ?

A. About eighteen years.

Q. How long have you been located at Paterson ?

A. Going on fifteen years.

Q. You have been familiar with the tracks and yards for that length of time ?

A. Yes, sir.

30 Q. Before you became yard master what was your position ?

A. Brakeman, conductor of an engine.

Q. You have charge of the Paterson yards now ?

A. Yes, sir.

Q. Fifteen years ago, when you began work, was this West Paterson yard there at that time ?

A. Yes, sir.

Q. How many tracks were there then at Sixth avenue ?

A. Seven.

Q. What changes have been made there since, if any ?

A. They lengthened out that yard on one side, made it longer.

10

Q. Even before you were employed there, did you from your own knowledge know of the existence of that yard ?

A. Ever since I have lived in Paterson, about twenty years.

Q. How much longer, do you know ?

A. No, sir.

Q. Is this West Paterson yard under your charge ?

A. Yes, sir.

20

Q. What have they working there ?

A. They have a switching engine working there night and day.

Q. Have they more than one there ?

A. Yes ; sometimes two and three.

Q. In their work there do they cross Sixth avenue frequently ?

A. Yes, sir.

Q. From which end do they enter the yard ?

A. Fifth avenue.

30

Q. Your lead is from that direction ?

A. Yes.

Q. They take cars out of the yard at which end ?

A. That is the only end you can get in or out

of ; that is on the west side ; on the east side you come in from River street.

Q. What is this yard used for ?

A. Used as a storing yard, for coupling cars and unloading cars.

Q. You spoke about coming in from the east end, there is also a connection from the west at Fifth avenue—

A. On the west side.

10 Q. There is a connection on the siding there to all the tracks ?

A. Yes, sir.

Q. It is also connected with the west bound side by crossings there ?

A. Yes, sir.

Q. Near Fifth avenue all the tracks are connected together ?

A. Yes, sir.

20 Q. In this unloading of cars at this place, how is that done, where do the cars stand to be unloaded ?

A. At Kearney & Foot's here (indicating on map).

Q. The cars stand on the tracks ?

A. Yes ; east of Sixth avenue and also west of it.

Q. The cars were loaded with freight ?

A. Yes ; coal, jute, gambier, etc.

30 Q. Men come there with trucks and take it out of the cars ?

A. Yes, sir ; ever since I have been there it has been the custom to unload there.

Q. For what other purposes are the tracks used for ?

A. Storing empty cars ; it is necessary to

store them there to make room for the other cars to be unloaded.

Q. When you make up a train to send west, where do you make it up?

A. In this yard.

Q. You say your switching engine, and some times more than one, is working there all the time, night and day?

A. Yes, sir.

Q. How often does it cross Sixth avenue? 10

A. It is running up and down there constantly, it is necessary in order to get through.

Q. If that yard were cut in two how would it affect your operations there?

A. It would absolutely break that yard all up.

Q. Would it be possible to operate it as you now operate it if that were done?

A. No, sir; you couldn't do it.

Q. What do you think as to safety at that yard if that were done? 20

A. It would be a very dangerous crossing, I think.

Cross Examination by Mr. Lewis :

Q. You say it would be a very dangerous crossing, would it be any more dangerous than the Market street crossing?

A. Yes; in the first place it would be unwise.

Q. No trolleys cross there? 30

A. No.

Q. Trolley cars cross Market street?

A. Yes.

Q. And more people cross Market street?

A. Yes.

Q. Then why would it be any more dangerous than Market street ?

A. It would be more dangerous, there are more tracks there, it is a longer crossing and would be a wider crossing.

Q. Have you ever measured Market street ?

A. No, sir ; I don't have to, I can see.

Q. You don't know from actual measurement ?

10 A. I know from what I can see there, I don't have to measure. I can see there are seven or eight tracks there and at Market street there are only two. I am talking about the crossing, the width of the crossing.

Q. I am talking about the width of the street, from curb to curb—

A. I am talking about the tracks.

Q. How many tracks are there at Market street ?

A. Two ; main tracks.

20 Q. How many at Sixth avenue ?

A. Seven.

Q. How often do you go down there ?

A. Pretty nearly every day.

Q. Did you hear the testimony of your engineer here ?

A. Yes.

Q. Did you hear him say there were only six tracks there ?

30 A. That is right, there are six ; I was thinking of the new switch. I counted that.

Q. They have not got that in there yet ?

A. Not quite.

Q. It does not cross Sixth avenue ?

A. Pretty near it.

Q. But it does not cross it ?

A. No ; I don't think it does.

Q. You say there are other yards in the city of Paterson outside of this West Paterson yard ?

A. Yes.

Q. How many are there ?

A. We term it one yard beyond the depot at Market street.

Q. You are referring now to the east bound track ?

A. Yes. 10

Q. Is that yard crowded ?

A. Yes, sir.

Q. Was it crowded yesterday ?

A. Yes, sir.

Q. Was there not lots of space on the switching facilities ?

A. No, sir ; not room for a hand car.

Q. When were you down there ?

A. A day or two ago.

Q. Were there a number of cars on the switching facilities then ? 20

A. Yes, sir.

Q. Was it crowded ?

A. Yes, sir.

Q. Do you mean that the entire switching facility was occupied ?

A. Yes, sir.

Q. Every bit of it ?

A. Yes, sir.

Q. Have you gone there several times and noticed it covered with cars ? 30

A. Yes.

Q. Where do you live ?

A. Straight street.

Q. How do people get from the westerly side of the city to the easterly side or vice versa ?

A. That depends on the mode of conveyance, I should think.

Q. What street do they take ?

A. Straight street or River street—

Q. Have you ever noticed people go in between the cars ?

A. That is their lookout.

10 Q. Have you ever noticed it ?

A. Yes.

Q. You don't leave any space for them ?

A. No.

Q. Were any of those switches built under your supervision ?

A. Yes.

Q. You know about their location ?

A. Yes.

20 Q. Did you build the Grasselli switch ?

A. No, sir.

Q. Who built that ?

A. Mr. Joice.

Q. At whose request ?

A. I suppose at the Chemical Company's request.

Q. The Kearney & Foot switch, who built that ?

A. That was built before my time.

Q. Is it used exclusively by Kearney & Foot ?

30 A. Yes, sir.

Q. The Weidmann Dye Works, that switch is used by them ?

A. Yes ; there was a dye works there before ; they put all their coal on the old switch and shoveled it over the fence.

Q. In these cases you switch all the cars down to the doors of these factories ?

A. Not the Sutherland & Edwards.

Q. Well, Kearney & Foot ?

A. That is their own switch ; under the Kearney & Foot switch the cars stand right on Sixth avenue and unload right there.

Q. As to the Weidmann Dye Works, the cars are switched to the doors ?

A. On the east side—the stuff has got to go down on his own switch down to the doors— 10

Q. Is it not an actual fact that these switches were put there for private property owners, all those switches ?

A. No, sir.

Q. How long have you been in the employ of the railroad ?

A. Eighteen years.

Q. Don't you know that all these switches are used by private owners and factories down there ? 20

A. No, sir.

Q. What parts are used by the Erie Railroad ?

A. On the west side it is used for storing empty cars and for unloading.

Q. Two switches on the west side ?

A. Two tracks on the west bound side.

Q. These two tracks that you speak of as the only ones used by the Erie Railroad, where do they begin on the west bound side ? 30

A. At Fifth avenue.

Q. How far do they extend ?

A. They run up beyond Kearney & Foot.

Q. Kearney & Foot are on the east side, are they not ?

A. We call it the west side.

Q. I am speaking of the two tracks on this side (indicating on map) where do they enter ?

A. At Fifth avenue.

Q. How far do they extend ?

A. About seven car lengths—

Q. About seven car lengths beyond Sixth avenue ?

A. About seven or eight.

10 Q. Those are the only two tracks used by the Erie ?

A. Used for storage yard and also for unloading.

Q. Those are the only two ?

A. On that side, the only two there.

Q. They extend about seven or eight car lengths beyond Sixth avenue ?

A. Yes.

Q. That disposes of two of the tracks ?

20 A. There is another one, Kearney & Foot.

Q. That is used by Kearney & Foot exclusively ?

A. Yes ; exclusively.

Q. It is not used by the Erie for storage purposes ?

A. No ; they used these (indicating).

Q. How many tracks are there on the east side, east of the east bound main track ?

A. Two, coming in at River street.

30 Q. That would make seven in all ?

A. That switch does not extend down to the Grasselli switch.

Q. The Grasselli switch is the only one there ?

A. Yes.

Q. What is that used for ?

A. For unloading cars ; expressmen get their freight there.

Q. From your observation how wide would you regard Sixth avenue, from curb to curb?

A. Sixty-five or seventy feet, I should judge.

Q. Are you able to tell from your observation the length of these tracks from here to here (indicating on map) about how many car lengths?

A. From where they enter ; that would hold about thirty-seven cars. 10

Q. What is the length of a car ?

A. Thirty-four feet on an average.

Q. So that if that was made a crossing for the public, it would take about two car lengths out of the length of the tracks ?

A. More than that.

Q. You say the street is about sixty feet wide ?

A. Yes.

Q. And the length of the tracks there ? 20

A. It will hold about thirty-seven cars.

Q. And a car is how many feet ?

A. About thirty-four ; some are longer.

Q. Do you think that would in any way break up your cars ?

A. Yes ; we would have to make a crossing there and put cars on both sides of it.

Q. You think it would be a dangerous crossing there ?

A. Yes ; very dangerous. 30

Q. Why dangerous ?

A. Our switching engines are working there most of the time.

Q. All the travel on the main track is over all the grade crossings of the city ?

A. Yes ; but they go at a higher rate of speed out of the city, when they get down there, than they do over the grade crossings in the city.

Q. If they had gates there it would not interfere at all with your operations as a yard ?

A. Certainly it would.

Q. If you had gates ?

A. Yes ; I don't see how the gates would help us.

10 Q. You couldn't carry on your operations there ?

A. Not the way it is now. You might as well have no crossing at all there ; in fact it would be closed all the time if they ever do get a crossing there.

Q. Don't you know as an actual fact that these tracks, switching facilities so-called, are not filled at all ?

20 A. No, sir ; they might be empty for a half hour or so, but as a general rule we fill them up.

Q. They are never totally filled ?

A. Yes, sir ; more than they will hold, some are on the bank sometimes.

Q. How many times do you go down to this yard ?

A. Nearly all the time.

Q. Every day ?

A. Sometimes three or four times a day.

30 Q. Are you familiar with this locality at all ?

A. Yes.

Q. Where do you live ?

A. Straight street.

Q. You know the nature of the buildings along Sixth avenue ?

A. I noticed two or three, none on the left hand side.

Q. Did you ever walk along Sixth avenue to River street ?

A. Yes.

Q. Did you ever notice any houses along there ?

A. A few houses on the right hand side ; none on the left.

Q. Did you notice some houses along there, dwellings, as well as manufacturing establishments, on Sixth avenue ? 10

A. Very few dwellings.

Q. You noticed some ?

A. Yes.

Q. Did you notice that street was opened, graded, curbed and guttered ?

A. It don't look so ; I can stand right on the track and look up ; there might be a sidewalk ; I don't know. 20

Q. Did you ever go down to the bridge at Sixth avenue beyond Bunker Hill ?

A. Not down Sixth avenue.

Q. Did you ever look down there ?

A. It is not very much improved from the looks of it.

Q. Didn't you ever notice a number of dwellings there ?

A. There can't be many ; about two or three.

Q. Your eyesight is all right ? 30

A. Yes.

Q. Never noticed many dwellings down there ?

A. There are one or two houses down there.

Q. Is that all ?

A. Yes.

Objected to as not proper cross examination.

Q. You didn't see the bridge down Sixth avenue ?

A. I never walked down that way.

By Mr. Corbin :

10 Q. Where do you do your classification and sorting of cars for the west bound trains ?

A. In that West Paterson yard.

Q. Is there much of that to be done in making up trains ?

A. Yes, sir ; quite a lot of it ; sorting and separating the cars.

Q. Where is that done ?

A. Right in this yard.

20 Q. And with your switching engine you make up a train load in the way it is to go out ?

A. Yes, sir ; as a general rule.

Q. You call that classification ?

A. Yes, sir.

Q. A few hundred feet south of Sixth avenue alongside of your track on the east side, is the ground higher or lower than the tracks ?

A. At Kearney & Foot's side it is kind of a hill there, going up toward Bell's.

Q. How high is it above the tracks ?

30 A. I should say twenty or thirty feet.

CHRISTOPHER JOYCE, being duly sworn according to law, on his oath says :

By Mr. Corbin :

Q. Where do you live ?

A. Paterson, New Jersey.

Q. What is your occupation ?

A. Track supervisor for the Erie Railroad.

Q. How long have you been in the employ of the Erie Railroad ? 10

A. Seventeen years.

Q. You are familiar with the West Paterson yard ?

A. Yes, sir.

Q. How long have you known of that yard being there ?

A. It has been the same as it is now ever since I knew it, about seventeen years.

Q. What is your business with the tracks of the Erie Railroad ? 20

A. To lay tracks and keep the tracks in condition.

Q. Have you the tracks of the city of Paterson in your charge ?

A. Yes.

Cross Examination by Mr. Lewis :

Q. You say you are familiar with this so-called yard at West Paterson ? 30

A. Yes, sir.

Q. Your duties are to lay tracks and switches, as I understand you ?

A. Yes, sir.

Q. Did you lay any of those at Sixth avenue ?

A. No ; they were there before my time.

Q. Are you familiar with the use of these tracks, the two on the west bound side, the easterly side of the main tracks ?

A. Yes.

Q. The tracks that enter at Fifth avenue ?

A. Yes, sir.

10

Q. What are they used for ?

A. Storage tracks.

Q. What kind of cars ?

A. All kinds of railroad cars.

Q. Passenger cars ?

A. Not passenger cars ; freight cars.

Q. Do you have occasion to pass this track entering at Fifth avenue and extending about seven cars lengths beyond Sixth avenue ?

A. Yes.

20

Q. Very often ?

A. Yes.

Q. Did you pass it yesterday ?

A. Yes.

Q. Did you notice that it was not occupied by cars ?

A. I think it was all filled up.

Q. Yesterday ?

A. Yes, sir.

30

Q. Do you mean that beginning at Fifth avenue where the track enters the main yard, it was all filled up from that coal yard to the end of the track ?

A. I did not look beyond the coal yard ; this storage track was all filled up.

Q. No space between the cars ?

A. I did not notice any.

Q. You pass there frequently ?

A. Almost every day.

Q. Are they generally filled there ?

A. As a rule it is always full, and to prevent these cars from running out on the main track we had to put a bar across there to keep the cars from filling the main track.

Q. Was not that done to avoid a head-on collision ?

A. It was done as a matter of safety, so that no more would get in there than the switch will hold. 10

Q. Is it not customary to put that on every switch ?

A. No, sir.

Q. Wasn't it put on there because it is down grade to the main track ?

A. It is a little down grade there.

Q. Wasn't the bar placed there because of that grade ? 20

A. I believe that was one reason, and another reason was the cars could not be left there where we were so pinched for room ; in a place where the tracks were always full, we had to prevent them from filling the main track.

Q. Do you know the use to which this switch is put (indicating) ?

A. Kearney & Foot's—that switch was there before I had anything to do with the tracks ; this part of Kearney & Foot's on the street is used as a storage track, from the fence out. 30

Q. Are not the main part of those tracks you speak of here, around Sixth avenue, used for switching facilities for private factories and owners ?

A. It is, inside the gates.

Q. I am now speaking generally—are you familiar with the use to which these switches are put in general ; are they not for the use of private factories and manufacturers down there ?

A. As a rule the railroad company uses them outside of the gates for unloading purposes ; it acts as a delivery track for that part of the city, for any individual that lives in the city or
10 around that part of the city.

Q. How long have you been connected with this yard ?

A. Almost since I have been there.

Q. Always considered it the West Paterson yard ?

A. Yes, sir.

Q. Where do you live ?

A. Nineteenth street.

Q. East or west ?

A. East Nineteenth street.
20

Q. Do you come up Sixth avenue ?

A. Perhaps once or twice a week, if I am down there ; I might take a short cut to dinner.

Q. You have come up Sixth avenue ?

A. The day before yesterday the alderman and I were around there, and this gentleman here, Mr. Marelli.

Q. You know the character of the buildings along Sixth avenue—are there any dwellings
30 west of the main tracks ?

A. On the southerly side I noticed that they were using it as a dumping ground.

Q. Sixth avenue itself ?

A. Yes ; behind the Grasselli Chemical Co.

Q. You noticed a number of dwellings there ?

A. I said I noticed it was used as a dumping ground.

Q. Did you walk down to the bridge on Sixth avenue ?

A. No.

Q. Have you ever walked down to the bridge at Sixth avenue ?

A. I don't believe I have.

Q. You never went over that bridge ?

A. I don't know where the bridge is.

10

Q. On what you call the southerly side, didn't you ever walk down on the southerly side, and go over that bridge there ?

A. No, sir.

Q. Don't know anything about that bridge ?

A. No ; not that particular bridge.

Q. Don't know there is a bridge there ?

A. No, sir.

Q. How long have you lived in Paterson ?

A. Seventeen years.

20

Q. Never walked down Sixth avenue ?

A. Never beyond that dumping ground.

Q. Where is that ?

A. About here (indicating on map).

Q. Is it used by the Erie Railroad ?

A. No ; they would not dump in a place like that.

Q. Have you ever walked up Sixth avenue beyond Kearney & Foot ?

A. I don't believe I have.

30

Q. Did you ever stand at Sixth avenue by Kearney & Foot's and look up the track ?

A. Occasionally.

Q. Have you noticed the dwelling houses along there ?

A. Not many.

Q. You noticed some?

A. The most thing I noticed was a pile of dirt here (indicating). There might be one or two houses; I did not count them; I could not say how many.

Q. Did you notice any houses on the other side of Sixth avenue?

A. A few.

10 Q. Did you notice whether it was curbed and guttered on the northerly side?

A. I don't believe it is; I did not notice it.

Q. Do you know anything about the width of Sixth avenue?

A. I never measured it; judging from the looks of it I should think it was seventy feet.

20 Q. Do you know the length of the tracks which I have called switching facilities, from their entrance at Fifth avenue, to the end, these two, west bound you call them?

A. About 1,000 or 1,100 feet.

Q. Do you think the taking of the 70 feet there would in any way interfere with the use of the switching facilities there?

A. I think it would; I don't think we could put as many cars in there as it now holds if that was taken away.

Q. It would take about two car lengths?

A. No; more than that.

30 Q. How long is a car?

A. They are different lengths.

Q. About how long?

A. I don't know; about thirty-two feet.

Q. It would take about two car lengths of about thirty-five feet in length?

A. It would take anywhere from four to five car lengths; people are not going to travel across that railroad without seeing where they are going; you would have to leave a space there open on each side; it would take from sixteen to twenty-five car lengths, that would make about one train.

Q. How many cars do they get in there now?

A. I don't know.

Q. Do you think it would materially interfere with the use of these switching facilities? 10

A. Yes, I do. The first thing you knew the aldermen would be finding fault with the cars being close up to the crossing and that would be public obstruction; it would break up all of thirty cars, it would almost take the use of one track away.

Q. Your familiarity then with this section of Riverside, at Sixth avenue, is confined immediately to the tracks? 20

A. I am familiar with that section of West Paterson yard you are talking about.

Q. Your familiarity is confined to the tracks; you know nothing about the outlying districts around there?

A. Off the company's property, I don't know that I do.

MICHAEL BOOZAN, being duly sworn according to law, on his oath says: 30

By Mr. Corbin:

Q. Where do you live?

A. 68 Warren street, Paterson.

Q. What is your business ?

A. Track foreman.

Q. Employed by the Erie Railroad ?

A. Yes.

Q. How long have you been in the employ of the Erie Railroad ?

10 A. I have worked for the Erie Railroad about twenty-three years ; I have been section foreman about seventeen years.

Q. You are familiar with this West Paterson yard at Sixth avenue ?

A. Yes, sir ; ever since I started to work for the company, twenty-three years ago.

Q. Was it there when you were first employed, twenty-three years ago ?

A. Just the same as it is now ; all those tracks were there just the same.

20 Q. Is this yard a part of the track that is under your supervision as foreman ?

A. Yes, sir.

Q. You work under Mr. Joyce ?

A. Yes, sir.

Cross Examination by Mr. Lewis :

Q. Did I understand you to say that the six tracks crossing Sixth avenue were there twenty-three years ago ?

30 A. Yes, sir.

Q. Was the one at Kearney & Foot's there twenty-three years ago ?

A. Yes, sir.

Q. Was the switch at Weidmann Dye Works built twenty-three years ago ?

A. I could not say about that.

Q. Those two tracks entering at Fifth avenue and extending easterly along the Erie tracks, were they there twenty-three years ago?

A. A little addition was put to that No. 2 siding, about ten rails about ten or twelve years ago; the six tracks were there since I have known them, twenty-three years.

Q. Do you pass Sixth avenue occasionally?

A. Pretty nearly every day; I am working there all the time; that is the section I cover.

10

Q. Have you noticed the condition of these tracks crossing Sixth avenue, there are generally very few cars on them?

A. They are full all the time; they might be clear for an hour or so when shifting trains, but they are filled right up again.

Q. Do you know Sixth avenue?

A. Yes, sir.

Q. Do you know how wide it is?

20

A. I guess about 50 feet or something like that.

Q. Without interfering with your work there that could be opened and blocked off with gates?

A. It would be dangerous on account of the fast running trains.

Q. The danger would be the only reason?

A. The danger, and it would knock them out of a great deal of room; they are shifting cars there night and day.

30

Q. Wouldn't it be a great convenience to open that?

A. It would.

Q. It would allow the people a means of getting across from the west to the east?

A. They cross there now under the cars, over the cars and between the cars.

Q. You frequently leave space between the cars ?

A. An opening, no, sir.

Q. Don't you often leave a whole car length of space for people to get through ?

A. No, sir ; we do not leave any space, unless the track happened to be empty.

10 Q. Which happens frequently ?

A. No, sir ; it might be empty for a while after they unload before they place other cars there.

Q. You are familiar with the surroundings of Sixth avenue ?

A. Yes, sir.

Q. You live there ?

A. Near River street station.

20 Q. You have walked up and down Sixth avenue ?

A. Yes ; walked over the bridge.

Q. Is it curbed and guttered ?

A. Yes ; it is curbed.

Q. Did you notice houses all along there ?

A. On the lower side towards the bridge, all the way down, it is not all built up ; there are houses here and there, perhaps two or so on a block.

Q. You mean west of the tracks ?

30 A. Yes ; down towards the river.

Q. You walked along Sixth avenue and across the bridge ?

A. Yes.

Q. You can't get down any other way ?

A. Yes ; the bridge at the gas house.

Q. How far is that from the Sixth avenue bridge?

A. Quite a ways.

Q. Wasn't that washed away in the flood?

A. It was ; I don't know whether it is fixed up or not ; I have not been down there lately.

Q. You can't cross Fifth avenue to the west side of the city, can you?

A. Yes, you can ; along the side there is a driveway. 10

Q. Who owns the property along the tracks there?

A. I could not say ; Bell told me it was all his ground.

Q. Have you walked up on the easterly side towards Kearney & Foot's?

A. Yes.

Q. Have you noticed any dwelling houses along there?

A. No ; I noticed a fence and a pile of dirt there on one side ; there is one house by itself there. 20

By Mr. Corbin :

Q. At Fifth avenue there is a crossing, a plank crossing?

A. Yes, sir.

Q. The railroad maintains gates and a watchman there?

A. Yes, sir. 30

Q. That street is open full width across the tracks?

A. Yes ; always has been ever since I knew the railroad.

HARRY WILSON, being duly sworn according to law, on his oath says :

By Mr. Corbin :

Q. State your residence and occupation.

A. I reside at Rutherford, New Jersey, and am employed by the Erie Railroad as division freight agent.

10 Q. What are your present facilities for unloading Paterson freight ?

A. Inadequate ; we are compelled to hold back cars because we have no room to place them.

Q. How long has that been the condition ?

A. It is the case continually, more or less.

Q. To what extent during this past year ?

20 A. At present it is so to the extent of some three hundred cars that are held back ; I can't tell the exact number ; it amounts to about from seventy-five to one hundred cars a day.

Q. What is it that is lacking, what is inadequate ?

A. We lack space to put our deliveries, to place them for unloading ; we have one main yard and the Sixth avenue yard and they are both crowded.

30 Q. If this West Paterson yard were entered here, and this street opened, what effect would it have upon your present facilities there ?

A. It would break up our operations there.

Q. How is that West Paterson yard important to you ?

A. It is very important for making up our empty trains, placing empty cars to be taken

west, the classification of these cars, sorting out the different cars, for example, refrigerator cars, or flat cars, that is all done at that yard ; it must be done there ; we have no other place to do it. On the east bound or west side we have a delivery track, from which the mills that do not have private switches in Paterson are served.

Q. There are many mills in that part of Paterson ?

A. Yes ; quite a number of mills. 10

Q. I notice three or four sidings here running off from the yard into the adjacent properties, what are those ?

A. Private sidings.

Q. Certain length of track to the private property on each one of those sidings ?

A. Yes, sir.

Q. Do not cars as a matter of fact stand on that private property while the goods are unloaded to those mills ?

A. Yes. 20

Q. These sidings rather add to your yard ?

A. Yes, sir.

Q. Increase its capacity ?

A. Yes, sir ; and have nothing to do with Sixth avenue, except for drilling the cars back and forth ; they are not all just opposite the yard, they are east and west—

Q. They are placed all along the railroad ?

A. Yes, sir. 30

Q. Whether they happen to be opposite your yard or elsewhere ?

A. Yes, sir ; they are all along the railroad from River to Market streets, where there is no yard at all.

Cross Examination by Mr. Lewis :

Q. In figuring up the six tracks crossing Sixth avenue, have you counted those sidings you have just spoken of ?

A. No, sir.

Q. They are, as I understand, on private ground ?

10 A. Not entirely on private ground ; they run from the company's ground to private ground.

Q. Are you familiar with the condition of that locality there ; do you go there frequently ?

A. Not every day ; I have no actual supervision except to see our deliveries are made as soon as possible.

Q. When were you there last ?

A. A week or ten days ago.

Q. When before that ?

A. Probably two weeks or a month.

20 Q. You are not familiar with the daily condition at that Sixth avenue crossing ?

A. I am familiar as a matter of information. I don't know from having personally seen it every day.

FRANK A. VON MOSCHZISKER, being duly sworn according to law, on his oath says :

30 *By Mr. Corbin :*

Q. State where you live.

A. 319 East Thirty-second street, Paterson, New Jersey.

Q. What is your business ?

A. Real estate agent of the Erie Railroad.

Q. How long have you been so employed ?

A. Sixteen years.

Q. What do you have charge of as real estate agent ?

A. Charge of the land belonging to the Erie Railroad Company and its auxiliary company ; I have jurisdiction over their records and am the keeper of their deeds.

Q. Have you to do with obtaining of additional lands ?

10

A. I purchase all land bought for the Erie Railroad.

Q. Are you familiar with this West Paterson yard ?

A. I am.

Q. By the deeds offered it appears that 66 feet or centre line of land there is in the name of the Paterson & Ramapo Railroad Company, while a strip of 20 feet on either side appears to be owned by the Erie Railway Company ; who has the actual possession of the whole land ?

20

A. The Erie Railroad Company has the actual possession ; it operates the Paterson & Hudson Railroad.

Q. Under what arrangement ?

A. Under a lease for the corporate existence of the Paterson & Hudson Railroad.

Q. The Paterson & Hudson Railroad constitutes a part of the main line, of what is known as the main line of the Erie Railroad ?

30

A. Yes, sir.

Q. How long has this yard been there, within your personal knowledge ?

A. Sixteen years.

Q. Do you know as to its sufficiency for the

company's business ; and what the management have done or intend to do towards changing it ?

Objected to.

10 A. I know the condition is such in Paterson that our yard facilities are insufficient to do the business of the company at that point, and by reason of this fact I have been endeavoring, on behalf of the company, to obtain additional land in the city of Paterson for the construction of a yard in that vicinity, adjacent to that property.

Q. Is that the intention of the company ?

A. If they can procure the land their intention is to do so to gain additional yard facilities in the Riverside portion of Paterson, as the present facilities are not sufficient to allow them to make prompt deliveries of cars.

20 Q. Have you been familiar with this agitation for the opening of Sixth avenue across the track ?

A. Yes, sir.

Q. For how long a time ?

A. Five or six years.

Q. How long have you had charge of it on behalf of the company ?

A. For the last four years.

Q. State what the company's position is with reference to what it has offered to do.

Objected to.

30

A. The company, through me, made an offer to the city, which offer was made to the street committee of the Board of Aldermen and also before the full board, to carry Sixth avenue across the tracks and right of way of the Erie

Railroad by a bridge, carry the street over by bridge, and bear the entire cost of the bridge and approaches which it is estimated would amount to \$41,000, if the city would assume the damages to the abutting property owners.

Q. Is the company willing to do that now ?

A. Yes, sir.

Q. How long ago did it first make that offer to the city ?

A. Three years ago, I think.

10

Q. I see indicated on this map factories in this immediate vicinity ; are there many there ?

A. Yes, sir ; a great many ; it is a silk district at Riverside, different silk manufacturers and dye works.

Q. There are a number of manufacturing companies there ?

A. Yes.

Q. In making this offer did your company prepare any plan ?

20

A. We had a plan prepared which we submitted.

Q. Has that offer been accepted by the city of Paterson ?

A. No, sir ; it was declined with thanks.

Q. From your personal observation at this place, what in your judgment would be the condition of that crossing as to safety if the street was opened at grade ?

A. The condition would be dangerous ; the storage tracks are always filled with cars and it would be almost impossible to guard the crossing or make it safe ; the view up and down the track would be impeded at all times, obstructed at all times.

30

Q. What has been the policy of your company in the past few years with reference to grade crossings ?

Objected to.

10 A. The policy of the company is not to permit any grade crossings when it can possibly be avoided ; we have spent many hundreds of thousands of dollars to abolish grade crossings and have abolished them in several places and the work is still going on—we have abolished them in Jersey City.

Cross Examination by Mr. Lewis :

Q. You stated you are familiar with this location ; have you had occasion to travel Sixth avenue, east and west ?

20 A. Yes, sir ; I have walked from River street to the bridge along Sixth avenue.

Q. You have seen the bridge at the end there ?

A. Yes, sir.

Q. Have you noticed that the street is graded, curbed and guttered ?

A. It is curbed and guttered, not graded.

Q. Have you noticed the character of the dwellings along Sixth avenue on either side of the Erie tracks ?

A. I have.

30 Q. Have you noticed that there are a large number of dwelling houses on the westerly side of the track along Sixth avenue ?

A. Towards the river, there are not a very large number of dwellings there ; for the first two blocks after leaving the railroad there are

but four or five houses ; below that it is more thickly settled.

Q. Have you noticed the character of the buildings on the westerly side of the track towards River street ?

A. There are a number of cottages there.

Q. You say you are familiar with the ownership by the railroad of the property in this vicinity ?

A. Yes, sir.

10

Q. Are you familiar with the ownership of property of private owners there ?

A. Yes.

Q. Do you know who owns the property between Fifth and Sixth avenues immediately west of the Erie tracks ?

A. I think that belongs to Mr. Bell or the Bell estate.

Q. Are you familiar with Fifth avenue ?

A. I have been on Fifth avenue.

20

Q. Do you know who owns the land at the west side of the Weidmann Dye Works ?

A. I could not say.

Q. Do you know it is private property ?

A. I have heard so.

Q. The assessors' map shows a street laid out in that vicinity ?

A. I understand there has been some litigation as to whether there is a street there or not.

Q. Have you noticed that Fifth avenue is opened ?

30

A. Physically Fifth avenue is not opened below Bunker Hill.

Q. As an actual fact, the only street between

the Passaic river and River street along the Erie tracks, which is opened, is Sixth avenue ?

A. On each side of the track Fifth avenue is opened, across the tracks and on each side of the tracks, up to where it runs into Bunker Hill.

Q. The only street opened extending from the east section of the city to the west section of the city, between the Passaic river and River street, across the tracks, is what avenue or street ?

A. There is no regular street across the tracks.

Q. What street is opened on either street ?

A. Sixth avenue is opened to the tracks on each side.

Q. And that is the only opened street between the Passaic river and River street, connecting the east and west sections of the city ?

A. I am not able to say that.

Q. You spoke of the crossing being dangerous ; you are familiar with the grade crossings through the city of Paterson ?

A. I am.

Q. There are no more trains on the main track passing Sixth avenue than there are passing Van Houten ?

A. No, sir ; there are not ; but at Van Houten street there are no switches filled with cars which would obstruct the view of the traveler on the highway, as it does at this point ; at Sixth avenue the switches are filled with cars and the traveler on the highway would have his view of approaching trains obstructed.

Q. You are familiar with the yard of the Erie Railroad at Cedar street ?

A. Yes, sir.

Q. How many tracks are there ?

A. I don't know.

Q. There are more tracks there than at the West Paterson yard ?

A. I should say there were ; I could not speak from actual knowledge.

Q. That is a grade crossing at Cedar street ?

A. There is a grade crossing there.

Q. Referring to this main yard of the Erie, do you go there frequently ? 10

A. Yes, every day.

Q. Have you noticed that they manage to handle all the cars there with the present facilities ?

A. They do not manage to handle all the cars ; they manage to handle such cars as are sent there for them to handle, but as has been testified to, there are hundreds of cars which we are compelled to hold out because we have no room for them. 20

Q. You have often noticed the cars on the tracks there, the main yard so-called, there is considerable distance between them ?

A. There may have been times when such a state of facts existed but that is generally not the condition.

Q. When have you been down on the Sixth avenue crossing ?

A. About a month ago. 30

Q. Are you familiar with the length of the tracks as they enter at the Fifth avenue end ?

A. No, sir.

Q. Could you indicate to us what would be

the extent of the trackage over the so-called switching facilities ?

A. No, sir ; I could not ; that map is practically correct.

Q. Are you familiar with the width of Sixth avenue ?

A. Yes.

Q. What is the width of it ?

10 A. On the Kearney & Foot side it is 60 feet and on the Grasselli Chemical Co. side it is 50 feet. That is from the records and actual measurements.

Q. Then from your observation the length of the entire tracks where they enter from Fifth avenue to the end of this so-called yard, would be about what ?

A. I could not say.

20 Q. The use of this Sixth avenue as a public highway by the people would not require a very great extent of the yard facilities of the Erie there ?

A. Yes, sir ; it would—

Q. It would not require very much in actual measurement ?

A. I could not say how much.

Q. From your observation, how much ; you have measured Sixth avenue ?

30 A. If they were deprived of the use of Sixth avenue, it would mean about 60 feet for four tracks ; that would mean cutting down our yard facilities ten or twelve cars.

Q. It would not destroy the use of that property generally indicated on the map as the yard ?

A. That yard is not now large enough to do

our business at the present time ; it certainly would destroy it.

Q. Would it destroy it as a yard ?

A. I would not like to testify to that—there are experts here to testify to that.

Q. You have charge of the real estate owned by the Erie down there ?

A. Yes ; but that is not a "real estate question.

Q. You would not say that you could not use the rest of the property down there still as a yard if the street was opened ? 10

A. We might use it as a yard if there was room for only two cars but it would not give them facilities to do the business there, but you can't cut down the capacity ten or twelve and run the yard at that point.

Q. It would not destroy it so you could not use it ?

A. I am not competent to say whether it would or not. 20

Counsel for prosecutors offers in evidence map entitled "Erie Railroad map showing property in the City of Paterson, scale 100 feet to inch," being blue print.

Marked Exhibit P 5.

This map is offered for the purpose of showing the ownership of the Erie Railroad Company and the Paterson & Ramapo Railroad Company at Sixth avenue and vicinity. 30

On Thursday, May 19th, 1904, at ten o'clock in the forenoon, the examination was resumed.

Counsel for prosecutors offers in evidence the following minutes of the proceedings of the Board of Aldermen of the City of Paterson, as taken from the city clerk's printed records :

10

(1) Minutes of meeting held June 1st, 1903, showing introduction of ordinance relative to Sixth avenue and showing that it was passed to second reading.

20

(2) Minutes of regular meeting held June 15th, 1903, under the head of "unfinished business" showing that said ordinance was laid over until the next meeting of the board.

(3) Minutes of regular meeting held July 6th, 1903, showing that after certain proceedings, as given in detail in the return, the ordinance was laid over until the next meeting of the board.

30

(4) Minutes of regular meeting held July 20th, 1903, showing that the ordinance was laid over until the next meeting of the board.

(5) Minutes of regular meeting held August 3, 1903, at which ordinance was declared lost and afterwards re-

considered and placed back on second reading.

(6) Minutes of regular meeting held August 17th, 1903, showing that ordinance was laid over until the next regular meeting of the board.

(7) Minutes of regular meeting held September 7, 1903, reading as follows :
September 7, 1903. Regular meeting. 10
In the absence of the president, Alderman Warmolts was chosen as temporary president. At roll call there being no quorum present, Alderman Harding moved to adjourn until next Monday evening at eight o'clock, which was declared carried.

JOHN T. POLLITT,
Acting City Clerk.

(8) Minutes of adjourned meeting, 20
held September 14, 1903, as follows :
Under the head of "unfinished business" : The ordinance to lay out and open Sixth avenue across the right of way of the lands of the Erie Railroad Company, was, on motion of Alderman Roegiers, laid over until the next meeting of the board.

(9) Minutes of regular meeting held 30
September 21, 1903, under the head of "unfinished business," as follows :
The ordinance concerning the opening of Sixth avenue was, on motion of

Alderman Roegiers, laid over until the next meeting of the board.

(10) Minutes of regular meeting held October 5, 1903, reading as follows :

Proceedings of the Board of Aldermen.

October 5, 1903. Regular meeting.

10

There were present at roll call President Fischer and all the other members excepting Aldermen Drew, Johnson, Roegiers, Wright and Young. The reading of the minutes of the regular meeting of September 21, 1903, was, on motion of Alderman MacDonald, dispensed with and approved as printed.

20

Alderman Kamerling moved to adjourn until Thursday evening next at eight o'clock ; the motion was declared carried, 9 members voting in the affirmative and 7 in the negative.

JOHN KEEGAN,

City Clerk.

30

(11) Minutes of adjourned meeting held October 8, 1903, showing that the ordinance was laid over until the next regular meeting of the board.

(12) Minutes of regular meeting held October 19, 1903, showing that the ordinance was laid over until the next regular meeting.

(13) Minutes of meeting held November 2, 1903, reading as follows :

Proceedings of the Board of Aldermen.

November 2, 1903. Regular meeting.

In the absence of President Fischer, Alderman Schoonmaker was chosen as temporary president. At roll call there was no quorum present, and on motion of Alderman Matthies, the board adjourned until next Monday evening at eight o'clock. 10

JOHN KEEGAN,
City Clerk.

(14) Minutes of adjourned meeting held November 9, 1903.

It is stipulated, subject to examination of original records by Mr. Lewis, that at this meeting of November 9th, 1903, the ordinance in question was not referred to. 20

(15) Minutes of regular meeting held November 16th, 1903, showing that the ordinance was laid over until the next regular meeting.

(16) Minutes of regular meeting held December 7, 1903, showing that the ordinance was laid over until the next regular meeting. 30

(17) Minutes of regular meeting held December 21, 1903, showing that the ordinance was laid over "until the next regular meeting of the board."

(18) Minutes of meeting held January 1, 1904, reading as follows :

Proceedings of the Board of Aldermen.

January 9, 1904.

The board met for organization, Mayor William H. Belcher in the chair. At roll call the following members were present :

10

FIRST WARD—John H. Wenting and Garret H. Vermeulen.

SECOND WARD—William R. Harding and David Young.

THIRD WARD—Bernard J. Roegiers and N. E. Warmolts.

FOURTH WARD—Joseph MacDonald and Charles W. Morgan.

FIFTH WARD—George H. Drew and S. M. Schoonmaker.

20

SIXTH WARD—Rudolph H. Matthies and John P. Kerwin.

SEVENTH WARD—Joseph M. Daly and John H. Cannon.

EIGHTH WARD—Thomas Quigley and Thomas E. Kelly.

NINTH WARD—Thomas J. Fitzmaurice and John J. Downey.

TENTH WARD—James H. Muth and John Boylan.

30

ELEVENTH WARD—George A. Fischer and Albin M. Smith, Jr.

After remarks by the mayor, in which he referred to the relationship that will exist between the board and himself, the mayor said that the first

thing in order would be the election of a president of the board. Alderman MacDonald nominated George H. Drew and Alderman Roegiers named Alderman Rudolph H. Matthies. The result of the vote was 11 votes for Alderman Drew and 10 for Matthies and 1 for Roegiers, Alderman Matthies voting for Alderman Roegiers. There being no election, Alderman MacDonald moved that Alderman Drew be chosen as president for the ensuing year. The vote resulted in 11 in the affirmative and 11 in the negative. Before the vote was announced Alderman Matthies moved that the election of Alderman Drew be made unanimous, which was declared carried. Aldermen MacDonald and Matthies then [conducted Alderman Drew to the chair. In a few well chosen remarks the newly elected president thanked the members for the honor conferred upon him.

The minutes further show that the newly elected mayor sent a communication informing the board of the appointment of certain gentlemen to various offices, which appointments were confirmed by the board.

The minutes further show that the board at this meeting proceeded to the election of city officers, including receiver of taxes and assessments, re-

corder, city counsel, city street commissioner, clerk to the board, city clerk, city treasurer, superintendent of indoor relief, comptroller, superintendent of outdoor relief, building inspector, registrar of licenses, city veterinarian, city weigher, sealer of weights and measures, city engineer.

10

Minutes also show that President Drew submitted a list of committees for the ensuing year, and that a motion was made to confirm the committees, which motion was lost.

(19) Minutes of regular meeting held January 4, 1904, showing that the ordinance in question was finally passed, as indicated in detail on the return.

20

The minutes also show that the board endeavored to elect certain city officers who had failed at the election of January 1, 1904.

The minutes also show that President Drew named committees, and the committees were confirmed by the board.

30

Counsel for prosecutors also offered in evidence list of the members of the Board of Aldermen for the year, 1903, as follows :

FIRST WARD.

Abraham Kamerling . . . 34 Circle ave.
John H. Wenting 26 Hillman Str.

SECOND WARD.

David Young 93 Coral Str.
 William R. Harding.... 365 Union Ave.

THIRD WARD.

Bernard J. Roegiers..... 117 Putnam Str.
 Nicholas E. Warmolts... 558 River Str.

FOURTH WARD.

Joseph MacDonald..... 538 E. 25th Str.
 Charles W. Morgan.... 130 Tyler St.

FIFTH WARD.

George H. Drew..... 115 Sixteenth Ave.
 Samuel H. Schoonmaker. 196 Van Houten Str.

10

SIXTH WARD.

James Miller..... 63 Van Houten Str.
 Rudolph H. Matthies.... 53 Ellison Str.

SEVENTH WARD.

John Johnson..... 38 Ward Str.
 Joseph M. Daly..... 351 Grand Str.

EIGHTH WARD.

Thomas Quigley..... 30 Hine Str.
 Thomas E. Kelly..... 204 Mill Str.

20

NINTH WARD.

James Roe..... 12 Jackson Str.
 Thomas J. Fitzmaurice. 130 Beech Str.

TENTH WARD.

James H. Muth..... 287 Getty Ave.

ELEVENTH WARD.

John Wright..... 352 Fifteenth Ave.
 George A. Fischer

30

Counsel also offers in evidence list
 of members of Board of Aldermen for
 the year 1904, as follows :

FIRST WARD.

John H. Wenting. 26 Hillman Str.
 Garret H. Vermeulen. 222 Water Str.

SECOND WARD.

David Young. 93 Coral Str.
 William R. Harding. 365 Union Ave.

THIRD WARD.

Bernard J. Roegiers. 117 Putnam Str.
 Nicholas E. Warmolts. 584 River Str.

10

FOURTH WARD.

Joseph MacDonald. 538 E. 25th Str.
 Charles W. Morgan. 130 Tyler Str.

FIFTH WARD.

George H. Drew. 115 Sixteenth Ave.
 Samuel H. Schoonmaker. 195 Van Houten Str.

SIXTH WARD.

Rudolph H. Matthies . . . 53 Ellison Str.
 John P. Kerwin. 72 Prospect Str.

SEVENTH WARD.

20 Joseph M. Daly. 351 Grand Str.
 John H. Cannon. 77 Mill Str.

EIGHTH WARD.

Thomas Quigley. 30 Hine Str.
 Thomas E. Kelly. 202 Mill Str.

NINTH WARD.

Thomas K. Fitzmaurice. 130 Beech Str.
 John J. Downey. 62 Jackson Str.

TENTH WARD.

James H. Muth. 287 Getty Ave.
 30 John Boylan. 33 Washington Ave.

ELEVENTH WARD.

George A. Fischer. 1038 Market Str.
 Albin M. Smith, Jr. 741 E. 22d Str.

It is stipulated, subject to examination of the original records by Mr. Lewis, that at the meeting of January 1, 1904, there was no reference made to the ordinance in question.

It is further stipulated that the newly elected Mayor, William H. Belcher, took office on January 1, 1904, succeeding in that office John Hinchliffe. 10

Testimony, on the part of defendant, taken on Thursday, May 19th, 1904, at eleven o'clock in the forenoon, at the office of Vivian M. Lewis, counsel for defendant, in the city hall in the city of Paterson, in the presence of George S. Hobart, of counsel with prosecutors, and Mr. Lewis for defendant. 20

HENRY F. BELL, being duly sworn according to law, on his oath says :

By Mr. Lewis :

Q. Where do you reside ?

A. River street, I think the numbers are 480 to 500, Paterson, New Jersey. 30

Q. Are you familiar with the street known as Sixth avenue, Riverside ?

A. Yes, sir.

Q. Have you walked along it ?

A. Yes, sir ; frequently, most of it went through our property.

Q. Do you own a large amount of property in the immediate vicinity of Sixth avenue ?

A. Considerable.

Q. How far is your place of residence from the Sixth avenue crossing about ?

A. I should say about twelve or fifteen hundred feet.

10 Q. Are you familiar with the immediate locality of the Sixth avenue crossing and the property in that vicinity ?

A. In a general way, yes.

Q. Do you know what factories are located on the easterly side of the Sixth avenue crossing ?

A. Yes, sir.

Q. What are they ?

20 A. On the northerly side of Sixth avenue, running from the Erie railroad to East Eleventh street, is the Nicholson File company, formerly Kearney & Foote company, they own that block, and the Sutherland & Edwards company own the property and occupy it on the easterly side of the Erie railroad and southerly side of Sixth avenue.

Q. Are you familiar with the sidings that run from the main tracks of the Erie to Kearney & Foote's and Sutherland and Edwards' ?

30 A. I know they exist, only in a general way ; not particularly.

Q. Do you recall the building of those factories down there ?

A. Yes, very well ; they were located on property we sold to them.

Q. You sold those factories the property ?

A. Yes.

Q. Were the switches there when you sold the property ?

A. No, sir.

Q. They were put there subsequent to the purchase by Kearney & Foote and Sutherland & Edwards of your property ?

A. Yes, sir ; the Kearney & Foote Company purchased before the Sutherland & Edwards Company ; the main switch, or first switch, was put into the Kearney & Foote Company and went beyond the Sutherland & Edwards property. 10

Q. They were put in there subsequent to the sale of the property by you to them ?

A. Yes ; they were put in for the benefit of the Kearney & Foote Company ; the first switch on that side was put in for their benefit, it went beyond some of our property and terminated at Kearney & Foote's property, terminated in their yard. 20

Q. When you passed title to Kearney & Foote the switch was not there ?

A. No, sir.

Q. Do you know the number of tracks at the present time crossing Sixth avenue ?

A. I have not counted them ; I don't know.

Q. Have you had occasion to observe the condition of those tracks, as to the number of cars on them, around the locality of Sixth avenue ? 30

A. At times ; yes, sir.

Q. Have you ever noticed them in such a condition that there was no space between any of the cars ?

A. Do you mean at that particular point of the crossings at Sixth avenue ?

Q. I mean all along that switching facility.

A. Yes, sir ; I have seen them when it appeared to me the cars were continuous or in contact for quite a long distance.

Q. How do the people get through there ?

A. I have seen them walk over the couplings that connect the cars together, and I have seen
10 them crawl underneath.

Q. Have you not noticed that it was the general condition there that there was a space between the cars that the people could pass to and fro ?

A. Not at all times, no, sir ; I have seen it both ways ; I have seen it when the cars were close together all the way down, and at other times when they were not ; I don't know that I
20 ever noticed that there was an absolute break at Sixth avenue.

Q. Are you familiar with the character of the buildings along Sixth avenue, east and west ?

A. Yes, sir ; more particularly on the easterly side.

Q. Are there dwelling houses along there ?

A. There are no dwelling houses on Sixth avenue, east of the Erie Railroad, between River street and the railroad.

Q. What is there along there ?

A. The Sutherland & Edwards Company,
30 they own the block on the southerly side of Sixth avenue, between the Erie Railroad and East Eleventh street, and running from East Eleventh street to the river ; the Nicholson File Company own about half of that block on the

southerly side of Sixth avenue, which I think they occupy as a storehouse, and I own the corner of Sixth avenue and River street, on the southerly side; on the northerly side the Nicholson File Company runs from the Erie Railroad to East Eleventh street, then the silk mill runs up about 200 feet and the balance of the block is taken up by a one-story building which I own.

Q. You say you have walked along Sixth avenue; how is the westerly side of the Erie tracks, along Sixth avenue—built up? 10

A. There have been some changes there recently; I think there is a chemical storehouse erected on the southerly side of Sixth avenue west of the Erie railroad, that is the only building I recall at present.

Q. Do you recall any dwelling houses on the west side? 20

A. On the northerly side, on the corner there is a saloon and I think one or two dwelling houses.

Q. Have you walked down Sixth avenue westerly from the Erie tracks to the bridge?

A. No, sir.

Q. Do you know the bridge there?

A. I have driven through portions of it; don't know that I ever went down all the way.

Q. Are there a number of houses there? 30

A. When you go a block or so from the railroad there are quite a number of houses.

Q. Has it not largely developed as a place of residence?

A. There are a great many houses built in that neighborhood occupied by workmen.

Q. Has not the entire section about Sixth avenue crossing, and in this immediate vicinity, developed very rapidly ?

A. On the westerly side of the Erie railroad a great many houses have been built in the last few years.

10 Q. I refer to within a radius of a quarter of a mile from the crossing, is not that section very rapidly developing as a place of residence—Riverside, I mean ?

A. Yes, sir.

Q. It has grown very rapidly in recent years ?

A. It has grown very rapidly for a number of years there.

Q. Do you know Fifth avenue, Riverside ?

A. Yes, sir.

Q. How far from Sixth avenue is Fifth avenue ?

A. About six hundred feet.

20 Q. Is Fifth avenue opened west of the Erie tracks ?

A. For a distance of about three hundred feet.

Q. Who owns the land beyond that three hundred feet ?

A. I own a portion of it and the Weidmann Dye Company owns a portion of it.

Q. I refer you to this map, Exhibit P 1: Do you know the land between Fifth and Sixth avenues immediately west of the Erie tracks ?

30 A. Yes, sir.

Q. Do you know who owns that land ?

A. I think so.

Q. Who owns it ?

A. I own it all excepting 100 feet adjoining Sixth avenue.

Q. There is no public highway there ?

A. No, sir ; there are no streets that have been opened there whatever, the only building there for a considerable space is the Ryewaner mill.

Q. Is there any other avenue connecting the westerly and the easterly side of this Riverside section besides Sixth avenue opened ?

A. No, sir.

Q. There is no other avenue that you know of opened in that immediate vicinity ?

10

A. No, sir.

Q. What is the nearest street or avenue, or highway of any character, by which you can go from River street to the Bunker Hill section of Riverside, without going through private property ?

A. Fifth avenue goes to Bunker Hill section and stops there ; it is open in front of the Ryewaner mills and Weidmann mills ; coming down from River street on the west side of the tracks there is no way of crossing the Erie tracks whatever at the present time, without going over private property. If Sixth avenue was opened then there would be a crossing.

20

Q. Is River street the nearest street which is opened on which to get across from the west side of Riverside to the east side ? Take a person living at Bunker Hill ; to get across the Erie tracks, if they did not want to cross private property, would he have to go down to River street ?

30

A. Yes, sir.

Q. How far is that from Sixth avenue crossing ?

A. I presume you have it figured out here ; I

would say it is in the neighborhood of 3,000 feet ; that is my judgment of the distance.

Q. In case of a fire in property on the west side of the Erie at Sixth avenue, how would a fire engine located in Riverside on the east side of the tracks reach the fire ?

A. Unless they went over private property they would have to go to River street and then go back again on the other side.

10 Q. That would be what distance ?

A. The only fire house Riverside has is the one on Highland street, that is about the same distance from the Erie crossing that the Sixth avenue crossing is, it might be a trifle less but not much ; that would be about a half a mile each way, the total distance would be about one mile.

20 Q. Do you regard the opening of the Sixth avenue crossing as a great necessity in this locality ?

A. It would certainly be a very great benefit to the property and the people on either side of the Erie tracks.

Q. You say you are not familiar with the number of tracks there ?

A. No, sir ; I could not state positively.

Q. You don't visit the tracks often at Sixth avenue ?

A. No, sir.

30 Q. When were you there last, do you remember ?

A. It may have been a year ago that I was actually at the crossing ; I have frequently since then, and within a comparatively short time, gone down on the easterly side of the Erie

tracks to Fifth avenue and crossed over and come back on the westerly side, right alongside of the main track, but not to cross the tracks. I have not crossed the tracks at that point in a year.

Q. Have you observed any freight station along the tracks in the vicinity of Sixth avenue ?

A. None nearer than the one north of the passenger station on the opposite side of the track.

Q. That is not in the vicinity of Sixth avenue ?

A. No, sir ; it is quite a distance from there.

Q. Did you ever hear this called the West Paterson yard ?

A. No, sir.

Q. Have you ever noticed the number of people that travel east and west in the neighborhood of the Sixth avenue crossing ?

A. Not for any continued length of time.

Q. You know there are a great number going back and forth there ?

A. Yes, sir.

Q. Did you ever have any conversation with any of the Erie officials relative to the establishment of a yard in that locality ?

A. They have negotiated at various times for the purchase of property for the purpose of establishing a yard.

Q. Have they ever negotiated with you ?

A. On one occasion, yes, sir ; and on two or three occasions with my father.

Q. Did any of those transactions go through ?

A. No, sir.

Q. How long have you been a resident of Riverside ?

10

20

30

A. I think thirty-seven years, in the house I now live in.

Q. Are you familiar with the population of that locality?

A. Only in a very general way.

Q. Could you in a general way state what the population is between River street and the Erie bridge across the Passaic river, east and west of the tracks?

10 A. I should think there was a population of from ten to twelve thousand in that territory, that is just roughly.

Q. And a great many of those people are employed in the factories in that locality?

A. Yes, sir.

Cross examination by Mr. Hobart :

20 Q. Your office is down town in Paterson, I suppose?

A. Yes, sir.

Q. Do you have any occasion to pass Sixth avenue in going back and forth to your office and home?

A. No, sir.

Q. What occasion do you have to go in the neighborhood of Sixth avenue?

30 A. The Ryewaner mills I own, and we have made improvements there, and for a couple of years prior to 1903 those mills were vacant, and I visited them almost every day when I was in town.

Q. Your visits to Sixth avenue have been in connection with your property there?

A. Yes, sir.

Q. You have never gone there for the express purpose of seeing how many cars happened to be on the tracks, or to find out what the tracks were used for ?

A. Not for that express purpose.

Q. What you have testified to is based upon your casual observations on the occasions of your visits to your property ?

A. Yes, sir ; what I have seen.

Q. I understand you to say you frequently walked along Sixth avenue ? 10

A. Yes, sir.

Q. How often would that be ?

A. In what period of time ?

Q. When you say you frequently walked along Sixth avenue, what period of time do you mean ?

A. The last fifteen or twenty years.

Q. How often does that mean, every day, every week ? 20

A. At times every day, at times perhaps once a week ; perhaps at other times not more frequently than once in two weeks or once a month.

Q. It would depend on what business happened to call you there ?

A. Yes.

Q. You never went that way for pleasure ?

A. A number of years ago I have gone down there to shoot ; then I went solely for pleasure. 30

Q. Take the Kearney & Foote Company, now Nicholson File Company, to which you have referred : How close is that factory to the east side of the railroad tracks ?

A. Well, they have a high fence there on the edge of the boundary line of their property and the Erie Railroad ; there is a gateway in the fence a short way just east of the Erie tracks, through which their switch enters their yard.

Q. Have you noticed how close the factory is to the track, before you come to the gate ; right alongside of it ?

10 A. Quite close ; within a very few feet, I should say.

Q. Take the buildings of the Sutherland & Edwards factory, which are on the easterly side and southerly side of Sixth avenue : How close do they come to the railroad ?

A. They are a considerable distance from the track ; their buildings were built fronting on East Eleventh street and running back towards the track.

20 Q. Passing to the west side of the track, the Chemical Company's works : Do you know how close their buildings come to the railroad track ?

A. They are some little distance from the track ; I can't say how far.

Q. How about this saloon and the buildings north of Sixth avenue, west of the tracks, how close are they to the tracks ?

A. About 50 feet ; 40 or 50 feet.

Q. The Ryewaner mills buildings, how close are they to the tracks ?

30 A. The main building is within twenty feet or thirty feet, perhaps a little more than thirty, between thirty and forty feet.

Q. Do you remember when it was you sold off part of your property to these factories ?

A. They are all matters of record.

Q. It is over twenty years ago, is it not ?

A. Not all of them ; no, sir.

Q. Take the Kearney & Foote factory.

A. Just as a matter of recollection, without having looked into it, I think we sold the first to them in 1882 or 1883.

Q. Do you recall when that first switch was put in for Kearney & Foote ?

A. It was put in within a year of the time they purchased. 10

Q. Is that the switch that runs on to the north to the so-called coal yard ?

A. No.

Q. The switch you refer to as the Kearney & Foote switch is the one that ends just a few feet to the north of Sixth avenue ?

A. Yes, sir ; these switches have been changed since the first switches were put in.

Q. You have no connection with the Kearney & Foote, now the Nicholson Company ? 20

A. No, sir.

Q. You know nothing at all as to the terms under which the switch was built ?

A. I have a general recollection of the terms under which it was built.

Q. You don't know under what terms it is now being used ?

A. No, sir.

Q. You don't know whether they have the exclusive right to use it at present ? 30

A. No, sir ; I don't know anything about that.

Q. In fact, you know nothing about any of those switches as to whether or not any of the factories have the exclusive right to use them, do you ?

A. Yes, sir ; I do.

Q. Which one do you know about ?

A. Ryewaner mills.

Q. Is that agreement in writing ?

A. I think not ; no, sir.

Q. Are you connected with the Ryewaner mills ?

A. Not with the Ryewaner mills ; I own the property ; I have testified that I own the property.

10

Q. Who owns the Ryewaner mills ?

A. I own the buildings.

Q. What are the terms under which that switch is being used ?

A. Used for the benefit of those mills, for freight or whatever they want to put in.

Q. It is in pretty constant use, is it not ?

A. It is used, I think, for the exclusive purpose of bringing in coal, whatever coal comes there is brought on that.

20

Q. It is used all the time ?

A. I don't imagine it is used every day.

Q. Do you happen to know ?

A. I know it is not used every day.

Q. When were those times that you noticed the condition of the tracks as to the number of cars on them ; you testified, as I recollect, that at times you noticed the condition of the tracks ?

A. They were the frequent occasions I visited that section.

30

Q. When you visited there you have often noticed the tracks full of cars, as you testified—continuous ?

A. There were times that they were continuous, and other times they were not crowded.

Q. Which was the more frequent condition, the continuous ?

A. I would say the continuous times.

Q. These cars, when they have been on the tracks in that way, they have extended across Sixth avenue, have they not ?

A. Yes.

Q. Have you noticed the switching engine switching around there in that vicinity ?

A. Sometimes.

10

Q. That engine also passes back and forth over Sixth avenue ?

A. I would say it generally went over the whole track, from River street down.

Q. That would include Sixth avenue ?

A. Yes ; Sixth avenue, between those points, I don't see how it could get across otherwise.

Q. Is this neighborhood growing rapidly at the present time ?

A. I think there are a greater number of people there now than ever before.

20

Q. Is the growth still continuing or practically stationary ?

A. I think there are more people living in that neighborhood than ever before.

Q. Is it growing as fast now as it was a number of years ago ?

A. I don't think there are as many buildings being erected at present, which is due to the high price of building material, but there are more people there at the present time than ever before.

30

Q. Fifth avenue is planked across the railroad ?

A. Yes, sir.

Q. People can drive across the tracks at Fifth avenue ?

A. Yes.

Q. And Fifth avenue on the east side of the railroad runs into East Eleventh street ?

A. Yes ; they intersect.

Q. On the west side what street does Fifth avenue run into ?

A. It does not run into any.

10 Q. Where does it end ?

A. About 300 feet north of the Erie tracks at present.

Q. It is vacant land on that side for the most part ?

A. Those mill buildings are on both sides.

Q. Fifth avenue could be extended so as to meet another street on the west side, could it not ?

A. Yes, sir.

20 Q. You spoke about the fire engines reaching a fire ; how many fire engines are there in the Riverside section ?

A. The one engine house on Highland street.

Q. That is on the east side of the track ?

A. Yes, sir.

Q. That engine as I understand, would have to go to River street to reach a fire on the west side ?

30 A. They would have to cross the tracks at River street.

Q. They could cross at Fifth avenue ?

A. Yes, sir.

Q. Are there no fire engines on the west side of the track in that neighborhood ?

A. No, sir.

Q. Where is the nearest fire engine on the west side of the track ?

A. I think right here on Highland street.

Q. You were asked whether or not you regarded the opening of Sixth avenue as a great necessity in that locality, and you replied that it would be a great benefit ; do you think it is a necessity ?

A. Yes, sir.

Q. For what reason ?

10

A. For the convenience of the people who live on one side and work on the other, for their safety in crossing the tracks at the point, which is the natural point for the crossing ; we dedicated the ground for Sixth avenue between River street and the Erie railroad, giving a strip of ground probably 500 feet long and 600 feet wide for the purpose of having a street which would cross the Erie railroad at that point.

Q. It would be a benefit to your property along there ?

20

A. The property has been disposed of largely with the exception of two small lots.

Q. I understood you to say you owned all the property on the west side of the tracks between Fifth and Sixth avenues ?

A. Yes ; between Fifth and Sixth avenues, but not running up to Sixth avenue.

Q. Who does own it ?

A. I think there are various owners of that property on the west side of the track running up to Sixth avenue, I don't know. The time I speak of, the Erie railroad negotiated for the purchase of that property for yard purposes, the agent got options on that property—

30

Q. Do you know with whom these negotiations were, the names of the parties ?

A. The one who came to me was Snyder, the freight agent at Paterson.

Q. Mr. Snyder explained to you the necessity of having more room to accommodate the freight ?

10 A. He said they didn't have enough yard facilities in Paterson, never had ; they wanted the property in Paterson ; while the negotiations were going on through me, or with me, they took up negotiations for the property at the other end of the town, near the Paterson Iron works.

Q. Didn't Mr. Snyder tell you that the reason they wanted the property was to accommodate the increasing freight business ?

A. He said they never had enough room in Paterson for their freight business.

20 Q. This freight station you spoke of is the one down near the River street station, is it not ?

A. Yes, sir.

MARTIN CURLEY, being duly sworn according to law, on his oath says :

By Mr. Lewis :

30 Q. Where do you reside ?

A. Corner of Sixth avenue and East Fifth street, Paterson, New Jersey.

Q. Do you own the property where you live ?

A. Yes, sir.

Q. How long have you lived there ?

A. I am living down there eight years ; it will be nine years this August.

Q. Are you familiar with the Sixth avenue crossing ?

A. Yes, sir ; I have crawled under those cars many a time.

Q. Are you familiar with the tracks that cross Sixth avenue ?

A. Yes, sir.

Q. How many are there ? 10

A. I think six ; counting main tracks and all.

Q. How many main tracks are there ?

A. Two.

Q. What are the rest ?

A. They are supposed to be switches ; I suppose they will be having switches as far back as my place after a while.

Q. Where do those switches run to ?

A. They are for the mill owners more than anyone else ; they have a new chemical works down there. 20

Q. They run into their yards ?

A. Yes, sir.

Q. Is there a switch to Sutherland & Edwards ?

A. No, sir ; not to my knowledge there is no switch running into his place.

Q. Do you have occasion to cross the tracks very frequently ?

A. Yes ; sometimes four times a day.

Q. How near is your house to Sixth avenue ? 30

A. Four blocks away from Sixth avenue.

Q. You say you observed the tracks in this locality, what is the condition there ; are there many cars there ?

A. Sometimes it is crowded, four rows of freight cars, two on each side.

Q. Is there not always some space between the cars?

A. Very seldom, it might be on Sunday afternoon, but that is the only time.

Q. Do you know Sixth avenue on either side of the tracks, is it built up along there?

10 A. Yes, sir; right along; Sixth avenue runs from river to river, it is built up from Sixth avenue bridge to East Eighteenth street; there are a great number of houses on it.

Q. From the Erie railroad?

A. From the bridge over the river to East Eighteenth, it is built up all the way, and on the other side of East Eighteenth street it is built up.

20 Q. Going west from the Erie tracks down Sixth avenue, are there any dwelling houses along there?

A. Yes, sir.

Q. On either side?

A. On both sides of the street.

Q. Is it built up pretty well down to the bridge?

A. All the way down to where I am, it is all built up down there.

Q. Is that section of the city growing rapidly?

A. Yes, sir.

30 Q. New houses are being built there all the time?

A. They have been building up to last flood; there is a damper on property there at the present time.

Q. The place is quite thickly built up?

A. Bunker Hill is all built up. We have no accommodations down there at all ; if our homes were on fire we would have to let them burn down.

Q. Where is the nearest fire engine located ?

A. No. 2, on the hill.

Q. Across the Erie tracks ?

A. Yes ; up on the hill.

Q. On the east side of the tracks ?

A. Yes.

10

Q. Suppose there was a fire in your house, how would that engine get to your house ?

A. It would have to go back around River street crossing, that is the only crossing we have.

Q. How many miles would that be ?

A. It is a good mile.

Q. Why would it have to go that way ?

A. There is no other crossing, there is one at Fifth avenue, but a fire engine could not cross there, you can scarcely cross there with a light wagon.

20

Q. It is private property there ?

A. That is there for Weidmann, I guess.

Q. There is no street open between the Erie railroad bridge crossing the Passaic river and River street ?

A. One crossing from River street to the Hawthorne crossing, that I can see, that is to say that you can drive a wagon across.

30

Q. You are familiar with Sixth avenue ?

A. Yes.

Q. It is opened on either side of the Erie ?

A. Yes, on both sides ; all curbed, guttered

and graded from East Eighteenth street down to the Sixth avenue bridge.

Q. Is that the only street, this Sixth avenue, that connects the east and west side of Riverside?

A. Yes, it would open up all that section of the country.

Q. Do you know anything about the population on the easterly side of the Erie over towards
10 Kearney & Foote's?

A. It is all built up there ; I am not well acquainted there ; it is a large population ; it is all built up all through there on both sides ; I know, where I live I think there are three hundred voters right there, on my side of the railroad.

Q. Are there a large number of people who live on your side of the railroad employed in the mills on the other side of the Erie?

A. Most of them are employed on the other
20 side.

Q. And they have to cross at times two or three rows of cars?

A. Yes ; they can't go any other way, there is no other crossing except they go all around to River street, that is quite a distance. And the young girls that have to crawl around them cars going to the factories in the morning it is a shame.

Q. Unless they cross River street crossing,
30 there is no other way to go?

A. No.

Q. You have spoken about a bridge, what is the nearest bridge across the Passaic river to the Sixth avenue passenger bridge?

A. The Straight street bridge.

Q. How far away about is the Straight street bridge from Sixth avenue ?

A. It is a good half a mile ; it might be three quarters of a mile, but it is a good half mile.

Cross Examination by Mr. Hobart :

Q. Where do you work ?

A. I work for myself. I have a business of my own. 10

Q. What line of business ?

A. A saloon business.

Q. Your saloon is on the corner of Sixth avenue and East Fifth street ?

A. Yes, sir ; I own four lots and two houses there.

Q. The Fifth avenue crossing is planked ?

A. Yes ; planked for Weidmann.

Q. How do you know that ?

A. If you tried to go there you could get over in a wagon, the way the street is there is something fierce. 20

Q. The streets are bad ?

A. Yes.

Q. The planking is all right ?

A. Yes, sir.

Q. Fifth avenue runs into private property ?

A. Yes, Bell's property ; I guess Mr. Bell could stop us from going there if he wanted to.

Q. How is the walking on Fifth avenue from East Eleventh to the river and across the tracks on Fifth avenue ? 30

A. On the other side that is all right ; where I live there is no accommodation at all.

Q. The girls you spoke of can cross Fifth avenue ?

A. It would take them out of their way.

Q. It is not so much out of their way, is it ?

A. They have to be at work on time, they can't take the time to go down that way.

Q. They have to crawl under the cars you say ?

10 A. They have, they can't go any other way, they crawl under them, over them and go in front of them, and we have to send our children to school and we have to watch them, they risk their lives going over there.

Q. How many cars are there generally ?

A. Generally four rows of freight cars.

Q. Extending across Sixth avenue and Fifth avenue also ?

A. Yes, nearly all the cars stop there.

Q. The whole track is generally full ?

20 A. Yes.

Q. Did you ever see the switching engine around there ?

A. Once in a while, twice a day, I guess it comes there.

Q. You have seen it there ?

A. Yes ; morning and afternoon I have seen it there.

30 HAROLD J. HARDER, being duly sworn according to law, on his oath says :

By Mr. Lewis :

Q. How do you serve the city ?

A. As City Engineer.

Q. Have you made a map of the tracks in the locality of Sixth avenue ?

A. Yes, sir.

Q. Did you make that map from a survey ?

A. Yes, sir.

Q. Have you that map here ?

A. I have a copy of it ; the original has been mislaid.

Witness produced copy of map. 10

Q. How many tracks are located across Sixth avenue ?

A. Six.

Q. How many main tracks ?

A. Two.

Q. What are the rest ?

A. Sidings—switch tracks.

Q. Where do these sidings run to ?

A. Into the factories along there ; one goes to the Kearney & Foote factory and the other runs into the coal yard north of Kearney & Foote. 20

Q. Are you familiar with the locality in the immediate vicinity of this crossing ?

A. Yes, sir.

Q. Is it thickly populated ?

A. On the east side of the track it is thickly built up ; on the west side it is pretty well built up too.

Q. There are a number of factories and dwellings in that vicinity ? 30

A. Yes, sir.

Q. Do you know what is the nearest street crossing to the Sixth avenue ?

A. Fifth avenue.

Q. Does that street extend to the river ?

A. No, sir ; it runs into what we call Bunker Hill and stops there ; that is private property.

Q. About how far east of the tracks is that private property ?

A. I should judge about 400 feet.

Q. Do you know the property between Fifth and Sixth avenue, is that public or private property ?

10 A. All private property.

Q. Outside of Sixth avenue, what is the name of the only street between the Passaic river and the Ashley & Bailey mill, at River street running east and west ?

A. River street.

Q. What is the condition of Sixth avenue, is it curbed, guttered and graded ?

A. Yes, sir.

Q. Up to the tracks ?

20 A. Yes, sir ; the whole street is graded, curbed and guttered with the exception of the Erie tracks.

Q. Have you been down to this locality many times ?

A. Yes, sir.

Q. Have you seen people crossing there ?

A. Yes, sir.

Q. How do they cross there ?

30 A. When the cars are there they climb over them and crawl under them.

Q. Did you see them going between the cars ?

A. You mean when the cars are not coupled ; yes, I have seen them ; I have gone between the cars myself.

Map produced by witness is offered
in evidence.

Cross Examination by Mr. Hobart :

Q. There are other sidings there besides the two you have mentioned, Kearney & Foote's and Sutherland & Edwards', are there not?

A. Mr. Lewis asked me where the switches lead.

10

Q. You answered as though there were only two sidings?

A. There are other sidings on the other side of the tracks.

Q. Those extend for a long distance north and south of Sixth avenue, do they not?

A. The one to the west extends from Fifth avenue, nearly to River street, the other one extends from Fifth avenue up to where Sixth avenue would cross.

20

Q. Another siding on the west side extends from Fifth avenue to River street?

A. Yes.

Q. The sidings on the east side extend for some considerable distance both north and south of Sixth avenue?

A. Yes, sir.

Q. When you have been in the neighborhood of Sixth avenue have you noticed the tracks were well filled with cars?

30

A. Most always filled.

By Mr. Lewis :

Q. Do you regard this opening of Sixth ave-

nue across the Erie tracks a great public necessity ?

A. Yes, sir ; because it is the only public street opened from river to river.

By Mr. Hobart :

Q. What about Fifth avenue, that is opened across the track, is it not ?

10 A. It is opened down to what is known as Bunker Hill, which is four or five hundred feet west of the track.

Q. What is the objection to opening that ?

A. There is no difficulty in the way ; but it is not opened, the other street is opened.

Q. It simply has not been opened ?

A. No, sir.

Q. It would be a public convenience to have this Sixth avenue carried above the tracks by a bridge, rather than a grade crossing ?

20 A. That the people don't seem to want.

Q. In your opinion, as an engineer, would it not be safer and of more benefit than a grade crossing ?

A. It would, as far as the railroad property is concerned, but it might not work to the benefit of the people owning land on either side, running approaches out a considerable distance ; the Kearney & Foote mills might be made dark by obstructing the windows.

30 Q. You know, from your experience as an engineer, that a grade crossing at that point would be dangerous ?

A. No more than Fifth avenue.

Q. At Sixth avenue there are six tracks and at Fifth only four or five ?

A. Yes ; but they are switching tracks.

Q. There are buildings right close up to the tracks on either side of Sixth avenue ?

A. The Kearney & Foote Company is the nearest one on the east side, that is right along the railroad right of way.

Q. Don't you consider that would be a dangerous crossing at grade ?

A. No more than any other grade crossing ; there are crossings right here in the middle of the town more dangerous than that. 10

Q. It would not be a safe crossing at grade ?

A. No grade crossings are safe, if it comes to that.

Q. The degree of safety depends on the number of tracks and the amount of traffic—

A. Do you mean to leave the crossing unguarded ?

Q. To have a grade crossing there ?

A. If the crossing is guarded it would be no more dangerous than any other crossing. 20

NICHOLAS WARMOLTS, being duly sworn according to law, on his oath says :

By Mr. Lewis :

Q. Where do you live ?

A. At Riverside, 584 River street.

Q. What is your business ? 30

A. Grocer and butcher.

Q. How near is your home to Sixth avenue, the Sixth avenue crossing ?

A. Two blocks.

Q. Have you had occasion during the last

year or so to go to the Sixth avenue crossing often ?

A. Yes, sir.

Q. Have you noticed the number of tracks there ?

A. Yes.

Q. How many are there ?

A. Two main tracks, three sidings and a switch.

10 Q. Where do the sidings run to ?

A. The two sidings on the east side run from Fifth avenue about three or four hundred feet north past Sixth avenue, and the other one on the westerly side runs from Fifth avenue to the Riverside freight station.

Q. Where does the switch run ?

A. To Nicholson's File Company.

20 Q. Have you noticed the number of cars on the tracks at various times when you have been there ?

A. Yes.

Q. Have you been there every day, do I understand ?

A. Not every day, a great many times though.

Q. As often as once a week ?

A. Yes, more than that.

Q. Did you notice the number of cars upon the tracks ?

30 A. Yes.

Q. As a general thing, were the tracks filled ?

A. Sometimes, and sometimes not.

Q. Were they so crowded along the track there that there was no space between the cars ?

A. Occasionally there is a space.

Q. And do people pass through ?

A. Yes, sir ; numbers of them.

Q. Some crawl under the cars and over the cars ?

A. Over and under them when there is no space there.

Q. From your observations made when you have been in that vicinity, would you say the cars could have been put close together so that sufficient space could be left at this point for a crossing ? 10

A. I could be left, certainly.

Q. That has been the general condition of the trackage there, that there would be sufficient space for a crossing if the cars were run together ?

A. Yes, sir ; certainly there would be, if the cars were up close together.

Q. You have crossed the Erie tracks often ?

A. Yes, sir. 20

Q. Are you familiar with any other street that crosses the Erie tracks and connects the east and west sections of the city in this locality ?

A. There is a crossing at Fifth avenue and the next one is by Ashley & Bailey mill on River street.

Q. The crossing you speak of at Fifth avenue—is that street open on the easterly side of the Erie tracks ?

A. Yes ; as far as Weidmann's dye works up to Bunker Hill. 30

Q. Where does it run into ?

A. Private property.

Q. How far is it opened on the west from the tracks of the Erie ?

A. About 400 feet.

Q. Are you familiar with the land east of the tracks between Fifth and Sixth avenues ?

A. Yes, sir.

Q. Is that public or private property ?

A. Private property.

Q. So that there is only one street crossing from east to west side of Riverside which is opened at the present time ?

10 A. Yes ; Fifth avenue is opened, but it runs into private property.

Q. Are the east and west sections of Riverside well populated, well built up ?

A. Yes, sir.

Q. What is the population in a radius of half a mile on either side of the Sixth avenue crossing ?

A. It is pretty hard to tell about the population. I know how many voters there are.

20 Q. How many ?

A. Some 650 voters.

Q. Do you know what the houses are in that locality, how many there are ?

A. I couldn't tell.

Q. Is it built up by manufacturing establishments and dwellings mostly ?

A. Yes, sir.

Q. A large number of the people are employed in the factories there ?

30 A. Yes, sir.

Q. Are a large number of the people living on the east side of the tracks employed in the factories on the west side ?

A. Yes, sir.

Q. As I understand it, there are a larger num-

ber of factories on the easterly side of the tracks ?

A. They are on both sides.

Q. Have you ever estimated how many people a day, for instance, cross over the cars, under the cars and between the cars at the Sixth avenue crossing ?

A. No, sir ; I know about how many people work in the factories.

Q. Can you give a guess ?

10

A. I should say from four to five hundred.

Q. From four to five hundred people cross there every day ?

A. Yes.

Q. I mean between the cars, over the cars and under the cars ?

A. Yes, sir.

Q. Is Sixth avenue graded, curbed and gut-
tered ?

A. Yes, sir.

20

Q. Up to the tracks, on either side ?

A. Yes.

Q. Do you regard the opening of this crossing as a great public necessity ?

A. I do.

Q. Is there a great demand for it among the people living in that locality ?

A. Yes, sir.

Q. In case of a fire on the west side of the tracks would there be great danger of the destruction of a large amount of property by reason of this crossing not being open ?

30

A. Yes, sir.

Q. Why is that ?

A. Because the engine is located on Highland

street, and it would have to go all the way to the Ashley & Bailey crossing in order to get over.

Q. What do you mean by the Ashley & Bailey crossing ?

A. The River street crossing ; it is generally called the Ashley & Bailey crossing.

Cross Examination by Mr. Hobart :

10 Q. How far away from Sixth avenue crossing is your place of business ?

A. Two blocks.

Q. On which side of the tracks ?

A. On the easterly side.

Q. You live there ?

A. Yes, sir ; upstairs over the store.

Q. What occasion do you have to pass over the Sixth avenue crossing ?

A. Well, on account of business, soliciting orders, collecting.

20 Q. You do that yourself ?

A. Yes, occasionally, not always.

Q. You have a clerk who does that for you ?

A. I have a driver, a delivery clerk.

Q. How often do you personally have occasion to go over the Sixth avenue crossing ?

A. On different occasions.

Q. How many times a week ?

A. Sometimes six times, sometimes ten times, and sometimes only once.

30 Q. You have never counted the number of people who actually use Sixth avenue crossing ?

A. I have seen, and I have been told, and I have watched for the purpose of seeing how they cross over.

Q. When did you see that a number of people cross at Sixth avenue ?

A. More so since this fight has been on than any other time.

Q. When was the last time ?

A. During the month of February, this year.

Q. When did you commence your watch, what time of the day ?

A. During the noon hour.

Q. Twelve o'clock ?

10

A. About twelve o'clock.

Q. How long did you watch ?

A. About half an hour.

Q. Then you went home and attended to your business ?

A. Yes, sir.

Q. During that half hour you counted the number of people ?

A. I did not count them ; I watched to see how they crossed.

20

Q. How do you figure that five hundred people pass over the railroad tracks at that point a day ?

A. On account of the large number of people employed in the mills, Kearney & Foote's, Weidmann's and the other mills there.

Q. You base your figures as to the number who cross at that point on the number of people employed in the mills ?

A. Yes.

30

Q. There is a crossing at Fifth avenue ?

A. Yes.

Q. Don't some of the people who work in the mills use that ?

A. Some of them.

Q. Don't a great many of them ?

A. Some who live in that section.

Q. There is planking over the crossing ?

A. Yes, sir.

Q. It is a much better crossing than the one at Sixth avenue ?

A. For the people working in that section it would be.

10 Q. There is no crossing at all at Sixth avenue, no planking ?

A. No, sir.

Q. You have walked across, have you ?

A. Yes ; when there was any space I went in between the cars.

Q. Generally there is no space between the cars, is there ?

A. I have been there when there was space.

Q. How many times ?

A. Different times ; I can't say exactly.

20 Q. You didn't count them ?

A. No.

Q. Was it more than ten times ?

A. I think so.

Q. More than twenty times ?

A. I don't want to say anything that is not so ; say between ten and twenty times.

Q. In how long a period ?

A. Well, it is pretty hard to tell.

Q. Within a year ?

30 A. Within the last six months.

Q. How many times have you been on that crossing when there was no open space, within the last six months ?

A. Several times.

Q. More than twenty times ?

A. More than twenty.

Q. More often there was no space ?

A. Yes.

Q. In fact, all the whole switching facility is generally filled with cars ?

A. This morning only one side was filled, very few cars there ; very often only two sidings have been filled.

Q. Sometimes the whole facility has been filled ? 10

A. There are only three ; one on one side and two sidings and a switch on the other.

Q. All three are generally filled, are they not ?

A. No, sir.

Q. Never more than two ?

A. Never more than two completely.

Q. You were an alderman in the Third ward during 1903 ?

A. I was elected in 1902, I think November, 1902, and took my seat in 1903. My term expires January 1, 1905. 20

Q. You were an alderman in 1903 ?

A. Yes.

Q. You attended the meeting held August 3, 1903 ?

A. Yes, sir.

Q. You said this opening was a great public necessity ; do you still think so ?

A. Yes, sir.

Q. Did you think so in August, 1903 ? 30

A. Yes, sir.

Q. Then why didn't you vote in favor of the ordinance ?

A. I always did. I never voted any other way.

Q. The records show differently.

A. I voted in favor of the ordinance ; when I found it would be lost I changed my vote before the vote was announced from the chair and moved for a reconsideration.

Q. It would be a great benefit, would it not, to have Sixth avenue carried above the railroad tracks by a bridge or viaduct ?

10 A. The railroad offered that, but the city could not afford to pay for damages that would result to the abutting property owners.

Q. That would be a much better crossing than a grade crossing, aside from the question of damages ?

A. I am not to speak for myself ; I represent my constituents there, and they want a grade crossing there.

By Mr. Lewis :

20 Q. Have you ever seen the so called yard so crowded with cars that there would not be sufficient space for a crossing at Sixth avenue if the cars were put close together ?

A. No, sir ; you could make space.

Q. How much space would be required for a crossing there ; how wide is the street ?

A. The street is sixty feet on one side and fifty feet on the other.

30 Q. For this crossing all that is required is about sixty feet of the trackage in width ?

A. The width of the street ; yes, sir.

Q. Do you know the length from one side to the other ?

A. The property owned by the railroad company, I should judge about 100 feet.

Q. Would you regard this crossing, if opened, as a dangerous one ?

A. It is more dangerous now than it would be then.

Q. Why do you say that ?

A. The people who cross there are not protected at all now ; they take their lives in their hands when they cross there ; if there was a crossing there and a watchman, they would be warned of the approach of trains. 10

Q. Is it not an actual fact that most of the trains crossing Sixth avenue slow up because of the Erie bridge over the river ?

A. I don't know ; there is a water tank there and a good many stop at Fifth avenue ; the Fifth avenue crossing is very often filled.

Q. That is frequently closed up ?

A. Yes, sir ; very frequently you have to wait a long time to cross there.

Q. Do you regard the Sixth avenue crossing, if opened, as dangerous as the River street crossing ? 20

A. No, sir ; it is not as dangerous.

By Mr. Hobart :

Q. Did you ever work on a railroad ?

A. No, sir.

Q. Never had anything to do with railroads ?

A. No, sir.

Q. Do you know anything about railroad business ? 30

A. No, sir.

Q. On what do you base your opinion as to the danger or safety of this grade crossing ?

A. The River street crossing is much longer, this would be a straight crossing.

Q. Have you ever been in the engineering business ?

A. No, sir.

Q. Or surveying ?

A. No, sir.

10 Q. You don't know anything about the safety of a grade crossing, except what you see ?

A. I can see for myself.

Q. You don't know anything about the room necessary in a yard in order to switch the cars, store the cars and handle them properly ?

A. No, sir.

Q. Do you know what a lead is ?

A. No, sir ; I know what a siding is.

Q. You don't know how necessary it is to have a lead sufficient to do the switching, you don't know anything about that ?

20 A. No, sir.

JOHN GRUNDY, being duly sworn according to law, on his oath says :

By Mr. Lewis :

Q. Where do you reside ?

A. 46 Butler street, Riverside.

30 Q. What is your business ?

A. I own considerable property and have to look after it all the time.

Q. Do you own considerable property in Riverside ?

A. Yes, sir.

- Q. Are you familiar with Sixth avenue ?
- A. Yes, sir ; I have been around there twenty-five years.
- Q. You have walked up and down on either side of the Erie tracks ?
- A. Yes, sir.
- Q. Sixth avenue is curbed, guttered and graded ?
- A. Yes, sir ; all the way through.
- Q. Right to the Erie tracks on either side ? 10
- A. Yes, sir.
- Q. Do you know of any other street connecting the east and west sections of the city in this locality ?
- A. Fifth avenue.
- Q. Is that open on either side of the tracks ?
- A. It is open as far as Weidmann's Dye Works ; it don't go any further.
- Q. On which side of the track is that ?
- A. West side. 20
- Q. How far is it opened from the tracks on the west side ?
- A. Probably 400 feet.
- Q. Beyond that what is it, private property ?
- A. Yes, sir ; it belongs to Henry F. Bell.
- Q. Do you know the property between Fifth and Sixth avenues on the west side of the tracks ?
- A. Yes, sir.
- Q. Is that public or private property ? 30
- A. It belongs to Mr. Bell.
- Q. Is that section on the west side pretty thickly populated ?
- A. I guess there are 1,500 inhabitants around there ?

Q. Could you get to this populated section by crossing the Fifth avenue crossing ?

A. No ; Bell's property runs up to the railroad, even if you did, there would be no way of getting to Sixth avenue.

Q. Do you know of any other street connecting the east and west side of Riverside, between the Passaic river and Ashley & Bailey's mills, besides Sixth avenue ?

10 A. No ; that is all.

Q. There is no other street ?

A. No.

Q. Ashley & Bailey's mills are located where ?

A. Right at the River street crossing of the Erie.

Q. Is there a bridge at the west end of Sixth avenue ?

A. There was one right at the Gas Works ; that has been washed away.

20 Q. On the west side ?

A. Yes ; a good bridge there.

Q. What does that connect ?

A. It runs across Sixth avenue to the Goffle road.

Q. What fire facilities have you in this locality ?

A. One in Highland street.

Q. Is that on the other side of the track ?

A. That is east of the track.

30 Q. Suppose there was a fire in your home, how would that engine reach you ?

A. It would have to go up around by the Erie crossing at River street, you could not get over Sixth avenue, that is always blocked with two or three cars.

Q. What distance would that be ?

A. I guess it would be a mile ; they would have to go one way and then come back again.

Q. Are there many dwellings houses on the east and west side of the tracks ?

A. On the east side, I guess, there would be 3,000, that takes in the race track.

Q. Are there several mills ?

A. Johnson's, Helvetia Silk mills, Brown's, Ashley & Bailey—

10

Q. Take around Sixth avenue, how many are there ?

A. Kearney & Foote, Johnson's, Helvetia Silk mills, Sutherland & Edwards, Weidmann Dye works, the Chemical works are right at Sixth avenue crossing.

Q. What is that called ?

A. I don't know the name of it.

Q. Are there many people employed in the mills in that locality ?

20

A. Yes, sir.

Q. About how many ?

A. Over 3,000 I guess.

Q. Do many of these people cross the tracks there every day in the vicinity of Sixth avenue ?

A. They have to get over ; they crawl under the cars, over the cars and underneath them.

Q. You have seen the people crossing there ?

A. Yes, every day ; morning, noon, and night, between the cars, on top of them and under them.

30

Q. About how many people do you think, from your observations, cross there every day ?

A. A good many cross there, there would be more than 2,000, if it was opened.

Q. Many of these people crawl under the cars, over them, and between them ?

A. Any way they can ; old people have to go around.

Q. Do you regard the opening of Sixth avenue as a great public necessity there ?

A. Most certainly I do.

Q. Do you think it would be at all dangerous there ?

10 A. Of course there would have to be some one there to watch ; it would not be near so dangerous as it is now.

Q. It would be less dangerous than it is now ?

A. Yes, sir ; if it was opened.

Q. You are familiar with the tracks there ?

A. I graded that there for Kearney & Foote, when they first came there, I dug around there for laying the switch, I put in the switch up to behind Bell's house.

20 Q. It runs into Kearney & Foote's ?

A. Yes, to their yard.

Q. Who paid you for that ?

A. Kearney & Foote.

Q. What did they tell you it was for ?

A. For their own use.

Q. Have you noticed during your frequent visits to this crossing a number of cars upon this so-called yard ?

30 A. I never saw it crowded there, there is quite a number of cars there in some places, there are two switches ; I have seen them both filled, and on the other side the same way.

Q. Did you ever see it so that the cars were so crowded that there could not have been a

space left enough for a crossing, if the cars were crowded close together ?

A. I have seen four or five cars, ten or fifteen feet apart.

Q. You think without even congesting the so-called yard, enough space could be left for a crossing there ?

A. Yes, they could make that switch longer, run it down to the depot.

Q. How far would that be ? 10

A. I guess a quarter of a mile anyhow, I should judge that.

Q. There would be no difficulty getting property there ?

A. The company owns it themselves ; that embankment could be taken away.

Q. From Sixth avenue to the Erie station at River street, they own that property ?

A. Yes ; they must own it ; they only had one switch there, and they kept stealing a little more and putting in another. 20

Q. You are familiar in a general way with the railroad there ?

A. I have done a great deal of filling in in my day, but don't do any of it now.

Q. Did you ever know this property was called a yard ?

A. Yes, sir ; but it was not a yard when they located on it first. I owned the buildings that Weidmann owns now, and the various buildings down by the bridge ; I was the first to build down there ; they have switches all along there now ; they have switches now in the middle of the street running into Weidmann's mills, between Fifth and Sixth avenues. 30

Cross Examination by Mr. Hobart :

Q. What is your business ?

A. I used to keep six or eight teams, do digging and excavating, and all such as that.

Q. Contracting work ?

A. Yes.

Q. Did you lay the rails on these switches, or simply do the excavating ?

10 A. I leveled it off for the ties and the rails.

Q. You never actually constructed a switch ?

A. No ; I had nothing to do with the switch.

Q. Your line has been excavating and digging ?

A. Yes.

Q. How do you know the Erie Railroad owns the property on the east side of the switches from Sixth avenue to River street, the property you stated the Erie Railroad owned where they could extend the switch ?

20 A. I know they could go 500 feet further down with that switch.

Q. How do you know they own that property, have you examined their deeds ?

A. No, sir.

Q. You never examined the records to see how much they do own ?

A. No, sir ; I was told.

Q. These switches are generally pretty well crowded by the cars ?

30 A. One here and one there ; not up close together as they ought to be.

Q. Did you ever work for a railroad in the line of freight business ?

A. I have had a great deal of freight on the road.

Q. Never been in the freight business, as a business ?

A. No.

Q. You don't know anything at all about the room necessary to handle the cars, store them and switch them around ?

A. No, sir.

Q. Do you know what a lead is ?

10

A. No, sir.

Q. Never saw it ?

A. I have heard of it.

Q. I understood you to say you heard this place called a yard ?

A. Yes.

Q. How long a time have you heard it called a yard ?

A. Since they commenced talking about having a crossing.

20

Q. That is within the last year or two ?

A. Yes.

Q. Don't you know that as a matter of fact it has been used to store freight cars and deliver freight for some fifteen or twenty years ?

A. No, sir ; it has not ; only since Weidmann came there, that is fifteen years ; the only switch then was the Weidmann switch.

Q. What were the other used for ?

A. There was a lumber yard there ; they went to the lumber yard.

30

Q. For the last fifteen years all these tracks have been there as they are now ?

A. Not all, I don't think.

Q. How many ?

A. I don't remember.

Q. At least one of the switches besides the main tracks have been there for the last fifteen years ?

A. Yes, sir.

Q. It has always been used for the delivery of freight and storage of freight cars. Have you been down there for the last fifteen years ?

A. I guess so.

10 Q. How far away is your home from the Sixth avenue crossing ?

A. It is right opposite, 500 feet from the railroad tracks and about 200 feet north of Sixth avenue.

Q. About seven or eight hundred feet from the Sixth avenue crossing ?

A. Yes.

Q. Have you ever counted the number of people that cross that point daily ?

20 A. No ; I have something else to do besides standing there counting people.

Q. I want to find out how you are willing to swear that 2,000 people use that crossing every day ?

A. I have talked to people, they tell me how many people go back and forth and take their lives in their hands in crossing there.

Q. You base your figures on what other people have told you ?

30 A. I should judge about 2,000 would cross there ; they either have to go down to Fifth avenue or else take their chances and go under the cars.

Q. Most of the people that have to cross the tracks in the neighborhood of Sixth avenue,

either cross over at Fifth avenue or have to crawl under or over the cars ?

A. A great many go under the cars, a great many come up by Fifth avenue, or over by Ashley & Bailey's ; if the crossing was open they would go the other way.

Q. Have you had any experience as an engineer or surveyor ?

A. No.

Q. Tell us what you know about grade crossings, whether or not they are dangerous. 10

A. It would not be any more dangerous than Fifth avenue.

Q. How do you form your judgment as to the degree of safety or danger of the grade crossing ?

A. Any crossing is dangerous, but not so dangerous as crossing under the cars, over them, and between.

Q. When you say a grade crossing at Sixth avenue would not be dangerous, you mean it would not be dangerous as compared with the way the people now crawl around the cars ? 20

A. No, sir.

Q. It would be safer than that ?

A. Of course.

Q. That is what you mean by saying it would not be dangerous ?

A. Yes, sir.

30

By Mr. Lewis :

Q. You spoke of a switch running in to Weidmann's Dye Works, that runs in at Fifth avenue, not Sixth ?

A. It commences from Sixth and runs over to Fifth.

Q. Does it cross Sixth avenue ?

A. No, sir ; it is on this side of Sixth avenue,

Q. The siding you spoke about as running to Weidmann's mill does not cross Sixth avenue ?

A. No.

10 JAMES H. GRUNDY, being duly sworn, according to law, on his oath says :

By Mr. Lewis :

Q. Where do you reside ?

A. 46 Butler street.

Q. What is your business ?

A. I am a stone cutter by trade.

Q. Do you know Sixth avenue where it crosses the Erie railroad ?

20

A. Yes, sir.

Q. Do you know that it is guttered, curbed and graded ?

A. Yes, sir.

Q. Is that section in the neighborhood of Sixth avenue pretty well populated, a number of people live there ?

A. Yes, sir.

Q. It is well built up ?

A. Yes, sir.

30

Q. Do you know of any other street connecting the west and east sections of Riverside, between the Passaic river and River street, besides Sixth avenue ?

A. Fifth avenue.

Q. Does that connect the east and west sides of Riverside ?

A. Yes ; there is a small street here, a little over twenty feet wide.

Q. How far does Fifth avenue extend west of the tracks ?

A. It runs right in to Bunker Hill.

Q. Is Bunker Hill private property ?

A. Yes, sir.

Q. You don't know of any other street except Sixth avenue connecting the east and west side ? 10

A. Unless you go six or seven blocks down by Wait street.

Q. There is no crossing between the Passaic river and River street except Sixth avenue ?

A. No.

Q. That is the only street that crosses from east to west ?

A. Yes.

Q. How many tracks are there at Sixth avenue ? 20

A. Five or six.

Q. Have you crossed the tracks near the Sixth avenue crossing ?

A. Yes, sir.

Q. How ?

A. If there is no space I crawl under the cars.

Q. Have you ever gone between the cars ?

A. Yes, many times.

Q. How often do you go there ? 30

A. Every day, once or twice a day.

Q. Did you ever notice that there was space enough by putting the cars close together to have a crossing there ?

A. I don't see why there would not be.

Q. You understand what I mean by having the cars close together on the tracks ?

A. There always seemed to be room enough : I suppose it is more convenient for them in their switching to leave them that way.

Q. So far as you observed then, the switches are never so crowded that there was not space for a crossing if the cars were crowded together ?

10 A. No, the railroad could, if they wanted to, make a little more switching room by taking away that bank.

Q. Did you ever notice the number of people crossing the tracks there ?

A. At meal times quite a crowd.

Q. How do they get over ?

A. The women generally creep under the cars and the men over the cars.

Q. And they go between the cars ?

A. If there happens to be any space.

20 Q. Very often there is space between the cars ?

A. Yes.

Q. Did you ever hear this place called a yard ?

A. No, sir ; never heard it called a yard.

Q. Do you know how many main tracks there are ?

A. I think five.

Q. You are not familiar with the tracks, are you ?

30 A. There are two main tracks.

Q. Do you know anything about the switches running off the main tracks, the sidings ?

A. There are three, I think.

Q. A switch runs to Kéarney & Foote's ?

A. Yes.

Q. Who uses that ?

A. They use it ; I don't think anyone else uses it.

Q. There is a switch to Sutherland & Edwards ?

A. That is a kind of siding.

Q. Is that for Sutherland & Edwards' private use ?

A. Yes, I don't see anybody else using it.

Q. How far up and down the tracks, north and south of the Sixth avenue crossing, do the cars generally extend ? 10

A. I don't know how many cars ; they break them at Fifth avenue ; they don't run quite as far as Fifth avenue ; sometimes they run quite a little distance south ; sometimes only a short distance.

Q. Sometimes the sidings are not filled at all ?

A. No, sir.

Q. But the crossing is always covered ? 20

A. They seem to leave them on the crossing.

Q. They don't use their switches or sidings always ?

A. They are not always in use.

Q. The crossing is always blocked up ?

A. Yes ; always.

Q. When you speak of the crossing being blocked, you mean immediately on the crossing ?

A. Yes ; they are never pushed down as they might be. 30

Q. Over on the switches and sidings ?

A. No ; as they might do.

Q. Do you regard this crossing as a great public necessity ?

A. Yes, sir ; we have been expecting it for years.

Q. You have been trying to get this crossing for years ?

A. Yes, sir.

Q. Would you regard it as a dangerous crossing ?

10 A. No, sir ; not if it is protected ; not near as much so as the River street crossing ; this would be a shorter crossing ; it would be a safer crossing.

Cross Examination by Mr. Hobart :

Q. Do you happen to know how many trains pass over that crossing every day ?

A. I don't know ; quite a number.

Q. You don't know that it is over one hundred ?

20 A. No, sir.

Q. Do you know how many times the switching engine passes there ?

A. It is always about one time they do their switching ; I don't know the hour.

Q. Every day some work is done there by the switching engine ?

A. I guess every day.

Q. Did you ever have any experience as a railroad man ?

30 A. No, sir.

Q. Don't know anything about grade crossings or whether they are dangerous or not ?

A. No, sir ; no more than it would not be as dangerous as it is now.

Q. Whenever you have been down in the

neighborhood of Sixth avenue there has always been more or less cars on all the switches ?

A. Yes, sir ; but I guess there is always some room to leave an opening so you could walk across there.

Q. You said you never heard of this being called a yard ?

A. No, sir.

Q. What is a railroad yard, do you know ?

A. Yes ; where they put the cars, and unload the cars. 10

Q. Is not that what they do here ?

A. On one part of it they do, south of Sixth avenue ; there is a great deal of unloading there.

Q. It is used as a yard ?

A. Yes ; just around this crossing it is very convenient to unload cars there.

Q. Sutherland & Edwards is near the crossing ?

A. Yes. 20

Q. Kearney & Foote is near the crossing ?

A. They have a switch over on the west.

Q. The Chemical company is near the crossing ?

A. Yes ; they have a switch.

By Mr. Lewis :

Q. South of Sixth avenue you spoke of that part as a yard, where is that ?

A. Going toward the depot, down near River street. 30

Q. That has nothing to do with Sixth avenue ?

A. It is quite a distance from Sixth avenue, that is where they do most of their unloading.

Q. There is a freight house down there ?

A. Yes, and the coal cars come down there, near the River street crossing, about half way.

Q. You know the tracks down from Sixth avenue to that freight house ?

A. Yes, sir.

Q. You mean the main tracks ?

A. The main tracks run down there, but some of the sidings switch off at Weidmann's and go down there.

10 Q. Did you see any siding there down to the freight house ?

A. Down here is where they do most of their unloading, down between Peel street and Bleecker street, that is where I consider the yard.

Q. You consider the yard is below Sixth avenue if they have any yard ?

A. Yes, sir.

20 Q. The switch or siding you spoke of running from the main track to the Post coal yard does not cross Sixth avenue, does it?

A. No, sir ; I don't think so.

By Mr. Hobart :

Q. It runs into a siding that does cross Sixth avenue ?

A. Yes ; that is where I would consider the yard, down towards Bleecker street.

30 Q. How far away is Bleecker street ?

A. Two blocks away from Sixth avenue.

Q. What do they load on there ?

A. Coal and brick.

Q. From what ?

A. From the cars.

Q. Not from any freight station ?

A. No ; the freight station is quite a distance from there.

Q. Where is the freight station ?

A. Way down ; I don't know what street it is.

Q. When you speak of a siding running from Sixth avenue to the freight station, you don't know of any such siding ?

A. I suppose it is right along the main track.

Q. Do you know of any siding running from Sixth avenue to the freight station at River street ? 10

A. This track here (indicating on the map, Exhibit P 1.)

Q. Do you know that is a siding ?

A. No, sir.

Q. You don't know anything about it ?

A. I know there is a line runs to the freight house.

20

By Mr. Lewis :

Q. You know it is possible to switch cars from Sixth avenue to the freight house station at River street without going on the main line ?

A. I guess it is.

By Mr. Hobart :

Q. How often do you cross the Sixth avenue crossing ?

30

A. Every day, I guess ; nearly every day, sometimes two and three times a day.

Q. How long does it take you to pass over the railroad tracks ?

A. Quite a little while.

Q. Five or ten minutes ?

A. Yes.

Q. You stop and observe ?

A. I always stop to see if there is a train coming.

Q. And the only times you have occasion to notice the condition of the tracks is during the five or ten minutes it takes you to cross there, once or twice a day?

10 A. No, sir.

Q. You don't know anything about the condition of the tracks when you are not there ?

A. No.

BERNARD J. ROEGIERS, being duly sworn according to law, on his oath says :

By Mr. Lewis :

20 Q. Where do you reside ?

A. 117 Putnam street, Riverside.

Q. Do you know Sixth avenue ?

A. Yes.

Q. Are you familiar with the Sixth avenue crossing ?

A. Yes, sir.

Q. Do you know whether the street on either side of the crossing is guttered, curbed and graded ?

30 A. Yes, sir ; it is, up to the railroad on both sides.

Q. Do you know of any other street crossing the Erie railroad in that vicinity ?

A. Fifth avenue.

Q. On the west side of the Erie tracks, how far does Fifth avenue run down?

A. I never measured it, but in my opinion it would be at least half a mile.

Q. What is the distance from the Erie towards Bunker Hill?

A. About two hundred feet.

Q. Is Bunker Hill public or private property?

A. Private.

Q. Fifth avenue extends about 200 feet from the Erie tracks to Bunker Hill? 10

A. About.

Q. Do you know the property between Fifth and Sixth avenue?

A. Yes, sir.

Q. Is it public or private property?

A. I understand it belongs to the Bells—they have used this as a drive-way (indicating on map Exhibit P 1), but it is all private property.

Q. You know it is all private property between Fifth and Sixth avenue? 20

A. Yes, sir.

Q. Therefore there is no street or avenue between the Passaic river and River street connecting the east and west side of Riverside with Sixth avenue?

A. No, sir.

Q. Is that section around Sixth avenue thickly populated?

A. Yes, sir; on one side it is all built up with factories, on the other side with private houses, all through Sixth avenue; there are large mill owners on the easterly side of the track. 30

Q. A great many people have to cross the Erie tracks at that point?

A. Four or five hundred cross there every day to their work in the factories ; they cross under the cars, over the cars, sometimes two or three lines of cars, freight cars.

Q. How many tracks are there at Sixth avenue ?

A. I think there are six, two main tracks, and then there are switches.

Q. Are there cars always on the tracks there ?

10 A. Not always ; at times it is open ; they have cars standing all around Sixth avenue at different places.

Q. The most of the congestion of the cars is on Sixth avenue ?

A. Between the freight house and Fifth avenue they have a large number of cars standing.

Q. Where is the freight house ?

A. Leon street.

Q. Is that near River street ?

20 A. Within one block.

Q. Do you know what this switch (indicating on map) is ?

A. It runs into Kearney & Foote's yard, into a coal yard that used to be there.

Q. Do you know the factory located at the southeast corner of Sixth avenue ?

A. Yes ; Sutherland & Edwards.

Q. Have they a switch running into their yard ?

30 A. I don't think they have.

Q. How many main tracks are there crossing Sixth avenue ?

A. Two.

Q. Do you know how far north and south these sidings extend that have been spoken of ?

A. I could not tell you just the distance.

Q. Do you know whether they run down to Peel street ?

A. I think they run a couple of blocks there.

Q. Are these sidings frequently all occupied by cars ?

A. Yes ; I have seen very few cars there at times when I have been down there ; other times I have seen them pretty well filled up.

Q. The main crowding is on the immediate crossing ? 10

A. Yes ; it seems to be about the most crowded place.

Q. Do you regard this crossing as a great public necessity ?

A. Certainly I do. I have advocated it two or three times. I appeared before the board a few years ago and brought the matter up and tried to get it through once before, but we can't get it, it seems. I regard it as a great necessity on account of the number of people who have to cross there every day, and it would be a benefit to the factories along there. 20

Q. You have been down there frequently ?

A. Yes, sir.

Q. Would it destroy the use of these sidings for the switching of cars ?

A. No ; they could leave them open.

Q. If they utilized all the space on the sidings on either side of Sixth avenue, you think they could readily leave an opening ? 30

A. Yes.

Q. Under the conditions you observed there ?

A. Yes.

Q. Are you familiar with the fire facilities in that section ?

A. Yes, sir ; the fire engine house is located at Highland street, which is about opposite Bleecker street, on the east side of the tracks.

Q. Suppose there was a fire over on the west side of tracks, how would the engine reach the fire ?

10 A. It would have to go around to River street crossing.

Q. How far is that ?

A. It would be a mile around. Fifth avenue is not open through there.

Q. To get over to that section, if they did not go down to River street, they would have to cross private property ?

A. Yes, sir.

20 *Cross Examination by Mr. Hobart :*

Q. In case of a fire do you think they would hesitate to go over private property ?

A. Not if they could get over ; if they put a fence there they could not get over.

Q. There is no fence there now ?

A. No.

Q. And no prospect of there being one put there, as far as you know ?

30 A. I have been told they were going to put a fence there.

Q. Who told you ?

A. One of the taxpayers at Riverside.

Q. Can you give the name of the party ?

A. I don't know his name.

Q. It was not any of the representatives of the mills ?

A. No.

Q. As a matter of fact people do drive now in this space between the Ryewaner Mills and Fifth avenue ?

A. Yes ; there is a drive-way there.

Q. Is it used ?

A. Yes, sir.

Q. What is your business ?

10

A. Plumber.

Q. You were an alderman in 1903, and are at the present time ?

A. Yes, sir.

Q. How far from the crossing is your home ?

A. I live three blocks away from the River street crossing.

Q. Your place of business is where you live ?

A. Yes.

Q. What occasion do you have to go over the Sixth avenue crossing ?

20

A. I do work over there for people who live in that neighborhood.

Q. Have you ever counted the number of people who cross the tracks at Sixth avenue in a day ?

A. No, sir ; I have not myself personally ; some of the people there have.

Q. When you say that four or five hundred people pass there in a day, you are not testifying from any actual count made by you ?

30

A. Property owners there have told me.

Q. You never counted them yourself ?

A. No.

Q. The sidings and tracks in the neighborhood

of Sixth avenue are generally quite well filled with cars, are they not?

A. Yes; I have seen them filled a number of times and I have also seen them empty.

Q. They are more frequently filled than empty?

A. I could not say that.

Q. Have you noticed the switching around there?

10 A. Around the freight house frequently.

Q. Have you noticed the switching engine switching at Sixth avenue?

A. Only one day when I went there to look at Sixth avenue; that was the only time I noticed the engine at Sixth avenue.

Q. Have you had any experience in the railroad business?

A. No, sir.

20 Q. On what do you base your judgment or opinion as to whether or not it would destroy the sidings; what do you know about it?

A. My judgment is this, that the small space the street would take up would not take up much of the railroad's part of it, and there would be plenty of room for more switches there; it would open up the crossing, leave the crossing open, and would not be much of a detriment outside of interfering with the work possibly in the immediate neighborhood of the crossing.

30 Q. Taking a strip of about 50 or 60 feet, that is the only effect it would have for railroad purposes?

A. Yes, sir; that is it.

Q. I understood you to say you considered this a public necessity?

A. I do.

Q. How long has it been a public necessity ?

A. I guess always, ever since the factories were built there.

Q. You still think it is ?

A. Yes.

Q. Did you think last August it was a public necessity ?

A. Yes, sir.

Q. Were you present at the meeting of the Board of Aldermen last August ? 10

A. Yes, sir.

Q. Did you think at that time it was a public necessity ?

A. Yes, sir.

Q. Why didn't you vote for the ordinance when it came up ?

A. I did vote for it.

Q. The records show otherwise.

A. I was the one who introduced the resolution to have it opened. 20

Q. Were you present at the meeting of August 3rd, 1903 ?

A. I can't tell you now.

Q. The records show you voted against the passage of the ordinance ?

A. I was the one who made the motion.

Q. You did not vote in favor of it ?

A. I certainly did. I would not advocate it right along and then not vote for it. 30

By Mr. Lewis :

Q. Did you vote to reconsider the vote by which the ordinance was lost ?

A. I did.

Q. Did you change your vote for that purpose ?

A. I did ; so as to have it laid over until the next meeting.

Q. That is the reason you happen to be recorded in the negative ?

A. Yes, sir.

10 *By Mr. Hobart :*

Q. Why didn't you make a motion to reconsider it ?

A. I did make a motion to reconsider.

By Mr. Lewis :

Q. You have at all times since you have been in the board, been heartily in favor of the opening of the crossing ?

20 A. Yes, sir ; ever since I have been in the board, I have always voted for it.

PATRICK WALSH, being duly sworn according to law, on his oath says :

By Mr. Lewis :

Q. Where do you reside ?

30 A. Right opposite the Sixth avenue crossing at Riverside.

Q. On which side of the crossing, east or west ?

A. On Wait street.

Q. Do you know the Grasseli Chemical Company ?

A. That is on the opposite side of Sixth avenue.

Q. You face the crossing ?

A. Yes.

Q. You own the property located on the corner of Sixth avenue ?

A. I own two lots on the corner of Wait street and Sixth avenue.

Q. The two lots toward the river ?

A. Yes, sir.

10

Q. You own that property ?

A. Yes.

Q. Do you know how many tracks there are crossing Sixth avenue ?

A. Yes, six ; counting Kearney & Foote's, there are generally two cars on that.

Q. How long is the Kearney & Foote switch, about ?

A. It runs into their yard, about 200 feet.

Q. How many main tracks are there ?

20

A. Two.

Q. Do you know the sidings there ?

A. Yes.

Q. How many are there ?

A. They are supposed to be switches ; there are two dead tracks they put on empty cars, on one they put in coal for Auger and Simon and Jacob Weidmann.

Q. Are those tracks there we speak of as sidings or switch tracks, and the main tracks ever crowded with cars ?

30

A. Sometimes they haven't got many there, especially a time like this they are generally open—

Q. So that people can walk between the cars ?

A. Yes, sir ; when they are filled they go over them and under.

Q. When you speak of being filled you mean immediately on the crossing they are filled up?

A. Sometimes on the crossing ; sometimes they are not.

Q. Sometimes there are no cars on the crossing ?

A. Sometimes it is clear.

10 Q. Sometimes there are no cars on the sidings ?

A. No ; sometimes none at all ; but they put them up on the crossing.

Q. Most of the time on these sidings and on the switches there are quite some spaces between the cars ?

20 A. Well, there is sometimes, and sometimes they are full. Most of the time the crossing is generally closed up by cars all up together ; people go over them and under them ; old people can't get over them and have to go around.

Q. Did you notice them today ?

A. Yes ; I noticed a few today.

Q. How many, about ?

A. Not many today ; not more than thirty ; when I came by there I had to go to the end of them.

Q. How many cars do you think could stand on those sidings and switches, about ?

30 A. I should think about fourteen cars.

Q. You say there are about thirty cars there today ?

A. Yes ; on two tracks, about thirty.

Q. How many would they hold if they were all filled up ?

A. I guess in the neighborhood of sixty.

Q. About twice as many ?

A. Yes.

Q. As a general thing there, are there more or less than thirty cars there ?

A. I have seen less many a time ; many a time I have seen only one or two there.

Q. Do they switch much there ?

A. They come around about eleven o'clock in the morning and switch from about eleven up to around twelve o'clock or a little after, and then they come down in the afternoon about half past four and switch again. 10

Q. Do you know about the water tank at Fifth avenue ; you can see that from your house ?

A. Yes.

Q. Many of the cars stop there to get water ?

A. Well, they do, more in the evening than any other time of the day.

Q. They block up the Fifth avenue crossing ? 20

A. The Fifth avenue crossing is blocked at times as long as twenty minutes at times.

Q. So as an actual fact there is no crossing open there at all part of the time ?

A. There is no crossing there at all, you might say.

Q. You are familiar with Fifth avenue ?

A. Yes, sir.

Q. Do you know at what place that stops on the west side of the tracks ? 30

A. It stops right at the track ; it cuts then right at the crossing ; it comes across the track just as far as the county line ; there it is private property.

Q. Who owns the property there ?

A. Frank Bell.

Q. Who owns the property there between Fifth and Sixth avenues ?

A. Frank Bell, from there to the end of my fence ; I own the rest except the corner lot.

Q. Could you get from Fifth avenue to Sixth without crossing private property ?

A. No ; if this is Bell's property there you have to go around River street.

10 Q. Do you know what street is open from east to west crossing the Erie tracks ?

A. Sixth avenue ought to be ; it is open from river to river.

Q. That is the only one.

A. Yes ; the other one. Fifth avenue does not go all the way through.

Q. Is there any other street opened across the railroad besides Fifth avenue in this locality ?

A. No, sir.

20 Q. Is the west section around Sixth avenue thickly populated ?

A. Not so thickly populated now.

Q. Lots of people live there ?

A. Yes ; lots of people live down there.

Q. A number of mills are located down there ?

A. Yes, sir ; on each side of the crossing, west and east side.

Q. Do you know Riverside pretty well—all around there ?

30 A. I have lived there ten years.

Q. You know it is a very large residence place ?

A. Yes, sir.

Q. Lots of people pass back and forth over Sixth avenue every day ?

A. Yes, sir ; between six and seven hundred, or perhaps eight hundred a day will pass over there.

Q. Do they go under the cars and between them ?

A. Under the cars, over the cars and between the cars when open.

Q. Have you had occasion to count the number ?

A. I would have to shut my eyes if I didn't see it. 10

Q. Is this opening of Sixth avenue crossing a great public necessity ?

A. It would be very much.

Q. Is it a public necessity ?

A. Yes, sir.

Q. Would it be very dangerous there ?

A. It would not be any more dangerous than the River street crossing ; it would not be as dangerous as the Fifth avenue crossing. 20

Q. Why not as dangerous as the Fifth avenue ?

A. There is more of a chance to see across.

Q. There is quite some property along either side of the tracks there ?

A. Quite some.

Q. Vacant property ?

A. Yes.

Q. In the immediate vicinity of Sixth avenue ?

A. Yes. 30

Cross examination by Mr. Hobart :

Q. What makes the population in that neighborhood less than it was ?

A. Well, I don't know.

Q. Is the place building up as fast now as it was years ago ?

A. It stands about on a level just now.

Q. And has for how long ?

A. The last year or so. Before that it was building up right along, and would build up more if the crossing was there.

Q. What is your business ?

10 A. I run a saloon down there.

Q. Next to your house ?

A. Yes, part of my house.

Q. That is the saloon on the northwest corner of Sixth avenue and the railroad ?

A. Yes.

Q. You run the saloon yourself or have some assistance ?

A. I run it myself.

20 Q. You are generally busy at the bar, I suppose, and attending to business ?

A. I am there all the time.

Q. You don't have very much time to spend looking out the door to see how many cross the railroad there ?

A. I have lots of chances to see ; only afternoons I am busy.

Q. Have you in fact ever counted the number of people passing over there in one day ?

30 A. I have not counted ; I should judge in the neighborhood of six or seven hundred.

Q. You are not a railroad man ?

A. No, sir.

Q. Never had any experience in the railroad business ?

A. No, sir.

Q. That crossing, as a matter of fact, is nearly always blocked with cars ?

A. The greater part of the time it is blocked. The children there going to school have to watch coming and going, they are afraid to go over ; although there has never been anyone hurt on it.

Q. You say today you saw about thirty cars there ; did you notice what tracks they were on, on the east or west side ? 10

A. Kearney & Foote side.

Q. All on that side ?

A. Yes, all empties.

Q. You testified that many times you saw less than thirty cars there ?

A. Yes, sir.

Q. How many times have you seen less than thirty ?

A. Thousands of times.

Q. How many times have you seen more than thirty ? 20

A. I have seen as many as thirty there as often as I have seen less.

Q. There are generally more than thirty, are there not ?

A. Sometimes.

Q. Is it not the general rule ?

A. Yes.

Q. They do switching there at night sometimes as well as during the day ? 30

A. They come in around ten o'clock ; bring in a couple of empties.

Q. That is done every night ?

A. Yes.

Q. You know as a matter of fact that is the

place they make up their cars to go west ?

A. Sometimes they do it up there.

By Mr. Lewis :

Q. These thirty cars you said you noticed there did not any where near fill up the sidings ?

A. No, sir.

Q. Lots of empty space ?

10 A. Lots of space ; there is lots of room they can make up there if they wanted to give us a crossing ; they could take the embankment away.

HENRY MARELLI, being duly sworn according to law, on his oath says :

By Mr. Lewis

20 Q. Where do you reside ?

A. 552 River street, between Erie street and Sixth avenue.

Q. Are you familiar with the surroundings of this Sixth avenue crossing ?

A. I am.

Q. How long have you lived in that locality ?

A. Since 1887.

Q. You have had occasion to visit the crossing many times during this year ?

30 A. Lots of times ; I used to visit the crossing there when I was a boy, more so then than I have visited it in late years, but I can see the tracks from my house ; every day I have a view.

Q. How many tracks are there ?

A. There are six.

Q. How many main tracks ?

A. Two.

Q. How many sidings ?

A. There is one track running to Kearney & Foote's file shop, beginning just south of Erie street and running across Sixth avenue into Kearney & Foote's works, to their yard.

Q. Are you familiar with this siding (indicating on map) ?

A. Yes.

10

Q. Where does that begin, how many feet south from Sixth avenue crossing ?

A. I don't know how many feet ; it is a great distance but I can't tell the exact number of feet ; I have been on there a number of times.

Q. Are you familiar with this siding (indicating on map) ?

A. I am familiar with all these sidings ; I have been down there many times.

Q. You are familiar with the surroundings there ?

20

A. Yes, sir ; both of those sidings referred to extend a few hundred feet perhaps south of Erie street.

Q. Now, you have accounted for three of the sidings ; what comes next to the three sidings ?

A. Then the main tracks.

Q. How many main tracks are there ?

A. Two.

Q. Where is the other siding ?

30

A. That is on the west side of the main tracks.

Q. Where does that siding begin ?

A. I don't know just where it begins ; it seems to begin down here (indicating on map) ; it is

hard to tell where that siding begins because it runs into another track.

Q. It runs into the main track ?

A. There are several switches.

Q. You don't know where it begins ?

A. I don't.

Q. Did you ever hear of the West Paterson yard ?

A. No, sir ; not until this case began.

10 Q. Did you ever hear of the Erie Railroad having a yard at Riverside or about the Sixth avenue crossing ?

A. Not until this case began.

Q. Are there many employees of the Erie Railroad around these main tracks or sidings during the day ?

20 A. No, sir ; very few ; I know when I was a boy I used to steal rides on the cars that they would switch on the tracks there and I know I used to watch for the switching engine to come around, and I know we would have to wait sometimes a whole day ; there were very few employees up there ; I know we used to take the brakes off the cars and let them go down and there was no one there to watch us.

Q. Were the six tracks there then ?

A. Yes, sir.

Q. Have you seen the same performance going on now ?

30 A. I have not noticed any performances of that kind lately.

Q. You say you can observe these sidings and the crossing from your house ?

A. My house is on River street. I cannot

notice Sixth avenue. I can only notice Erie street.

Q. Have you noticed frequently in the last year these tracks and sidings ?

A. Yes, sir ; I have.

Q. From your observations are they generally crowded with cars ?

A. They are usually crowded with cars, but I have never been down that direction without finding some space between the cars. 10

Q. This space sometimes extends for a car's length ?

A. Yes.

Q. And therefore, you have never been down there when the space was entirely occupied by cars ?

A. No, sir ; I don't recollect that I was.

Q. When you have been there during the past year, or so, have you frequently seen people going between the cars ? 20

A. Yes, sir ; I have seen them coming out of the File works, the Helvetia Silk Mills ; I have noticed them coming out of the mills in large numbers going down Sixth avenue towards the track, and crossing the tracks, crossing in all sorts of ways, some would look for an opening, others cross over the cars, others under them.

Q. How frequently have you been down there ?

A. Quite often ; I could not tell you how often I have been down there. I have been down there when the mills were going out ; a number of times within the last year. 30

Q. How many would you say cross there about ?

A. A few hundred ; I have seen I would say thousands going in the direction of the crossing a number of times ; I can't say that they all go over the crossing, perhaps they do, but I did not see them ; I have seen several hundred go over the crossing.

Q. Generally do they go over the cars and between the cars when you have been there ?

10 A. All ways ; between the cars, over the cars and under them.

Q. Which way generally ?

A. Under and over ; sometimes the women from the Helvetia Silk Mills will look for an opening and they usually find it.

Q. Between the cars on these sidings ?

A. Yes, sir.

Q. Is that switch running to Kearney & Foote's used by them exclusively ?

A. I don't know that it is.

20 Q. You have never seen that obstructed by cars, have you ?

A. It is pretty hard for me to say whether or not that small length of track has ever been filled with cars.

Q. Do you recollect the building of the Kearney & Foote works there ?

A. No, sir.

Q. You are very familiar with the residents in Riverside ?

30 A. Very.

Q. The general class of people are employed in the mills about the Sixth avenue crossing ; a large number of them ?

A. Yes.

Q. How many residents would you say there

are there in Riverside about this Sixth avenue crossing ?

A. Well, I can't say that ; right next to the crossing there are mostly factories, mills ; when you go a block or so, or two blocks, on either side of the crossing, then you find a large population ; on the east side of the track, say two blocks east of the Sixth avenue crossing, Riverside becomes populated ; begins to be populated, and there is a very large population in that district ; on the west side, about two blocks away, west of the Sixth avenue crossing, we find a large population ; I believe that Riverside proper will be termed one of the largest populated sections of the city. 10

Q. Are you familiar with Fifth avenue as it crosses the Erie railroad ?

A. Yes, sir.

Q. About how far west of the Erie tracks does Fifth avenue extend ? 20

A. About one block.

Q. What does it then run into, private or public property ?

A. Private property, Bunker Hill.

Q. Who owns that ?

A. I don't know.

Q. You know it is not public property ?

A. Yes, I know that.

Q. Do you know the property between Fifth and Sixth avenues, immediately west of the Erie tracks ? 30

A. I am familiar with it.

Q. Do you know whether it is public or private property ?

A. It is private property ; Frank Bell owns it.

Q. There is no way, if you are on the west side of the Erie tracks at Fifth avenue, of reaching this populated portion of the city around Sixth avenue without going over private property ?

10 A. No, sir ; you cannot, and even the little road you might walk on from Fifth avenue leading to Sixth, on the west side of the track is always in poor condition ; it is private property.

Q. A person desiring to cross the Erie tracks, standing at the corner of Sixth avenue and River street, if he didn't want to cross private property, how would he get to the west side section of Riverside ?

A. He would have to go down to the River street crossing, about a mile.

20 Q. Have you walked down Sixth avenue west from the tracks ?

A. Not very much.

Q. Do you know anything about the bridge there ?

A. I know there is a bridge there.

Q. What does that lead over to, what section of the city ?

A. It leads over to the main road from the country, the Goffle road, leads into the first ward of the City of Paterson.

30 Q. Do you know where there is any other bridge outside of the Sixth avenue crossing to the first ward of the City of Paterson ?

A. There is none at present ; there was a bridge but that was washed away ; the next

bridge is the Straight street bridge ; that is a mile and a half, perhaps two miles away.

Q. Do you regard this opening of the crossing as a public necessity ?

A. Most urgent public necessity.

Q. You have had occasion to attend public meetings ?

A. Political meetings for the last two campaigns, ward campaigns. Every republican meeting that was held in the ward I attended, every one of them, and at every meeting the matter of the Sixth avenue crossing was discussed, and our candidate for alderman on each occasion promised to do all in his power to help the Sixth avenue crossing, and I believe that our alderman was elected solely because of his promises ; the people want the crossing. 10

Q. There is a great demand for the crossing ?

A. Yes, sir ; a great demand, everyone wants it. 20

Q. Would you regard it as dangerous ?

A. I think there are other crossings in Paterson that are more dangerous than the Sixth avenue crossing would be.

Q. Would you regard it as a dangerous crossing with gates and appliances ?

A. I think it would be safer than it is at present. Then there would be some degree of safety ; now there is absolutely none, absolutely nothing to warn a person of the approach of a train. 30

Q. When you speak of the cars being congested at all on the tracks around Sixth avenue, you mean only on the crossing itself ?

A. That is the way it seems to me, as if the Erie desired to crowd the cars just on the crossing ; I have seen them crowded on the crossing when there was lots of room further up.

Cross Examination by Mr. Hobart :

- Q. You say you never heard of the West Paterson yard ?
- 10 A. Never until this case began.
- Q. What is a railroad yard, do you know ?
- A. I don't know.
- Q. Is it not a place where they store cars, unload them, and switch them around to deliver freight ?
- A. I don't know anything about a railroad yard.
- Q. What do you understand by a railroad yard ?
- 20 A. I don't know what a railroad yard is.
- Q. Then you don't know whether or not this section of the road is a yard ?
- A. I never heard it called a yard.
- Q. You don't know whether it is a railroad yard or not ?
- A. If the storing of a few cars occasionally upon a certain place is called a yard, then it is a yard.
- Q. Do you know what a yard is ?
- 30 A. No, sir ; I don't know what a railroad yard is.
- Q. You don't know whether this is a railroad yard or not ?
- A. Not from a technical standpoint.
- Q. From your knowledge ?

A. I would say so.

Q. How far from the Sixth avenue crossing is your home ?

A. I said I could not see the Sixth avenue crossing ; I can see Erie street, the jute mills and several houses block my view, but my view is not blocked at Erie street.

Q. Can you see that point of the tracks where Sixth avenue would cross, if extended, from your home ? 10

A. No, sir.

Q. You can see the tracks to the south of Erie street, if Erie street were extended across ?

A. Yes, sir.

Q. About how far is your home from the railroad tracks ?

A. Two blocks ; around the next block.

Q. About how many feet ?

A. I don't know how many feet.

Q. About three hundred feet from the tracks ? 20

A. Perhaps a little more than that.

Q. I understood you to say you lived there since 1887 ?

A. Yes, sir.

Q. You mean your home was there ; you were at college four or five years, and away from home after that ?

A. Yes, sir ; eight years.

Q. You have actually lived at 552 River street since you returned ? 30

A. Yes ; it will be four years the seventh of June.

Q. During these last four years you have lived continuously at 552 River street ?

A. Yes, sir.

Q. Where is your office ?

A. In the Second National Bank building.

Q. You are a practicing attorney in Paterson ?

A. Yes, sir.

Q. Have you occasion to pass this Sixth avenue crossing on your way to and from your office ?

A. No, sir.

10 Q. You have no special business in the neighborhood of Sixth avenue ?

A. I have had occasion to go over there a number of times.

Q. For what purpose ?

A. I had clients living over there ; I have taken walks in that direction within the last four years ; I don't mean to say I pass and re-pass there every day, possible not once a week or not once a month, and then again perhaps every day for awhile.

20 Q. You don't know to what extent the tracks are used except as you noticed it on the few occasions you have been there ?

A. I have been there more than a few occasions ; I can't tell how many.

Q. You go down there sometimes in connection with other matters than to examine the crowd ?

A. Yes.

30 Q. Perhaps to post yourself for political speeches ?

A. No, sir.

Q. Have you made any special study of the surroundings, or are you testifying from casual observation ?

A. I am testifying from my general knowledge

of the surroundings. I have not been down there specially except this year; I really did not know how many tracks there were across there, whether there were six or not until recently.

Q. You have had no occasion to loosen the brakes on the cars recently ?

A. No, sir ; that was a number of years ago ; but there was never anyone there to interfere with us.

10

Q. You spoke of a few hundred people crossing that point ; that I suppose is simply a guess ?

A. Yes ; it is a guess from observations ; I never counted them. I have seen the people coming out of the mills ; Kearney & Foote employ about seven hundred, the jute mill employs about 400, I think—

Q. You never in fact counted them ?

A. I never counted them ; I can see the crowd.

20

Q. You assume that the majority of them risk their lives by crossing the tracks at that point.

A. I have seen them go across; I don't assume anything ; I have watched them.

Q. How do you get at the estimate of a few hundred a day ?

A. I have seen the crowds go across at Sixth avenue at twelve o'clock and at six o'clock.

Q. You have seen people actually crossing the track, not simply going towards the tracks ?

30

A. I have observed them actually crossing the tracks.

Q. You have spoken of this section being

thickly populated ; have you figured out the population ?

A. No, sir.

Q. How many people in the third ward, how many voters ?

A. I think there are about 2,500 voters.

Q. The third ward is located on the east side of the railroad, or does it extend across ?

A. It extends across.

10 Q. Is that practically the same as what has been spoken of as the Riverside section ?

A. Riverside and Bunker Hill section.

Q. In the immediate neighborhood of Sixth avenue crossing, on the west side of the track, are one or two houses, between Fifth and Sixth avenues ?

A. Yes, sir.

Q. Between Fifth avenue and the river what is there ?

20 A. On the west side is the largest dyeing establishment, I believe, in the United States.

Q. But no houses ?

A. No, sir.

Q. Go back on the south side ; but still on the west of the tracks, how many houses between Sixth avenue and Peel street ?

A. Very few.

Q. Between Peel and Bleecker streets ?

30 A. Hardly any houses along there, but just a block away from the railroad there are a great many.

Q. Take the other side on the east of the railroad, north of Sixth avenue, how many houses between Sixth avenue and the Passaic river ?

A. All this block bounded by Fifth avenue,

Sixth avenue, East Eleventh street and the Erie railroad is occupied by mills.

Q. On the other side ?

A. There are a lot of houses and the Helvetia silk mills, further on there are many houses ; as you go to River street it is thickly populated.

Q. Between Fifth avenue and the river is mostly mills ?

A. Yes ; there are a few houses. It is pretty bad property and not likely to be built up. The property I refer to is that bounded by the river, East Eleventh, Fifth avenue and the railroad. 10

Q. On the opposite side, on the south side of Sixth avenue between Sixth avenue and Erie streets, are there many houses there ?

A. There are not many houses there, the jute mills are in that block ; there are not many houses until you get to River street. In fact, that entire block bounded by Sixth avenue, Erie street, East Eleventh, and the Erie railroad belongs to the jute mills. 20

Q. Coming to the south of Erie street, the block bounded by Erie street and the railroad ?

A. There are a few houses on Erie street, East Eleventh street does not run through, between Erie street and River street, for about one block to River street is built up with houses ; after that we have two large estates, you might call them, one is Frank Bell's, and the other the Ashley property ; they have magnificent surroundings, large trees, shrubbery and all that sort of thing. When you get down to Leon street, Sparrow street, Putnam street, there are a lot of houses down there, you might say that from Sparrow street down to the crossing on the 30

west side River street is all built up with houses.

Q. Where is Sparrow' street ?

A. The street next north of Leon street, running into Rye street. Then on the east side of River street from the crossing for about a distance of a mile it is thickly populated, built up with houses.

Q. That is some distance from the Sixth avenue crossing ?

10 A. No, sir.

Q. How far is it ?

A. It is two blocks ; then we get to Riverside ; the extreme northeasterly section in Riverside we find many houses there ; it is thickly populated.

Q. Have these people any way of getting down to the main part of the city except by crossing over Sixth avenue ?

20 A. Yes ; when they get to the main part of the city.

Q. They go down River street ?

A. Yes ; but here in this thickly populated section of the city they have no crossing.

Q. What about Fifth avenue ?

A. Fifth avenue is absolutely useless for the reason it is hard to approach from the west.

Q. Can't you go down East Eleventh street and turn in ?

30 A. Yes ; but after you are across it is very inconvenient to get to any section of Bunker Hill, very inconvenient.

Q. That is simply because Fifth avenue has not been extended to the west ?

A. Yes ; and even then it would be inconvenient ; Fifth avenue is not as convenient for the

purpose of getting to the various sections of Bunker Hill as is Sixth avenue.

Q. Why?

A. In the first place it is at a greater distance.

Q. One block?

A. It is more than one block ; in the next place it can't be approached so easily ; in the next place there is not so large a population around Sixth avenue ; I will say this, that Fifth avenue is quite necessary, and Sixth avenue is more so. 10

Q. Is it not as much a public necessity that Fifth avenue be extended as Sixth avenue to be opened?

A. Not near so much necessary, not a hundredth part.

Q. If Fifth avenue was extended that would relieve this section to some extent?

A. No, sir ; because Sixth avenue is the main road from Riverside. There is a bridge here on Sixth avenue and no bridge on Fifth. Sixth avenue is sort of a natural street. 20

Q. Where is the Sixth avenue bridge?

A. Over the Passaic River and leads into the Goffle Road and to the first ward.

Q. The river takes a curve to the south, is that the idea?

A. The river comes around this way (indicating).

Q. So that the Sixth avenue bridge is a bridge over the river when it strikes the river? 30

A. Yes.

Q. Have you ever noticed how many trains pass over that crossing in the course of a day?

A. No. more than over any other crossing.

Q. Have you ever noticed?

A. There are only two main tracks. I have never counted the trains.

Q. How about the switching engine, have you noticed that there ?

A. Not lately.

Q. When did you ?

A. When I was a boy ; it did not go over very often then.

Q. Have not noticed it lately ?

10

A. No.

Q. Have you had any practical experience in railroad business ?

A. No, sir ; I am merely speaking from my observations.

Q. On what do you base your judgment as to the degree of safety of a grade crossing at Sixth avenue ?

A. Common sense.

Q. Nothing else ?

20

A. That is all.

Q. You did not answer Mr. Lewis when he asked you if you considered a grade crossing there dangerous. Do you consider a grade crossing at Sixth avenue dangerous ?

A. Not any more than any other crossing ; I do not consider it more dangerous, and not so dangerous as the River street crossing ; I would not consider it any more dangerous than any ordinary crossing with two tracks ; because the switching done there amounts to nothing.

30

Q. You never formed any judgment as to the amount of switching done there ?

A. No, sir.

Q. Would you consider a grade crossing at Sixth avenue a safe crossing ?

A. It would be just as safe as any crossing we have in the city.

Q. Would you consider it safe ?

A. It would be as safe as any other ; we all know there is more or less danger in any grade crossing.

Q. There would be more or less danger in a grade crossing at Sixth avenue ?

A. No more than any other grade crossing in the city. 10

Q. There would be some danger ?

A. Yes ; there would be some ; but no more than any other crossing we have.

Q. Grade crossings are dangerous to some extent, at least ?

A. Certainly.

On Tuesday, July 12th, 1904, at eleven o'clock in the forenoon, the examination was resumed in the presence of Vivian M. Lewis, counsel for defendants, and George S. Hobart, of counsel with prosecutors. 20

EDWARD G. EDWARDS, being duly sworn according to law, on his oath says :

By Mr. Lewis :

30

Q. Where do you reside ?

A. 150 Fair street, Paterson, New Jersey.

Q. What is your business ?

A. Manufacturing jute and twine.

Q. Where is your business located ?

A. The block bounded by Erie street, East Eleventh street, Sixth avenue and the Erie Railroad.

Q. What have you at that point ?

A. A factory.

Q. What is the name of the concern ?

A. Sutherland & Edwards Company.

Q. Is it incorporated ?

A. Yes.

10

Q. What office do you hold ?

A. President and treasurer.

Q. You have been more or less interested in the Sixth avenue grade crossing ?

A. I have.

Q. For how a long a period ?

A. Actively for at least seven years.

Q. Does your mill adjoin the crossing ?

A. The property adjoins the railroad, the mill does not run down to the end of the property.

20

Q. Have you had any communication with the city officials regarding this Sixth avenue crossing ?

A. I have.

Q. About what time did you first communicate with the city officials ?

A. In 1897.

Q. Was that by letter ?

A. It was.

Q. Have you a copy of that letter with you ?

30

A. I have.

Q. Will you produce it ?

Witness produces copy of letter which reads as follows :

3d June '7.

Matthew Maguire, Esq., and Members of Committee on Streets and Sewers.

Gentlemen :

We beg to submit for your consideration this evening the following :

We learn that it has been suggested to erect a foot bridge over the tracks of the Erie R. R. at Sixth avenue. We are the owners of the block bounded by Sixth avenue east, Eleventh and Erie streets and the Erie R. R., and do most respectfully protest against such bridge being constructed for the reason that the Sixth avenue crossing must soon be planked, and should have been long ago. 10

We have customers on the other side of the track whose mill we could almost hit with a stone, and yet we have to cart our goods either around by Fifth avenue at the "Weidmann" works, or by the crossing at Ashley & Bailey's mills. By reference to the maps in the City Surveyor's office, we find that the distance between those crossings is 2,850 feet on the railroad, and by nearest way of the streets 3,600 feet, or about three-quarters of a mile. We have not found a property owner in the neighborhood in favor of a foot bridge ; on the contrary, all seem to consider that it is not what is wanted. 20

We do a large business with the Erie R. R. and feel sure that had we known sooner of the conference recently had, and been present to present our views, the Railroad Co. would have appreciated the need of a crossing at this point, and gladly have established one. 30

The writer regrets that a previous engagement

will prevent his being present to present his protest, and trusts that you will give the expression of his views your kind consideration.

Very Respectfully Yours,

E. G. EDWARDS,

President.

Q. At the time of the writing of this communication was Sixth avenue graded, curbed and guttered up to the railroad on either side?

10 A. I can't say positively about both sides. I am quite sure it was on our side, and about a year later it was on the other side; that is my memory of it.

Q. Is the avenue pretty well built up on either side?

A. Yes.

Q. Occupied by dwelling houses and factories?

20 A. On the westerly side principally by dwelling houses, there is one factory next to the railroad, on the easterly side by factories for the first two blocks.

Q. You have a switch running into your property, or by your property?

A. By our property.

Q. Is that switch used exclusively by you?

A. No, sir; it is used by ourselves and the Kearney & Foote Co., the Nicholson File Works, it is called.

30 Q. Is it used by the Erie railroad?

A. Yes; they use it at times, but the part of it used principally by us was constructed for our benefit; they do not use it for their business.

Q. Do you know how many tracks there are at the Sixth avenue crossing ?

A. Either six or seven ; two main tracks and two sidings on each side, if I remember correctly, and this switch that runs to Kearney & Foote ; there are at least six.

Q. Do you go to your factory every day ?

A. Every day, as a rule.

Q. What is the condition of these sidings, generally crowded with cars ?

10

A. As a rule they are.

Q. Are they crowded in such a way that no space could be left for the crossing ?

A. No ; I see no reason why they could not leave an opening there.

Q. Do you think by joining the cars or pushing them together there would be plenty of space for a crossing ?

A. There would be plenty of room to leave an opening there.

20

Q. Have you ever heard this place called a yard ?

A. No ; except by the Erie people themselves.

Q. At what time ?

A. At the time the question was agitated, when the representatives of the company expressed themselves in that way ; they claimed it was a yard as their right to object to the crossing.

30

Q. Are there many people crossing to and fro at this Sixth avenue crossing ?

A. Most certainly.

Q. How do they get across ?

A. Crawl under the cars, climb over them, and through them.

Q. They go between the cars ?

A. Yes.

Q. Do you regard this as a great public necessity—this opening of Sixth avenue ?

A. I certainly do.

10 Q. Do you regard the crossing as at all dangerous ?

A. As it is at present ; yes.

Q. Would it be less dangerous if opened ?

A. Most decidedly, in my opinion.

Q. Do you think it would in any way destroy the use of the railroad down there for the purposes it is now used ?

A. I don't think it would make any difference to them, except a little inconvenience in the switching.

20 Q. Otherwise there would be no inconvenience ?

A. None that I can see.

Cross Examination by Mr. Hobart :

Q. Please look at the map, Exhibit P 1, and state if the factory to which you referred is the building which is indicated as adjoining Erie street on the north and East Eleventh street on the west.

30 A. It is on the corner of Erie street and East Eleventh street.

Q. Just to the west of East Eleventh ?

A. Yes.

Q. You own all the property included in the

streets known as Erie street, Sixth avenue, East Eleventh street and the Erie railroad ?

A. Yes.

Q. Where is the entrance to your mill, on what street ?

A. It fronts on East Eleventh street ; the office door is about the centre of the building ; we also have a gate here (indicating a point just to the east of the railroad tracks) opening on Erie street.

10

Q. Show me on the same map the switch that you have referred to which you say is used by you and the File Works.

A. It is the most easterly of the several tracks indicated on the map.

Q. There are no buildings of your works that directly adjoin Sixth avenue ?

A. The stable indicated on the map.

Q. Otherwise it is open ground ?

A. There is a storehouse on the corner of East Eleventh street and Sixth avenue.

20

Q. There is a large open space between the factory and Sixth avenue, is there not ?

A. Yes.

Q. The only buildings of your company that adjoin Sixth avenue are the stable and the storehouse, is that right ?

A. Yes.

Q. You have no gateway open on Sixth avenue ?

30

A. No.

Q. What have you there, a fence, between your property and Sixth avenue ?

A. A fence.

Q. Have you any written agreement with the railroad as to the use of that switch ?

A. No.

Q. You don't claim the right to use it exclusively for your own business ?

A. I certainly claim the right to use it ; it was offered to me as an inducement to locate there ; the former owner paid for the switch.

10 Q. You have the first right to use it for your cars ?

A. I claim that.

Q. As a matter of fact, it is used by the railroad for its business, too, when there is room ?

A. Yes.

Q. About how many people do you employ at your factory ?

A. About eighty-five.

20 Q. About how many cars do you handle on your switch, annually, or any way you wish to figure it ?

A. In the neighborhood of one hundred.

Q. A year ?

A. Yes ; including the coal and raw material.

Q. Do you also load your cars at the same place ?

A. Occasionally.

Q. You unload principally there ?

A. Yes.

30 Q. Can you tell us to what extent this particular switch is used, is it generally filled with cars, or otherwise ?

A. The switch that I use ? No, sir ; there are not many cars on there, except for Kearney & Foote and ourselves ; as I say, the Erie uses it for convenience at times—it has a dead end.

Q. Do you know whether there is any particular time they do the switching on this siding ?

A. There is, but I cannot name it.

Q. And in placing the cars for you and the File Works, or for their own use, the railroad company often switches the car across Sixth avenue, does it not ?

A. No, not for me ; they do for the File Works, but not for me. 10

Q. To what extent is the switch used by the File Works ?

A. Their cars go to their own yard off the street.

Q. Have they more cars than you have ?

A. I don't think they have as many ; our cars do not under any circumstances cross Sixth avenue.

Q. All the cars for the File Works have to be sent across Sixth avenue ? 20

A. Yes, into their yard, but they do not stand there.

Q. When was it you heard this part of the railroad tracks called a yard ; about how long ago ?

A. I could not say positively.

Q. You heard that expression used before this present suit was brought by the Erie railroad to set aside the ordinance ?

A. Only in that way. 30

Q. You heard it called a yard by the railroad people ?

A. Yes.

Q. You never called it a yard yourself ?

A. No.

Q. Do you know what a railroad yard is, the technical meaning ?

A. I can't say that I do.

Q. You have never been in the railroad business ?

A. No.

Q. I understood you to say that people crawl over the cars, under them and between the cars, and for that reason you consider this crossing as it now exists very dangerous ?

10

A. Yes.

Q. Is that the reason you now consider it dangerous ?

A. Yes.

Q. If the street were opened across the tracks you think it would be less dangerous than it is at the present time ?

A. I certainly do.

Q. Don't you think a crossing above grade would be the best of all ?

20

A. There would be no use for it except for foot passengers.

Q. If it was crossed by a viaduct or overhead bridge that wagons and foot passengers could use, would not that be a better crossing ?

A. You would have to go back about 400 feet for an approach.

Q. 400 feet on each side ?

A. Yes.

Q. Would not that be a safer crossing for all parties ?

30

A. I don't think anybody would go up in the air to get across ; I mean to say the foot passengers, they would take the more dangerous way to get across.

Q. It would be safer ?

A. I don't think they would use it.

Q. If they did use it would it not be safer than a grade crossing ?

A. That goes without saying.

Q. Such a crossing above grade with a four hundred feet approach would not in any way interfere with your property ?

A. It would with the buildings I am contemplating. 10

Q. It would not shut out your light with the buildings as they are now ?

A. Not as they are.

Q. But as you contemplate building ?

A. Yes.

Q. On what do you base your opinion that the opening of the street would not make any difference about the switching facilities, except being a little more inconvenient ?

A. Because my opinion is that they have 20
room enough for all the purposes they require switching for to leave an opening without handicapping them in their business.

Q. Do you know what a lead is in railroad terms ?

A. No.

Q. You don't know how much extra room is necessary in order to do switching promptly and conveniently ?

A. I don't understand the question, I know the 30
street is sixty feet wide—

Q. Your idea is that if a street of sixty feet in width is opened, the only effect that would have on the switching would be that it would take up space for a couple of cars ?

A. Yes.

Q. You think they could continue their regular switching just the same without regard to that sixty feet?

A. I do.

By Mr. Lewis :

10 Q. You spoke about the construction of a bridge shutting out the light; would it damage property there to a large extent?

A. I can't imagine for a moment how Kearney & Foote could stand for such a thing, for a bridge; they would have to go the whole length of their property to get an approach to make the bridge of any use.

Q. Would that shut off their light entirely?

A. More than half, certainly.

20 Q. They have a large factory there?

A. Yes; employing about 450 hands.

By Mr. Hobart :

Q. Are you in any way connected with the file works?

A. No.

Q. You are not authorized to speak for them as to an overhead crossing?

A. No, sir.

NEW JERSEY SUPREME COURT.

PATERSON & R. R. Co. et al.,	}	
<i>vs.</i>		
MAYOR, ETC. OF CITY OF PATERSON.		10

1. On certiorari to review an ordinance of a city purporting to authorize the laying out of a street, evidence that at the point at which the proposed street crosses the prosecutors' railroad tracks there are side tracks ; that cars are unloaded and trains made up there ; and that the point is used as a storing yard, the tracks having been there and the use continued for twenty-three years—sufficiently shows that the point of the proposed crossing is a freight yard. 20

2. The charter of the City of Paterson (Laws 1871, page 846) par. 92, granting it power to lay out, open, vacate, straighten, widen or alter any street, and to take such lands and real estate as may be necessary therefor, on making compensation in the manner therein prescribed, but containing no special provision for taking the lands of a railroad company, does not authorize the city to lay out a street across the freight yard of a railroad company, and hence an ordinance purporting to do so is void. 30

Certiorari by the Paterson & Ramapo Railroad

Company and another against the mayor and aldermen of the city of Paterson to review an ordinance. Ordinance set aside.

Swayze, J.

10 The evidence in this case satisfies us that the point at which the proposed street crosses the railroad tracks is, properly speaking, a freight yard. There are side tracks, cars are unloaded, and trains made up at this point, and it is used as a storing yard. All the tracks have been there and the present use has been continued for twenty-three years. That the city of Paterson has no authority to lay out a street across the freight yard of a railroad company has been decided by this court. *N. Y., S. & W. R. R. vs. Paterson*, 61 N. J. Law, 408, 39 Atl., 680.

The ordinance should be set aside, with costs

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30

NEW JERSEY COURT OF ERRORS AND
APPEALS.

THE MAYOR AND ALDERMEN OF
CITY OF PATERSON,
Plaintiff in Error,

vs.

THE PATERSON & RAMAPO RAIL-
ROAD COMPANY AND THE
ERIE RAILROAD COMPANY,
Defendants in Error.

In Error.

10

Assignments of Error.

Afterwards, that is to say, on the first day of
August, in the year of our Lord one thousand,
nine hundred and five, in the Court of Errors
and Appeals, in the last resort in all causes,
comes the said The Mayor and Aldermen of the
City of Paterson, Plaintiff in Error, by Edmund
G. Stalter, its attorney, and says that in the
decision, record and judgment of the Supreme
Court of the State of New Jersey in the above
cause, manifest error has intervened to the dam-
age and injury of the said Plaintiff in Error, for
which the judgment of the said Supreme Court
should be reversed, set aside and for nothing
holden ; and for causes of error the said plaintiff
specifies and assigns the following :

20

30

1. Because the said Supreme Court decided
that the point at which the proposed street

crosses the railroad track is, properly speaking, a freight yard.

2. Because the said Court decided that the City of Paterson has no authority to lay out a street across the freight yard of a railroad company.

EDMUND G. STALTER,

Attorney for and of Counsel with

Plaintiff in Error.

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