NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

Mary A. T. Riley (Substituted in the Place and Stead of Henry Bradley), *Complainant, Appellant and Cross-Respondent,*

and

Ocean City Association, *et als., Defendants, Respondents and Cross-Appellants.*

William G. Carroll, *et als., Complainants, Appellants and Cross-Respondents,*

and

Ocean City Association, *et als., Defendants, Respondents and Cross-Appellants.*

William E. Bridgewater, *Complainant, Appellant and Cross-Respondent,*

and

Ocean City Association, *et als., Defendants, Respondents and Cross-Appellants.*

On Appeal and Cross-Appeal.

Reply Brief of Mary A. T. Riley, William G. Carroll, et als., and William E. Bridgewater, Complainants, Appellants and Cross-Respondents, to the Briefs of Ocean City Association, Ocean City Tabernacle Association, Mary R. Buchanan, and Atlantic Land Development Company, Defendants, Respondents and Cross-Appellants.

Preliminary statement.

The present briefs are filed by permission of the Court in reply to the briefs presented on behalf of the Ocean City Association, Ocean City Tabernacle Association, and Mary R. Buchanan, by Messrs. Bleakley and Stockwell, and on behalf of the Ocean City Association and Atlantic Land Development Company, by Messrs. Bourgeois and Coulomb. We will deal with each brief of opposing counsel separately.

BRIEF OF OCEAN CITY ASSOCIATION, OCEAN CITY TABERNACLE ASSOCIATION AND MARY R. BUCHANAN.

The brief of counsel for these parties defendant presents a number of points in opposition to the case of complainants which we may summarize as follows:

(a) That a definite adjudication with regard to the complainants' rights has been made in the *Lennig* and *Bridgewater* cases, and no overt act having been since committed by these defendants, there is nothing to sustain these bills.

(b) That there are no public, but only private, rights in the restricted area, and that complainants are not entitled to a decree proclaiming the dedication of the tract to public uses.

(c) That there was never any devotion of the tract to park purposes, but that its uses were restricted solely to those of a camp meeting ground.

(d) That the association has a right to convey its lands and should not be enjoined from so doing.

(e) That the alternative form of the decree—enjoining any use inconsistent with a camp meeting ground or park—is erroneous.

(f) That no costs should be imposed on the Ocean City Association.

(g) That the original dedication cannot be extended over the riparian lands acquired from the state.

(h) That Mrs. Buchanan had no knowledge that she was infringing the covenant of the association, and hence that her equity is superior to that of the complainants, who have delayed action.

Of these contentions, the first six, (a) to (f), relate solely to the cross-appeals prosecuted by these defendants; the last two being in reply to the appeals of these complainants.

(a) Have the complainants a cause of action?

Counsel for the defendants have laid particular stress upon the fact that there was no violation of the covenant immediately preceding the bringing of the complainants' suits, and that the mere fact that violations are threatened by the association is not enough to sustain the bills. They say further that the rights which the complainants now seek to have decreed have been already decreed in the earlier

New Jersey State Library

cases of *Lennig vs. Ocean City Association,* and *Bridgewater vs. Ocean City Railroad Company,* and that no additional relief is needed than was awarded in those cases.

False premises.

The last assertion proceeds upon a false assumption of fact.

The *Lennig* case dealt only with a particular use of the dedicated land; the *Bridgewater* case only with a particular parcel thereof. In neither was there any definite adjudication that the entire tract from bay to ocean was bound by the covenant of the association. It was evident in the opinions filed in these cases that the Court so regarded the scope of the covenant, but it was not necessary for it to make this a matter of adjudication in order to grant the needed relief. Nor did an injunction issue in either of these cases—such as is herein prayed—forbidding a conveyance of any parcel of the tract for purposes inconsistent with camp ground and park. Both by the subject-matter and by the relief prayed, the present cases are differentiated from these earlier adjudications.

The fallacy of the attempted argument that all rights of the parties have been finally determined by these cases is sufficiently illustrated by the erection of the Buchanan Hotel. Opposing counsel insist that there is no danger to the complainants' rights because of the adjudication in the *Lennig* and *Bridgewater* cases; and yet subsequent to those decrees, and in despite of them, the Buchanan cottage was moved onto the restricted tract and there enlarged into the present structure. Manifestly, it offends the public

purpose of the land on which it stands. The only argument advanced against its removal is the laches of these complainants. If tomorrow a hundred grantees from the association of land within the tract began to build thereon, it cannot be denied that suit would be necessary to enjoin the erection of such structures. Counsel must admit, therefore, that the building of their client, Mrs. Buchanan, itself affords the best illustration of how futile the *Lennig* and *Bridgewater* adjudications are to guard against violations of the covenant.

These present suits are prosecuted to prevent the conveyance by the association of land within the restricted area and the building thereon by innocent grantees. The alternative question presented is whether these complainants must be required to seek successive injunctions in the Court of Chancery to oust successive wrong-doers who violate the covenant, or whether protection can not be afforded them by a single injunction forbidding the association and other owners of the land within the tract from ever hereafter conveying their land or doing any act thereon in violation of its dedication as a park and camp meeting ground.

False position of the Association.

Counsel in their brief seek to invest the association with a certain pious attitude of obligation towards the covenants assumed by it in 1880 and renewed in the three years succeeding. They would have this Court believe that only in honest ignorance of their own duty had they countenanced the erection of small cottages on the tract in 1886 (enjoined in *Lennig vs. Ocean City Association*), and the erection of a large

railroad station in 1901 (enjoined in *Bridgewater vs. Ocean City Railroad Co.*); that when these adjudications had finally set the matter straight, they then apprehended their duty and have observed it strictly ever since. So counsel assert:

> "Those cases established the law and to that law the defendants long ago submitted."
> *Defendants' Brief, p.* 6.

> "Since 1901 nothing has been done on or in reference to this tract upon which any complaint could be based."
> *Ibid, p.* 10.

These assertions are contradicted by the facts; and in the hostile policy pursued by the association in the ten years preceding the filing of these bills, is found the justification for our suits.

We beg to remind the Court again of the following attempted violations of its covenant by the association.

On August 10, 1903, one lot within the restricted area was conveyed to the defendant, James E. Lake, for building purposes, and two days thereafter two lots were likewise conveyed to Wesley Lake.

On September 12, 1905, the association conveyed lands within the restricted area as well as riparian lands fronting the bay, for building purposes, to the defendant, Cresse, and his wife.

On April 12, 1906, the association conveyed to Masland lands within the reserved area, as well as riparian lands, for the same purpose.

On August 19, 1907, a building lot was conveyed by the association to the defendant William Watson Adams.

On May 16, 1909, a conveyance was made by the as-

sociation of all the ocean front lands to the Atlantic Land Development Company for no consideration save purchase money mortgages.

On October 30, 1909, another lot was conveyed to the defendant S. H. Hann.

For several of these grants of land, a valuable consideration was received. In the deed to Cresse, *Exhibit C*47, a consideration of $250 is recited and in the deeds to Masland, *Exhibits DM*1 and *DM*2, considerations respectively of $750 and $150. It is evident that the association knew and intended that these grantees should erect buildings on the lands conveyed which would inevitably violate the rights created by its covenant. Indeed the only conveyance at all consistent with the purposes of its dedication was the deed on March 11, 1907, of the "Auditorium Square," to the Ocean City Tabernacle Association.

Nor should we forget that the association, after holding out to its purchasers the promise of a well ordered park, has forgotten its assurances and deliberately permitted this tract to run to waste.

Added to these attempted violations, there must be reckoned the defiant attitude of the association which it has assumed in its pleadings and exhibited at the hearing.

Is an overt act necessary to give jurisdiction?

Counsel have insisted that equity has no jurisdiction without the performance of an overt act. This is a view which is opposed to the fundamental purpose of equity, to prevent irreparable wrong where the legal remedy is inadequate. It often happens that a right is put in danger by circumstances which threaten its violation, although those circumstances

may not assume the definite form of an overt act. In such cases where the danger is clearly proven and the law can afford no protection against it, the interposition of equity is justified.

Sayre vs. Newark, 58 N. J. Eq. 136, 148;
Sooy Oyster Co. vs. Gaskill, (Ch.) 69 Atl. 1084.

Protection of an easement against its threatened violation is a familiar illustration of the injunctive power of equity. Pomeroy, in his chapter on the subject, describes the jurisdiction taken to uphold the easement as founded upon the principles of preventing irreparable injury as well as a multiplicity of suits. 6 *Pom. Eq. Jur. Chap.* 25. There is no requirement that the defendant should have made good its threat by some overt act. The rule is simply that:

"There must be imminent danger of wrongdoing."

Ibid, Section 550.

It was held in *Hall vs. Byron*, L. R. 4 Ch. D. 667—a suit to enjoin the violation of an easement—that a sufficient threat is shown if the defendant *merely claims the right* to do the anticipated wrongful act, although he denies any present intention to act upon his threat. In the cases *sub judice*, the Ocean City Association not only claims the right, but asserts the intention to immediately proceed to the violation of its covenant.

Defiant attitude of the Association.

In its answer to the bill of the complainant Bradley (now Riley), it denies the very existence of its cove-

nant (an inconsistency with the professed devotion for its obligation which counsel overlooked).

> "This defendant denies that this defendant, prior to, and as an inducement to all purchasers of lots in Ocean City, represented and stipulated that a certain large area of land adjacent to the lots offered for sale and included in and bounded by Fifth and Sixth Streets, Atlantic Ocean and Beach Thoroughfare, should forever remain devoted to camp meeting and other public recreation purposes in connection therewith, etc."
>
> *S. of C. p.* 36.

And it repeats this denial throughout the remainder of its pleading.

Again in its answer to Bridgewater's bill, it denies that any statement made by its officers

> "was made for the advantage and benefit, in the nature of an easement, of the lots and ground purchased by the complainant * * * * or for any other purpose."
>
> *S. of C. p.* 152.

And so forth throughout the answer until it comes to the allegation in the bill that the camp meeting ground has greatly increased in value, and that the association is desirous of placing it on the market for sale. It then proceeds to make the following admission:

> "It admits that said alleged reserved area has greatly increased in value and says that this increase in value was from the beginning of Ocean City by this defendant fully expected and looked for and that it was this prospective increased value that induced and prompted this defendant to refrain from plotting the land be-

tween Fifth and Sixth Streets, Wesley Avenue and the ocean, and between Asbury Avenue, Fifth and Sixth Streets and a line 100 feet northwesterly of the northwesterly line of West Avenue into lots on Section A, and offering the same for sale at the time the other lands in that vicinity were being exposed to sale, and that it was this expected increase in value that prompted this defendant to refrain from plotting the land between Fifth and Sixth Streets, within section B, into lots and exposing said lots to sale at the time the other lots in that section were exposed to sale.

"Defendant further answering says that the very great majority of lands originally held by it is now sold and that as was anticipated thirty years ago, *the time has come when it is necessary for this defendant to dispose of the lands so by it then reserved* for the purposes of carrying on the objects for which this defendant was incorporated, and for which its members for the past thirty years have striven."

S. of C. pp. 159-160.

The attempt of counsel (p. 20 in their brief) to interpret this paragraph as relating solely to a desire on the part of the association to further the purposes of a camp ground in conveying this land scarcely deserves comment. How such a desire could be furthered in this way is incomprehensible. The intention of the association to sell these lands for money is herein specifically set forth. If it afterward occurred to counsel that the association should disavow any intent to sell for private building, they would have done well to have sought leave to amend these paragraphs.

Counsel state (at the top of page 20), that their answer denies any intention to sell for private building, but the references which accompany their statement relate only to past conveyances to Hann and the Atlantic Development Company and do not in any way contradict the explicit avowal of the association's plans quoted in full above.

We rest our case on the ground that the attitude of the association itself is such a menace to the rights of these complainants in the restricted area as to call for the injunctive relief of equity. If the defendants break the tract up into lots and sell to separate purchasers, it is inevitable that most, if not all, of them will attempt to build, and thus necessitate a multiplicity of suits by these complainants. And if any one of these purchasers can escape the eye of the complainants and erect his house before objection made, then laches may be asserted—perhaps successfully—to maintain the structure. It is not difficult to imagine so many buildings finally escaping injunction that Chancery will eventually be justified in decreeing an abandonment of the whole scheme. In any event, the right of the complainants to have this tract kept open and free from all obstructions entitles them now to protection by injunction from the avowed purpose of the Ocean City Association to sell the land for private gain. In the words of the learned Vice-Chancellor below:

> "There is no way to adequately protect the complainants as against the association, Atlantic Land Development Company, and their innocent grantees, except by the injunctive power of this court."
>
> *S. of C. p.* 229, *lines* 30-33.

(b) Was there a dedication of the tract?

Counsel, throughout their brief, stress the point that complainants are seeking to enlarge a private covenant into a public dedication, to enforce public rights rather than private. As a matter of fact, complainants are concerned only with the protection of their individual rights, and whether those rights are founded on private covenant or public dedication, is, except for theoretical purposes, of small importance.

It is not necessary, of course, that their private rights should rest on private contract, as counsel claim on page 15 of their brief. It is well settled in this state that the owners of land bounded on a public square, dedicated to public uses, have a private right, over and above that of the public at large, to have the square kept open. *Fessler vs. Union*, 56 Atl. 272, 67 N. J. Eq. 14 (Ch. 1904). The rights of the parties hereto, therefore, may be safely enforced either on the ground of covenant or dedication.

We do not for a moment withdraw our contention that the acts of the Ocean City Association in the years 1880-1883 constituted a public dedication. There is abundant authority to support this view. It is laid down as a general rule that

> "No particular form is necessary to the validity of a common law dedication and it need not be in writing. * * * * As already shown, no writing is necessary to the validity of a dedication. Express dedications may be made orally, when the use is inaugurated, or while it is being enjoyed, and may consist of declarations made directly to the public."
>
> 13 *Cyc.* 453.

The oral statements made by the president of the association at the sales in 1880 come within the scope of this rule.

In addition there were the printed maps of the association filed in the office of the clerk of Atlantic County. It is well settled that a map exhibiting parks constitutes a dedication to the public of the areas indicated.

> "The word 'park' written upon a block on a map of city property indicates a public use; and conveyances made by the owners of the plotted land, by reference to such map, operate conclusively as a dedication of such map."
>
> *Prince vs. Plainfield,* 40 N. J. L. 608 (E. & A. 1878);
>
> *Bayonne vs. Ford,* 43 N. J. L. 292 (S. C. 1881).

This Court, in deciding the Lennig case, simply declined to pass on the question. Its silence cannot be said to lend authority to the view expressed in Vice-Chancellor Stevens' overruled opinion that no dedication existed. Nor in *Ocean City Land Co. vs. Ocean City,* 73 N. J. L. 493, 499, did the Supreme Court pass upon the question, but expressly avoided a decision upon it.

Indeed, it is evident that the question is *res judicata.* In the former Bridgewater suit, 62 N. J. Eq. 276, 277, the complainant prayed:

> "That it may be decreed that the tract of land between Fifth and Sixth Streets has been dedicated as a park and camp meeting ground to be kept open and free from all conveyances and obstructions except the auditorium."

and the Vice-Chancellor declared that

> "upon the whole case the complainant is entitled to a decree *according to the prayer of his bill of complaint.*"
>
> *p.* 295.

(c) Camp meeting ground or park?

The argument of counsel is that the original dedication and covenant of the association extended only so far as to devote the tract to the uses of a camp meeting ground. They deny that any restrictions in favor of a park were ever created. This denial is made in the face of documentary proof. The publications of the association, its minutes and recorded maps sufficiently reveal the purpose of the association to throw the tract open as a public park.

The dedicated area is referred to indiscriminately as "Camp Ground" and "Park." Thus in the first annual report, *S. of C. p.* 420, the association says:

> "We have put down 1,000 feet of boardwalk, * * * * making a continuous walk from the wharf to the ocean, and around two sides of the *Camp Ground and Parks.*"
>
> * * * * * * * *
>
> "A suitable auditorium must be erected * * * * and our *Camp Ground and Parks* more thoroughly graded."

Throughout these publications, reference is made to the tract first as "Camp Ground" and then "Park," the two words appearing with equal frequency. The tract is specifically described as a "park" in the following instances:

The second annual report of the association con-

tains a report under the caption "The Camp Ground Park" which refers on one page to "the Camp Park" and on the next to "the Camp Ground." (*S. of C. p.* 422, *lines* 3, 12, 20.)

Again, in the fourth and fifth annual reports, under the caption "Camp Ground Park," the association describes "our beautiful park"; later the report states that "at a moderate cost the park was kept in fair condition, etc." (*S. of C. p.* 425, *lines* 12, 13, 29.)

The minutes of the association, *Exhibits C*36-39, *S. of C. pp.* 483-485, indicate clearly that at that time the association considered the tract dedicated to park as well as camp meeting purposes. After various resolutions for grading the "camp ground" (*lines* 10, 16, 21), and beautifying the same (*lines* 28-32), the minutes set forth reports by a "committee of park," appointed to accomplish the beautifying and improving of the tract. (*Lines* 33 *to* 37, *p.* 485; *lines* 4, 6 *and* 29, *p.* 486.)

The minutes also record a resolution appointing a "committee to look after the injunction placed upon the leasing of auditorium *park* lots, etc." (*S. of C. p.* 486, *lines* 20 *to* 24.)

Finally the resolution of April 9th, 1886 (*S. of C. p.* 486*a*), by which the association attempted to repudiate the dedication of the tract as a "park" and withdraw from what it felt to be a bad bargain, in itself is convincing evidence that the association had theretofore regarded the tract as dedicated to park as well as camp meeting purposes.

This discussion may make our point clearer but it is unnecessary, for the objection raised by our opponents has already been settled in the prior decision of *Bridgewater vs. Ocean City R. R. Co.*, where

the Court definitely recognized the restriction as of "camp ground and park."

> "It is straining credulity too far to ask that, in the face of all the proofs here offered, it be believed that there was, in truth, no devotion of the lands between Fifth and Sixth Streets, from the bay to the ocean, to the purposes of *camp ground and park.*"
>
> 62 *N. J. Eq.* 287.

(d) Can the Association be enjoined from conveying lands within the restricted area?

Counsel next insist that even though the tract be bound by a dedication or covenant in favor of the complainants, the naked fee remains and leaves the right of alienation unrestricted. We have no quarrel with their claim to the naked fee. Title is usually reserved in the dedicator subject to the uses of his dedication. The mere fact, however, that a conveyance may not in itself involve an infringement of the dedication is not sufficient answer to our claim to enjoin such conveyance, when it is evident that the title in the hands of an innocent grantee may be used in hostility to the dedication.

The same point is made by Messrs. Bourgeois and Coulomb in their brief for the association and Atlantic Land Development Company, *p.* 25. These counsel claim that the mere conveyance of title will not in itself justify an injunction and declare that "no reported case, after diligent effort on our part, has been found" supporting such a view.

The following reported cases are all in point and uphold our contention:

In *Cole vs. Minn. Loan & Trust Co.* (Minn.) 117 N. W. 354, the defendant company had platted a tract of land, reserving a certain square for a public park. Plaintiffs were purchasers of lots fronting on the square in question, which they had purchased on the strength of its dedication to the public. Plaintiffs alleged that "the defendants have in direct violation of the rights of the public, and in face of the long-continued use by dedication and acceptance of said public square, proceeded to have the said square surveyed and platted into lots, and have attempted to sell and are now attempting to sell a fee simple title to said public square and to the several lots that they have wrongfully and unlawfully caused to be platted thereon to private individuals for private purposes." Upon trial it was adjudged that the square "is and shall ever remain a public square, park, and common, and forever enjoining defendants and their heirs and assigns from in any manner interfering with or preventing the full, free and unobstructed use by the public of said property as a public square or common."

In *Lamar County vs. Clements*, 49 Tex. 347, one Wright donated to the county a large tract of land with the express agreement that a certain public square thereon should remain forever open to the use of the public. The county subsequently erected county buildings—a court house, etc., on the public square. Later these were removed to another site, and under authority of the state legislature, the county advertised the public square for sale. Complainants prayed an injunction to restrain the sale, which injunction was granted. The syllabus follows:

> "Where the owner of land lays out and establishes a town, exhibits a map with streets and public squares, and sells the lots with reference

to such map, the purchasers acquire as appurtenant to their lots all rights, privileges, easements, and servitudes represented by such map.

"The sale and conveyance of lots according to such map implies a grant or covenant for the benefit of the owners of the lots, that the streets and other public places represented by the map shall never be appropriated by the owner to a use inconsistent with that represented by the map on faith of which the lots are sold."

In *Price vs. Roberts*, (Conn.) 17 Atl. 275, defendants surveyed a tract of land fronting on Long Island Sound for purposes of sale and filed a map thereof in the town clerk's office. On this map was a space marked "park" and when plaintiffs purchased their lots they were assured that this area would be always kept open. Subsequently defendants sold this tract to defendant Wooding, who took with notice. Upon his commencing to build on said tract, plaintiffs filed their complaint.

"The Superior Court after hearing the pleas and finding the facts substantially as stated, granted the injunction prayed for, restraining the defendants and each of them from erecting or placing any building or structure of any kind on the park, and from *selling, conveying or leasing* the same, or any part, and from interfering with or destroying the use of the land as a public park."

This injunction was sustained by the upper Court.

In *Sherzer vs. Hillman Inv. Co.*, 52 *Wash.* 492; 100 *P.* 982, the defendant company in platting a certain tract of land into lots, by its parol representa-

tions, gave a certain section fronting on Lake Washington as a park to the public, on the strength of which offer plaintiff and others purchased lots facing thereon. Later a different plat was made by the defendant, showing a certain corner of the park, marked as "block 16" for sale. The Court entered a decree "enjoining the defendants from subdividing the block or selling any part thereof."

(e) Alternative form of decree.

The objection interposed by counsel relates to the alternative form of the decree which enjoins the defendants against any use of the dedicated lands "for any purpose inconsistent with their use as a camp meeting ground *or* park." *S. of C. p.* 289, *lines* 8-10. The alternative form was based on the testimony offered in the case which showed that the dedication was two-fold—as a camp meeting ground as well as a public park. We need not review this testimony. What we have previously said of the testimony establishing the land's dedication as a public park, and our opponent's admissions that the land was devoted to use as a camp meeting ground, sufficiently establish the dual purpose of the covenantor. It would, therefore, have been improper in the decree to have used the conjunctive "and" instead of the disjunctive "or," for the two restrictions were different in character and one might have been violated while the other remained uninfringed.

(f) Costs.

If it is true (as we have shown from the pleadings) that the association has announced its inten-

tion to sell its lands in violation of its covenant, for private building, and if it is necessary to the preservation of the complainants' rights that such action be enjoined, it follows that costs should be taxed against this defendant, not only because it is the losing party in the cause, but because the attitude assumed by it in this litigation has been contrary to equity and good conscience.

(g) The riparian lands.

Discussion by the counsel for the defendants of this cause of appeal by the complainants introduces nothing new in argument or authority.

The statement on page 31 of their brief that "the doctrine of the *Hoboken case,* 7 *Vr.* 540, was modified by the *Hoboken-Pa. R. R.* case," is a misapprehension. The decisions in the two cases, as we pointed out, are entirely consistent with the different states of fact on which they were based. This distinction is clearly indicated by Dixon, J., in *Elizabeth vs. Central R. R.,* 53 *N. J. L.* 491.

(h) The charge of laches.

This ground of appeal has also been covered in our main brief, and we desire to emphasize only one point in further support of our contention.

We have argued that the understanding, by Mrs. Buchanan, when she moved her building on to the tract, that she was violating its uses, in itself estopped her from setting up the defence of laches against these complainants. We call the attention of this Court to the fact that this exact point was

presented and passed upon by Vice-Chancellor Grey in the earlier *Bridgewater* case, 62 *N. J. Eq.* 276, 292, and this view by this Court adopted in its *per curiam* opinion, 63 *N. J. Eq.* 799.

> "The defence that the complainant stood by and suffered the defendants to spend their money is dependent upon another incident, and that is, that the defendants must, in order to avail themselves of that defence, have acted in ignorance of the complainant's rights upon which they intruded. If a party has notice that he is building on another's lands, or in derogation of another's rights, he proceeds at his own peril. In such cases it does not lie with him to complain that the other did not object."
>
> 62 *Eq., p.* 292.

The facts in the earlier *Bridgewater* case have been duplicated in the cases at bar. There the railroad company had almost entirely finished its structure before its erection was discovered by the complainant, Bridgewater. It was, therefore, necessary for the Court to require the virtual dismantling of a building even more costly and spacious than the Buchanan Hotel. The circumstances under which it was erected were identical with those attending the setting up of Mrs. Buchanan's building. The Court said, in speaking of the disadvantages resultant to the defendant from its mandatory injunction:

> "Substantially all the disadvantages which the defendants suffer by reason of having their building stopped in course of its erection had happened to them before the complainant knew it was being built. It was half way up."
>
> *p.* 292.

Twenty-one days then elapsed before suit was brought, and by that time the structure was nearly completed. *pp.* 291-292.

The learned Vice-Chancellor in the case at bar attempted a distinction on the ground that the notice imputed to Mrs. Buchanan was constructive rather than actual. But he doubtless overlooked the fact that this Court, in the earlier *Bridgewater* case, had before it no direct proof of actual knowledge by the railroad company, but acted solely on the evidence of facts which put the defendant upon constructive notice of the restriction. The principal ground for ascribing notice was the physical condition of the tract:

> "Again, on the ground at the place where the railroad station is being built there were physical evidences quite sufficient to put the railroad companies upon warning that those lands were devoted to some use calling for an open space. The uniform use of the side lines of Fifth and Sixth Streets for town lots and the leaving the squares between Fifth and Sixth Streets as open blocks, nearly in the centre of the city, was an indication that they were devoted to some special purpose. Slight inquiry by the defendants would have disclosed to them what their use was, if they were, in fact, at any time ignorant of it. The defendants were fairly notified, by all these circumstances, of the outstanding covenant, and were bound by it as was the original covenantor."
>
> *pp.* 292-293.

The Vice-Chancellor agreed with the force of the observation just quoted.

> "It cannot with any hope of belief be said

> that Mrs. Buchanan was not put upon inquiry. The maps and the unimproved condition of the strip, compared with the adjoining and improved land, were enough to charge her with this duty."
>
> *S. of C. p.* 226, *lines* 28-32.

The physical conditions are the same now as they were then, and *Exhibits C*3, 4 *and* 5, establish constructive notice by record.

In view of his evident agreement with the attitude assumed by this Court in the earlier *Bridgewater* case towards a similar infringement, we do not understand why the learned Vice-Chancellor proceeded to a different conclusion.

If this Court should hold that Mrs. Buchanan is saved by the laches of these complainants, it must necessarily reverse its own holding in the earlier *Bridgewater* case.

BRIEF OF DEFENDANTS, OCEAN CITY ASSOCIATION AND ATLANTIC LAND DEVELOPMENT COMPANY.

The following points—all matter of cross-appeal—are made in the brief of counsel for these defendants.

(a) That no covenant can be implied binding upon the complainants, Riley and Carroll.

(b) That the covenant was for light and air only, and hence the complainants, who live at some distance from the tract, obtained no rights therein.

(c) That the complainant, Bridgewater, obtained no rights from the publication of the covenant in the Ocean City Annual because that publication was subsequently abrogated by a later board of directors.

(d) That the association has a right to convey its land for private building and should not be enjoined from so doing.

(e) That the covenant in question, one that involved a general building scheme, has been abandoned.

(a) Rights of complainants, Riley and Carroll.

On page 19 of their brief, counsel make the statement:

> "It will be observed that the alleged statements were oral, and, therefore, complainants, in order to succeed, must show that each suc-

cessive owner of each lot, including complainants', purchased said lands relying upon the statements made at said sale."

We do not propose to discuss this contention because the point has been set at rest by the decision of this Court in the earlier *Bridgewater case* (62 *N. J. Eq.* 276):

"Where a general scheme of land improvement is announced to invited purchasers of lots, and part of the promulgated scheme is the declaration that a named portion of the lands within the general plan shall be devoted to special purposes, which are held out to be advantageous to all the lots to be sold, an implied covenant is thereby entered into by the owner with the lot purchasers that the named portion shall be devoted to the announced uses.

"Each purchaser of a lot and his grantees may enforce this covenant against the grantor or his grantees who purchased with notice of this implied covenant."

(b) Rights of remote lot owners.

The argument of counsel on this point can be commended only for its ingenuity. As in other contentions made by them, the point has been already settled by the decision in *Bridgewater vs. Ocean City R. R. Co.* We quote from the opinion of the Vice-Chancellor:

"The defendant railroad companies set up several other grounds, which they insist should lead this Court to disregard the declaration of the Court of Appeals in the *Lennig case.* They

say that Lennig succeeded in enforcing an implied covenant because his lots fronted on, and were adajacent to, the camp ground, and received especial benefit from having that space left unoccupied by buildings, whereas, they say the complainant's lots are at Tenth Street and Asbury Avenue, some four blocks away from the camp ground, and will receive little, if any, injury because of the construction of the defendants' station. The declarations at the sales, the publications of the association, its filed maps and its deeds conveying its lands, will be searched in vain for any indication that the camp ground and park were to remain an open space for the benefit of the adjoining or fronting lots. All lots were sold with the assurance of that open space; all were to participate in its benefits. The Lennig decision contains no suggestion that the implied covenant was raised because Lennig owned a lot fronting on the camp ground. * * * * Lots, whether near to or remote from the camp ground, were purchased in the expectation that this space should be devoted to the declared use. All purchasers thus acquired a right to have that space used as they had been assured it would be used, for no other than the named purposes. The implied covenant arises for the benefit of all the lots, without regard to their particular locality, in relation to the tract impliedly agreed to be specially kept as an open space. The principle upon which such covenants are enforced is luminously discussed in *De Gray vs. Monmouth Beach Club,* 5 *Dick. Ch. Rep.* 329, and in *Mulligan vs. Jordan,* 5 *Dick. Ch. Rep.* 363 (Vice-Chancellor Green)."

62 *Eq., pp.* 288-289.

(c) Rights of complainant, Bridgewater.

The right of the complainant Bridgewater to enjoin the violation of the restriction rests on a firmer basis, if possible, than that of the other complainants. Bridgewater was a purchaser at the sales in 1880 and the oral declarations of the president of the association that the tract would remain forever open to light and air were made in his actual presence.

It is rather superfluous, therefore, to discuss the question of whether the declarations of the association in its annual addressed to its stockholders, among whom was this complainant, vested him with any rights.

As a matter of law, our opponent's contention that the declarations contained in this annual were not binding (*page* 24 *of brief*) is an impossible one. The association published the declaration that stockholders purchasing lots would obtain certain rights in the restricted area. This declaration was a valid offer, which, when accepted, would constitute a valid contract. Upon the complainant accepting a deed the contract was completed.

It is not true that "the contract between Bridgewater and the association was reduced to writing in the form of his deed." (*Page* 24 *of brief.*) The deed of sale related only to the lands sold, not at all to the lands restricted. The acceptance of the deed closed the contract, whose offer was contained (in writing) in the publication of the association's annual. The contract of the parties was that if Bridgewater should enter into the contract of purchase—evidenced by the deed—the association would

keep the tract open to air and light. This agreement was prior to and distinct from the actual contract of purchase embodied in the deed.

Bridgewater's rights being founded upon contract, it is obvious that no subsequent act of a board of directors of the association could legislate such rights out of existence.

(d) Can the defendants be enjoined from conveying lands within the restricted area?

This point has already been discussed in our reply to the brief of Messrs. Bleakley and Stockwell. See *page* 16, *supra*.

(e) Has there been an abandonment?

The last contention of our opponent cannot be maintained. The facts which will justify a Court of Equity in finding an abandonment of a building scheme are not proven in this case. A Court will only refuse the enforcement of a restrictive covenant on the ground of abandonment where it is made evident that the character of the neighborhood has so changed as to make the enforcement of the restriction inconvenient and unjust. *Newberry vs. Barkalow,* 75 *N. J. Eq.* 128; *Morrow vs. Hasselman,* 69 *N. J. Eq.* 621.

No change in the character of the neighborhood has been proven in the cases at bar. None, in fact, exists. There is nothing to show that the releases set forth in the defendants' brief represent any

more than a small minority of the lot holders beneficially interested in the restriction. Nor if all the parties interested save these three complainants had released, would such releases affect their vested rights. This proposition does not require the citation of authority to support it.

There has been no abandonment in the sense that the neighborhood has rejected the scheme and proceeded to violate it without objection from those interested.

Respectfully submitted,
WILSON & CARR,
E. SPENCER MILLER,
Counsel for Complainants, Appellants and Cross-Respondents.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

MARY A. T. RILEY (Substituted in the Place and Stead of Henry Bradley), *Complainant, Appellant and Cross-Respondent,*

and

OCEAN CITY ASSOCIATION, *et als., Defendants, Respondents and Cross-Appellants.*

WILLIAM G. CARROLL, *et als., Complainants, Appellants and Cross-Respondents,*

and

OCEAN CITY ASSOCIATION, *et als., Defendants, Respondents and Cross-Appellants.*

WILLIAM E. BRIDGEWATER, *Complainant, Appellant and Cross-Respondent,*

and

OCEAN CITY ASSOCIATION, *et als., Defendants, Respondents and Cross-Appellants.*

ON APPEAL AND CROSS-APPEAL.

REPLY BRIEF OF MARY A. T. RILEY, WILLIAM G. CARROLL, ET ALS., AND WILLIAM E. BRIDGEWATER, COMPLAINANTS, APPELLANTS AND CROSS-RESPONDENTS, TO THE BRIEFS OF OCEAN CITY ASSOCIATION, OCEAN CITY TABERNACLE ASSOCIATION, MARY R. BUCHANAN, AND ATLANTIC LAND DEVELOPMENT COMPANY, DEFENDANTS, RESPONDENTS AND CROSS-APPELLANTS.

Preliminary statement.

The present briefs are filed by permission of the Court in reply to the briefs presented on behalf of the Ocean City Association, Ocean City Tabernacle Association, and Mary R. Buchanan, by Messrs. Bleakley and Stockwell, and on behalf of the Ocean City Association and Atlantic Land Development Company, by Messrs. Bourgeois and Coulomb. We will deal with each brief of opposing counsel separately.

BRIEF OF OCEAN CITY ASSOCIATION, OCEAN CITY TABERNACLE ASSOCIATION AND MARY R. BUCHANAN.

The brief of counsel for these parties defendant presents a number of points in opposition to the case of complainants which we may summarize as follows:

(a) That a definite adjudication with regard to the complainants' rights has been made in the *Lennig* and *Bridgewater* cases, and no overt act having been since committed by these defendants, there is nothing to sustain these bills.

(b) That there are no public, but only private, rights in the restricted area, and that complainants are not entitled to a decree proclaiming the dedication of the tract to public uses.

(c) That there was never any devotion of the tract to park purposes, but that its uses were restricted solely to those of a camp meeting ground.

(d) That the association has a right to convey its lands and should not be enjoined from so doing.

(e) That the alternative form of the decree—enjoining any use inconsistent with a camp meeting ground or park—is erroneous.

(f) That no costs should be imposed on the Ocean City Association.

(g) That the original dedication cannot be extended over the riparian lands acquired from the state.

(h) That Mrs. Buchanan had no knowledge that she was infringing the covenant of the association, and hence that her equity is superior to that of the complainants, who have delayed action.

Of these contentions, the first six, (a) to (f), relate solely to the cross-appeals prosecuted by these defendants; the last two being in reply to the appeals of these complainants.

(a) Have the complainants a cause of action?

Counsel for the defendants have laid particular stress upon the fact that there was no violation of the covenant immediately preceding the bringing of the complainants' suits, and that the mere fact that violations are threatened by the association is not enough to sustain the bills. They say further that the rights which the complainants now seek to have decreed have been already decreed in the earlier

cases of *Lennig vs. Ocean City Association,* and *Bridgewater vs. Ocean City Railroad Company,* and that no additional relief is needed than was awarded in those cases.

False premises.

The last assertion proceeds upon a false assumption of fact.

The *Lennig* case dealt only with a particular use of the dedicated land; the *Bridgewater* case only with a particular parcel thereof. In neither was there any definite adjudication that the entire tract from bay to ocean was bound by the covenant of the association. It was evident in the opinions filed in these cases that the Court so regarded the scope of the covenant, but it was not necessary for it to make this a matter of adjudication in order to grant the needed relief. Nor did an injunction issue in either of these cases—such as is herein prayed—forbidding a conveyance of any parcel of the tract for purposes inconsistent with camp ground and park. Both by the subject-matter and by the relief prayed, the present cases are differentiated from these earlier adjudications.

The fallacy of the attempted argument that all rights of the parties have been finally determined by these cases is sufficiently illustrated by the erection of the Buchanan Hotel. Opposing counsel insist that there is no danger to the complainants' rights because of the adjudication in the *Lennig* and *Bridgewater* cases; and yet subsequent to those decrees, and in despite of them, the Buchanan cottage was moved onto the restricted tract and there enlarged into the present structure. Manifestly, it offends the public

purpose of the land on which it stands. The only argument advanced against its removal is the laches of these complainants. If tomorrow a hundred grantees from the association of land within the tract began to build thereon, it cannot be denied that suit would be necessary to enjoin the erection of such structures. Counsel must admit, therefore, that the building of their client, Mrs. Buchanan, itself affords the best illustration of how futile the *Lennig* and *Bridgewater* adjudications are to guard against violations of the covenant.

These present suits are prosecuted to prevent the conveyance by the association of land within the restricted area and the building thereon by innocent grantees. The alternative question presented is whether these complainants must be required to seek successive injunctions in the Court of Chancery to oust successive wrong-doers who violate the covenant, or whether protection can not be afforded them by a single injunction forbidding the association and other owners of the land within the tract from ever hereafter conveying their land or doing any act thereon in violation of its dedication as a park and camp meeting ground.

False position of the Association.

Counsel in their brief seek to invest the association with a certain pious attitude of obligation towards the covenants assumed by it in 1880 and renewed in the three years succeeding. They would have this Court believe that only in honest ignorance of their own duty had they countenanced the erection of small cottages on the tract in 1886 (enjoined in *Lennig vs. Ocean City Association*), and the erection of a large

railroad station in 1901 (enjoined in *Bridgewater vs. Ocean City Railroad Co.*); that when these adjudications had finally set the matter straight, they then apprehended their duty and have observed it strictly ever since. So counsel assert:

> "Those cases established the law and to that law the defendants long ago submitted."
> *Defendants' Brief, p.* 6.

> "Since 1901 nothing has been done on or in reference to this tract upon which any complaint could be based."
> *Ibid, p.* 10.

These assertions are contradicted by the facts; and in the hostile policy pursued by the association in the ten years preceding the filing of these bills, is found the justification for our suits.

We beg to remind the Court again of the following attempted violations of its covenant by the association.

On August 10, 1903, one lot within the restricted area was conveyed to the defendant, James E. Lake, for building purposes, and two days thereafter two lots were likewise conveyed to Wesley Lake.

On September 12, 1905, the association conveyed lands within the restricted area as well as riparian lands fronting the bay, for building purposes, to the defendant, Cresse, and his wife.

On April 12, 1906, the association conveyed to Masland lands within the reserved area, as well as riparian lands, for the same purpose.

On August 19, 1907, a building lot was conveyed by the association to the defendant William Watson Adams.

On May 16, 1909, a conveyance was made by the as-

sociation of all the ocean front lands to the Atlantic Land Development Company for no consideration save purchase money mortgages.

On October 30, 1909, another lot was conveyed to the defendant S. H. Hann.

For several of these grants of land, a valuable consideration was received. In the deed to Cresse, *Exhibit C47*, a consideration of $250 is recited and in the deeds to Masland, *Exhibits DM1* and *DM2*, considerations respectively of $750 and $150. It is evident that the association knew and intended that these grantees should erect buildings on the lands conveyed which would inevitably violate the rights created by its covenant. Indeed the only conveyance at all consistent with the purposes of its dedication was the deed on March 11, 1907, of the "Auditorium Square," to the Ocean City Tabernacle Association.

Nor should we forget that the association, after holding out to its purchasers the promise of a well ordered park, has forgotten its assurances and deliberately permitted this tract to run to waste.

Added to these attempted violations, there must be reckoned the defiant attitude of the association which it has assumed in its pleadings and exhibited at the hearing.

Is an overt act necessary to give jurisdiction?

Counsel have insisted that equity has no jurisdiction without the performance of an overt act. This is a view which is opposed to the fundamental purpose of equity, to prevent irreparable wrong where the legal remedy is inadequate. It often happens that a right is put in danger by circumstances which threaten its violation, although those circumstances

may not assume the definite form of an overt act. In such cases where the danger is clearly proven and the law can afford no protection against it, the interposition of equity is justified.

Sayre vs. Newark, 58 N. J. Eq. 136, 148;
Sooy Oyster Co. vs. Gaskill, (Ch.) 69 Atl. 1084.

Protection of an easement against its threatened violation is a familiar illustration of the injunctive power of equity. Pomeroy, in his chapter on the subject, describes the jurisdiction taken to uphold the easement as founded upon the principles of preventing irreparable injury as well as a multiplicity of suits. 6 *Pom. Eq. Jur. Chap.* 25. There is no requirement that the defendant should have made good its threat by some overt act. The rule is simply that:

"There must be imminent danger of wrongdoing."

Ibid, Section 550.

It was held in *Hall vs. Byron*, L. R. 4 Ch. D. 667—a suit to enjoin the violation of an easement—that a sufficient threat is shown if the defendant *merely claims the right* to do the anticipated wrongful act, although he denies any present intention to act upon his threat. In the cases *sub judice*, the Ocean City Association not only claims the right, but asserts the intention to immediately proceed to the violation of its covenant.

Defiant attitude of the Association.

In its answer to the bill of the complainant Bradley (now Riley), it denies the very existence of its cove-

nant (an inconsistency with the professed devotion for its obligation which counsel overlooked).

> "This defendant denies that this defendant, prior to, and as an inducement to all purchasers of lots in Ocean City, represented and stipulated that a certain large area of land adjacent to the lots offered for sale and included in and bounded by Fifth and Sixth Streets, Atlantic Ocean and Beach Thoroughfare, should forever remain devoted to camp meeting and other public recreation purposes in connection therewith, etc."
>
> *S. of C. p.* 36.

And it repeats this denial throughout the remainder of its pleading.

Again in its answer to Bridgewater's bill, it denies that any statement made by its officers

> "was made for the advantage and benefit, in the nature of an easement, of the lots and ground purchased by the complainant * * * * or for any other purpose."
>
> *S. of C. p.* 152.

And so forth throughout the answer until it comes to the allegation in the bill that the camp meeting ground has greatly increased in value, and that the association is desirous of placing it on the market for sale. It then proceeds to make the following admission:

> "It admits that said alleged reserved area has greatly increased in value and says that this increase in value was from the beginning of Ocean City by this defendant fully expected and looked for and that it was this prospective increased value that induced and prompted this defendant to refrain from plotting the land be-

tween Fifth and Sixth Streets, Wesley Avenue and the ocean, and between Asbury Avenue, Fifth and Sixth Streets and a line 100 feet northwesterly of the northwesterly line of West Avenue into lots on Section A, and offering the same for sale at the time the other lands in that vicinity were being exposed to sale, and that it was this expected increase in value that prompted this defendant to refrain from plotting the land between Fifth and Sixth Streets, within section B, into lots and exposing said lots to sale at the time the other lots in that section were exposed to sale.

"Defendant further answering says that the very great majority of lands originally held by it is now sold and that as was anticipated thirty years ago, *the time has come when it is necessary for this defendant to dispose of the lands so by it then reserved* for the purposes of carrying on the objects for which this defendant was incorporated, and for which its members for the past thirty years have striven."

S. of C. pp. 159-160.

The attempt of counsel (p. 20 in their brief) to interpret this paragraph as relating solely to a desire on the part of the association to further the purposes of a camp ground in conveying this land scarcely deserves comment. How such a desire could be furthered in this way is incomprehensible. The intention of the association to sell these lands for money is herein specifically set forth. If it afterward occurred to counsel that the association should disavow any intent to sell for private building, they would have done well to have sought leave to amend these paragraphs.

Counsel state (at the top of page 20), that their answer denies any intention to sell for private building, but the references which accompany their statement relate only to past conveyances to Hann and the Atlantic Development Company and do not in any way contradict the explicit avowal of the association's plans quoted in full above.

We rest our case on the ground that the attitude of the association itself is such a menace to the rights of these complainants in the restricted area as to call for the injunctive relief of equity. If the defendants break the tract up into lots and sell to separate purchasers, it is inevitable that most, if not all, of them will attempt to build, and thus necessitate a multiplicity of suits by these complainants. And if any one of these purchasers can escape the eye of the complainants and erect his house before objection made, then laches may be asserted—perhaps successfully—to maintain the structure. It is not difficult to imagine so many buildings finally escaping injunction that Chancery will eventually be justified in decreeing an abandonment of the whole scheme. In any event, the right of the complainants to have this tract kept open and free from all obstructions entitles them now to protection by injunction from the avowed purpose of the Ocean City Association to sell the land for private gain. In the words of the learned Vice-Chancellor below:

> "There is no way to adequately protect the complainants as against the association, Atlantic Land Development Company, and their innocent grantees, except by the injunctive power of this court."
>
> *S. of C. p.* 229, *lines* 30-33.

(b) Was there a dedication of the tract?

Counsel, throughout their brief, stress the point that complainants are seeking to enlarge a private covenant into a public dedication, to enforce public rights rather than private. As a matter of fact, complainants are concerned only with the protection of their individual rights, and whether those rights are founded on private covenant or public dedication, is, except for theoretical purposes, of small importance.

It is not necessary, of course, that their private rights should rest on private contract, as counsel claim on page 15 of their brief. It is well settled in this state that the owners of land bounded on a public square, dedicated to public uses, have a private right, over and above that of the public at large, to have the square kept open. *Fessler vs. Union*, 56 Atl. 272, 67 N. J. Eq. 14 (Ch. 1904). The rights of the parties hereto, therefore, may be safely enforced either on the ground of covenant or dedication.

We do not for a moment withdraw our contention that the acts of the Ocean City Association in the years 1880-1883 constituted a public dedication. There is abundant authority to support this view. It is laid down as a general rule that

> "No particular form is necessary to the validity of a common law dedication and it need not be in writing. * * * * As already shown, no writing is necessary to the validity of a dedication. Express dedications may be made orally, when the use is inaugurated, or while it is being enjoyed, and may consist of declarations made directly to the public."
>
> 13 *Cyc.* 453.

The oral statements made by the president of the association at the sales in 1880 come within the scope of this rule.

In addition there were the printed maps of the association filed in the office of the clerk of Atlantic County. It is well settled that a map exhibiting parks constitutes a dedication to the public of the areas indicated.

> "The word 'park' written upon a block on a map of city property indicates a public use; and conveyances made by the owners of the plotted land, by reference to such map, operate conclusively as a dedication of such map."
>
> *Prince vs. Plainfield,* 40 N. J. L. 608 (E. & A. 1878);
>
> *Bayonne vs. Ford,* 43 N. J. L. 292 (S. C. 1881).

This Court, in deciding the Lennig case, simply declined to pass on the question. Its silence cannot be said to lend authority to the view expressed in Vice-Chancellor Stevens' overruled opinion that no dedication existed. Nor in *Ocean City Land Co. vs. Ocean City,* 73 N. J. L. 493, 499, did the Supreme Court pass upon the question, but expressly avoided a decision upon it.

Indeed, it is evident that the question is *res judicata.* In the former Bridgewater suit, 62 N. J. Eq. 276, 277, the complainant prayed:

> "That it may be decreed that the tract of land between Fifth and Sixth Streets has been dedicated as a park and camp meeting ground to be kept open and free from all conveyances and obstructions except the auditorium."

and the Vice-Chancellor declared that

> "upon the whole case the complainant is entitled to a decree *according to the prayer of his bill of complaint.*"
>
> *p.* 295.

(c) Camp meeting ground or park?

The argument of counsel is that the original dedication and covenant of the association extended only so far as to devote the tract to the uses of a camp meeting ground. They deny that any restrictions in favor of a park were ever created. This denial is made in the face of documentary proof. The publications of the association, its minutes and recorded maps sufficiently reveal the purpose of the association to throw the tract open as a public park.

The dedicated area is referred to indiscriminately as "Camp Ground" and "Park." Thus in the first annual report, *S. of C. p.* 420, the association says:

> "We have put down 1,000 feet of boardwalk, * * * * making a continuous walk from the wharf to the ocean, and around two sides of the *Camp Ground and Parks.*"
>
> * * * * * * * *
>
> "A suitable auditorium must be erected * * * * and our *Camp Ground and Parks* more thoroughly graded."

Throughout these publications, reference is made to the tract first as "Camp Ground" and then "Park," the two words appearing with equal frequency. The tract is specifically described as a "park" in the following instances:

The second annual report of the association con-

tains a report under the caption "The Camp Ground Park" which refers on one page to "the Camp Park" and on the next to "the Camp Ground." (*S. of C. p.* 422, *lines* 3, 12, 20.)

Again, in the fourth and fifth annual reports, under the caption "Camp Ground Park," the association describes "our beautiful park"; later the report states that "at a moderate cost the park was kept in fair condition, etc." (*S. of C. p.* 425, *lines* 12, 13, 29.)

The minutes of the association, *Exhibits C*36-39, *S. of C. pp.* 483-485, indicate clearly that at that time the association considered the tract dedicated to park as well as camp meeting purposes. After various resolutions for grading the "camp ground" (*lines* 10, 16, 21), and beautifying the same (*lines* 28-32), the minutes set forth reports by a "committee of park," appointed to accomplish the beautifying and improving of the tract. (*Lines* 33 *to* 37, *p.* 485; *lines* 4, 6 *and* 29, *p.* 486.)

The minutes also record a resolution appointing a "committee to look after the injunction placed upon the leasing of auditorium *park* lots, etc." (*S. of C. p.* 486, *lines* 20 *to* 24.)

Finally the resolution of April 9th, 1886 (*S. of C. p.* 486*a*), by which the association attempted to repudiate the dedication of the tract as a "park" and withdraw from what it felt to be a bad bargain, in itself is convincing evidence that the association had theretofore regarded the tract as dedicated to park as well as camp meeting purposes.

This discussion may make our point clearer but it is unnecessary, for the objection raised by our opponents has already been settled in the prior decision of *Bridgewater vs. Ocean City R. R. Co.*, where

the Court definitely recognized the restriction as of "camp ground and park."

> "It is straining credulity too far to ask that, in the face of all the proofs here offered, it be believed that there was, in truth, no devotion of the lands between Fifth and Sixth Streets, from the bay to the ocean, to the purposes of *camp ground and park.*"
>
> 62 *N. J. Eq.* 287.

(d) Can the Association be enjoined from conveying lands within the restricted area?

Counsel next insist that even though the tract be bound by a dedication or covenant in favor of the complainants, the naked fee remains and leaves the right of alienation unrestricted. We have no quarrel with their claim to the naked fee. Title is usually reserved in the dedicator subject to the uses of his dedication. The mere fact, however, that a conveyance may not in itself involve an infringement of the dedication is not sufficient answer to our claim to enjoin such conveyance, when it is evident that the title in the hands of an innocent grantee may be used in hostility to the dedication.

The same point is made by Messrs. Bourgeois and Coulomb in their brief for the association and Atlantic Land Development Company, *p.* 25. These counsel claim that the mere conveyance of title will not in itself justify an injunction and declare that "no reported case, after diligent effort on our part, has been found" supporting such a view.

The following reported cases are all in point and uphold our contention:

In *Cole vs. Minn. Loan & Trust Co.* (Minn.) 117 N. W. 354, the defendant company had platted a tract of land, reserving a certain square for a public park. Plaintiffs were purchasers of lots fronting on the square in question, which they had purchased on the strength of its dedication to the public. Plaintiffs alleged that "the defendants have in direct violation of the rights of the public, and in face of the long-continued use by dedication and acceptance of said public square, proceeded to have the said square surveyed and platted into lots, and have attempted to sell and are now attempting to sell a fee simple title to said public square and to the several lots that they have wrongfully and unlawfully caused to be platted thereon to private individuals for private purposes." Upon trial it was adjudged that the square "is and shall ever remain a public square, park, and common, and forever enjoining defendants and their heirs and assigns from in any manner interfering with or preventing the full, free and unobstructed use by the public of said property as a public square or common."

In *Lamar County vs. Clements*, 49 Tex. 347, one Wright donated to the county a large tract of land with the express agreement that a certain public square thereon should remain forever open to the use of the public. The county subsequently erected county buildings—a court house, etc., on the public square. Later these were removed to another site, and under authority of the state legislature, the county advertised the public square for sale. Complainants prayed an injunction to restrain the sale, which injunction was granted. The syllabus follows:

> "Where the owner of land lays out and establishes a town, exhibits a map with streets and public squares, and sells the lots with reference

to such map, the purchasers acquire as appurtenant to their lots all rights, privileges, easements, and servitudes represented by such map.

"The sale and conveyance of lots according to such map implies a grant or covenant for the benefit of the owners of the lots, that the streets and other public places represented by the map shall never be appropriated by the owner to a use inconsistent with that represented by the map on faith of which the lots are sold."

In *Price vs. Roberts*, (Conn.) 17 Atl. 275, defendants surveyed a tract of land fronting on Long Island Sound for purposes of sale and filed a map thereof in the town clerk's office. On this map was a space marked "park" and when plaintiffs purchased their lots they were assured that this area would be always kept open. Subsequently defendants sold this tract to defendant Wooding, who took with notice. Upon his commencing to build on said tract, plaintiffs filed their complaint.

"The Superior Court after hearing the pleas and finding the facts substantially as stated, granted the injunction prayed for, restraining the defendants and each of them from erecting or placing any building or structure of any kind on the park, and from *selling, conveying or leasing* the same, or any part, and from interfering with or destroying the use of the land as a public park."

This injunction was sustained by the upper Court.

In *Sherzer vs. Hillman Inv. Co.*, 52 *Wash.* 492; 100 *P.* 982, the defendant company in platting a certain tract of land into lots, by its parol representa-

tions, gave a certain section fronting on Lake Washington as a park to the public, on the strength of which offer plaintiff and others purchased lots facing thereon. Later a different plat was made by the defendant, showing a certain corner of the park, marked as "block 16" for sale. The Court entered a decree "enjoining the defendants from subdividing the block or selling any part thereof."

(e) Alternative form of decree.

The objection interposed by counsel relates to the alternative form of the decree which enjoins the defendants against any use of the dedicated lands "for any purpose inconsistent with their use as a camp meeting ground *or* park." *S. of C. p.* 289, *lines* 8-10. The alternative form was based on the testimony offered in the case which showed that the dedication was two-fold—as a camp meeting ground as well as a public park. We need not review this testimony. What we have previously said of the testimony establishing the land's dedication as a public park, and our opponent's admissions that the land was devoted to use as a camp meeting ground, sufficiently establish the dual purpose of the covenantor. It would, therefore, have been improper in the decree to have used the conjunctive "and" instead of the disjunctive "or," for the two restrictions were different in character and one might have been violated while the other remained uninfringed.

(f) Costs.

If it is true (as we have shown from the pleadings) that the association has announced its inten-

tion to sell its lands in violation of its covenant, for private building, and if it is necessary to the preservation of the complainants' rights that such action be enjoined, it follows that costs should be taxed against this defendant, not only because it is the losing party in the cause, but because the attitude assumed by it in this litigation has been contrary to equity and good conscience.

(g) The riparian lands.

Discussion by the counsel for the defendants of this cause of appeal by the complainants introduces nothing new in argument or authority.

The statement on page 31 of their brief that "the doctrine of the *Hoboken case,* 7 *Vr.* 540, was modified by the *Hoboken-Pa. R. R.* case," is a misapprehension. The decisions in the two cases, as we pointed out, are entirely consistent with the different states of fact on which they were based. This distinction is clearly indicated by Dixon, J., in *Elizabeth vs. Central R. R.,* 53 *N. J. L.* 491.

(h) The charge of laches.

This ground of appeal has also been covered in our main brief, and we desire to emphasize only one point in further support of our contention.

We have argued that the understanding, by Mrs. Buchanan, when she moved her building on to the tract, that she was violating its uses, in itself estopped her from setting up the defence of laches against these complainants. We call the attention of this Court to the fact that this exact point was

presented and passed upon by Vice-Chancellor Grey in the earlier *Bridgewater* case, 62 *N. J. Eq.* 276, 292, and this view by this Court adopted in its *per curiam* opinion, 63 *N. J. Eq.* 799.

> "The defence that the complainant stood by and suffered the defendants to spend their money is dependent upon another incident, and that is, that the defendants must, in order to avail themselves of that defence, have acted in ignorance of the complainant's rights upon which they intruded. If a party has notice that he is building on another's lands, or in derogation of another's rights, he proceeds at his own peril. In such cases it does not lie with him to complain that the other did not object."
>
> 62 *Eq., p.* 292.

The facts in the earlier *Bridgewater* case have been duplicated in the cases at bar. There the railroad company had almost entirely finished its structure before its erection was discovered by the complainant, Bridgewater. It was, therefore, necessary for the Court to require the virtual dismantling of a building even more costly and spacious than the Buchanan Hotel. The circumstances under which it was erected were identical with those attending the setting up of Mrs. Buchanan's building. The Court said, in speaking of the disadvantages resultant to the defendant from its mandatory injunction:

> "Substantially all the disadvantages which the defendants suffer by reason of having their building stopped in course of its erection had happened to them before the complainant knew it was being built. It was half way up."
>
> *p.* 292.

Twenty-one days then elapsed before suit was brought, and by that time the structure was nearly completed. *pp.* 291-292.

The learned Vice-Chancellor in the case at bar attempted a distinction on the ground that the notice imputed to Mrs. Buchanan was constructive rather than actual. But he doubtless overlooked the fact that this Court, in the earlier *Bridgewater* case, had before it no direct proof of actual knowledge by the railroad company, but acted solely on the evidence of facts which put the defendant upon constructive notice of the restriction. The principal ground for ascribing notice was the physical condition of the tract:

> "Again, on the ground at the place where the railroad station is being built there were physical evidences quite sufficient to put the railroad companies upon warning that those lands were devoted to some use calling for an open space. The uniform use of the side lines of Fifth and Sixth Streets for town lots and the leaving the squares between Fifth and Sixth Streets as open blocks, nearly in the centre of the city, was an indication that they were devoted to some special purpose. Slight inquiry by the defendants would have disclosed to them what their use was, if they were, in fact, at any time ignorant of it. The defendants were fairly notified, by all these circumstances, of the outstanding covenant, and were bound by it as was the original covenantor."
>
> *pp.* 292-293.

The Vice-Chancellor agreed with the force of the observation just quoted.

> "It cannot with any hope of belief be said

that Mrs. Buchanan was not put upon inquiry. The maps and the unimproved condition of the strip, compared with the adjoining and improved land, were enough to charge her with this duty."

S. of C. p. 226, *lines* 28-32.

The physical conditions are the same now as they were then, and *Exhibits C*3, 4 *and* 5, establish constructive notice by record.

In view of his evident agreement with the attitude assumed by this Court in the earlier *Bridgewater* case towards a similar infringement, we do not understand why the learned Vice-Chancellor proceeded to a different conclusion.

If this Court should hold that Mrs. Buchanan is saved by the laches of these complainants, it must necessarily reverse its own holding in the earlier *Bridgewater* case.

BRIEF OF DEFENDANTS, OCEAN CITY ASSOCIATION AND ATLANTIC LAND DEVELOPMENT COMPANY.

The following points—all matter of cross-appeal—are made in the brief of counsel for these defendants.

(a) That no covenant can be implied binding upon the complainants, Riley and Carroll.

(b) That the covenant was for light and air only, and hence the complainants, who live at some distance from the tract, obtained no rights therein.

(c) That the complainant, Bridgewater, obtained no rights from the publication of the covenant in the Ocean City Annual because that publication was subsequently abrogated by a later board of directors.

(d) That the association has a right to convey its land for private building and should not be enjoined from so doing.

(e) That the covenant in question, one that involved a general building scheme, has been abandoned.

(a) Rights of complainants, Riley and Carroll.

On page 19 of their brief, counsel make the statement:

> "It will be observed that the alleged statements were oral, and, therefore, complainants, in order to succeed, must show that each suc-

cessive owner of each lot, including complainants', purchased said lands relying upon the statements made at said sale."

We do not propose to discuss this contention because the point has been set at rest by the decision of this Court in the earlier *Bridgewater case* (62 *N. J. Eq.* 276):

"Where a general scheme of land improvement is announced to invited purchasers of lots, and part of the promulgated scheme is the declaration that a named portion of the lands within the general plan shall be devoted to special purposes, which are held out to be advantageous to all the lots to be sold, an implied covenant is thereby entered into by the owner with the lot purchasers that the named portion shall be devoted to the announced uses.

"Each purchaser of a lot and his grantees may enforce this covenant against the grantor or his grantees who purchased with notice of this implied covenant."

(b) Rights of remote lot owners.

The argument of counsel on this point can be commended only for its ingenuity. As in other contentions made by them, the point has been already settled by the decision in *Bridgewater vs. Ocean City R. R. Co.* We quote from the opinion of the Vice-Chancellor:

"The defendant railroad companies set up several other grounds, which they insist should lead this Court to disregard the declaration of the Court of Appeals in the *Lennig case.* They

say that Lennig succeeded in enforcing an implied covenant because his lots fronted on, and were adajacent to, the camp ground, and received especial benefit from having that space left unoccupied by buildings, whereas, they say the complainant's lots are at Tenth Street and Asbury Avenue, some four blocks away from the camp ground, and will receive little, if any, injury because of the construction of the defendants' station. The declarations at the sales, the publications of the association, its filed maps and its deeds conveying its lands, will be searched in vain for any indication that the camp ground and park were to remain an open space for the benefit of the adjoining or fronting lots. All lots were sold with the assurance of that open space; all were to participate in its benefits. The Lennig decision contains no suggestion that the implied covenant was raised because Lennig owned a lot fronting on the camp ground. * * * * Lots, whether near to or remote from the camp ground, were purchased in the expectation that this space should be devoted to the declared use. All purchasers thus acquired a right to have that space used as they had been assured it would be used, for no other than the named purposes. The implied covenant arises for the benefit of all the lots, without regard to their particular locality, in relation to the tract impliedly agreed to be specially kept as an open space. The principle upon which such covenants are enforced is luminously discussed in *De Gray vs. Monmouth Beach Club,* 5 *Dick. Ch. Rep.* 329, and in *Mulligan vs. Jordan,* 5 *Dick. Ch. Rep.* 363 (Vice-Chancellor Green)."

62 *Eq., pp.* 288-289.

(c) Rights of complainant, Bridgewater.

The right of the complainant Bridgewater to enjoin the violation of the restriction rests on a firmer basis, if possible, than that of the other complainants. Bridgewater was a purchaser at the sales in 1880 and the oral declarations of the president of the association that the tract would remain forever open to light and air were made in his actual presence.

It is rather superfluous, therefore, to discuss the question of whether the declarations of the association in its annual addressed to its stockholders, among whom was this complainant, vested him with any rights.

As a matter of law, our opponent's contention that the declarations contained in this annual were not binding (*page* 24 *of brief*) is an impossible one. The association published the declaration that stockholders purchasing lots would obtain certain rights in the restricted area. This declaration was a valid offer, which, when accepted, would constitute a valid contract. Upon the complainant accepting a deed the contract was completed.

It is not true that "the contract between Bridgewater and the association was reduced to writing in the form of his deed." (*Page* 24 *of brief.*) The deed of sale related only to the lands sold, not at all to the lands restricted. The acceptance of the deed closed the contract, whose offer was contained (in writing) in the publication of the association's annual. The contract of the parties was that if Bridgewater should enter into the contract of purchase—evidenced by the deed—the association would

keep the tract open to air and light. This agreement was prior to and distinct from the actual contract of purchase embodied in the deed.

Bridgewater's rights being founded upon contract, it is obvious that no subsequent act of a board of directors of the association could legislate such rights out of existence.

(d) Can the defendants be enjoined from conveying lands within the restricted area?

This point has already been discussed in our reply to the brief of Messrs. Bleakley and Stockwell. See *page* 16, *supra*.

(e) Has there been an abandonment?

The last contention of our opponent cannot be maintained. The facts which will justify a Court of Equity in finding an abandonment of a building scheme are not proven in this case. A Court will only refuse the enforcement of a restrictive covenant on the ground of abandonment where it is made evident that the character of the neighborhood has so changed as to make the enforcement of the restriction inconvenient and unjust. *Newberry vs. Barkalow*, 75 *N. J. Eq.* 128; *Morrow vs. Hasselman*, 69 *N. J. Eq.* 621.

No change in the character of the neighborhood has been proven in the cases at bar. None, in fact, exists. There is nothing to show that the releases set forth in the defendants' brief represent any

more than a small minority of the lot holders beneficially interested in the restriction. Nor if all the parties interested save these three complainants had released, would such releases affect their vested rights. This proposition does not require the citation of authority to support it.

There has been no abandonment in the sense that the neighborhood has rejected the scheme and proceeded to violate it without objection from those interested.

Respectfully submitted,
WILSON & CARR,
E. SPENCER MILLER,
Counsel for Complainants, Appellants and Cross-Respondents.

NEW JERSEY COURT OF ERRORS AND APPEALS

BETWEEN	
WILLIAM E. BRIDGEWATER *Complainant-Appellant*	ON APPEAL
AND	
OCEAN CITY ASSOCIATION, HENRY D. MOORE, CECILIA H. CRESSE, *et als* *Defendants-Respondents*	ON APPEAL OF WILLIAM E. BRIDGEWATER

BRIEF OF HENRY D. MOORE AND CECILIA H. CRESSE

Defendants-Respondents

The above is one of a group of cases which were heard and argued together in the Court of Chancery. The defendants on whose behalf this brief is filed are parties only in the Bridgewater case. In two of said cases, namely, that of Mary A. T. Riley, (substituted in the place and stead of Henry Bradley) vs. Ocean City Association, *et als.*, and William G. Carroll vs. Ocean City Association, *et als.*, the defendants were made parties, but demurrers filed on their behalf on the ground of multifariousness were sustained by Vice Chancellor Stevens. The defendants are the owners of lands in Ocean City, Cape May County, New Jersey, between 5th and 6th Streets. All of the lands owned by these defendants, however, lie west of Bay Avenue and extend into the bay as far as the State's exterior

line, under riparian grants from the State. The lands of both the defendants consist of two parcels which are distinct in character: First, the lands west of Bay Avenue and above the ordinary high water line of the Bay; and Second, riparian lands below said high water line and extending to said exterior line. The conclusions of Vice Chancellor Backes (85 Eq. 379) so far as the same affect the lands of these defendants, were that the restrictive covenant was binding upon the lands of the first class, but was not binding upon the riparian lands of the second class. From the decree entered in accordance with these conclusions, the complainant appeals.

At the time of the filing of the original bill of complaint and also of the hearing in the Court of Chancery, the Cresse lands were owned by Lewis M. Cresse and Cecilia H. Cresse, his wife, as tenants by the entirety. Since the hearing Lewis M. Cresse has died and said lands are now owned by the defendant Cecilia H. Cresse in fee.

It is of the utmost importance that we should have clearly in mind just what was the nature of the use to which the lands between 5th and 6th Streets, may have been restricted by the maps and oral declarations by or on behalf of the Ocean City Association. The entire case of the complainant seems to proceed on the assumption that these lands were restricted to some public use, probably that of a park or an open space which should be for the benefit and advantage of the public, and which operated as an inducement to attract purchasers. As a matter of fact, no such restriction was ever intended. The lands in question were to be used for *"Camp Ground purposes,"* and tents or even buildings of a permanent character, if erected for the purpose of carrying on a camp meeting, and if actually used for that purpose, would in no way violate the restrictive covenant. In other words, the camp meeting was the center around which the whole Ocean City proposition was to be built. The entire plan was organized and

managed by Methodist ministers and laymen who were interested in establishing on the southern New Jersey coast a resort similar to Ocean Grove on the north Jersey coast. There was evidently no thought of any restriction of the lands in question for public use, or that any purchaser of lands elsewhere in Ocean City should acquire any rights of light, air, prospect or public user. The lands in question could have been entirely covered with auditoriums, concert halls, business offices, cottages or tents provided they were directly connected with the camp meeting project, without any violation whatever of the alleged restrictive covenants.

On page 22 of the appellant's brief, counsel seems to have entirely lost sight of the above facts, and to have treated the camp ground question as having been an inducement used to sell lots on the theory that the lands between 5th and 6th Streets would be maintained as a public park or square.

The map which was offered in evidence and marked "Exhibit D. M. 4" (State of the Case p. 387) shows most clearly the exact situation as regards the lands of these defendants. The lands of the defendant, Moore, are located partly above and partly below the high water line, but there have been no buildings or other structures erected on any part of said lands, with the exception of a bulkhead which would not in any case violate the restrictive covenant. The lands of the defendant Cresse, are also located partly above and partly below the high water line. Nothing has been erected above the high water line, with the exception of two wooden approaches which provide facilities for entrance and exit, and which, it is admitted, do not violate the restrictive covenant. An examination of said map shows that the entire building, which is a substantial one and was built in 1906 at a cost of about $6,000, is not only located entirely below the high water line but also that a large part of said building is even below the mean low water line of the bay.

The questions involved in these cases, as a whole, are four in number:

First.—Did the maps, publications, oral statements, etc. of the Ocean City Association, its officers or agents, impose a restrictive covenant upon any of the lands between 5th and 6th Streets, limiting the use of said lands to camp ground purposes?

Second.—Did such restrictive covenant, if found to exist, apply to lands formed by accretion?

Third.—Did such restrictive covenant, if found to exist, apply to lands west of Bay Avenue and above the high water line of the bay?

Fourth.—Did such restrictive covenant, if found to exist, affect the riparian lands below high water line at the time of obtaining the riparian grant from the State?

The learned Vice Chancellor answered the first three questions in the affirmative, and the last in the negative.

Although a determination of the first question is fundamental, it will doubtless be fully discussed by counsel for other parties, and therefore will not be considered in this brief.

These defendants are particularly concerned with the answers to the third and fourth of the questions set forth above as follows:

"*Third.*—Did such restrictive covenant, if found to exist, apply to lands west of Bay Avenue and above the high water line of the bay?"

The position of these defendants is that the maps which must form the foundation of the alleged restrictive covenant do not affect lands west of Bay Avenue. (See Exhibits C 1 and C 2). An inspection of said maps shows that lands west of Bay Avenue are not shown on said maps

to be in any different condition between 5th and 6th Streets than the conditions elsewhere in Ocean City. On Exhibit C 1 the plotting only extends to a point 100 feet westwardly of West Avenue, which point is more than 600 feet eastwardly of Bay Avenue. On Exhibit C 2 all the lands west of Bay Avenue are unplotted not only between 5th and 6th Streets but also northwardly and southwardly so far as the map extends.

> "*Fourth.*—Did such restrictive covenant, if found to exist, affect the riparian lands below high water line at the time of obtaining the riparian grant from the State?

The learned Vice Chancellor in his conclusions determined that the restrictive covenant embraced the upland west of Bay Avenue and extended to the high water mark. He held, however, that said restrictive covenant did not apply to lands below high water mark. In view of the decisions of the courts of this State and of the United States, which decisions are considered in detail in the opinion of the learned Vice Chancellor, it is submitted that his determination that the restrictive covenant could not possibly be so stretched as to extend to the lands which were below high water mark at the time of the filing of said map and obtaining from the State the riparian grant of the same, is sound law and is in accord with the great majority of decided cases. These cases are so well known to your Honors that it seems scarcely necessary to refer to them in detail.

Hoboken vs. Penna. R. R. Co. et als., 124 U. S., 656, has been accepted as authority for the position that the lands below high water mark in the navigable waters of the State of New Jersey are the absolute property of the State. This finding has been approved and followed in all of our courts whenever the matter has come squarely before them.

In the head note to *Atlantic City vs. New Auditorium Pier Co.*, 18 Dick., 644, the position taken by our courts on this question is most succinctly stated, as follows:

> "3. An owner of lands bordering upon high water mark in the tide waters of this State, who has not obtained the State's title to the lands lying in front of his property and below high water mark, has no power to charge the latter with any easement which will be forceful against a subsequent grant by the State of its title in those lands."

In *Evans vs. New Auditorium Pier Co.*, 18 Dick., 674, it was expressly held that the grantor of the upland who had imposed a building restriction upon the same in a deed given by himself, had no equity to restrain the erection of a structure below high water mark, which, if built above said high water mark, would have admittedly been a violation of the restriction.

In *City of Camden vs. McAndrews & Forbes Co.*, 56 Vr., 260, this court expressly ruled that an owner could not dedicate to public use streets over lands which he does not own; and that the subsequent extension of his ownership over the land in question would not confer any efficacy on a map or deed based thereon so far as constituted a dedication of the lands below high water mark.

It is also important to know that in his conclusions in the case of Mary A. T. Riley (substituted in the place and stead of Henry Bradley) complainant, which is one of this group of cases now before this court, in which case demurrers filed on behalf of these defendants were sustained. Vice Chancellor Stevens in his conclusions filed Sept. 20, 1912 uses the following language:

> "If it is proper to pass upon the question of the claim that lands under water, within the lines of Fifth and Sixth Streets, extended, are subject to the ease-

ment, I may state that it seems to me very clear that they are not."

It is ingeniously argued, however, that because the State's riparian grant passed through the Ocean City Association the original covenantor, riparian lands should be subject to the restrictive covenant. This could only be upon the ground of estoppel, and there is no proof whatever to support the contention that at the time the representations regarding the Camp Ground Square were made there was any thought in the mind of any one of acquiring the State's grant to the riparian lands, or of extending the restrictive covenant over the same. If we accept the broadest possible interpretation of the general statements made on behalf of the association that this square should be kept open from bay to ocean, such a description could not be held to contemplate control over the riparian lands of the State below high water mark. Although the grant from the State was made to the Ocean City Association, the latter never had any beneficial interest in the same.

So far at least as these defendants are concerned, and I believe the same applies to all defendants holding riparian grants, the entire consideration for said grants was paid by the individual defendants. Nothing whatever was paid by the Ocean City Association, which was a mere conduit for the transfer of the title to riparian lands from the State to the present owners.

The complainant asks for a mandatory injunction directing the removal of the substantial boat house which stands wholly upon the riparian portion of the Cresse lands. It is in evidence that the Cresse lots were purchased from the Ocean City Association by several deeds between 1906 and 1908, and that the consideration paid therefor was $3,200 in cash. It is further in evidence that an additional sum of $600 was paid for the State's riparian grant; that $2,300 was expended in building the bulkhead, filling, grading, making walks, etc.; that in the summer of 1906 a

combination cottage and boat house was built at a contract cost of $5,500. The total amount of money thus invested in the Cresse property was more than $11,600. The complainant admitted that he knew the Cresse boat house had been there for four or five years. (State of the Case p. 272). As a matter of fact, the boat house was built and completed in the summer of 1906. Under these circumstances, even if the complainant were entitled to insist upon the removal of the Cresse boat house had he taken prompt action in regard thereto, the fact that he admittedly slept on his rights for four years after the building of the same, would certainly constitute a sufficient bar to mandatory relief.

The position of these defendants is the same as was taken on their behalf in the Court of Chancery, namely, that the restrictive covenant in question, if valid at all, did not extend westwardly of Bay Avenue, and that neither the upland west of that avenue nor the riparian lands connected therewith are subject to any restrictive covenant or condition whatsoever.

Respectfully submitted.

J. FITHIAN TATEM

Counsel for Henry D. Moore and
Cecilia H. Cresse

Defendants-Respondents

NEW JERSEY COURT OF ERRORS AND APPEALS

Between

Mary A. T. Riley (substituted in the place and stead of Henry Bradley), *Complainant, Appellant and Cross-Respondent,*

and

Ocean City Association, et als., *Defendants, Respondents and Cross-Appellants.*

William G. Carroll, et als., *Complainants, Appellants and Cross-Respondents,*

and

Ocean City Association, et als., *Defendants, Respondents and Cross-Appellants.*

William E. Bridgewater, *Complainant, Appellant and Cross-Respondent,*

and

Ocean City Association, et als., *Defendants, Respondents and Cross-Appellants.*

On Appeal and Cross-Appeal.

BRIEF OF MARY A. T. RILEY, WILLIAM G. CARROLL, ET ALS., AND WILLIAM E. BRIDGEWATER (Complainants), Appellants and Cross-Respondents.

Preliminary statement.

At the outset, in order to avoid confusion, we deem it advisable to state that the defendants, Lewis M. Cresse and Cecilia H. Cresse, his wife, and Henry D. Moore, demurred to the bills filed by Henry A. Bradley and William G. Carroll on the ground that said bills were multifarious. These demurrers were sustained. These defendants, however, answered the bill exhibited against them by William E. Bridgewater. The contention raised by the demurrers that the bills demurred to were multifarious did not, of course, affect the merits of the case, while the decision in the Bridgewater case, wherein said defendants answered the bill, is, and will be, dispositive of the case upon its merits.

STATEMENT OF THE CASE.

The present cases come before this court on appeals prosecuted by the several complainants and on cross-appeals by the Ocean City Association and Atlantic Land Development Company, common defendants in each of the three cases. The following brief presents the case of the complainants on appeal and is also in answer to the contentions of the defendants in their cross-appeals.

The facts in the case.

The bills in these cases, which were tried together, were filed for the purpose of enforcing the dedica-

tion by the Ocean City Association of certain lands in Ocean City, extending from the bay to the ocean, between Fifth and Sixth Streets, and commonly known as the "Camp Ground." These same lands have been the subject of much prior litigation, and were declared to have been dedicated in the cases of *Lennig vs. Ocean City Association,* 41 N. J. Eq. 606 (1886), and *Bridgewater vs. Ocean City Railroad Co.*, 62 N. J. Eq. 276 (1899), affirmed 63 N. J. Eq. 798. The facts relating to the dedication are set forth in the bill, and may be briefly summarized as follows:

The lots of the complainant and defendants, and the park or camp ground above mentioned, together with a larger tract of land now constituting Ocean City, New Jersey, were at one time owned in one tract by the Ocean City Association, a corporation of this state, organized in 1879 by certain ministers of the Gospel, whose declared object was "the establishment of a summer seaside resort founded on Christian principles, and affording religious privileges as well as healthful recreations." (*Ex. C9, S. of C. p.* 405.) The association offered its lots for sale, and published maps on which were exhibited plans of the lots and streets, dividing the property into parcels for private purchasers.

The association made its first public sale of lots on May 25th, 1880. This sale had previously been advertised by a publication called "The Ocean City Journal. (*Ex. C*14, *S. of C., p.* 418.) In this paper are set forth the names of the officers of the association. The first page is devoted to the advertisement of the sale and a description of the property, its advantages and attractions. It refers to the camp ground in the following language:

"The space allotted to the encampment is 500

> feet wide, from the thoroughfare to the ocean, with plenty of tenting ground. It is contemplated to have all the appointments desirable to render the camp meeting a real feast to the thousands who may congregate there for Christian worship. * * * * "

At the sale William B. Wood, the president of the association, in the presence of its officers and directors who were seated around a table with him, arose and made public announcement of the permanence of the park, and stated, that by reason of the prospect afforded by it the lots bordering thereon should bring an enhanced price. Indeed, he suggested double the price of other lots. Reference was also made to lithographed copies of maps which had been distributed among the bidders, and which showed the camp ground open from bay to ocean. Mr. Wood stated that the map correctly disclosed the purposes of the association, and that all future deeds and maps would be drawn in accordance therewith. One of these maps was offered in this case as Exhibit C15 and will be found in the book of maps. At the second sale occurring the following month the same announcements were made under similar circumstances, the president declaring in the presence of the officers and directors that the space between Fifth and Sixth Streets and from bay to ocean would be kept forever open. (*Testimony of Wm. Bridgewater, pp.* 253, *et seq.*

On June 7th, 1880, the association recorded a map in the office of the clerk of Cape May County entitled "Section A Ocean City." (*Ex. C1, Book of Maps.*) The map was dated May 22nd, 1880, and showed an open space between Fifth and Sixth Streets, marked "camp ground," in the centre block,

with the other sides of Fifth and Sixth Streets plotted for sale as town lots.

It would be impossible for the association to contend that the acts of their board of managers above noted are not binding upon it. Such a contention meets absolute refutation in the resolution passed at the stockholders' meeting on August 31, 1880, and which reads as follows:

> "Absalom Cox presented the following resolution. Resolved that this annual meeting of the stockholders of Ocean City Association, in view of the prosperity of said enterprise, endorse and confirm all the acts and administration of the board of managers for the year just closed. Unanimously adopted."
>
> (*Ex. C*39, *S. of C., p.* 485.)

In 1881 the association issued a pamphlet called the "Ocean City Annual," which was scattered broadcast, and contained the first annual report of its president under the head of "Work Done." (*Ex. C*16, *S. of C., p.* 419.) It declared that "the camp ground block extending from the meadow to the ocean, and from Fifth to Sixth Streets, has been cleared of underbrush, drained and some of the hills leveled." (*S. of C., p.* 420.) It also referred to the map of section A, comprising 995 lots, "besides the camp ground, tenting ground and parks." This annual repeated the publication of the dedication in the following words: "The space allotted to the encampment is 500 feet wide from the thoroughfare to the ocean." (*S. of C., p.* 422.)

It may not be impertinent to note also that the report of the president contained the following adjuration:

> "I cannot, therefore, close this report with-

> out calling your attention to the importance of maintaining, in all their integrity, the great moral and religious principles laid down at the beginning as the foundation of this movement. That something like a spirit of speculation should be awakened by the inauguration of this enterprise is not to be wondered at. But Ocean City was not originated in a spirit of speculation."
>
> (*S. of C., p.* 420.)

The sincerity of this prayer was to be tested during the next few years.

The intent of the association to dedicate this entire tract between the bay and ocean is further revealed by the following resolutions taken at random from the minute books of the association:

> "March 1, 1881. (*S. of C., p.* 485.)
>
> On motion, the superintendent was instructed to grade the camp ground.
>
> "April 5, 1881. (*S. of C., p.* 485.)
>
> On motion, Resolved that we rent the ocean front per foot, *except in front of the camp ground,* for strand privileges."
>
> "April 4, 1882. (*S. of C., p.* 485.)
>
> The committee on park reported that grass seed had been sown and rolled, the flower beds made and evergreens planted, and as soon as the weather would permit the flowers would be set out."
>
> (*Ex. C*39, *S. of C., p.* 483.)

In 1882 the association again published the "Ocean City Annual," referring to its previous publication, and stating the additional attractions and advantages that had been developed. (*Ex. C*17, *S. of C., p.* 421.) It also contained the following:

"The camp ground park, extending from Fifth to Sixth Streets, and from Asbury to Wesley Avenues, has been fully graded. It has also been laid out into plots formed by a system of converging walks, suitable to the formation of the park and the location of the auditorium. The walks are fifteen feet wide and have all been nicely graveled. Over 400 trees have been planted in and around the camp tract, and they are all doing well. It has been decided to beautify and ornament the park and make it the center of attraction. When our plans for ornamentation have been complied with, it will be 'a thing of beauty,' and we trust, 'a joy forever.' That part of our camp ground lying between Wesley Avenue and the ocean has been graded, and preparations made for opening a gravel walk from the auditorium to the ocean front, where the surf meetings are held. The part lying between Asbury Avenue and the bay has also been cleared and graded."

(*S. of C., p.* 422.)

Then follows a printed plan of a portion of the camp ground park referred to. On this plan are printed the words "park," "auditorium" and "grove," with the converging walks above mentioned.

On April 17th, 1883, the association filed another map in the Cape May County clerk's office, showing sections A, B and C of the tract. (*Ex. C2 see Book of Maps.*) On this map the space between Fifth and Sixth Streets is indicated to be open from the thoroughfare to the ocean, making seven blocks. The laid-out streets cross this open space. All the blocks on Fifth and Sixth Streets are plotted into town lots,

except the seven blocks of camp ground, park, &c., which are not so plotted. Two of the blocks within this open space are marked "park," one of them is marked "grove," and the block between Wesley and Asbury Avenues and Fifth and Sixth Streets has the words "auditorium" and "camp ground." The other three blocks, between West Avenue and Bay Avenue, are indicated as open spaces, but with no words upon them.

But at the same time that the association was thus publishing to the world the dedication of the camp ground it was secretly preparing to use itself what it had already given the public. Thus we find in the minutes of the meeting of April 3, 1883, the following resolution in evident anticipation of making profit from leases of the dedicated land:

> "Committee on form of lease for rental of auditorium park lots reported work in the hands of the printer. On motion, the report was accepted."
>
> (*S. of C., p.* 486.)

In 1883 the third report of the association repeated the assertions and advertisements relating to the park quoted above. (*S. of C., Exh. C*24, *p.* 426.)

The association's understanding of its obligation to the public involved in the dedication is further revealed by a resolution passed at the meeting of February 5, 1884, to the following effect:

> "On motion, the locating of the government life saving station is left to the superintendent with instructions that no house be allowed on the camp ground block."
>
> (*S. of C., p.* 486.)

In 1884 the "Ocean City Annual" offered the

fourth and fifth reports of the association combined. (*Ex. C*23, *S. of C., p.* 424.) This publication, signed by the president, W. B. Wood, is of interest because of the following reference to the camp ground:

> "Our beautiful park has continued to be a center of interest. Its gravel walks, grass plots, flower beds, trees and vases, together with its size and location, compel all to admit that it has no equal at any other similar resort. By constant attention it has been kept in good condition. When the young trees have grown to a fair height and a few tasty pavilions have been erected in various parts it will be still more attractive."
>
> (*S. of C., p.* 425.)

This statement was published in 1884. It was the last word emanating from the association that advertised the attractions of the camp ground. About this time the attitude of the park's founders seems to have undergone a change. No longer desirous that the camp ground should furnish a "feast to the thousands who may congregate there for Christian worship," the minds of its creators seem to have bent themselves to an appreciation of the great money value of the space thus recklessly sacrificed to the public. Henceforward we will find this organization, headed by ministers of the Gospel, whose proclaimed purpose was a resort "founded on Christian principles and affording religious privileges," exercising a resourceful ingenuity to devise means to escape its honest obligation to the public. We shall see the religious association fade into the profit-making corporation, the evangelist become speculator.

As early as 1882 the association had attempted to

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lease portions of the camp ground for a term of years, for the erection of wooden cottages thereon. Its effort was enjoined in the case of *Lennig vs. Ocean City Association, supra,* decided in 1886. From this time on the policy of the association resolved itself into a determined endeavor to be rid utterly of the public obligations with which it had charged itself. In the face of its unequivocal dedication of the land and its repeated assertions of that fact, it completely reversed its position, repudiated its declared intentions, and denied the very obligations it had created. We find it taking this stand in a resolution adopted at a meeting of the association on April 9, 1886. This solemn abnegation of its contract duty was framed in the following words:

> "Whereas, it appears that the word 'park' was written on a certain map of the land of this Association at Ocean City, made by William Lake and filed of record in the Clerk's office of Cape May County at Cape May Court House, April 17th, 1883, entitled 'Map of Sections A. B. & C.', without the knowledge or authority of the Association, and without any thought or purpose on the part of this Association or any of its officers of dedicating the land so designated as a park to public uses forever;"
>
> "And whereas, misconception and misunderstanding may arise in relation to the use of the word 'park' if lots are sold and conveyed by said map:"
>
> "Therefore, be it now Resolved by this Association that the said map be rejected by this Association, and that no lots shall be sold or conveyed by or according to it, but that a new map or maps of the same grounds be prepared and

filed to be used by this Association in making sales and conveyances."
(*S. of C., p.* 486.)

In 1889 the association erected two dwelling houses within the reserved area which were afterwards removed.

On November 26th, 1896, the association conveyed lots 125 and 127 to Charles Matthews, and later a dwelling house was erected thereon. (*Ex. C3, S. of C., p.* 400.) This is now known as the Buchanan property. In 1901 an action of ejectment was commenced by the city of Ocean City against the predecessor in title of Mary J. Buchanan, which for some reason was not concluded. All the attorneys in this suit are now dead, and it is impossible to ascertain the causes inducing this result.

On December 29th, 1896, and on May 20th, 1899, the association conveyed lands within the reserved area to the Ocean City Railroad Company for station purposes. This brought on the case of *Bridgewater vs. Ocean City Railroad Co., supra,* in which the erection of the station was enjoined.

On June 24th, 1897, there was a conveyance by the association of lot 117 to Alfred K. Scholl, who erected a dwelling house thereon. (*Ex. C6, S. of C., p.* 403.) This property was conveyed by Scholl to Mary J. Lake. (*Ex. C7, S. of C., p.* 404.) In 1901 an action of ejectment was brought by the city against Lake and the association, and the dwelling house was removed.

On December 1st, 1897, the association conveyed to Henry D. Moore a lot between Bay Avenue and Sixth Street, and within the reserved area, and subsequently conveyed riparian rights acquired by the association between the same streets.

On September 12th, 1905, the association made a conveyance to Lewis M. Cresse and wife of lands within the reserved area, and also of certain riparian lands fronting on the bay side and between Fifth and Sixth Streets.

On April 12th, 1906, the association conveyed to Charles W. Masland lands between Fifth and Sixth Streets, and within the reserved area, and also riparian lands acquired by the association immediately adjoining on the bay side.

On May 16th, 1909, the association by four deeds conveyed all the lands on the ocean side of Atlantic Avenue for $50,000, to the Atlantic Land Development Company, for the purpose of division into lots, and for the erection of permanent structures. It took back purchase money mortgages for the full consideration of $50,000. (*Ex. C8, S. of C., p.* 404.)

The association also made the following additional conveyances within the reserved area:

July 18th, 1903, to the Centenary Fund and Preachers' Aid Society, two lots.

August 10th, 1903, to James E. Lake, one lot.

August 12th, 1903, to Wesley Lake, two lots.

March 11th, 1907, to Ocean City Tabernacle Association, the "Auditorium Square."

August 19th, 1907, to William Watson Adams, one lot.

October 30th, 1909, to S. H. Hahn, one lot.

Probably the most determined attempt made by the Ocean City Association to free itself from this dedication was by an application on the 10th of October, 1904, to the city council of Ocean City, proposing that the council should co-operate with the association in removing the restrictions on the camp ground. This resulted in the passage of an ordinance which was approved on October 11th, 1904.

(*Exs. C*31, 32, 34, 35.) This ordinance was afterwards set aside by the Supreme Court in the case of *Ocean City Land Co. vs. Ocean City,* 73 N. J. L. 493, so that the only result of the association's action was to give full notice to all residents of Ocean City of the facts pertaining to the dedication.

A study of the minutes of the meetings of the Ocean City Association will throw a great deal of light upon their understanding and designs. In this brief we have only referred to some of the resolutions passed. Among the exhibits, however, will be found a digest of the most pertinent of these resolutions. See *S. of C., pp.* 483-488.

Notwithstanding the adjudications of the court of last resort that the lands in question were dedicated from the bay to the ocean for park and camp meeting purposes, and that the association had engaged to keep them open between the bay and the ocean forever, the association has evidently determined that if there is any possible way of repudiating its obligation it purposes to do so. It is evident that it is the settled policy of the association to attempt to rid itself of this particular obligation, and to deny in every suit in which it is attempted to enforce the dedication that the lands were ever so dedicated. It, no doubt, determined to make occasional conveyances from time to time in the hope that the same would not be observed; to erect an occasional dwelling house within the reserved area in the hope that their right to do so might not be litigated, and then in course of time to urge either laches or acquiescence in the abandonment of the dedication.

Their latest inspiration is revealed in the suits now before this court. By purchasing from the state the lands below the waters of the bay and the ocean, and thus beyond the exact limits of the dedication,

they hoped to construct over the water such buildings and other obstructions to the view—or to sell to others who would do the same—as would effectually destroy the essential worth and beauty of the park. Thus the association planned to invite the abandonment for which it has schemed so long. It was playing for a large stake, a matter, no doubt, of several hundred thousand dollars, and the amount involved and the possible profit to the association has so aroused its cupidity that no sense of fair dealing or regard for its obligations has been sufficient to restrain it. Its purpose palpably is to tire out the individual litigant.

While the dedication of this tract has been established by prior adjudication, the prayers for relief in those cases covered only the particular instances of violation which it was sought to restrain, as the erection of a railroad station, &c.

The purpose of this litigation, therefore, was to have the definite adjudication of a court of competent jurisdiction, that all of the lands within the reserved area have been dedicated, and to restrain the association and its grantees from ever making any conveyances except subject to the terms of the dedication. As the dedication rests partly upon parol, and as it was made many years ago, but few witnesses are living today who can testify as to the representations made at the sale. It was, therefore, essential that this question be settled once for all and the rights of the parties forever determined.

The relief sought and granted.

On proof of these facts, the complainants asked for a decree establishing the dedication over the entire

tract between Fifth and Sixth Streets and the bay and ocean, and as well over the subaqueous lands under the bay and ocean and between the lines of Fifth and Sixth Streets extended. The complainants further asked that the defendants be enjoined from conveying any part of the dedicated area held by them in defiance of the dedication, or from making any use thereof derogatory thereto; and that those defendants who had erected buildings within the dedicated area, be required to remove the same therefrom.

The learned Vice-Chancellor who heard the case, in his conclusions (reported in 85 *N. J. Eq.* 379), declared that the dedication extended over the entire tract, as well as over lands acquired by accretion from the ocean or bay, but that it did not extend over riparian lands acquired by grant from the state. All the defendants were enjoined from future conveyances, building operations and any acts which violated the dedication. None of the defendants, however, were required to remove their buildings from the restricted area. The structures of Moore, the Cresses, and Hann are all below the high water mark and thus not subject, in the view of the Court, to the operation of the dedication. The defendant, Mary J. Buchanan, is the owner of a large boarding house within the restricted area, but the learned Vice-Chancellor held that as against her the complainants were in laches and barred thereby from any right to demand the removal of this structure. The boathouse of the defendant, Masland, was partly above and partly below the high water mark and the Court held that the complainants were likewise estopped by their laches as against this defendant from insisting on his removal.

The decrees were drawn in accordance with these findings.

Grounds of appeal.

The appeal of the complainants is directed to three matters of relief.

First. From so much of the decree which refuses to extend the dedication beyond the original high water mark (except in the cases of accretion).

Second. From so much of the decree as excepts, from the restraint imposed, the building of the defendants Masland, Cresse and Moore.

Third. From so much of the decree as dismisses the bill of complaint as against the defendant, Mary J. Buchanan.

The appeals of the cross-appellants, Ocean City Association and Atlantic Land Development Company, are practically identical, and raise the alternative points that no dedication exists, and that if it does exist, those defendants have done nothing to violate the rights created under it.

An orderly arrangement of our argument demands that the several points of appellant and cross-appellant be considered in the following order, and we may summarize the questions of law hereinafter treated as follows:

I. That the acts of the Ocean City Association in 1880 and thereafter constituted a dedication of the tract in Ocean City between Fifth and Sixth Streets and the ocean and bay for park purposes and especially bound the defendant and its assigns against obstructing in any way the view or passage of air within the restricted area. The opposite contention

is the substance of the cross-appeals prosecuted by the defendants, Ocean City Association and Atlantic Land Development Company.

II. That the dedication so created bound the Ocean City Association and its assigns not to use their adjoining land, and particularly the lands below the high water mark of the ocean and bay immediately contiguous to the dedicated area, in such a way as to injure or impair the enjoyment of the dedication. This contention upholds the position of the learned Vice-Chancellor in so far as he regarded accretions as subject to the dedication, and opposes his decree in so far as he refused to hold the defendants for anything done beyond the original high water mark on lands acquired from the state.

III. That the complainants were not guilty of laches against the defendants Masland, Cresse, Moore and Buchanan, and that these defendants should be required to remove their structures from the restricted area.

I. THE DEDICATION AND ITS INFRINGEMENT.

As Vice-Chancellor Backes declared in his opinion (*S. of C., p.* 217)—"the fundamental rights upon which the complainants in these cases rest their claim to relief are established by the judgment of the Court of Errors and Appeals in *Lennig vs. Ocean City Association,* 41 N. J. Eq. 606, and *Bridgewater vs. Ocean City Railroad,* 62 N. J. Eq. 275 (affirmed 63 N. J. Eq. 798)."

We have already reviewed in some detail the story of the dedication upon which the suits of these complainants are based. The notice of appeal of the Ocean City Association states as one of the reasons for reversing the decree that:

> "There is no proof in the case that the whole of said lands and premises were dedicated or set apart to the use, in the alternative, as a camp meeting ground or park."
>
> *S. of C., p.* 8.

Thus, this defendant, thirty years after the acts of dedication, again makes denial of the obligation, and attempts the contention that, even if the dedication were proven, it cannot be regarded as extending over the whole of the tract in question.

It is true that in the *Lennig* and *Bridgewater* cases only portions of the tract between Fifth and Sixth Streets and the bay and ocean were affected by those decisions, it being unnecessary for the Court to make any adjudication regarding the entire tract. This Court, however, in adopting the opinion of Grey, V. C., in *Bridgewater vs. Ocean City Association,* 63 Eq. 798, clearly indicated its opinion that the dedication extended from bay to ocean:

> "The large map containing Sections A, B, and C of the association's tract delineates the camp ground and park as open space *from the ocean to the bay* with all the blocks on the adjoining side lines of Fifth and Sixth Streets plotted into town lots. This map was filed and recorded April 19, 1883, in the Cape May County Clerk's office."
>
> *Ibid, p.* 285.

> "It is straining credulity too far to ask that, in the face of all the proofs here offered, it be

believed that there was in truth no devotion of the lands between Fifth and Sixth Streets *from the bay to ocean* for the purposes of camp ground and park."

Ibid, p. 287.

We do not believe that this Court will reverse its own view so definitely expressed in the *Bridgewater* case; and we shall not attempt to anticipate our opponents' argument on this point.

II. THE BURDEN UPON THE RIPARIAN LANDS.

The complainant's prayers for relief with regard to the extension of the covenant over the lands lying beyond the original high-water mark relate (a) to accretions, and (b) to the subaqueous lands subsequently acquired from the state.

(a) Extension of covenant over accretions.

The Court below dealt briefly with the question as applied to accretions, holding that:

"It is settled in this state that where land located on tidal waters is dedicated to public uses to afford a means of access to the water, the public's easement extends to the water over lands acquired by reclamation or accretion."

S. of C., pp. 218-219.

The Vice-Chancellor cites the cases of *Jersey City vs. Morris Canal Co.*, 12 N. J. Eq. 547; *Newark Lime*

and Cement Co. vs. Newark, 15 N. J. Eq. 64 (Ch. 1862); *Hoboken Land and Improvement Co. vs. Hoboken,* 36 N. J. L. 540, and *Seabright vs. Algor,* 69 N. J. L. 641 (E. & A. 1903).

These cases afford conclusive authority on the question as it relates to accretions and render further discussion on our part unnecessary.

(b) Extension of covenant over lands acquired from state.

This is the chief matter of the complainant's appeal. The facts on which our contentions are based may be briefly summarized thus:

A land company, desirous of marketing its seashore property, sets off a large tract of land extending from bay to ocean, which it publicly announces will be reserved forever as a park and camping ground. The chief attraction in this promise lies in the adjacency of the park land to the bay and ocean, whereby an unbroken view of the water and the free sweep of the salt air is assured; and this consideration induces the company to charge enhanced prices for lots bordering the tract. Had the company at the same time announced that it would erect a high board fence along the high-water lines of the bay and ocean, the offer would have attracted no one. But the promise of the land company is unconditional. At the same time, it holds an option, given it by the laws of the state, to acquire full title to the lands under the water that border the tract on either side. Should it exercise its option and acquire these lands it would be immediately possessed of the means of effectually destroying the essential worth of its park. For to shut this tract off from its contact with

navigable water and to shut off the view therefrom would be to withdraw at once the chief consideration that induced the purchase of lots bordering upon it.

Therefore, we say that the land company, possessing a preemptive right to acquire the state's riparian rights and the means of making good its promise to keep the park open from bay to ocean, and having sold its lots on the faith on such representations, and having been paid an increased price therefor, cannot now be permitted to rob its grantees of that which it sold them, viz., the right to the enjoyment of a park always to be kept open from bay to ocean. If the land company had frankly said, "We only intend to dedicate to the high water mark, and mean to acquire the riparian rights, and then exclude the lot purchasers from the bay and the ocean and destroy the view of the water"—is it likely that any one would have been induced to pay any increased price for such an evanescent privilege? The association sold its lots on the strength of the representations made and must be regarded in equity and good conscience as having agreed and covenanted with its purchasers that no act which it might do on these riparian lands, should it ever own them, would injure or injuriously affect in any way the full enjoyment of the park which it had agreed to maintain. If the company has now acquired these riparian lands and has obstructed their view, it should be denied the right to assert that it made no promise with regard to them, or to set up in any form the fact that this land below high tide was not in like manner equitably bound and restricted by the devotion of its upland to park purposes. This is the application of the doctrine of equitable estoppel.

It happens that the land company, after acquiring the state's title to these riparian lands, conveys them

to others. This is some years after the original devotion of the land for park purposes, but the grantees from the land company take with full notice of their grantor's covenant. They take, therefore, with knowledge that there exist over these riparian lands certain equitable duties and restrictions, which forbid their use in any way which might impair the value of the park, or diminish the rights of enjoyment therein which their grantor's covenant had created. To take these lands with full knowledge of the just rights of others therein, and then proceed to violate those rights is, in equity, we say, an unconscionable thing. It is opposed to the policy that protects and enforces restrictive covenants designed for public improvement.

It should be remembered throughout our discussion that the dedication of the tract as a "camp meeting ground" afforded no inducement to the purchasers. On the contrary, it is probable that they would have been repelled by the prospect of adjoining a place devoted to congregations of great crowds of people. What attracted purchasers and rendered the association's lots marketable was the dedication of the tract in question as a park, a space which would assuredly remain open to view and air forever, and which would permit the public to reach navigable water on both the ocean and bay.

Grounds for relief sought.

In the following pages, we shall uphold the following contentions:

(1) That the defendants are estopped from denying their duty to maintain the riparian lands ac-

quired by grant from the state, free and clear of all obstructions that bar the public's access to navigable water and obstruct the view over the water from the park.

(2) That by the authority of *Hoboken Land and Improvement Co. vs. Hoboken* and other New Jersey cases, public rights originally created as bordering upon navigable waters will be continued over reclaimed land or structures of any sort which extend the contact of navigable water.

(3) That the policy of upholding restrictive covenants in this state requires that the covenant of the Ocean City Association be enforced against it and its grantees so as to prevent them from obstructing the view of the public over the waters of the ocean and bay and the public's access thereto by any structure erected on the riparian lands acquired from the state.

The principle of equitable estoppel referred to above applies equally to the defendant, the Ocean City Association, and to the other defendants, grantees from it with notice; for estoppel runs as well against the successors in title of the party originally estopped.

> "The privies of the grantor or grantee are estopped to the same extent as the original party to the deed and may in like manner take advantage of estoppel. The estoppel of a grantor as to an after acquired title applies against those in privity with him the same as in other cases of estoppel."
>
> 16 *Cyc.* 715.
>
> *Moore vs. Rake,* 26 N. J. L. 574, 587 (E. & A. 1857).

The policy of law that upholds and enforces restrictive covenants applies equally to the Ocean City Association, and to the other defendants, but we shall discuss it with particular relation to the latter.

The question thus presented is an important one. It is novel in the sense that the exact factual situation has never before been brought before a court for adjudication. It is not novel in the sense that judicial precedents and established principles of equity are not at hand to determine its decision.

The application of estoppel.

As defined by Pomeroy:

> "Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity from asserting a right which might perhaps have otherwise existed, either of property, or of contract, or of remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquired some corresponding right, either of property, or of contract, or of remedy."
>
> 3 *Pomeroy, Eq. Jur. p.* 1421.

The question herein presented is not peculiar in principle to riparian lands. The same situation would arise with regard to adjacent tracts of terra firma. Suppose a suburban land owner has an option to buy a garden lot adjoining his property. He sells his own lot with the covenant that the garden and open space adjoining shall be forever preserved. Later he exercises his option and acquires title to the

adjoining lot. Can it be said that he does not, on the instant of his purchase, become bound to the observance of his covenant? If this is so, does it not follow that the grantee from him, who takes with full notice of the covenant of his grantor, is not in like manner bound? The authorities are agreed that one can by agreement create rights in another's property which when later acquired will be enforced against him who created such rights.

> "If a person who is not the owner of land, or who has a defective title, sells it with terms imparting warranty, any title, which he subsequently acquires, will, by way of estoppel, inure to the benefit of the grantee. In such a case, to allow the grantor to set up a subsequently acquired title, would be to allow him to deny a fact that he has affirmed in his deed, upon the faith of which affirmation the grantee has parted with a valuable consideration. While it is sometimes said that this estoppel is odious and is not to be favored, it is, in fact, based upon the highest principles of morality and if it prevents the telling of the truth, or the assertion of a subsequent right, it has this effect only where its assertion would enable the grantor or his privies, to declare that a previous statement made by the grantor was untrue." * * * *
>
> "While a deed can operate only to pass at the time the title held by the grantor, yet if the parties to it intended that it should pass a greater estate than that held by the owner, he will, if he subsequently acquires such greater estate, be estopped from setting it up against his grantee." * * * "If a grantor conveys land by a deed containing covenants of general warranty, and if he afterwards acquires the title of ad-

joining property, he is estopped from claiming a right of way over the land which he has conveyed."

3 *Devlin on Real Estate, Sec.* 1281a.

"It is well settled that an agreement to charge, or to assign, or to give security upon, or to affect property not yet in existence, or in the ownership of the party making the contract, or property to be acquired by him in the future, * * * * does constitute an equitable lien upon the property so existing or acquired at a subsequent time, which is enforced in the same manner and against the same parties as a lien upon specific things existing and owned by the contracting party at the date of the contract."

3 *Pomeroy Eq. Jur., Sec.* 1230.

"It is quite true that a deed which professes to convey property which is not in existence at the time is, as a conveyance, void at law, simply because there is nothing to convey. So in equity, a contract which engages to transfer property which is not in existence cannot operate as an immediate alienation, merely because there is nothing to transfer. But if a vendor or mortgagor agrees to sell or mortgage property, real or personal, of which he is not possessed at the time, and he receives the consideration for the contract, and afterwards becomes possessed of property answering the description in the contract, there is no doubt that a court of equity would compel him to perform the contract, *and that contract would in equity transfer the beneficial interest to the mortgagee or purchaser immediately on the property being acquired.*

> This, of course, assumes that the supposed contract is one of that class of which a court of equity would decree the specific performance." * * * * "For if a contract be in other respects good and fit to be performed, and the consideration has been received, incapacity to perform it *at the time of its execution* will be no answer when the means of doing so are afterwards obtained."
>
> 3 *Pomeroy Eq. Jur., note to Sec.* 1288. Cites with approval *Holroyd vs. Marshall,* 10 H. L. Cas. 191.

In *Moore vs. Rake,* 26 N. J. L. 574, 587 (1857), the Court of Errors and Appeals declared that:

> "An instrument which legally creates an estoppel to a party conveying, he having no estate at the time, but acquiring a title afterwards by descent or purchase, does, in fact, pass an interest and a title from the moment such estate comes to the grantor, and this principle applies equally against all others claiming in privity with the grantor."

This expression of the rule of estoppel is cited with approval and applied in *Vreeland vs. Blauvelt,* 23 N. J. Eq. 483; *Vulcan Detinning Co. vs. American Can Co.,* 67 N. J. Eq. 243, and *Tully vs. Taylor,* 94 Atl. 572 (N. J. E. & A.).

In the cases *sub judice,* the Ocean City Association sold its lots and made its profits on the strength of its promise to afford unrestricted view and air to the lots adjoining its park land. To permit it now to assume the contradictory position that it has a right to repudiate this promise as to the new land simply

because that land was not owned by it at the time of its original promise would be to disregard altogether the beneficent doctrine of estoppel.

Hoboken Land Co. vs. Hoboken.

The doctrine of estoppel which we invoke was applied to a similar situation in *Hoboken Land and Improvement Co. vs. Hoboken,* 36 N. J. L. 540. Numerous other decisions by our Courts deal with the question of whether a public right which extends to navigable water will be extended over reclaimed land. The cases *pro* and *con* have been cited in the opinion of the Vice-Chancellor. They are readily distinguishable and fail naturally into two distinct classes.

In the first class are those cases where the upland owner attempts to impose a burden upon the land below high tide, and the state later conveys such land to a third party. Here the rule is that the grantee from the state takes the latter's title unrestricted by any covenant of the prior upland owner, and the easement will not be extended over the new land. To hold otherwise would be to impugn the state's sovereignty and to limit its proprietary title. *Hoboken vs. Pa. R. Co.,* 124 U. S. 656; *Elizabeth vs. Central R. R. Co.,* 53 N. J. L. 491; *Evans vs. New Auditorium Pier Co.,* 63 N. J. Eq. 674; *Atlantic City vs. New Auditorium Pier Co.,* 67 N. J. Eq. 610.

In the second class are those cases where the upland owner attempts to burden the state's riparian land by easement and then himself acquires the state's title and either fills in or regrants to others. In these cases the easement is extended over the land acquired from the state. So holding are *Jer-*

sey City vs. Morris Canal Co., 12 N. J. Eq. 547; *Newark Lime and Cement Co. vs. Newark*, 15 N. J. Eq. 64; *Hoboken Land and Improvement Co. vs. Hoboken*, 36 N. J. L. 540; *Seabright vs. Algor*, 69 N. J. L. 641.

Camden vs. McAndrews & Forbes Co., 85 N. J. L. 260, cited by the Vice-Chancellor, did not relate to riparian lands at all and is not in point. There was no valid dedication in that case whereby the public could ever have reached navigable water and hence there was no question of extending a contact with the water when such contact never existed.

> "As respects the part of the described premises lying beyond such high-water line the claim is that Winslow Street was dedicated to high-water line, and the subsequent filling in under riparian grants or other authority carried the street to the new line of high water, under the rule laid down in Hoboken Land and Improvement Co. vs. Hoboken, 7 Vroom, 540. It was denied by the defendant that any dedication to the original high-water line had been shown, or indeed any dedication of Winslow Street west of Third Street; and the Judge by his action sustained this position."
>
> *Pp.* 261-2.

The learned Vice-Chancellor, in his opinion, cites the cases included above in the second group as authorities for the proposition that a dedication to high water extends over lands formed by reclamation or alluvial deposits, and then proceeds to cite the cases noted in our first group as denying these complainants relief as to lands obtained by grant from the state. To our mind, it is not possible to distinguish in principle between the extension of a public

right across land acquired by natural processes and the same extension over land acquired by the original covenantor from the state.

The distinction between the two classes above defined is marked and need not be long dwelt on. The rule in the first class is based on the supremacy of the state's title. In the second class, this title is fully recognized, but, after its transfer, the Courts hold, that the upland owner, by his covenant relating to these lands, is equitably bound to enforce that covenant over the new lands. The estoppel thus created follows the land after it leaves the ownership of the state's grantee and affects all who take with notice.

As our cases fall within the latter classification, we will take up in some detail the outstanding precedents in New Jersey.

In *Jersey City vs. Morris Canal Co., supra*, the associates of Jersey City had granted to the defendant company their water rights in the Bay of New York at the foot of a certain city street. They had previously dedicated the street to the public. The canal company extended its canal in front of the street and thus rendered contact with navigable water impossible. The city threatened to destroy the canal and suit was brought to enjoin such action on the ground that the dedication did not extend beyond its original bounds. It was held by the Court of Errors and Appeals (1859) that the dedication attached to the canal basin and fixtures. The Court cited the decision of *People vs. Lambert*, 5 Den. 9, a case in point, and concluded:

> "It is undeniable that before the erection of the works of the respondents, Hudson Street terminated upon the tide water, and that the space between that and the canal basin has been

> filled in by the canal company and others, either rightfully or wrongfully. * * * * The doctrine that when the shore-owner through whose lands a street comes to the shore, fills in in front of his land, and also in front of the terminus of the street, the public is entitled to the extension of the street as if the land filled in were an alluvian, is the reasonable doctrine and in strict accordance with principle."
>
> *Pp.* 557-8.

There was in this case a dedication of land to the water's edge coincident with the dedicator's ownership of the riparian land beyond the boundary of the dedication. The right to develop this riparian land is granted to a stranger who fills in and by so doing obstructs the public's enjoyment of its easement. The Court holds that his title derived from the original dedicator does not exempt him from the burden of the dedication. The decision is in point in principle with the cases *sub judice.*

In *Newark Lime and Cement Co. vs. Newark, supra,* (Ch. 1862), the city of Newark had dedicated a street sixty-six feet in width which extended over the Passaic River. The legislature appointed commissioners to build a bridge over this river and the city of Newark, when the work had been completed leased it to the commissioners. The bridge was thirty-three feet wide and the commissioners used the extra space for the erection of a guard-house which was entirely beyond the high-water mark. This house they conveyed to the plaintiff company by whom action was brought to restrain its removal in compliance with a city ordinance. The Court upheld the action of the city.

> "If the shore is extended into the water by alluvial deposits, or is filled in by the proprietor

> of the soil, the public easement is by the operation of law extended from its former terminus over the new land to the water. The owner of the soil in whom the title is cannot by filling in and thus extending his land toward the water obstruct the public right of way to the river. People vs. Lambert, 5 Den. 9."

This case was substantially on all fours with *Morris Canal Co. vs. Jersey City,* which it cited and followed.

In *Hoboken Land and Improvement Co. vs. Hoboken* (E. & A. 1873), *supra,* it was held that a street delineated on a map as extending to a public navigable river will be extended to the new water front obtained by filling in by legislative permission granted to the owner of the upland. The upland owner in this case was also the dedicator and the Court held him bound by his dedication on the grounds of estoppel. The facts on which the Court's decision was grounded are identical with those now presented save that the benefit of the dedication was claimed against the original dedicator instead of his grantee. There as here the riparian rights had been acquired *after* the dedication was created.

In the case of *Seabright vs. Algor, supra* (E. & A. 1903), the land owner, a corporation, obtained the state's title to land under water and then dedicated to public use a street having its designated terminus at the exterior line for solid filling. Subsequently, it conveyed its rights beyond this line and the grantee filled in and excluded the public from access to the water. It was held that the land so filled in was subject to the public easement.

These four cases are all alike in principle but the Hoboken case goes furthest and is a more exact pre-

cedent for the decision of the cases *sub judice.* The only difference, as we have noted, was that in that case the rights of the public were enforced against the actual dedicator and not against grantees from him. This, however, is a difference of fact and not of principle.

The authority of these cases cannot be doubted. Our Supreme Court, in *Elizabeth vs. Central R. R., supra,* noted the distinction between the two Hoboken cases, (*Hoboken Land Co. vs. Hoboken* and *Pa. R. Co. vs. Hoboken,* 124 U. S. 656), a distinction to which we have heretofore called attention. It comes down to this: that while the state's title is absolute and wholly unaffected by any restriction or burden attempted by an upland owner, it does not possess such authority as to absolve a grantee from his own obligations. If the grantee who takes the state's land has prior thereto made a covenant which carries a public right to the line of high water, he will not be permitted, merely by acquiring the state's title, to evade his obligation of maintaining the public's access to navigable water. The limitation is placed not on the state, but on the individual, and the individual is so charged not on the ground of public convenience but on the ground of his own obligation.

Mr. Justice Bradley, in writing the opinion of the Supreme Court in *Hoboken vs. P. R. R.,* 124 U. S. 656, plainly had in mind the distinction we have just noted. His following discussion of the point under discussion is illuminating:

> "It is contended that, as the grants of the state only operated on its present title, 'when the state's title passed to the successor of John Stevens, who was estopped from excluding those streets from access to tide-water, the right as against him by estoppel sprang at once into ex-

istence and estopped him and all claiming under him.' *Suppose instead of a dedication it is said, J. S. had made an express covenant with the city, that as he acquired the state's title to these lands and reclaimed them he would continue the streets to the high-water line. In such case no one would contend that the riparian acts or the grants made under them would discharge such liability.* * * * * The dedication it is claimed operates on the same principle. * * * * But in this case there was no express covenant, and if any to that effect can be implied by law it arises only upon the principle of an estoppel. Whether such estoppel would arise upon the circumstances of the case it is not necessary for us to discuss or decide. If we suppose it to exist so that if the title acquired by the defendants from the state had been acquired from some other source it would have been affected by it; *nevertheless the estoppel cannot apply to the defendants as successors to the title of the state.* The grant being from the state creates an estoppel against the estoppel, for the state in respect to the easements claimed is the representative of the public, superior in authority and paramount in right to the city.''

The doctrine of restrictive covenants.

The right in these complainants to require an enforcement of the covenant over the riparian lands acquired from the state should be viewed from another angle. The principle at the bottom of our law of restrictive covenants is simply that equity will not permit one having knowledge of the just rights of

another in a plot of land to take that land and defeat the other's rights. Chief Justice Beasley in *Brewer vs. Marshall,* 19 N. J. Eq. 537, 542, said:

> "The point is this: there is a class of cases in which equity will charge the conscience of an alienee of land with an agreement relating to such land, where clearly the agreement neither creates an easement nor runs with the title. This rule has been too frequently acted upon and is too deeply seated in our legal system to be passed by unnoticed or to be rejected as unsound."

More generally expressed, the fundamental principle may be stated in the words of Lord Justice Knight-Bruce, in *De Mattos vs. Gibson,* 4 DeG. & J. 282, as follows:

> "Reason and justice seem to prescribe, that at least, as a general rule, where a man, by gift of purchase, acquires property from another, with knowledge of a previous contract, lawfully, and for a valuable consideration, made by him with a third person, to use and employ the property for a particular purpose in a specified manner, the acquirer shall not, to the material damage of the third person, in opposition to the contract, and inconsistently with it, use the property in a manner not allowable to the giver or seller."

The doctrine of restrictive covenants in New Jersey has been developed solely upon this fundamental ground that a party cannot take land from another, even for valuable consideration, without upholding the patent rights of a third party therein when those rights have been validly created.

The leading case in England on the subject of restrictive covenants is *Tulk vs. Moxhay,* 11 Beav. 571 (Ch. 1848), wherein it was held:

> "The question is not whether the covenant runs with the land, but whether a party shall be permitted to use the land in a manner inconsistent with the contract entered into by his vendor, and with notice of which he purchased."

It is interesting to note the facts in this case. The defendant's predecessor in title had planted a garden in the rear of a row of houses, designed for the general improvement of these residences and the enjoyment of their inhabitants. The garden was protected by an iron railing and entered through its gate, a small charge being made for the pleasure of treading its gravel paths. The place, however, fell into disuse some years after its establishment and the defendant, Moxhay, planned to remove the railings and use it for other purposes.

> "It is said that the defendant is bound to keep the square open and uncovered, and in a neat and ornamental state; this he confesses he has not done. He insists that he is not bound to do it unless he please. I think he is and that he cannot leave it in that foul and disgraceful state, which he maintains he has a right to do. I think that he will not find that this can be maintained; he must now do something to prevent it.
>
> "I am most anxious to do no more than seems to me perfectly warranted by the covenant. I think that portion of the injunction that relates to the trees ought to be discharged. My anxiety is to do that which will protect these parties until the question between them can be finally settled, and not to impose any more restraints

> upon Mr. Moxhay than is necessary for that particular purpose. I do not go the whole length asked by the plaintiff as to the neat and ornamental order, but I must restrain the defendant from converting or using the square garden or removing the iron railings in such a manner as is inconsistent with the use of it as an open garden and pleasure ground."

This decision has been made the basis of the development of our own law of restrictive covenants. It is cited in *Brewer vs. Marshall, supra,* and of it and the cases contemporaneously decided, Beasley, C. J., spoke in that case as follows:

> "It will be found upon examination, that these decisions proceed upon the principle of preventing a party having knowledge of the just rights of another, from defeating such rights and not upon the idea that the engagements enforced create easements or are of a nature to run with the land.
>
> * * * * * * * *
>
> "From this review of the authorities, I am entirely satisfied that a court of equity will sometimes impose the burden of a covenant relating to lands on the alienee of such lands, on a principle altogether aside from the existence of an easement or the capacity of such covenant to adhere to the title."

The language of Lord Cottenham quoted above is cited and made the basis of the decision in *De Gray vs. Monmouth Beach Club,* 50 N. J. Eq. 329, 333.

In *Coudert vs. Sayre,* 46 N. J. Eq. 386, 391, *Tulk vs. Moxhay* is also quoted and followed.

Chancellor Runyon in *Kirkpatrick vs. Peshine,* 24

N. J. Eq. 206, referring to the right of the complainant to the protection of a building agreement, said:

> "It is one of that class of cases in which equity *will charge the conscience of the grantee of the land* with an agreement relating to the land, although the agreement neither creates an easement nor runs with the land. The jurisdiction of courts of equity over contracts and covenants is not confined to cases where an action at law can be maintained, but extends to cases where an action at law is not maintainable. Covenants controlling the enjoyment of land, though not binding at law, will be enforced in equity, provided the person into whose hands the lands pass, has taken it with notice of the covenant."

The same ground for enforcing a restrictive covenant is taken by Vice-Chancellor Leaming in *Wooten vs. Selzer,* 83 N. J. Eq. 163 (Aff. *per curiam,* 84 N. J. Eq. 207), in the following words:

> "It is unnecessary to regard such covenants as creative of easements; the equitable right to enforce the covenant is transferable as a part of the land to which it is attached and may be enforced upon the equitable principle of preventing one having knowledge of the just rights of another from defeating such rights." p. 167.

And finally in *Cotton vs. Cresse,* 80 N. J. Eq. 540, this Court adopted the opinion of Vice-Chancellor Walker, who, in defining the nature of restrictive covenants, used the language of Chief Justice Beasley in *Brewer vs. Marshall.*

The relevancy of these cases on restrictive covenants to the facts before this Court lies in this,

that despite the fact that the legal rights of the complainants are determined by the original high-water mark, their equitable rights go further and embrace as much of the ocean and bay in front of the dedicated tract as is needed for the essential purpose of a seaside park, an unrestricted view over the water. As to these lands covered by the waters of the ocean and bay, the conscience of the association, when it acquired title, was charged with a duty of so using them as not to infringe upon the essential purposes of its dedication.

Gollner vs. Lewis.

That restrictive agreements are enforceable not only against land acquired subsequently to the agreement, but also to third parties who take such after acquired property with notice of the restriction, is well illustrated in the case of *Lewis vs. Gollner,* 129 N. Y. 227, 29 N. E. 81.

In that case the plaintiff's house was in a residential section noted for the beauty and taste of its homes. The defendant entered into a contract to purchase a lot, touching on the rear of plaintiff's lot, and immediately thereafter announced his intention of erecting thereon a tenement house. It was evident that he had a purpose in thus spreading the information of his designs. The plaintiff offered to purchase his contract, and after many negotiations, Gollner agreed to sell for a sum which netted him a profit of six thousand dollars. In consideration therefor he covenanted that "he would not construct or erect any flats in plaintiff's immediate neighborhood." However, despite this clear condition of the agreement, Gollner proceeded to purchase

a house diagonally opposite that which he had just abandoned, and to start thereon the erection of another flat. When threatened with suit he sought shelter for his enterprise and his breach of faith behind an ownership in his wife, conveying the lot to her for a nominal consideration. Suit was brought on Gollner's covenant with the plaintiff. The Court was thus confronted with the problem of applying a purely personal covenant to a party who, while taking with notice, was yet a stranger to the original transaction. This state of facts had its effect upon the Court below, and they felt compelled to render a judgment for the defendant, believing, as they felt bound to say, that "equity stood helpless before this cool and deliberate wrong." The inquiry which confronted the Court of Appeals was whether equity did in truth stand helpless to enforce such a clear and admitted right. The Court (through Mr. Justice Finch), nothing daunted by the lack of exact precedent to support their holding, decided the case on broad principles of equity. The language of the decision applies so particularly to the case at bar that we have ventured to include the following excerpt:

> "But Gollner did not remain the owner of his new purchase, and that brings us to the difficulty which the Courts below deemed insurmountable, and which needs to be thoughtfully considered. They reasoned that the new vendee could not be affected except through or by the purchase of the land, and so only when the land carried with it as an inseparable attachment the burden of the contract; that when the contract was made there was no land to which it did or could attach; and so the agreement remained wholly personal to Gollner, and did not affect or bind his wife. I do not see the contract in that way.

Gollner might have fulfilled it by omitting to buy or lease any land within the prescribed limits, but his agreement left him at liberty to do so or not, as he pleased, but required that, if he did so purchase or lease, he should not erect upon the land so owned or possessed the prohibited structures. The moment he bought or leased any such land he came under an obligation not to use it in a particular way; the land in his hands necessarily became restricted and limited in the use of which it was capable; and as much so, though bought of another, as if it had come from the contractor who imposed the restraint as vendor. I do not see why the equitable rights of the plaintiff did not attach to the land when bought, if it came, as it did, within the scope of the contract. Why should it affect the result that the obligation and the land ownership were not simultaneous, or that the latter came from a vendor who did not restrict when the contractor could and did? In the case of a mortgagor the lien may attach to and bind after-acquired property, or cover future and later advances, as between the parties themselves, and that is permitted because they have so agreed and their contract contemplates that precise result. In like manner I think the agreement under discussion was in substance and effect that whatever land the defendant, Gollner, might thereafter possess in that immediate neighborhood should be restricted in its use by him, and should not be devoted to the construction of tenements or flats. In other words, when he bought the land the plaintiff's equitable rights at once attached to it, and became a burden upon it so long as Gollner owned it, so that ap-

parently the contract ceases to be merely and purely personal because it affects and was intended to affect the use and occupation of Gollner's after-acquired land in that neighborhood. But, if the contract remains technically a personal one, I think the reasonable and settled doctrine is that the contract equity is so attached to the use of the land which is its subject-matter as to follow the land itself into the hands of a purchaser with full knowledge of all the facts, who buys with his eyes open to the existing equity, and more especially when he buys for the express purpose of defeating and evading that equity. It has been held that the equity resulting from a valid agreement, although the latter was not a covenant running with the land, or a legal exception or reservation out of it, but stood solely upon the ground of a personal contract dictating the mode of user, would nevertheless go with the land into the hands of a purchaser with notice, and who did not buy innocently or in good faith. Whitney vs. Railway Co., 11 Gray, 363. In Hodge vs. Sloan, 107 N. Y. 250, 17 N. E. Rep. 335, we substantially affirmed that doctrine, holding that a purchaser without restriction in his deed, but from one who was restricted by a personal covenant not running with the land or binding his assigns, yet with the notice of the facts, is bound by the restriction in a court of equity; Judge Danforth described the character of the agreement thus: 'It is restrictive, not collateral to the land, but relates to its use.' * * * * The source of the restriction would seem to be immaterial, if itself binding, and founded upon sufficient consideration; and a breach is no greater wrong to a privy

> in estate than to a stranger validly contracting about its use. Nor can the vendee in bad faith stand upon such a difference. Equity has no compassion for a fraud, and he who buys in aid of one, with full knowledge of what is right, but with purpose to defeat it, should not escape the hand of equity by a criticism upon the origin of the restriction violated."

In other words, the New York Court held that a personal covenant by the grantor of land beneficial to the land, renders the grantor a trustee of the land for the performance of the covenant, *and operates as well against after-acquired land* as against that in existence at the time of the original agreement, *and as well against grantees who take with notice from the original grantor as against the grantor himself.*

The Vice-Chancellor's objections to relief.

The learned Vice-Chancellor in refusing to extend the benefit of the covenant over the lands acquired from the state, based his opposition on a number of grounds which may be enumerated as follows:

(1) The authority of *Hoboken vs. P. R. R., supra,* and the *Auditorium Pier cases.* These decisions we have already discussed and have shown that they are not applicable to the facts under discussion.

(2) That present conditions do not infringe the requirements of the covenant.

(3) The rule that restrictions on the use of land are to be construed strictly and confined to the limits placed upon them by the parties.

(4) The fact that the dedicator in this case acted in the transfer of the riparian lands as a conduit.

(2) The real character of the dedication.

The Vice-Chancellor seems to have viewed the dedication within its narrow physical limits and to have thereby missed the real purpose of the dedication. There is no more reason for restricting this public park to the limits of the original high-water mark, by which it was described, than there is to refuse to extend a street originally terminating on high water over land that has been filled in to a new high-water line. A park is also a right of way and the importance of maintaining its adjacency to navigable water is as urgent as the case of a street. The following language of this Court in *Hoboken Land and Improvement Co. vs. Hoboken,* will apply with equal force to a park as to a highway.

> "The essence of the gift is the means of access to the public waters of the river, the advantage of which induced the growth of the city by reason of its adjacency and connection with the important and navigable waters of the Hudson which gave a peculiar commercial value to the lots put in the market by the dedication, and which can only be preserved by maintaining unbroken the connection of the streets with the navigable river. Any obstructions of that access would not only derogate from the effect of the gift, but would be a public nuisance."
>
> (*Page* 548.)

The original dedication in this case extended the public right to the navigable waters of both bay and ocean. Not only is the public's right to maintain this adjacency upheld by such cases as *Hoboken Land and Improvement Co. vs. Hoboken, supra,* but practical wisdom recommends the rule. It would

be a dangerous precedent to hold that a dedicator who offers a public park fronting on the ocean should have the power, by acquiring title from the state, to shut off and entirely block that frontage.

We respectfully submit that our view of the association's obligation with regard to its park cannot be limited by the exact physical boundaries as they existed at the time of the grant, but that the whole dedication must be viewed from the standpoint of its essential purpose; that that purpose inevitably embraced the unbroken view of ocean and bay, and the direct contact of the park with the waters of ocean and bay. This was the meaning which the association's covenant undoubtedly conveyed to the minds of its lot purchasers, and it was the meaning which they had a right to accept. No other dedication would have induced the purchases and no other dedication would have been a fair consideration for the enhanced prices paid for lots bordering the park area.

(3) The rule of construction.

The learned Vice-Chancellor declared that "the covenant cannot be stretched beyond its fair intendment," (*S. of C., l.* 29, *p.* 221). To this proposition we readily assent. Our whole contention, however, is that while the actual legal rights created by the dedication did not at the time extend beyond the then existing high-water mark, the obligation of the association and the equitable rights of its covenantees were more extensive. The "fair intendment" of the covenant was simply that this park area should be forever open to the bay and ocean. In this view of it the duty of the defendants extended

to those riparian lands which might be used to defeat the essential purposes of the covenant.

So far as these lands under water whose title has been secured from the state are concerned, our effort is not to extend the covenant over them so much as it is to enjoin the defendants from committing thereon any acts which may impair the rights which their covenant created. Our suits are brought for the protection of vested legal rights against the danger of their destruction by the acts of the defendants. They do not seek the extension of those rights, but merely their protection.

The case of *Fortescu vs. Carroll*, 76 N. J. Eq. 583, cited by the Vice-Chancellor held simply that a restriction against the erection of "more than one building on a single lot" could not be regarded as sufficiently clear to prohibit the erection of a "double house." The case is not pertinent to this issue. We have here no question of ambiguous construction, but merely a necessary measure of protection.

(4) The "conduit" theory.

The learned Vice-Chancellor suggests in his conclusions that the doctrine of estoppel will not avail in the present instance because the title of the association was taken for the purposes of transfer to its grantees of the upland and that the association, therefore, acted as a mere conduit. The rule of estoppel is that:

> "If a grantor, having no title, a defective title, or an estate less than that which he assumed to grant, conveys with warranty or covenants of like import, and subsequently acquires the

title or estate which he purported to convey, or perfects his title, such after acquired or perfected title will enure to the grantee or to his benefit by way of estoppel."

16 *Cyc.* 689.

Moore vs. Rake, 26 N. J. L. 574;
Vreeland vs. Blauvelt, 23 N. J. Eq. 483;
Vulcan Detinning Co. vs. Can Co., 67 N. J. Eq. 243;
Tully vs. Taylor, 94 Atl. 572 (E. & A.).

To this rule, the Vice-Chancellor insists the following exception applies in the case at bar.

"The doctrine does not apply where an after-acquired title passes to the grantor subject to a resulting trust in favor of the actual purchaser, or the conveyance is made to him as a conduit and for the purpose of vesting title in a third person."

16 *Cyc.* 697.

The exception, however, has no application to the present cases. Estoppel is a rule designed to accomplish equity and is only invoked for the purpose of preventing the assertion of an inequitable claim. There is nothing equitable in the claim made by the association that it took title to the submerged lands free and clear of its own covenant to maintain a park adjacent to navigable water. There is nothing equitable in the claim of the grantees from the association to take a title free and clear from the burden of their grantor's covenant. They took their deeds with full notice of the existence of the dedication and the rights of these complainants in the lands conveyed by the association. They knew that the

erection of obstructions to the view on these submerged lands would be an injury to the dedication. There is, therefore, every reason why the doctrine of estoppel should be invoked against both the association and its grantees with notice.

The situation herein is wholly different from that prevailing in the cases which uphold the exception to which the Vice-Chancellor refers. They deal solely with the case of a grantor who has but the one function to perform of transferring title, and with grantees who take in innocence of the prior rights of other parties.

Nor is it possible to invest the association with the character of a "conduit." It was not the design of the transactions whereby these defendants, grantees of the association, took their title to the lowlands that the association should be a mere machine for transferring the title. The association was a "trustee" to convey title solely because it designed to restrict the title which it was to convey. Its interest in obtaining the state's title was purely selfish. It planned to protect the value of its realty by restricting the riparian lands so that no intoxicating liquors could be sold upon them, whereby the character of the properties might be injuriously affected. Far from being a conduit the association dictated the very terms of the conveyances. Its acquisition of title from the state and its conveyance of that title were done solely to promote its own ends.

The exception noted by the Vice-Chancellor to the rule of estoppel was designed to safeguard the interests of innocent strangers to the rights of the parties setting up the estoppel; such an exception, in the nature of things, can not be invoked by these defendants, who took with full notice of the complainants' equities.

In conclusion, we submit, on the ground of equitable estoppel as applied in the case of *Hoboken Land and Improvement Co. vs. Hoboken,* and the cases similar to it, as well as on the ground of the public policy, expressed in that case, of continuing a public right originally located on navigable water over the land made by natural processes or by the work of man, and on the authority of our law upholding restrictive covenants,—that the complainants are entitled to have the defendants enjoined from the erection of their buildings on the riparian lands of ocean and bay included within the lines of Fourth and Fifth Streets extended.

III. THE CHARGE OF LACHES.

There are two essential conditions involved in these cases which forbid the application of the rule of laches in favor of these defendants.

First, that vested real property rights would be destroyed if the doctrine of laches were applied; and

Second, that the defendants having committed their acts of obstruction with full knowledge of the complainants' rights are themselves estopped from insisting on this defence.

1. Vested rights of complainants.

It is a principle of universal application that courts of law or equity will uphold the integrity of vested real property rights, and permit their destruction only in cases of real merit.

Pomeroy notes this exception to the general rule in the following words:

> "This effect of delay is subject to the important limitation that it is properly confined to claims for purely equitable remedies to which the party has no strict legal right. Where an injunction is asked in support of a *strict legal right* the party is entitled to it if his legal right is established. Mere delay or acquiescence will not, therefore, defeat the remedy unless it has continued so long as to defeat the right itself."
>
> 2 *Pom. Eq. Jur. p.* 1449.

With respect to real property rights, this exception is even more strongly applied.

> "A life tenant is not barred from enforcing her claim when less than twenty years have elapsed."
>
> *Kocher vs. Kocher,* 56 N. J. Eq. 545.

> "Where fifteen years after obtaining a judgment the creditor files a bill to set aside a conveyance of land made pending the suit in which judgment was obtained, the delay is no bar to the right to set the conveyance aside, the bill being one for equitable aid to enforce a legal right which is not barred."
>
> *Burne vs. Partridge,* 61 N. J. Eq. 434.

2. Guilty knowledge of defendants.

It must be remembered that laches, being an equitable doctrine, will not be applied unless it is necessary to protect the defendant from a wrong which would otherwise be inflicted. It is essential that the

defendant show an actual danger of injustice to himself.

> "The delay of a complainant in seeking redress in equity cannot be availed of by way of defense unless it has been so great that to afford him relief will be the cause of wrong to the defendant."
>
> *Daggers vs. VanDyck,* 37 N. J. Eq. 130.

> "A party cannot complain of laches that does him no harm. It is only laches by which he has suffered that works an estoppel or gives a right of action."
>
> *Northrupt vs. Roe,* 10 N. J. L. J. 334.

> "A bill to set aside a deed as obtained by undue influence will not be dismissed for laches when brought within six years from its record, unless it appears that complainant by delay has deprived the court of the power of ascertaining with reasonable certainty the truth of the matter, or has placed himself in a postion of unfair advantage over his adversary."
>
> *Le Gendre vs. Brynes,* 44 N. J. Eq. 372.

How can it be urged that the complainants have obtained by delay a position of unfair advantage over the defendants? The latter purchased the land with their eyes open, and with evident intent to build thereon in defiance of the public easement. They were misled by no conduct of the complainants; they did exactly that which they had planned to do. The defendants are not in the situation of one who innocently infringes on another's rights; nor are we dealing with a case where lost evidence will prejudice the defendant's case or where the statute of limitations has run.

Pomeroy thus states the general rule:

"The true doctrine concerning laches has never been more concisely and accurately stated than in the following language of an able, living Judge: 'Laches in the legal significance is not mere delay but a delay which works disadvantages to another. So long as parties are in the same condition it matters little whether one presses a right promptly or slowly within limits allowed by law; but one, knowing his rights, who takes no steps to enforce them until the condition of the other party has in good faith become so changed that he cannot be restored to his former state, if the right be then enforced, delay becomes inequitable and operates as estoppel against the assertion of the right. The disadvantages may come from loss of evidence, change of title, inconvenience of equities and other courses; but when a Court sees knowledge on one side and injury therefrom on the other it is a ground for denial of relief.'

"Dicta to substantially the same effect from nearly all of the American courts may be readily accumulated, all tending to show that the doctrine of laches is for the most part merely an application of the old maxims of equity. 'He who seeks equity must do equity,' and 'He who comes into equity must come with clean hands.' It exacts of the plaintiff no more than fair dealing with his adversary. It is in no way dependent on those general considerations of public utility and 'the repose of society' which are in legal theory the legislative motive for statutes of limitation."

Pom. Eq. Jur., Sec. 21.

The defendants have suffered no wrong from the delay of complainants' suit; they themselves perpetrated with open eyes the wrong with which they are charged. The necessity for innocence on the part of the defendant who claims laches as a defense is emphasized in the following excerpt:

> "A most important application includes all cases where an owner of property, A, stands by and knowingly permits another person, B, to deal with the property as though it were his, and as though he were rightfully dealing with it without interposing any objection. * * * * *Of course, it is essential that B should be acting in ignorance of the title and in the supposition that he was rightful in his own dealings.*"
>
> 2 *Pom. Eq. Jur. p.* 1451.

The claim of laches urged by our opponents amounts to a demand that the complainants patrol the boundaries of this tract in the daily endeavor to ascertain if some stranger has not begun the erection of an obstruction violating the public rights. And they make this demand even though they themselves knew fully of the rights of the public.

There is abundant authority to the effect that he who encroaches upon the rights of another with knowledge of the other's rights will be estopped from pleading laches in his opponents, and this even though he may have expended money and erected improvements.

Wayzata vs. Great Northern Railroad, 46 *Minn.* 506, 49 N. W. 205, is a typical case. There the action was brought to restrain the defendant railroad from maintaining and operating its railway and from maintaining buildings on certain dedicated streets of the plaintiff village. It was held that one who has

entered upon and possessed the land of another without right could not, no matter to what use he might have put the land, or how much he might have improved it or expended upon it, claim that the owner should be estopped by mere delay in ousting him to seek any remedy, legal or equitable, appropriate to the case.

In accord with this decision are the following, all of which involve the wilful entry by the defendant upon the realty or upon real property rights of the complainants:

Southside Imp. Co. vs. Burson, 147 Cal. 401; 81 P. 1107 (1905);
Price vs. Stratton, 45 Fla. 535; 33 S. 644 (1903);
McDonald vs. Stark, 176 Ill. 436 (1898);
Casey's Lessee vs. Inloes, 1 Gill. 430 (Md. 1844);
Browne vs. Church, 37 Md. 108 (1872);
Grey vs. Bartlett, 37 Mass. 186;
Stewart vs. Finkelstone, 206 Mass. 28; 92 N. E. 37 (1910);
Abbott vs. Abbott, 51 Me. 575;
Woll vs. Voigt, 105 Minn. 371, 23 L. R. A. (N. S.) 270;
Goldschmidt vs. City of New York, 43 N. Y. S. 447 (1897);
Ackerman vs. True, 175 N. Y. 353 (1903);
Bright vs. Allan, 203 Penn. 294 (1902);
Cooper vs. Cotton Mills, 94 Penn. 588, 30 S. W. 353 (1895);
City of Victoria vs. Victoria County, 128 S. W. 109 (Tex. 1910);
Chambers vs. Wyatt, 151 S. W. 864 (Tex. Civ. App. 1912).

And it is well settled that even where the offending party has no actual knowledge of the rights of the complainant, but is held to constructive knowledge by reason of the latter's recorded title, laches will be no defense.

Mayo vs. Cartright, 30 Ark. 407 (1875);
Oberhein vs. Reeside, 81 Atl. 590 (Md. 1911);
Staton vs. Bryant, 55 Miss. 261 (1877);
Gardner vs. Pierce, 22 Nev. 146; 36 P. 782 (1894);
Marston vs. Brackett, 9 N. H. 366;
Knuoff vs. Thompson, 16 Penn. 357 (1851);
Atkinson vs. Wash. Irri. Co., 86 P. 1127 (Wash. 1906).

It should be noted that this Court in *Jersey City vs. Morris Canal Co.,* 12 N. J. Eq. 547, 555, dealt with the same objection raised by the defendant in that case. The Court met it in the following manner:

> "The doctrine of acquiescence, invoked by the respondents, furnishes them with no protection. They did not fill up and occupy this place in ignorance of their rights; their deed estops them effectually from setting up any such defence; it contained on its face a statement of fact of the dedication."

Finally we contend that this very point has been conclusively determined in the prior Bridgewater case. In that case the question of laches was likewise raised, the defendant insisting that the complainant knew the railroad was being built but made no objection until sometime after it had been completed. In direct reply to this defense the Vice-Chancellor declared that:

> "The defense that the complainant stood by and suffered the defendants to spend their money is dependent upon another consideration and that is, that the defendants must, in order to avail themselves of that defense, have acted in ignorance of the complainant's rights upon which they intrude. *If a party has notice that he is building on another's land or in derogation of another's rights he proceeds at his own peril.* In such cases it does not lie in him to complain that the other did not object." (62 *Eq.* 292.)

In conclusion, therefore, it is submitted that within the true meaning of the rule, the complainants have wrought the defendants no wrong, nor caused them any loss for which they themselves were not responsible, and that the doctrine of laches cannot be applied to oust innocent parties of their legal rights.

Respectfully submitted,
WILSON & CARR,
E. SPENCER MILLER,
Counsel for (Complainants) Appellants and Cross-Respondents.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

In Chancery of New Jersey.

BETWEEN
WILLIAM BRIDGEWATER,
Complainant,
AND
OCEAN CITY ASSOCIATION ET AL.,
Defendants.

WILLIAM G. CARROLL,
Complainant,
AND
OCEAN CITY ASSOCIATION ET AL.,
Defendants.

HENRY BRADLEY,
Complainant,
AND
OCEAN CITY ASSOCIATION ET AL.,
Defendants.

} On Bill, &c.

Brief of Ocean City Association and Atlantic Land and Development Company.
Bourgeois & Coulomb, Counsel.

The State of the Case, page 383, shows that a release was offered in evidence, marked *Exhibit D-2*. This *Exhibit D-2* is found on page 504 of the State of

the Case, but the contents of the release are not set out. This release is as follows:

RELEASE.

To The Ocean City Association of Ocean City, N. J. We the subscribers, owners of property adjoining the park and Camp Meeting ground at Ocean City, between Fifth and Sixth Streets, extending from the Bay or Thoroughfare to the Atlantic Ocean hereby consent that the said park and Camp Meeting ground may be sold by the Ocean City Association and improved by the erection of dwelling houses or other buildings thereon, provided however that no dwelling shall be erected on that part of the same between Wesley and Atlantic Avenues at a cost of less than Two Thousand Dollars; it being considered by us advantageous to that neighborhood and the whole city to have the said land so improved. And we hereby jointly and severally release to the said Ocean City Association all our right to have the said park and Camp Meeting ground kept open and unimproved excepting the Camp ground and Park between the South side of Fifth St. the North side of Sixth St. the East side of Asbury Avenue and the West side of Wesely Ave. In Witness Whereof we have hereunto set our hands and seals this 13th day of Feb. 1895

For lot No. 837 Mark Baner
For lot No. 839
For lot No. 841 Ocean Ave. Ocean City, N. J.
For lots No. 694, 696 E. B. Lake
For lots No. 48, 141, 240, 336, 432, 61, 157, 253, 349, 445, 354, 356
For lot No. and from East side of Atlantic Ave. to the Atlantic Ocean on *For lot No.* South side of Sixth Street.
(L. S. Corp.)

For lots No. E. B. Lake, Secretary of Ocean City Association.

For parts of lots Nos. For Lots No. 541, 543 Harriet S. Lake

For lots No. 691, 693 & 695, 353, 355 W. H. Burrell

For parts of lots No. 546, 548 J. H. Slawter

For lot No. 129 Youngs Corson

For part of lot No. 546 & 548 Ellwood Allen

For lot No. 545 E. C. Nichols

For lot No. 973, 975, 834, 836 Jane E. Boyle

For lot No. 351 Anna R. Somers

For lot No. 976 Strand North of 5th & East of Atlantic. F. F. Corson

For lot Nos. 977 & 979, 838, 840, 842 & 844 Chas. Mathews, Jr.

For part of lots No. 541 & 543 John I. Corson

For lot No. 130 Lettice J. English

For lot No. Hannah A. Paxson
For lot No. Sarah J. Paxson
For lot No. Anna R. Paxson
} For lots No. 697 & 699

For lot No. 698 C. H. Myers

For lot No. 542 Thomas Shaw

For lot No. 544 Anna J. Shaw

For lot No. 350 & 352 Ann W. Reany

For lot No. 698 Wm. R. Hughes

For lot No. John Myers lot 127

For lot No. Robert Carson lots Nos. 833 & 835

For lot No. 698 Hannah E. Houck

For lots Nos. 350 & 352 { Carrell Doughty / Ann Eliza Doughty }

For lot No. 128 Chas. Mathews, Jr.

Witness as to all the signatures except Chas Mathews, Jr.

The interlineations having first been made

Chas. Mathews, Jr.

Witness as to Signature of Chas. Mathews, Jr.

G. E. Palen

Philadelphia County, State of Pennsylvania, *ss.* On the Thirteenth day of February A. D. 1895 before me, a Commissioner of Deeds &c. duly appointed under and by virtue of the laws of the State of New Jersey to take the acknowledgment and proof of deeds &c. residing in the State and County aforesaid personally appeared Mark Baner who, I am satisfied is the person who signed the within Release or Deed Poll and I having first made known unto him the contents thereof he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

CHAS. MATHEWS, JR., [L. S. Offl.]
Commissioner of Deeds for New Jersey.

Philadelphia County, State of Pennsylvania. On this Fourth day of April A. D. 1895 before me a Commisioner of Deeds &c. duly appointed under and by virtue of the laws of the State of New Jersey to take the acknowledgment and proof of Deeds &c. residing in the State and County aforesaid personally appeared Harriet S. Lake, William H. Burrell and John H. Slawter who, I am satisfied are the persons named in and who signed the within Release or Deed Poll and I having first made known unto them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

CHAS. MATHEWS, JR., [L. S. Offl.]
Commissioner of Deeds for New Jersey.

Philadelphia County, State of Pennsylvania. On this Fourth day of April A. D. 1895 before me a Commisioner of Deeds &c. duly appointed under and by virtue of the laws of the State of New Jersey to take the acknowledgment and proof of deeds &c. residing in the State and County aforesaid, personally appeared Ezra B. Lake who, I am satisfied is the person who

signed the within Release or Deed Poll and I having first made known unto him the contents thereof he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

CHAS. MATHEWS, JR., [L. S. Offl.]
Commissioner of Deeds for New Jersey.

Philadelphia County, State of Pennsylvania, *ss.* On this Twelfth day of April, A. D. 1895 before me a Commissioner of Deeds duly appointed under and by virtue of the laws of the State of New Jersey to take the acknowledgment and proof Deeds &c. residing in the State and County aforesaid personally appeared Youngs Corson, Ellwood Allen, E. C. Nichols and Jane E. Boyle, who, I am satisfied are the persons who signed the within Release or Deed Poll and I having first made known unto them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

CHAS. MATHEWS, JR., [L. S. Offl.]
Commissioner of Deeds for New Jersey.

Philadelphia County, State of Pennsylvania, *ss.* On this Fourth day of May, A. D. 1895 before me a Commissioner of Deeds duly appointed under and by virtue of the laws of the State of New Jersey to take the acknowledgment and proof of Deeds &c. residing in the State and County aforesaid personally appeared Anna R. Somers, Frank F. Corson, John I. Corson and Lettie J. English, who I am satisfied are the persons who signed the within Release or Deed Poll and I having first made known unto them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

CHAS. MATHEWS, JR., [L. S. Offl.]
Commissioner of Deeds for New Jersey.

Philadelphia County, State of Pennsylvania, *ss.* On this Sixth day of July A. D. 1895 before me a Commissioner of Deeds &c. duly appointed under and by virtue of the laws of the State of New Jersey to take the acknowledgment and proof of Deeds &c. residing in the State and County aforesaid personally appeared Hannah A. Paxson, Sarah J. Paxson, Anna B. Paxson and C. H. Myers, who I am satisfied are the persons who signed the within Release or Deed Poll, and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

CHAS. MATHEWS, JR., [L. S. Offl.]
Commissioner of Deeds for New Jersey.

Philadelphia County, State of Pennsylvania, *ss.* On this Seventh day of August A. D. 1895 before me a Commissioner of Deeds duly appointed under and by virtue of the laws of the State of New Jersey to take the acknowledgment and proof of deeds &c. residing in the State and County aforesaid personally appeared Thomas Shaw and Ann J. his wife and Anna W. Reany, who I am satisfied are the persons named in and who executed the within Release or Deed Poll and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. And the said Ann J. being of full age on a private examination apart from her said husband, before me acknowlegded that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband. All of which is hereby certified.

CHAS. MATHEWS, JR., [L. S. Offl.]
Commissioner of Deeds for New Jersey.

Philadelphia County, State of Pennsylvania, *ss.* On this Twentieth day of August A. D. 1895 before me a Commissioner of Deeds &c. duly appointed under and by virtue of the laws of the State of New Jersey to take the acknowledgment and proof of Deeds &c. residing in the State and County aforesaid personally appeared William R. Hughes and John Myers, who, I am satisfied are the persons who signed the within Release or Deed Poll and I having first made known unto them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

CHAS. MATHEWS, JR., [L. S. Offl.]
Commissioner of Deeds for New Jersey.

Philadelphia County, State of Pennsylvania. On this 28th day of December A. D. 1895 before me a Commissioner of Deeds &c. duly appointed under and by virtue of the laws of the State of New Jersey to take acknowledgment and proof of Deeds &c., residing in the State and County aforesaid personally appeared Charles Mathews Jr. who I am satisfied is the person who signed the within Release or Deed Poll and I having first made known unto him the contents thereof he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

CHAS. COBB VAN RIPER, [L. S. Offl.]
Commr. of Deeds for New Jersey.

Philadelphia County, State of Pennsylvania, *ss.* On this Eleventh day of January A. D. 1896 before me a Commissioner of Deeds &c. duly appointed under and by virtue of the laws of the State of New Jersey to take the acknowledgment and proof of Deeds &c. residing in the State and County aforesaid personally appeared Robert Carson who, I am satisfied is the person who signed the within Release or Deed Poll and I

having first made known unto him the contents thereof he acknowledged that *the* signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

CHAS. MATHEWS, JR., [L. S. Offl.]
Commissioner of Deeds of New Jersey.

Philadelphia County, State of Pennsylvania, *ss.* On this Twelfth day of March A. D. 1896 before me a Commissioner of Deeds duly appointed under and by virtue of the laws of the State of New Jersey to take the acknowledgment and proof of Deeds, &c., residing in the State and County aforesaid personally appeared Hannah E. Houck who, I am satisfied is the person who signed the within Release or Deed Poll, and I having first made known unto her the contents thereof she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed. All of which is hereby certified.

CHAS. MATHEWS, JR., [L. S. Offl.]
Commissioner of Deeds for New Jersey.

Philadelphia County State of Pennsylvania. On this Seventh day of November A. D. 1896 before me a Commissioner of Deeds &c. duly appointed under and by virtue of the laws of the State of New Jersey to take the acknowledgment and proof of Deeds &c., residing in the State and County aforesaid personally appeared Correll Doughty and Ann Eliza his wife, who, I am satisfied are the persons named in and who signed the within Release or Deed Poll, and I having first made known unto them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed: And the said Ann Eliza being of full age, on a private examination apart from her said husband before me acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear,

threats or compulsion of her said husband. All of which is hereby certified.

CHAS. MATHEWS, JR., [L. S. Offl.]
Commissioner of Deeds for New Jersey.

Philadelphia County, State of Pennsylvania. On this Seventh day of December A. D. 1896 before me a Commissioner of Deeds &c. duly appointed under & by virtue of the laws of the State of New Jersey to take the acknowledgment and proof of Deeds &c., residing in the State & County aforesaid personally appeared the within named Charles Mathews, Jr., who, I am satisfied is the person who signed the within release or Deed Poll & I having first made known unto him the contents thereof he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

CHAS. COBB VAN RIPER, [L. S. Offl.]
Commr. for New Jersey.

Received and recorded this Release &c., December 11" A. D. 1896.

EDWARD L. RICE, Clerk.

STATE OF NEW JERSEY,
COUNTY OF CAPE MAY.

I, A. C. Hildreth, County Clerk and Clerk of the Court of Common Pleas in and for said county, do hereby certify that the foregoing is a true and correct copy of release from Mark Baner et als. to Ocean City Association as recorded, on the eleventh (11th) day of December, A. D. 1896, in the Clerk's Office of the county of Cape May, in Book No. 132 of Deeds, at page 119, &c.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Cape

[L. S.] May Court House, this eighth (8th) day of December, A. D. 1913.

A. C. HILDRETH,
Clerk.

Endorsed:
Certified Copy
of
Release
From
Mark Baner et als.
To
Ocean City Association.
Cape May County Clerk's Office,
Cape May Court House, N. J.

FACTS.

In eighteen hundred and eighty, Ocean City Association, a corporation of the State of New Jersey, organized for the purpose of dealing in real estate, was the owner of a large tract of land situate in Ocean City, Cape May County, New Jersey. It plotted and mapped a single section of this land containing nine hundred and ninety-nine, which is designated as "Section A." This map shows the land between Fifth Street and Sixth Street, and between a point ninety feet northerly of the lortherly line of West Avenue, and the northerly line of Atlantic Avenue to be plotted except for an outline corresponding to a block of lots similar in size and dimensions as the adjoining blocks which have been plotted and mapped in lots, except between Fifth and Sixth Streets and Wesley Avenue and Asbury Avenue. In all other parts of the section Central Avenue extends between Asbury Avenue and Wesley Avenue and parallel thereto. Across this plot bounded by Fifth Street, Wesley Avenue, Sixth Street and Asbury Avenue, Central Avenue does not extend. In this plot is marked "Camp Ground.'

There is no designation whatever within any of the rectangular tracts of land on the map of Section A, filed in eighteen hundred and eighty. Southwesterly of Fifth Street there is no indication of the extension of Atlantic Avenue excepting the fact that between the northerly of what would be Atlantic Avenue and the Atlantic Ocean, between Sixth Street and Seventh Street, is found the word "Avenue." Between Fifth Street and Sixth Street, however, and oceanward from the northerly line of Atlantic Avenue extended to the ocean, there is no indication whatever to indicate the use to which the land is to be put. Southerly or southeasterly of the northerly line of Atlantic Avenue extended there are two irregular lines, with no indication as to what they are unless it can be drawn from the wording within those lines on the opposite side of the page, wherein are found the two words "Beach Thoroughfare," nor is there any evidence that these two irregular lines were placed upon the map as the result of any measurement, or that they are presumed to indicate the location of any point or object.

The testimony of Henry S. Haines, who surveyed along the ocean front in eighteen hundred and eighty, at page 124, was that the range of the tide at that time was about three hundred feet, and that the distance from the oceanward side of Ocean Avenue at Fifth Street to the high-water mark of that date was about three hundred feet, and that the distance from the southeasterly line or oceanward side of Ocean Avenue at Sixth Street to the high-water mark was one hundred and ninety feet.

The distance between the oceanward side of Ocean Avenue and the landward side of Atlantic Avenue extended is two hundred and eighty feet, which would bring the high-water mark at Fifth Street twenty feet oceanward of the oceanward side of Atlantic Avenue extended. From this point the high-water line crossed the rectangular plot, and at Sixth Street was up on that

plot a distance of ninety feet, or to within forty feet of the inland end of the lots, if lots have been plotted in that rectangular plot.

After the mapping of this land a public sale was held, and while the auctioneer was endeavoring to sell a lot abutting this space between Fifth and Sixth Streets, it is alleged that Dr. Wood, or some other officer of the Ocean City Association, announced that the land between Fifth and Sixth Streets and the bay and ocean should forever be kept open.

At that sale George G. Lennig purchased lot 698, which is at the southerly corner of Sixth Street and Wesley Avenue. Sometime after the purchase thereof Ocean City Association commenced the erection and construction of buildings upon the land either directly opposite Lennig's property or else diagonally across the street from his property on the plot marked "Camp Ground."

The map which is in evidence shows that the Association plotted a tract of land at the northeasterly end of the Beach for a park and marked it in large letters "Inlet Park." The Association sold the lots by it so plotted in Section A presumably by reference to this map, and in eighteen hundred and eighty-three filed a map, being a reproduction of the map of Section A with the addition of Sections B and C thereon plotted. On this new map the rectangular section bounded by West Avenue, Fifth Street, Asbury Avenue and Sixth Street is marked "Grove," the section bounded by Wesley Avenue, Fifth Street, Ocean Avenue and Sixth Street is marked "Park"; the section bounded by Ocean Avenue, Fifth Street, Atlantic Avenue and Sixth Street is marked "Park"; the new sections within the limits of Section C are not designated except by a rectangular line around each parcel.

Ocean City Association from time to time sold the fee to portions of the land between Fifth Street and Sixth Street and the Atlantic Ocean and the Bay, not

however between Wesley Avenue and Asbury Avenue marked "Camp Ground." The sale of several of these tracts included the riparian grant, and the sale to the Atlantic Land Development Company includes land lying oceanward of the oceanward line of Atlantic Avenue, all of which in eighteen hundred and eighty was beneath the waters of the Atlantic Ocean.

Afterwards, to wit, on the thirteenth day of February, eighteen hundred and ninety-five, the owners of all of the lots abutting on Fifth and Sixth Streets, between Atlantic Avenue and the Bay, executed and delivered a release and consent that the Camp Meeting Ground might be sold by Ocean City Association and improved by the erection of dwelling houses and other buildings thereon, and thereby jointly and severally releasing said Association of their right to have said park and camp meeting ground kept open and unimproved except between Asbury Avenue and Wesley Avenue aforesaid.

A comparison between the map aforesaid and the release will show that each lot is specifically mentioned by number excepting lot 976, which was owned by Frank F. Corson, and by him released not by number but as Strand north of Fifth and east of Atlantic.

The bill of complainant Bridgewater alleges as his interest in the matter the fact of his ownership of lot 21 in Section C. It will be recalled that the statement regarding the keeping open of the camp meeting ground was made at the sale during the summer of eighteen hundred and eighty, at which time and for three years thereafter there was no Section C. A reference to the map of Section C, however, shows that lot 21 is almost a quarter of a mile, to wit, upwards of twelve hundred feet distant from Sixth Street.

The lots of William G. Carroll, complainant, Nos. 508 and 510, in Section A, are nine hundred feet distant from the nearest line of said alleged park.

The lot of Louis W. Schnieder, No. 300, in Section A, is more than nine hundred feet distant from the nearest line of said park.

The lot of Samuel S. Wenzell, No. 907 in Section A, is a third of a mile, or eighteen hundred feet, distant from the nearest line of said park.

The lot of Frank M. Newcomb, No. 955 in Section A, and 953 in Section A, is six hundred and fifty feet distant from the nearest line of said park.

The lot of James S. Casterman, Nos. 973 and 975 in Section A, immediately adjoins said alleged park, but the testimony shows that the lands in question were released from the burden of any alleged easement or restriction in favor of said lots by Jane E. Boyle, who was the owner thereof, and executed the release offered in evidence in this cause.

The lot of George W. Urquhart, Nos. 3 and 5 in Section 10, on plan of Ocean City Land Company, adjoin this alleged park, the lands of said Urquhart abutting on the easterly side of Fifth Street southeasterly of Atlantic Avenue. The evidence shows, however, that the land in the alleged camp ground was released from any burden of easement or restriction in favor of the land of Urquhart by Frank F. Corson, who was the owner of Urquhart's land and executed the release in this cause.

The lot of Benjamin F. Wheaton, Nos. 542 and 533 in Section A, immediately adjoins the easterly line of said alleged park, but the testimony shows that the previous owner of said lots, Anna J. Shaw and Thomas Shaw, executed the release above mentioned.

The lot of Henry Bradley, No. 701 in Section A, is distant one hundred and fifty feet from the nearest line of said alleged park.

There is no evidence in the cause showing that these complainants, or any of them, in fact, relied upon any representations made at the time they purchased their property, or that they even knew of any such representations.

Statements contained in the Ocean City Annual were offered in evidence on the part of complainants. It appears that William B. Wood, the President of said Association, yearly made a report to the stockholders and that this report was caused to be printed and delivered to the stockholders at the annual meeting thereof.

LAW.

The following questions arise:

1. What obligation or burden was placed upon Ocean City Association by reason of the verbal statement made by William B. Wood at the first or second, or both, sales of lots in eighteen hundred and eighty, that the land between Fifth and Sixth Streets, from Bay to Ocean, should ever remain open?

2. What obligation or burden was placed upon Ocean City Association in favor of non-stockholders by reason of the fact that the annual report of the President was printed and furnished to the directors and stockholders of that association?

3. What standing have the complainants, or any of them, in this suit?

4. Are the proofs submitted sufficient on which to found a decree for any of the complainants?

5. Will the Court decree relief in case of a negative building covenant prior to a breach thereof?

6. Will the Court enforce this negative covenant as against lands granted by the State?

At the first sale of lots and at the time William B. Wood, when auctioning off lots adjoining the camp ground, made the statement that the lands between Fifth and Sixth Streets were ever to remain open, George G. Lennig purchased a lot on the ocean side of West Avenue and the westerly side of Sixth Street, immediately adjoining the alleged park on the west,

and after the purchase of that lot the Ocean City Association commenced the erection of buildings immediately across the street from the lots so by him purchased.

A bill in chancery was filed to restrain them from erecting said buildings, on the ground that by filing a map and plotting it, as is shown by the map of Section A, herein, and the subsequent filing of a map, Sections A, B and C, wherein they marked two of these rectangular parcels as "Park," the Ocean City Association had dedicated those parcels of land as a park.

This suit in the Court of Chancery was prosecuted on the theory of a dedication, and was by Chancellor Runyon dismissed. With regard to the map of 1883 and the word "Park" written in said rectangular plots, the Chancellor held that Lennig, who had purchased prior to the filing of said map, could gain no rights thereunder.

The evidence in this case shows that all of the lots in Section A were sold and disposed of before Sections B and C were plotted.

The Lennig case was taken to the Court of Errors and Appeals, and that court held that Lennig was entitled to relief, not on the ground of a dedication of the land between Fifth and Sixth Streets and Atlantic Ocean and the Thorofare as a park, but that Ocean City Association at the time of the sale of the lots to Lennig having publicly announced that said lands should forever remain open, such statement created an implied covenant in favor of Lennig to have the condition stated at the time of the sale enforced.

The report of the Lennig case is found in 41 Equity 24 and 606.

It will be borne in mind that this Court, by Chancellor Runyon, repudiated the dedication theory, and that in this repudiation he was not reversed by the Court of Errors, and that the Court of Errors did not hold that there was a dedication, but only that there was an implied covenant.

While the Court of Errors and Appeals did not cite any authority for the enforcing of this implied covenant, it would seem quite clear that the Court proceeded on the theory of a restrictive covenant, and applied the rule deduced from the cases, Chief Justice Beasley in the case of *Brewer* v. *Marshall*, 19 *N. J. Eq.* 537, at 543, to wit:

> "It will be found upon examination that these decisions proceed upon the principle of preventing a party having knowledge of the just rights of another from defeating such rights, and not upon the idea that the engagements enforced create easements or are of a nature to run with the land."

If this is in fact the principle upon which the case of *Lennig* v. *Ocean City Association* was decided, then the question before the Court is simply a question of restrictive covenant touching this land. We contend that such is the true construction to be placed upon the case of Ocean City Association, and it was eminently just that the Court of Errors and Appeals in view of the fact that an officer of the Association announced at the time of the sale of the lots that the land in front of them would forever remain open, and thereby probably increasing the price bid for the lot, should enjoin the Association from violating its implied agreement, and it is on the theory of an implied restrictive covenant that this argument is based.

The first question that arises is whether or not any of the lands owned by complainants were sold under such conditions as confers the benefit of an implied covenant on complainants. There is no evidence in the cause that any lot, excepting lots 698 and possibly 700, was sold at either of the sales when the statement was made that these lands were to remain open, and as to these two lots, which were the lots sold to Lennig, and to which the previous litigation referred, an owner thereof, subsequent to the sale thereof by Lennig, re-

leased the lands in question from the burden of said covenant in favor of the lots No. 698 and 700 aforesaid, unless it should be considered that Mr. Bridgewater acquired rights by virtue of receiving the Ocean City Annual, he being a stockholder in said Association, which will be discussed hereafter.

The next question that arises is whether the burden of an implied covenant as to any of these lands has been transmitted from the purchaser thereof to the present holder of the title. A restrictive covenant, as was held in the case of *Brewer* v. *Marshall*, does not run with the land. It will only be enforced in favor of a purchaser who relied upon said covenant, and where the seller knew or was bound to know the rights of such purchaser. In cases of ordinary restrictive covenants it is necessary to trace the covenant in the deed from the covenantor down to the person enjoying the land. Where there is a general scheme one owner may enforce a breach of a restrictive covenant against another owner. (*DeGray* v. *Monmouth Beach*, 50 *N. J. Eq.* 329.)

Where no general scheme is shown, then a restrictive coveant can only be enforced either by the covenantor, if it be a personal covenant, or by a subsequent grantee from the common grantor in cases where the covenant is inserted for the benefit of the remaining lands.

Hemsley v. *Marlborough*, 62 *Eq.* 164.

In the case at hand there is no effort on behalf of the original implied covenantor to enforce the implied covenant. There is nothing in the deeds of conveyance from the common grantor which would indicate that said implied covenant was intended for the benefit of the remaining lands, hence the question, What with regard to the general scheme?

An examination of the deeds will disclose that said lands were sold off pursuant to a general scheme, but this tract of land formed no part thereof. The deeds contain full restrictive covenants touching the location

of buildings, the uses to which they are to be put, etc., but no reference is made to the lands in question, and it is respectfully urged that where the Association has established a general building scheme by full and complete restrictions set out in their deeds of conveyance, it cannot be said that a statement made a sale of a single lot or several lots creates a general scheme. The most that can be said is that a person buying at such sale has the right to rely upon the statements made at the time thereof, and, if those rights are repudiated, to enforce the observance thereof by injunction or otherwise.

It will be observed that the alleged statements were oral, and therefore complainants, in order to succeed, must show that each successive owner of each lot, including complainants', purchased said lands relying upon the statements made at said sale.

In cases of written restrictive covenants this is shown by showing that the same covenant is contained in each deed in the chain of title. Where it is not included in the deeds, but depends entirely upon oral statements, this fact must be shown as to each one, and if not shown the implied covenant will not be enforced, because if one intermediate purchaser purchased said lots without regard to or knowledge of the implied covenant, then as to that purchaser the implied covenant forms no part of the consideration price of such conveyance to him, and therefore he is not in a position to enforce it against the original covenantor; as to such purchaser there was no restrictive covenant.

In the case of *Rowan* v. *Barr*, 89 *Atl*.. 282, at page 285, this Court said:

> "It is a well-established principle that covenants which restrict another in the use to which he may put his lands are strictly construed, and unless the right to restrict is made manifest and clear in the covenant, a court of equity will not aid by its process of injunction one owner to

restrict another in the otherwise lawful use to which he may put his lands." Citing cases.

In the case of *McNichol* v. *Townsend*, 74 *Eq.* 618, a tract of land was in the ownership of a single person. This owner, a common grantor, conveyed the lots, some containing building restrictions, others not containing them. The majority of the lots, however, did contain building restrictions. The home of this grantor was on the tract on the westerly side of States Avenue, about fifty feet southerly from Pacific Avenue. The last tract of land by him sold, exclusive of his home, was diagonally across States Avenue, at the corner of States Avenue and Pacific Avenue. This lot was sold subject to a restriction. He then sold his homestead lot, which later came into the ownership of McNichol. The property diagonally across came into the possession of Townsend. Townsend commenced the erection of an apartment house contrary to the restrictions contained in the deed. McNichol sought to enjoin him on the ground of, first, a general scheme; second, that the covenant had been inserted for the benefit of the McNichol lot, it being the last property sold. Inasmuch as all the conveyances did not contain the covenant, the Court held there was no general scheme; and inasmuch as it did not appear in the deed from the common grantor for the Townsend lot that said restriction was inserted for the benefit of the remaining land, it was held that the covenant was a personal covenant and that McNichol could not enforce it.

The complainants in this case have no standing and no right to relief in this court unless the negative covenant was entered into for their benefit.

Mulligan v. *Jordon*, 50 *Eq.* 363.

It will be remembered that the theory upon which the Court of Errors determined the Lennig case, who at the time the statement was made by Dr. Wood that the land should be kept open, purchased a lot immediately adjoining it, was that there was an implied cove-

nant for light and air. Therefore, the covenant being limited to light and air, persons living remote therefrom where the building up of the tract would not affect them as to light and air, have no standing to enforce the implied covenant. Such are the complainants. Every person owning lands along either side of this tract, and who alone would be in position to enforce it, has released the defendants from the burden of this covenant, and complainants, who live far distant, should not be permitted to burden this land with easements that were never intended for their benefit and which cannot possibly be of any benefit to them. They have no right to use the lands for recreation or other purposes. The only right anyone could enforce was the right of light and air, in which these complainants, living far distant, certainly have no interest.

The burden of proof to show that the negative covenant was made for the benefit of complainants' lands is on the complainants.

Sharp v. *Ropes*, 110 *Mass.* 381–385.
Badger v. *Sheppard*, 130 *Mass.* 180.
Skinner v. *Sheppard*, 130 *Mass.* 180.

Prior to the instituting of this suit every owner of the lots abutting on Fifth and Sixth Streets released the lands in question from the burden of the implied covenant now sought to be imposed upon it, and the case does not show a single complainant to be the owner of a lot purchased at one or the other of the sales when the statement was made as to which lot the covenant has not been released.

All the complainants who have not purchased their property from an owner who has released this implied covenant own land far distant from the lands in question, so far distant that they are not affected by the sale of the land in question or the building thereon. There is no implied covenant touching this land excepting an implied covenant for light and air, and in view

of the fact that they are distant more than a third of a mile from the lands in question, they are not entitled to complain against defendants.

In the case of *Ocean City Association* v. *Headley*, 62 *Eq.* 322, the question involved was the violation of building restrictions touching a building lot situate on Asbury Avenue between Eighth Street and Ninth Street. In that case it was shown that on Asbury Avenue between Sixth Street and Ninth Street there had been a large number of violations aggregating more than sixty per cent. of all the improved property on that street within said limits, and the court held that the violations constituted an abandonment and refused to restrain defendant.

Later in the case of *Barton* v. *Slifer*, 72 *Eq.* 812, a bill was filed to restrain the violation of a building covenant, the land in the latter case being located at Twelfth and West Avenue, West Avenue being one square distant from Asbury Avenue. The defense was that the restrictions had been abandoned. It was shown that the district between Sixth and Ninth Streets, to which the testimony related in the Headley case, had been plotted in one section, and from Ninth Street to Fourteenth Street had been plotted as a later section, and that within the latter section there were but half a dozen violations, it being removed one or more city squares from the lands then in question. The Court held that the violation of these restrictions at points distant from the land in question as above mentioned did not constitute a bar against the relief.

In the case of *Bowen* v. *Smith*, 76 *Eq.* 456–462, our Court of Chancery said:

> "A town-site proprietor owning lots on various parts of the tract may be directly interested in violations of such covenants upon any part of the entire tract, and acquiescence on his part may appropriately deny to him the equitable right to enforce the covenants, but a viola-

tion of a restrictive covenant at a point in the tract distant from the lot of an individual lot owner may be of no interest whatever to such an owner and cannot appropriately call for affirmative action on his part."

In the case of *Binison* v. *Vultman*, 38 *N. Y. Supp.* 209, the Court held that an injunction against the erection of wooden buildngs on another street and some eight hundred feet away from plaintiff's building, although in violation of covenants, was properly refused.

The defendants further contend that complainants, other than Bridgewater, can claim no rights whatever by virtue of the publishing of the Ocean City Annual. This annual, as above stated, was the printed report of the Association President. It was a compilation sent from the Association to its stockholders, and it is respectfully submitted that third parties can gain no rights by reason of any statement that might be made in it, nor do the statements contained in the Ocean City Journal avail the complainants in this case. That paper was published in eighteen hundred and eighty, and the mere fact that an issue thereof contained a statement that this land was to forever remain open surely cannot create an implied covenant in favor of the world to have the land thus kept open. Real estate is a commodity, and public policy requires it to be free and unfettered as much as possible, and for that reason restrictve covenants will not be upheld unless they are clear and explicit, and the notion that an owner may forever restrict his land by a publication that it is to forever remain open, without regard to the circumstances or manner in which the land is afterwards sold, is contrary to all the law in this country touching restrictive covenants.

As to Bridgewater, the situation is somewhat different. He was a stockholder in the Associaton, and this annual was printed and sent to him for the pur-

pose of informing him what had been done, and was being done by the directors of the Association of which he was a member. There was nothing, however, in that annual report sent by the Association to *him* which a subsequent board of directors might not alter and change. It was a statement of what the board of directors at that time intended doing. That board of directors could not, as to legislative acts, bind a subsequent board, and Mr. Bridgewater could gain no rights because of such report to him unless such rights were the result of a contract between him and the Association. The contract between him and the Association was reduced to writing in the form of his deed. That deed must be presumed to cover the entire contract between them, and there is nothing in that contract which gives to him the right to have the statements from the Ocean City Annual incorporated in his deed as a part of the contract.

As to the Atlantic Land and Development Company, there is the additional defense that the lands owned by it are riparian lands, to which the dedication could not extend. The testimony shows that the high-water mark ran over a point inside of the middle of Atlantic Avenue, if Atlantic Avenue were extended, across Fifth Street to a point about a hundred and forty feet distant from Ocean Avenue at Sixth Street. The lands of the Atlantic Land and Development Company all lie oceanward of Atlantic Avenue extended. Assuming that its title extends to the middle of Atlantic Avenue as it is now on the ground, no part of its lands were high land in eighteen hundred and eighty, when the statements were made as to these lands, which were then the lands of the State of New Jersey. Any statement made by Ocean City Association at the time of such sale or sales would be inoperative in restricting the use thereof.

There is nothing in the testimony in this cause that would justify a court in granting the relief prayed for

by complainants. The situation as it exists to-day is the same situation that has existed for years past. If there had been any substance to complainants' allegations, their right to intercede at this time is barred by their own laches, but the evidence wholly fails to disclose any proof of a conspiracy or of any fact that would justify an injunction in favor of the complainants. Aside from the foregoing is the further fact that these bills are all demurrable because of multifariousness; the situation of the party defendants is diverse; the relief prayed for against each is of a different nature, and complainants under their bill and proofs taken are not entitled to a decree in their favor, but defendants are entitled to have the bills of each of them dismissed.

In the case at hand the claim is that by virtue of a negative covenant arising from the language used at the sale of properties in 1880 and from the publications in the Ocean City Journal, there arose a negative building covenant which was enforced in the case of *Lennig* v. *Ocean City*. That covenant was that Lennig was entitled to the enjoyment of light and air over the camp ground adjoining his lots. In the case at hand no claim is made that this negative covenant has been violated by the erection of any buildings to obstruct light and air. It is not so decreed. The restraint allowed in the court below was not passed on any such violation, but is that the owners of the land shall not convey the same. No reported case, after diligent effort on our part, has been found going so far. Restrictive covenants are not favored in the law, and it is submitted the Court erred in decreeing as follows (page 234):

> "It appearing that there is danger that the said defendants, the Ocean City Association, etc., or some of them, will violate said restrictions, or that they will convey the lots and premises owned by them within said tract to

bona fide purchasers or others who may take the said lots and premises in ignorance of the rights of complainants therein, and that it is necessary for the full and adequate protection of the aforesaid covenant and of the individual rights involved in it that said last-named defendants be restrained and enjoined from any action inconsistent with the purpose of said covenant.

"It is therefore * * * ordered, adjudged and decreed * * * that the said defendants, Ocean City Association, Atlantic Land Development Company et al., their heirs, successors and assigns, be and are hereby forever enjoined from using the whole or any part of the lands and premises for any purpose inconsistent with their use as a camp meeting ground or park or from conveying the same for any purpose inconsistent with such use."

In so decreeing the Court precludes the future application to said lands of the well-established rules of law as have governed courts in enforcing these covenants from time almost immemorial, to wit, that such an action will not be maintainable where it appears that the covenant has not entered into the consideration of complaiant's purchase, and where it appears that the original plan has been abandoned without dissent, or the character of the neighborhood has so changed as to defeat the purpose of the covenant and to thus render its enforcement unreasonable.

DeGray v. *Monmouth Club House,* 50 *Eq.* 329–336.

The implied covenant is that the purchaser is entitled to light and air over this ground. None of the complainants up to the present time have been deprived of it. It may well happen that before any effort is made to build on the land in question, and thereby obstruct the light and air, the conditions may have so ma-

terially changed that injunctive relief would be denied an applicant. Courts do not grant injunctive relief merely on the apprehension of complainant, and especially where the right thereto may be entirely gone before any attempted breach of the covenant takes place.

There is no necessity for an injunction at the present time in this case, in view of the fact that there has been no breach of the negative covenant. The right to enforce the negative covenant depends upon knowledge by complainants or complainants' grantees of the fact that a negative covenant entered into the original purchase from Ocean City Association, and not upon knowledge that the grantee of Ocean City Association of the lands in question has of any such negative covenant, therefore and inasmuch as complainants or complainants' grantee, if he purchased with knowledge of the negative covenant entered into by the original purchaser and the Association, cannot be prejudiced in their rights to enforce the covenant when violated, the court erred in granting an injunction before violation.

In the case of *Hoboken* v. *Pennsylvania Railroad*, 124 *U. S.* 656–694; 31 *L. Ed.* 543, the United States Supreme Court held that the title one acquired to lands under the waters of this State is a title to a new estate and in a new subject, and that under these grants the land conveyed is held by the grantees on the same terms on which all other lands are held by private persons under absolute titles and every previous right of the State of New Jersey therein, whether proprietary or sovereign, is transferred or extinguished except such sovereign right as the State may lawfully exercise over all other private property.

Ocean City Association could not impress a negative covenant on this land while it was owned by the State of New Jersey, and when the land was conveyed by the State of New Jersey to the Association it was free of any such covenant.

The Court further held, at page 690, that the title acquired by such grantee differs in every respect from that of a riparian owner to the alluvial accretions made by the changes in a shifting stream which constitutes the boundary of his possessions. The latter comes to him by virtue of his title to land bound by a stream and belongs to him because it is within the description of his original grant, but the title under the New Jersey grants is not only of a new estate, but in a new subject, divided from the upland or riparian property by a fixed and permanent boundary.

Assuming, but not admitting, that the negative covenant is enforcible against these defendants, it is insisted that it is not enforcible against the riparian lands that were conveyed by the State of New Jersey to Ocean City Association and thence to the Atlantic Land Development Company. The implied covenant did not extend to lands then not owned by Ocean City Association but which might thereafter be purchased by it. It cannot be assumed that in making this statement Ocean City Association contemplated the purchase of other land then under water and then in the ownership of the State. The assumption must rather be that it was speaking only of the lands it then owned, and there is nothing to indicate a contrary intent on its part. The most that could be urged would be that Ocean City Association should be estopped from denying that said lands were not subject to the same negative covenant, but this estoppel would not run with the land and would not be binding against Atlantic Land Development Company.

At the time of the making of the statement by Wood in 1880 the high water mark of the Atlantic Ocean crossed Sixth Street at Atlantic Avenue. Since that time the land has made oceanward, and the Riparian Commissioners made a grant of the lands then under water, to wit, on May 29th, 1901, to Ocean City Association. The lands under water so granted there-

after appeared above the surface of the water, and so remain at the present time. (See *Exhibit D3*, page 504.)

We submit that the decree of the Court of Chancery should be in all things reversed.

BOURGEOIS & COULOMB.

New Jersey Court of Errors and Appeals

Between

MARY A. T. RILEY (Substituted in the Place and Stead of Henry Bradley), Complainant, Appellant and Cross-Respondent,

and

OCEAN CITY ASSOCIATION, ET ALS., Defendants, Respondents and Cross-Appellants.

WILLIAM G. CARROLL, ET ALS., Complainants, Appellants and Cross-Respondents,

and

OCEAN CITY ASSOCIATION, ET ALS., Defendants, Respondents and Cross-Appellants.

WILLIAM E. BRIDGEWATER, Complainant, Appellant and Cross-Respondent,

and

OCEAN CITY ASSOCIATION, ET ALS., Defendants, Respondents and Cross-Appellants.

ON APPEAL AND CROSS-APPEAL.

BRIEF FOR OCEAN CITY ASSOCIATION, Defendant and Cross-Appellant, OCEAN CITY TABERNACLE ASSOCIATION and MARY R. BUCHANAN, Defendants.

ISSUES INVOLVED.

1. The complainants in the first place are seeking to

have the Court decree a change in the original camp ground covenants made by the Ocean City Association between 1880 and 1884. They now want a decree that these lands are dedicated to **public** use for **park** purposes and not merely restricted in their use to camp ground purposes.

The defendants contend that these lands are subject to a camp ground covenant or restriction, that this is a **private** right, and that the real issue to be determined in these proceedings is not whether a dedication to **public** use has been made of these lands.

The bills are not so framed, but on page 22 of their brief, lines 17 to 27, counsel for complainant, entirely disregarding the framework of the bills, disclose their real purpose in this litigation, which is to enlarge and **entirely change** the restrictive covenants imposed on this land by the decisions of this court in the Lenning and Bridgewater cases, and to now secure from this court a decree imposing a dedication as a **park** for **public** use over the whole tract.

The bills are based on alleged violations of certain **private** rights growing out of the implied covenants made by the Ocean City Association, and yet they seek to restrain the Association from making any use of these lands "**not conforming** with a full right in the **public** to all uses—as may be appropriate for a **camp meeting ground** and incidental uses." (Bradley bill, p. 34, and Carroll, p. 104).

The Bridgewater bill (p. 148) seeks to enjoin any use "not fully consistent with the maintenance of **public** rights therein for all purposes connected with a **camp meeting ground,** and for all purposes affording unobstructed passage of air," and on page 148, lines 28 to 33, concludes with the same prayer as the Bradley bill.

The issues should be considered solely as if the bills were seeking to enjoin alleged violations of these restrictive covenants as against the **private** rights of the complainants, because if there be any **public** rights, these complainants are not the guardians thereof.

2. In the second place, complainants are endeavoring to impose the original camp ground covenants (now enlarged by them to a **public** dedication), over the **riparian** lands purchased by this Association from the State **between seventeen and twenty-two years after** the last declaration (1884) was made by the Ocean City Association creating these restrictive covenants.

The grant for the Ocean front was made May 29, 1901 (Exhibit D-3, page 504). This land is now owned by the defendant, Atlantic Land Development Company. The Bay front was obtained under two grants one dated March 8, 1906 (Exhibit DM-3, page 508), and the other dated August 5, 1909, page 339. This Bay front land is now all owned by the defendants, Masland, Cresse and Hann.

The Court below sustained the contention of the defendants that these restrictions had not been so imposed.

3. Complainants are also endeavoring to enjoin the Association from making any **future** conveyance of any interest it may have in the camp ground lands above high water, and to punish it by the imposition of the costs of these proceedings for having made conveyances many years ago of lands **either** above or below high water.

The Court below imposed the **whole** of the costs in the three suits, together with a counsel fee of $500, on the Ocean City Association, and that without the proof of a single overt act committed or threatened as a basis for

the injunction decreed.

4. The Ocean City Tabernacle Association was made a defendant, because it took title to a portion of the camp ground plot from the Ocean City Association. It is maintaining an auditorium for camp meeting purposes on this plot, which was erected in 1880 for that very purpose.

This building and the hotel erected by the defendant, Mary J. Buchanan, are the only buildings that have been erected or maintained in the reserved area outside of camp ground tents, for the past sixteen years.

On the Bay side there have been a couple of buildings erected by the defendants Cresse and Masland, on their riparian lands.

The Court dismissed the bill as against the Ocean City Tabernacle Association.

5. The issue as far as the defendant Mary J. Buchanan is concerned, is entirely a question of laches and acquiescence on the part of the complainants.

The original conveyance of the Buchanan lot was made to Charles Matthews, Jr., in 1896, and he moved a hotel or boarding house from another part of the City to this lot in 1897. In 1900, he conveyed the property to the defendant, Mary J. Buchanan. This building cost about $18,000, and in 1907 Mrs. Buchanan enlarged it by spending $3,500.

The first of these bills was filed by Bridgewater February 28, 1910; the second by Carroll, February 8, 1911; and the third by Bradley, now represented by Riley, June 9, 1911.

The question in Mrs. Buchanan's case is whether the complainants, having failed to take any action for over thirteen years (1897 to 1910) have not lost by laches and acquiescence whatever rights they might originally have

had.

The Court below decided in favor of Mrs. Buchanan.

THE FACTS IN THE CASE.

(A) As to the Original Restrictions.

The first map, filed June 9, 1880, is known as Section 17, 1883. (See page 242).

The second map, known as Exhibit C-2, was filed April 17, 1883. (See page 242.)

This last named map was put in evidence over the objection of counsel for the defendants, because there was no proof that its filing had ever been authorized by the Association.

In fact, the complainants themselves disproved this map by putting in evidence a resolution adopted by the Association April 9, 1886, as copied from the minutes, as follows: —

> "Whereas, it appears that the word 'park' was written on a certain map of the land of this Association at Ocean City, made by William Lake and filed of record in the Clerk's office of Cape May County at Cape May Court House, April 17th, 1883, entitled "Map of Sections A. B and C, without the **knowledge or authority of the Association**, and without any thought or purpose on the part of this Association or any of its officers of dedicating the land so designated as a park to public uses forever;"
>
> "And Whereas, misconception and misunderstanding may arise in relation to the use of the word 'park' if lots are sold and conveyed by said map;"
>
> "Therefore, be it now Resolved by this Association that the said map be rejected by this Association, and that no lots shall be sold or conveyed by or according to it, but that a new map or maps of

the same grounds be prepared and filed to be used by this Association in making sales and conveyances."

This repudiation of the 1883 map by the Association was in the record in the lower Court, but, by some oversight, was omitted from the printed record. We called attention of counsel for complainant to this omission, and a slip has been since inserted at page 486.

The oral proofs were practically the same as those in the original Lennig and Bridgewater cases, with this exception, viz, that no act violating the camp ground restrictions was proved against any of the defendants within a period of several years prior to the filing of these bills. In the Lennig and Bridgewater cases, facts were put in evidence showing **recent** violations and these facts were the **real basis** for those suits.

CAMP GROUND RESTRICTION.

The defendants admit and have long acted upon the theory that under the decrees of this Court and the Court of Chancery in the Lennig and Bridgewater cases, the land from Bay to Ocean (excluding Riparian lands purchased from the State), is restricted in its use to Camp Ground or Camp Meeting purposes. Those cases established the law and to that law the defendants long ago submitted. The present suit is not brought to prevent any threatened violation of the restrictive use heretofore explicitly defined by this Court. On the contrary, this is a determined attempt, though under the guise of preventing violation of the admitted restriction, to change completely the restriction heretofore imposed and to turn it from an implied covenant between contracting parties and their

privies **into a public dedication of this whole tract as a public park.**

Counsel have inserted in their brief (page 22) a frank statement of their attitude and purpose:—

> "It should be remembered throughout our discussion that the dedication of the tract as a 'camp meeting ground' afforded no inducement to the purchasers. On the contrary, it is probable that they would have been repelled by the prospect of adjoining a place devoted to congregations of great crowds of people. What attracted purchasers and rendered the Association's lots marketable was the dedication of the tract in question as a park, a space which would assuredly remain open to view and air forever, and which would permit the public to reach navigable water on both the ocean and bay."

This most amazing admission is made notwithstanding the fact that both the language and reason of the Lennig and Bridgewater cases are upon the theory that the **only restriction** upon the use of this land is that it shall be used solely for Camp Ground or Camp Meeting purposes. This Court in the Lennig case said:—

> "This no doubt was the character of the use to which the defendant devoted the ground now in controversy:—It was a camp for the purposes of a religious camp meeting, where the sojourners would remain a short time under the shelter of tents or other such temporary structures." (41 N. J. Eq. 610).

And further on page 609, the Court said:—

> "The inquiry now presented, therefore, must be not whether the Association has dedicated the blocks between Fifth and Sixth Streets for **public** use, but whether it has entered into an implied covenant with the complainant not to use those blocks in the mode now proposed, and has granted to him, as appurtenant to his lots, the benefits to be derived from such restriction."
>
> "The object of the principle is, not to create

> **public** rights, but to secure to persons purchasing lots under such circumstances those benefits, the promise of which it is reasonable to infer has induced them to buy portions of a tract laid out on the tract indicated."

The New Jersey Supreme Court in Ocean City Land Company vs. Ocean City, 73 N. J. L. 493-499, concluded that it was doubtful if these various declarations of the Ocean City Association were dedications to **public** use or that they were more than notices to purchasers. The Court there also said that there was no evidence of any acceptance by the public and this criticism holds good as to this record in this case also.

This new inspiration of the complainants does not rest on any new records or on any new oral testimony. This testimony is the same, except diminished in quantity, and less circumstantial than in the earlier cases. The same witnesses appear but in diminished number.

In short, although the implied agreement as heretofore interpreted by this Court left the ownership of this land in the Association and restricted its use to camp ground or camp meeting purposes, these complainants now desire to wipe out completely that agreement and substitute one of their own making to suit their own designs —**in fact, to take away the ownership of the land from the Association and place it in the public.**

We submit that the learned Vice Chancellor has, by allowing any relief to the complainants, given countenance in some measure at least, to this proposition.

Counsel throughout their brief make charges of imaginary fraud and violations not yet committed, all of which have no foundation in fact and for which they produced no proof.

Their brief, in its opening pages, refers to and is based

upon the Lennig case. From the Lennig case, however, it is gradually withdrawn until at page 22 it frankly repudiates its findings of fact and its enunciation of legal principles.

(B)—As to the facts on which the injunction is based.

The object of the several bills as expressed therein is—

First, to enjoin the defendants from conveying any of the lots held by them or any lands or rights they may hereafter acquire, contrary to the rights of the **public**, as claimed in the bill, or contrary to the rights of the lot owners in the vicinity, to wit, the complainants, who may be entitled to the benefit of implied covenants made by the Ocean City Association; (page 32, line 30), and

Second, that the Ocean City Association be enjoined and restrained from building upon or **making any use** of the land described in the Bill of Complaint, located between Fifth and Sixth Streets and the Ocean and the Bay, at Ocean City, N. J., (page 33, line 28); and

Third, that Mary J. Buchanan and the other defendants be restrained from making **any** use of said land not in conformity with the full right of the **public** to all the uses of the same as may be appropriate for a camp meeting ground and incidental uses. (See pages 33 and 34.)

Fourth, that Mary J. Buchanan and certain others of the defendants be ordered to remove from said lands

certain buildings which they had erected thereon or were alleged to have erected thereon.

NO BASIS FOR INJUNCTION.

If it be claimed that the complainants are seeking an injunction against the defendants for some alleged violation of the restrictions in question, there is nothing in the record to warrant the issuance of such an injunction.

Since 1901 nothing has been done on or in reference to this tract upon which any complaint could be based. In 1901, the suit of Bridgewater vs. Ocean City Railroad Company was decided. The location of a station on this tract was not thought objectionable but the Court considered otherwise. Since that time there has been no change whatever in this tract which could form a basis of a complaint against the Association. Even the two houses which had been erected in 1889 were promptly removed. We, therefore, have this situation:—

For fifteen years the restrictions imposed by the Courts of this State have been respected and their requirements complied with by the Association and in this situation complainants have filed their bills **to enforce** the restrictions and **to enjoin** their violation.

The only charge against the Association since 1901 is that arising out of the enactment of a law in 1904 and an ordinance by the City Council of Ocean City based on this statute. The Court held the statute constitutional but set aside the ordinance on certiorari because the terms imposed **by the municipality** were not lawful. See Ocean City Land Co. vs. Ocean City, 73, N. J. L. 493.

By no stretch of the imagination can complainants charge any violation of their covenants by the Association in reference to this proceeding.

The only acts charged against the **other** defendants since 1889 are as follows:

A. The erection of the Masland boat house after securing a riparian grant on the Bay front in 1900. (Page 351.)

B. The erection of the Cresse house after securing such a grant on the Bay front in 1906. (Page 396.)

C. The erection in 1897 of the Buchanan hotel.

The lower Court in this case held that all of these violations were too stale to afford any relief to the complainants. In any event the Association was not a party to any of these transactions.

THE CONVEYANCES.

The conveyances complained of cover a period of time from 1896 down to October 30, 1909. But no word or act in violation of the restrictions **in connection with any of these conveyances** was proved or even suggested by any evidence appearing on the record.

Counsel in their brief (p. 12) say that on May 16, 1909, the Association by four deeds "conveyed a certain part of this land to the Atlantic Land Development Company **for the purpose of division into lots and the erection of permanent structures.**" Undoubtedly such a conveyance was made, **but there is not the slightest evidence in the case of the purpose for which the conveyance was made.**

Neither is there any evidence that either the Ocean City Association or this other defendant attempted or intended to make any use of this land. However, this conveyance involves an entirely different question, as we have above noted, namely, the question of whether the lands conveyed by the State are subject to these restrictions.

The only building erected since 1889 outside of those erected by Masland and Cresse on the Bay front riparian lands was the Buchanan Hotel, in 1897.

ONLY ONE BUILDING NOW.

No other building now stands on any of the land within the prescribed area outside of the Camp Ground Auditorium, **except this Buchanan Hotel**. No building has ever been erected on the Ocean front.

The sole and only evidence produced by the complainant of any thing done by the Ocean City Association was the conveyance between 1896 and 1909 of the several tracts of ground within the prescribed area to a number of the defendants. But not a particle of evidence has been produced to show that any one of these conveyances was made for **any purpose at variance** with the implied covenants to which the land is subject.

The entire case is barren of the commission of any act or of a single thing done by the Association except to make the conveyances aforesaid.

INJUNCTION CASE RESTS ON SINGLE POINT.

Complainants, therefore, must rest their case on this one single claim, viz,**that the Ocean City Association had no right to make a conveyance of any kind to any person of any part of this land.** To sustain this claim, they must assert and prove that there was no title to convey. This is abolutely at variance with the findings of the Court in the Lennig case and to these findings great weight must be given, because they were based on evidence given when it was fresh in the minds of the witnesses.

In the Lennig case, the Court said:

> "Instead of a camp, occupied for a few weeks only by tents which will scarcely at all interfere with the prospect or the breeze over an open space six hundred feet wide extending to the Ocean, the ground is to be divided into small lots, on which permanent buildings are to be constructed, of such height and dimensions as may suit the taste of the occupant, and shutting in the complainant's dwelling to an outlook over a fifty foot street. The contrast between the two situations covers much of the attractiveness of a seaside resort."

Clearly then, the **Ocean City Association** under the finding in the Lennig case, **had a right to erect tents on the camp ground plot.** That was the avowed purpose for which it was laid out. **It, therefore, had the title to the ground in question.** But complainants are fearful that the mere conveyance of the Association's title as aforesaid has affected or will affect their rights and prevent them from acting in the future against buildings being erected in the reserved area, and they desire the land dedicated to public use.

REAL OBJECT OF LITIGATION.

The **real** object of this litigation is, therefore,

(a) To enlarge or change the nature of the original covenant.

(b) To protect the complainants against their own laches, past, present and future.

(c) To prevent not only the defendants, but anybody else from conveying by deed or other proper conveyance **any** right, title, interest or estate in this land or any part thereof.

(d) To prevent the passage of the title or any

interest in the land to any person, by operation of law or otherwise.

(e) To impose costs on the Ocean City Association for violations committed by other defendants long ago or supposed to be committed at some time in the future by grantees of the Association.

(f) To do all this without the proof of a single overt act done or threatened within a reasonable time prior to the filing of the bills in question.

ARGUMENT.

THE SUITS IN QUESTION UNCALLED FOR.

1. If, as counsel claim in their brief, the matter has been settled in the Lennig case, why is this Court now called upon to settle it all over again, and that particularly without the proof of a single recent act chargeable to the defendants, which threatens the rights of the complainants?

MERE TRANSFER DOES NOT CHANGE TITLE.

2. The mere transfer of the title by the Association to a third party gives that party no higher or better title than the grantor had.

No injunction can now be secured against supposed future violations by future owners. Certainly this cannot be done at the expense of the present defendants. We cannot assume, in any event, that future owners will violate these restrictions.

NOT A BILL TO QUIET TITLE.

3. In one view of the case, counsel are apparently trying to quiet complainants' title in this property. There is a statute which provides that this can only be done by complainants in possession. Complainants are not in possession, nor are they proceeding under this statute, yet they are seeking to secure the benefit of the very remedy which is provided only by this statute.

NO PRIVATE RIGHTS AFFECTED.

4. No overt act in violation of any **private** right has been proved against these defendants. The complainants have suffered no special injury. These suits are avowedly brought by **private** parties to create or protect alleged **public** rights. The bills repeatedly refer to a violation of an alleged **public** dedication.

We contend that as to any rights the **public** may have in this land, there is no statute which authorizes the complainants to bring an action of this kind to protect such **public rights,** even if the bills in these cases were so framed.

Before the complainants are entitled to an injunction, they must show that some **private** right (aside from any public right) has been injured or threatened.

ISSUES ALREADY SETTLED.

5. The real issues (outside of the title to the riparian lands) in this case have already been settled by this Court in the Lennig and Bridgewater cases. This Court ought not to be asked to re-affirm what the Court then found in those cases, **at the expense**

of these defendants, unless they are guilty of some new violation of these covenants.

DEFINITE ADJUDICATION ALREADY MADE.

6. Counsel claims that the purpose of the litigation is to have a definite adjudication by this Court that all the lands within the reserved area have been dedicated or restricted and to restrain the Association and its grantees from ever making any conveyance except subject to the terms of the covenants. As to the public dedication, that is not the issue, and as to the restrictive covenant, if by the Lennig case, such a definite adjudication has not already been made, how is it going to be made in this case?

And, if the Lennig case is not binding and if it does not restrain the Association from making any conveyance, except subject to the terms of the covenants and restrictions specified in the Lennig case, how is this litigation going to benefit the complainants?

Are these defendants, or other defendants five years from now, to be subjected to some other suit by some other complainants, who will insist on another adjudication by this Court at their expense?

Counsel for complainants argue that it is essential that this question be settled, once for all. If it has not been settled in the Bridgewater case or in the Lennig case, when does counsel suppose it is going to be settled?

The confusion in the mind of counsel for the complainants is due to the fact that they are seeking to have their clients protected by the guaranty of this Court, viz, that they can never hereafter be guilty of laches in reference to their rights in this property.

Complainants are seeking, and that without the

proof of any overt act threatened, to have an **omnibus injunction** against these defendants and all other persons who could ever possibly be named as defendants in such a suit, enjoining supposed future violations of these covenants.

CONSPIRACY.

7. Counsel in drafting the bills has made certain allegations in reference to a conspiracy. It is one thing **to assert** a fact, but it is quite a different thing to prove it.

No conspiracy has been proved in this case.

All the defendants cannot be charged with the conduct of every other defendant. Each defendant is responsible for his, her or its own conduct, unless collusion be proved and none was proved.

NO OVERT ACT.

8. The distinction between the cases previously adjudicated and the present case is that in those cases some overt act had actually been committed in violation of these restrictions, while **now** no such act has even been threatened.

This Court has never acted except in cases of particular violations. Counsel proposes now to have a sort of an omnibus injunction, which shall actually prevent all **possible** violations by future litigants.

It is one thing to pass a law or decide a case, but it is quite another thing to enjoin **posterity in the mass** from attempting to evade such a law or decision. If counsel means that they want it judicially determined that this land is subject to the implied covenant, that it shall not be used except as a camp ground, then that is what has

already been decided in the Lennig and Bridgewater cases.

If subsequently to those decisions any person evades or attempts to evade the same, an injunction would issue, based on those decisions, but the evasion must be brought home to the particular defendant to be enjoined.

The complainants in this case have not shown any evasion or attempted evasion of these restrictions. The mere conveyance of a portion of the lands is not such an evasion.

ADJOINING OWNER HAS FEE IN STREET.

Take the case of a dedicated street,—the fee to the middle of the street is in the adjoining property holder and it is frequently conveyed by one to another, not for the purpose of evading the dedication or erecting a building in the street, but simply to pass the title **for whatever it is worth, a**nd that is all that was done in this case. There is not an indication in any of the recent conveyances complained of or in the oral testimony produced, that the Ocean City Association as grantor, or any one of the defendants as grantee, ever took **or** intended to take any of this land, **except subject to the original restrictions.**

Of course, we do not refer to the land secured from the State by riparian grant. That land is claimed by the several defendants as a separate title and not subject to these restrictions.

Some of the defendants erected houses years ago on the Bay front over this riparian land. But no houses had been constructed for many years prior to the filing of the bills in this case on the other land above the high water line, and none at all were ever constructed on the

Ocean front.

Of course, on the other hand, the Atlantic Land Development Company claims the Ocean front, the title to which came from the State, as an independent title and not subject to these restrictions. But the Court below decided in favor of this contention and there is, therefore, no injunction outstanding against these claims.

WHY COSTS IMPOSED ON ASSOCIATION?

Why, therefore, should the Ocean City Association be compelled to pay the costs of these suits and a counsel fee of $500 besides? It conveyed its riparian title which it secured from the State, as it supposed it had a right to do. The other titles were conveyed and could only be conveyed subject to the restrictions.

This did not mean that this land could not be used for **camp ground purposes.** That is what it was supposed to be used for. No attempt has been made of recent years to use it in any other way.

ERRORS IN DECREE AND CONCLUSIONS.

9. The learned Vice Chancellor in his conclusions (State of Case, page 218) found that the Association had sold and conveyed parcels in the reserved area, on two of which the purchasers had erected buildings. He doubtless refers to Mrs. Buchanan and Mr. Masland, against both of whom he refused an injunction (page 227).

The Court then proceeds to say (page 218, line 16) that the **Association's avowed intention is to sell to others for like purposes.**

We cannot find anything in the proofs to support

this allegation that the Association had any such intention. The answer expressly denies any such intention. (Page 89, lines 32 to 36; page 164, lines 17 to 33.) Not a single witness was produced to prove that the Association or any of its officers had ever declared or intimated such an intention.

The learned Vice Chancellor in his conclusions (page 229), also found as follows:

> "The attitude of the Ocean City Association throughout this litigation, is one of deliberate intention to sell its remaining fee in the reserved area for **private building.** In its answer, it declares that the time has come when it is necessary for it to dispose of the land, and at the hearing there was no concealment of that purpose. It is too obvious for comment that the purchase by the Development Company was made for the same object. In one of its answers it says so."

We have failed to find anything in the answer of the Ocean City Association which shows any intention to sell any part of this reserved area for **private building purposes**. The declaration in the answer (p. 160, lines 4 and 5) that the time had come when it was necessary to dispose of the land, does not assert that such disposition is to be at variance with or clear of the camp ground restrictions. It says, on the contrary, that it is "for the purpose of carrying on the objects for which it was incorporated," and one of these objects was the establishment and maintenance of a camp ground. Part of the very land was conveyed to the Ocean City Tabernacle Association, one of the defendants, and this Tabernacle Association is now operating the summer camp at Ocean City—not in violation, but in furtherance of the original camp ground restrictions.

There is nothing in the answer either to show that the conveyance to the Development Company was for

any such purpose. The contrary, in fact, (page 164, lines 17 to 33) appears by its answer. See also Development Company's answer, page 197, lines 1 to 10.

The purchase by the Atlantic Land Development Company covered land on the Ocean front, the major portion of which came by a title from the State.

The question, therefore, of the conveyance of that land is entirely different from a conveyance of the land originally plotted. There is not a line of testimony in the case to show that the Ocean City Association has conveyed in recent years any part of the land in the reserved area for any purpose contrary to the covenants or restrictions under which it is held.

REPLY ARGUMENT TO COMPLAINANTS' BRIEF.

I. THE FACTS.

Some of the facts and inferences set forth in complainants' brief are not supported by the record.

(a) The statement (page 12 of Brief) that the conveyance of May 16, 1909, to the Atlantic Land Development Company was made for the purpose of division into lots and permanent structures, **has no proof to support it.** There is not a word of testimony in the case on which to base this statement. This fact has been **assumed** and **not proved.**

An injunction should not be issued on a mere assumption. It is not a matter of right. Proof must be shown that there is imminent and actual impending danger. Central Railroad vs. Standard Oil, 33 N. J. Eq. 127-131. Buck vs. Backarack, 45 N. J. Eq. 123.

In the latter case, a question arose over the erection

of bath houses, within a violation of the covenant not to build on a tract which was to be kept open and unobstructed. **The Court refused to enjoin the making of a lease, because there was no proof that the same was to contain a covenant giving the lessee the right to build.** The Court said **some injury must be threatened** in cases where it has not already been inflicted and it must be distinctly alleged. This case also holds that **where the buildings were already erected at the time the complainant took the title, complainant is estopped in equity from asking for the removal,** on the doctrine of **caveat emptor.**

As far as the complainant, Mary A. T. Riley, is concerned, she took title November 11, 1910, and the Buchanan building was erected in 1897. The complainant, Henry Bradley, took title April 9, 1906, nine years after it was erected; and the complainant, William Bridgewater, as we shall herafter show, stood by for thirteen years, knowing that the building had been erected; in fact, having personally seen it. Page 270.

(b) An inference is raised by counsel (see Brief, page 13, line 27) that the conveyances made between 1903 and 1909 were **secretly** made and that the Association had a secret intention to erect an occasional dwelling within the reserved area and in the course of time urged laches or acquiescence.

The Association has erected no dwelling since 1889. Neither has it attempted to erect any. It had nothing to do with the erection of the Buchanan Hotel in 1897 or its enlargement in 1907.

This inference has no basis in fact and as a statement of fact it is absolutely untrue.

(c) Counsel then makes the insinuation (Brief, p. 13, line 33) that the Association by purchasing the riparian lands from the State hoped to construct over the

water such buildings and other constructions as would destroy the original covenant. This statement has no foundation in fact. It is a mere figment of the imagination of counsel for the complainant.

Riparian rights on the Ocean front were purchased by the Ocean City Association away back in 1901. No building was ever erected or intended to be erected thereon by said Association. These rights were sold May 16, 1909, to the defendant, the Atlantic Land Development Company. They never erected or threatened to erect any building thereon, or, in fact, to make any use of the land in question. They may have such a purpose in mind some time in the future, but the lower Court decided against the complainants as to these lands being restricted.

(d) Counsel on page 18, line 10, of their Brief assert that because defendant's ground of appeal (State of the Case, page 8) states "there was no proof in the case that the **whole** of this land had been **dedicated, in the alternative, as a camp ground meeting place or park,**" we are thus making a denial of the original covenant. This **whole** tract has not been so **dedicated** to the public in **the alternative.**

Counsel entirely misconceives this ground of appeal, we were simply taking exception to the attempted **enlargement** of the original covenant and to the effort of counsel to broaden it into a **dedication** for **public** purposes. The complainants' rights are private, due to an **implied covenant.** Lennig case, 41 N. J. Eq. 608-609.

(e) Counsel next, as a basis for the issuance of the injunction, state that the Ocean City Association and the other defendants were guilty of a number of violations, extending over a long period of time. For instance, the building in 1889 of two houses, (Brief, p. 11) which

were afterwards removed; the construction of the Buchanan Hotel in 1897 and its enlargement in 1907, and in between those dates the construction of the Masland and the Cresse buildings.

All these acts were a long time prior to the institution of these suits. It is well settled that this Court cannot by the aid of an injunction make reparation for **past** injuries. Its province is to restrain those that are in contemplation or progress. The object is strictly preventive.

Southard vs. Morris Canal, 1 N. J. Eq. 518. See also, King vs. Morris, 18 N. J. Eq. 397.

II. COVENANTS OVER RIPARIAN LANDS.

The arguments of counsel in support of complainants' contention that these covenants should extend over the lands obtained from the State overlooks two primary considerations:

(a) That the lot purchasers from the Association between 1880 and 1884 **then knew** that the Association did not own the title below the high water. It is a matter of record that this title was not obtained until 1901 on the Ocean front and 1906 and 1909 on the Bay front.

(b) The Association made no pretense that it **then** owned or that it would **thereafter** secure or purchase these lands. It was **no part of the original covenant** that the Association should pay to the State, as it did in 1901, $3,492.61, for the Ocean front or a further consideration for the Bay front, as it did in 1906 and 1909, and then make a free gift to the pubiic of this newly acquired land. Such a proposition was not even contemplated in 1880 or in 1883, or 1884, when all these declarations are

alleged to have been made on which the original restrictions are based. At least, there is no evidence that the same was contemplated either by the Association or by any of the lot purchasers, and certainly no express agreement to that effect has been proved or even alleged in the Bills of Complaint.

III. THE LAW.

(a) No person can dedicate to public use or restrict by **special covenant** land which belongs to another. The metes and bounds of the Ocean City Association's **title** in 1880 and subsequently, were necessarily the metes and bounds of its **intentions and declarations.**

(b) In New Jersey, the title to shore lands (between high and low water) is in the State and not in the riparian owner. This was so held by our Courts as early as 1847. Gough vs. Bell, 21 N. J. L., 156; 22 N. J. L. 441; 23 N. J. L. 624.

RIPARIAN OWNER HAS NO PROPERTY IN LAND UNDER WATER.

In State vs. Jersey City, 25 N. J. L. 525-527, the Court said as early as 1856:

> "It must now be accepted as the established law in New Jersey, that the right of the owner of lands bounding on a navigable river extends only to the actual high water mark, and that all below that mark belongs to the State. **The inchoate right**, if such it may be called, which the proprietor of the upland has, either with or without a license, to acquire an exclusive right to the property, by wharfing out or otherwise improving the [illegible] **gives him no property** in the land while it remains under the water. It may be granted by the State

to a stranger, at any time before it is actually reclaimed and annexed to the upland. Such is unquestionably the common law, and I am aware of no alteration of it in this respect in New Jersey."

This Court in 1870, in Stevens vs. Patterson, 34 N. J. L. 532, said:

"The State is **absolute owner** of the land all navigable waters within its territorial limits."

And on page 553:

"The State is never presumed to have parted with any part of its property, in the absence of conclusive proof of an intention to do so."

In Atlantic City vs. New Auditorium Pier Company, 63 N. J. Eq. 644-663, it was held:

"It appears, after considerable litigation, to have been settled, as the law of this State, that an owner of lands bordering on high water mark, who has not obtained the State's title to the lands lying below high water mark, **has no power to charge the latter with any easement** which will be forceful against a subsequent grant of the State's title."

Citing with approval Hoboken vs. Pennsylvania Railroad Co., 124 U. S. 656.

The Auditorium Pier case was considered by the Vice Chancellor on final hearing. His conclusions, found in 58 Atlantic Reporter 729, were reversed by this Court, 59 Atl. Rep. 158. But this reversal was on a different aspect of the case from that considered in 63 N. J. Eq. 644.

The United States Supreme Court in this Hoboken case held that the navigable rivers of the State of New Jersey are the property of this State, affirming Stevens vs. Paterson, supra.

Counsel for the complainant, in citing this case, quotes Justice Bradley, page 34 of his Brief, as follows:

> "**Suppose** instead of a dedication, it is said J. S. had made an express covenant with the City that **as he acquired the State's title** to these lands and reclaimed them, he would continue the streets to the high water line. In such case no one would contend that the riparian acts or the grants made under them would discharge such liability."

We cannot see how counsel can expect to apply this doctrine to the present case, because there was **no express covenant** that the Ocean City Association would ever acquire the State's title and there was no suggestion that if they ever did acquire it, it would be subject to these covenants and restrictions.

If it be claimed that such was the declared intention of the Ocean City Association, the test would be whether complainants (if the Association had never acquired the State's title) could by a bill for specific performance compel it to so acquire it and then subject it to these covenants and restrictions.

That is the situation in which the complainants are placed. They rest their case on a **supposition** which has no foundation in fact.

Counsel next cites Brewer vs. Marshall, 19 N. J. Eq. 537-542.

The trouble here is that the rights claimed by the complainants do not exist with reference to the riparian lands. Counsel overlooks the fact that the two titles are entirely distinct.

Counsel next cites the De Mattos case, which holds that the property could not be used in opposition to the contract. The query naturally arises—"What property?"

This riparian land is different property, coming by a different title than the land originally plotted. Counsel assumes the very premise which he is bound to prove.

Counsel next takes up the case of Cotton vs. Cresse, 80 N. J. Eq. 540. He claims that the Association had equitable rights in the Ocean and Bay fronts, but, as we have shown, our Courts have held that there were no such rights as against the State, that the riparian owner has no title except what he gets from the State, and it therefore, had no power of dedication or restriction over land which it did not own.

IV. NO ESTOPPEL.

Counsel for the complainants next contend that the Ocean City Association should be estopped to make any claim to the land acquired by it from the State of New Jersey by riparian grant, except subject to an implied covenant restricting its use.

We would thus have the situation of a lot owner who is interested in an implied covenant affecting certain lands in Ocean City, seeking to **extend** that restrictive covenant and impose it upon other land acquired by the Association from the State of New Jersey, by independent grant and **subsequently** to the creation of the restrictive covenant referred to.

As a matter of act, the defendant Association did not own or have any interest in this riparian land at the time of the creation of the restrictive covenant mentioned. While there is testimony that certain words like "from Bay to Ocean" were used in oral and printed statements given out by the Association, yet this language must be interpreted in the light of the actual ownership of the Association at that time and any restrictive covenant **then** created by implied contract between the Association and its lot purchasers must have been co-extensive with and delimited by **the actual title then owned** or claimed

to have been then owned by the Association.

This restrictive covenant has been raised by our Courts out of the maps filed by the Association and the deeds of which those maps formed a part and upon certain oral and printed statements claimed to have been made by the Association as inducements to the purchase of lots by the complainants from the Association.

APPLIES ONLY TO LAND THEN OWNED.

Admittedly the deeds and the maps refer only to land owned at that time. In similar fashion, the oral and printed statements attributed to the Association must be held to relate to the land it then owned, which land was then described in the maps and in the deeds to which those maps referred.

In short, there is nothing in the conveyances or maps, forming a part thereof, which could be construed as an attempt on the part of the Association **to convey what it did not own** or to warrant the title to property which it did not own. The presumption must be that the Association contracted with reference to land it then owned. There is no fact in the case in any wise tending to change that presumption.

While the restrictive covenant in question might bind the land the Association **then owned** and the accretions made thereupon by the recession of the Ocean, yet such covenant could not extend to other land which the Association did not acquire by its original conveyance or title, but rather from the State as an independent owner and **subsequently** to the creation of the restrictive covenant.

Complainants are, therefore, without recourse to the doctrine of estoppel. That doctrine has no applica-

tion to the circumstances and conditions involved in this dispute, because—

(1) An estoppel is co-extensive—

"with the estate, right or interest which its conveyance purports to pass. (16 Cyc. 693).

(2) And—

"An estoppel will not operate as to land or an interest therein other than that which is **specifically** conveyed or called for by the **plain import** of the conveyance, and as to which the covenants for title are confined." (16 Cyc. 695, Sec. 3.)

(3) Any statements made by the Association (oral or written) must be assumed to have been made in the light of the law applicable thereto. One is supposed to know the law, not only when it is against his interest, but also when in his favor. In short, any expressions like "Bay to Ocean" must be construed to relate solely to the **Ocean** as it then was and with reference to the title then owned by the Association.

The title which the complainants here got from the Ocean City Association was obtained **long prior** to the grants from the State in 1901 and 1906. The last declaration of any kind attributed to the Ocean City Association by the complainant, **was in 1884.** (State of case, 425.)

NO DEDICATION AFTER RIPARIAN GRANT.

Counsel attempts to make the distinction that because the Ocean City Association **itself took** title to the riparian land, therefore, under the doctrine of Seabright vs. Algor, 69 N. J. L. 641, the easement should be extended over the riparian land.

The trouble with the application of the principle of that case to the present issue is that there was no

declaration by the Ocean City Association **after** it acquired the State's title in 1901 or in 1906. Not a single declaration as to this covenant or act in the nature thereof since 1884 has been made by the Ocean City Association.

Counsel say in their brief that this was the last word, page 9, line 16.

The case of Camden vs. McAndrews and Forbes, 85 N. J. L. 260, is not in point to sustain complainants' contention. Counsel is attempting to overturn the findings of the Court in that case. This Court there held held that public dedications may be made over the State's land by acts of dedication made **after** the State's title has been acquired.

The doctrine of the Hoboken case, 7 Vroom 540, was modified by the Hoboken-Pennsylvania Railroad case and by a number of cases since that time.

The whole point, as we have already said, is that the **Ocean City Association was in no sense bound to secure the title from the State and subject it to these restrictions.**

V. CONSTRUCTION OF COVENANT.

The Vice Chancellor well said "the covenant could not be stretched beyond its fair intent." Counsel for the complainant (page 46, line 12 of Brief) say—

> "These suits are brought for the protection of vested legal rights against the danger of their destruction by the acts of the defendant. They do not seek the **extension** of these rights, but merely their **protection.**"

We take issue with this statement, because that is just what counsel is seeking to do, namely, they are seeking to **extend** and not to **protect** the private rights they already have. As a matter of fact, the rights which

they already have **need no protection,** as far as this record shows.

They are seeking a decree of this Court in favor of a **dedication** of this land to **public** purposes.

In their brief they do not discuss the question of "an implied covenant," but on every page they use the term "dedication" or "public right."

VI. LACHES OR ACQUIESCENCE.

Counsel seem to think that Mrs. Buchanan had full knowledge of the covenants, oral and otherwise, made by the Ocean City Association, and that, therefore, the complainants are not in laches, as far as she is concerned. But there is no proof that Mrs. Buchanan had any such knowledge.

As the Vice Chancellor well said, she honestly believed she had a good title or she would not have made the large expenditures she did. See Case, p. 227, lines 7 to 10.

The facts are that in 1900, Mrs. Buchanan purchased this hotel property, located on the reserved area which property cost originally $18,000.00. Mr. Charles Matthews, her predecessor in title, moved this hotel there in 1897. William Bridgewater, one of the complainants, (see page 270), saw the boarding house being moved to its present location. It was moved several squares and took a week or ten days.

In 1907, Mrs. Buchanan enlarged it. Mr. Bridgewater knew that this was done at the time. He had actual knowledge of the original moving and of the enlarging. In 1907, Mrs. Buchanan openly and notoriously erected an addition, which cost more than $3500.00. She obtained a permit from the City officials March 21,

1907. It was thirteen years before Mr. Bridgewater moved against her after he had this knowledge. In the meantime, **she conducted this boarding house notoriously** and **openly for the entertainment of the public.**

As we have already seen, the complainant Bradley took title April 9, 1906, nine years after this hotel was placed on the ground; in other words, **he took title with the hotel already there.**

Mrs. Riley, another complainant, took title to her lot November 11, 1910, thirteen years after. Buck vs. Backarack, 45 N. J. Eq. 123. This case holds that buildings cannot be removed **if erected at time complainant took title.**

Mr. Bridgewater admittedly knew that this building was being moved in the first instance; that it was enlarged in the second instance; and that it was maintained in the third place for thirteen years as a public house by the defendant, Mrs. Buchanan. Certainly he must be held to have acquiesced in its original construction, as well as in its enlargement and maintenance.

The wrongful act of the defendant, Mrs. Buchanan, was **completed** with his knowledge and after he **had** that knowledge, he sat by and allowed all this time to elapse. She has spent thereon between $20,000.00 and $25,000.00.

The laches of all the complainants in this particular case is so gross that the Court, as a mere matter of equity, should refuse relief to any litigant so lacking in diligence. A great deal more harm will be done to Mrs. Buchanan by granting the relief than will come to the complainants by refusing it.

Complainants evidently did not think that their own rights were being seriously invaded when they sat by for thirteen long years inactive.

It is highly improbable that Mrs. Buchanan could

now recover against her grantor, Mr. Matthews, in case she were forced to remove from the land in question. As a matter of fact, Mr. Matthews is dead. Many of her witnesses are also scattered or dead.

The continued neglect of the complainants in this case renders their demands unconscionable at this time. It certainly should not appeal, as a matter of conscience, to this Court to exercise its discretion to grant the complainants this extraordinary remedy against this defendant.

Not what Mrs. Buchanan ought to have known, but what she **actually** did **know** is the question. Sumner v. Seaton, 47 N. J. Eq. 103.

The Court will balance the convenience or inconvenience of the parties and, in so doing, delay and laches on the part of the complainant has an important bearing.

14 Ruling Case Law, page 358, par. 60.

> "Equity always refuses its aid to stale demands." 14 Ruling Case Law, page 360, par. 62.

The text-writer there said:

> "The lapse of time carries with it the life and memory of witnesses, the muniments of evidence and other means of proof."
>
> "He should be left to his remedy at law. Thus one standing by and permitting the erection of a stable in alleged violation of the restrictive covenant in a deed and having the right to prevent it, cannot invoke the aid of the Court to enforce a remedy in equity for its removal."

See cases cited 14 Ruling Case Law, 361, par. 62, notes 18 and 19.

But no better citation can be given than the one in Counsel's brief, p. 52, lines 10 to 20. There has here been surely a change of title and a loss of evidence and inconvenience of equities.

ARGUMENT ON DEFENDANT'S GROUNDS OF APPEAL.

On page 6 of the State of the Case, will be found the notice of the appeal given by the Ocean City Association and the several grounds on which said appeal is based. The cross-appeal of the Ocean City Association claims two errors in the conclusions and decree of the lower Court.

(a) That there were no proofs of anything done or threatened to be done in violation of the Camp Ground restrictions; therefore, no injunction should have issued against it.

(b) There was no proof in the case to warrant the imposition of any costs on this defendant, and, in any event, no proof to warrant the imposition of all the costs including the $500.00 counsel fee, on this defendant.

A. NO INJUNCTION.

We have already shown that the Ocean City Association had not recently committed any overt act and no such act was threatened at the time this suit was started. It is true that back in 1889, two houses were erected on this reserved area, but they were immediately removed. From that time down to the present time no building has been erected by this defendant within this area. **This defendant is certainly not responsible for any building erected by one of the other defendants.** It had nothing to do with the erection or the enlargement of the Buchanan building. As to the Cresse and Masland buildings, they ware erected by those defendants themselves, and on what is known as the "riparian lands." But even if the Association had participated in the enlarge-

ment of the Buchanan building (of which there was no proof) that was not an injury threatened at the time of the filing of the bill, because this enlargement was completed by Mrs. Buchanan in 1907, three years prior to the filing of the first of these bills.

> "The mere apprehension of future injury is not sufficient to warrant the issuance of an injunction." (14 Ruling Case Law, p. 334, par. 57.)

We may well ask what overt act has recently been committed or threatened by this defendant, to prevent which this Court, in the exercise of its sound discretion, should use "this strong arm of equity?"

What was this defendant doing or threatening to do that it should have been haled into Court?

There is not a line of proof in the case to show that it even conveyed any of this land **with any intention** on its part that it was to be used for **private building purposes or contrary to the Camp Ground restrictions.** But even so, if we infer that possibly the Atlantic Land Development Company took title to the riparian lands for that purpose, the lower Court sustained the claim of this company that it had a separate, independent title, free and clear of these restrictions. The lower Court, having found in favor of the defendants on this point, was in error in deducing any such inference as a ground for an injunction.

But, as we have shown, the mere conveyance of whatever title they had was, in no sense, injurious to the complainants. **While the Ocean City Association held title, it had just as much right to build on this land as had any of its grantees. The grantees obtained no greater right than had their grantors by the transfer of the title.** The mere conveyance, therefore, was not an overt act, nor did it necessarily threaten the commission

of any overt act, unless some purpose apart from the mere conveyance was expressed at the time. It would be stretching the right to an injunction very far to say that complainants can obtain such relief in this Court on the mere **supposition** that the transfer of the restricted title was evidence of a purpose to disobey such restrictions.

B. AS TO COSTS.

No costs should have been imposed. In any event, no costs should have been imposed on the Ocean City Association, and certainly not the **whole** of the costs of this case. The Ocean City Association is not responsible for what any of its grantees may have done. **The sole and only cause of complaint against the Association is that it made a conveyance of the title it had. The Association issued no title policy that the title it gave was free and clear of any restrictions.** There is no proof that it made or pretended to make any representations that the title was thus clear, even if it could have done so. In any event, such representations, even if made, would have been of no avail.

But moreover, the injunction as issued only prevents the Association or its grantees from conveying the lands, or any interest therein, for any use or purpose inconsistent with its use as a camp meeting ground. **It may well be asked how could the Association make any such conveyance** in view of the decisions of this Court in the Lennig and Bridgewater cases.

As we have heretofore shown, complainants are simply seeking protection against their own laches, past, present and future. This Court will not grant relief to the litigant who is in laches. Certainly it is not going to

make an omnibus declaration that no other claimant can ever hereafter be in laches with reference to his, her or its rights in relation to this ground. The Court was supposed to have protected all these claims in the Lennig and Bridgewater cases. Those cases settled the law as to the title to this land. If the Court now makes a new declaration, at our expense, what is to prevent some other claimant in the future from acquiescing in the violation of these covenants The Court has already stated what his rights are. Certainly this Court is not going to issue an injunction against his relinquishing those rights, if he sees fit so to do, whether it be by laches, acquiescence or release duly executed.

The inquiry should be—not whether the Association had dedicated these blocks to some **public** use, but, first, whether it had entered into an **implied covenant** with the complainants not to use them as then proposed, and, secondly, whether that covenant was being violated at the time these suits were started.

See Lennig case, 41 N. J. Eq. 609.

These complainants cannot maintain a suit for an injunction unless they suffer some special injury different from that suffered by the public at large. They are not here to protect the **public rights,** if any there be in this land.

The inquiry should not be whether the Ocean City Association, in years long past has violated the restrictions, but whether or not the Association at the time of the institution of this litigation, or within a reasonable time prior thereto, had or was doing any act in violation of these covenants, tending to injure these particular complainants. We contend that no such act was either done or threatened. There is not a suggestion of proof in the case on which to found any such claim as the

complainants now make. Why then should any costs be imposed on the defendant, the Ocean City Association? Why, in any event, **were three such suits started?**

Was it merely an effort to forage on this defendant for counsel fees and costs? Can any one of the complainants point to any recent act committed by the Association, or any one of these defendants, which should have incited them to file these bills?

There was not a single thing done except the mere transfer of a portion of the title to the land within the restricted or reserved area. The Ocean City Association could not convey any greater or better title than it had. **The determination of these suits in favor of the complainants will not change the restrictions or covenants other than as such restrictions and covenants were determined in the Lennig and Bridgewater cases.**

Is this defendant to be subjected to the expense of litigation at the beck and call of all of the thousand and one claimants who have some interest in this reserved area and mulcted with costs at the mere whim and fancy of any attorney who desires to bring a suit of this kind? Certainly such a suit should be brought only when some injury is threatened or has been **recently** committed. **These complainants use the very facts brought out in the Lennig and Bridgewater cases**, and even the overt act alleged in those two cases **as a basis,** in part at least, **for their present claims** to relief.

No new or recent violation of the camp ground covenants has been shown.

The decree should, therefore, be modified in three particulars, viz:

1. No injunction should have been issued because no act was being committed or threatened. The bills should have been dismissed as to the Ocean City Associa-

tion with costs in its favor.

2. The defendants, Ocean City Tabernacle Association and Mary J. Buchanan, should be dismissed as defendants, with costs against the complainants in each case.

3. A decree should not have been made creating or even tacitly suggesting **a dedication** of the **whole** of these lands to **public** use in **the alternative** as a camp meeting ground **or park.**

Respectfully submitted,

BLÆAKLY & STOCKWELL,
Counsel for Ocean City Association,
Mary J. Buchanan and Ocean City
Tabernacle Association.

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NOTICE OF APPEAL OF MARY A. T. RILEY.

IN CHANCERY OF NEW JERSEY.

Between Mary A. T. Riley, substituted in the place and stead of Henry Bradley, *Complainant,* and Ocean City Association, *et als.*, *Defendants.*	On Bill, &c. Notice of Appeal.

To Bourgeois and Coulomb, of counsel with the defendants, Ocean City Association, Atlantic Land Development Company, James E. Lake and S. Wesley Lake; Marter and Rose, of counsel with the defendant, Charles W. Masland; John Boyd Avis, of counsel with the defendants, Centenary Fund and Preachers' Aid Society of the New Jersey Annual Conference of the Methodist Episcopal Church, Samuel H. Hahn and Izetta Hahn; Bleakley and Stockwell, of counsel with the defendants, Mary J. Buchanan and Ocean City Tabernacle Association:

Take Notice that the complainant appeals from so much of the decree made in the above cause on

the 24th day of May, 1916, as limits the restraint imposed in said decree to the land lying between high water marks of the Atlantic Ocean and Great Egg Harbor Bay (including therein land formed by accretion or reliction), and fails to provide for the same restraint below the high water marks of the Atlantic Ocean and Great Egg Harbor Bay in those cases where riparian grants of the state's lands under water have been, or may hereafter be, made;

From so much of the said decree as excepts from the restraint thereby imposed the building of the defendant, Charles W. Masland, and fails to enjoin the said defendant to remove the said building in its entirety from the restricted area between Fifth and Sixth Streets, either above or below the high water mark of Great Egg Harbor Bay;

From so much of the said decree as dismisses the bill of complaint as against the defendant, Mary J. Buchanan (without prejudice in the event of future infractions of the restrictions):

For the following reasons:

1. That the complainant was entitled, in addition to the relief allowed in said decree, to have the defendants restrained from using the whole or any part of such lands and premises lying beneath the waters of the Atlantic Ocean or Great Egg Harbor Bay and between the lines of Fifth and Sixth Streets in the city of Ocean City, county of Cape May, extended, as said defendants, or any of them, might acquire by riparian grant from the state, or which said lands the defendants, or any of them, might have already so acquired, for any purpose injurious or detrimental to the enjoyment of the upland tract of land dedicated by the defendant, the Ocean City

Association, as a camp meeting ground and park; and from conveying said riparian lands, or any part thereof, for any purpose injurious or detrimental to the enjoyment of the said dedicated tract as a camp meeting ground and park; and from erecting on any part of the said riparian lands any obstruction to the view of the ocean or bay, or to the free passage of air over said restricted tract; and that the Court erred in refusing to provide for such additional restraint.

2. That the complainant was entitled, in addition to the relief allowed in said decree, to an injunction against the defendant, Charles W. Masland, requiring him to remove from the restricted tract and from the land below high water wark between the lines of Fifth and Sixth Streets extended, the building thereon erected by the said defendant.

3. That the complainant was entitled, in addition to the relief allowed in said decree, to an injunction against the defendant, Mary J. Buchanan, requiring her to remove from the restricted tract the building owned by her thereon.

Dated, this fifteenth day of August, nineteen hundred and sixteen.

WILSON & CARR,
Solicitors for and
HARVEY F. CARR,
Of Counsel with Complainant.

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

HARVEY F. CARR,
Of Counsel with Complainant.

New Jersey State Library

NOTICE OF APPEAL OF ATLANTIC LAND DEVELOPMENT COMPANY.

IN CHANCERY OF NEW JERSEY.

Between Mary A. T. Riley, substituted in the place and stead of Henry Bradley, *Complainant,* and Ocean City Association, *et als.,* *Defendants.*	On Bill, &c. Notice of Appeal of Atlantic Land Development Company.

Defendant, Atlantic Land Development Company, hereby appeals from so much of the final decree entered in the above-stated cause on the 24th day of May, 1916, as states as a fact that Atlantic Land Development Company has denied the existence of the dedication in the nature of an easement, and is offering resistance to its enforcement, and intends to use said lands in a manner inconsistent with the use of the same as a park or camp meeting ground; and from that part of said decree which states as a fact that there is danger that the Atlantic Land Development Company will convey the lots and premises to bona fide purchasers in ignorance of the rights of the public and complainant therein; and from that part of said decree contained in paragraph one which adjudges that all the lands in Ocean City, Cape May County, New Jersey, lying between Fifth and Sixth Streets and Atlantic Ocean and Great Egg Harbor Bay, except where grants of the state's lands under water have been made, in which case to the high water as it existed at the

date of said riparian grants, are forever bound and restricted by the dedication created by defendants to the public for a park and camp meeting ground, to be forever kept open and free of any buildings except an auditorium to be used only for park and camp meeting purposes, or other public recreation purposes in connection therewith; and appeals from that part of said decree contained in paragraph two wherein it is decreed that Atlantic Land Development Company be and is forever enjoined from using the whole or any part of the lands and premises situate in Ocean City aforesaid between Fifth and Sixth Streets, and Atlantic Ocean and Great Egg Harbor Bay, etc., for any use or purpose inconsistent with the use of said lands and premises as a park and camp meeting ground, and from in any manner conveying the same or any interest therein for any use or purpose inconsistent with their use as a park and camp meeting ground; and appeals from the whole and every part of paragraph 4 of said decree, and from the whole of paragraph 5 of said decree wherein it adjudges a counsel fee to be taxed in the costs against defendant Atlantic Land Development Company, and in favor of complainant in said cause.

Dated August 16, 1916.

BOURGEOIS & COULOMB,
Solicitors for Defendant Atlantic Land Development Co.
GEO. A. BOURGEOIS,
Of Counsel.

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

GEO. A. BOURGEOIS,
Of Counsel with Defendant.

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between Mary A. T. Riley, substituted in the place and stead of Henry Bradley, *Complainant,* and Ocean City Association, *et als.*, *Defendants.*	On Bill, &c. Notice of Appeal.

To Wilson & Carr, solicitors and of counsel with the complainant, and Bourgeois & Coulomb, solicitors and of counsel with the defendant, Atlantic Land Development Company:

Take notice that the defendant, the Ocean City Association, appeals from so much of the decree made in the above cause on the twenty-fourth day of May, 1916, in which it is decreed:

1. That the defendants, the Ocean City Association, Charles W. Masland, the Centenary Fund and Preachers Aid Association, etc., the Atlantic Land Development Company, James E. Lake, S. Wesley Lake, Ocean City Railroad Company, Scull and Marts Company, City Mill and Lumber Company, and David K. Tucker, and any and all heirs, successors or assigns, of the said defendants, all and singular, be and they are hereby, forever enjoined from using the whole or any part of the lands and premises situate in the city of Ocean City, county

of Cape May and state of New Jersey, lying and being between Fifth and Sixth Streets and the Atlantic Ocean and Great Egg Harbor Bay to the high water mark on both the Atlantic Ocean and Great Egg Harbor Bay, including all land now or hereafter formed by accretion or recession (except where riparian grants of the state's lands under water have or hereafter may be made—in which case to the high water line as it existed at the dates of said riparian grants), for any purpose inconsistent with their use as a camp meeting ground or park or from conveying the same for any purpose inconsistent with such use, excepting, however, such part of the building of the defendant Charles W. Masland as stands at the present time within the restricted area.

2. That the complainants be, and are hereby allowed the costs of this suit to be taxed, not including costs of trial, and that the said costs and counsel fee be collectable from the defendant the Ocean City Association:

For the following reasons:

1. The proofs in the case do not show that the said defendant, the Ocean City Association, had used or attempted to use the whole or any part of the lands and premises above described for any purpose inconsistent with any dedication, use or easement imposed thereon.

2. There is no evidence that the said defendant, the Ocean City Association, had conveyed or attempted to convey said lands and premises, or any part thereof, for any purpose inconsistent with any dedication, use or easement imposed thereon.

3. There is no proof in the case that the said defendant, Ocean City Association, committed or threatened to commit any act in violation of any dedication, use or easement imposed on said lands and premises, or any part thereof.

4. There is no proof in the case that the whole of said lands and premises were dedicated or set apart to the use, in the alternative, as a camp meeting ground or park.

5. There is no proof in the case sufficient to support an injunction or restraining order against the defendant, Ocean City Association, for any of the matters set forth in the bill of complaint or on any of the grounds set forth in said decree in respect to the use or conveyance of said lands or any part thereof.

6. There is no proof in the case to warrant the imposition of any costs on the Ocean City Association.

7. There is no proof in the case, in any event, to warrant the imposition on the defendant, Ocean City Association, of the whole amount of the costs decreed to be paid, or that the defendant, Atlantic Land Development Company should be relieved entirely therefrom.

Dated August 21, 1916.

BLEAKLY & STOCKWELL,
Solicitors for and
E. G. C. BLEAKLY,
Of Counsel with Complainant.

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

E. G. C. BLEAKLY,
Of Counsel with the Complainant.

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between
William G. Carroll, *et als.*,
Complainants,
and
Ocean City Association, *et als.*,
Defendants.

ON BILL, &c.

NOTICE OF APPEAL.

Notice of appeal of complainants, William G. Carroll, *et als.*, in the same form as the notice of appeal of the complainant, Mary A. T. Riley, substituted in the place and stead of Henry Bradley, in the case of Bradley vs. Ocean City Association, *et als., supra,* pp. 1 .

Notice of appeal of Atlantic Land Development Company, defendant, in the same form as the notice of appeal of said defendant in the case of Bradley vs. Ocean City Association, *et als., supra,* pp. 1 .

Notice of appeal of Ocean City Association, defendant, in the same form as the notice of appeal of said defendant in the case of Bradley vs. Ocean City Association, *et als., supra,* pp. 1 .

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between William E. Bridgewater, *Complainant,* and Ocean City Association, *et als.,* *Defendants.*	On Bill, &c. Notice of Appeal.

Notice of appeal of the complainant, William E. Bridgewater, in the same form as the notice of appeal of the complainant, Mary A. T. Riley, substituted in the place and stead of Henry Bradley, in the case of Bradley vs. Ocean City Association, *et als., supra,* pp. 1 .

Notice of appeal of the defendant Atlantic Land Development Company, in the same form as the notice of appeal of said defendant in the case of Bradley vs. Ocean City Association, *et als., supra,* pp. 1 .

Notice of appeal of the defendant, Ocean City Association, in the same form as the notice of appeal of said defendant in the case of Bradley vs. Ocean City Association, *et als., supra,* pp. 1 .

[Erratum to be inserted on page 10 of the State of the Case to follow line 25]

except that in the Bridgewater case the complainant also appeals from so much of the decree entered therein as relates to the defendants Cecilia H. Cresse and Henry D. Moore, and fails to enjoin them to remove from the riparian lands lying between Fifth and Sixth Streets extended into Great Egg Harbor Bay the buildings erected thereon and owned by them respectively.

BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

Between
Henry Bradley,
Complainant,
and
Ocean City Association, Mary J. Buchanan, Ocean City Railroad Company, Henry D. Moore, Lewis M. Cresse, and Cecilia H., his wife, Charles W. Masland, Centenary Fund & Preachers' Aid Society, James E. Lake, S. Wesley Lake, Ocean City Tabernacle Association, William Watson Adams, Samuel H. Hann, Atlantic Land Development Company, Ebenezer Adams, Scull & Marts Co., City Mill & Lumber Co., and David K. Tucker,
Defendants.

To His Honor Mahlon Pitney, Chancellor of the State of New Jersey:

Humbly complaining, showeth unto your Honor, your orator, Henry Bradley, residing in the city of Philadelphia, and state of Pennsylvania.

1. That he is the owner of the following lot of ground, situate in the city of Ocean City and county of Cape May, in the state of New Jersey, described according to the maps or plots representing the va-

rious sections of lots, parts of said city, originally owned, laid out, and to a large extent, already sold by the Ocean City Association, which was the owner of the entire area of said section, prior to the plotting thereof and selling of lots therefrom, which lot owned by this complainant, he acquired of parties who, through a greater or less number of intermediate transfers, acquired the same from original purchasers thereof from said association:

> All that frame messuage and certain lot or piece of ground Situate, lying and being in the city of Ocean City, county of Cape May and state of New Jersey, No. 701, section A, on plan of lots of the Ocean City Association. Beginning on the westerly side of Wesley Avenue at the distance of 100 feet southwardly from the southwardly side of Sixth Street, containing in front or breadth on the said Wesley Avenue 50 feet and of that width extending in length or depth westwardly between lines parallel with the said Sixth Street 120 feet to a 15 feet wide street.

2. And your orator further shows that said original purchasers and also all the parties succeeding them, as subsequent owners in the line of title to your orator, and also your orator himself bought and paid for the said lot in reliance upon certain representations made by the said Ocean City Association before it had sold any lots on the said maps or plots of Ocean City.

3. And your orator further shows that the said association, prior to and as an inducement to all the purchasers, which were subsequently made, of lots in said Ocean City, from said association, and as an in-

ducement also to the purchase of lots in said Ocean City, from other parties than said Ocean City Association, represented and stipulated that a certain large area of land adjacent to the said lots offered to and subsequently purchased, to wit, the area of ground exclusive of streets bounded by Fifth and Sixth Streets, and the Atlantic Ocean and Beach Thoroughfare, in the said city, should be and forever remain devoted to camp meeting and other public recreation purposes in connection therewith, to the advantage and benefit, in the nature of an easement, of the lots of ground which were so offered by the Ocean City Association, as aforesaid, and were afterward purchased by the several individuals whose rights have become vested in your orator.

In the early part of the year 1880, said Ocean City Association announced by a printed paper which it introduced published and circulated as the Ocean City Journal, that said association had consummated plans for establishing a great and permanent place for holding religious camp meetings, and a summer college settlement, located on Peck's Island, at a part of the area embraced in the present Ocean City, in Cape May County, New Jersey. The plan of providing for locations intended to be occupied by religious camp meetings, a large area, free from any obstructions or interference with passage and occupation by visitors, and with use in the erection of tents thereon, was fully recognized by all those coversant with such camp meetings in and prior to the year 1880. Said Ocean City Journal stated further, that a public sale of lots adjacent to such a camping ground would be held on May 20th, 1880. Said Ocean City Journal further announced, in addition, for the purpose of attracting purchasers to the said proposed public sale, the following particu-

lars, among others, of the terms upon which its lots would be offered:

"The space allotted to the encampment is "500 feet wide, from the thoroughfare to the "ocean, with plenty of tenting ground. It is "contemplated to have all the appointments "desirable to render the camp meeting a real "feast to the thousands who may congregate "there for Christian worship.

"Those coming to tent with us will have every "possible facility that will contribute to their "comfort. Besides the regular services of the "encampment, there will be temperance con- "ventions, anniversaries and other Christian "and philanthropic convocations, fully occupy- "ing the season and making it memorable in "interest and profit.

"No pains will be spared to give to Ocean City "a series of religious privileges equal to other "resorts of kindred character."

Prior to the sale which was held as thus announced, on May 20th, 1880, and throughout the progress of said sale, the Ocean City Association published and distributed, in order to inform intending purchasers of the conditions under which they were solicited by said association to purchase lots, a map or plan embracing the whole tract of ground adjacent to the proposed camp meeting area, which the said association was then ready to offer to purchasers, and designating by numbers about one thousand lots, defined thereon as occupying in the aggregate said entire tract then ready to be offered for sale, except the streets and the strip of ground embraced between Fifth and Sixth Streets, extending from the southeast to the northwest bor-

ders of the tract designated upon said map. The said strip of ground between Fifth and Sixth Streets, as represented upon said plan, was clear of any marking of lots, and on that portion between Wesley and Asbury Avenues, as said streets are now defined, and as they were then represented upon said plan, Central Avenue was not extended, and there were set forth the words "Camp Ground" in prominent letters. One, William B. Wood, who was the chief representative of the Ocean City Association, acting by authority given him therefor by said association, made an address in the presence and hearing of all the persons assembled, who afterward made purchases at said sale, immediately before and to preface the same, wherein he explained the plans and purposes of the association, substantially as hereinbefore stated, in developing the said tract of land and offering for sale the lots, into which a part of it had been so divided up. In the course of his address, aforesaid the said William B. Wood announced that the strip of ground above indicated, lying between Fifth and Sixth Street, and the Atlantic Ocean and Beach Thoroughfare was set forth apart and dedicated to public uses in connection with the established camp meeting enterprise, and for the better promotion of such project would be forever kept open and clear of permanent obstruction of every sort, for freedom and circulation of air, except a certain large auditorium building situate in the square made by Fifth and Sixth Streets, Wesley and Asbury Avenues, through which square the intervening avenue, Central Avenue, had not been extended. In the latter part of the year 1880, the said association published and circulated a printed account of the plans and purposes declared by it in respect of lots which it proposed to, offer for sale,

designating the said document and annual report. In the said report said association stated that the camp ground block extends from the meadow to the ocean; and that the space allotted to the encampment was 500 feet wide from thoroughfare to ocean, with plenty of camping ground. Relying upon said representations and other forms of implied covenant made by said association, many and various individuals acquired lots.

Your orator purchased said lot, relying upon said representations and covenants made by said association as aforesaid. To consummate the said purchases from the Ocean City Association aforesaid and sales by it, said association made and delivered to the respective grantees, immediately thereafter, deeds of conveyances of the said respective lots. The said deeds referred expressly to a certain plan or map of the lands of said association, laid out for sale, designated as section A, embracing the lots thereby conveyed as aforesaid, and embracing also many other lots intended to be offered for sale by said association, all of which were indicated by numbers upon the said plan or map, and embracing also the said area between Fifth and Sixth Streets and between the Atlantic Ocean and Beach Thoroughfare, which area was marked conspicuously upon the said plan or map with the words "Camp Ground." The said plan or map had been filed previously in the clerk's office of Cape May County, under the provisions of the statute for such case made and provided, and thereby became a part of deeds thereafter made, to convey lots represented thereon by reference to the numbers designating such lots on said plan or map, and were part of the said deed to your orator and to his grantor. The said deeds were intended and made by the said Ocean

City Association and by its grantees aforesaid, to more fully define the said transactions of sale as to their terms, whereby all the respective grantees thereunder, as your orator is advised and therefore avers, became entitled, as by implied covenant, to the maintenance of the said use, and the exclusive application of the said area to the purposes aforesaid. By virtue of the said representations and stipulations, your orator, as the owner of the said lot, became entitled as against the said Ocean City Association and its assigns, to the reservation of the said area between Fifth and Sixth Streets, Atlantic Ocean and Beach Thoroughfare, by the said Ocean City Association, for all the uses embraced in the object of a camp ground, to the exclusion of private occupation and use, and of all other uses whatsoever, differing from said uses designated by said plan or map. Your orator's lot was the more desirable to him and was enhanced in value by reason of the easement so made appurtenant thereto, by effect of the said representations, to wit, an easement for such limitation as aforesaid of the use of said area between Fifth and Sixth Streets, Atlantic Ocean and Beach Thoroughfare, and dedication of the said area to such use. Your orator is therefore entitled to a reservation of the said area, open and devoted to public uses of the nature of those incident to a camp meeting ground.

3. And your orator further shows, that the said Ocean City Association, notwithstanding its representations, stipulations and implied covenants, with respect to the said area of ground, now does and for a long time has disregarded and attempted to repudiate the same, craftily designing and contriving scheme after scheme for enabling it to violate its

said obligations, that it might become free to sell the said reserved area, which is now of greatly increased value. To that end the said association, at the successive times below respectively mentioned, attempted the particular evasions of its duty specified below:

In the year 1882, and during a period before that year, which your orator is unable to define more exactly, the said defendant association undertook and attempted to sell and transfer private and individual rights for long terms of years, in lots of the said reserved and dedicated area of land, for the erection of permanent houses thereon, to be occupied as private cottages. Upon bill in chancery, filed by one George B. Lennig, a property owner like your orator, this Court ultimately granted a writ of injunction prohibiting said Ocean City Association from making such leases of the said reserved area.

About the same time with its said undertaking to lease lots of the reserved area, the said defendants knowing its obligation to individuals who had purchased lots from it, with implied covenants for the reservation of the said lots, exclusively for public uses, and to the public by virtue of dedication effected as hereinbefore stated, nevertheless fraudulently, intending, purposing and contriving to violate said obligation, prepared and promulgated a certain plan of the said reserved strip of ground between Fifth and Sixth Streets, Atlantic Ocean and Beach Thoroughfare, whereon the same was laid out and divided into many building lots of dimensions nearly corresponding with those in which the other portions of its said property, constituting sections A, B and C, were divided, and designated the said plan as map No. 1, annex to section A, and offered for sale generally the lots so indicated upon the said map.

In or about the year 1889, but at what date, more nearly, your orator is unable to ascertain, the said Ocean City Association erected dwelling houses upon two lots, marked upon the said plan, known as map No. 1, annex to section A, to wit, at the south corner of Wesley Avenue and Fifth Street, and the west corner of Ocean Avenue and Fifth Street, in the said Ocean City.

In or about the 27th day of November, 1896, the said defendant, contriving to evade the obligations of its said implied covenant and its dedication of the reserved area aforesaid for the public uses hereinbefore mentioned, conveyed to one Charles Matthews, Jr., two certain lots of the said reserved area, to wit, lots Nos. 125 and 127, according to the said map No. 1 of annex to section A, situate on the northwest side of Ocean Avenue, 400 feet southwestwardly from Fifth Street in Ocean City, having together in front or breadth on said Ocean Avenue one hundred feet, and in depth 135 feet to a fifteen feet wide alley, the said company concurring and contriving with the said Charles Matthews, Jr., in and by and pursuant to the said conveyance, for the erection of a hotel building upon the said lots, which building was afterward erected thereon by the said Matthews, in co-operation with the said association, with the object and intention of violating the obligation of the said defendant company to maintain the said area unobstructed.

Afterward, to wit, February 24th, 1900, the said Charles Matthews, Jr., conveyed the lots and building aforesaid to one Walter S. Ritter, and the said Walter S. Ritter, on the eighteenth day of September, 1900, conveyed the same property to one, Mary J. Buchanan. The said Mary J. Buchanan has conducted upon the said property up to this date a hotel,

co-operating with the said association in its undertaking to violate its obligations aforesaid, to wit, its obligations to reserve the said above described property for the public uses hereinbefore specified, of which obligations the said Mary J. Buchanan at all times had full knowledge.

On the 24th day of June, 1897, the said Ocean City Association, intending again to violate its said obligations by implied covenant, and by dedication, pretended to sell and convey to one Alfred K. Scholl, M. D., of Philadelphia, a certain other lot, No. 117, on map No. 1, annex to section A, to wit, likewise part of said reserved area, a lot situate on the northwest side of Ocean Avenue, 200 feet southwest of the southwest side of Fifth Street, having a front on the said Fifth Street of fifty feet, and a depth, between parallel lines at right angles with the said Ocean Avenue, of 135 feet to a certain fifteen feet wide street, the said conveyance being made by defendant, with the purpose and intention, devised between itself and the said Alfred K. Scholl, to be carried out by him, with the connivance and concurrence of said association, of erected on said lot a permanent dwelling house for private occupation; and such house the said Alfred K. Scholl, at the instance of the said company did in fact build and erect. Afterward, to wit, on the tenth day of June, 1898, the said Alfred K. Scholl, M. D., and Lucy G., his wife, pretended to sell and convey the said lot of ground, as improved to one Mary J. Lake, who assumed possession and occupancy of the said lot and building.

Thereafter, to wit, on the day of 1901, the city of Ocean City, proceeded to institute respective actions of ejectment in the Supreme Court of this commonwealth, against the said Mary J. Buchanan, the Ocean City Association itself, in respect

of the said two lots in the reserved area, upon which it had erected private dwellings, and against Mary J. Lake, last above mentioned, in order to oust them from the said respective premises where they assumed to exercise private exclusive ownership and occupation to the exclusion of the public interest in the premises, acquired by virtue of the implied covenants of said association as aforesaid, and the dedication to public use likewise effected by it as aforesaid. These actions of ejectment were so proceeded with that the respective defendants conceded the right of the said city of Ocean City, and yielded defense thereto. The said Ocean City Association and Mary J. Lake removed their buildings from the lots which were the subject of the said proceedings, to sites outside the said reserved area. The said Mary J. Buchanan appealed for indulgence of the said city, plaintiff in the action of ejectment brought against her as aforesaid, that she be allowed to continue the use of her said premises, which were then occupied as a hotel, until the end of the business season then current. The said plaintiff granted her request, but the said Mary J. Buchanan to this day has never removed her said building, nor ceased during any of the intervening seasons to use the same as before, as and for a hotel.

On December 29th, 1896, and May 20th, 1899, said association, intending and contriving to violate its said implied covenants, and its obligations to the public under dedication theretofore effected by it as aforesaid, conveyed to the Ocean Railroad Company, for the nominal consideration of one dollar, a piece of ground, part of said strip reserved for public purposes, lying on the southwest side of Haven Avenue between Fifth and Sixth Streets, and a certain other piece of ground, also part of the said reserved

area, on the northeast side of Haven Avenue, between Fifth and Sixth Streets aforesaid, with the restriction contained in the said deed of conveyance that the same should be used for passenger depot purposes. One, William Bridgewater, to wit, on the day of 1890, filed a bill in this court against the said Ocean City Railroad Company and Atlantic City Railroad Company, which had joined in the construction of a building thereon, for the purposes of a railroad station, and after due proceedings, in pursuance thereof, obtained a decree from this court, enjoining the said Ocean City Railroad Company from erecting any building upon the said property so acquired by it. The said conveyance was made to the said Ocean City Railroad Company with the purpose and intention, and under covenant that the said company would use the said property for the purposes of a railroad station. The said Ocean City Association was well aware of the proceedings taken as aforesaid against the said Ocean City Railroad Company and the action of this court aforesaid in the said cause.

On the 1st day of December, 1897, the said Ocean City Association, intending and purposing wilfully to violate its said obligations, both to purchasers of lots of said association, and also to the public, under the dedication made to the public as hereinbefore stated, conveyed to one H. D. Moore another lot, part of the same reserved area, to wit, the lot of ground lying at the intersection of the northwest line of Bay Avenue, and the northeast line of Sixth Street, having a front of 77 feet on Bay Avenue, and extending to within 3 feet of ordinary high water mark of the Beach Thoroughfare. And, afterward, on application made by the said Ocean City Association to the riparian commissioners, in the usual form, pursu-

ant to a stipulation theretofore made with the said H. D. Moore, and on the said riparian commissioners making a grant to the said Ocean City Association for the riparian rights eastward from the piece of ground last above described, the subject of the said conveyance, to wit, on the 29th day of September, 1908, the said Ocean City Association, by a deed of conveyance in due form, and for a nominal consideration, conveyed to the said H. D. Moore, the rights acquired by them in virtue of the said grant, and also the intervening three feet wide strip, to wit:

"A lot or piece of ground in the city of Ocean City, beginning three feet eastward from high water line on the Beach Thoroughfare, where the same is intersected by the northeast line of Sixth Street, and running from said point first northwestwardly in line with the northeastern line of Sixth Street, extending 151 53/100 feet to the extension of the wharf line established by the commissioners appointed under the authority of an act entitled 'An act to ascertain the right of the state and the riparian owners under waters of the bay of New York and elsewhere to this state,' approved April 11th, 1864, and the supplements thereto; thence northeast along said exterior water line, as shown and located on the map thereto annexed 77 and 85-100 feet more or less to a point; thence southeast parallel with said Sixth Street extended, and 77 feet northeast at right angles from the northeast line of same 150 and 1/100 feet to a point 3 feet east of high water line of Beach Thoroughfare; thence southward 3 feet from and parallel with high water line to the place of beginning."

On the 12th day of September, 1905, the said Ocean City Association assumed to sell and convey to one Lewis M. Cresse and Cecilia H., his wife, by a deed in due form, still another lot of the said reserved area, to wit, a lot situate on the northwest line of Pleasure Avenue, 223 feet southwest of Fifth Street, having a front of 150 feet on Pleasure Avenue and extending between lines parallel with said Fifth Street, to a line parallel with and three feet southeastwardly of the high water mark on the Beach Thoroughfare. The said defendant, in so selling and conveying the said lots, connived and concurred with the said Lewis M. Cresse and wife, to violate its obligations which were fully known to them, by building and erecting as he subsequently did, a certain boat house on the said lot of ground, which they have maintained at all times until now, using the same for private purposes.

Subsequently, to wit, on the 5th day of February, 1906, and on the 7th day of February, 1906, by two several deeds, after the said association had applied for and obtained of the board of riparian commissioners, a grant of rights to the area of ground within the outer line fixed by the commissioners aforesaid, it granted to the said Lewis M. Cresse and wife, the whole of the said area, corresponding or opposite to the shore land theretofore conveyed to them, and the intervening strip of land, three feet in width, between the said premises previously conveyed, and high water line adjacent thereto.

The above mentioned conveyances to H. D. Moore and Lewis M. Cresse and wife, were intended to include, and did include, as is declared by the said deeds, the whole area which the riparian commissioners of the state of New Jersey had conveyed

to the said Ocean City Association, by respective deeds prior to the said deeds of conveyance to Moore and Cresse and wife, aforesaid, together with the strips of ground three feet in width, adjoining said riparian rights, to be appurtenant thereto, for which application was made for the purpose, and for no other purpose, of conveying such riparian rights when the same should be granted to the said H. D. Moore and Lewis M. Cresse and wife; and in finally conveying all the riparian area subsequently to the said H. D. Moore and Lewis M. Cresse and wife as was done by the above-mentioned conveyances, the said association acted in violation of its duties hereinbefore stated, to the public, and the said H. D. Moore and Lewis M. Creese and wife, who well knew the obligations of the said association in respect of all parts of the said reserved strip, including the pieces of ground conveyed to them aforesaid, received the said conveyances for the purposes of aiding and co-operating in the breach of the said obligations.

On the 25th day of August, 1900, said Ocean City Association, by deed in due form, assumed and undertook to convey to one, Charles W. Masland, for the like unlawful purpose, to wit, the purpose of co-operating with the said Charles W. Masland, for the violation and ultimate destruction of the obligations of said Ocean City Association, under its implied covenants and dedication aforesaid, to public use, of such reserved area between Fifth and Sixth Streets, a certain lot or piece of ground situate on the northwest side of Bay Avenue in Ocean City aforesaid, beginning at a point 373 feet southwestwardly from 5th Street, thence southwestwardly along the northwest line of Bay Avenue 50 feet, and of that width northwestwardly 115 feet to the

southeasterly side of a certain 15 feet wide street, and another certain lot or piece of ground, beginning at a point on the northwesterly line of the said 15 feet wide street, at the distance of 373 feet southwestwardly from the southwest line of said 5th Street, extending southwestwardly along said 15 feet wide street, parallel with said Bay Avenue 50 feet, and of that width northwestwardly 150 feet, between parallel lines, to within 3 feet of mean high water mark of Great Egg Harbor Bay or Thoroughfare, and on the 12th day of April, 1906, said defendant association likewise undertook to convey to the said Charles W. Masland, a certain irregularly shaped lot of ground, situate on high water line of the southeast shore of Beach Thoroughfare, at the distance of 373 feet southwestward from Fifth Street, being the strip of ground 3 feet in width intervening between the lot last above described, extending to within 3 feet of high water line of the said Beach Thoroughfare, and the same high water line; together with the right to apply for, and on the same being allowed, to take, for the use of the said Charles W. Masland, a grant from the commissioners known as the riparian commissioners of the state of New Jersey, under the act entitled "An act to ascertain the right of the state and the riparian owners under waters of the bay of New York and elsewhere in this state," approved April 11, 1864, and its supplements.

The said Charles W. Masland, in receiving conveyance by the said deed of the premises therein described, did so with the purpose of co-operating with the said Ocean City Association, in so making use of the same and of so proceeding in respect of it as to aid the said association in its schemes to relieve itself of its obligations under the said im-

plied covenants and dedications undertaken by it, as aforesaid, in respect of the said reserved area. The said Charles W. Masland has continued to co-operate with the said Ocean City Association to such end, and in such co-operation, and with the connivance and concurrence of the said association, has erected a building, for use as a bathhouse, upon said piece of ground.

Subsequently, to wit, on the several dates hereinafter stated, the said Ocean City Association, further contriving, co-operating and conspiring with the respective individuals below named, executed and delivered to these individuals, deeds of conveyance in due form, for the purpose of violating and ultimately destroying the obligations of the said Ocean City Association, under its implied covenants and dedication aforesaid, assuming thereby to convey to the said grantees hereinafter respectively named, pieces of ground described, all being located between Fifth and Sixth Streets, in Ocean City, to wit, the tract set apart originally, as above fully stated, for the uses of a camp meeting ground, as follows:

July 18th, 1903, said Ocean City Association conveyed to Centenary Fund and Preachers' Aid Society, two certain lots, the first beginning at a point in the northwesterly line of Ocean Avenue 200 feet southwest of 5th Street, having a front of 200 feet, and in depth between parallel lines at right angles with said Ocean Avenue, 135 feet to a 15 feet wide street, and the second beginning at a point in the southeasterly line of Ocean Avenue, at the distance of 400 feet southwest from the southwest side of 5th Street, having a front of 100 feet on said Ocean Avenue and a depth between parallel lines at right angles with said Ocean Avenue, 130 feet to the same 15 feet wide street.

August 10th, 1903, said Ocean City Association conveyed to James E. Lake, a certain lot beginning at the intersection of the southwest line of 5th Street and northwest line of Ocean Avenue, having a front of 200 feet on Ocean Avenue and in depth along the southwest side of 5th Street 135 feet.

August 12th, 1903, said Ocean City Association conveyed to S. Wesley Lake, two certain lots, the first beginning in the southeast line of Wesley Avenue 400 feet southwest of 5th Street, having a front of 100 feet on Wesley Avenue and extending southeastwardly parallel with said 5th Street, 105 feet, and the second beginning on the northwest line of Atlantic Avenue 400 feet southwest of 5th Street, having a front of 100 feet on said Atlantic Avenue and extending northwestwardly 130 feet to a 15 feet wide street.

March 11th, 1907, said Ocean City Association conveyed to Ocean City Tabernacle Association, the lot bounded by Fifth and Sixth Streets and by Asbury and Wesley Avenues, known as the auditorium or camp ground square.

August 19th, 1907, said Ocean City Association conveyed to William Watson Adams, a certain lot on the northwest line of Bay Avenue where the same is intersected by the southwest line of Fifth Street, and extending first southwestwardly in northwest line of Bay Avenue 100 feet, in depth 117 feet to a point 3 feet southeast from the line of mean high water mark on Thoroughfare.

October 30th, 1909, said Ocean City Association conveyed to Samuel H. Hann, a certain lot beginning on the northwest side of Pleasure Avenue 123 feet southwestward from the southwest side of 5th Street, having 50 feet in front on said Pleasure Avenue, and in depth northwestwardly 75 feet to a

line 3 feet southeast of the ordinary high water line of Thoroughfare.

March 16th, 1909, said Ocean City Association undertook to convey by four several deeds to Atlantic Land Development Company, a corporation organized under the laws of the state of New Jersey, for a certain consideration therein recited, aggregating $50,000, the whole area of lands owned by it, on the ocean side of Atlantic Avenue, as the same is now located, in the city of Ocean City, in Cape May County, New Jersey, between the lines of Fifth and Sixth Streets extended, including the entire space between the said extended lines, as far as the exterior line on the said ocean shore, established by the commissioners appointed under the authority of the act entitled "An act to ascertain the rights of the state and riparian owners in the lands lying under waters of the bay of New York and elsewhere in this state," approved April 1, 1864, and its supplements, to wit, embracing the full extent of rights known as riparian rights, corresponding with the said strip of ground reserved for public uses as aforesaid. The entire aggregate as aforesaid, of said consideration, was secured by four mortgages of even date with said deeds, and recorded simultaneously therewith, in $12,500 each, charged upon four parts, severally deemed to be of approximately equal value, of the said area of lands. The said conveyances were made by the said Ocean City Association and taken by the said Atlantic Land Development Company for the purpose of dividing the same into lots, and building thereon or conveying again such lots to other persons who would build there permanent structures for uses private in their nature, and known both to the said grantor and grantee to be in conflict with the proper and lawful

restrictions implied upon said riparian surface, by force of the limitations fixed upon the aforesaid strip of ground, by the clearly defined covenants and dedication for public uses, hereinbefore set forth. And the said Ocean City Association is aiding and abetting the said purpose of the said Atlantic Land Development Company, and intends with it to violate its said obligations with respect thereto.

The said parties defendant in making application to the board of riparian commissioners of the state of New Jersey, as hereinbefore stated, have withheld from said board knowledge of the fact that their title to land abutting upon the shore is not absolute, but subject to rights of easement as hereinbefore set forth, in favor of other parties. Such knowledge was pertinent and necessary in order that the said board might properly consider such application, and the withholding of the same was a fraud upon said board, upon such owners of rights in the nature of easements in the said lands, and upon the commonwealth of New Jersey and the public thereof.

At some time or times, and by some deed or other instrument of conveyance, of which your orator does not have knowledge, and has been unable to obtain further information than that now herein set forth, the said Ocean City Association, further designing to free itself by some means from its said lawful duties and obligations, transferred or assumed to transfer, or endeavored to present the appearance of transferring to one, Ebenezer Adams, to a certain business firm or association well known as Scull & Marts Co., and to another like party known as City Mill & Lumber Company and one, David K. Tucker, seizin, estate, possession or use of portions respectively of the said area between Fifth and Sixth Streets, the Beach Thoroughfare and Atlantic

Ocean, Ocean City, which respective portions of said area, are claimed and in some instances actually occupied by the said Ebenezer Adams, Scull & Marts Co., and City Mill & Lumber Company, and David K. Tucker, which possession is actual, conspicuous, and inconsistent in its nature with the free enjoyment of the said area for camp ground purposes. Said Scull & Marts Co., is a corporation under the laws of New Jersey.

The said Ocean City Association has attempted and is still attempting, as to other portions of the said reserved area, with the co-operation of other persons also, to violate, in the purpose and hope ultimately to destroy its obligations, in respect of said reserved area hereinbefore stated.

And your orator further shows that the said defendant, the Ocean City Association, designs and purposes to attempt and commit many other undertakings, likewise in breach of its said express and implied covenants, and opposed to the dedication aforesaid for public uses, made by the said Ocean City Association.

All the individuals named in the foregoing averments, as having received title or possession or enjoyment of the several pieces of land therein mentioned, part of the reserved area aforesaid, were fully notified and informed of the implied covenants assumed by the said Ocean City Association, and the dedication to public use effected by it, in respect of the same reserved area, long before the conveyance by the said association of the several pieces of land aforesaid. But other parties who are *bona fide* purchasers for value, may, in the future, acquire title to portions of the reserved area, from said association, without notice of the said covenants or dedications, and such persons might thereby acquire valid

titles to the lands which are conveyed to them, free from the effect of such covenants and dedication.

All which actings, doings and pretences of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises. In tender consideration whereof and for as much as your orator is without adequate remedy in the premises, at and by the strict rules of the common law and can obtain relief only in this honorable court, where matters of this nature are properly cognizable and relievable. To the end, therefore, that the said Ocean City Association, Mary J. Buchanan, Ocean City Railroad Company, Henry D. Moore, Lewis M. Cresse and Cecilia H., his wife, Charles W. Masland, Centenary Fund and Preachers' Aid Society, James E. Lake, S. Wesley Lake, Ocean City Tabernacle Association, William Watson Adams, Samuel H. Hann, Atlantic Land Development Company, Ebenezer Adams, Scull & Marts Co., City Mill and Lumber Company, and David K. Tucker, defendants herein, may to the best and utmost of their respective knowledge, remembrance, information, and belief, full, true and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were repeated and they and every one of them distinctly interrogated thereto, but without oath.

Your orator prays that the said Ocean City Association may be enjoined from conveying or attempting to convey, at any time hereafter forever, any part of the area between Fifth and Sixth Streets, the Atlantic Ocean and Beach Thoroughfare, or any lands or rights under the waters of either, between the lines of the said streets extended, which it may now possess or hereafter acquire; for any private

purpose, or for any use whatsoever which is not fully consistent with the maintenance of the rights of your orator and of other purchasers of lots adjacent thereto, for the preservation of public privileges therein for all purposes connected with a camp meeting ground and for all purposes affording unobstructed passage of air over the said strip of ground last described, and

That the said Mary J. Buchanan, Ocean City Railroad Company, Henry D. Moore, Lewis M. Cresse and Cecilia H. Cresse, his wife, Charles W. Masland, Centenary Fund and Preachers' Aid Society, James E. Lake, S. Wesley Lake, Ocean City Tabernacle Association, William Watson Adams, Samuel H. Hann, Atlantic Land Development Company, Ebenezer Adams, Scull & Marts Co., City Mill and Lumber Company and David K. Tucker, of defendants herein, be enjoined from conveying the lots hereinbefore designated as now held by them, or any lands or rights they or any of them may hereafter acquire, under water, between the lines of said Fifth and Sixth Streets extended, to any other person, for uses contrary to the said rights of the public, and rights of lot owners in the vicinity, who may be entitled to the benefit of implied covenants by the Ocean City Association, as in your orator, and

That the said Ocean City Association be enjoined and restrained from building upon or making any use of the said area of ground between Fifth and Sixth Streets, the Atlantic Ocean and Beach Thoroughfare, and that the said Mary J. Buchanan, Ocean City Railroad Company, Henry D. Moore, Lewis M. Cresse and Cecilia H. Cresse, his wife, Charles W. Masland, Centenary Fund and Preachers' Aid Society, James E. Lake, S. Wesley Lake, Ocean City Tabernacle Association, William Watson

Adams, Samuel H. Hann, Atlantic Land Development Company, Ebenezer Adams, Scull & Marts Co., City Mill and Lumber Co., and David K. Tucker, the defendants herein, as well, be further restrained from making any use of the said lands hereinbefore respectively described which they pretend to hold and own, or of any lands or rights to lands covered by water between the lines of said Fifth and Sixth Streets or the same extended, not conforming with a full right in the public to all uses of the said area including such portions as may be under water, as may be appropriate for a camp meeting ground and incidental uses, and

That the said Mary J. Buchanan, Ocean City Railroad Company, Henry D. Moore, Lewis M. Cresse and Cecilia H. Cresse, his wife, Charles W. Masland, Centenary Fund and Preachers' Aid Society, James E. Lake, S. Wesley Lake, William Watson Adams, Samuel H. Hann, Atlantic Land Development Company, Ebenezer Adams, Scull & Marts Co., and David K. Tucker, the defendants herein, be further ordered to remove forthwith from the lands between Fifth and Sixth Streets, the Atlantic Ocean and Beach Thoroughfare, or under the waters of the same, in Ocean City, and which they pretend to own, all buildings or other improvements whatsoever which may now be erected thereon; and

That your orator may have such further or other relief in the premises, as the nature of the case may require and so shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator the state's writ of subpoena, issuing out of and under the seal of this honorable court, to be directed to the said Ocean City Association, Mary J. Buchanan, Ocean City

Railroad Company, Henry D. Moore, Lewis M. Cresse and Cecilia H. Cresse, his wife, Charles W. Masland, Centenary Fund and Preachers' Aid Society, James E. Lake, S. Wesley Lake, Ocean City Tabernacle Association, William Watson Adams, Samuel H. Hann, Atlantic Land Development Company, Ebenezer Adams, Scull & Marts Co., City Mill and Lumber Company, and David K. Tucker, the defendants herein, commanding them by a certain date and under a certain penalty, therein to be expressed to be and appear before your Honor in this honorable court, and then and there to answer all and singular the premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray.

ANSWER OF OCEAN CITY ASSOCIATION.

IN CHANCERY OF NEW JERSEY.

Between
Henry Bradley,
Complainant,
and
Ocean City Association,
et als.,
Defendants.

ANSWER OF OCEAN CITY ASSOCIATION.

The answer of Ocean City Association to the bill of complaint filed in the above-stated cause.

This defendant answering said bill of complaint

says, it admits that it was the owner of practically the entire tract of land now known as Ocean City, and that the land by it owned comprised lot No. 701 in section A on the plan of lots of Ocean City Association mentioned in section 1 of complainant's bill, and denies each and every other allegation in said paragraph mentioned.

This defendant answering paragraph 2 of said bill denies that complainant and his predecessors in title of lot No. 701, section A aforesaid purchased relying upon certain or any representations made by Ocean City Association before it, this defendant, sold any lots on the maps or plots of Ocean City.

Answering paragraph 3 of said bill, this defendant denies that this defendant prior to and as an inducement to all purchasers of lots in Ocean City from this defendant, represented and stipulated that a certain large area of land adjacent to the lots offered for sale and included within and bounded by Fifth and Sixth Streets and Atlantic Ocean and Beach Thoroughfare should forever remain devoted to camp meeting and other public recreation purposes in connection therewith to the advantage and benefit in the nature of an easement of the lots of ground which was so offered by the Ocean City Association as aforesaid or which were afterwards purchased by the several individuals whose rights have become vested in complainant.

Further answering said paragraph this defendant denies that it in the early part of the year eighteen hundred and eighty introduced and published and circulated a statement in a paper known as "Ocean City Journal" that this defendant proposed a plan of providing for locations, intended to be occupied by religious camp meeting, a large area free from any obstructions or interference of pas-

sage and occupation by visitors, intending thereby to mean the lands between Fifth and Sixth Streets and Atlantic Ocean and Beach Thoroughfare, and says that the entire publication authorized by this defendant in Ocean City Journal related only to the conditions that were present and existing during that camp meeting year of eighteen hundred and eighty, and was not intended to have any application whatever to any other year than the year eighteen hundred and eighty, and was not published as an inducement for the purchase or sale of lots, but only as an announcement affecting and concerning the camp meeting then about to be held.

This defendant further answering paragraph 3 of said bill says that it is unable to tell from said bill what sale had been announced, and neither admits nor denies that at a sale held on the twentieth day of May, eighteen hundred and eighty a sales map was used by complainant and complainant's predecessors in title which had been published by Ocean City Association and says that no copy of said map is exhibited to this defendant from which this defendant might identify the same if it had been published and distributed by this defendant, and therefore it leaves complainant to prove same, and further says that without admitting or denying the authenticity of the map referred to in paragraph 3, of complainant's said bill, it does admit that at the time of sale it was and from that time until the present time always has been and now is the intention of this defendant to devote the tract of land lying between Fifth Street and Sixth Street and Wesley Avenue and Asbury Avenue to camp meeting purposes, but denies that it has ever been the intention of this defendant to devote any other portion of the tract of land between Fifth Street and Sixth Street

and between Atlantic Ocean and Beach Thoroughfare to camp meeting purposes, and denies that it has ever been the intention of this defendant to dedicate any part of said tract lying between Fifth Street and Sixth Street and Atlantic Ocean and Beach Thoroughfare to public uses, and denies that there is any public use incident to or growing out of a camp meeting ground, and says that a camp meeting ground is an individual or collective enterprise or undertaking of a purely private nature, and denies that William B. Wood, president of Ocean City Association at the time of said sale, had any authority to bind Ocean City Association by any representations as to the use to which any of the lands of said association were to be put, and that it neither admits nor denies the allegation of complainant touching the alleged statement of William B. Wood, but says that even though made it was not binding upon this association.

This defendant, further answering said paragraph, says it admits that the president of said association rendered an annual report to said association, and that a copy of this annual report was sent to each stockholder of said association but denies that said annual report of a copy thereof was printed, published and circulated to show the plans and purposes of this defendant respecting the lots which it proposed to offer for sale, and denies that any such annual report or copy thereof was used as an inducement to sell any lot or lots, and denies that complainant or complainant's predecessors in title purchased any such lot because of any statement contained in said annual report, and denies that any statement made in the annual report of the president of said association to the stockholders thereof, whether published or not published, conferred upon

any purchaser any rights against Ocean City Association.

This defendant admits that conveyances made by it were made with reference to the map or plan of lots of Ocean City Association designated as section A, but denies that the tract of ground lying between Fifth Street and Sixth Street and Atlantic Ocean and Beach Thoroughfare were marked with the words "camp ground," and says that only that portion of said tract of land as lies between Fifth Street and Sixth Street and Wesley Avenue and Asbury Avenue was marked "camp ground" and the remaining portion thereof was indicated as land not yet laid off into lots, and denies that said deeds referred to said map for the purpose of more clearly defining the transaction, and say that the deed referred to said map to more readily identify the land and denies that any purchaser of lands by reason of reference to said map thereby became entitled to have said lands reserved by Ocean City Association for the benefit of any such purchaser or other person, and denies that thereby any right in said land between Fifth and Sixth Streets and Atlantic Ocean and Beach Thoroughfare became appurtenant to lot No. 701, in section A, and denies that said land between Fifth Street and Sixth Street and Atlantic Ocean and Beach Thoroughfare is devoted to any public uses of the nature of uses incident to a camp meeting ground, and denies that there are any public uses incident to a camp meeting ground.

Answer paragraph 3a of said bill, this defendant denies that for a long time it has or that it now is disregarding or attempting to repudiate any implied covenant entered into by it with any purchaser of lots, and says that at no time was the object of this defendant to violate any implied covenant made be-

tween it and any purchaser of lands from it, and further says that at no time has it ever used or attempted to use the land lying between Fifth and Sixth Streets and between Atlantic Ocean and Wesley Avenue and between Asbury Avenue and the Thoroughfare in a manner different from that originally contemplated by said Ocean City Association.

Further answering paragraph 3a defendant denies that in eighteen hundred and eighty-two and prior thereto that this defendant attempted to sell and transfer private and individual rights in any part of the lands lying between Fifth and Sixth Streets and Atlantic Ocean and the Thoroughfare except between Wesley Avenue and Asbury Avenue, and then only in line of the original object and undertaking of this defendant.

It admits that George G. Lennig instituted a suit against defendant touching and concerning lands lying between Wesley Avenue and Asbury Avenue and between Fifth and Sixth Streets and says that the Court refused to grant to the said George G. Lennig a temporary injunction, and denies that any permanent injunction was ever issued against Ocean City Association at the instance of said Lennig.

Further answering paragraph 3a this defendant denies that it ever plotted lots on a map or plan styled "Map No. 1 annexed to section A," touching the land between Fifth and Sixth Streets and between Wesley Avenue and Asbury Avenue, and denies that it was ever the intention of this defendant to dedicate the land between Fifth and Sixth Streets and between Atlantic Ocean and Wesley Avenue and between Asbury Avenue and the Thoroughfare to public uses or even to camp meeting purposes, and denies that it ever prepared or promulgated any such plan or any other plan fraudu-

lently intending, purposing and contriving to violate any of its obligations.

This defendant further answering said paragraph 3a denies that this defendant ever erected any dwelling houses on lands by it dedicated to camp meeting purposes, and denies that it has ever dedicated any lands in Ocean City to public uses excepting only the streets, lanes and alleys thereof, and further answering said paragraph denies that it ever conveyed any lots to Charles Matthews, Jr., or to Alfred K. Scholl or to Henry D. Moore or to Lewis M. Cresse, or to Charles W. Masland, or to James E. Lake, or to Atlantic Land Development Company for the purpose of violating any of its obligations or for the purpose of having any of the persons above mentioned co-operate with it in an effort to evade any of defendant's obligations either expressed or implied, and further says that said bill of complaint is without equity in that no covenant, implied or otherwise, was ever entered into between complainant and defendant, and that this complainant has no interest in the lands between Fifth and Sixth Streets and between Atlantic Ocean and the Thoroughfare and prays to be hence dismissed with its reasonable costs and expenses in this behalf most wrongfully sustained.

BOURGEOIS & COULOMB,
Solicitors of Defendant, Ocean City Association.

ANSWER OF MARY J. BUCHANAN.

IN CHANCERY OF NEW JERSEY.

Between Henry Bradley, and Ocean City Association, Ocean City Tabernacle Association, *et al.*, *Defendants.*	On Bill, &c. Answer.

The answer of Mary J. Buchanan to the bill of complaint filed in the above-stated cause:

This defendant, answering the complainant's said bill of complaint for such answer, says:

1. She is ignorant as to whether or not the said Henry Bradley, complainant, or his grantee, Mary A. T. Riley, is the owner of a certain lot of ground, situate in Ocean City, and particularly described in paragraph 1 of said bill of complaint, but leaves the same to be proved by said complainant as best it may, when and where this Honorable Court may direct.

This defendant, further answering, says that she neither admits nor denies that certain parts of the said city of Ocean City were originally owned, laid out, or to a large extent sold by said Ocean City Association prior to the plotting thereof and the

selling of lots therefrom; and neither does she admit nor deny that there were a greater or less number of intermediate transfers of the said land, claimed to be owned by the said complainant, prior to the complainant's ownership thereof, if any, but leaves the same to be proved as best it may by the complainant, when and where this Honorable Court may direct.

2. She neither admits nor denies that the original purchaser of said described lot and the party or parties succeeding him or them as subsequent owner or owners thereof in line of title of complainant, bought said lot relying upon representations made by Ocean City Association before it had sold any lots on said map or plot of Ocean City, but leaves complainant to prove the same.

3. She neither admits nor denies that Ocean City Association prior to or as an inducement to all purchasers which were subsequently made of lots in said Ocean City from said association, or as an inducement also to purchase the said lots in said Ocean City from other parties than Ocean City Association, represented and stipulated that a certain area of land adjacent to said lots offered and subsequently purchased, to wit, that area of ground exclusive of streets bounded by Fifth and Sixth Streets and Atlantic Ocean and Beach Thoroughfare, should be and forever remain devoted to camp meeting and other public recreation purposes in connection therewith, to the advantage and benefit in the nature of an easement of the lots of ground which were so offered by the Ocean City Association as aforesaid, and were afterwards purchased by the several individuals whose rights have vested in complainant,

but asserts she is ignorant thereof and not charged with notice thereof and leaves the complainant to prove the same.

Further answering said paragraph, this defendant neither admits nor denies that Ocean City Association published a paper called the "Ocean City Journal" in the year eighteen hundred and eighty, or that said paper published statements purporting to come from or was authorized by Ocean City Association touching and concerning the block of land between Fifth and Sixth Streets aforesaid, and leaves complainant to prove the same.

This defendant neither admits nor denies that prior to the sale held on May twentieth, eighteen hundred and eighty, or throughout the progress of said sale, Ocean City Association published and distributed, in order to inform intending purchasers of the conditions under which they were solicited to purchase lots, a map showing the strip of land between Fifth and Sixth Streets, and between Wesley Avenue and Asbury Avenue, marked "Camp Ground" but asserts she is ignorant thereof and not charged with notice thereof and leaves complainant to prove the same; and neither admits nor denies that William B. Wood had authority to make an address in the presence and hearing of all persons therein assembled; and neither admits nor denies that any of the persons there assembled afterwards purchased lots at said sale; and neither admits nor denies that the said William B. Wood prefaced his address by explaining the plans and purposes of the association as mentioned in said bill of complaint; and neither admits nor denies that during the course of said address the said William B. Wood announced that the strip of land lying between Fifth and Sixth Streets, and between Atlantic Ocean and Beach

Thoroughfare was set apart and dedicated to public uses in connection with the established camp meeting enterprises, and for the better promotion of such projects would be forever kept open and clear of public obstructions of every sort for freedom and circulation of air; and neither admits nor denies that Ocean City Association published an annual report and therein stated that the camp ground block extending from meadow to ocean five hundred feet wide, had been devoted to an encampment, but is ignorant thereof and is not charged with notice thereof and leaves complainant to prove the same; and denies that complainant and those owning the lands now claimed by him prior in chain of title purchased relying upon any implied covenant touching and concerning the lands lying between Fifth and Sixth Streets and between Atlantic Ocean and the Thoroughfare.

This defendant, further answering said paragraph, denies that the deed of conveyance to complainant for lot 701, in section A, and the deeds of conveyance for the same premises prior in chain of title referred to a plan or map of the tract between Fifth and Sixth Streets and the Atlantic Ocean and Beach Thoroughfare, was marked with the words "camp ground," and she denies that any such map or plan was ever filed in the clerk's office of Cape May County by the authority of the Ocean City Association, and denies that any such map or plan became a part of the deeds thereafter made, and denies that any sales were made by the Ocean City Association or its grantees, with reference to any such map or more fully define the said transaction of sale, as to their terms; and further denies that thereby any such purchase by the complainant, or any one claiming under him, became entitled to an implied

covenant to the maintenance of said tract of land between Fifth and Sixth Streets and the Ocean and Beach Thoroughfare for any specified purpose or purposes; and further denies that the complainant, by reason of any such map and deed, or either of them, ever became entitled, as against the Ocean City Association or as against this defendant, to have the strip of land between Fifth and Sixth Streets and the Atlantic Ocean and Beach Thoroughfare, devoted to the object of a camp ground to the exclusion of private occupancy or private use thereof.

And further answering the said paragraph, this defendant denies that the complainant's alleged lot No. 701, section A, is more desirable or more enhanced in value by reason of the alleged easement claimed and set forth in said bill of complaint, and denies that such easement is appurtenant to the said lot No. 701, and denies that the complainant is entitled to have said tract of land between Fifth and Sixth Streets, and the Atlantic Ocean and Beach Thoroughfare, Ocean City, because of any fact alleged or set forth in said bill of complaint, or otherwise, kept open or devoted to public uses, or to such as are in the nature of those incident to a camp meeting ground, and avers that a camp meeting is not a public institution, and that there are no public uses incident to a camp meeting ground.

4. This defendant, further answering paragraph 4, (incorrectly numbered 3) of said bill of complaint is not informed and neither admits nor denies as to whether or not the Ocean City Association now does, nor for a long time has, disregarded or attempted to repudiate any implied covenant entered into by it with any purchaser or purchasers of lots at Ocean

City, or as to whether it has ever been the object or intention of the said Ocean City Association, to violate any implied covenant made between the said association and any purchaser or purchasers of lots of land from Ocean City, or as to whether or not the said Ocean City Association at any time ever used or attempted to use the land lying between Fifth and Sixth Streets and Atlantic Ocean and Wesley Avenue and Asbury Avenue and Beach Thoroughfare, in a manner different from that originally intended or contemplated by the said Ocean City Association, but leaves complainant to prove the same.

And further answering said paragraph No. 4 of said bill, this defendant neither admits nor denies that in the year of 1882, or prior thereto, the Ocean City Association attempted to sell or transfer any private or individual rights in any part of the lands lying between Fifth and Sixth Streets and Atlantic Ocean and Beach Thoroughfare, except between Wesley Avenue and Asbury Avenue or that the suit mentioned in the complainant's bill of complaint, was begun by one George G. Lennig against the Ocean City Association, touching or concerning the land lying between Wesley Avenue and Asbury Avenue and Fifth and Sixth Streets, but leaves complainant to prove the same.

And this defendant, further answering, denies that said Ocean City Association, fraudulently intending, purposing or contriving to violate said alleged obligation, prepared or promulgated a certain plan of said strip of ground and divided the same into lots and offered same for sale as set forth in said bill, or that in the year 1889, said Ocean City Association erected dwelling houses upon two lots in section A, as therein set forth; or that said association contriving to evade any of the alleged obligations or

covenants conveyed the lots mentioned in the bill of complaint to the said Charles Matthews, Jr., for the purpose of erecting a hotel building thereon, or that the Ocean City Association, in any manner cooperated with the said Charles Matthews, Jr., or that the said Matthews, in any manner or way, cooperated with the said association in violating or attempting to violate any lawful obligation or covenant of the said association.

This defendant, further answering said paragraph, neither admits nor denies that the Ocean City Association conveyed lot No. 117, on map No. 1, to Alfred K. Scholl, on June twenty-fourth, eighteen hundred and ninety-seven, and leaves complainant to prove the same, but denies that any such conveyance, if made, was made for the purpose of violating any obligation or implied covenant of Ocean City Association, but was made strictly within what the Ocean City Association conceived its legal rights in the premises, and denies that the said Alfred K. Scholl erected on said lot a building at the instance of Ocean City Association, and denies that Alfred K. Scholl conveyed said lands to the said Mary J. Lake for any other than for a lawful purpose.

The defendant, further answering said paragraph, denies that the city of Ocean City, in nineteen hundred and one, instituted an ejectment suit against this defendant for possession of two lots in the alleged reserved area, or against Mary J. Lake, above mentioned, because of occupying the lands by them owned, to the exclusion of the public interest in said premises, and denies that the course of procedure in any suits or the result thereof was as set forth in said bill and denies that this said defendant removed any buildings from off her lands by reason of any such suit or that any such suit was so proceeded

with that the defendant therein conceded the right of the city of Ocean City thereto or yielded defense thereto; and also denies that the city of Ocean City had any right, title, interest or estate in said lands described in the bill of complaint or any part thereof.

This defendant, further answering, is not informed and neither admits nor denies that said association, on December twenty-ninth, eighteen hundred and ninety-nine, intending or contriving to violate any of its lawful obligations, conveyed a certain piece of ground to the Ocean City Railroad Company, as set forth in said bill of complaint, or that a suit was brought by one William Bridgewater and proceedings had therein, as set forth in said bill, or that on December first, eighteen hundred and ninety-seven, said association intending or purposing to wilfully violate any of its lawful obligations, conveyed a certain lot or lots to one Henry D. Moore, or to Lewis M. Cresse and wife, or to C. W. Masland, as set forth in the bill of complaint, but asserts the truth to be that any lots or lands by said association so conveyed were lawfully conveyed; or that said Ocean City Association, further contriving, cooperating or conspiring with the individuals named in said bill, or with either or any of them, executed or delivered certain deeds, as set forth in said bill, for the purpose of violating or ultimately destroying any of its lawful obligations, but leaves complainant to prove the same.

This defendant, further answering said paragraph, admits that Ocean City Association, on July eighteenth, nineteen hundred and three, conveyed two certain tracts of land to the Centenary Fund and Preachers' Aid Society, and on August tenth, nineteen hundred and three, one tract of land to Atlantic Land Development Company, of the sizes and dimen-

sions mentioned in said bill of complaint, but is not informed and neither admits nor denies that said conveyances were made by the Ocean City Association contriving and conspiring with the grantees above mentioned, or either of them, to violate or ultimately destroy the obligations of the said Ocean City Association under any implied covenant or dedication, but leaves complainant to prove the same, or that the lands conveyed to Atlantic Land Development Company are, in any manner, subject to any implied covenants or restrictions of whatsoever nature, but leaves complainant to prove the same; but denies that this defendant had any notice of any restrictions, easements, or implied covenants touching and concerning the lands lying between Fifth and Sixth Streets, and between Atlantic Ocean and Wesley Avenue and Asbury Avenue and Beach Thoroughfare, and says that she is a *bona fide* purchaser for value without notice of said covenants and without notice of any dedication, of lands between Fifth and Sixth Streets and between Atlantic Ocean and Wesley Avenue and Asbury Avenue and the Thoroughfare to any public use or uses.

5. This defendant, further answering said bill, denies that the entire space at Ocean City, between Fifth and Sixth Streets, from bay to ocean, or any part thereof, was designated on any map or maps as a park or camp meeting ground, or for any public place, or use or uses, by the Ocean City Association, or by any other lawful owner of the same, and leaves the complainant to prove the same, when and where this Honorable Court may direct.

6. This defendant, further answering said bill, claims that she is ignorant of and has no knowledge,

except as hereinabove set forth, as to the original plans or purposes of the said Ocean City Association, in filing, if any it did file, said maps or in plotting the land described in the bill of complaint, if any it did plot, or in making any of the alleged dedications in relation to the land described in the bill of complaint, if any such dedications it did make, nor has she any knowledge as to what deed or deeds of conveyance were made by the Ocean City Association to any other person or persons than this defendant, nor as to what the intentions or objects of the said association were at the time of the making of any such deed or deeds, but this defendant alleges that the conveyance made to this defendant for the land at the northwest corner of Sixth and Ocean Avenue, Ocean City, N. J., was lawfully and properly made, and that this defendant is the lawful and proper owner thereof for the purposes and uses set forth in her said deed.

7. And this defendant, further answering said bill of complaint, has no knowledge, except as hereinabove set forth, as to what proceedings were instituted by or against the said Ocean City Association, or as to the purpose or intention of such proceedings or the result thereof, as alleged in said bill of complaint, but leaves the same to be proved by the complainant, when and where this Honorable Court may direct.

8. This defendant, further answering said bill, denies that the deeds of conveyance made by the Ocean City Association to its various grantees, as set forth in the bill of complaint, were made with reference to the maps mentioned and described in the complainant's bill or that the lands now claimed by the

complainant were sold by said association with reference to said maps or with reference to the maps claimed to have been filed in the county clerk's office of Cape May County.

9. This defendant further says that if any statements were made by one William B. Wood or others acting for or representing the Ocean City Association at any public sale of lands or otherwise as set forth in bill of complaint, no such statements were ever communicated to this defendant; but that she bought the said premises now owned by her at Sixth and Ocean Avenue, Ocean City, N. J., in good faith for a valuable consideration, and that as to any such statements or similar statements, this defendant avers that if any such statements were made, she has not been informed thereof, that the same in no way affected her title to and possession of premises owned by her as aforesaid.

10. This defendant, further answering, says that in the year 1900, she purchased in good faith for a consideration of approximately $18,000, two lots of land on the northwest corner of Sixth and Ocean Avenue, having a front of 100 feet by a depth of 125 feet, and that when she purchased said premises, there was already erected and maintained thereon a large frame hotel or boarding house, three stories in height and a basement, making virtually a four-story hotel building or boarding house, and that this defendant purchased the said premises and said boarding house as then erected and maintained on said lots from one Charles Matthews, Jr., who had occupied and used said premises for his own private purposes, as a hotel and boarding house for many years prior to the date of purchase of the same by

this defendant, and this defendant further answering says that upon making said purchase, and taking title to said lots from the said Matthews, she was informed and then believed and still believes and now charges that she obtained a good title thereto and that without being subject to any of the alleged easements or dedications set forth in the bill of complaint, this defendant further answering says that on taking the title to said lots, she expended a considerable sum of money in and about the repairing of said property and has continued to spend moneys thereon annually from the time of said purchase until the present time; that from the date of her said purchase up to the present time, the said premises have been owned by this defendant and used and occupied by her or some one under her as tenant, each and every season for boarding house and hotel purposes; that said boarding house has been opened each year for the accommodation of guests, the same as other hotels and boarding houses in Ocean City; and that at each season, said hotel has been full of guests, boarders, and occupants under this defendant, and all without any objection whatever on the part of the complainant or the complainant's grantors, also without any objection from any other person or corporation except as hereinafter set forth; and also without objection or complaint from any of the complainant's grantors.

11. This defendant, further answering, says that on or about the first of June, 1907, the Ocean City Land Company filed a bill of complaint in this court against this defendant, praying for injunction and restraining this defendant from the further erection or construction of a certain addition to the aforesaid hotel or boarding house which she was

then constructing and erecting; that this defendant thereupon filed an answer to said bill of complaint, whereupon it was adjudicated by this Court in said proceeding on the seventeenth day of June, 1907; that the temporary restraining order in such cause should be and was dismissed with costs, and in any by which order it was also adjudicated that the complainant was not entitled to the *ad interem* restraint prayed for, to which said bill of complaint, and order, this defendant begs leave to refer.

12. This defendant, further answering, says that she had no knowledge as to what proceedings might have been instituted against any other persons for the removal of any building or buildings upon the tract of land between Fifth and Sixth Streets, at Ocean City, N. J., but this defendant avers that she has never, to her knowledge, been made a defendant in any law suit with respect to said property, and has never been called upon to defend her title to the said land except in the chancery suit above mentioned. This defendant denies that she has ever had any agreement, communication or understanding with the city of Ocean City or its officials, or with city council or the other governing body of said city with respect to the erection and maintenance of her said hotel or boarding house on the two lots aforesaid as set forth in the bill of complaint, or that she has to remove same or any part of the same; but on the contrary avers and charges that the city of Ocean City, on March 21, 1907, by H. C. Smith, its building inspector then and there issued its building permit No. 200, giving permission to one F. J. Smith, defendant's contractor and builder, to add an addition to the former building for boarding house purposes on her lots at

Sixth and Ocean Avenue aforesaid, and granting permissions to said Smith as this defendant's agent to use the streets and premises for three months for the purpose aforesaid.

13. This defendant, further answering, says that pursuant to the permit above mentioned she expended during the spring of the year 1907, in alterations and in building an addition to the said hotel or boarding house upwards of $3500. This defendant, further answering, says that said hotel had become too small for the proper accommodation of her guests, was in need of repairs and that this defendant, in the spring of 1907, as she now charges, strictly within her legal rights, expended the sum aforesaid in the reconstruction of the main hotel building above mentioned and in the erection of an addition thereto as aforesaid; that said work was continued for several months and was proceeded with openly and in full view of all the people of Ocean City; and that without any objection except from the Ocean City Land Company aforesaid in the chancery suit above mentioned and particularly without any protest or objection from the complainant or any of the complainant's grantors. This defendant, further answering, says that said addition was completed in the summer of 1907 and ever since that time, has been used as a hotel during every season accommodating a large number of guests; that the reconstruction work and other work aforesaid extended over a period of five months and was openly carried on and without any objection from the complainant or any of the complainant's grantors, and that said work was openly and notoriously done in full view of all citizens, property owners, residents, and visitors at Ocean City and with their

full knowledge as well as the knowledge of the public and the complainant and her grantors.

14. This defendant, further answering, says that this defendant and defendant's grantor, Charles Matthews, Jr., ever since the Ocean City Association conveyed the lots now owned by this defendant to the said Matthews in the year 1896, have occupied and used the said premises as aforesaid and have had erected thereon the building aforesaid; and that while the same has been occupied and used by this defendant and her grantor the complainant and the complainant's grantors have consented to such occupancy and to such use for hotel and boarding house purposes and for upwards of eighteen years last past have acquiesced in such use of said premises and this defendant charges that while the complainant might otherwise have had certain equitable rights in and to the said tract of land between Fifth and Sixth Streets, Ocean City, aforesaid, or some portion of the same now owned by this defendant, nevertheless, the said complainant is now estopped to take advantage thereof to defendant's prejudice by reason of the complainant's neglect and laches; this defendant further answering charges that the complainant and the complainant's grantors are guilty of laches in that they made no objection to the defendant and her grantor using the said premises aforesaid or to the building, repairing, and reconstructing of the building aforesaid thereon, or making an addition thereto as above stated; and that the said complainant and complainant's grantors have stood by and permitted this defendant and defendant's grantor, Charles Matthews, Jr., to expend in good faith upwards of $30,000 in and about the purchase, repairs, reconstruc-

tion, additions, and furnishings of the said hotel and boarding house, all of which would be practically a total loss to this defendant should she be required by this Court to remove said building or any portion thereof from the land now owned by her.

15. This defendant, further answering, says that since 1907 she has had no immediate intention or purpose of altering or reconstructing the said boarding house or hotel or had in contemplation the making of any changes thereto and she denies that with the said Ocean City Association or with any of the defendants or any other person or persons she has contrived or is contriving or intending to violate or destroy any obligation by which she is bound or to violate any covenant by which the Ocean City Association is bound. This defendant, further answering, denies that she has done or is doing or intends to do any of the acts or things complained of in the said bill of complaint, or any other act or thing of which by reason of her so doing, the complainant could complain in connection with the two lots of land aforesaid, located at Sixth Street and Ocean Avenue, Ocean City, New Jersey.

16. This defendant, further answering said bill of complaint, avers and charges that the numerous buildings erected upon said plot of ground at Ocean City, between Fifth and Sixth Streets, and the Atlantic Ocean and Beach Thoroughfare, mentioned and described in the bill of complaint, were constructed and erected in the ordinary course of business, properly and lawfully, and with the greatest publicity and notoriety, and in full view of the occupants and owners of the land now claimed by the complainant, and of those under whom complainant

claims; and this defendant denies that the complainant has any rights whatsoever as against this defendant in the said tract of land between Fifth and Sixth Streets, and the Atlantic Ocean and Beach Thoroughfare, as the owner of lot No. 701, in section A, or otherwise; and further denies that the said complainant had or has acquired any rights, as against this defendant, in reference to the said tract of land, or that the said complainant has had or now has any rights in said land as against this defendant, to have the same kept open, unplotted or reserved and that the said complainant and her grantors, if any lawful title was ever taken by her or them, to any land at Ocean City, New Jersey, as set forth in the bill of complaint, took title thereto subject to and with full notice and knowledge of the rights of this defendant and her grantors, in the premises described in the deed above mentioned to this defendant, and with full knowledge and notice of the various facts, matters and things set forth in the bill of complaint and in this answer, and subject thereto.

17. This defendant, further answering said bill of complaint, avers and charges that the complainant, neither by reason of anything set forth in the bill of complaint, nor otherwise, has any standing to enforce any rights or alleged rights, such as are set forth in the said bill of complaint, with reference to the said tract of ground at Ocean City, New Jersey, located between Fifth and Sixth Streets and the Atlantic Ocean and Beach Thoroughfare; and also avers and charges that the complainant and complainant's grantors, for years past, have consented to and acquiesced in the various occupancies and other alleged breaches of covenant set forth

in the bill of complaint, and that the complainant is now estopped from taking any advantage thereof, to the defendant's prejudice by reason of such acquiescence. And this defendant further avers and charges that the complainant is guilty of laches in that complainant has acquiesced in said alleged breaches and has made no proper objection or any lawful attempt to prevent the use of the said premises alleged to have been made by this defendant and others, as set forth in the said bill of complaint; and that the said complainant, and those under whom complainant claims, have stood by for a long period of time while the buildings now erected upon said land were being openly and notoriously constructed, and have permitted the persons named in said bill of complaint, and their grantors, in good faith, to expend thousands of dollars in and about the construction, repairs, reconstruction and furnishings of the various buildings alleged to have been erected on said lot of ground, as above set forth, all of which expenditures would entail a great financial loss, if the said defendants, or any of them, should be required, under an order of this Court, to remove said buildings, or any portion thereof. And this defendant, further answering said bill, avers and charges that the said complainant is now estopped to take advantage of the alleged covenants set forth in the bill of complaint, to the defendant's prejudice, by reason of said laches.

18. And this defendant, further answering said bill of complaint, denies each and every other allegation therein alleged not herein otherwise admitted, answered or denied, and this defendant submits to this Honorable Court that all and every of the matters in the complainant's said bill mentioned and

complained of are matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief in this court, and this defendant hopes she shall have the same benefit of this defence as if she had demurred to said bill.

19. And this defendant further avers and charges that the complainant's bill is without equity, and prays that she may be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

BLEAKLY & STOCKWELL,
Solicitors of Defendant,
Mary J. Buchanan.

AMENDED ANSWER OF SAMUEL H. HANN, DEFENDANT.

IN CHANCERY OF NEW JERSEY.

Between Henry Bradley, *Complainant,* and Ocean City Association, *Defendant.*	ON BILL FOR RELIEF. AMENDED ANSWER OF SAMUEL H. HANN, DEFENDANT.

The amended answer of Samuel H. Hann, one of the defendants in the above-stated cause, to the bill of complaint of Henry Bradley, filed therein.

This defendant, answering the allegations contained in the bill of complaint, filed in the above-stated cause, says that he has no actual knowledge of the allegations made in said bill with relation to various dedications made by the defendant, Ocean City Association, but so far as he is advised, he believes said allegations to be true, and that so far as the allegations in any part of said bill refer to this answering defendant, he admits that the said Ocean City Association did convey unto this answering defendant, and his wife, Izetta Hann, on October 30, 1909, a certain lot beginning on the northwest side of Pleasure Avenue, one hundred and twenty-three feet southwest from the southwest side of Fifth Street, having fifty feet in front of Pleasure Avenue, and in depth northwestwardly seventy-five feet to a line three feet southwest of the ordinary high water line of Thoroughfare; and also says that the said Ocean City Association did, on August 15, 1912, convey unto this answering defendant and his wife, Izetta Hann, the riparian rights in front of the lands so conveyed by the deed last aforesaid, which said riparian lands are described in said deed as follows: Beginning at a point in the line parallel with and three feet southeasterly of the ordinary high water mark of Beach Thoroughfare as it was located in a deed from the said Ocean City Association to the said S. H. Hann, and Izetta Hann, dated October 30, 1909, said point being distant one hundred twenty-three feet at right angles from the southwesterly line of Fifth Street; thence extending along said line in a generally southwesterly direction to a point one hundred seventy-three feet at right angles from the southwesterly line in said Fifth Street. Thence northwesterly in a line parallel with said Fifth Street, extended, two hundred forty-

three feet, more or less to the exterior line established by the Riparian Commissioners of the State of New Jersey; thence northeastwardly along said exterior line, fifty-two feet more or less to a point distant one hundred twenty-three feet at right angles from the southwesterly line of said Fifth Street extended, thence southeasterly in a line parallel with said Fifth Street, extended, two hundred ninety-seven feet more or less to the place of beginning; the land flowed by tide water in said premises being part of the riparian grant of the State of New Jersey to the Ocean City Association, dated May 24, 1912, and recorded in the Clerk's Office of Cape May County, New Jersey, on July 16, 1912, in Book No. 279 of Deeds, pages 255, &c.; but defendant says that all of said land so conveyed to this answering defendant by said conveyances was and is riparian lands, and below the high water mark on the Thoroughfare opposite the grounds of the said Ocean City Association, and are therefore free and clear from any dedication of the camp grounds, and the allegations in the said bill of complaint cannot and do not apply to the lands so owned by this answering defendant.

This defendant, further answering, denies that said conveyance to this defendant was made for the purpose of contriving, cooperating or conspiring for the purpose of violating and ultimately destroying the obligations of the said Ocean City Association under its implied covenants and dedications, but alleges that said deed was made in good faith to this defendant, for a good and lawful consideration, and conveyed to this defendant lands entirely free and discharged of any dedication, implied or express, of the said Ocean City Association.

And this defendant prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JOHN BOYD AVIS,
Solicitor for and of Counsel with Defendant, Samuel H. Hann.

ANSWER OF THE CENTENARY FUND AND PREACHERS' AID SOCIETY, OF THE NEW JERSEY ANNUAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH, DEFENDANT.

IN CHANCERY OF NEW JERSEY.

Between
Henry Bradley,
Complainant,

and

Ocean City Association, *et als.*,
Defendants.

ON BILL FOR RELIEF.
Answer of The Centenary Fund and Preachers' Aid Society, of the New Jersey Annual Conference of the Methodist Episcopal Church, Defendant.

The answer of The Centenary Fund and Preachers' Aid Society of the New Jersey Annual Conference of the Methodist Episcopal Church to the

bill of complaint of Henry Bradley, complainant, filed in the above-stated cause, this defendant being therein named as Centenary Fund and Preachers' Aid Society.

This defendant, answering the allegations contained in the bill of complaint filed in the above-stated cause, says that it has no actual knowledge of the allegations made in said bill with relation to the various dedications made by the defendant, Ocean City Association, but so far as it is advised, it believes said allegations are true, and that so far as the allegations in any part of said bill refer to this answering defendant, it admits that the Ocean City Association did convey to this defendant two certain lots, the first beginning at a point in the northwesterly line of Ocean Avenue, two hundred feet southwest of Fifth Street, having a front of two hundred feet and in depth between parallel lines at right angles with said Ocean Avenue, one hundred thirty-five feet to a fifteen-feet wide street, and the second beginning at a point in the southeasterly line of Ocean Avenue at a distance of four hundred feet southwest from the southwest side of Fifth Street, having a front of one hundred feet on said Ocean Avenue and a depth between parallel lines, at right angles with the said Ocean Avenue one hundred thirty feet to the same fifteen-feet wide street, but this defendant denies that said conveyance was made by any contrivance, cooperation or conspiracy for the purpose of violating and ultimately destroying the obligations of the said Ocean City Association under its implied covenants and dedication aforesaid, but alleges that said conveyance was made to this defendant as the trustee of the estate of Ezra B. Lake, deceased, for and in payment of a dividend due to this defendant as trustee as aforesaid, upon

shares of stock held by this defendant as trustee, in the said Ocean City Association; and that the said lands and premises were conveyed to this defendant subject to all of the dedications and restrictions, express or implied, theretofore created thereon by the Ocean City Association.

This defendant, further answering, says that it has never used or allowed the use of said tracts of land for any other purpose excepting in accordance with the dedications and restrictions set out in the bill of complaint in this cause, so far as it has been informed, and as it verily believes.

And this defendant, by way of cross bill exhibited against the complainant, says that it here reiterates the facts alleged in the bill of complaint in this cause with relation to the dedications, &c., made by the Ocean City Association, and prays that by the order and decree of this Honorable Court the said dedication may be construed, and that the rights of this defendant in said premises so conveyed to it as set out in said bill of complaint, as to the use and occupation thereof by this defendant, its grantees or lessees, may be determined by the order and decree of this Honorable Court.

And this defendant, as in duty bound, will ever pray.

JOHN BOYD AVIS,
Solicitor for and of Counsel with The Centenary Fund and Preachers' Aid Society of the New Jersey Annual Conference of the Methodist Episcopal Church, Defendant.

ANSWER OF CHARLES W. MASLAND.

IN CHANCERY OF NEW JERSEY.

Between
Henry Bradley,
Complainant,
and
Ocean City Association, Mary J. Buchanan, Ocean City Railroad Company, Henry D. Moore, Lewis M. Cresse, and Cecilia H., His Wife, Charles W. Masland, Centenary Fund & Preachers' Aid Society, James E. Lake, S. Wesley Lake, Ocean City Tabernacle Association, William Watson Adams, Samuel H. Hann, Atlantic Land Development Company, Ebenezer Adams, Scull & Marts Co., City Mill & Lumber Co., and David K. Tucker,
Defendants.

On Bill, &c.

Answer.

Answer of Charles W. Masland, one of the defendants in the above cause.

This defendant, in answer to so much and such parts of the bill of complaint filed herein as he is advised is material for him to make answer unto, answering says:

1. This defendant has no knowledge as to the ownership of the complainant's property, as described in paragraph one of the complainant's bill, nor from whom he purchased the lands and leaves the complainant to his proof of the same.

2. Defendant does not know what representations were made by the Ocean City Association to the complainant.

3. Defendant leaves complainant as to his proof as to the facts set forth in paragraph three of his bill, he having no representations made to him as set forth in said paragraph; defendant did not see the Ocean City Journal published in 1880, as set forth by complainant, and knows nothing of the representations or inducements therein made; defendant knows nothing regarding the announcements made on May 20th, 1880, as set forth in complainant's bill; defendant says that he has seen copies of the maps referred to by the complainant and that on the copies that defendant has seen, the ground between Fifth and Sixth Streets westward of Bay Avenue, has never been plotted and numbered, as set forth in complainant's bill and has no marking on which to show any intent to dedicate by the Ocean City Association; defendant has no knowledge of the alleged attempts by the Ocean City Association to evade or violate any of its obligations, as set forth in complainant's bill, by conveying, or attempting to convey to the numerous parties therein mentioned; defendant admits that on the twenty-fifth day of August, nineteen hundred, the Ocean City Association did convey to the defendant the piece of ground set forth in the complainant's bill, but denies that it was for an unlawful purpose, and says that it was for a lawful purpose, defendant purchasing the same, paying good consideration

therefor, and that on the twelfth day of April, nineteen hundred and six, the Ocean City Association conveyed to the defendant another piece of ground, as set forth in the complainant's bill, together with the right to apply to the state for the riparian rights; that defendant denies that he cooperated with he Ocean City Association in taking this ground to further any schemes of relieving the Ocean City Association from any obligations, implied covenants or dedications; defendant denies that he connived or concurred with the Ocean City Association in connection with his buildings, but that he erected thereon a building of value and made improvements to the said ground in furtherance of the purpose for which he purchased the said land to use the same as a boat house and dwelling house; this defendant further says that from time to time he has expended large sums of money on this property, that he might enjoy the occupation, possession and ownership of it; that the complainant has never objected to the defendant's occupying the said property, although the defendant has had a substantial building upon the said property for about eleven years; that for a period of over two years he has had the said property bulkheaded and filled at a great expense and has remained in quiet and peaceful possession of the said land and premises up until the present time, all of which facts, matters and things this defendant is willing to maintain and prove, as this Honorable Court may direct, and, therefore, prays that he may hence be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

CYRUS D. MARTER,
Solicitor for and of Counsel with Defendant, Charles William Masland.

ANSWER OF CENTENARY FUND AND PREACHERS' AID SOCIETY, ET ALS.

IN CHANCERY OF NEW JERSEY.

Between Henry Bradley, *Complainant,* and Ocean City Association, *et als.*, *Defendants.*	Answer of Centenary Fund and Preachers' Aid Society, *et als.*

The answer of Centenary Fund and Preachers' Aid Society, James E. Lake, S. Wesley Lake, Ocean City Tabernacle Association and Atlantic Land Development Company to the bill of complaint filed in the above-stated cause.

These defendants answering so much of said bill of complaint as they are advised it is necessary to answer the same, answering say:

1. They neither admit nor deny that complainant is the owner of land particularly described in section 1 of said bill, and neither admit nor deny that there were a greater or less number of intermediate transfers of said land prior to the ownership, if any, thereof by complainant.

2. They deny that the original purchaser of said described lot and the parties succeeding him or them as subsequent owners thereof in line of title of

complainant, and complainant bought said lot relying upon representations made by Ocean City Association before it had sold any lots on said map or plot of Ocean City.

3. They deny that Ocean City Association prior to and as an inducement to all the purchases which were subsequently made of lots in said Ocean City from said association, and as an inducement also to purchase the lots in said Ocean City from other parties than Ocean City Association, represented and stipulated that a certain large area of land adjacent to said lots offered and subsequently purchased, to wit, the area of ground exclusive of streets bounded by Fifth and Sixth Streets and Atlantic Ocean and Beach Thoroughfare, should be and forever remain devoted to camp meeting and other public recreation purposes in connection therewith, to the advantage and benefit in the nature of an easement of the lots of ground which were so offered by the Ocean City Association as aforesaid, and were afterwards purchased by the several individuals whose rights have vested in complainant.

Further answering said paragraph, these defendants neither admit nor deny that Ocean City Association published a paper called the "Ocean City Journal" in the year eighteen hundred and eighty, and deny that said paper published statements purporting to come from or be authorized by Ocean City Association touching and concerning the block of land between Fifth and Sixth Streets aforesaid and leave complainant to prove the same.

These defendants neither admit nor deny that prior to the sale held on May twentieth, eighteen hundred and eighty, and throughout the progress of said sale, Ocean City Association published and

distributed, in order to inform intending purchasers of the conditions under which they were solicited to purchase lots, a map showing the strip of land between Fifth and Sixth Streets, and between Wesley Avenue and Asbury Avenue marked "Camp Ground" and leave complainant to prove the same, and neither admit nor deny that William B. Wood had authority to make an address in the presence and hearing of all the persons therein assembled, and neither admit nor deny that any of the persons there assembled afterwards purchased lots at said sale, and neither admit nor deny that the said William B. Wood prefaced his address by explaining the plans and purposes of the association as mentioned in said bill of complaint, and deny that during the course of said address the said William B. Wood announced that the strip of land lying between Fifth and Sixth Streets, and between Atlantic Ocean and Beach Thoroughfare was set apart and dedicated to public uses in connection with the established camp meeting enterprise, and for the better promotion of such projects would be forever kept open and clear of public obstructions of every sort for freedom and circulation of air, and neither admit nor deny that Ocean City Association published an annual report and therein stated that the camp ground block extending from meadow to ocean, five hundred feet wide, had been devoted to an encampment, and deny that complainant and those owning the lands now claimed by him prior in chain of title purchased relying upon any implied covenant touching and concerning the lands lying between Fifth and Sixth Streets and between Atlantic Ocean and the Thoroughfare.

These defendants, further answering said paragraph, neither admit nor deny that the deed of con-

veyance to complainant for lot 701 in section A, and the deeds of conveyance for the same premises prior in chain of title referred to a plan or map of lands of said association, on which plan or map the tract between Fifth and Sixth Streets and Atlantic Ocean and Beach Thoroughfare were marked with the words "Camp Ground" and deny that any such map or plan was filed in the clerk's office of Cape May County by authority of Ocean City Association, and deny that any such map or plan became a part of the deeds thereafter made, and deny that any sales were made by Ocean City Association and its grantees with reference to any such map to more fully define the said transactions of sale as to their terms and thereby such purchasers became entitled to an implied covenant to the maintenance of said tract of land between Fifth and Sixth Streets and the Ocean and Thoroughfare for any specific purposes, and deny that complainant by reason of such map and deed or either of them became entitled as against the Ocean City Association and as against these defendants to have the strip of land between Fifth and Sixth Streets and Atlantic Ocean and Beach Thoroughfare to be devoted to the object of a camp ground to the exclusion of private occupation and use thereof, and further answering deny that complainant's alleged lot No. 701, in section A, is more desirable and enhanced in value by reason of the alleged easement, and deny that any such easement is appurtenant to said lot 701, and deny that complainant is entitled to have said tract of land between Fifth and Sixth Streets and Atlantic Ocean and the Thoroughfare, because of any fact alleged in said bill of complaint, kept open and devoted to public uses of the nature of those incident to a camp meeting ground, and say that a camp meeting is not

a public institution and there are no public uses incident to a camp meeting ground.

3. These defendants deny that Ocean City Association for a long time has and now is disregarding and attempting to repudiate any implied covenant entered into by it with any purchaser of lots, and says that at no time was it the object of Ocean City Association to violate any implied covenant made between it and any purchaser of lands from it, and further say that at no time has Ocean City Association ever used or attempted to use the land lying between Fifth and Sixth Streets and Atlantic Ocean and Wesley Avenue and Asbury Avenue and the Thoroughfare in a manner different from that originally contemplated by said Ocean City Association.

Further answering paragraph 3, these defendants neither admit nor deny that in the year eighteen hundred and eighty-two and prior thereto, that Ocean City Association attempted to sell and transfer private and individual rights in any part of the lands lying between Fifth and Sixth Streets and Atlantic Ocean and the Thoroughfare except between Wesley Avenue and Asbury Avenue, and that the suit mentioned in complainant's bill of complaint by one George G. Lennig against Ocean City Association was touching and concerning lands lying between Wesley Avenue and Asbury Avenue and Fifth and Sixth Streets, and neither admit nor deny that a writ of injunction was issued against Ocean City Association in said suit, and leave complainant to prove the same.

Further answering paragraph 3, these defendants say they neither admit nor deny complainant's allegation concerning a map or plan styled "Map No. 1

annexed to Section A," and leave complainant to prove the same.

Further answering said paragraph these defendants say they neither admit nor deny that Ocean City Association erected a house on a lot upon said map No. 1 annexed to section A, and leave complainant to prove same.

Further answering paragraph 3, these defendants say they deny that Ocean City Association for the purpose of evading its obligations or any implied covenant or dedication for public uses, conveyed two certain lots to Charles Matthews, Jr., and say they neither admit nor deny that two lots were conveyed to Charles Matthews, Jr., by Ocean City Association, and leave complainant to prove same, and say that Charles Matthews, Jr., was a member of the Ocean City Association, and that a large number of lots were conveyed by said association to its various members at different times as dividends upon stock, but deny that Ocean City Association conveyed said lots to the said Charles Matthews, Jr., for the purpose of erecting a hotel building thereon, and deny that Ocean City Association in any manner cooperated with the said Charles Matthews, Jr., or that Charles Matthews, Jr., in any manner cooperated with said Ocean City Association in violating or attempting to violate any obligation of said Ocean City Association.

These defendants further answering paragraph 3 neither admit nor deny that Ocean City Association conveyed lot No. 117 on map No. 1 to Alfred K. Scholl on June twenty-fourth, eighteen hundred and ninety-seven, and leave complainant to prove same, but deny that such conveyance, if made, was made for the purpose of violating any obligation or implied covenant of Ocean City Association, but was

made strictly within what Ocean City Association conceived to be its legal rights in the premises, and deny that the said Alfred K. Scholl erected on said lot a building at the instance of Ocean City Association, and deny that Alfred K. Scholl made a pretended sale or conveyance of said lands to Mary J. Lake, and say that the said Alfred K. Scholl conveyed said lands to the said Mary J. Lake in fact.

These defendants, further answering said paragraph, neither admit nor deny that Ocean City in nineteen hundred and one instituted an ejectment suit against Mary J. Buchanan for two lots in the alleged reserved areas, and against Mary J. Lake above mentioned because of occupying the lands by them owned to the exclusion of the public interest in said premises, and neither admit nor deny what the course of procedure was in said suits nor the result thereof, but deny that the said Mary J. Lake or Mary J. Buchanan removed the buildings from off their lands by reason of said suit or entered into any agreement with Ocean City touching and concerning the same.

Further answering paragraph 3, these defendants deny that Ocean City Association on December twenty-ninth, eighteen hundred and ninety-six, and May twentieth, eighteen hundred and ninety-nine, contrived to violate any of its implied covenants to the public or to any individual, but admit that on or about the dates aforesaid, Ocean City Association conveyed a certain tract of land to Ocean City Railroad Company as an inducement to secure railroad service to the citizens of Ocean City over the Ocean City Railroad Company, which is a part of the Reading Railroad system, and neither admit nor deny the proceeding mentioned in complainant's bill of complaint instituted by one William Bridge-

water, but say that these defendants were not parties to said suit, and are not bound thereby.

These defendants, further answering paragraph 3, say they deny that Ocean City Association wilfully violated any obligation or covenant due to the public under any dedication made to the public by conveying to one Henry D. Moore a lot alleged to be in the reserved area, and being seventy-seven feet on Bay Avenue and extending within three feet of the ordinary highwater mark of Beach Thoroughfare, and neither admit nor deny that Ocean City Association afterwards applied for a riparian grant in front of the lands conveyed to the said Henry D. Moore, but leave complainant to prove same, and neither admit nor deny that Ocean City Association conveyed riparian rights acquired in front of the lands of the said Henry D. Moore to the said Henry D. Moore for a nominal consideration, and leave complainant to prove same.

Further answering said paragraph 3, these defendants neither admit nor deny that Ocean City Association on the twelfth day of September, nineteen hundred and five, sold and conveyed a lot situate on the northwest line of Pleasure Avenue two hundred and twenty-three feet southwest of Fifth Street to Lewis M. Cresse, and leave complainant to prove same, but they deny that Ocean City Association and the said Lewis M. Cresse in any manner connived or colluded with the said Lewis M. Cresse to violate any obligation of Ocean City Association, and neither admit nor deny that riparian commissioners made a grant of riparian lands to the said Lewis M. Cresse on the fifth day of February, nineteen hundred and six, and seventh day of February, nineteen hundred and six, and leave complainant to prove same, and deny that the conveyance to the

said Henry D. Moore and Lewis M. Cresse were made for the purpose of violating the duties of the Ocean City Association to the public, and deny that the conveyances so made as aforesaid were a violation of any duties owing by Ocean City Association to the public.

These defendants further answering paragraph 3 say that they neither admit nor deny that Ocean City Association on the twenty-fifth day of August, nineteen hundred, conveyed a tract of land three hundred and seventy-three feet southwesterly from Fifth Street to Charles W. Masland, but deny that said conveyance was made for any unlawful purpose, and deny that said conveyance was made for the purpose of having the said Charles W. Masland cooperate with Ocean City Association for the violation and ultimate destruction of the obligation of said Ocean City Association or for any other purpose, and deny that the said Charles W. Masland has cooperated or continued to cooperate with Ocean City Association in violating the obligation of said Association.

These defendants, further answering said paragraph 3, admit that Ocean City Association on July eighteenth, nineteen hundred and three, conveyed two certain tracts of land to Centenary Fund and Preachers' Aid Society, and on August tenth, nineteen hundred and three, one tract of land to James E. Lake, and on August twelfth, nineteen hundred and three, another tract of land to S. Wesley Lake, and on March sixth, nineteen hundred and nine, another tract of land to Atlantic Land Development Company, or the sizes and dimensions mentioned in said bill of complaint, but neither admit nor deny that on August nineteenth, nineteen hundred and seven, a lot was conveyed to William Watson Adams,

nor that on November thirtieth, nineteen hundred and nine, a lot was conveyed to Samuel H. Hann of the size and dimension mentioned in said bill of complaint, but deny that said conveyances were made by Ocean City Association contriving and conspiring with the grantees above mentioned to violate and ultimately destroy the obligations of the said Ocean City Association under any implied covenant and dedication, and say that said conveyances were each respectively made in furtherance of the original plans and undertakings of Ocean City Association.

These defendants, further answering paragraph 3, say they deny that the lands conveyed to Atlantic Land and Development Company are in any manner subject to any implied covenants or restrictions of whatsoever nature, and deny that these defendants had any notice of any restrictions, easements, or implied covenants touching and concerning the lands lying between Fifth Street and Sixth Street, and between Atlantic Ocean and Wesley Avenue and Asbury Avenue and Beach Thoroughfare, and say they are severally *bona fide* purchasers for value without notice of said covenants and without notice of any dedication of lands between Fifth and Sixth Streets and between Atlantic Ocean and Wesley Avenue and Asbury Avenue and the Thoroughfare to public uses, and pray to be hence dismissed with their costs in this behalf most wrongfully sustained.

BOURGEOIS & COULOMB,

Solicitors of Defendants, Centenary Fund and Preachers' Aid Society, James E. Lake, S. Wesley Lake, Ocean City Tabernacle Association and Atlantic Land Development Company.

ANSWER OF OCEAN CITY TABERNACLE ASSOCIATION.

IN CHANCERY OF NEW JERSEY.

Between Henry Bradley, *Complainant,* and Ocean City Association, Ocean City Tabernacle Association, *et al.*, *Defendants.*	Answer of Ocean City Tabernacle Association.

The answer of the Ocean City Tabernacle Association, to the bill of complaint filed in the above-stated cause.

This defendant answering the complainant's said bill of complaint, for such answer, says:

1. It is ignorant as to whether or not the said Henry Bradley, complainant, is the owner of a certain lot of ground situate in Ocean City, and particularly described in paragraph 1 of said bill of complaint, but leaves the same to be proved by said complainant as best he may, when and where this Honorable Court may direct.

This defendant, further answering, says that it neither admits nor denies that certain parts of the said city of Ocean City were originally owned, laid out, or to a large extent sold by said Ocean City

Association prior to the plotting thereof and the selling of lots therefrom; and neither does it admit nor deny that there were a greater or less number of intermediate transfers of the said land, claimed to be owned by the said complainant, prior to the complainant's ownership thereof, if any, but leaves the same to be proved as best he may by the complainant, when and where this Honorable Court may direct.

2. This defendant, further answering said bill of complaint, denies that the original purchaser of the said described lot of ground claimed to be owned by the said complainant, and the parties succeeding him or them, as subsequent owners thereof in the line of the title of the said complainant, or that the complainant himself bought said lot relying upon certain representations made by the Ocean City Association before it had sold any lots on said map or plot of Ocean City, and leaves the same to be proved as best he may, when and where this Honorable Court may direct.

3. This defendant, further answering, denies that the Ocean City Association, prior to, or as an inducement to all purchases which were subsequently made of the lots in Ocean City from said association, or as an inducement also to the purchase of lots in Ocean City from other parties than Ocean City Association, represented or stipulated that a certain large area of land adjacent to the said lots offered to or subsequently purchased; to wit, the area of ground, exclusive of streets, bounded by Fifth and Sixth Streets, and the Atlantic Ocean and Beach Thoroughfare, in the said city of Ocean City, should be or forever remain devoted to camp meeting or

other public recreation purposes in connection therewith, to the advantage or benefit, in the nature of an easement, of the lots of ground which were so offered by the said Ocean City Association, or that they were afterward purchased by the several individuals whose rights have vested in the said complainant.

And further answering the third paragraph of said bill of complaint, this defendant says that it neither admits nor denies that the Ocean City Association published a certain paper called the "Ocean City Journal" in the year 1880, or that such journal contained certain allegations and statements attributed thereto by the complainant, but leaves the same to be proved by the complainant, as best he may, when and where this Honorable Court may direct.

And this defendant, further answering said paragraph 3 of the said bill of complaint, denies that the paper or journal said to have been so published, contained or set forth the statements claimed by the complainant, or purporting to come from, or be authorized by the Ocean City Association, touching or concerning the block of land or any part thereof between Fifth and Sixth Streets aforesaid, as set forth in the said bill of complaint, but leaves the complainant to prove the same as best he may when and where this Honorable Court may direct.

And this defendant, further answering said paragraph 3 of said bill of complaint, neither admits nor denies, that prior to said sale, said to have been held on May 20th, 1880, or throughout the progress of the same, said Ocean City Association published or distributed, in order to inform intending purchasers of the condition under which they were solicited to purchase lots, a map showing the strip of land between Fifth and Sixth Streets, and between

Wesley and Asbury Avenues, marked "camp ground" but leaves the complainant to prove the same as best he may, when and where this Honorable Court may direct.

And further answering said paragraph 3, this defendant says that it neither admits nor denies that William B. Wood made an address, or had an authority to make an address in the presence and hearing of all the persons there assembled, as set forth in the bill of complaint, and neither admits nor denies that any of the persons there assembled afterward purchased any lots from said association at said sale, and neither admits nor denies that the said William B. Wood prefaced such alleged address by explaining the plans and purposes of said association, as mentioned in said bill of complaint. And further answering denies that during the course of said alleged address, the said William B. Wood announced or had authority to announce that the strip of land lying between Fifth and Sixth Streets and the Atlantic Ocean and Beach Thoroughfare, as mentioned in the bill of complaint, was set apart and dedicated, or was to be set apart and dedicated to public uses in connection with the established camp meeting enterprise, or that it would, for the better promotion of such project, be forever kept open and clear of all public obstacles of every sort, for freedom and circulation of air, and neither admits nor denies that the said Ocean City Association published a report and therein stated that the camp ground block, extending from meadow to ocean, five hundred feet wide, had been devoted or was to be devoted to a camp; and further denies that the complainant, or those formerly owning the lands now claimed by him, prior in chain of title, purchased the same, or any part thereof, relying upon any implied

covenant touching or connecting the lands aforesaid, lying between Fifth and Sixth Streets in the said city of Ocean City.

This defendant, further answering said paragraph 3, neither admits nor denies that the deed of conveyance to the complainant for the said lot 701, in section A, or the deeds of conveyance for the said premises prior in chain of title, referred to a map or plan of the said association; on which plan or map the said tract of land between Fifth and Sixth Streets and the Atlantic Ocean and Beach Thoroughfare, was marked with the words "camp ground," and it denies that any such map or plan was ever filed in the clerk's office of Cape May County by the authority of the Ocean City Association, and denies that any such map or plan became a part of the deeds thereafter made, and denies that any sales were made by the Ocean City Association or its grantees, with reference to any such map to more fully define the said transaction of sale, as to their terms; and further denies that thereby any such purchase by the complainant, or any one claiming under him, became entitled to an implied covenant to the maintenance of said tract of land between Fifth and Sixth Streets and the Ocean and Beach Thoroughfare for any specified purpose or purposes. And further denies that the complainant, by reason of any such map and deed, or either of them, ever became entitled, as against the Ocean City Association or as against this defendant, to have the strip of land between Fifth and Sixth Streets and the Atlantic Ocean and Beach Thoroughfare, devoted to the object of a camp ground to the exclusion of private occupancy or private use thereof.

And further answering said paragraph, this defendant denies that the complainant's alleged lot No. 701, section A, is more desirable, or more enhanced in value by reason of the alleged easement claimed and set forth in said bill of complaint, and denies that any such easement is appurtenant to the said lot No. 701 and denies that the complainant is entitled to have said tract of land between Fifth and Sixth Streets and the Atlantic Ocean and Beach Thoroughfare, Ocean City, because of any fact alleged or set forth in said bill of complaint, or otherwise, kept open or devoted to public uses or to such as are in the nature of those incident to a camp meeting ground, and avers that a camp meeting is not a public institution, and that there are no public uses incident to a camp meeting ground.

4. This defendant, further answering said bill of complaint, denies that the Ocean City Association now does nor for a long time has disregarded or attempted to repudiate any implied covenant entered into by it with any purchaser or purchasers of lots at Ocean City, and avers that it has never been the object or intention of the said Ocean City Association, or of this defendant, to violate any implied covenant made between the said association and any purchaser or purchasers of lots of land at Ocean City. And further answering said bill, this defendant denies that the said Ocean City Association, at any time, ever used or attempted to use the land lying between Fifth and Sixth Streets and Atlantic Ocean and Wesley Avenue and Asbury Avenue and Beach Thoroughfare, in a manner different from that originally intended or contemplated by the said Ocean City Association.

And further answering said paragraph No. 4, of

said bill (incorrectly numbered 3), this defendant neither admits nor denies that in the year 1882, or prior thereto, the Ocean City Association attempted to sell or transfer any private or individual rights in any parts of the lands lying between Fifth and Sixth Streets and Atlantic Ocean and Beach Thoroughfare, except between Wesley Avenue and Asbury Avenue; or that the suit mentioned in the complainant's bill of complaint, by one George G. Lennig against the Ocean City Association, was touching or concerning lands lying between Wesley Avenue and Asbury Avenue and Fifth and Sixth Streets, and neither admits nor denies that a writ of injunction was issued against Ocean City Association in any such suit, but leaves the complainant to prove the same as best he may, when and where this Honorable Court may direct.

And further answering said paragraph 4 (incorrectly numbered 3), this complainant says that it neither admits nor denies that a map or plan styled map No. 1, annexed to section A, was prepared or that lots were offered for sale, as set forth in said bill of complaint, but leaves the complainant to prove the same when and where this Honorable Court may direct.

And further answering said paragraph, this defendant says that it neither admits nor denies that the Ocean City Association erected a house on a lot indicated on said map No. 1, but leaves the complainant to prove the same as best he may, when and where this Honorable Court may direct.

And further answering said paragraph, this defendant further says that it denies that the Ocean City Association, for the purpose of evading its obligation or any implied covenant of dedication, for public uses, conveyed certain lots to Charles Mat-

thews, Jr., and says that it neither admits nor denies that the said lots were conveyed to the said Matthews by said association, but leaves the complainant to prove the same when and where this Honorable Court may direct.

And further answering said paragraph, this defendant says that Charles Matthews, Jr., was a stockholder in said Ocean City Association, and that a large number of lots were conveyed by said association to its various stockholders at different times, as dividends upon the stock held by such members, but denies that said association conveyed the lots mentioned in the bill of complaint to the said Charles Matthews, Jr., for the purpose of erecting a hotel building thereon, and denies that the Ocean City Association, in any manner, co-operated with the said Charles Matthews, Jr., or that the said Matthews, in any manner or way, co-operated with the association in violating or attempting to violate any lawful obligation of the said association.

This defendant, further answering said paragraph, neither admits nor denies that the Ocean City Association conveyed lot No. 117 on map No. 1 to Alfred K. Scholl on June twenty-fourth, eighteen hundred and ninety-seven, and leaves complainant to prove same, but denies that such conveyance, if made, was made for the purpose of violating any obligation or implied covenant of Ocean City Association, but was made strictly within what Ocean City Association conceived to be its legal rights in the premises, and denies that the said Alfred K. Scholl erected on said lot a building at the instance of Ocean City Association, and denies that Alfred K. Scholl made a pretended sale or conveyance of said lands to Mary J. Lake, and say that the said Alfred K. Scholl conveyed said lands to the said Mary J. Lake, in fact, and for a lawful purpose.

This defendant, further answering said paragraph, neither admits nor denies that Ocean City, in nineteen hundred and one, instituted an ejectment suit against Mary J. Buchanan for two lots in the alleged reserved area, and against Mary J. Lake, above mentioned, because of occupying the lands by them owned to the exclusion of the public interest in said premises, and neither admits nor denies what the course of procedure was in said suits nor the result thereof, but denies that the said Mary J. Lake or Mary J. Buchanan removed the buildings from off their lands by reason of said suit or entered into any agreement with Ocean City touching and concerning the same.

Further answering paragraph 4, this defendant denies that Ocean City Association on December twenty-ninth, eighteen hundred and ninety-six, and May twentieth, eighteen hundred and ninety-nine, contrived to violate any of its implied covenants to the public or to any individual, but admits that on or about the dates aforesaid Ocean City Association conveyed a certain tract of land to Ocean City Railroad Company as an inducement to secure railroad services to the citizens of Ocean City over the Ocean City Railroad Company, which is a part of the Reading Railroad system, and neither admits nor denies the proceeding mentioned in complainant's bill of complaint instituted by one William Bridgewater, but says that this defendant was not a party to said suit, and is not bound thereby.

This defendant, further answering said paragraph, says it denies that Ocean City Association wilfully violated any obligation or covenant due to the public under any dedication made to the public by conveying to one Henry D. Moore a lot alleged to be in the reserved area, and being seventy-seven

feet on Bay Avenue and extending within three feet of the ordinary high water mark of Beach Thoroughfare, and neither admits nor denies that Ocean City Association afterwards applied for a riparian grant in front of the lands conveyed to the said Henry D. Moore, but leaves complainant to prove same, and neither admits nor denies that Ocean City Association conveyed riparian right acquired in front of the lands of the said Henry D. Moore to the said Henry D. Moore for a nominal consideration, and leaves complainant to prove same.

Further answering said paragraph, this defendant neither admits nor denies that Ocean City Association on the twelfth day of September, nineteen hundred and five, sold and conveyed a lot situate on the northwest line of Pleasure Avenue two hundred and twenty-three feet southwest of Fifth Street to Lewis M. Cresse, and leaves complainant to prove same, but it denies that Ocean City Association and the said Lewis M. Cresse in any manner connived or colluded with the said Lewis M. Cresse, or any one else, to violate any obligation of Ocean City Association, and neither admits nor denies that riparian commissioners made a grant of riparian lands to the said Lewis M. Cresse on the fifth day of February, nineteen hundred and six, and seventh day of February, nineteen hundred and six, and leaves complainant to prove same, and denies that the conveyances to the said Henry D. Moore and Lewis M. Cresse were made for the purpose of violating the duties of the Ocean City Association to the public, and denies that the conveyances so made as aforesaid were a violation of any duties owing by Ocean City Association to the public.

This defendant, further answering said paragraph, says that it neither admits nor denies that

Ocean City Association on the twenty-fifth day of August, nineteen hundred, conveyed a tract of land three hundred and seventy-three feet southwesterly from Fifth Street to Charles W. Masland, but denies that said conveyance was made for any unlawful purpose, and denies that said conveyance was made for the purpose of having the said Charles W. Masland co-operate with Ocean City Association for the violation and ultimate destruction of the obligation of said Ocean City Association or for any other purpose, and denies that the said Charles W. Masland has co-operated or continued to co-operate with Ocean City Association in violating the obligation of said association.

This defendant, further answering said paragraph, admits that Ocean City Association on July eighteenth, nineteen hundred and three, conveyed two certain tracts of land to Centenary Fund and Preachers' Aid Society, and on August tenth, nineteen hundred and three, one tract of land to James E. Lake, and on August twelfth, nineteen hundred and three, another tract of land to S. Wesley Lake, and on March sixth, nineteen hundred and nine, another tract of land to Atlantic Land Development Company, of the sizes and dimensions mentioned in said bill of complaint, but neither admits nor denies that on August nineteenth, nineteen hundred and seven, a lot was conveyed to William Watson Adams, nor that on November thirtieth, nineteen hundred and nine, a lot was conveyed to Samuel H. Hann of the size and dimension mentioned in said bill of complaint, but denies that said conveyances were made by Ocean City Association contriving and conspiring with the grantees above mentioned, or any of them, to violate and ultimately destroy the obligations of the said Ocean City Association under

any implied covenant or dedication, and says that said conveyances were each respectively lawfully made in furtherance of the original plans and undertakings of Ocean City Association.

This defendant, further answering said paragraph, says it denies that the lands conveyed to Atlantic Land and Development Company are in any manner subject to any implied covenants or restrictions of whatsoever nature, and denies that this defendant had any notice of any restrictions, easements, or implied covenants touching and concerning the lands lying between Fifth Street and Sixth Street, and between Atlantic Ocean and Wesley Avenue and Asbury Avenue and Beach Thoroughfare, and says that it is a *bona fide* purchaser for value without notice of said covenants and without notice of any dedication or alleged dedication of lands between Fifth and Sixth Streets and between Atlantic Ocean and Wesley Avenue and Asbury Avenue and the Thoroughfare to any public uses.

5. This defendant, further answering said bill of complaint, denies that the entire space at Ocean City between Fifth and Sixth Streets from bay to ocean, was designated on any map or maps as a park or camp meeting ground, or for any public place or use, by the Ocean City Association or by any other lawful owner of the same, but leaves the complainant to prove the same as best he may, when and where this Honorable Court may direct.

6. This defendant, further answering said bill, claims that it is ignorant of and has no knowledge except as hereinabove set forth, as to the original plans or purposes of the said Ocean City Association, in filing, if any it did file, said maps or in plot-

ting the land described in the bill of complaint, if any it did plot, or in making any dedications in relation to the land described in the bill of complaint, if any such dedications it did make, nor has it any knowledge except as above set forth as to what deed or deeds of conveyance were made by the Ocean City Association to any other person or persons than this defendant, nor as to what the intentions or objects of the said association were at the time of the making of any such deed or deeds, but this defendant alleges that the conveyance made on March eleventh, nineteen hundred and seven, by the said Ocean City Association to this defendant for the land bounded by Fifth and Sixth Streets and by Asbury and Wesley Avenues, was lawfully and properly made, and that this defendant is the lawful and proper owner thereof for the uses and purposes set forth in said deed.

7. And this defendant, further answering said bill of complaint, has no knowledge except as hereinabove set forth, as to what proceedings were instituted by or against the said Ocean City Association, or as to the purpose or intention of such proceedings or the result thereof, as alleged in said bill of complaint, but leaves the same to be proved by the complainant as best he may, when and where this Honorable Court may direct.

8. This defendant, further answering said bill of complaint, avers and charges that the numerous buildings erected upon said plot of ground at Ocean City between Fifth and Sixth Streets, and the Atlantic Ocean and Beach Thoroughfare mentioned and described in the bill of complaint, were constructed and erected in the ordinary course of busi-

ness, properly and lawfully, and with the greatest publicity and notoriety and in full view of the occupants and owners of the land now claimed by the complainant, and of those under whom he claims, and this defendant denies that the complainant has any rights whatsoever as against this defendant in the said tract of land between Fifth and Sixth Streets, and the Atlantic Ocean and Beach Thoroughfare, as the owner of lot No. 701, in section A, or otherwise, and further denies that the said complainant has or had acquired any rights, as against this defendant, in reference to the said tract of land, or that the said complainant has had or now has any rights in said land as against this defendant, to have the same kept open, unplotted or reserved or kept for public uses, and this defendant charges that the said complainant and its grantors, if any lawful title was ever taken by him or them, to any land at Ocean City, New Jersey, as set forth in the bill of complaint, took title thereto subject to and with full notice and knowledge of the rights of this defendant and its grantor, in the premises described in the deed above mentioned, to this defendant, and with full knowledge and notice of the various facts, matters and things set forth in the bill of complaint and subject thereto.

9. This defendant further answering said bill of complaint avers and charges that the complainant, neither by reason of anything set forth in the bill of complaint, nor otherwise, has any standing to enforce any rights or alleged rights, such as are set forth in the said bill of complaint, with reference to the said tract of ground at Ocean City, New Jersey, located between Fifth and Sixth Streets and the Atlantic Ocean and Beach Thoroughfare; and

also avers and charges that the complainant and his grantor, for years past, have consented to and acquiesced in the various occupancies and other alleged breaches of covenant set forth in the bill of complaint, and that the complainant is now estopped from taking any advantage thereof, to the defendant's prejudice by reason of such acquiescence. And this defendant further avers and charges that the complainant is guilty of laches in that it has acquiesced in said alleged breaches and has made no proper objection, or any lawful attempt to prevent the use of the said premises alleged to have been made by this defendant and others, as set forth in the said bill of complaint; and that the said complainant, and those under whom he claims, have stood by for a long period of time, while the buildings now erected upon said land, were being openly and notoriously constructed, and have permitted the persons named in said bill of complaint, in good faith, to expend thousands of dollars in and about the construction, repairs, reconstruction and furnishings of the various buildings alleged to have been erected on said lot of ground as set forth in the bill of complaint, all of which expenditures would entail a great financial loss, if the said defendant, or any of them, should be required, under an order of this court, to remove said buildings, or any portion thereof. And this defendant further answering said bill avers and charges that the said complainant is now estopped to take advantage of the alleged covenants set forth in the bill of complaint, to the defendant's prejudice, by reason of his said laches.

And this defendant further answering said bill of complaint denies each and every other allegation therein alleged not herein otherwise ad-

mitted, answered or denied, and this defendant avers and charges that the complainant's bill is without equity and prays that it may be hence dismissed with its reasonable costs and charges, in this behalf most wrongfully sustained.

BLEAKLY & STOCKWELL,
Solicitors of Defendant, Ocean City Tabernacle Association.

10

REPLICATION.

IN CHANCERY OF NEW JERSEY.

Between
Henry A. Bradley,
Complainant,
and
Ocean City Association, *et als.,*
Defendants.

ON BILL, ETC.
REPLICATION.

The complainant joins issue on the answer of the defendant, Ocean City Association.

WILSON & CARR,
Solicitors of Complainant.

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30 Replications in the same form were filed to the answers of Mary J. Buchanan, Samuel H. Hann (Amended answer), Centenary Fund and Preachers' Aid Society of the New Jersey annual conference of the Methodist Episcopal Church, Charles W. Masland, James E. Lake, S. Wesley Lake, Ocean City Tabernacle Association and Atlantic Land Development Company.

DEMURRER.

IN CHANCERY OF NEW JERSEY.

Between
Henry A. Bradley,
Complainant,
and
Ocean City Association, *et als.*,
Defendants.

ON BILL, ETC.

DEMURRER.

The demurrer of William Watson Adams, one of the defendants to the bill of complaint of Henry A. Bradley, complainant.

This defendant by protestation, not confessing all or any of the matters and things in the complainant's bill of complaint contained to be true in such manner and form as the same are therein set forth or alleged, demurs thereto and for cause of demurrer shows:

1. That the complainant has not in and by his said complaint made or stated such a case as entitled him in a court of equity to any discovery from this defendant or to any relief against him.

2. That it appears by the said bill that the same is exhibited against this defendant and the several other persons therein named as defendants thereto

for distinct matters and causes, in several whereof, as appears by the said bill, this defendant is not in any manner interested or concerned, and that said bill is altogether multifarious.

3. Because said bill of complaint in no way alleges or says that the right or interest of this defendant in and to the premises referred to in said bill as having been acquired by him is used, owned or enjoyed by him in a way inconsistent with the rights, if any, of the complainant therein or with the integrity of the alleged implied covenant or dedication referred to in said bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing in said bill, these defendants to demur thereto, and humbly pray the judgment of this Honorable Court whether they should be compelled to make any further or other answer to the said bill and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

McCarter & English,
Solicitors for and of Counsel with Demurrants.

(Demurrers in substantially the same form and effect were filed by Lewis M. Cresse and Cecelia H. Cresse, by Henry D. Moore, and by Ebenezer Adams.)

ORDER SUSTAINING DEMURRER.

IN CHANCERY OF NEW JERSEY.

Between
Henry A. Bradley,
Complainant,
and
Ocean City Association,
et als.,
Defendants.

ON BILL, ETC.

ORDER SUSTAINING DEMURRER.

This cause coming on to be heard in the presence of Wilson & Carr, of counsel with the complainant, and McCarter & English, of counsel with the defendant hereinafter named, and the Chancellor having heard the arguments of counsel and being of opinion that the demurrer of the defendant, William Watson Adams, is good and sufficient.

It is, on this day of October, nineteen hundred and twelve, on motion of McCarter & English, solicitors of the said defendant, ordered that the said demurrer do stand and be allowed and that the complainant do pay to the said defendants their costs of the said demurrer to be taxed.

E. R. WALKER, *C.*

(Similar orders were filed with regard to the demurrers of Lewis M. Cresse and Cecelia H. Cresse, Ebenezer Adams, and Henry D. Moore.)

DECREE PRO CONFESSO.

IN CHANCERY OF NEW JERSEY.

Between
Henry A. Bradley,
Complainant,
and
Ocean City Association,
et als.,
Defendants.

ON BILL, ETC.

DECREE PRO CONFESSO.

This cause being opened to the Court by Wilson and Carr, of counsel with and solicitors for the complainant, and it appearing that process of subpoena for the defendant, the Ocean City Railroad Company, to appear and answer the complainant's bill hath been duly issued, and it appearing that the said defendant, the Ocean City Railroad Company, is a domestic corporation but that the agent thereof designated by said corporation as the agent upon whom process against it might be served, cannot with due diligence, be found, and that service of process of subpoena hath been duly made upon the secretary of state of this state, in accordance with the provisions of "An act to amend an act" entitled "An act concerning corporations (Revision of 1896) approved April twenty-first, eighteen hundred and ninety-six; and that the said defendant, the Ocean City Railroad Company, has not

appeared and pleaded, answered or demurred to the said bill within the time limited by law, or at any other time, but has wholly failed and neglected so to do.

It is, thereupon, on this first day of September, in the year of our Lord one thousand nine hundred and eleven, on motion of Wilson and Carr, of counsel with and solicitors for the complainant, ordered and decreed that the complainant's bill be and the same is hereby taken as confessed against the said defendant, the Ocean City Railroad Company, to the end that such decree may be made against it as the Chancellor shall think equitable and just.

By the Statute,
E. R. WALKER,
Master.

DECREE PRO CONFESSO.

IN CHANCERY OF NEW JERSEY.

Between Henry A. Bradley, *Complainant,* and Ocean City Association, *et als.,* *Defendants.*	ON BILL, ETC. DECREE PRO CONFESSO.

This cause being opened to the court by Wilson and Carr, solicitors for and of counsel with the complainant, and it appearing that process of subpoena for the defendants, Scull and Marts Company,

City Mill and Lumber Company, David K. Tucker and Mary J. Buchanan, to appear and answer the complainant's bill hath been duly issued and returned served upon the said defendants by the sheriff of the county of Cape May, and that process of subpoena for the defendant, Samuel H. Hann to appear and answer the complainant's bill, hath been duly issued and returned served upon the said defendant by the sheriff of Camden County, and that the said defendants have not nor has any or either of them appeared and pleaded, answered or demurred, to the said bill within the time limited by law or at any other time, but that they have wholly failed and neglected so to do.

It is, thereupon, on this eleventh day of October, in the year of our Lord one thousand nine hundred and eleven, on motion of Wilson and Carr, solicitors for and of counsel with the complainant, ordered and decreed that the complainant's bill be and the same is hereby taken as confessed against the said defendants, Scull and Marts Company, City Mill and Lumber Company, David K. Tucker, Mary J. Buchanan and Samuel H. Hann, to the end that such decree may be made against them as the Chancellor shall think equitable and just.

MAHLON PITNEY,
C.

ORDER OPENING DECREE PRO CON.

IN CHANCERY OF NEW JERSEY.

Between
Henry A. Bradley,
Complainant,
and
Ocean City Association,
et als.,
Defendants.

ON BILL, ETC.

ORDER OPENING DECREE PRO CON.

This matter coming on to be heard in the presence of Wilson & Carr, solicitors for the complainant, and Bleakly & Stockwell, solicitors for Mary J. Buchanan, and it appearing that decrees pro confesso have been heretofore entered, to wit, on the first day of September, nineteen hundred and eleven, and on the eleventh day of October, nineteen hundred and eleven, against the defendant, Mary J. Buchanan; now on motion of the said Bleakly & Stockwell, solicitors for said defendant, Mary J. Buchanan, for good cause shown, it is on this day of nineteen hundred and thirteen, ordered that the said decrees pro confesso heretofore entered, be and the same are hereby opened and leave is given to the said defendant, Mary J. Buchanan, to file an answer in the above cause, which answer shall be filed within ten days from the date of this order.

E. R. WALKER, *C.*

(A similar order was filed opening the decree pro confesso against Samuel H. Hann and giving leave to said defendant, to file an answer.)

ORDER OF REFERENCE.

IN CHANCERY OF NEW JERSEY.

Between
Henry A. Bradley,
Complainant,
and
Ocean City Association,
et als.,
Defendants.

ON BILL, ETC.

ORDER OF REFERENCE.

It is, on this 15th day of April, nineteen hundred and thirteen, on motion of Wilson and Carr, solicitors for the complainant, ordered that the above-stated cause be referred to Hon. John H. Backes, one of the Vice-Chancellors, to hear the same for the Chancellor, and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER, *C.*

We consent to the making and entry of the above order.

BOURGEOIS & COULOMB,
Solicitors of James E. Lake, S. Wesley Lake, Ocean City Association, Ocean City Tabernacle Association, Atlantic Land Development Company

and Centenary Fund and Preachers' Aid Society, Answering Defendants.

CYRUS D. MARTER,
Solicitor of Charles W. Masland, Answering Defendant.

BLEAKLY & STOCKWELL,
Solicitors of Ocean City Tabernacle Association, Answering Defendant.

JOHN BOYD AVIS,
Solicitor of Samuel H. Hann and Centenary Fund and Preachers' Aid Society, Answering Defendants.

ORDER SUBSTITUTING COMPLAINANT.

IN CHANCERY OF NEW JERSEY.

Between Henry A. Bradley, *Complainant,* and Ocean City Association, *et als.*, *Defendants.*	ON BILL, ETC. ORDER SUBSTITUTING COMPLAINANT.

This matter coming on in the presence of Bourgeois and Coulomb, solicitors of the defendants, James E. Lake, S. Wesley Lake, Ocean City Association, Ocean City Tabernacle Association, Atlantic

Land Development Company and Centenary Fund and Preachers' Aid Society; and of Cyrus D. Marter, solicitor of the defendant, Charles W. Masland; and Bleakly and Stockwell, solicitors of the defendant, Ocean City Tabernacle Association; and J. Boyd Avis, solicitor of the defendants, Samuel H. Hann and Centenary Fund and Preachers' Aid Society; and all parties consenting in open court.

It is, on this ninth day of May, nineteen hundred and thirteen, on motion of Wilson and Carr, solicitors of the complainant in the above-stated cause, ordered that Mary A. T. Riley be and she is hereby substituted as party complainant in the above-stated cause, in the place and stead of Henry Bradley.

E. R. Walker, *C.*

BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

Between

William G. Carroll, Lewis N. Schnider and Hannah M., his wife, Samuel S. Wenzell, Frank M. Newcomb, James S. Caterson, George W. Urquhart, and Benjamin F. Wheatman and Ida W., his wife,

Complainants,

and

Ocean City Association, Mary J. Buchanan, Ocean City Railroad Company, Henry D. Moore, Lewis M. Cresse, and Cecilia H., his wife, Charles W. Masland, Centenary Fund & Preachers' Aid

Society, James E. Lake, S. Wesley Lake, Ocean City Tabernacle Association, William Watson Adams, Samuel H. Hann, Atlantic Land Development Company, Ebenezer Adams, Scull & Marts Co., City Mill & Lumber Co., and David K. Tucker,

Defendants.

(The bill of the complainants in this case is substantially identical with that filed in the case of Bradley vs. Ocean City Association, *et als., supra,* pp. 6-35.)

ANSWER OF OCEAN CITY ASSOCIATION.

IN CHANCERY OF NEW JERSEY.

Between
William G. Carroll, *et als.,*
Complainants,

and

Ocean City Association, *et als.,*
Defendants.

ANSWER.

The answer of Ocean City Association to the bill of complaint of William G. Carroll, Louis N. Schni-

der, Hannah M. Schnider, Samuel S. Wensell, Frank M. Newcomb, James S. Caterson, George W. Urquhart, Benjamin F. Wheatman and Ida W. Wheatman.

This defendant, answering so much of complainants' bill of complaint as it is advised it is necessary and material for it to answer, says:

I.

It neither admits nor denies that complainants are severally owners of lands situate in Ocean City described in said bill of complaint, and neither admits nor denies that complainants acquired title to said lands mediately or immediately from this defendant, but admits that if complainants are the owners of land in Ocean City aforesaid as mentioned in said bill of complaint, that said land was formerly owned and plotted by this defendant, and neither admits nor denies that complainants became the owners of all the rights in respect to said lands which had been acquired by the original purchasers from this defendant, and leaves complainants to prove the same.

II.

Defendant denies that the original purchasers and all parties succeeding them as subsequent owners in line of title to complainants and complainants bought and paid for said lots respectively relying upon representations made by defendant before it had sold any of said lots.

III.

This defendant denies that it represented and stipulated to complainants or their predecessors in title or any of them that a certain large area of land adjacent to said lots offered to and subsequently purchased by complainants, to wit, the area of ground exclusive of streets bounded by Fifth and Sixth Streets and the Atlantic Ocean and Beach Thoroughfare in said city, should be and forever remain devoted to camp meeting and other public recreation purposes in connection therewith, to the advantage and benefit in the nature of an easement of the lots of ground afterwards purchased by the several mentioned complainants.

It admits that it advertised in the "Ocean City Journal" the establishing of a place of holding religious camp meetings, free from obstruction or interference, but says that said advertisement was for the purpose of showing the advantages of its place of camp meeting and not for the purpose of qualifying or limiting the adjacent property.

It admits that it published a statement that the space allotted to the encampment is five hundred feet wide, from thoroughfare to ocean, with plenty of tenting ground, but says that said advertisement was only for the purpose of setting forth the advantages of the camp meeting ground and not for the purpose of in any manner limiting or qualifying the adjoining real property or the owner's rights therein.

It denies that it in any manner ever created an easement over said lands or any of them for the benefit of the public at large.

This defendant admits that it held a sale of lots on the twentieth of May, eighteen hundred and

eighty. It denies that at said sale it sold any of the lots now owned by complainants or any of them, and denies that it ever made any statement restricting the use of its lands between Fifth and Sixth Streets and between the thoroughfare and the ocean at the time of making sale of any of the lots owned by complainants, and denies that William B. Wood at said sale ever announced that said strip of land was set apart and dedicated to public uses in connection with the established camp meeting enterprise, or that it should be forever kept open and clear of permanent obstructions of every sort for freedom and circulation of air except the tabernacle building.

It admits that it printed its annual report of the year eighteen hundred and eighty, but denies that it circulated said report, and says that after the report of the president had been presented to the board of directors at the annual meeting of defendant company, a motion was made to have said report printed; that said report was printed and a copy of it was delivered to each of the directors of said company, but that said report was not circulated nor published in any other manner than above stated.

It denies that complainants or any of them were ever furnished a copy of said reports by this defendant, and denies that said complainants or any of them ever purchased any lands in said Ocean City relying upon the statements which they derived from said annual reports or any of them.

It denies that complainants have any interest in or rights over the lands of this defendant lying between Fifth and Sixth Streets and the thoroughfare and Atlantic Ocean by virtue of anything alleged in said bill of complaint.

It admits that a plan of section one of the lots of Ocean City Association was filed in the clerk's office of Cape May County, and admits that on said map there was a block of land extending from Asbury Avenue to Wesley Avenue and from Fifth Street to Sixth Street which was designated or marked "Cape Ground" but denies that said map was a part of the deeds to complainants or their grantors; and denies that the purchasers of said lots acquired any easement over defendant's lands by reason of reference to said map in said deeds of conveyance, and denies that complainants or any of them are entitled to a reservation of said area open and devoted to public uses of the nature of those incident to a camp meeting ground, and denies that there are any public uses incident to a camp meeting ground.

IV.

Defendant denies that it now or at any other time has disregarded or attempted to disregard or repudiate any obligation binding upon it or any covenant, express or implied, binding upon it, and denies that it has contrived or schemed to violate any of its obligations touching and concerning the lands of this defendant.

It denies that in eighteen hundred and eighty-two it endeavored to sell and transfer private individual rights in said property, but admits that a bill in equity was filed by one George G. Lennig to restrain defendant from erecting a permanent structure on said camp meeting ground, but denies that complainants or any of them occupy a similar position and standing as did the said Lennig, and

denies that said court determined that there were such implied covenants as complainants allege in complainants' bill of complaint, and denies that it ever laid out into lots the lands between Fifth and Sixth Streets and Asbury Avenue and Wesley Avenue, which had been previously designated as a camp meeting ground, and avers that the reserved strip of land mentioned by complainants in complainants' bill of complaint as "Map No. 1 annexed to section A" are lands not embraced within the block of land that had been marked "Camp Ground."

It admits erecting houses on its lands not within the block set apart for camp meeting purposes, but denies that it ever contrived to evade the obligations of any covenant, implied or express, made by it.

It admits making a conveyance to one Charles Matthews, Jr., but denies that said lands were within the block set apart for camp meeting purposes.

It admits a conveyance of land to Alfred K. Shaw, but denies that said lands were within the block of land set apart for camp meeting purposes, and denies that said conveyance was an effort to evade any covenant, implied or express, or other obligation of defendant.

It says that it had no interest in the lands of Mary J. Buchanan in March of nineteen hundred and one, and is not bound by any proceedings by the city of Ocean City against the said Mary J. Buchanan. It neither admits nor denies that said Mary J. Buchanan appealed for indulgence of said city, and says it is not bound by her acts in the premises and that these complainants have no interest therein.

It admits that in eighteen hundred and ninety-seven it conveyed a tract of land to Ocean City Railroad Company, and admits some litigation between

one Bridgewater and said railroad company, but denies that this defendant is in any manner bound by said litigation or the decree entered therein.

It denies that in December of eighteen hundred and ninety-seven it intended to violate or that it did violate any obligation by conveying a tract of land to one Henry D. Moore, and says that the tract of land so conveyed by this association to him, the said Henry D. Moore, was not within the block of land set apart for camp meeting purposes aforesaid.

It admits a conveyance of land to Lewis Cresse, but denies that said lands were within the block of land set apart for camp meeting purposes, and denies that in said conveyance it violated any covenant, express or implied.

It admits a conveyance to Charles Masland in August of nineteen hundred, but denies that said conveyance was for the violation and ultimate destruction of the obligations of the said Ocean City Association under any implied covenant or dedication, and says that said conveyance was for a legitimate purpose, and was of lands not within the plot set apart for camp meeting purposes, and was not for the purpose of having the co-operation of the said Charles W. Masland or any other person with this association.

It admits a conveyance to the Centenary Fund and Preachers' Aid Society in July of nineteen hundred and three; and to James E. Lake in August of nineteen hundred and three; and to S. Wesley Lake in August of nineteen hundred and three; and to Ocean City Tabernacle Association on March eleventh, nineteen hundred and seven; and to William W. Adams on August nineteenth, nineteen hundred and seven; and to Atlantic Land Development Company on March sixteenth, nineteen hun-

dred and nine; but denies that any of the lands so by it conveyed as aforesaid were within the block of land set apart for camp meeting purposes, and denies that said conveyances or any of them were in violation of any covenants, express or implied, made by Ocean City Association, and says that said conveyances were made in the regular course of business, for legitimate purposes and not otherwise, and denies that said conveyances or any of them were in conflict with the proper and lawful restrictions implied upon said riparian surface, and denies that this association is aiding and abetting the Atlantic Land and Development Company in any effort or intent to violate its obligations.

It denies that in making the application, it withheld from the board of riparian commissioners any information touching and concerning the title to said lands, and denies that it in any manner perpetrated or practiced any fraud upon said board in securing the riparian grant for the lands under water adjoining defendant's lands.

It denies that Ebenezer Adams, Scull and Martz Company, City Mill and Lumber Company, or David K. Tucker used or are in possession of any of the block of lands set apart for camp meeting purposes, and denies that this defendant is in any manner attempting to use said block of lands so set apart for camp meeting purposes for any other purpose than religious purposes, camp meeting and otherwise.

It denies that there was any implied covenant touching and concerning any of the lands conveyed to the above-named defendant. It says that the foregoing complainants are improperly joined, and may not jointly maintain said bill of complaint, and prays the same benefit by way of answer as if this defendant had demurred thereto because of misjoinder

of parties complainant, and prays to be dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

And this defendant will ever pray.

BOURGEOIS & COULOMB,
Solicitors for and of Counsel with Defendant, Ocean City Association.

Answer of Mary J. Buchanan substantially the same as answer filed by her in Bradley vs. Ocean City Association, *et als.*, *supra*, pp. 42-60)

Answer of Samuel H. Hann (as amended) substantially the same as answer (as amended) filed by him in Bradley vs. Ocean City Association, *et als.*, *supra*, pp. 61-63.

Answer of Centenary Fund and Preachers' Aid Society, of the annual conference of the Methodist Episcopal Church substantially the same as answer filed by it in Bradley vs. Ocean City Association, *et als.*, *supra*, pp. 63-66.

THE ANSWER OF CHARLES W. MASLAND.

IN CHANCERY OF NEW JERSEY.

Between

William G. Carroll, Lewis N. Schnider and Hannah M., his wife, Samuel S. Wenzell, Frank M. Newcomb, James S. Caterson, George W. Urquhart, and Benjamin F. Wheatman and Ida W., his wife,

Complainants,

and

Ocean City Association, Mary J. Buchanan, Ocean City Railroad Company, Henry D. Moore, Lewis M. Cresse, and Cecilia H., his wife, Charles W. Masland, Centenary Fund & Preachers' Aid Society, James E. Lake, S. Wesley Lake, Ocean City Tabernacle Association, William Watson Adams, Samuel H. Hann, Atlantic Land Development Company, Ebenezer Adams, Scull & Marts Co., City Mill & Lumber Co., and David K. Tucker,

Defendants.

The answer of Charles W. Masland, one of the defendants in the above cause.

1. This defendant in answer to so much and such part of the bill of complaint filed herein as advised is material for him to make answer unto answering says; this defendant has no knowledge as to the ownership of the complainants' properties, nor from whom they were purchased.

2. This defendant has no knowledge of what representation was made to complainants by the Ocean City Association.

3. Defendant does not know what representations were made by the Ocean City Association to complainants or their grantors, either personal, or by means of announcements in newspapers as the Ocean City Journal, as set forth by the complainant, or by distribution of maps or plans, or by the officers of the association or what was intended regarding the ground between Fifth and Sixth Streets, described in the third paragraph of complainant's bill; the defendant has no knowledge as to whether the complainants are the owners of the properties described in paragraph three of said bill; defendant has no knowledge of the disregarding by the Ocean City Association of her alleged dedications or attempts to repudiate the same, as set forth in complainant's bill; defendant admits that on the twenty-fifth day of August, nineteen hundred, and on April 12th, 1906, the Ocean City Association did convey to the defendant, Charles W. Masland, the property therein described, but denies that it was for an unlawful purpose; to wit, for the violation and ultimate destruction of the obligation of the Ocean City Association, and says that it was for a lawful purpose, namely, the purchase of the same by the payment of a good consideration for the defendant's private use; defendant says that in furtherance of the purpose for which he purchased the property, he erected thereon a building of great value and made improvements to the property to a great expense and that for years he has enjoyed the property for the purpose for which he purchased the land, to wit, as a boat house, and has remained in

quiet and peaceful possession of the same, although several of the complainants reside within a few city blocks of the defendant and know of his occupation, all of which facts, matters and things this defendant is willing to maintain and prove as this Honorable Court may direct, and therefore prays that he may hence be dismissed with his reasonablle costs and charges in this behalf most wrongfully sustained.

CYRUS D. MARTER,
Solicitor for and of Counsel with Charles Wm. Masland, Deft.

ANSWER OF ATLANTIC DEVELOPMENT COMPANY.

IN CHANCERY OF NEW JERSEY.

Between
William G. Carroll, *et als.*,
Complainants,
and
Ocean City Association, *et als.*,
Defendants.

ANSWER.

The answer of Atlantic Land Development Company, defendant, to the bill of complaint of William G. Carroll, Louis N. Schnider, Hannah M. Schnider, Samuel S. Wensell, Frank M. Newcomb, James

S. Caterson, George W. Urquhart, Benjamin F. Wheatman and Ida W. Wheatman, complainants.

This defendant, answering so much of complainants' bill of complaint as it is advised it is necessary and proper to answer, says:

I.

It neither admits nor denies the allegations contained in paragraphs one, two and three of complainants' bill of complaint, and leaves complainants to prove same as this defendant is without knowledge or information touching the allegations therein contained.

II.

It neither admits nor denies the allegations contained in paragraph four of complainants' bill of complaint, except that portion of said paragraph which alleges that on March sixteenth, nineteen hundred and nine, Ocean City Association undertook to convey by four several deeds to Atlantic Land Development Company for a certain consideration the whole area of land owned by it on the ocean side of Atlantic Avenue, and as to said allegation this defendant says it admits the conveyance from Ocean City Association to this defendant of the lands above mentioned, and says that said lands were lands lying between Fifth and Sixth Streets but not between the Thoroughfare and the Atlantic Ocean at the time of the filing of said map or the sale of the lots mentioned in said bill of complaint during the year eighteen hundred and eighty, eighty-one, eighty-two or eighty-three, and says that said lands entirely formed by accretions or by a rescission of the Atlantic Ocean

leaving said lands above the high water, which from the year eighteen hundred and eighty until eighteen hundred and eighty-three and thereafter were entirely below the high water line and beneath the Atlantic Ocean.

It admits that it purchased said lands for the purpose of dividing the same into lots to be used as private property, but denies that said purpose is in conflict with the proper and lawful restrictions implied upon said riparian surface, and denies that there are any limitations fixed upon said plot of ground, and denies that there are any covenants of dedication for public uses touching or concerning the same, and denies that it is in any manner aiding or abetting the Ocean City Association in an intent to violate any obligation of said Ocean City Association, and denies that said riparian grant was made by any fraud practiced on the board of riparian commissioners or upon any other person.

It denies that complainants were *bona fide* purchasers for value relying upon any alleged dedication of said lands to public use, and says that said lands never were dedicated to public use or to any public purpose.

III.

It denies that the complainants have such an interest in the subject as entitles them to join as party complainants and says that said complainants are not lawfully entitled to maintain a joint bill against defendants, and prays the same benefit of said misjoinder by way of answer as though defendant had specifically demurred to said bill of complaint and prays to be hence dismissed with its reasonable

costs and charges in this behalf most wrongfully sustained, and this defendant will ever pray.

BOURGEOIS & COULOMB,
Solicitors for and of Counsel with Defendant, Atlantic Land Development Company.

ANSWER OF S. WESLEY LAKE.

IN CHANCERY OF NEW JERSEY.

Between
William G. Carroll, *et als.*,
Complainants,
and
Ocean City Association, *et als.*,
Defendants.

ANSWER.

The answer of S. Wesley Lake, defendant, to the bill of complaint of William G. Carroll, Louis N. Schnider, Hannah M. Schnider, Samuel S. Wensell, Frank M. Newcomb, James S. Caterson, George W. Urquhart, Benjamin F. Wheatman and Ida W. Wheatman.

This defendant, answering so much of complainants' bill of complaint as he is advised it is necessary and proper to answer, for answer says:

I.

He neither admits nor denies the allegations contained in paragraph one of complainants' bill of complaint, and leaves complainants to prove same.

II.

He neither admits nor denies the allegations contained in paragraph two of complainants' bill of complaint, and leaves complainants to prove same.

III.

He neither admits nor denies the allegations contained in paragraph three, except that he denies that there was ever any dedication of the lands between Fifth and Sixth Streets and Beach Thoroughfare and the Atlantic Ocean to public uses and denies that there was any dedication whatever of said lands excepting the tract between Asbury Avenue and Wesley Avenue and between Fifth and Sixth Streets, which two blocks of land were set aside by said association as a camp meeting ground for it, the said Ocean City Association.

He admits that the annual report of William B. Wood the president of said association, was published and sent to the directors of said association, but denies that said report was ever published or circulated other than as above stated, and denies that said report so printed and sent to the directors had any other or greater force or effect than any other report of a private corporation delivered to its directors and stockholders, and denies that such reports constituted any dedication or covenant against

said Ocean City Association, and denies that by reason thereof or by reason of anything alleged in complainants' bill of complaint these complainants became entitled to an easement over the lands of this defendant.

IV.

Defendant admits that Ocean City Association conveyed to defendant two lots mentioned in paragraph four of complainants' bill of complaint, but denies that said lots were conveyed in violation of any implied or other covenant or limitation of Ocean City Association, and denies that this defendant in any manner colluded or contrived with Ocean City Association to defeat any legal obligation imposed upon it, and says that said conveyance was made for a legitimate purpose and none other.

This defendant denies each and every allegation in said bill contained except those herein specifically admitted.

Defendant says that complainants are not entitled to prosecute a joint suit against said defendant, and that they have and possess no joint equity against defendant, and prays the same benefit of the misjoinder of complainants by way of answer as if he had specifically demurred thereto, and prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained, and defendant will ever pray.

BOURGEOIS & COULOMB,
Solicitors for and of Counsel with Defendant, S. Wesley Lake.

REPLICATION.

IN CHANCERY OF NEW JERSEY.

Between
William G. Carroll, *et als.*,
Complainants,
and
Ocean City Association, *et als.*,
Defendants.

On Bill, Etc.

Replication.

The complainants join issue on the answers of the defendant, Ocean City Association.

Wilson & Carr,
Solicitors for Complainants.

Replications in the same form were filed to the answer of Mary J. Buchanan, amended answer of Samuel H. Hann, and answers of Centenary Fund and Preachers' Aid Society of the Annual Conference of the Methodist Episcopal Church, Charles W. Masland, James E. Lake, S. Wesley Lake, Ocean City Tabernacle Association, Atlantic Land Development Company.

DEMURRER.

IN CHANCERY OF NEW JERSEY.

Between William G. Carroll, *et als.*, *Complainants*, and Ocean City Association, *et als.*, *Defendants*.	On Bill, Etc. Demurrer.

The demurrer of William Watson Adams, one of the defendants to the bill of complaint of William G. Carroll, *et als.*, complainants.

This defendant, by protestation, not confessing all or any of the matters and things in the complainants' bill of complaint contained to be true in such manner and form as the same are therein set forth or alleged, demurs thereto and for cause of demurrer shows:

1. That the complainants have not in and by their said complaint made or stated such a case as entitled them in a court of equity to any discovery from this defendant or to any relief against him.

2. That it appears by the said bill that the same is exhibited against this defendant and the several other persons therein named as defendants thereto

for distinct matters and causes, in several whereof, as appears by the said bill, this defendant is not in any manner interested or concerned, and that said bill is altogether multifarious.

3. Because said bill of complaint in no way alleges or says that the right or interest of this defendant in and to the premises referred to in said bill as having been acquired by him is used, owned or enjoyed by him in a way inconsistent with the rights, if any, of the complainant therein or with the integrity of the alleged implied covenant or dedication referred to in said bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant demurs thereto, and humbly prays the judgment of this Honorable Court whether he should be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

Demurrers in substantially the same form and effect were filed by Lewis M. Cresse and Cecilia H. Cresse, by Henry D. Moore, and by Ebenezer Adams.

ORDER SUSTAINING DEMURRER.

IN CHANCERY OF NEW JERSEY.

Between
William G. Carroll, *et als.*,
Complainants,
and
Ocean City Association, *et als.*,
Defendants.

ON BILL, ETC.

ORDER SUSTAINING DEMURRER.

This cause coming on to be heard in the presence of Wilson and Carr, of counsel with the complainants, and McCarter & English, of counsel with the defendant, hereinafter named, and the Chancellor having heard the arguments of counsel and being of opinion that the demurrer of the defendant, William Watson Adams, is good and sufficient,

It is, on this day of October, nineteen hundred and twelve, on motion of McCarter & English, solicitors of the said defendant, Ordered that the said demurrer do stand and be allowed and that the complainant do pay to the said defendants their costs of the said demurrer to be taxed.

E. R. WALKER, *C.*

Similar orders were filed with regard to the demurrers of Lewis M. Cresse and Cecilia H. Cresse, Ebenezer Adams, and Henry D. Moore.

DECREE PRO CONFESSO.

IN CHANCERY OF NEW JERSEY.

Between William G. Carroll, *et als.*, *Complainants,* and Ocean City Association, *et als.*, *Defendants.*	On Bill, Etc. Decree Pro Confesso.

This cause being opened to the Court by Wilson and Carr, solicitors for and of counsel with the complainants, and it appearing that process of subpoena for the defendants, Mary J. Buchanan, Ocean City Railroad Company, Scull and Marts Company, David K. Tucker and City Mill and Lumber Company, to appear and answer the complainants' bill hath been duly issued and returned served upon the aforesaid defendants, by the sheriff of the county of Cape May, and that the aforesaid defendants have not, nor has any or either of them, appeared and pleaded, answered or demurred to the said bill within the time limited by law and the said order or at any other time, but that they have wholly failed and neglected so to do:

It Is, thereupon, on this twenty-third day of April, nineteen hundred and thirteen, on motion of Wilson and Carr, solicitors for and of counsel with the com-

plainants, Ordered and Decreed that the complainants' bill be and the same is hereby taken as confessed against the said Mary J. Buchanan, Ocean City Railroad Company, Scull and Marts Company, David K. Tucker, and City Mill and Lumber Company, to the end that such decree may be made against them as the Chancellor shall think equitable and just.

E. R. WALKER,
C.

ORDER OPENING DECREE PRO CONFESSO.

IN CHANCERY OF NEW JERSEY.

Between William G. Carroll, *et als.*, *Complainants,* and Ocean City Association, Ocean City Tabernacle Association, *et als.*, *Defendants.*	ON BILL, ETC. ORDER OPENING DECREE PRO CON.

This matter coming on to be heard in the presence of Wilson & Carr, solicitors for the complainants, and Bleakly & Stockwell, solicitors for Mary J. Buchanan, and it appearing that a decree *pro confesso* has been heretofore entered, to wit, on the twenty-fourth day of April, nineteen hundred and

thirteen, against the defendant, Mary J. Buchanan, now on motion of the said Bleakly & Stockwell, solicitors for said defendant, Mary J. Buchanan, for good cause shown, it is on this day of , nineteen hundred and thirteen, ordered that the said decree *pro confesso* heretofore entered, be, and the same is hereby, opened and leave is hereby given to the said defendant, Mary J. Buchanan, to file an answer in the above cause, which answer shall be filed within ten days from the date of this order.

E. R. Walker, *C.*

ORDER OF REFERENCE.

IN CHANCERY OF NEW JERSEY.

Between
William G. Carroll, *et als.*,
Complainants,
and
Ocean City Association, *et als.*,
Defendants.

On Bill, Etc.

Order of Reference.

It Is, on this twenty-second day of September, nineteen hundred and thirteen, on motion of Wilson & Carr, solicitors for the complainants, Ordered that the above-stated cause be referred to John H. Backes,

one of the Vice-Chancellors, to hear the same for the Chancellor, and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER,
C.

We consent to the making and entry of the above order.

BOURGEOIS & COULOMB,
Solicitors of James E. Lake, S. Wesley Lake, Centenary Fund and Preachers' Aid Society, Atlantic Land Development Company and Ocean City Association, Answering Defendants.

BLEAKLY & STOCKWELL,
Solicitors of Ocean City Tabernacle Association, and Mary J. Buchanan, Answering Defendant.

CYRUS D. MARTER,
Solicitor of Charles W. Masland, Answering Defendant.

JOHN BOYD AVIS,
Solicitor of Centenary Fund and Preachers' Aid Society and Samuel H. Hann, Answering Defendants.

BILL OF COMPLAINT OF WILLIAM BRIDGEWATER.

IN CHANCERY OF NEW JERSEY.

Between

William Bridgewater, and Such Other Persons as May be Found to Have a Like Right and Interest with Him in the Enforcement of the Obligations of Defendant Constituting the Subject-Matter of This Suit,

Complainants,

and

Ocean City Association, Mary J. Buchanan, Lewis M. Cresse and Cecilia H. Cresse, His Wife; Henry D. Moore, Charles W. Masland and Atlantic Land Development Company,

Defendants.

To His Honor, Mahlon Pitney, Chancellor of the State of New Jersey:

Humbly complaining, showeth unto your Honor your orator, William Bridgewater, a resident of the city of Ocean City, in the county of Cape May, state of New Jersey.

1. That he is the owner of more than one hundred and fifty lots of ground situate in the said city of Ocean City and county of Cape May, in the state of New Jersey, and among the said lots of one designated as No. 21 in section B, according to the map or

plot representing the said section of lots of the Ocean City Association, in what is now Ocean City, to wit, the lot beginning at the southeast side of Bay Avenue, at the distance of 330 feet southwardly from the southerly side of Second Street, containing in front on Bay Avenue 40 feet, and of that width in depth southeastwardly one hundred and fifteen feet to a fifteen feet wide street in said city of Ocean City, in the state of New Jersey, all of which lots he acquired immediately or mediately from the said Ocean City Association, of respondents herein, and in the instances of those lots which your orator purchased from grantees from the said Ocean City Association, or subsequent owners who had acquired title from said association, through other purchasers therefrom, as also in those instances where your orator purchased immediately from said association, your orator purchased the said lots relying upon the representations, which were known to your orator, made by the said association to the public prior to the date of the first purchase therefrom, and furthermore he acquired the full rights of predecessors in title who had purchased the property acquired by him, in reliance upon the earliest representations of said association hereinafter more fully stated.

2. And your orator further shows, that the said association, prior to and as an inducement to his purchases, and as inducement to purchase by the grantors to him, and as inducement to purchase from said association, by owners earlier in the chain of title to your orator, of the said lots of grounds, represented and stipulated that a certain large area of land adjacent to the said lots offered to and subsequently purchased by your orator, to wit, the area of ground exclusive of streets bounded by Fifth and

Sixth Streets, and the Atlantic Ocean and Beach Thoroughfare, in the said city, should be and forever remain devoted to camp meeting and other public recreation purposes in connection therewith, to the advantage and benefit, in the nature of an easement, of the lots of ground which were so offered to them by the Ocean City Association as aforesaid, and were afterward purchased by the several individuals whose rights have become vested in your orator.

In the early part of the year 1880, said Ocean City Association announced by a printed paper which it introduced, published and circulated as the Ocean City Journal, that said association had consummated plans for establishing a great and permanent place for holding religious camp meetings, and a summer college settlement, located on Peck's Island, at a part of the site where now Ocean City is situate, in Cape May County, New Jersey. The plan of providing for locations intended to be occupied by religious camp meetings, a large area, free from any obstruction or interference with passage and occupation by visitors, and with use in the erection of tents thereon, was fully recognized by all those conversant with such camp meetings in and prior to the year 1880. Said Ocean City Journal stated, further, that a public sale of lots adjacent to such a camping ground would be held on May 20th, 1880. Said Ocean City Journal further announced, in addition, for the purpose of attracting purchasers to the said proposed public sale, the following particulars, among others, of the terms upon which its lots would be offered:

> "The space allotted to the encampment is 500 feet wide, from the Thoroughfare to the Ocean, with plenty of tenting ground. It is contem-

plated to have all the appointments desirable to render the camp meeting a real feast to the thousands who may congregate there for Christian worship.

"Those coming to tent with us will have every possible facility that will contribute to their comfort. Besides the regular services of the encampment, there will be temperance conventions, anniversaries and other Christian and philanthropic convocations, fully occupying the season and making it memorable in interest and profit.

"No pains will be spared to give to Ocean City a series of religious privileges equal to other resorts of kindred character."

Prior to the sale which was held as thus announced, on May 20th, 1880, and throughout the progress of said sale, the Ocean City Association published and distributed, in order to inform intending purchasers of the conditions under which they were solicited by said association to purchase lots, a map or plan embracing the whole tract of ground adjacent to the proposed camp meeting area, which the said association was then ready to offer to purchasers, and designating by numbers about one thousand lots, defined thereon as occupying in the aggregate said entire tract then ready to be offered for sale, except the streets and the strip of ground embraced between Fifth and Sixth Streets, extending from the southeast to the northwest borders of the tract designated upon said map. The said strip of ground between Fifth and Sixth Streets, as represented upon said plan, was clear of any marking of lots, and on that portion between Wesley and Asbury Avenues, as said streets are now defined,

and as they were then represented upon said plan, Central Avenue was not extended, and there were set forth the words "Camp Ground" in prominent letters. One William B. Wood, who was the chief representative of the Ocean City Association, acting by authority given him therefor by said association, made an address in the presence and hearing of all the persons assembled, who afterward made purchases at said sale, immediately before and to preface the same, wherein he explained the plans and purposes of the association, substantially as hereinbefore stated, in developing the said tract of land and offering for sale the lots into which a part of it had been so divided up. In the course of his address aforesaid, the said William B. Wood announced that the strip of ground above indicated, lying between Fifth and Sixth Streets, was set apart and dedicated to public uses in connection with the established camp meeting enterprise, and for the better promotion of such project would be forever kept open and clear of permanent obstruction of every sort, for freedom and circulation of air, except a certain large auditorium building situate in the square made by Fifth and Sixth Streets, Wesley and Asbury Avenues, through which square the intervening avenue, Central Avenue, had not been extended. In the latter part of the year 1880, the said association published and circulated a printed account of the plans and purposes declared by it in respect of lots which it proposed to offer for sale, designating the said document an annual report. In the said report, said association stated that the camp ground block extends from the meadow to Ocean; and that the space allotted to the encampment was 500 feet wide from Thoroughfare to Ocean, with plenty of camping ground. Relying upon said representations

and other forms of implied covenant made by said association, many and various individuals, whose titles have since been acquired by your orator, purchased of said association as many pieces of ground, including lot No. 21 of section B, and your orator purchased of them the lots so acquired, including said lot No. 21 of section B, and so relying your orator moreover purchased various other lots in the vicinity of the said reserved strip of ground of the Ocean City Association aforesaid. To consummate these purchases by your orator by his predecessors in title, and sales by the said Ocean City Association, said association made and delivered to the respective grantees, immediately thereafter, deeds of conveyance of the said respective lots. The said deeds referred expressly to certain plans or maps of the lands of said association then laid out for sale, designated as sections A, B, C, etc., embracing the lot thereby conveyed as aforesaid, and embracing also many other lots intended to be offered for sale by said association, all of which were indicated by numbers upon the said plans or maps, and embracing also the said area between Fifth and Sixth Streets, and between the Atlantic Ocean and Beach Thoroughfare, which area was marked conspicuously upon the said plans or maps with the words "Camp Ground." The said plans or maps had been filed previously in the clerk's office of Cape May County, under the provisions of the statute for such case made and provided, and thereby became a part of deeds thereafter made to convey lots represented thereon by reference to the numbers designating such lots on said plans or maps and were part of the said deeds to your orator and his grantors. The said deeds were intended and made by the said Ocean City Association and by its grantees aforesaid to

more fully define the said transactions of sale as to their terms, whereby the respective grantees, as your orator is advised and therefore avers, became entitled, as by implied covenant, to the maintenance of the said use and exclusive application of the said area to the purposes aforesaid. By virtue of the said representations and stipulations, your orator, as the owner of the said various lots, became entitled, as against the said Ocean City Association and its assigns, to the reservation of the said area between Fifth and Sixth Streets, Atlantic Ocean and Beach Thoroughfare, by the said Ocean City Association, for all the uses embraced in the object of a camp ground, to the exclusion of private occupation and use and of all other uses whatsoever, differing from said uses designated by said plan or map. Your orator's lots were the more desirable to him, and were enhanced in value by reason of the easement so made appurtenant thereto, by effect of the said representations, to wit, an easement for such limitation as aforesaid of the use of said area between Fifth and Sixth Streets, Atlantic Ocean and Beach Thoroughfare, and dedication of the said area to such use. Your orator is therefore entitled to a reservation of the said area, open and devoted to public uses of the nature of those incident to a camp meeting ground. Relying further upon the said representations, and upon the greater value and availability of said lots by reason thereof, your orator erected, at great expense, a dwelling house upon certain of them which he has maintained and improved until now.

3. And your orator further shows that the said Ocean City Association, notwithstanding its representations, stipulations and implied covenants, with

respect to the said area ground, now does, and for a long time has disregarded and attempted to repudiate the same, craftily designing and contriving scheme after scheme for enabling it to violate its said obligations that it might become free to sell the said reserved area, which is now of greatly increased value. To that end the said association, at the successive times below respectively mentioned, attempted the particular evasions of its duty specified below:

In the year 1882, and during a period before that year, which your orator is unable to define more exactly, the said defendant association undertook and attempted to sell and transfer private and individual rights for long terms of years, in lots of the said reserved and dedicated area of land, for the erection of permanent houses thereon, to be occupied as private cottages. Upon bill in chancery, filed by one George B. Lennig, property owner like your orator, this Court ultimately granted a writ of injunction prohibiting said Ocean City Association from making such leases of the said reserved area.

About the same time with its said undertaking to lease lots of the reserved area the said defendant, knowing its obligation to individuals who had purchased lots from it, with implied covenants for the reservation of the said lots, exclusively for public uses, and to the public by virtue of dedication effected as hereinbefore stated, nevertheless fraudulently intending, purposing and contriving to violate said obligation, prepared and promulgated a certain plan of the said reserved strip of ground between Fifth and Sixth Streets, Atlantic Ocean and Beach Thoroughfare, whereon the same was laid out and divided into many building lots of dimensions nearly corresponding with those in which the other portions

of its said property, constituting sections A, B and C, were divided, and designated the said plan as map No. 1, annex to section A, and offered for sale generally the lots so indicated upon the said map.

In or about the year 1889, but at what date, more nearly, this plaintiff is unable to ascertain, the said Ocean City Association erected dwelling houses upon two lots, marked upon the said plan, known as map No. 1, annex to section A, to wit, at the south corner of Wesley Avenue and Fifth Street and the west corner of Ocean Avenue and Fifth Street, in the said Ocean City.

On the twenty-seventh day of November, 1896, the said defendant, contriving to evade the obligations of its said implied covenant and its dedication of the reserved area aforesaid for the public uses hereinbefore mentioned, conveyed to one Charles Matthews, Jr., two certain lots of the said reserved area, to wit, lots Nos. 125 and 127, according to the said map No. 1 of annex to section A, situate on the northwest side of Ocean Avenue, 400 feet southwestwardly from Fifth Street in Ocean City, having together in front or breadth on said Ocean Avenue one hundred feet, and in depth 135 feet to a fifteen feet wide alley, the said company concurring and conniving with the said Charles Matthews, Jr., in and by and pursuant to the said conveyance, for the erection of a hotel building upon the said lots, which building was afterward erected thereon by the said Matthews in co-operation with the said association, with the object and intention of violating the obligations of the said defendant company to maintain the said area unobstructed.

Afterward, to wit, February 24th, 1900, the said Charles Matthews, Jr., conveyed the lots and building aforesaid to one Walter S. Ritter, and the said

Walter S. Ritter, on the eighteenth day of September, 1900, conveyed the same property to one Mary J. Buchanan. The said Mary J. Buchanan has conducted upon the said property up to this time a hotel, co-operating with the said association in its undertaking to violate its obligations aforesaid, to wit, its obligations to reserve the said above described property for the public uses hereinbefore specified, of which obligations the said Mary J. Buchanan at all times had full knowledge.

On the 24th day of June, 1897, the said Ocean City Association, intending again to violate its said obligations by implied covenant, and by dedication, pretended to sell and convey to one Alfred K. Scholl, M. D., of Philadelphia, a certain other lot, No. 117, on map No. 1, annex to section A, to wit, likewise part of said reserved area a lot situate on the northwest side of Ocean Avenue, 200 feet southwest of the southwest side of Fifth Street, having a front on the said Fifth Street of fifty feet, and a depth, between parallel lines, at right angles with the said Ocean Avenue, of 135 feet to a certain fifteen feet wide street, the said conveyance being made by defendant, with the purpose and intention devised between itself and the said Alfred K. Scholl, to be carried out by him, with the connivance and concurrence of said association, of erecting on said lot a permanent dwelling house for private occupation; and such house the said Alfred K. Scholl, at the instance of the said company, did in fact build and erect. Afterward, to wit, on the tenth day of June, 1898, the said Alfred K. Scholl, M. D., and Lucy G., his wife, pretended to sell and convey the said lot of ground so improved to one Mary J. Lake, who assumed possession and occupancy of the said lot and building.

Thereafter, to wit, on the day of 1901, the city of Ocean City proceeded to institute respective actions of ejectment in the Supreme Court of this commonwealth against the said Mary J. Buchanan, the Ocean City Association itself, in respect of the said two lots in the reserved area, upon which it had erected private dwellings, and against Mary J. Lake, last above mentioned, in order to oust them from the said respective premises where they assumed to exercise private ownership and occupation to the exclusion of the public interest in the premises, acquired by virtue of the implied covenants of said association as aforesaid, and the dedication to public use likewise effected by it as aforesaid. These actions of ejectment were so proceeded with that the respective defendants conceded the right of the said city of Ocean City and yielded defense thereto. The said Ocean City Association and Mary J. Lake removed their buildings from the lots which were the subject of the said proceedings to sites outside the said reserved area. The said Mary J. Buchanan appealed for indulgence of the said city, plaintiff in the action of ejectment brought against her as aforesaid, that she be allowed to continue the use of her said premises, which were then occupied as a hotel, until the end of the business season then current. The said plaintiff granted her request, but the said Mary J. Buchanan to this day has never removed her said building, nor ceased during any of the intervening seasons to use the same as before as and for a hotel.

On December 29th, 1896, and May 20th, 1899, said association, intending and contriving to violate its said implied covenants, and its obligation to the public under dedication theretofore effected by it, as aforesaid, conveyed to the Ocean City Railroad

Company, for the nominal consideration of one dollar, a piece of ground, part of said strip reserved for public purposes lying on the southwest side of Haven Avenue, between Fifth and Sixth Streets, and a certain other piece of ground, also part of the said reserved area, on the northeast side of Haven Avenue, between Fifth and Sixth Streets aforesaid, with the restriction contained in the said deed of conveyance, that the same should be used for passenger depot purposes. Your orator, to wit, on the of , 1890, filed a bill in this court against the said Ocean City Railroad Company and Atlantic City Railroad Company, which had joined in the construction of a building thereon, for the purposes of a railroad station, and, after due proceedings, in pursuance thereof, obtained a decree from this Court, enjoining the said Ocean City Railroad Company from erecting any building upon the said property so acquired by it. The said conveyance was made to the said Ocean City Railroad Company with the purpose and intention, and under covenant that the said company would use the said property for the purposes of a railroad station. The said Ocean City Association was well aware of the proceedings taken as aforesaid against the said Ocean City Railroad Company and the action of this Court aforesaid in the said cause.

On the twelfth day of September, 1905, the said Ocean City Association assumed to sell and convey to one Lewis M. Cresse and Cecilia H., his wife, by a deed in due form, still another lot of the said reserved area, to wit, a lot situate on the northwest line of Pleasure Avenue, 223 feet southwest of Fifth Street, having a front of 150 feet on Pleasure Avenue and extending between lines parallel with said Fifth Street, to a line parallel with and three feet

southeastwardly of the high water mark on the Beach Thoroughfare. The said defendant in so selling and conveying the said lot, connived and concurred with the said Lewis M. Cresse and wife, to violate its obligations which were fully known to them, by building and erecting, as he subsequently did, a certain boat house on the said lot of ground, which he has maintained at all times until now, using the same for private purposes.

On the 1st day of December, 1897, the said Ocean City Association, intending and purposing wilfully to violate its said obligations, both to purchasers of lots of said association, including your orator, and also to the public, under the dedication made to the public as hereinbefore stated, conveyed to one H. D. Moore another lot, part of the same reserved area, to wit, the lot of ground lying at the intersection of the northwest line of Bay Avenue, and the northeast line of Sixth Street, having a front of 77 feet on Bay Avenue, and extending to within 3 feet of ordinary high water mark of the Beach Thoroughfare. And, afterward, on application made by the said Ocean City Association to the riparian commissioners, in the usual form, pursuant to a stipulation theretofore made with the said Henry D. Moore, and on the said riparian commissioners making a grant to the said Ocean City Association for the riparian rights eastward from the piece of ground last above described, the subject of the said conveyance, to wit, on the 29th day of September, 1908, the said Ocean City Association, by a deed of conveyance in due form, and for a nominal consideration, conveyed to the said Henry D. Moore the rights acquired by them in virtue of the said grant, and also the intervening three feet wide strip, to wit:

"A lot or piece of ground in the city of Ocean

City, beginning three feet eastward from high water line on the Beach Thoroughfare, where the same is intersected by the northeast line of Sixth Street, and running from said point first northwestwardly in line with the northeastern line of Sixth Street, extending 151 53-100 feet to the extension of the wharf line established by the commissioners appointed under the authority of an act entitled 'An act to ascertain the right of the state and the riparian owners under waters of the Bay of New York and elsewhere in this state,' approved April 11th, 1864, and the supplements thereto; thence northeast along said exterior water line, as shown and located on the map thereto annexed, 77 85-100 feet more or less to a point; thence southeast parallel with said Sixth Street extended, and 77 feet northeast at right angles from the northeast line of same, 150 1-100 feet to a point 3 feet east of high water line on Beach Thoroughfare; thence southward 3 feet from and parallel with high water line to the place of beginning.''

The above-mentioned conveyance was intended to include, as is declared by the said deed, all of the land the riparian commissioners of the state of New Jersey conveyed to said Ocean City Association, by deed dated September 29th, 1908, together with a strip of ground three feet in width adjoining said riparian area. In so conveying the first of the two lots last above described, in applying for a grant of riparian rights to be appurtenant thereto, which application was made for the purpose, and for no other purpose, of conveying such riparian rights when the same should be granted to the said Henry D. Moore, and in finally conveying all the riparian

area subsequently to the said Henry D. Moore, as was done by the last above-mentioned conveyance, the said association acted in violation of its duties hereinbefore stated, and to the public, and the said Henry D. Moore, who well knew the obligations of the said association in respect of all parts of the said reserved strip, including the pieces of ground conveyed to him as aforesaid, received the said conveyances for the purpose of aiding and co-operating in the breach of the said obligations.

On the 12th day of April, 1906, said defendant association assumed and undertook, by deed in proper form but with like unlawful purpose, to convey to one Charles W. Masland, to wit, with the purpose of co-operating with him in the violation and ultimate possible destruction of the obligations of said Ocean City Association under its implied covenants and dedication aforesaid, to public use, of the said reserved area between Fifth and Sixth Streets, a certain irregularly shaped lot of ground, situate on high water line of the southeast shore of Beach Thoroughfare, at the distance of 373 feet at right angles from Fifth Street; thence extending southeast parallel with Fifth Street, 3 feet to a point; thence extending southwest, parallel with high water line, to a point 423 feet at right angles southwest from Fifth Street; thence northwest, parallel with Fifth Street, three feet to high water mark; thence northeast, along high water mark to the place of beginning, together with the right to apply for and on the same being allowed to take, for his own use, a grant from the commissioners known as the riparian commissioners of the state of New Jersey, under the act of April 11, 1864, and its supplements.

The said Charles W. Masland, in receiving conveyance by the said deed of the premises therein

described, did so with the purpose of co-operating with the said Ocean City Association, in so making use of the same and of so proceeding in respect of it, as to aid the said association in its schemes to relieve itself of its obligations under the said implied covenants and dedications undertaken by it, as aforesaid, in respect of the said reserved area. The said Charles W. Masland has continued to co-operate with the said Ocean City Association to such end, and in such co-operation and with the connivance and concurrence of the said association, has erected a building, for use as a boathouse, upon said piece of ground.

March 16th, 1909, said Ocean City Association undertook to convey by four several deeds to Atlantic Land Development Company, a corporation organized under the laws of the state of New Jersey, for a certain consideration therein recited, aggregating $50,000, the whole area of lands owned by it, on the ocean side of Atlantic Avenue, as the same is now located, in the city of Ocean City, in Cape May County, New Jersey, between the lines of Fifth and Sixth Streets extended, including the entire space between the said extended lines, as far as the exterior line on the said ocean shore, established by the commissioners appointed under the authority of the act entitled "An act to ascertain the rights of the state and riparian owners in the lands lying under waters of the Bay of New York and elsewhere in this state," approved April 1, 1864, and its supplements, to wit, embracing the full extent of rights known as riparian rights, corresponding with the said strip of ground reserved for public uses as aforesaid. The entire aggregate as aforesaid of said consideration was secured by four mortgages of even date with said deeds, and recorded simultaneously therewith in $12,-

500 each, charged upon four parts, severally deemed to be of approximately equal value, of the said area of lands. The said conveyances were made by the said Ocean City Association and taken by the said Atlantic Land Development Company for the purpose of dividing the same into lots, and building thereon or conveying again such lots to other persons who would build there permanent structures for uses private in their nature, and known both to the said grantor and grantee to be in conflict with the proper and lawful restrictions implied upon said riparian surface, by force of the limitations fixed upon the aforesaid strip of ground, by the clearly defined covenants and dedication for public uses, hereinbefore set forth. And the said Ocean City Association is aiding and abetting the said purpose of the said Atlantic Land Development Company, and intends with it to violate its said obligations with respect thereto.

The said association has attempted, and is still attempting, as to other portions of the said reserved area, with the co-operation of other persons also, to violate, in the purpose and hope ultimately to destroy its obligations, in respect of said reserved area hereinbefore stated.

And your orator further shows that the said defendant, the Ocean City Association, designs and purposes to attempt and commit many other undertakings, likewise in breach of its said express and implied covenants, and opposed to the dedication aforesaid for public uses, made by the said Ocean City Association.

All of the individuals named in the foregoing averments, as having received title to the several pieces of land therein mentioned, part of the reserved area aforesaid, were fully notified and informed of the

implied covenants assumed by the said Ocean City Association and the dedication to public use effected by it, in respect of the same reserved area, long before the conveyances by the said association of the several pieces of land aforesaid. But other parties, who are *bona fide* purchasers for value, may, in the future, acquire title to portions of the reserved area, from the said association, without notice of the said covenants or dedication, and such persons might thereby acquire valid titles to the lands which are conveyed to them, free from the effect of such covenants and dedication.

All which actings, doings and pretences of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises. The tender consideration whereof and forasmuch as your orator is without adequate remedy in the premises, at and by the strict rules of the common law and can obtain relief only in this Honorable Court, where matters of this nature are properly cognizable and relievable. To the end, therefore, that the said Ocean City Association, Mary J. Buchanan, Lewis M. Cresse and Cecilia H. Cresse, his wife, Henry D. Moore, Charles W. Masland and Atlantic Land Development Company, defendants herein, may to the best and utmost of their respective knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were repeated and they and every of them distinctly interrogated thereto, but without oath.

Your orators pray that the said Ocean City Association may be enjoined from conveying or attempting to convey, at any time hereafter forever, any part of the area between Fifth and Sixth Streets,

the Atlantic Ocean and Beach Thoroughfare, or any lands or rights under the water of either, which they may now possess or hereafter acquire, for any private purpose, or for any use whatsoever which is not fully consistent with the maintenance of public rights therein for all purposes connected with a camp meeting ground, and for all purposes affording unobstructed passage of air over the said strip of ground last described, and

That the said Mary J. Buchanan, Lewis M. Cresse and Cecilia H. Cresse, his wife, Charles W. Masland and Atlantic Land Development Company be enjoined from conveying the lots hereinbefore described as now held by them, to any other person for uses contrary to the said rights of the public and rights of lot owners in the vicinity who may be entitled to the benefit of implied covenants by the Ocean City Association, as is your orator, and

That the said Ocean City Association be enjoined and restrained from building upon or making any use of the said area of ground between Fifth and Sixth Streets, the Atlantic Ocean and Beach Thoroughfare, and that the said Mary J. Buchanan, Lewis M. Cresse, and Cecilia H. Cresse, his wife, Charles W. Masland and Atlantic Land Development Company, as well, be further restrained from making any use of the said lands hereinbefore described which they pretend to hold and own, not conforming with a full right in the public to all such uses of the said area, including such portions as may be under water, as may be connected with a camp meeting ground and incidental uses, and

That the said Mary J. Buchanan and Lewis M. Cresse and Cecilia H. Cresse, his wife, and Charles W. Masland, be further ordered to remove forthwith from the lands, between Fifth and Sixth Streets,

the Atlantic Ocean and Beach Thoroughfare, or under the waters of the same, in Ocean City, and which they pretend to own, all buildings or other improvements whatsoever which may now be erected thereon; and

That your orator may have such further or other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator the state's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Ocean City Association, Mary J. Buchanan, Lewis M. Cresse, and Cecilia H. Cresse, his wife, Charles W. Masland and Atlantic Land Development Company, commanding them by a certain date and under a certain penalty, therein to be expressed, to be and appear before your Honor in this Honorable Corut and then and there to answer all and singular the premises and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray.

W. Holt Apgar,
Andrew C. Boswell,
E. Spencer Miller,
Solicitors for and of Counsel with Complainant.

ORDER AMENDING BILL.

IN CHANCERY OF NEW JERSEY.

Between William E. Bridgewater, *Complainant,* and Ocean City Association, *et als.,* *Defendants.*	On Bill, Etc. Order Amending Bill.

This matter being opened to the Court by Wilson and Carr, solicitors for and of counsel with the complainant, and it appearing that through inadvertence and mistake the name of the defendant, Henry D. Moore, was omitted from the prayers for injunction, for relief and for process contained in the complainant's bill of complaint:

It Is, thereupon, on this day of December, nineteen hundred and thirteen, on motion of Wilson and Carr, solicitors for and of counsel with the complainant, Ordered that the complainant's bill be and the same is hereby amended by inserting the name of the defendant, Henry D. Moore, in the prayers for injunction, relief and process in said bill contained.

E. R. Walker, *C.*

I consent to the making and entry of the above order.

J. Fithian Tatam,
Solicitor of Defendant, Henry D. Moore.

ANSWER OF OCEAN CITY ASSOCIATION.

IN CHANCERY OF NEW JERSEY.

Between
William Bridgewater,
Complainant,
and
Ocean City Association, *et als.*,
Defendants.

ON BILL, ETC.

ANSWER.

The answer of Ocean City Association, defendant, to the bill of complaint of William Bridgewater, complainant, in the above-stated cause.

This defendant, answering so much of said bill of complaint as it is advised it is necessary and proper to answer, for answer says:

1. Defendant neither admits nor denies the allegations of ownership set forth in paragraph 1 of complainant's bill, but denies that complainant purchased lot 21, in section B, from this defendant, and denies that complainant purchased said lot relying upon any representation made by defendant to complainant, or by defendant to complainant's predecessor in title, and denies that any representations were made to the public by this defendant touching or concerning said lot, at any time, either prior to or subsequent to the date of the first

purchase alleged in said paragraph 1, and denies that any purchaser relied upon any earlier representations of this defendant in making a purchase thereof.

2. Answering paragraph 2 of complainant's bill, this defendant says that it denies that this defendant, prior to or as an inducement to complainant's purchases and as an inducement to complainant's grantors of the said lot 21, in section B, or of any other lots, that this defendant represented and stipulated that a certain large area of land adjacent to said lots offered to and subesquently purchased by complainants, to wit, the ground between Fifth and Sixth Streets, and Atlantic Ocean and Beach Thoroughfare, should forever remain devoted to camp meeting and other public recreation purposes in connection therewith, and denies that any such statement was made for the advantage and benefit in the nature of an easement of the lots and ground purchased by complainant or complainant's predecessors in title, or for any other purpose, and denies that this defendant announced as an inducement to the sale of its lots or for the purpose of creating rights in said lots or for any other purpose except as a matter of general information as a news item, any statement in the Ocean City Journal touching the consummation of plans for the securing of a permanent place for holding camp meetings and a summer college settlement, and denies that all conversant with such camp meetings prior to 1880 fully recognized that the lands were to be used in the erection of tents thereon, and denies that this defendant advertised or published that the terms upon which the sale of lots would be offered among others included, "The space

allotted to the encampment is 500 feet wide from the Thoroughfare to the ocean, with plenty of tenting ground. It is contemplated to have all the appointments desirable to render the camp meeting a real feast to the thousands who may congregate there for Christian worship. Those coming to tent with us will have every possible facility that will contribute to their comfort. Besides the regular service of the encampment there will be temporary inventions, anniversaries and other Christian and philanthropic convocations fully occupying the season and making it memorable in interest and profit. No pains will be spared to give Ocean City a series of religious privileges equal to other resorts of kindred character.

Further answering said paragraph, this defendant admits that prior to a sale held by said sssociation on the 25th day of May, 1880, and during the progress of said sale this defendant did distribute a map or plan embracing the whole tract of ground by it then mapped, including the camp meeting ground, and that said map was drawn in such manner by this defendant as would inform every purchaser who should attend said sale or should procure a copy thereof of the intention of this defendant to reserve all lands not then plotted into lots, excepting only the tract of land bounded by Asbury Avenue, Fifth Street, Wesley Avenue and Sixth Street, for a future plotting and use, which map was designated at "Section A," and showed upon it about 1000 lots then plotted and ready for use. Camp meeting ground within the limits last above mentioned left the remaining portion of said map unplotted and unmarked.

Further answering, this defendant says that it admits that William B. Wood was president of said

defendant company, but denies that the said William B. Wood was chief representative of this defendant, excepting only in so far as his official position as president created him such chief representative, and denies that the said William B. Wood acting with and by authority given him by this defendant, made an address in the presence and hearing of all persons assembled who afterwards made purchases at said sale, immediately before and to preface the same, when he explained the plans and purposes of the association substantially as set forth in paragraphs 1 and 2 of complainant's bill of complaint, and denies that in the course of said address, William B. Wood, acting by authority of this defendant, announced that the strip of ground above indicated, lying between Fifth and Sixth Streets, was set apart and dedicated to public use in connection with the camp meeting enterprise, and for the better promotion of such policy would be forever kept open and clear of permanent obstruction of every sort for freedom and circulation of air, excepting a large auditorium building situate in the square made by Fifth and Sixth Streets, Wesley and Asbury Avenues, through which square the intervening avenue, Central Avenue, had not been extended.

Further answering said paragraph, defendant denies that in the latter part of the year 1880, this defendant printed and circulated any account of its plans and purposes in respect to lots which it proposed to offer for sale, but admits that the annual report of William B. Wood, its president, was published, and that said report contained a statement to the effect that at that time the space allotted to the encampment is 500 feet wide, and extended from the Thoroughfare to ocean, with plenty of camping

ground but denies that this defendant ever authorized the directing or making of any statement that the space from Thoroughfare to ocean, 500 feet in width, would be permanently allotted for camping purposes, or for the public, and denies that any statements or representations were ever made by this defendant or by any person with authority from this defendant, creating any implied covenant in favor of any person unless it should be in favor of persons owning lands immediately abutting on said Fifth or Sixth Streets, and denies that this complainant owns any lands abutting on said Fifth or Sixth Streets, and denies that complainant purchased directly from this defendant, or from persons who had purchased from this defendant any lands in favor of which this defendant had created any implied covenant and particularly denies that this defendant is bound by any implied covenant in favor of lot 21, in section B, and denies that said complainant is the owner of any lots in the vicinity of the lands mentioned by complainant, in complainant's bill of complaint, lying between Fifth Street and Sixth Street, Beach Thoroughfare and the Atlantic Ocean, and says that the lot of William Bridgewater, to wit, lot 21, in section B, is more than 10 feet distant from the nearest point of said tract of land between Fifth and Sixth Streets, extending from Thoroughfare to the Ocean, and is more than 1,400 feet distant from the nearest point of the camp ground bounded by Asbury Avenue, Fifth Street, Wesley Avenue and Sixth Street.

Defendant further answering said paragraph denies that immediately after the sale of said lands as above mentioned that defendant executed deeds therefor, which said deeds referred to a certain map of lands of this defendant designated as "Sections

A, B and C," and says that at the time of the sales set forth in complainant's bill of complaint made in the year 1880, this defendant had not mapped or plotted sections B or C, and that section B, in which complainant's lot No. 21, in section B, is situate, was not plotted or put on the market for sale until long after the making of the sales mentioned in complainant's bill of complaint, and further says that this defendant, in developing its said lands, first plotted such portion of its lands as lay between an alley 100 feet northwesterly of the northwesterly line of West Street, First Street, Atlantic Avenue and Ninth Street, and that at that time, this defendant reserved for future plotting the lands between Fifth Street and Sixth Street and Wesley Avenue and the ocean, and the lands between Asbury Avenue and a line 100 feet northwesterly of West Avenue, part and parcel of section A, for future plotting, as well as all the land comprised in sections B, C, D, E, F, G, H, and I, and further says that at the time of exhibiting the map of section A, at the sale mentioned in complainant's bill of complaint, all the lands plotted in the various sections above mentioned were unplotted and unsold and that afterwards, defendant's unsold lands were plotted for sale and put on the market in sections, and that this defendant at all times believing that because of the location of the camp meeting ground between Asbury Avenue, Fifth Street, Wesley Avenue and Sixth Street, land in that location would be most desirable, and of greatest value, and foreseeing that as time passed on and the lands of defendant should have been sold and money would be required to maintain its camp meeting on the ground above described, reserved the tract of land lying between Wesley Avenue, Fifth Street, At-

lantic Ocean and Sixth Street, and between Asbury Avenue, Sixth Street, Beach Thoroughfare and Fifth Street, unplotted, for future use, and further answering defendant denies that it filed in the clerk's office of Cape May County, a map of sections A, B and C, and that on said map the area on Fifth and Sixth Streets and between Atlantic Ocean and the Beach Thoroughfare, was conspicuously marked with the words "Camp Ground," and denies that any such map became a part of the deeds to complainant or complainant's predecessors in title, and denies that said deeds were intended and made by Ocean City Association and by its grantees to more fully define the transactions of sale as to

grantees became entitled as in complainant's bill of complaint alleged by implied covenant to maintain the said use and exclusive application of said area to the purpose aforesaid, and denies that by authority of any representations or stipulations made by this defendant or by any agent authorized to make stipulations or representations for it that the owners of said various tracts became entitled as against this defendant to the reservation of the said area between Fifth and Sixth Streets, Atlantic Ocean and Beach Thoroughfare, excepting only that portion of said area between Fifth and Sixth Streets, and Asbury Avenue and Wesley Avenue for all uses embraced in the object of a camp meeting ground to the exclusion of private occupation and use, and all other uses whatsoever differing from said use alleged to be designated by said map or plan.

Defendant further answering said paragraph denies that the lots owned by complainant were more desirable to him and were enhanced in value by reason of said alleged easement and denies that

said easement, if it existed, was appurtenant to defendant's lands, and denies that by reason of any representation made by this defendant or by reason of any representations authorized to be made by this defendant, complainant is entitled to a reservation of the area between Fifth and Sixth Streets, Atlantic Ocean and Beach Thoroughfare, to be open and devoted to public uses, of the nature of those incident to a camp meeting ground, and denies that there are any public uses incident to the camp meeting ground of this defendant, and says that Ocean City was incorporated and developed as a Christian seaside resort by this defendant, whose stockholders are and were men principally ministers of the gospel, interested in its development, and that as the incident to such development, this defendant set aside the land between Fifth and Sixth Streets, Asbury Avenue and Wesley Avenue, as a space in which this defendant at all future times might conduct a camp meeting at such season of the year as this defendant should determine; that the conducting of said camp meeting is and always has been in every respect a private religious enterprise conducted, regulated and carried on exclusively by this defendant at its private cost and expense and absolutely free from every public control.

This defendant further answering denies that complainant, relying upon representations made by defendant, or relying upon authorized representations of any agent of this defendant, erected at great expense a dwelling house upon certain of his lots which he has maintained and improved until now, and denies that complainant is in any manner interested in the object for which defendant was incorporated, and for which the camp meeting ground was set apart, and the camp meetings have

been held, and denies that complainant has erected any dwelling house on lot 21, in section B, and denies that complainant has erected any dwelling house within the limits of section A, and says that complainant's dwelling house is more than 2000 feet distant from the nearest point of the land between Fifth and Sixth Streets, and Atlantic Ocean and Beach Thoroughfare.

3. Answering paragraph 3 of complainant's bill of complaint, this defendant denies that for a long time defendant has disregarded and attempted to repudiate any representations or stipulations by it made or by it authorized to be made by any of its agents, and denies that it has at any time repudiated any implied covenant by it created, and denies that it has resorted to any scheme in order to violate its obligations, in order that it might be free to sell the reserved area. It admits that said alleged reserved area has greatly increased in value and says that this increase in value was from the beginning of Ocean City by this defendant fully expected and looked for and that it was this prospective increased value that induced and prompted this defendant to refrain from plotting the land between Fifth and Sixth Streets, Wesley Avenue and the Ocean, and between Asbury Avenue, Fifth and Sixth Streets and a line 100 feet northwesterly of the northwesterly line of West Avenue into lots on section A, and offering the same for sale at the time the other lands in that vicinity were being exposed to sale, and that it was this expected increase in value that prompted this defendant to refrain from plotting the land between Fifth and Sixth Streets, within section B, into lots and exposing said lots to sale at the time the other lots in that section were exposed to sale.

Defendant further answering says that the very great majority of lands originally held by it is now sold and that as was anticipated thirty years ago, the time has come when it is necessary for this defendant to dispose of the lands so by it then reserved for the purposes of carrying on the objects for which this defendant was incorporated, and for which its members for the past thirty years have striven.

Further answering said paragaph 3 of said bill, this defendant denies that a writ of injunction was issued restraining defendant at the suit of George B. Lennig from leasing lands within the alleged reserved area for long term leases but admits that after the year 1882, it did plot the lands so by it reserved for future plotting as shown by the map of section A, as it then contended and at all times since has contended it might lawfully do, and that said map was designated as map No. 1, annex to section A, and admits that it conveyed to one Charles Matthews, Jr., two lots Nos. 125 and 127, according to map No. 1, annex to section A, but denies that said lots were within this reserved area, and avers that it had a perfect right to so convey said lands, but denies that this defendant co-operated with said Mathews in any attempt or any intention of violating any obligation resting upon this defendant touching the lands therein conveyed.

Further answering said paragraph, this defendand neither admits nor denies that said Mathews conveyed to one Ritter, and that said Ritter conveyed said lands to one Buchanan, and leaves complainant to prove the same if he shall be so advised, but denies that this defendant co-operated with any such persons with any intention to violate any obligation imposed upon it.

Further answering said paragraph, this defendant admits that it conveyed lot 117, on said map No. 1, annex to section A, to Alfred K. Scholl, but denies that said lot was a part of any area reserved for the public or in which the public had any interest, or was a part of any area reserved to complainant's prior grantees, or in which they or any of them had any interest, and denies that this defendant co-operated with said Scholl or with intention to violate any obligation of this defendant, and neither admits nor denies the alleged conveyance by the said Scholl to Mary J. Lake, and leaves the complainant to prove same.

This defendant neither admits nor denies that Ocean City instituted an ejectment suit against the said Mary J. Buchanan and Mary J. Lake, and neither admits nor denies that the said Buchanan or Lake conceded the rights alleged by Ocean City in said premises, and says that if the rights in said premises are public rights which may be enforced in an ejectment suit by Ocean City against the owners of said lots that then and in such case, this complainant has not shown any special injury sustained by him different in kind from that sustained by the public in general as will support a bill of complaint in his behalf and in this respect this defendant prays the same benefit by way of answer as if defendant had specifically demurred thereto.

Further answering said paragraph, this defendant admits that it made a conveyance of lands probably on December 9th, 1896, and May 20th, 1899, the proper dates being unknown to the defendant at this time, to Ocean City Railroad Company, but denies that said conveyances were made with any intent to violate any implied covenant or any obligation that this defendant owed to the public under

the alleged public dedication mentioned in said paragraph, and denies that there was any public dedication of any lands by this association excepting only the streets and alleys shown on said maps.

It neither admits nor denies that complainant filed a bill in the Court of Chancery against the Ocean City Railroad Company and Atlantic City Railroad Company, and leaves complainant to prove same, and says that if there was a public dedication as complainant alleges and as this defendant denies, then this complainant has shown no such special injury to him, different in kind from the injury to the public, which will support this bill, and prays the same defense by way of answer as if he had specifically demurred thereto.

This defendant, further answering said paragraph, admits that it made a conveyance of lands to one Lewis M. Cresse and Cecilia, his wife, a tract of land situate on Pleasure Avenue between Fifth and Sixth Streets, and fronting on Beach Thoroughfare, but denies that said lands were any portion of lands reserved from sale by this defendant, and denies that in making said sale this defendant intended to violate any obligation due from it to anybody.

This defendant, further answering said paragraph, admits that it conveyed, in December, of 1897, a tract of land to one Henry D. Moore, situate on Bay Avenue, extending to within three feet of the ordinary high water mark of Beach Thoroughfare, and that afterwards it secured a riparian grant in front of said lands, and afterwards the purchasers of said grant conveyed said lands to the said Henry D. Moore, but denies that said conveyance or any part thereof was made with intent to violate any obligation due from this defendant, and denies that said conveyances did violate any obligation which this

defendant owed to the public, or to any of its grantees, and says that the object of reserving the three-foot strip along Beach Thoroughfare from the first sale was to enable this defendant to insert its restrictive covenants in the conveyances covering lands covered by water and for that purpose he made application to the riparian commissioners for the said riparian grant, and after securing the same, conveyed the lands so by it purchased from the state of New Jersey, together with the three-foot strip reserved as aforesaid, to said Henry D. Moore, by deed of conveyance conveying the restrictive covenants inserted in all the deeds of conveyance by this defendant, which said restrictive covenants were incorporated in the conveyances made by this defendant for the purpose of effecting the object made by this defendant, a copy of which restrictive covenants is annexed to this answer and made a part thereof, that the same kind of a conveyance has been made by this defendant for all of its other lands bounding on either the Atlantic Ocean or on Beach Thoroughfare, and for the said objects, except only in cases where a part of the land on Peck's Beach were not owned by defendant, wherein the owner of such lands had conveyed them to this defendant for the purpose of having inserted therein the covenant aforesaid, so that the entire lands upon the said Peck's Beach might become subject to the same restrictive covenants.

Further answering said paragraph 3, this defendant admits making a conveyance of an irregular piece of ground to Charles W. Masland, on or about the 12th of April, 1906, but denies that said conveyance was made for any unlawful purpose or for the ultimate or possible destruction of any obligation of the Ocean City Association, either implied or oth-

erwise, and denies that this defendant ever made any dedication to public use of any lands within the limits of Ocean City excepting only the streets and alleys laid down on its map, and denies that it ever set apart with intent to do so any lands for camp meeting purposes excepting only the lands between Fifth and Sixth Streets and between Asbury and Wesley Avenues.

Further answering said paragraph, defendant admits that on or about the sixteenth day of March, 1909, this defendant conveyed four several tracts of land to Atlantic Land Development Company, for the consideration of $50,000.00, and that said four tracts of land covered all the lands between Fifth and Sixth Streets and the centre line of Atlantic Avenue and the exterior line established by the riparian commissioners, but denies that said conveyance was made with any purpose of avoiding any obligation of this defendant, and says that all the transactions were *bona fide* business transactions and that this defendant has no knowledge or information of the use proposed to be made of the lands by the Atlantic Land Development Company, but denies said sale was entered into with intent to violate any obligation of this defendant, and denies that this defendant is aiding or abetting the Atlantic Land Development Company in violation of any obligation which it owes to any persons, and denies that this defendant is attempting with the co-operation of other persons, or by itself, to violate or destroy any obligation which it owes to any person touching and concerning the alleged reserved area.

Defendant, further answering said bill of complaint, says that there never was any public dedication of the lands between Fifth and Sixth Streets, and between Wesley Avenue and the Atlantic Ocean,

and between Fifth and Sixth Streets, between Asbury Avenue and Beach Thoroughfare; that all of said lands have been assessed for taxes by the assessor of Ocean City against the different owners and that the said taxes have been paid by the said owners for the city of Ocean City, and in cases where the said taxes were not paid said lands have been sold for unpaid taxes by the proper municipal officers, and that in cases where the lands of this defendant have been sold for unpaid taxes, said lands have been redeemed from said tax sale by said defendant, excepting in the last tax sale, from which some of the lands of defendant have not as yet been redeemed.

Defendant further answering says that Ocean City has never expended moneys upon lands lying between Fifth and Sixth Streets and the Atlantic Ocean and Beach Thoroughfare, except in keeping in repair the streets which had been built by and at the cost and expense of this defendant, and by order of Ocean City; that in addition to building the streets by order of said Ocean City, this defendant has set sidewalk curbing and built flag sidewalks along said streets at its own expense.

Defendant further says that after the sale of the lots or plots on section A, it gave orders for the plotting of sections B and C, and that a map of sections B and C was prepared and filed in the office of this defendant in Ocean City, N. J., but that no copy of said map was ever filed by order of this defendant in the clerk's office of Cape May County, and that no authority or permission was ever given to William Lake, draftsman, by this defendant to place upon said map the word "Park" on the block between Wesley Avenue and Ocean Avenue and the block between Ocean Avenue and Atlantic Avenue,

between Fifth and Sixth Streets, and further that this defendant had no knowledge or information that a map of said sections B and C had been filed in the clerk's office of Cape May County until 1885.

Defendant further answering says that complainant's bill is without equity in the premises as to the complaint and prays the same benefit by way of answer as if it had specifically demurred to the complainant's bill, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

GEORGE A. BOURGEOIS,
Sol'r of Ocean City Ass'n.

ANSWER OF MARY J. BUCHANAN.

IN CHANCERY OF NEW JERSEY.

Between
William E. Bridgewater, *et als.*,
Complainants,
and
Ocean City Association, Ocean City Tabernacle Association, *et al.*,
Defendants.

ON BILL, &c.

ANSWER.

The answer of Mary J. Buchanan to the bill of complaint filed in the above-stated cause:

This defendant, answering the complainants' said bill of complaint, for such answer, says:

1. She is ignorant as to whether or not the said complainant, William E. Bridgewater, is the owner of the certain lots of ground, situate in Ocean City, and particularly described in paragraph 1 of said bill of complaint, but leaves the same to be proved by said complainant, when and where this Honorable Court may direct.

This defendant, further answering, says that she neither admits nor denies that the complainant's own certain lots ascending to maps representing certain sections or parts of the said Ocean City were originally owned, laid out, or to a large extent sold by said Ocean City Association prior to the plotting thereof and the selling of lots therefrom; and neither does she admit nor deny that there were a greater or less number of intermediate transfers of the said land, claimed to be owned by the said complainant, prior to the complainant's ownership thereof; if any, but leaves the same to be proved as best it may by the complainants when and where this Honorable Court may direct.

2. She neither admits nor denies that the original purchasers of said described lots and the party or parties succeeding them and subsequent owners thereof in line of title of complainants and complainants bought said lots or any of them relying upon representations made by Ocean City Association before it had sold any lots on said map or plot of Ocean City, but leaves the complainants to prove the same.

3. She neither admits nor denies that Ocean City Association prior to or as an inducement to all the purchases which were subsequently made of lots in said Ocean City from said association, or as an inducement also to purchase the lots in said Ocean City from other parties than Ocean City Association, represented and stipulated that a certain large area of land adjacent to said lots offered and subsequently purchased, to wit, the area of ground exclusive of streets bounded by Fifth and Sixth Streets and Atlantic Ocean and Beach Thoroughfare, should be and forever remain devoted to camp meeting and other public recreation purposes in connection therewith, to the advantage and benefit in the nature of an easement of the lots of ground which were so offered by the Ocean City Association as aforesaid, and were afterwards purchased by the several individuals whose rights have vested in complainants, but leaves complainants to prove the same.

Further answering, this defendant neither admits nor denies that Ocean City Association published a paper called the "Ocean City Journal" in the year eighteen hundred and eighty, or that said paper published statements purporting to come from or be authorized by Ocean City Association touching and concerning the block of land between Fifth and Sixth Streets aforesaid, but leaves complainants to prove the same.

This defendant neither admits nor denies that prior to the sale held on May twentieth, eighteen hundred and eighty, or throughout the progress of the said sale, Ocean City Association published and distributed, in order to inform intending purchasers of the conditions under which they were solicited to purchase lots, a map showing the strip of land between Fifth and Sixth Streets, and between Wesley

Avenue and Asbury Avenue, marked "Camp Ground" and leaves complainants to prove the same; and neither admits nor denies that William B. Wood had authority to make an address in the presence and hearing of all the persons therein assembled; and neither admits nor denies that any of the persons there assembled afterwards purchased lots at said sale; and neither admits nor denies that the said William B. Wood prefaced his address by explaining the plans and purposes of the association as mentioned in said bill of complaint; and denies that during the course of said address the said William B. Wood announced that the strip of land lying between Fifth and Sixth Streets, and between Atlantic Ocean and Beach Thoroughfare was set apart and dedicated to public uses in connection with the established camp meeting enterprises, and for the better promotion of such projects would be forever kept open and clear of public obstructions of every sort for freedom and circulation of air; and neither admits nor denies that Ocean City Association published an annual report and therein stated that the camp ground block extending from meadow to ocean, five hundred feet wide, had been devoted to an encampment, but leaves the complainants to prove the same, but denies that complainants and those owning the lands now claimed by them prior in chain of title purchased relying upon any implied covenant touching and concerning the lands lying between Fifth and Sixth Streets and between Atlantic Ocean and the Thoroughfare.

This defendant, further answering, neither admits nor denies that deeds of conveyance were made to complainant for the lots claimed by him or that said deeds of conveyance for the same premises prior in chain of title referred to a plan or map of lands

of said association, on which plan or map the tract between Fifth and Sixth Streets and the Atlantic Ocean and Beach Thoroughfare, was marked with the words "camp ground," but she denies that any such map or plan was ever filed in the clerk's office of Cape May County by the authority of the Ocean City Association, and denies that any such map or plan became a part of the deeds thereafter made, and denies that any sales were made by the Ocean City Association or its grantees, with reference to any such map to more fully define the said transaction of sale, as to their terms; and further denies that thereby any such purchase by the complainants or any one claiming under them or any of them became entitled to an implied covenant to the maintenance of said tract of land between Fifth and Sixth Streets and the Ocean and Beach Thoroughfare for any specified purpose or purposes; and further denies that the complainants by reason of any such map and deed, or either of them, ever became entitled, as against the Ocean City Association or as against this defendant to have the strip of land between Fifth and Sixth Streets and the Atlantic Ocean and Beach Thoroughfare, devoted to the object of a camp ground to the exclusion of private occupancy or use thereof.

And further answering, this defendant denies that the complainants' lands are more desirable or more enhanced in value by reason of the alleged easement claimed and set forth in said bill of complaint, and denies that any such easement is appurtenant to the said lots or any of them and denies that the complainants are entitled to have said tract of land between Fifth and Sixth Streets and the Atlantic Ocean and Beach Thoroughfare, Ocean City, because of any fact alleged or set forth in said bill of com-

plaint, or otherwise, kept open or devoted to public uses, or to such as are in the nature of those incident to a camp meeting ground, and avers that a camp meeting is not a public institution, and that there are no public uses incident to a camp meeting ground.

4. This defendant, further answering said bill of complaint, is not informed and neither admits nor denies as to whether or not Ocean City Association now does, nor for a long time, has, disregarded or attempted to repudiate any implied covenant entered into by it with any purchaser or purchasers of lots at Ocean City, or as to whether it has ever been the object or intention of the said Ocean City Association to violate any implied covenant made between the said association and any purchaser or purchasers of lots of land from Ocean City, or as to whether or not the said Ocean City Association, at any time, ever used or attempted to use the land lying between Fifth and Sixth Streets and Atlantic Ocean and Wesley Avenue and Asbury Avenue and Beach Thoroughfare, in a manner different from that originally intended or contemplated by the said Ocean City Association, but leaves complainants to prove the same.

And further answering said bill, this defendant neither admits nor denies that in the year 1882, or prior thereto, the Ocean City Association attempted to sell or transfer any private or individual rights in any parts of the lands lying between Fifth and Sixth Streets and Atlantic Ocean and Beach Thoroughfare, except between Wesley Avenue and Asbury Avenue; or that the suit mentioned in the complainants' bill of complaint, by one George G. Lennig against the Ocean City Association, was

touching or concerning lands lying between Wesley Avenue and Asbury Avenue and Fifth and Sixth Streets, but leaves complainants to prove the same.

And this defendant, further answering, is not informed and neither admits nor denies that said Ocean City Association fraudulently intending, purposing or contriving to violate said alleged obligation, prepared or promulgated a certain plan of said strip of ground and divided same into lots and offered same for sale as set forth in said bill, or that said Ocean City Association erected dwelling houses upon two lots as therein set forth; or that said association contriving to evade any of its alleged obligations or covenants conveyed the lots mentioned in the bill of complaint to one Charles Matthews, Jr., for the purpose of erecting a hotel building thereon, or that the Ocean City Association, in any manner co-operated with the said Charles Matthews, Jr., or that the said Matthews, in any manner or way, co-operated with the association in violating or attempting to violate any lawful obligation or covenant of the said association, but leaves the complainants to prove the same.

This defendant, further answering said bill, neither admits nor denies that the Ocean City Association conveyed lot No. 117, on map No. 1, to Alfred K. Scholl, on June twenty-fourth, eighteen hundred and ninety-seven, and leaves complainants to prove the same, but denies that such conveyance, if made, was made for the purpose of violating any obligation or implied covenant of Ocean City Association, but was made strictly within what Ocean City Association conceived to be its legal rights in the premises, and denies that the said Alfred K. Scholl erected on said lot a building at the instance of Ocean City Association, or that Alfred K. Scholl made a pre-

tended sale or conveyance of said lands to Mary J. Lake, or that the said Alfred K. Scholl conveyed said lands to the said Mary J. Lake for any other than a lawful purpose, but leaves the complainants to prove the same.

This defendant, further answering said bill, denies that the city of Ocean City, in nineteen hundred and one, instituted an ejectment suit against this defendant for possession of two lots in the alleged reserved area, or against Mary J. Lake, above mentioned, because of occupying the lands by them owned to the exclusion of the public interest in said premises, and denies that the course or procedure in any such suits or the result thereof was as set forth in said bill and denies that this said defendant removed any buildings from off her lands by reason of any such suit or that any such suit was so proceeded with that the defendant therein conceded the right of the city of Ocean City thereto or yielded defense thereto; and also denies that the city of Ocean City had any right, title, interest or estate in said lands described in the bill of complaint, or any part thereof.

This defendant, further answering, is not informed and neither admits nor denies that said association, on December twenty-ninth, eighteen hundred and ninety-nine, intending or contriving to violate any of its lawful covenants or obligations, conveyed certain ground to the Ocean City Railroad Company, as set forth in the bill of complaint, or that a suit was brought by one William Bridgewater on proceedings had therein, as set forth in said bill, or that on December first, eighteen hundred and ninety-seven, said association intending or purposing to wilfully violate any of its lawful obligations, conveyed a certain lot or lots to one Henry D. Moore, or

to Lewis M. Cresse and wife, or to C. W. Masland, as set forth in the bill of complaint, or that said Ocean City Association, further contriving, co-operating or conspiring with the individuals named in said bill, or with either or any of them, executed or delivered certain deeds, as set forth in said bill, for the purpose of violating or ultimately destroying any of its lawful obligations, but leaves complainants to prove the same.

This defendant, further answering said bill, admits that Ocean City Association, on July eighteenth, nineteen hundred and three, conveyed two certain tracts of land to Centenary Fund and Preachers' Aid Society, and on August tenth, nineteen hundred and three, one tract of land to James E. Lake, and on August twelfth, nineteen hundred and three, another tract of land to S. Wesley Lake, and on March sixth, nineteen hundred and nine, another tract of land to Atlantic Land Development Company, of the sizes and dimensions mentioned in said bill of complaint, but neither admits nor denies that on August nineteenth, nineteen hundred and seven, a lot was conveyed to William Watson Adams, nor that on November thirtieth, nineteen hundred and nine, a lot was conveyed to Samuel H. Hann, of the size and dimension mentioned in said bill of complaint, but is not informed and neither admits nor denies that said conveyances were made by the Ocean City Association contriving and conspiring with the grantees above mentioned, or either of them, to violate or ultimately destroy the obligations of the said Ocean City Association under any implied covenant or dedication, and says that said conveyances were each respectively and lawfully made in furtherance of the original plans and undertakings of Ocean City Association, or that the lands conveyed to Atlantic Land

and Development Company are, in any manner, subject to any implied covenants touching and concerning the lands lying between Fifth and Sixth Streets, and between Atlantic Ocean and Wesley Avenue and Asbury Avenue and Beach Thoroughfare, and says that she is a *bona fide* purchaser for value without notice of said covenants and without notice of any dedication, or alleged dedication, of lands between Atlantic Ocean and Wesley Avenue and Asbury Avenue and Fifth and Sixth Streets and the Thoroughfare to any public use or uses.

5. This defendant, further answering said bill, denies that the entire space at Ocean City, between Fifth and Sixth Streets, from bay to ocean, or any part thereof, was designated on any map or maps as a park or camp meeting ground, or for any public place, or use or uses, by the Ocean City Association, or by any other lawful owner of the same, but leaves the complainants to prove the same, when and where this Honorable Court may direct.

6. This defendant, further answering said bill, claims that she is ignorant of and has no knowledge, except as hereinabove set forth, as to the original plans or purposes of the said Ocean City Association, in filing, if any it did file, said maps or in plotting the land described in the bill of complaint, if any it did plot or in making any of the alleged dedications in relation to the land described in the bill of complaint, if any such dedications it did make, nor has she any knowledge as to what deeds of conveyance were made by the Ocean City Association to any other person or persons than this defendant, nor as to what the intentions or object of the said association were at the time of the making of any

such deed or deeds, but leaves complainants to prove the same; and this defendant alleges that the conveyance made to this defendant for the land at the northwest corner of Sixth and Ocean Avenue, Ocean City, N. J., was lawfully and properly made, and that this defendant is the lawful and proper owner thereof for the uses and purposes set forth in her said deed.

7. And this defendant further answering said bill of complaint has no knowledge, except as hereinabove set forth, as to what proceedings were instituted by or against the said Ocean City Association, or as to the purpose or intention of such proceedings or the result thereof, as alleged in said bill of complaint, but leaves the same to be proved by the complainants, when and where this Honorable Court may direct.

8. This defendant, further answering said bill, denies that the deeds of conveyance made by the Ocean City Association to its various grantees, as set forth in the bill of complaint, were made with reference to the maps mentioned and described in the complainants' bill or that the lands now claimed by the complainant were sold by said association with reference to said maps or with reference to the maps claimed to have been filed in the county clerk's office of Cape May County.

9. This defendant further says that if any statement was made by one William B. Wood or others acting for or representing the Ocean City Association at any public sale of lands or otherwise as set forth in bill of complaint, no such statements were ever communicated to this defendant; but that she

bought the said premises now owned by her at Sixth and Ocean Avenue, Ocean City, N. J., in good faith for a valuable consideration, and that as to any such statements or similar statements, this defendant avers that if any such statements were made, she has not been informed thereof, that the same in no way affected her title to and possession of premises owned by her as aforesaid.

10. This defendant, further answering, says that in the year 1900, she purchased in good faith for a consideration of approximately $18,000 two lots of land on the northwest corner of Sixth and Ocean Avenue having a front of 100 feet and a depth of 125 feet and that when she purchased said premises, there was already erected and maintained thereon a large frame hotel or boarding house, three stories in height, and a basement, making virtually a four-story hotel building or boarding house, and that this defendant purchased the said premises and said boarding house as then erected and maintained on said lots from one Charles Matthews, Jr., who had occupied and used said premises for his own private purposes, as a hotel and boarding house for many years prior to the date of purchase of the same by this defendant, and this defendant further answering says that upon making said purchase, and taking title to said lots from the said Matthews, she was informed and then believed and still believes and now charges that she obtained a good title thereto and that without being subject to any of the alleged easements or dedications set forth in the bill of complaint, this defendant, further answering, says that on taking the title to said lots, she expended a considerable sum of money in and about the repairing of said property and has continued to spend

moneys thereon annually from the time of said purchase up to the present time; that from the date of her said purchase up to the present time, the said premises have been owned by this defendant and used and occupied by her or some one under her as tenant, each and every season for boarding house and hotel purposes; that said boarding house has been opened each year for the accommodation of guests, the same as other hotels and boarding houses in Ocean City; and that at each season, said hotel has been full of guests, boarders, and occupants under this defendant; and all without any objection whatever on the part of the complainant or the complainant's grantors, also without any objection from any other person or corporation except as hereinafter set forth; and also without objection or complaint from any of the complainant's grantors.

11. This defendant, further answering, says that on or about the first of June, 1907, the Ocean City Land Company filed a bill of complaint in this court against this defendant, praying for injunction and restraining this defendant from the further erection or construction of a certain addition to the aforesaid hotel or boarding house which she was then constructing and erecting; and that this defendant thereupon filed an answer to said bill of complaint, whereupon it was adjudicated by this Court in said proceeding on the seventeenth of June, 1907, that the temporary restraining order in such cause should be and was dismissed with costs, and in any by which order it was also adjudicated that the complainant was not entitled to the *ad interem* restraint prayed for, to which said bill of complaint, and order, this defendant begs leave to refer.

12. This defendant, further answering, says that she had no knowledge as to what proceedings might have been instituted against any other persons for the removal of any building or buildings upon the tract of land between Fifth and Sixth Streets, at Ocean City, N. J., but this defendant avers that she has never to her knowledge, been made a defendant in any law suit with respect to said property, and has never been called upon to defend her title to the said land except in the chancery suit just above mentioned. This defendant denies that she has ever had any agreement, communication or understanding with the city of Ocean City or its officials or with city council or the other governing body of said city with respect to the erection and maintenance of her said hotel or boarding house on the two lots aforesaid as set forth in the bill of complaint, or that she has to remove same or any part of the same; but on the contrary, avers and charges that the city of Ocean City, on March 21, 1907, by H. C. Smith, its building inspector, then and there issued its building permit No. 200, giving permission to one F. J. Smith, defendant's contractor and builder, to add an addition to the former building for boarding house purposes on her lots at Sixth and Ocean Avenue aforesaid, and granting permission to said Smith as this defendant's agent to use the streets and premises for three months for the purpose aforesaid.

13. This defendant, further answering, says that pursuant to the permit above mentioned, she expended, during the spring of the year, 1907, in alterations and in building an addition to the said hotel or boarding house, upwards of $3500. This defendant, further answering, says that said hotel had become too small for the proper accommodation of her

guests, was in need of repairs and that this defendant, in the spring of 1907, as she now charges, strictly within her legal rights, expended a sum aforesaid in the reconstruction of the main hotel building above mentioned and in the erection of an addition thereto as aforesaid; that said work was continued for several months and was proceeded with openly and in full view of all the people of Ocean City; and that without any objection except from the Ocean City Land Company aforesaid in the chancery suit above mentioned and particularly without any protest or objection from the complainant or any of the complainant's grantors. This defendant, further answering, says that said addition was completed in the summer of 1907 and ever since that time, has been used as a hotel during every season accommodating a large number of guests; that the reconstruction work and other work aforesaid extended over a period of five months and was openly carried on and without any objection from the complainant or any of the complainant's grantors and that said work was openly and notoriously done in full view of all citizens, property owners, residents, and visitors at Ocean City and with their full knowledge as well as the knowledge of the public and the complainant and her grantors.

14. This defendant, further answering, says that this defendant and defendant's grantor, Charles Matthews, Jr., ever since the Ocean City Association conveyed the lots now owned by this defendant to the said Matthews in the year 1896, have occupied and used the said premises as aforesaid and have had erected thereon the building aforesaid; and that while the same has been occupied and used by this defendant and her grantor, the complainant and the

complainant's grantors have consented to such occupancy and to such use for hotel and boarding house purposes and for upwards of eighteen years last past have acquiesced in such use of said premises and this defendant charges that while the complainant might otherwise have had certain equitable rights in and to the said tract of land between Fifth and Sixth Streets, Ocean City, aforesaid, or some of that portion of the same now owned by this defendant, nevertheless, the said complainant is now estopped to take advantage thereof to defendant's prejudice by reason of the complainant's neglect and laches; this defendant, further answering charges that the complainant and the complainant's grantors are guilty of laches in that they made no objection to the defendant and her grantor using the said premises aforesaid or to the building, repairing and reconstruction of the building aforesaid thereon, or making an addition thereto as above stated; and that the said complainant's grantors have stood by and permitted this defendant and defendant's grantor, Charles Matthews, Jr., to expend in good faith upwards of $30,000 in and about the purchase, repairs, reconstruction, additions, and furnishings of the said hotel and boarding house, all of which would be practically a total loss to this defendant should she be required by this Court to remove said buildings or any portion thereof from the land now owned by her.

15. This defendant, further answering, says that since 1907 she has had no intention or purpose of altering or reconstructing the said boarding house or hotel or had in contemplation the making of any changes thereto, and she denies that with the said Ocean City Association or with any of the defend-

ants or any other person or persons she has contrived or is contriving or intending to violate or destroy any obligation by which she is bound or to violate any covenant by which the Ocean City Association is bound. This defendant, further answering, denies that she has done or is doing or intends to do any of the acts or things complained of in the said bill of complaint, or any other act or thing of which by reason of her so doing, the complainant could complain in connection with the two lots of land aforesaid, located at Sixth and Ocean Avenue, Ocean City, New Jersey.

16. This defendant, further answering said bill of complaint, avers and charges that the numerous buildings erected upon said plot of ground, at Ocean City, between Fifth and Sixth Streets, and the Atlantic Ocean and Beach Thoroughfare, mentioned and described in the bill of complaint, were constructed and erected in the ordinary course of business, properly and lawfully, and with the greatest publicity and notoriety, and in full view of the occupants and owners of the land now claimed by the complainants and of those under whom complainants claim; and this defendant denies that the complainants have any rights whatever as against this defendant in the said tract of land between Fifth and Sixth Streets, and the Atlantic Ocean and Beach Thoroughfare, as the owner of lot No. 701, in section A, or otherwise; and further denies that the said complainants had or have acquired any rights, as against this defendant, in reference to the said tract of land, or that the said complainants have had or now have any rights in said land as against this defendant, to have the same kept open, unplotted or reserved or kept for any public use or uses, and this defendant charges that the said complainants and their grantors, if any

lawful title was ever taken by them or any of them, to any land at Ocean City, New Jersey, as set forth in the bill of complaint, took title thereto subject to and with the full notice and knowledge of the rights of this defendant and her grantors, in the premises described in the deed above mentioned, to this defendant, and with the full knowledge and notice of the various facts, matters and things set forth in the bill of complaint and in this answer, and subject thereto.

17. This defendant, further answering said bill of complaint, avers and charges that the complainants neither by reason of anything set forth in the bill of complaint, nor otherwise, have any standing to enforce any rights or alleged rights, such as are set forth in the said bill of complaint, with reference to the said tract of ground at Ocean City, New Jersey, located between Fifth and Sixth Streets and the Atlantic Ocean and Beach Thoroughfare; and also avers and charges that the complainants and complainants' grantors, for years past, have consented to and acquiesced in the various occupancies and other alleged breaches of covenant set forth in the bill of complaint, and that the complainants are now estopped from taking advantage thereof, to the defendant's prejudice by reason of such acquiescence. And this defendant further avers and charges that the complainants are guilty of laches in that complainants have acquiesced in said alleged attempt to made no proper objection or any lawful attempt to prevent the use of the said premises alleged to have made no proper objection or any lawful attempt to prevent the use of the said alleged breaches and have been made by this defendant and others, as set forth in the said bill of complaint; and that the said complainants and those under whom complainants claim,

have stood by for a long period of time while the buildings now erected upon said land were being openly and notoriously constructed, and have permitted the persons named in said bill of complaint, and their grantors, in good faith, to expend thousands of dollars in and about the construction, repairs, reconstruction, and furnishing of the various buildings alleged to have been erected on said lot of ground, as set forth in the bill of complaint, all of which expenditures would entail a great financial loss, if the said defendants, or any of them, should be required, under an order of this Court, to remove said buildings, or any portion thereof. And this defendant, further answering said bill, avers and charges that the said complainants are now estopped to take advantage of the alleged covenants set forth in the bill of complaint, to the defendant's prejudice, by reason of said laches.

18. And this defendant, further answering said bill of complaint, denies each and every other allegation therein alleged not herein otherwise admitted, answered or denied, and this defendant submits to this Honorable Court that all and every of the matters in the complainants' said bill mentioned at law, and with respect to which the said complainants are not entitled to any relief in this court, and this defendant hopes he shall have the same benefit of this defence as if she had demurred to said bill.

19. And this defendant further avers and charges that the complainants' bill is without equity, and prays that she may be hence dismissed with her reasonable costs and charges, in this behalf most wrongfully sustained.

BLEAKLY & STOCKWELL,
Solicitors for Defendant.

ANSWER OF CHAS. L. MASLAND.

IN CHANCERY OF NEW JERSEY.

Between William Bridgewater, *Complainant,* and Ocean City Association, *et als.,* *Defendants.*	On Bill, &c. Answer.

Answer of Chas. L. Masland, one of the defendants in the above-entitled cause.

This defendant in answer to so much and such parts of the bill of complaint filed herein as he is advised it is material for him to make answer unto, answering says:

1. This defendant has no knowledge whatsoever regarding the statements contained in the 1st paragraph in the bill of complaint relating to the ownership of the lands therein described which the complainant says belong to him, and the defendant leaves the complainant to make his proof regarding the same; this defendant does not know from whom complainant purchased his grounds nor whether he purchased them relying upon representations of any one; nor what representations, if any, were made to him or his predecessors in title, nor what

rights complainant may have acquired by reason of his purchase of said lands and leaves the complainant to make such proof regarding the same as may be material to the issue in this cause.

2. This defendant further answering says that he has no knowledge of the alleged inducements to purchase offered by the Ocean City Association to the complainant, or to complainant's grantor contained in the 2nd paragraph of this bill; that he was not present at the alleged sale of lots described in the 2nd paragraph, and did not purchase the land now owned by him at said sale, nor was the land now owned by defendant sold by the Ocean City Association at said sale, and does not know what representations and stipulations were made at the time of said sale; that he did not see the announcement in the Ocean City Journal as set forth in the said second paragraph of said bill, and had no knowledge of an alleged statement made by one Wm. B. Wood, as representative of the Ocean City Association acting by authority given him by said association. This defendant has no knowledge of the maps referred to in the 2nd paragraph of said bill except such constructive knowledge and notice as is given by the filing of the map in the county clerk's office; this defendant denies that the maps filed in the county clerk's office by the said defendant, Ocean City Association, showed any dedication of this defendant's land as "Camp Ground," but on the contrary says that said map shows all of the lands of this defendant to be unplotted and not included within the limits of the land marked on said map as "Camp Ground"; the said defendant denies by reason of any representations made by the defendant, the Ocean City Association, or by any one in its behalf that Wm. Bridgewater, the complainant herein, or any other

person or persons as grantees of the Ocean City Association became entitled to a reservation of the lands now held and owned by this defendant as a camp ground to the exclusion of private properties and use, but on the contrary this defendant avers that the lands now owned and held by him were in no wise embraced or included within the lands affected by said alleged map, or maps and representations and were never reserved and dedicated for the purpose of a camp ground or for any other public use or purpose whatsoever. Defendant leaves complainant to his proofs as to the dwellings erected upon his, complainant's lots, upon the alleged representation of the defendant, Ocean City Association, and as to the greater value and availability of said lots by reason of said alleged representations and dedication.

3. This defendant further answering says that he has no knowledge of the Ocean City Association disregarding and attempting to repudiate any representations, stipulations, and implied covenants that it has made, or any schemes, designs or contrivances to violate its obligations in order to sell the ground described in complainant's bill; this defendant says that so far as the alleged acts and representations of parties other than this defendant, as referred to in the 3rd paragraph of said bill, this defendant has no knowledge whatsoever and avers that the alleged acts and representations therein set forth are of no binding face or affect so far as this defendant or the lands now owned by him are concerned; this defendant admits that on or about the 12th day of April, 1906, the Ocean City Association did sell and convey to this defendant the following described piece of ground.

All that certain lot or piece of ground situate,

lying and being in Ocean City, on Peck's Beach, Upper Township, Cape May County, state of New Jersey, in section "B" on the plan of lots of the said "Ocean City Association." Beginning at a point in the high water line of the southeasterly shore of Beach Thoroughfare at the distance of 373 feet at right angles from the southwesterly line of 5th Street and thence extending southeastwardly parallel with 5th Street 3 feet to a point, thence southwestwardly parallel with said high-water line to a point 423 feet at right angles from the southwesterly line of 5th Street, thence northwestwardly parallel with 5th Street 3 feet to said high water mark thence northeastwardly along said high water line to the place of beginning.

Also all that parcel of land flowed by tide water in the City, County and State aforesaid, described as follows:

Beginning at a point in the high water line of the southeasterly shore of Great Egg Harbor Bay or Beach Thoroughfare at the distance of 373 feet at right angles from the southwesterly line of 5th Street, and thence extending northwestwardly parallel with 5th Street extending 155 53/100 feet to exterior wharf line established by the commissioners appointed under the authority of the act entitled "An act to ascertain the rights of the state in the lands lying under the waters of the bay of New York elsewhere in the state," approved April 11, A. D. 1864, and the supplements thereto, thence southwestwardly along said exterior wharf line 50 56/100 feet and or—to a point 423 feet at right angles from the southwesterly line of 5th Street, thence southeastwardly parallel with 5th Street extended 147 01/100 feet to the said high water line; thence northeastwardly along said high water line to the place of beginning.

The above riparian right being the same premises conveyed to the said "Ocean City Association" by the state of New Jersey, by grant dated March 8, 1906, recorded in the clerk's office of Cape May County, New Jersey, which said deed is in the possession of this defendant and ready to be produced and proved, or the record thereof as aforesaid, this defendant, for greater certainty begs leave to refer to as proved hereby; this defendant denies that Ocean City Association conveyed this piece of ground to him with an unlawful purpose of cooperating with this defendant in violation and ultimate possible destruction of its obligations; this defendant on the contrary says that he paid as consideration for the said ground, the full market value of the lands described in said deed; this defendant further says that on the 25th day of August, 1900, the Ocean City Association conveyed to him for value the following described piece of ground:

All those certain lots or pieces of ground situate, lying and being in Ocean City or Peck's Beach, Upper Township, Cape May County, state of New Jersey.

No. 1. Beginning at a point in the northwestwardly line of Bay Avenue at a distance of 373 feet southwestwardly from the southwesterly line of 5th Street and thence extending along the northwesterly line of Bay Avenue southwestwardly 50 feet and of that width extending in length or depth northwestwardly 115 feet to a 15 feet wide street.

No. 2. Beginning at a point in the northwesterly line of a 15 feet wide street 130 feet northwestwardly from the northwesterly line of Bay Avenue and 373 feet southwestwardly from the southwesterly line of 5th Street, thence extending southwestwardly along said line of a 15 feet wide street parallel with

Bay Avenue 50 feet and of that width extending in length or depth northwestwardly 150 feet more or less to within 3 feet of the mean high water mark of Great Egg Harbor Bay or Thoroughfare.

This defendant further says that from time to time he has expended large sums of money on this property that he might enjoy the occupancy, possession and ownership of said property; in the summer of 1900 defendant erected a large boathouse on said property being a two-story frame building 20 feet by 35 feet and has occupied the same since the time of its completion until the present day; that the cost of said house and boat slip was about $750; that in June, 1909, defendant spent a large sum of money in bulkheading, filling, grading and graveling his said ground at the cost of $700; that at the time of the erection of the building aforesaid and at the time of the bulkheading, filling and graveling as aforesaid the defendant received no notice of a claim of rights of the complainant, Wm. Bridgewater, or any other person; that the defendant did not receive any notice from the said Bridgewater or any other person to stop erecting his building or his bulkheading or to question his right to use and occupy the ground for a boathouse, but on the contrary, says this defendant has been allowed to occupy, use, hold and enjoy the same without any molestation or claim of right for a period of 10 years, and has remained in quiet and peaceful possession of said lands and premises above described until the filing of the bill of complaint in this cause and the service of subpoena upon the defendant; during all this time defendant is informed and believes that the said Wm. Bridgewater was a resident of Ocean City living within a very short distance of defendant's property.

All of which facts, matters and things this defendant is willing to maintain and prove as this Honorable Court may direct and therefore prays that he may be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

CYRUS D. MARTER,
Solicitor of Chas. W. Masland.

ANSWER OF ATLANTIC LAND DEVELOPMENT COMPANY.

IN CHANCERY OF NEW JERSEY.

Between William Bridgewater, *Complainant,* and Ocean City Association, *et als.,* *Defendants.*	ON BILL, &c. ANSWER.

The answer of Atlantic Land Development Company, defendant, to the bill of complaint of William Bridgewater, complainant, in the above-stated cause:

This defendant, answering so much of said bill of complaint as it is advised it is necessary and proper to answer, for answer says:

1. Defendant neither admits nor denies the allegation of ownership set forth in paragraph 1 of complainant's bill, but denies that complainant purchased lot No. 21, in section "B," from Ocean City Association, defendant, and denies that complainant purchased said lot relying upon any representations made by Ocean City Association, defendant, to complainant, or by Ocean City Association, defendant, to complainant's predecessor in title, and denies that any representations were made to the public by Ocean City Association, defendant, touching or concerning said lot, at any time prior to or subsequent to the date of the first purchase alleged in said paragraph 1, and denies that any purchaser relied upon any earlier representations of Ocean City Association, defendant, in making a purchase thereof.

2. Answering paragraph 2 of complainant's bill, this defendant says that it denies that Ocean City Association, defendant, prior to and as an inducement to complainant's purchases and as an inducement to complainant's grantors of the said lot 21, in section B, or of any other lots that Ocean City Association, defendant, represented and stipulated that a certain large area of land adjacent to said lots offered to and subsequently purchased by complainants, to wit, that ground between Fifth and Sixth Streets and Atlantic Ocean and Beach Thoroughfare should forever remain devoted to camp meeting and other public recreation purposes in connection therewith, and denies that any such statement was made for the advantage and benefit in the nature of an easement of the lots and ground purchased by complainant or complainant's predecessors in title, or for any other purpose, and denies

that Ocean City Association, defendant, announced as an inducement to the sale of its lots, or for the purpose of creating rights in said lots, or for any other purpose except as a matter of general information as a news item, any statement in the Ocean City Journal touching the consummation of plans for the securing of a permanent place for holding religious camp meetings and a summer college settlement, and denies that all conversant with such camp meetings prior to 1880, fully recognized that said lands were to be used in the erection of tents thereon and denies that Ocean City Association, defendant, advertised or published that the terms upon which the sale of lots would be effected, among others, included, "The space allotted to the encampment is 500 feet wide from the Thoroughfare to the ocean, with plenty of tenting ground. It is contemplated to have all the appointments desirable to render the camp meeting a real feast to the thousands who may congregate there for Christian worship. Those coming to tent with us will have every possible facility that will contribute to their comfort. Besides the regular services of the encampment, there will be temporary inventions, anniversaries and other Christian and philanthropic convocation, fully occupying the season and making it memorable in interest and profit." "No pains will be spared to give Ocean City a series of religious privileges equal to other resorts of kindred character."

Further answering said paragraph, this defendant neither admits nor denies that prior to the sale held by the Ocean City Association, on the 25th day of May, 1880, and during the progress of said sale that said Ocean City Association distributed a map or plan of the lands of said Ocean City Association,

showing the lands between Fifth and Sixth Streets, Atlantic Ocean and Beach Thoroughfare to be unmarked and unplotted into lots, upon which open space was printed the words "Camp Grounds," and neither admits nor denies that any such map was circulated for the purpose of inducing persons to purchase or that any such map became a part of the deeds of conveyance of said Ocean City Association and leaves complainant to prove the same.

Further answering, this defendant neither admits nor denies that William B. Wood was president of Ocean City Association, and neither admits nor denies that the said William B. Wood was chief representative of said Ocean City Association, and leaves complainant to prove the same, and denies that said William B. Wood, as president of the said Ocean City Association, had authority to make the representations set out in the complainant's bill of complaint.

Further answering said paragraph, defendant neither admits nor denies that Ocean City Association, in the latter part of 1880, printed and circulated any account of its plans and purposes touching land between Fifth and Sixth Streets, Atlantic Ocean and Beach Thoroughfare, and says that if said Ocean City Association did publish said circular or plan that such publication created any contractual rights between said Ocean City Association and persons who had purchased land from said Ocean City Association at the sale previously held on the 25th of May, 1880, and leaves complainant to prove the same if he shall be so advised, and denies that the land between Fifth and Sixth Streets, Atlantic Ocean and Beach Thoroughfare has ever been dedicated to public use, and denies that complainant has any con-

tractual rights therein, or in any part thereof, and denies that complainant or complainant's predecessor in title in the purchase of lot 21, in section B, relied upon the statements made at the sale on May 25th, 1880, and says that section B was not plotted, and that the lands plotted in section B were not exposed to sale for a period of two or three years after said sale of May 25th, 1880, and that at the time of the sale of May 25th, 1880, section A only had been plotted, which comprised but a small portion of the lands owned by the Ocean City Association, and denies that at the time said sale of May 25th, 1880, was held, any statement was made touching or concerning the then unplotted lands of the Ocean City Association.

This defendant further answering the said paragraph neither admits nor denies that lot 21, in section B, was more desirable to complainant by reason of the fact that he considered the land lying between Fifth and Sixth Streets, Atlantic Ocean and Beach Thoroughfare to be dedicated for camp meeting purposes, and denies that complainant is the owner of any land abutting upon either Fifth or Sixth Streets, or upon the Atlantic Ocean and Beach Thoroughfare, between Fifth and Sixth Streets, and denies that complainant is the owner of any lands located sufficiently near to said alleged camp meeting park as to secure any increased amount of light or air by reason of having said tract of land kept unimproved.

This defendant further answering said paragraph denies that complainant relying upon the representations set forth in complainant's bill of complaint alleged to have been made by Ocean City Association, or its agents, erected at great expense one

dwelling house upon his land, which he has held until now, and denies that any dwelling house has been erected upon lot 21, in section B, and says that the only dwelling house erected by complainant within the limits of Ocean City Association which he has kept improved until now is the dwelling house in which complainant resides on Asbury Avenue, near Tenth Street, which said dwelling house is located not in section A, which was first plotted, nor in section B, in which complainant's lot 21 is situate, but is located in section C, and is more than 2000 feet distant from the nearest point of Sixth Street.

3. This defendant, answering paragraph 3 of complainant's bill of complaint, says that it neither admits nor denies that Ocean City Association has for a long time disregarded and attempted to repudiate any representations alleged in complainant's bill of complaint to have been made by Ocean City Association, and leaves complainant to prove the same.

Further answering said paragraph, this defendant neither admits nor denies that a writ of injunction was issued restraining the Ocean City Association from making a long lease of said lands at the suit of one George B. Lennig, but is advised that no such injunction was issued and leaves complainant to prove the same.

Further answering said paragraph, this defendant says that it neither admits nor denies the various conveyances and proceedings of Ocean City Association touching said conveyances alleged in complainant's bill of complaint, the conveyance to this defendant excepted, and leaves complainant to prove the same.

Further answering said paragraph, this defend-

ant denies that the conveyance from the Ocean City Association to this defendant was made for the purpose of repudiating any obligation or duty resting upon the said Ocean City Association concerning and touching the lands described in complainant's bill of complaint, and denies that this defendant combined or confederated with Ocean City Association in any such attempt, or in any manner, for the purpose of enabling, aiding or assisting said Ocean City Association in avoiding any obligation resting upon it.

This defendant, further answering said bill, denies that a map of sections A, B and C, was ever filed in the clerk's office of Cape May County, by defendant, Ocean City Association, and denies that any markings upon said map of sections A, B and C were ever made by said Ocean City Association, or by its authority, excepting only the words, "Camp Ground," within the square bounded by Asbury Avenue, Fifth Street, Wesley Avenue and Sixth Street, and denies that Ocean City Association made any conveyances by reference to any map having designated or printed thereon between Fifth and Sixth Streets, any words excepting only the words "Camp Ground" within the block above mentioned, and denies that any conveyances were made by reference to any map filed in the clerk's office of Cape May County by Ocean City Association, and avers that all of the conveyances made by said Ocean City Association were drawn in the office of said Ocean City Association, in Ocean City, New Jersey, in which office there was a map of the lands of said Ocean City Association, from which and by reference to which said conveyances were made.

This defendant, further answering says that after the plotting of the lands in section A, and after the

filing of the map as alleged in complainant's bill of complaint, the Ocean City Association purchased from the state of New Jersey the grant of riparian lands extending from the then high water mark of the Atlantic Ocean to the exterior line as established by the riparian commissioners, and that by virtue of such grant, the lands which have been made by accretion lying oceanward of the then high water mark of the Atlantic Ocean were vested in said Ocean City Association, and by its conveyance to this defendant are now vested in this defendant, free and unencumbered by any contractual rights existing or alleged to be existing between Ocean City Association and any other person, and free and clear of any alleged dedication whatsoever, and further answering says that on the 25th day of May, 1880, the high water mark of the Atlantic Ocean was along Atlantic Avenue and that the lands purchased by this defendant from the Ocean City Association, lie oceanward from Atlantic Avenue between Fifth and Sixth Streets, and are not and never were affected or touched by any contractual rights existing between Ocean City Association and any other person, and are not and never were affected by any contractual rights existing between Ocean City Association and any other person and this complainant.

This defendant further answering says that there has been no public dedication of the lands between Fifth and Sixth Streets, the Atlantic Ocean and Beach Thoroughfare; that all the streets over, upon and across said strip of land have been built at the expense of the owners of the title and all other street improvements such as curbing and flagging have been constructed at the cost and expense of the owners of said record title, and further says that the

tract of land between Fifth and Sixth Streets extending from Wesley Avenue to the Atlantic Ocean, excepting only the streets where built on a few lots actually built upon has remained and still does remain and at all times since prior to May 25th, 1880, has remained and still does remain in its natural state, consisting of sand and sand hills on which there is a growth during each summer of wild coarse beach grass which is allowed to grow and die with the change in the seasons, there being and never having been any attempt upon the part of the Ocean City Association, defendant, or any of the owners of the record title, or of Ocean City to level off or grade over this property, or in any manner convert it into a public park.

This defendant further answering says that complainant's bill of complaint is without equity in the premises as to the complaint, and prays the same benefit by way of answer as if defendant had specifically demurred thereto and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

GEORGE A. BOURGEOIS,
Solicitor of Atlantic Land Development Company.

ANSWER OF LEWIS M. CRESSE AND CECELIA H. CRESSE.

IN CHANCERY OF NEW JERSEY.

Between William Bridgewater, *Complainant,* and Ocean City Association, Lewis M. Cresse, Cecelia H. Cresse, *et als.*, *Defendants.*	On Bill, &c. Answer.

The joint and several answer of Lewis M. Cresse and Cecelia H. Cresse, two of the defendants in the above-entitled cause:

These defendants, in answer to so much and such parts of the bill of complaint filed herein as they are advised it is material for them to make answer unto, severally answering say:

1. Regarding the allegations contained in the first paragraph of the said bill of complaint relative to the ownership of the lands therein particularly described and which are therein alleged to belong to the said complainant, these defendants have no knowledge whatsoever, and leave the complainant to make proof thereof; these defendants have no knowledge from whom the said complainant purchased the

said lands, nor what representations were made by his grantor regarding the same, nor of any rights which he may claim to have acquired by reason of his purchase thereof, and leave the complainant to make such proof regarding the same as may be material to the issue in this cause.

2. These defendants further answering regarding the allegations in the second paragraph of the said bill of complaint, severally say that they are in no wise connected with the defendant, the Ocean City Association; that they have no knowledge whatsoever regarding the matters set forth in said second paragraph of said bill; that they were not present at the said alleged public sale of lots therein referred to, and never saw the advertisement which it is therein stated appeared in the Ocean City Journal, and at the time they purchased the lots of land now held and owned by them, they had no knowledge whatsoever of the alleged facts set forth in the second paragraph of the said bill of complaint; that they were not present at said sale and did not purchase the lands now owned by them at said sale, and that they had no knowledge regarding any statement alleged to have been made by one William B. Wood, on behalf of the said defendant, the Ocean City Association. That these defendants have no knowledge regarding the maps referred to in the said second paragraph of the said bill, excepting the map which was filed in the clerk's office of Cape May County, of which last named map these defendants admit that they had such constructive knowledge as is given by the filing of a map in the county clerk's office under such circumstances. These defendants expressly deny that the map alleged to have been filed in the

said county clerk's office by the said defendant, the Ocean City Association, shows anything whatsoever regarding the lots now held and owned by these defendants, but on the contrary aver the fact to be that said map shows all the lands of these defendants to be unplotted and not to be included within the limits of the lands marked on said map as "Camp Ground." And these defendants severally deny that by reason of the filing of the said map or by reason of any representations made by the defendant, the Ocean City Association, or by any one on its behalf, that either William Bridgewater, the complainant herein, or any other person or persons as grantees of the said Ocean City Association, became entitled to the reservation for use as a "Camp Ground" of the lands now held and owned by these defendants to the exclusion of private occupation and use; and on the contrary, these defendants aver that the lands now held and owned by them were in no wise embraced or included within the lands affected by said alleged map or maps and representations, and were never reserved or dedicated for the purpose of a "Camp Ground," or for any other public use or purpose whatsoever.

3. And these defendants further answering say that in so far as the alleged acts and representations of parties other than these defendants are referred to in the third paragraph of the said bill, these defendants have no knowledge thereof whatsoever, and aver that the alleged acts and representations therein set forth are of no binding force or effect so far as these defendants, or the lands now held and owned by them, are concerned. These defendants admit that on or about September 12th, 1905, by deed of

conveyance dated on that day, the said Ocean City Association did sell and convey to these defendants, by deed in due form, all that lot or piece of ground in Ocean City aforesaid, described as follows:

Beginning at a point in the northwesterly line of Pleasure Avenue, two hundred and twenty-three feet southwesterly from the southwesterly line of Fifth Street, containing in front or breadth southwesterly on said northwesterly line of Pleasure Avenue one hundred and fifty feet; and of that width extending in length or depth northwesterly between lines parallel with said Fifth Street to a line parallel with and three feet southeasterly of the high water mark of the southeasterly shore of Beach Thoroughfare; which said deed was duly recorded 19, 1905, in the clerk's office of Cape May County aforesaid, in Book No. 200 of Deeds, folio 3, etc., that on or about January 11th, 1906, the state of New Jersey, by its riparian commissioners, made a riparian grant to the Ocean City Association, for the riparian lands along the Beach Thoroughfare in front of the lands described in the foregoing deed, which said grant was duly recorded in the clerk's office of Cape May County aforesaid, in Book 203 of Deeds, page 178, etc.; that on or about February 7th, 1906, the Ocean City Association, by deed dated on that day, granted and conveyed to these defendants the riparian lands embraced within the above mentioned riparian grant, which said deed is of record in said county clerk's office of Cape May County aforesaid, in Book 200 of Deeds, page 438, etc.; that on or about February 5th, 1906, the Ocean City Association, by deed of conveyance dated on that day, granted and conveyed to these defendants a certain strip of land three feet wide along and easterly of the high water

line in front of the premises particularly above described, which said deed is of record in said county clerk's office of Cape May County aforesaid, in Book 203 of Deeds, page 163, etc., to all of which deeds and to said riparian grant, which are now in the possession of these defendants and ready to be produced and proved, or to the record thereof as aforesaid, these defendants, for greater certainty, beg leave to refer as a part hereof; that at the time of the sundry conveyances above referred to, made by the said Ocean City Association to these defendants, these defendants paid as a consideration therefor the full market value of the lands included therein, and title to said lands was taken by these defendants without any knowledge whatsoever of any claim of the complainant regarding the use of the said lands; these defendants deny that they, or either of them, connived or conspired with the said defendant, the Ocean City Association, or with any person or persons, to cause the said Ocean City Association to violate any obligation resting upon it regarding the use and occupancy of the premises granted and conveyed by said association to these defendants; that in the month of February, 1906, these defendants commenced the erection upon the lands above described of a boathouse, which is a large and substantial building erected upon piling, which has a length of more than fifty feet and a breadth of more than fifty feet, and was fully completed in the month of August, 1906, since which time it has been used and occupied by these defendants for the uses and purposes for which it was built; said boathouse is a large and substantial structure, and contains in addition to the rooms for the storage of boats and appliances, six rooms and bath, for the occupancy of

the defendants, and also suitable servants' quarters in addition thereto, and is occupied during a considerable portion of each year by the family of these defendants; that said boathouse was erected by these defendants at a cost of over $5,500.00, and while the same was in process of erection and up to the filing of the bill of complaint and the service of a subpoena in this cause, no notice was given to these defendants, nor either of them, of any claim on the part of the complainant, William Bridgewater, or of any other person or persons, that they claimed any rights in the said premises; but on the contrary, these defendants were allowed to proceed with the erection of said boathouse and to complete the same, and to occupy the same without molestation for a period of nearly four years, although the fact that the work was in progress was well known to the said complainant, William Bridgewater, who is a resident of Ocean City and lives within a short distance of said boathouse; that from the time of the erection of the said boathouse until the filing of the bill of complaint in this cause, and the service of a subpoena upon them, these defendants have remained in quiet and peaceable possession of the said lands and premises above described and the boathouse erected thereon, without any claim or demand whatsoever against them by the said complainant, William Bridgewater, or by any other person or persons claiming to have any interest in the said premises; that in the years 1908 and 1909, these defendants made further improvements upon the said premises, by bulkheading, filling, grading and beautifying the same, at a cost of these defendants of upwards of $2000.00.

All of which facts, matters and things these de-

fendants are willing to maintain and prove as this Honorable Court may direct, and therefore humbly pray that they may be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

J. Fithian Tatem,
Solicitor for Lewis M. Cresse and Cecelia H. Cresse.

ANSWER OF HENRY D. MOORE.

IN CHANCERY OF NEW JERSEY.

Between
William Bridgewater,
Complainant,
and
Ocean City Association,
Henry D. Moore, *et als.,*
Defendants.

On Bill, &c.

Answer.

Answer of Henry D. Moore, one of the defendants in the above-entitled cause.

This defendant, in answer to so much and such parts of the bill of complaint filed herein as he is advised it is material for him to make answer unto, answering says:

1. Regarding the allegations contained in the first

paragraph of the said bill of complaint, relative to the ownership of the lands therein particularly described, and which are therein alleged to belong to the said complainant, this defendant has no knowledge whatsoever, and leaves the complainant to make proof thereof; this defendant has no knowledge from whom the said complainant purchased the said lands, nor what representations were made by his grantor regarding the same, nor of any rights which he may claim to have acquired by reason of his purchase thereof, and leaves the complainant to make such proof regarding the same as may be material to the issue in this cause.

2. And this defendant, further answering, regarding the allegations contained in the second paragraph of the said bill of complaint, says that he is in no wise connected with the defendant, the Ocean City Association; that he has no knowledge whatsoever regarding the matters set forth in said second paragraph of said bill; that he was not present at the said alleged public sale of lots therein referred to and never saw the advertisement which it is therein stated appeared in the Ocean City Journal, and at the time he purchased the lots of land now held and owned by him, he had no knowledge whatsoever of the alleged facts set forth in the second paragraph of the said bill of complaint; that he was not present at said sale and did not purchase the lands now owned by him at said sale, and that he had no knowledge regarding any statement alleged to have been made by one William B. Wood on behalf of the said defendant, the Ocean City Association. And this defendant has no knowledge regarding the maps referred to in the said second paragraph of the said bill, excepting the map which was filed in the clerk's

office of Cape May County, of which last named map, this defendant admits that he had such constructive knowledge as is given by the filing of a map in the county clerk's office under such circumstances. This defendant expressly denies that the map alleged to have been filed in the said county clerk's office by the said defendant, the Ocean City Association, shows anything whatsoever regarding the lands now held and owned by this defendant, and on the contrary avers the fact to be that said map shows all the lands of this defendant to be unplotted and not to be included within the limits of the lands marked on said map as "Camp Ground." And this defendant denies that by reason of the filing of the said map or by reason of any representations made by the defendant, the Ocean City Association, or by any one on its behalf, that either William Bridgewater, the complainant herein, or any other person or persons as grantees of the said Ocean City Association, became entitled to the reservation for use as a "Camp Ground," of the lands now held and owned by this defendant to the exclusion of private occupation and use, but on the contrary, this defendant avers that the lands now held and owned by him were in no wise embraced or included within the lands affected by said alleged map or maps and representations, and were never reserved or dedicated for the purpose of a "Camp Ground" or for any other public use or purpose whatsoever.

3. And this defendant further answering says that in so far as the alleged acts and representations of parties other than this defendant are referred to in the third paragraph of the said bill, this defendant has no knowledge thereof whatsoever, and avers that the alleged acts and representations therein set forth

are of no binding force or effect so far as this defendant, or the lands now held and owned by him, are concerned. This defendant admits that on or about December 1st, 1897, by deed or conveyance dated on that day, the said Ocean City Association did sell and convey to this defendant, by deed in due form, all that lot or piece of ground in Ocean City aforesaid, in section "B," on plan of lots of the Ocean City Association.

Beginning at the intersection of the northwesterly line of Bay Avenue and the northeasterly line of Sixth Street; containing in front or breadth on said Bay Avenue seventy-seven feet, and of that width extending in length or depth northwesterly at right angles to said Bay Avenue and between lines parallel with and along the northeasterly line of said Sixth Street, three hundred and seventy feet, more or less, to a point within three feet of the line of ordinary high water mark on the Beach Thoroughfare; which said deed was duly recorded in the clerk's office of Cape May County, New Jersey, at Cape May Court House, in Book 137 of Deeds, pages 204, etc. And this defendant admits that afterwards, on or about the 29th day of September, 1908, on application made by said Ocean City Association, the state of New Jersey, by its riparian commissioners, granted unto the said Ocean City Association, its successors and assigns, forever, all that parcel of land flowed by tidewater, lying at Ocean City, in the county of Cape May and state of New Jersey, described as follows:

Beginning at a point in the high water line of the southeasterly shore of Beach Thoroughfare, where the same is intersected by the northeasterly line of Sixth Street; and from thence northwesterly in line with the northeasterly line of Sixth Street,

extended, one hundred and forty-eight and fifty-three hundredths feet to the exterior wharf line established by the commissioners appointed under the authority of the act entitled "An act to ascertain the rights of the state and riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this state," approved April 11th, A. D. 1864, and the supplements thereto; thence northeasterly along said exterior wharf line, as shown and located on the map hereto annexed, seventy-seven and eighty-five hundredths feet, more or less, to a point; thence southeasterly parallel with Sixth Street, extended, and seventy-seven feet northeasterly at right angles from the northeasterly line of the same, one hundred and forty-seven and one hundredth feet to the high water line of the southeasterly shore of Beach Thoroughfare; thence southwesterly along said high water line to the place of beginning; which said riparian grant was duly recorded in the clerk's office of Cape May County, New Jersey, at Cape May Court House, in Book No. 234 of Deeds, pages 380, etc. And this defendant admits that the said defendant, the Ocean City Association, on or about the tenth day of September, 1909, by deed of conveyance in due form, dated on that day, granted and conveyed unto this defendant all the lot or piece of ground therein described, situate, lying and being in Ocean City, on Peck's Beach, Upper Township, Cape May County, New Jersey, which said lot or piece of ground therein described is expressly stated to include all lands which the riparian commissioners of the state of New Jersey conveyed to the said Ocean City Association, by its riparian grant, dated September 29th, A. D. 1908, above referred to, together with a certain strip of land three feet wide along and easterly of the high water line in

front of the premises particularly above described, which said deed was duly recorded in the clerk's office of Cape May County aforesaid, at Cape May Court House, on the 18th day of September, A. D. 1909, in Book No. 244 of Deeds, pages 268, etc.; to all of which deeds and to said riparian grant, which are now in the possession of this defendant, and ready to be produced and proved, or to the record thereof as aforesaid, this defendant, for greater certainty, begs leave to refer to proof thereof.

At the time of the sundry conveyances above referred to, made by the said Ocean City Association to this defendant, this defendant paid as a consideration therefor, the full market value of the lands included therein, and title to said lands was taken by this defendant without any knowledge whatsoever of any claim of the complainant regarding the use of said lands; this defendant denies that he connived or conspired with the said defendant, the Ocean City Association, or with any other person or persons, to cause the said Ocean City Association to violate any obligation resting upon it regarding the use and occupancy of the premises granted and conveyed by said association to this defendant; that from time to time, this defendant has expended large sums of money upon the premises conveyed to him by the said Ocean City Association as aforesaid in filling, bulkheading, grading and otherwise improving the same, at great cost and expense to this defendant, and up to the filing of the bill of complaint and service of a subpoena in this cause no notice was given to this defendant of any claim on the part of the complainant, William Bridgewater, or of any other person or persons, that they claimed any rights in the said premises; but on the contrary, this defendant has been allowed to occupy, use, hold and

enjoy the same without molestation, for a period of upwards of twelve years, during all of which time, this defendant has remained in quiet and peaceable possession of the said lands and premises above described.

All of which facts, matters and things this defendant is willing to maintain and prove as this Honorable Court may direct, and therefore humbly prays that he may be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

J. Fithian Tatem,
Solicitor for Henry D. Moore.

REPLICATION.

IN CHANCERY OF NEW JERSEY.

Between
William E. Bridgewater,
Complainant,
and
Ocean City Association,
et als.,
Defendants.

On Bill, &c.

Replication.

The complainants join issue on the answers of the defendant, Ocean City Association.

Wilson and Carr,
Solicitors for Complainant.

Replications in the same form were filed to the answers of Mary J. Buchanan, Charles W. Masland, Lewis W. Cresse, Cecilia Cresse, Henry D. Moore, Ocean City Tabernacle Association and Atlantic Land Development Company.

ORDER OF REFERENCE.

IN CHANCERY OF NEW JERSEY.

Between
William E. Bridgewater,
Complainant,

and

Ocean City Association,
et als.,
Defendants.

ON BILL, &c.

ORDER OF REFERENCE

It is, on this 15th day of April, nineteen hundred and thirteen, on motion of Wilson and Carr, solicitors for the complainant, Ordered that the above-stated cause be referred to Hon. John H. Backes, one of the Vice-Chancellors, to hear the same for the Chancellor, and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER, *C.*

We consent to the making and entry of the above order.

BOURGEOIS & COULOMB,
Solicitors of James E. Lake, S. Wesley Lake, Ocean City Association, Ocean City Tabernacle Association, Atlantic Land Development Company and Centenary Fund and Preachers' Aid Society, Answering Defendants.

CYRUS D. MARTER,
Solicitor of Charles W. Masland, Answering Defendant.

BLEAKLY & STOCKWELL,
Solicitors of Ocean City Tabernacle Association, Answering Defendant.

JOHN BOYD AVIS,
Solicitor of Samuel H. Hann and Centenary Fund and Preachers' Aid Society, Answering Defendants.

CONCLUSIONS.

Decided, December 14, 1915.

IN CHANCERY OF NEW JERSEY.

Between
William E. Bridgewater,
Complainant,

and

Ocean City Association,
et als.,
Defendants.

William G. Carroll, *et als.,*
Complainants,

and

Ocean City Association,
et als.,
Defendants.

Henry Bradley,
Complainant,

and

Ocean City Association,
et als.,
Defendants.

CONCLUSIONS.

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1. A restriction upon the use of land fronting on navigable waters of this state extends over lands afterwards acquired by accretion.

2. A restriction upon the use of land lying on navigable waters of the state does not extend by estoppel over riparian lands afterwards acquired by the covenantor from the state.

3. An estoppel does not arise where the party sought to be estopped took the after-acquired title as a mere conduit of transfer.

4. The defence of a *bona fide* purchaser for a valuable consideration without notice, must be pleaded, though notice be not charged in the bill. In the absence of statutory regulations, the burden of proof is upon the pleader.

5. Payment, or its equivalent, of the whole purchase money, is essential to the defence of a *bona fide* purchaser. The execution of a bond and mortgage in payment, is not sufficient.

6. One who stands by and silently permits another to make large expenditures in improvements on land, under an honest belief that he is the rightful owner, must be held to have acquiesced and to be estopped from being heard to complain. The question is not so much what the party setting up the estoppel might or ought to have known or supposed, as what he actually did know and suppose to the knowledge of the other party.

7. Relief of an equitable nature will not be afforded a complainant unless he acts with diligence. One who supinely sleeps upon his rights will be charged with laches and barred.

On Final Hearing.

For the complainants: Messrs. Wilson & Carr; Apgar & Boswell.

For the defendants Ocean City Association and Atlantic Land Development Company: Messrs. Bourgeois & Coulomb.

For the defendants Lewis M. Cresse and wife and Henry D. Moore: Mr. J. Fithian Tatem.

For the defendant Charles M. Masland: Messrs. Marter & Rose.

For the defendants Centenary Fund and Preachers' Aid Society of the New Jersey Annual Conference of the Methodist Episcopal Church: Samuel H. Hann and Izetta Hann: Mr. John Boyd Avis.

For the defendants Mary J. Buchanan and Ocean City Tabernacle Association: Messrs. Bleakly & Stockwell.

Backes, V. C.

The fundamental rights upon which the complainants in these cases rest their claim to relief, are established by the judgment of the Court of Appeals in Lennig vs. Ocean City Association, 41 N. J. Eq. 606, and in Bridgewater vs. Ocean City Railroad, 62 N. J. Eq. 275, affirmed 63 N. J. Eq. 798. The Ocean City Association in 1880 launched a building scheme by subdividing a large tract of land located between the Atlantic Ocean and Great Egg Harbor Bay, Cape May County, which has since become Ocean City, into streets and building lots, and as an inducement to prospective purchasers of lots, declared orally and in literature exploiting the undertaking, that the

blocks between Fifth and Sixth Streets, from ocean to bay, were to be devoted to camp meeting purposes, and to be kept open forever. Plans of the subdivision were filed in the county clerk's office on which the space so allotted was not plotted into lots. See copy in Bridgewater vs. Ocean City Railroad, *supra.* Upon these premises the court of last resort held that the association had entered into an enforceable implied covenant with the lotholders that the blocks should be devoted to the uses indicated, and on this phase its deliveries are *res judicata* in the present controversies. Since then the association has sold and conveyed parcels in the reserved area, on two of which the purchasers have erected buildings; and its avowed intention is to sell to others for like purposes. The complainants are owners holding title immediately or mediately from the association, and seek to remove past, and restrain further, encroachments upon their rights under the covenant.

Of the new questions to be decided, the most conspicuous and important, in the material sense, is whether the covenant applies to land acquired by the association through accretion, by a recession of the ocean and alluvial deposits. When the covenant was made in 1880, the mean high water line of the ocean, in front of the reservation, was westerly of Atlantic Avenue, the reach of the tide being some three hundred feet. In 1901 the ocean had receded about a thousand feet, and in that year the association purchased the state's riparian right, which, in the grant, was described as 315 feet along Sixth Avenue extended to the exterior line established by the riparian commissioners. It is settled in this state that where land located on tidal waters is dedicated to public use, to afford a means of access to

the water, the public's easement extends to the water over lands acquired by reclamation or accretion. In Jersey City vs. Morris Canal Co., 12 N. J. Eq. 547, it was held that a dedicated street terminating at the waters of a navigable river is continued to the new water front obtained by filling in in front of the shore by the owner of the land over which a street was dedicated; and, in Newark Lime & Cement Co. vs. Mayor of Newark, 15 N. J. Eq. 64, it was laid down that the survey of a highway to a navigable river, carried the highway to the river wherever it is found, and that if the shore is extended by alluvial deposit, or by filling in by the proprietor, the public easement is, by operation of law, extended from its former terminus over the new made land, to the water. The Court of Appeals in Hoboken Land & Imp. Co. vs. Mayor of Hoboken, 36 N. J. L. 540, accepted the judgment in these cases as declaring the law correctly on this subject. Seabright vs. Allgor, 69 N. J. L. 641. Now, if the rule of construction or private grants, that a grant of land bounded on a stream which has gradually changed its course by alluvial formations, holds to the new boundaries including the accumulated soil is applicable to public rights acquired by dedication, as was the view of the United States Supreme Court in New Orleans vs. United States, 10 Peters, 662-717, it is an appropriate to an implied covenant having relatively the same legal scope.

It is not, however, a legal sequence to this applied rule of construction, that the covenant extends across the state's land subsequently acquired by the association. The U. S. Supreme Court, in Hoboken vs. Pa. R. R. Co., 124 U. S. 656, decided that a riparian proprietor in New Jersey has no power to create an easement for the public over lands below high water

mark, as against the state and those claiming under it; and if he attempts to do it, and then conveys to another person, all his right to reclaim the land under water fronting his property, his grantee may acquire from the state the title to such land, discharged of the supposed easement. This doctrine was adopted by our Supreme Court in Elizabeth vs. Central Railroad of New Jersey, 53 N. J. L. 491, and in Evans vs. New Auditorium Pier Co., 63 N. J. Eq. 674, this Court held the covenant of a grantee, binding himself, his heirs and assigns, restricting the use of his land lying on the ocean front, not to embrace adjoining riparian lands afterwards acquired by his assigns from the state. But, argue the complainants, the association has purchased the state's title and has made possible the performance of the covenant in its broadest sweep, and, therefore, it is estopped. This may be met by the answer that it does not appear in the case that the ocean's retreat so far has left any part of the state's lands dry, and that present conditions do not infringe the requirements of the covenant. I will not pause, because my opinion on the point is against the complainants' contention and has bearing upon the rights of defendants who own land on the bay side within the riparian rights hereafter to be alluded to. The proposition advanced by the complainants might have merit if the covenant has been that the association would, upon acquiring the state's title, appropriate it to the use indicated, or, if it had represented itself to be the owner; but that was neither the nature of the undertaking nor the situation, and I apprehend that the right to relief does not reside in estoppel. The full measure of the association's obligation in this connection, it seems to me, is to be discovered in a correct interpretation of its con-

tract. Now, when the covenant was made to keep open forever the strip of land from ocean to bay, the association owned only down to high water and was utterly impotent to bind beyond. This limit of its power, it must be assumed, was within the comprehension of the contracting parties, and hence that it was not within the contemplation of the bargain other than that the restriction should stop at the state's line. The self-established or mutually recognized boundary, manifestly marks the confine of the covenant. In a somewhat similar situation, the Court of Appeals in Camden vs. McAndrews & Forbes Co., 83 N. J. L. 260, adjudged that the making and use by a landowner of a sales map or plot of his land showing lots, blocks, and streets, and the conveyance of land by reference thereto, constitute a dedication to public use of the streets delineated thereon so far as the ownership extended at the time the map was made, but not of streets lying wholly outside the owned tract, though the land be subsequently acquired, unless there be some further act evidencing an intent to dedicate streets traversing such after-acquired property. The elements of an estoppel (3 Wash. Real Property, 6th Ed. 81), are totally absent and relief must be denied on this score. The covenant cannot be stretched beyond its fair intendment. Courts of Equity do not aid one man to restrict another in the uses to which he may lawfully put his property unless the right to such aid is clear. Fortesque vs. Carroll, 76 N. J. Eq. 583.

The association sold the accrued land, including the riparian title, in 1909, to the Atlantic Land and Development Company, by a description beginning on the easterly side of Atlantic Avenue and extending along Sixth Street extended oceanward, 1319 feet to the exterior line of the riparian grant, and the

next inquiry is whether the covenant is binding upon it. The development company does not set up the defense that it was a purchaser in good faith, without notice of the covenant. Chancellor Kent, in Murray vs. Ballou, 1 Johnson's Chan. Repts. 566, said, that if a party means to defend himself on the ground that he was a *bona fide* purchaser for a valuable consideration, without notice of a trust, he must deny the fact of notice and every circumstance from which it can be inferred. And, notice must be denied though not charged by the bill. Jones vs. Thomas, 3 P. Wms. 244, 24 Eng. reprint, 1047, n. Such a defense does not profess to go to the merits of the controversy tendered by the complainant, but only to the propriety of the remedy that the court is asked to enforce. It is new matter in bar of the jurisdiction of equity, and proceeds upon the notion that as no consideration can appeal more favorably to a court of equity than that of one who, in good faith, has paid for a title without notice of any encumbrances, a court of equity will not concern itself with a comparison of equities, but will content itself with a denial of its remedial assistance; Atlantic City vs. New Auditorium Pier Co., 67 N. J. Eq. 610. The burden is upon the defendant to establish the truth of the plea, unless it is shifted by the registry act. Hodge vs. Amerman, 40 N. J. Eq. 99. The failure to plead immunity from attack on this ground, therefore, leaves the case to be dealt with according to the equities of the parties.

Even if the defense had been interposed, it could not, in my judgment, have been sustained. The defendant had notice of the maps or plans of Ocean City filed by the association; its deed makes reference to them, and together with the physical evidences on the ground were, as Vice-Chancellor Grey

observed in Bridgewater vs. Ocean City Railroad, quite sufficient to put it on warning that those lands were devoted to some use calling for an open space. The uniform use of the side lines of Fifth and Sixth Streets for town lots and the leaving the squares between Fifth and Sixth Streets as open blocks, nearly in the centre of the city, was an indication that they were devoted to some special purpose. Slight inquiry by the defendants would have disclosed to them what their use was, if they were, in fact, at any time ignorant of it. The defendant was fairly notified, by all these circumstances, of the outstanding covenant, and was bound by it as was the original covenantor. The fact that lots were not plotted on either side of Fifth and Sixth Streets oceanward of Atlantic Avenue, is inconsequential. The absence of structures throughout the stretch between the two streets (with two exceptions), while the adjoining land was thickly built upon, was calculated to attract attention sufficient to put it on notice.

Furthermore, the defendant is not entitled to the standing of a *bona fide* purchaser for value, because the consideration price of $12,500 was not paid, but only secured by a purchase money mortgage. The association conveyed to the development company, by four several deeds, for $50,000 all of its land on the ocean side of Atlantic Avenue (one piece being the land in front of the reserve), and took in payment four mortgages of $12,500 each, approximately the value of the parcel mortgaged. Payment, or its equivalent, of the whole purchase money is essential to the defense of a *bona fide* purchaser. Notice before actual payment of the purchase money, although it be secured, is notice before the contract. Naughwout & Pomeroy vs. Murphy, 22 N. J. Eq. 531. Ac-

tual payment is, in general, necessary to the protection of a subsequent *bona fide* purchaser for value, and giving a security and executing a bond or other obligation for payment, is not sufficient. Losey vs. Simpson, 11 N. J. Eq. 246; Leonard vs. Leonia Heights Land Co., 81 N. J. Eq. 489; Kitteridge vs. Chapman, 36 Iowa, 348; Rush vs. Mitchell, 71 Iowa, 333; Baldwin vs. Sager, 70 Ill. 503.

The defendants, Moore, Masland, Cresse and Hahn, are owners respectively of lots on the bay side of the tract. Hahn's is entirely below mean high water line. The other three defendants own upland and the association to them of the upland run to within three feet of the high water mark of the bay, and at the time of the sales the association agreed to obtain for them, upon request, the title of the state upon their paying the price. The three foot strip along the edge was reserved by the association, so as to include in its conveyances of the riparian title community restrictions, part of the general scheme for the regulation of the conduct of Ocean City. Masland built a boathouse on his lot, a corner of which is on the upland. Cresse's dwelling house is wholly below high water. At the time these defendants bought from the association the lands on either side of Sixth Street produced west of Bay Avenue, were not plotted into lots, and for this reason they claim notice of the restriction is not to be imputed to them. It is almost impossible to believe that all four did not have actual notice. Repeated litigation alone made it notorious. They were all, more or less, intimately associated with the development, and interested in the affairs, of Ocean City before they purchased. Senator Cresse was instrumental in passing the act of March 30, 1904 (P. L. 1904, 366),

legislating methods for vacating the dedication of these lands for public use, proceedings under which were set aside by the Supreme Court in Ocean City Land Company vs. Ocean City and Ocean City Assn. 73 N. J. L. 493. But, aside from this, they were, as above found against the development company, charged with notice, by the immediate surroundings and by the maps of the building scheme on file in the clerk's office. Their title deeds are on printed forms of the association, in which reference is made to the maps. In the Masland deed especial attention is attracted to the maps by the obliteration in red ink of the reference. As to their fast land, the defendants, Moore, Masland and Cresse, will be held to an observance of the restriction. Their titles held under the state's grants, as above observed, are not included. If the doctrine of estoppel invoked by the complainants, has any place in this case, there is an additional reason for not applying it to the four defendants above named. It cannot be controverted that if they had taken their riparian grants direct from the state, their title under the state would be unassailable. Now, their agreement with the association at the time they bought their upland, was that upon the payment of the price by them of the state's title, the association would, on request, procure for them the grant. The intermediate title was to be taken by the association for a specific purpose. Under these circumstances, so far as the lands under water were concerned, the title was in the association as trustee, and was conveyed to it, and by it nearly as a conduit, upon which an estoppel cannot be built. 16 Cyc. 697, and cases in the foot note.

The defendant, Mary J. Buchanan, owns two lots on the corner of Ocean Avenue and Sixth Street, in the reserved area, upon which are erected a large

boarding house or hotel, and for its removal a mandatory injunction is sought. The lots were originally conveyed by the association to Charles Matthews, Jr., in 1896. He had notice of the restriction, for it appears that the conveyance was made to him in consideration of his services in obtaining releases of lot owners of their rights under this very covenant. Mrs. Buchanan became the owner in 1900, by a deed from the grantee of Matthews, for which he paid approximately $18,000.00. The boarding house was moved by Matthews to the lots in 1897, or thereabouts, and enlarged by Mrs. Buchanan some ten years later at an outlay of upwards of $3500.00. The complainant, Bridgewater (and it is not a remote surmise that the others did too), know of the erection and improvements as they were being made, and stood by and without the slightest protest, permitted these large expenditures to be made. He must be held to have acquiesced and to be barred from now being heard to complain. Trout vs. Lucas, 54 N. J. Eq. 361; Coater vs. Ely, 80 N. J. Eq. 40. In the absence of denial of acquiescence by the other complainants, they will also be regarded as estoppel. The complainants contend that the estoppel should not work against them, because the expenditures were not made in ignorance of their rights under the covenant. It cannot, with any hope of belief, be said that Mrs. Buchanan was not put upon inquiry. The maps and the unimproved condition of the strip, compared with the adjoining and improved land, were enough to charge her with this duty; but my understanding of the law is that a failure to discharge it will not, at all events, estop one from setting up acquiescence, for as Vice-Chancellor Pitney said in Sumner vs. Seaton, 47 N. J. Eq. 103, the question is not so much what the party setting up

the estoppel might or ought to have known or supposed, as what he actually did know, and suppose to the knowledge of the other party. It was not attempted to be proved that Mrs. Buchanan had actual notice of the covenant, or of its force and effect, and in view of the large purchase price of the property and the heavy expenditure of money in its improvement, the only reasonable inference is that she honestly believed, at the times she bought and built, the title to be good, and that she owned the property. More than this is not expected. Sumner vs. Seaton, *supra.*

As to Mrs. Buchanan, the complainants are guilty of laches. The first of these bills by Bridgewater was filed in 1910, and for thirteen years they supinely slept upon their rights. Equity demands diligence whenever its remedy is sought in cases of this kind, and where the right to enforce building restrictions is of a purely equitable nature, a court of equity will not enforce them by mandatory injunction, unless prompt application is made by the person entitled to enforce the restrictions. Trout vs. Lucas, *supra.*

Mr. Masland took title to his upland and erected his boathouse in 1900, to the then knowledge of the complainant Bridgewater. As to him, to compel removal the complainants are barred, both by acquiescence and laches.

The seven defendants, other than Hahn, whose interest in this litigation has just been disposed of, are parties to the three bills. Hahn and others are additional defendants in the Bradley and Carroll suits, and the complainants against them will now be considered.

Ocean City Tabernacle Association owns the fee in the block bounded by Wesley and Asbury Avenue

and Fifth and Sixth Streets, known as the "Camp Ground Square," on which stands an auditorium. Its answer is disingenously framed, and does not frankly set forth the capacity in which it holds the title, but with the aid of the brief of counsel it may fairly be inferred that the fee of the Ocean City Association was turned over in order that it might carry out the intention of the association to establish and maintain camp grounds and an auditorium. No threatened violation of the covenant is charged or proved, and counsel asserts that their client never intended and does not propose to lease the ground except for camp ground sites and camp ground purposes. This block, it is admitted all around, was dedicated to the special purpose for which it is now being used, and it is not pretended by either side to be involved in these disputes.

The defendant, Centenary Fund and Preachers' Aid Society, holds title to two lots in the reservation in trust for the estate of Ezra B. Lake, deceased, conveyed to it in payment of dividends due from the association to the estate. In its answers officially filed, the society denies the application of the restricted covenant of its lots and the right of the complainants to have it enforced; the implication being that it may use and sell them in defiance of the restriction. In answers subsequently filed by other counsel, the tune is changed. The society therein avers that the conveyances were made "subject to all of the dedications and restrictions expressed or implied theretofore created thereon by the Ocean City Association, and has never used or allowed them to be used for any other purpose 'excepting in accordance with the dedications and restrictions set out in the bill of complaint in this cause,'" and by cross-bill prays that "the said dedication may be

construed and that the rights of this defendant in the said premises so conveyed to it, as set out in said bill of complaint, as to the use and occupation thereof by this defendant, its grantees or lessees, may be determined by the order and decree of this Honorable Court." Neither set of answers is attested by the corporation in the manner required of corporate pleading. Dickinson's Chan. Prac., page 115. The submission to observe the letter and spirit of the dedication cannot be regarded as the concession of the society, and it must be treated as antagonistic to any restraint upon use or right of unencumbered alienation.

James E. Lake and S. Wesley Lake, original promoters of Ocean City, have lots in the forbidden district, which they insist they are at liberty to use for private purposes, unhampered by the covenant.

Other defendants, Ocean City Railroad Company, Scull and Marts Company, David A. Rucker and City Mill & Lumber Company, have not answered.

The final question relates to the form of the release. The attitude of the Ocean City Association throughout this litigation is one of deliberate intention to sell its remaining fee in the reserve area for private building. In its answer, it declares that the time has come when it is necessary for it to dispose of the land, and at the hearing there was no concealment of that purpose. It is too obvious for comment that the purchase by the development company was made for the same object. In one of its answers it says so. There is no way to adequately protect the complainants as against the association and the development company and their innocent grantees, except by the injunctive power of this Court, and therefore they, their successors and assigns, will be restrained from using the land in Ocean City between

Fifth and Sixth Streets and the Atlantic Ocean and Great Egg Harbor Bay, to the point of line of the riparian grants to the association, and from in any manner conveying the same or any interest therein, for any use or purpose whatsoever inconsistent with its use as a camp meeting ground or park.

The defendants, Moore, Cresse and Masland (as to their upland), Centenary Fund and Preachers' Aid Society, James E. Lake and S. Wesley Lake, having denied the covenant and still offering resistance to its enforcement, will be restrained in like manner.

The defendant Hahn and wife, by conveyance from the association, have title to premises purporting to be upland, which at the hearing proved, in fact, to be below high water line. As to them, the bill will be dismissed, but without prejudices to future action in case of threatened violations upon the upland, if any they have.

Mary J. Buchanan disavows any effort in the past or of intention in the future to further violate the covenant and the Ocean City Tabernacle Association also disaffirms the right, desire or intention to molest. As against them, the bill will be dismissed, but without prejudice in the event of infractions of the restriction hereafter.

The defendants who have not answered will be enjoined, if it is deemed necessary.

It is suggested that further protection may be afforded the complainants by filing in the clerk's office a notice of *lis pendens*.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between
Mary A. T. Riley, substituted in the place and stead of Henry Bradley,
Complainant,
and
Ocean City Association, *et als.,*
Defendants.

On Bill Etc.

Final Decree.

This cause coming on to be heard on bill, answer, replication and proof, in the presence of Wilson and Carr, of counsel with the complainant; Bourgeois and Coulomb, of counsel with the defendants Ocean City Association, Atlantic Land Development Company and James E. Lake and S. Wesley Lake; Marter and Rose, of counsel with the defendant Charles W. Masland; John Boyd Avis, of counsel with the defendants Centenary Fund and Preachers' Aid Society of the New Jersey Annual Conference of the Methodist Episcopal Church, Samuel H. Hahn and Izetta Hahn; and Bleakly and Stockwell, of counsel with the defendants, Mary J. Buchanan and Ocean City Tabernacle Association; whereupon and upon reading the pleadings and upon hearing and considering the proofs in the cause taken in open court and the arguments of counsel;

From all of which it appears that the lands and premises hereinafter referred to, situate in the city of Ocean City, county of Cape May, and state of New Jersey, and lying between Fifth and Sixth Streets, the Atlantic Ocean and Great Egg Harbor Bay are subject to a certain covenant made by the defendant the Ocean City Association, with its grantees, whereby the said lands were to be kept forever open to be used solely as a camp meeting ground or park as in the bill of complaint alleged, and that the complainant is entitled to the benefit of the said covenant, and that the said covenant is a restriction upon the use of the said premises in the nature of an easement to the extent aforesaid.

And it appearing from the proofs in the cause that the defendant, the Ocean City Association, has conveyed mediately or immediately certain lots or parcels of land within said restricted area to certain of the defendants, to wit, Charles W. Masland, Centenary Fund and Preachers' Aid Society of the New Jersey Annual Conference of the Methodist Episcopal Church, James E. Lake, S. Wesley Lake, and the Atlantic Land Development Company; and that these defendants deny the existence of the restriction aforesaid and are offering resistance to its enforcement, and threaten to use the said lands in a manner inconsistent with the use of the same as a park and camp meeting ground; and threaten to convey the said lands to *bona fide* purchasers innocent of said restriction, who might take a title freed from the burden of the same.

And it appearing that certain of the defendants named in the bill of complaint have not answered said bill, to wit, Ocean City Railroad Company, Scull and Marts Company City Mill and Lumber Company and David K. Tucker, and that decrees pro confesso have been entered against said defendants;

And it appearing that the aforesaid covenant bound all lands in Ocean City, county of Cape May, state of New Jersey, lying between Fifth and Sixth Streets and the high water lines of Great Egg Harbor Bay and the Atlantic Ocean and that the said covenant applies as well to all lands thereafter and hereafter to be acquired by accretion, by recession or by alluvial deposits, and that the lands since added by accretion, recession or alluvial deposits to the said original tract are now fully bound by the obligation of said covenant; but that the said covenant does not apply to lands below high tide and under the waters of the ocean or the bay, nor to such lands under water which heretofore have been, or hereafter may be lawfully conveyed by the state of New Jersey and the accretions thereof.

And it appearing that the defendants Samuel H. Hahn and Izetta, his wife, have title to premises purporting to be upland, but which at the hearing proved in fact to be below high water line, and that the said defendants have disavowed any effort in the past or intention in the future to violate the said dedication;

And it appearing that the defendants Mary J. Buchanan and Charles W. Masland are the owners of buildings erected upon the land so dedicated, which buildings violate the said covenant; but that the complainant is in laches in regard to any claim she might otherwise have had against the said Mary J. Buchanan and the said Charles W. Masland; and that the said Mary J. Buchanan disavows any effort in the past or intention in the future to further violate the said covenant.

And it appearing that the defendant the Ocean City Tabernacle Association has not in the past violated the covenant, and that the said defendant disavows any intention to so violate it in the future.

And it appearing that there is danger that the said defendants, the Ocean City Association, Charles W. Masland, Ocean City Railroad Company, Centenary Fund and Preachers' Aid Society, etc., the Atlantic Land Development Company, James E. Lake, S. Wesley Lake, Scull and Marts Company, City Mill and Lumber Company, and David K. Tucker, or some of them will violate said restriction or that they will convey the lots and premises owned by them within said tract to *bona fide* purchasers or others, who may take the said lots and premises in ignorance of the rights of the complainant therein, and that it is necessary to the full and adequate protection of the aforesaid covenant and of the individual rights involved in it that the said last named defendants be restrained and enjoined from any action inconsistent with the purposes of said covenant;

It Is, therefore, on this 24th day of May, one thousand nine hundred and sixteen, on motion of Wilson and Carr, of counsel with and solicitors for the complainant, Ordered, Adjudged and Decreed, and the Chancellor doth hereby Order, Adjudge and Decree.

1. That the defendants, the Ocean City Association, Charles W. Masland, the Centenary Fund and Preachers' Aid Association, etc., the Atlantic Land Development Company, James E. Lake, S. Wesley Lake, Ocean City Railroad Company, Scull and Marts Company, City Mill and Lumber Company, and David K. Tucker, and any and all heirs, successors, or assigns of the said defendants, all and singular, be and they are hereby, forever enjoined from using the whole, or any part of the lands and premises situate in the city of Ocean City, county of Cape May and state of New Jersey, lying and being between Fifth and Sixth Streets and the Atlantic Ocean and Great Egg Harbor Bay to the high water

mark on both the Atlantic Ocean and Great Egg Harbor Bay, including all land now or hereafter formed by accretion or recession (except where riparian grants of the state's lands under water have or hereafter may be made—in which case to the high water line as it existed at the dates of said riparian grants), for any purpose inconsistent with their use as a camp meeting ground or park or from conveying the same for any purpose inconsistent with such use, excepting, however, such part of the building of the defendant Charles W. Masland as stands at the present time within the restricted area.

2. And it is further Ordered, Adjudged and Decreed that as to the defendant Mary J. Buchanan, the bill of the complainant is dismissed without costs, but without prejudice in the event of any future infractions of said restriction.

3. And it is further Ordered, Adjudged and Decreed that should it become necessary to the full and adequate enforcement of the complainant's rights herein adjudged and decreed the complainant shall have the right to apply to this court at any time for such further and additional relief as may be found necessary.

4. And it is further Ordered, Adjudged and Decreed that the complainants be, and are hereby, allowed the costs of this suit to be taxed not including costs of trial, and that the said costs and counsel fee be collectable from the defendant the Ocean City Association.

E. R. Walker, *C.*

Respectfully advised.
John H. Backes,
V. C.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between
William G. Carroll, *et als.*,
Complainant,

and

Ocean City Association,
et als.,
Defendants.

On Bill, Etc.

Final Decree.

Final decree identical with that filed in the case of Bradley vs. Ocean City Association, *et als., supra,* pp. .

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between
William E. Bridgewater,
Complainant,

and

Ocean City Association,
et als.,
Defendants.

On Bill, Etc.

Final Decree.

This cause coming on to be heard on bill, answer, replication and proof, in the presence of Wilson and Carr, of counsel with the complainants; Bourgeois

and Coulomb, of counsel with the defendants, Ocean City Association and Atlantic Land Development Company; J. Fithian Tatem, of counsel with the defendants, Lewis M. Cresse and Cecilia H., his wife, and Henry D. Moore; Marter and Rose, of counsel with the defendant, Charles W. Masland, and Bleakly and Stockwell, of counsel with the defendant, Mary J. Buchanan; whereupon and upon reading the pleadings and upon hearing and considering the proofs in the cause taken in open court and the arguments of counsel;

From all of which it appears that the lands and premises hereinafter referred to, situate in the city of Ocean City, county of Cape May, and state of New Jersey, and lying between Fifth and Sixth Streets, the Atlantic Ocean and Great Egg Harbor Bay are subject to a certain covenant made by the defendant the Ocean City Association, with its grantees, whereby the said lands were to be kept forever open to be used solely as a camp meeting ground or park as in the bill of complaint alleged, and that the complainant is entitled to the benefit of the said covenant, and that the said covenant is a restriction upon the use of the said premises in the nature of an easement to the extent aforesaid.

And it further appearing that the aforesaid covenant bound all lands in Ocean City, county of Cape May, state of New Jersey, lying between Fifth and Sixth Streets and the high water lines of Great Egg Harbor Bay and the Atlantic Ocean, and that the said covenant applies as well to all lands thereafter and hereafter to be acquired by accretion, by recession or by alluvial deposits, and that the lands since added by accretion, recession or alluvial deposits to the said original tract are now fully bound by the obligation of said covenant; but that the said cove-

nant does not apply to lands below high tide and under the waters of the ocean or the bay, nor to such lands under water which heretofore have been, or hereafter may be lawfully conveyed by the state of New Jersey and the accretions thereof.

And it further appearing from the proofs in the cause that the defendant, the Ocean City Association, has conveyed mediately or immediately certain lots or parcels of land within said restricted area to certain of the defendants, to wit, Atlantic Land Development Company, Charles W. Masland, Lewis M. Cresse and Cecilia H., his wife, and Henry D. Moore; and that these defendants deny the existence of the restriction aforesaid and are offering resistance to its enforcement, and threaten to use the said lands in a manner inconsistent with the use of the same as a park and camp meeting ground; and threaten to convey the said lands to *bona fide* purchasers, innocent of said restriction, who might take a title freed from the burden of the same.

And it appearing that the defendant Lewis M. Cresse, since the filing of proofs in this cause, and before the entry of this decree, has deceased, leaving him surviving his wife, the defendant Cecilia H. Cresse, and it appearing that the said defendants held title to their property as tenants by the entirety; and that the said Cecilia H. Cresse succeeded, upon the death of the said Lewis M. Cresse, to all the rights and obligations of the said Lewis M. Cresse in said property;

And it appearing that the defendants Mary J. Buchanan and Charles W. Masland are the owners of buildings erected upon the land so dedicated, which buildings violate the said covenant; but that the complainant is in laches in regard to any claim he might otherwise have had against the said Mary J. Buchanan and the said Charles W. Masland; and

that the said Mary J. Buchanan disavows any effort in the past or intention in the future to further violate the said covenant.

And it appearing that there is danger that the said defendants, the Ocean City Association, Charles W. Masland, Cecilia H. Cresse, Henry D. Moore, and the Atlantic Land Development Company, or some of them will violate said restriction or that they will convey the lots and premises owned by them within said tract to *bona fide* purchasers or others, who may take the said lots and premises in ignorance of the rights of the complainant therein, and that it is necessary to the full and adequate protection of the aforesaid covenant and of the individual rights involved in it that the said last named defendants be restrained and enjoined from any action inconsistent with the purposes of said covenant.

It Is, therefore, on this 24th day of May, one thousand nine hundred and sixteen, on motion of Wilson and Carr, of counsel with and solicitors for the complainant, Ordered, Adjudged and Decreed, and the Chancellor doth hereby Order, Adjudge and Decree:

1. That the defendants, the Ocean City Association, Charles W. Masland, Cecilia H. Cresse, Henry D. Moore, and the Atlantic Land Development Company, and any and all heirs, successors, or assigns of the said defendants, all and singular, be and they are hereby, forever, enjoined from using the whole, or any part of the lands and premises situate in the city of Ocean City, county of Cape May and state of New Jersey, lying and being between Fifth and Sixth Streets and the Atlantic Ocean and Great Egg Harbor Bay to the high water mark on both the Atlantic Ocean and Great Egg Harbor Bay, including all land now or hereafter formed by accretion or re-

cession (except where riparian grants of the state's lands under water have or hereafter may be made —in which case to the high water line as it existed at the dates of the said riparian grants), for any purpose inconsistent with their use as a camp meeting ground or park; or from conveying the same for any purpose inconsistent with such use, excepting, however, such part of the building of the defendant Charles W. Masland as stands at the present time within the restricted area.

2. And it is further Ordered, Adjudged and Decreed that as to the defendant Mary J. Buchanan, the bill of the complainant is dismissed without costs, but without prejudice in the event of any future infractions of said restriction.

3. And it is further Ordered, Adjudged and Decreed that should it become necessary to the full and adequate enforcement of the complainants' rights herein adjudged and decreed, the complainant shall have the right to apply to this court at any time for such further and additional relief as may be found necessary.

4. And it is further Ordered, Adjudged and Decreed that the complainant be, and is hereby, allowed the costs of this suit to be taxed and a counsel fee of $500.00 to be included with, and collectable as part of said costs, and that the said costs and counsel fee be collectable from the defendant the Ocean City Association.

E. R. Walker, *C.*

Respectfully advised,
John H. Backes,
V. C.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM H. BRIDGEWATER,
Complainant,
and
OCEAN CITY ASSOCIATION, *et als.*,
Defendants.

ON BILL, &C.
TESTIMONY.

Testimony taken in the above-entitled cause, at the Camden County Court House on Friday, the ninth day of May, 1913, at ten o'clock A. M.

Before HON. JOHN H. BACKES, Vice-Chancellor.

APPEARANCES:

WILSON & CARR, ESQS., by MR. CARR, and ANDREW G. BOSWELL, ESQ., solicitors for the complainant;

BLEAKLY & STOCKWELL, ESQS., by MR. BLEAKLY; BOURGEOIS & COULOMB, ESQS., by MR. BOURGEOIS; J. FITHIAN TATEM, ESQ., and CYRUS D. MARTER, ESQ., solicitors for the several defendants.

Mr. Carr: We offer in evidence a certified copy of a map of section A, Ocean City, Cape May County, dated May 22, 1880, and recorded June 9, 1880.

Mr. Bleakly: That is objected to; we are not bound by it.

The Court: You do not object on the ground that it is not a true copy of the map filed in the clerk's office?

Mr. Bleakly: Not at all.

The Court: It will be admitted.

(Said map is marked "Exhibit C1.")

Mr. Carr: We offer a map of sections A, B and C, Ocean City, Cape May County, William Lake, surveyor, and filed April 17, 1883, in the office of the clerk of Cape May County.

Mr. Bleakly: We make the same objection, and an additional ——

The Court: You admit that this is a copy of the map on file in the office of the county clerk?

Mr Bleakly: Yes, sir.

Mr. Bourgeois: The further objection is, that they have not proved this map, comes from the Ocean City Association; they must prove that it was authorized to be filed by the Ocean City Association. The Ocean City Association never authorized the filing of any map having this cross.

The Court: It is admitted.

(Said map is marked "Exhibit C2.")

Mr. Carr: I offer in evidence certified copy of a deed from the Ocean City Association to Charles Matthews, dated November 27, 1896.

Mr. Bourgeois: That is objected to as irrelevant.

The Court: It is admitted.

(Said deed is marked "Exhibit C3.")

Mr. Carr: I offer in evidence a copy of a deed from Charles Matthews to Walter S. Ritter, dated February 24, 1900, and recorded in Book 149 of Deeds, page 277.

(Said deed is marked "Exhibit C4.")

The Court: It is in the Buchanan title?

Mr. Carr: Yes, sir.

The Court: And the preceding deed is in the Buchanan title?

Mr. Carr: Yes, sir. I offer in evidence a certified copy of a deed from Walter S. Ritter to Mary J. Buchanan, dated September 18, 1900, and recorded in Book 151 of Deeds, page 405.

Mr. Bourgeois: The same objection.

The Court: It is admitted.

(Copy of deed marked "Exhibit C5.")

Mr. Carr: I offer in evidence a certified copy of deed, Ocean City Association to Alfred K. Scholl, dated June 24, 1897, and recorded in Book 134 of Deeds, page 307.

Mr. Bourgeois: That is objected to; it is irrelevant, so far as the Atlantic Development Land Company is concerned.

The Court: The objection is overruled.

(Said copy of deed is marked "Exhibit C6.")

Mr. Carr: I offer in evidence a certified copy of a deed from Alfred K. Scholl and Lucy G., his wife, to Mary J. Lake, wife of S. Wesley Lake, dated June 10, 1898, and recorded in Book 139, page 310.

Mr. Bourgeois: The same objection.

The Court: Objection overruled.

(Said certified copy of deed is marked "Exhibit C7.")

Mr. Carr: I offer in evidence a certified copy of deed from the Ocean City Association to Atlantic Land Development Company, dated March 16, 1909, and recorded in Book 243 of Deeds, page 40.

(Said certified copy of deed is marked "Exhibit C8.")

Mr. Carr: I offer in evidence a certified copy of a certificate of incorporation of the Ocean City Association, filed in the office of the secretary of state of New Jersey, on February 25, 1880.

(Said certified copy of certificate of incorporation is marked "Exhibit C9.")

Mr. Carr: I offer in evidence certified copy of statement of officers, filed by the Ocean City Association with the secretary of state on October 26, 1880, and also of statement dated February 7, 1883, filed by the Ocean City Association with the secretary of state, on February 9, 1883, giving a list of persons elected directors at the annual meeting held October 3, 1882.

(Said certified copy is marked "Exhibit C10.")

Mr. Carr: We offer in evidence certified copy of a deed, dated January 20, 1885, from the Ocean City Association to William Bridgewater, for the lots numbers 675, 676 and 677 in section D, on the plan of lots of the Ocean City Association, and recorded in the office of the clerk of Cape May County in Book 70 of Deeds, at page 251.

Mr. Bourgeois: That is objected to as not being within the issue.

The Court: It is admitted.

(Said certified copy of deed is marked "Exhibit C11.")

Mr. Carr: I offer in evidence a certified copy of deed, dated April 17, 1896, from George L. Horn to William Bridgewater, conveying lot number 21 in section B, on the plan of lots of the Ocean City Association, also lots 410, 411, 412, 413 and 414, section F, and also lot 622 in section F, on the plan of lots of the Ocean City Association, and recorded in Book 125 of Deeds, page 107.

(Said certified copy of deed is marked "Exhibit C12.")

Mr. Carr: I offer in evidence a certified copy of a deed dated May 9, 1894, from Edwin C. Freeman to William Bridgewater, conveying lots numbers 684 and 685 in section F on plan of lots of the Ocean City Association, and lot 665, section F, and lot 672, section F, and lot 731, the same section, and lot 787, section F, and lots 606 and 607, section F, and lot 653, section G, and lot 749, section F, and lot 546, section F.

(Said certified copy of deed is marked "Exhibit C13.")

Mr. Bourgeois: I want to enter an objection, and that is, that the lots that Mr. Carr has now put before the Court are not located in this section at all. This map of "A, B and C" is not in section F, but three or four miles away.

The Court: I will admit it.

WILLIAM BRIDGEWATER, the above-named complainant, being sworn in his own behalf, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Bridgewater, are you the complainant in this suit?

A. I believe I am, sir.

Q. Where do you live, Mr. Bridgewater?

A. In Ocean City.

Q. How old are you?

A. 82 years old my next birthday.

Q. How long have you lived at Ocean City?

A. 20 years.

Q. When did you first know Ocean City?

A. In 1880.

Q. In 1880?

A. In 1880 I went there first.

Q. Did you come down there on the occasion of the first public sale of lots?

A. I did, sir.

Q. How did you come to go down there?

A. Because the Ocean City Association sent me a paper called "The Ocean City Journal of 1880," advertising lots for sale, and asking me to come to the sale.

Q. I show you a paper, bearing date "Ocean City Journal, Volume 1, Number 1, Ocean City, May, 1880"?

A. That is it.

Q. And I ask you whether it was a paper like that that you received?

A. Yes, sir, a paper that looked like that.

Q. Containing the advertisement of sale to be made on May 26th?

A. Yes.

Q. Did you attend that sale?

A. I did, sir.

Mr. Carr: I offer the paper in evidence.

Mr. Bourgeois: That is objected to as not relevant.

Mr. Tatem: We object to it as having no bearing on the lands of our client.

The Court: The objection is overruled.

(Said paper is marked "Exhibit C14.")

Q. Was that sale largely attended or was it not?

A. Yes, sir.

Q. Was it conducted as a public auction sale?

A. Yes, sir.

Q. Do you remember what officers of the association, the Ocean City Association, were there at the time of the sale?

A. William D. Wood was there; he was the president; and William Borrell, vice-president, and James E. Lake, Wesley Lake and Ezra B. Lake,—he was an association officer.

Q. What office did he hold?

A. It was secretary, I believe.

Q. Do you remember whether Mr. Matthews was there?

A. I remember Mr. Matthews was there.

Q. What was his job?

A. He acted as solicitor for them; and Charlie Matthews was there,—he was a heavy stockholder.

Q. Did you know the Reverend W. E. Boyle?
A. Yes.
Q. Was he there?
A. Yes, sir.
Q. And the Reverend Samuel Barnes?
A. I knew him—he was there.
Q. And G. L. Horn?
A. Mr. Horn was there.
Q. James E. Lake you mentioned?
A. Yes, sir, but I don't know whether he was there or not.
Q. Were there a matter of hundreds of people at that sale?
A. Yes, sir.
Q. Was a regular auctioneer there?
A. Yes, sir.
Q. Do you know whether or not there was distributed any maps to prospective purchasers?
A. Yes, sir.
Q. Lithograph copies of maps?
A. Yes, sir.
Q. Did you get a copy of such a map?
A. I did, sir.
Q. I show you a lithographed copy of a map, of section of Ocean City, marked "Section A of Ocean City, Cape May County, New Jersey," and I ask you whether you identify that as one of the maps distributed at the sale?
A. Yes, sir, with those trees in the center.
Q. With the trees in the center?
A. Yes, sir.

Mr. Carr: I offer the map in evidence.

(Marked "Exhibit C15.")

Mr. Bourgeois: That is objected to as irrelevant for the Atlantic Land Development Company.

(It is agreed, that whenever Mr. Bourgeois offers an objection, counsel for the other parties desire an objection to be made for those parties.)

Q. To what extent were the lithographed copies of the map distributed among the prospective purchasers at the sale?

Mr. Bourgeois: That is objected to.

(Question withdrawn.)

Q. Have you any idea how many of those maps were handed out at the time of the sale?

A. No, sir, I can't tell; there were a good many handed out.

Q. Were they handed out generally to the crowd?

A. Yes, sir.

Q. Did you see them handed out and into the hands of purchasers?

A. Yes, sir.

Q. Did you hear any announcement made?

A. Yes, sir.

Q. What public announcement was made during the sale, and by whom was it made?

Mr. Bourgeois: That is objected to on behalf of the Ocean City Association and the Atlantic Land Development Association, as incompetent, irrelevant and immaterial.

(Question withdrawn.)

Q. Was any public announcement made during the course of the sale?

A. Yes, sir.

Q. Who made the announcement?

A. William B. Wood, president of the association.

Q. What announcement did he make?

Mr. Bourgeois: That is objected to, on the ground that William B. Wood cannot bind the association, except within the scope of his authority.

Q. Was the announcement made during the progress of the sale?

A. Yes, sir.

Q. Won't you just tell the Court what happened?

Mr. Bourgeois: We object to any oral statement.

The Court: The objection is overruled.

A. William B. Wood made an announcement that the camp ground was to be open from bay to ocean forever, and that all lots on the front of the camp ground ought to bring double the money of anywhere else.

Mr. Bourgeois: I ask that the answer be struck out as irrelevant and incompetent.

The Court: I will refuse to strike it out at this time. You may make your motion later, if it is not connected.

Q. Won't you state where Mr. Wood was when he made that announcement, and the circumstances under which it was made?

Mr. Bourgeois: That is objected to.

(Question withdrawn.)

Q. When you say just how it was that Mr. Wood came to make this statement, state it by what you saw him do or heard him say.

A. He got on a chair and he stated that the lots ought to bring a great deal more on that side of the camp ground, because of its being an open space, and you would have light and recreation.

Mr. Bourgeois: I ask that the answer be struck out.

Q. When, with reference to the sale, was it made?

A. In May.

Q. Was it made before the sale, during the sale, or after the sale?

A. During the sale, when he found the lots was not bringing quite enough money, he made that announcement, and he got on a chair.

Mr. Bourgeois: I ask that that be struck out. It presumes what was in his mind.

The Court: I will strike it out, as far as that part is concerned.

Q. Did Mr. Wood make any statement with regard to what the lots ought to bring?

A. Yes, sir.

Q. What did he say?

A. He said it ought to bring double the prices they were fetching; of course, I considered they brought a good price.

Mr. Bourgeois: I ask that that be struck out.

The Court: Strike the latter part of the answer out.

Q. Was any objection made by any of the officers of the Ocean City Association, or by the auctioneer, to the statement made by Mr. Wood?

A. No, sir.

Q. Were the officers and directors of the association within hearing distance when the statement was made?

A. Yes, sir.

Q. Where were they?

A. They stood around the table.

Q. Were they close enough to Mr. Wood to hear him?

A. Yes, sir.

Q. Were you present at the next sale of the lots?

A. I was, sir.

Q. When did that take place?

A. Sometime in June.

Q, June, 1880?

A. Yes, sir.

Q. Who conducted that sale?

A. Who was the auctioneer?

Q. Yes.

A. Young Scorson.

Q. Was the Rev. Mr. Wood there?

A. Yes, sir.

Q. Were the other officers and directors of the company you have mentioned, there?

A. Several of them were there.

Q. What announcement, if any, was made by Mr. Wood, with reference to the space between Fifth and Sixth Streets?

A. The same announcement was made at that sale as was made at the first sale.

Mr. Bourgeois: That is objected to, and I move to strike it out.

The Court: You may make your motion after a while.

Q. Did Mr. Wood state between what points, bounded by Fifth and Sixth Streets, that the land was to be open?

Mr. Bourgeois: That is objected to as leading.

The Court: Objection sustained.

Q. Did Mr. Wood make any statement whatever with regard to the boundaries of the land that you say was always to be kept open?

A. Yes, sir, he made this announcement, that it was to be kept open from bay to ocean, forever.

Mr. Bourgeois: I move to strike that out.

Q. And between what other boundaries?

A. Between Fifth and Sixth Streets, 500 feet square.

Q. When he was talking, was any reference made to the lithographed copies of maps that were in the hands of bidders?

A. Yes, sir.

Q. Will you say whether or not he indicated in any way, upon the map, the portion he was speaking about?

Mr. Bourgeois: That is objected to; it is leading.

The Court: Objection sustained.

Q. What did he say with reference to the map, if he said anything with reference to the map?

A. He said the maps represented what it was going to be forever, and all maps was to be made with reference to them maps; all maps was to be drawn up on the deeds, that is, with reference to them.

Mr. Bourgeois: That is objected to,—the latter part.

The Court: The latter part will be stricken out.

Q. At the second sale, which was held sometime in June, 1880?

A. Yes, sir.

Q. Was that largely attended?

A. Yes.

Q. Were any maps handed out at that sale?

A. Very few.

Q. Were you a bidder upon any of those lots?

A. Yes, sir, I bought several times.

Q. At both sales?

A. At both sales, but I didn't buy at the time when ——

Q. You didn't buy at the sales?

A. No, sir, I bought after the sales.

Q. Were there any bidders who did buy at the sale, whose bids were accepted; were there any bids accepted at the sale?

Mr. Bourgeois: That is objected to.

The Court: Objection overruled.

A. Yes, sir.

Q. Were you a member of the Ocean City Association?

A. I was, sir.

Q. Were you a stockholder in the association?
A. Yes, sir.
Q. Did you attend the stockholders' meetings?
A. Yes, sir.
Q. I show you a booklet printed on the outside cover, "Ocean City Annual, First Annnual Report of the President of the Ocean City Association," and I ask you whether you ever had that or a similar report in your possession?
A. Yes, sir, I had a similar one to that,—not that one.
Q. Where did you get it?
A. I got it from the annual meeting.
Q. Of the association?
A. Yes, sir.
Q. Stockholders' meeting?
A. Stockholders' meeting.

Mr. Carr: I offer it in evidence.

Mr. Bourgeois: It is objected to as irrelevant and immaterial to this case, and not binding on the defendant.

The Court: It is admitted.

(Said annual report is marked "Exhibit C16.")

Q. Now, I show you a paper, a pamphlet printed on the outside cover, "Ocean City Annual, Containing the Second Annual Report of the President of the Ocean City Association," "published by order of the Association, 1882," and I ask you whether you ever had that or a similar book in your possession?
A. I believe I had that.
Q. How did you get it?
A. At the annual meeting of the association.

By the Court:

Q. The annual meeting of the stockholders of the association?
A. Yes, sir.
Q. From whom did you get it, from the officers?
A. That was all we got for a dividend. They spent all the money.

Mr. Bourgeois: The same objection, if it is offered.

Mr. Carr: We offer it in evidence.

The Court: The objection is overruled.

(Said report is marked "Exhibit C17.")

Q. I show you a paper, marked "Ocean City Journal," dated "Ocean City, July, 1880, Volume 1, Number 2," and purporting to be published by the Ocean City Association, and I ask you whether you ever received that paper, or one like it?
A. I received one like it.
Q. How did you receive that?
A. By mail.
Q. From what source?
A. From the association.

Mr. Carr: I offer that in evidence.

Mr. Bourgeois: It is objected to as irrelevant and immaterial as against the Atlantic Land Development Company and the Ocean City Association, and is not pertinent to the issues in this case.

New Jersey State Library

By the Court:

Q. Who was this published by?
A. A man by the name of Boyd.
Q. But under whose authority?
A. It was the association's, I suppose.

The Court: The objection is overruled.

(Said paper is marked "Exhibit C18.")

Q. Now, did you afterwards become the purchaser of any lots from the Ocean City Association, either directly or indirectly?

A. I had a good many lots directly from the association.

Q. And where were those lots, within general points, I mean?

A. I had two on Central Avenue, between Third and Fourth Streets.

Mr. Bourgeois: That is objected to, if he don't own them now.

The Witness: No, I don't own them now.

Mr. Bourgeois: They cannot be material in this suit, and I move to strike out the answer.

The Court: The objection is overruled.

Q. Did you purchase a number of lots from time to time, of the Ocean City Association?

Mr. Bourgeois: I object to that as leading.

The Court: Objection overruled.

A. Yes, sir.

Q. What were the circumstances attending the purchase of lots by you, and were your purchases affected in any way by the representations you heard made, and the representations appearing upon these maps, with reference to these lands between Fifth and Sixth Streets?

Mr. Bourgeois: That is objected to as leading; it is a double question.

The Court: The objection is sustained.

Q. What effect, if any, had the representations made by Mr. Wood, that the tract would always be kept open from bay to ocean, between Fifth and Sixth Streets and the maps which were distributed at the time of the sale, and the filed maps shown here, what effect, if any, did that have upon your purchasing?

Mr. Bleakly: That is objected to as leading, and as asking for a conclusion. It is putting statements into the mouth of the witness with reference to these maps, that he can state himself.

The Court: Objection sustained.

Q. What effect, if any, was produced upon you by the statement of Mr. Wood that the lands between Fifth and Sixth Street and from bay to ocean, would always be kept open?

Mr. Bourgeois: That is objected to, unless it is connected with Mr. Wood.

A. It had the effect of raising the price of lots.

Mr Bleakly: That is objected to as not responsive.

Q. Did you buy any lots with reference to the plan of lots of the Ocean City Association?

A. Yes, sir.

Q. Now, when buying those lots, what influence, if any, did the representation that the space between Fifth and Sixth Streets from bay to ocean would always be kept open have upon you?

A. It had a tendency to increase the value of those lots, and I had to pay more for them.

Mr. Bleakly: I move to strike out the answer as not responsive.

Mr. Bourgeois: And that is not the proper way to prove it.

The Court: Strike it out.

(The stenographer repeats the question, as follows: Now, when buying those lots, what influence, if any, did the representation that the space between Fifth and Sixth Streets from bay to ocean would always be kept open have upon you?)

Mr. Bleakly: That is objected to as leading.

The Court: I think you had better frame your question.

Q. Did you buy lots according to the plan, from the plan of the Ocean City Association?

A. Yes, sir.

Q. When you brought them, had there been made these representations that you have spoken about?

A. Yes, sir.

Q. Did that influence you in any way—the representations that were made?

A. Yes, sir.

Q. How?

A. It influenced me, that I had to pay more for them.

Mr. Bourgeois: That is objected to. That is a conclusion, and it is not a proper method of proving that evidence.

The Court: The objection is overruled.

Q. Mr. Bridgewater, will you please point out on the map, "Exhibit C2," the location of lot 21 in section B, owned by you; is this it? (Indicating.)

A. It is on Bay Avenue.

Q. Between Second and Third?

A. Between Second and Third, that's it.

(Counsel marks the lot indicated, with a cross.)

Q. Where I marked with this lead pencil a cross?

A. Yes, sir.

Q. Are you also the owner of land at 110th and Asbury?

A. Yes, sir.

Q. Can't you point out where that is on the map "Exhibit C2"?

Mr. Bourgeois: That is objected to as not within the issue.

The Court: Objection overruled.

A. Next to the corner.
Q. Are they between Ninth and Tenth?
A. Yes, sir.
Q. Can you show here on the map just where they are?
A. No, I don't know that I can.
Q. Are they not 474 and 475?
A. No, sir, 454 and five; the deed, you got it there.
Q. It's between Ninth and Tenth on Asbury Avenue?
A. Yes, sir.
Q. On the west side?
A. Yes, sir, there is a house on one and a vacant lot on the other.
Q. There were various deeds and certified copies of deeds offered in evidence, showing conveyances of lots to you; are you still the owner of all those lots?
A. Yes, sir.
Q. Do you remember any house being built along Wesley Avenue between Fifth and Sixth?
A. On the camp ground?
Q. Yes.
A. Yes, sir.
Q. Are all the houses there now that were built?
A. No, sir.
Q. How many were built on Wesley Avenue?
A. I believe there were three built.
Q. There were three built?
A. Yes, sir.
Q. How long ago was that?
A. Ten or twelve years ago.
Q. Were there any built on Ocean Avenue?
A. Yes, sir.

Q. Do you know where the Buchanan cottage is?
A. Yes, sir.
Q. Where is the Buchanan cottage?
A. On Sixth and Ocean Avenue, on the corner.
Q. It faces towards the ocean?
A. Yes, sir, it faces towards the ocean.
Q. Is that still there?
A. That is still there.
Q. What happened to these other two cottages?
A. They were moved away when I had the suit before.
Q. What suit?
A. When I had the same suit on the camp grounds, years ago.
Q. Was that the suit of Bridgewater against the Ocean City Railroad?
A. Yes, and against the association at the same time.
Q. You mean after the decision of Bridgewater against the association, these cottages were moved?
A. Yes, sir.
Q. The Buchanan property is still there?
A. Yes, sir.
Q. Now, Mr. Bridgewater, isn't it a fact that two of the houses were on Ocean Avenue and one on Wesley Avenue?

Mr. Tatem: That is objected to as absolutely leading.

A. No, they were on Wesley Avenue, two of them, and one on Ocean Avenue.
Q. What is your best recollection as to the number of houses that were put on this camp ground?
A. Three of them.
Q. Two have been shown on the map?
A. No.

Q. Two of those houses have been taken away?
A. And one is there now.
Q. Do you remember the suit of Bridgewater against Ocean City Railroad?
A. Yes, sir.
Q. You were the plaintiff in that suit, were you?
A. Yes, sir.

Mr. Carr: I want to offer in evidence the original files in the case of Lennig vs. The Ocean City Association, and also Bridgewater vs. The Ocean City Railroad,—the files of the Court of Chancery in these causes, for such purpose as may be relevant. They are part of the allegations of the bill that such suits were brought, and they are challenged.

Mr. Bourgeois: They are objected to as to the Atlantic Land Development Company, as it was not a party in that suit, and it is not relevant as to it.

Mr. Tatem: The same objection.

Mr. Bleakly: On Mrs. Buchanan's part, I object to it.

Mr. Carr: These are not offered as being res adjudicata; they are offered to show the several steps in the history of this transaction. We allege in our bill a course of dealing to get rid of this dedication.

The Court: I will admit it.

(Said files are marked "Exhibits C19 and C20," respectively.)

(Counsel for the defendants admit that on the

23rd day of March, 1900, a suit in ejectment was instituted in the New Jersey Supreme Court, wherein Ocean City was plaintiff and the Ocean City Association was defendant, and that a summons and declaration were filed therein, and a plea filed on behalf of the Ocean City Association; the land described in the declaration being at Fifth and Wesley Avenue, 50 feet front by 105 feet in depth, and another lot at the corner of Fifth and Ocean Avenue, of the same size, and order for service.

Also that a suit was instituted in the New Jersey Supreme Court by Ocean City against Mary J. Lake, by summons tested the 23rd day of March, 1900, and that a summons and declaration were filed, and a plea of not guilty filed therein, and that the lands described in the declaration were lands beginning in the northwest line of Ocean Avenue, 250 feet southwest from the southwest line of Fifth Street, 50 feet front and 135 feet in depth.)

Mr. Bleakly: We admit these suits were brought, but object to their relevancy or pertinency to this case.

Mr. Carr: We offer the papers in evidence.

(Said papers are marked "Exhibits C21 and C22," respectively.)

Mr. Carr: I am informed that the third suit was Ocean City vs. Ritter. May I ask that upon verification, we may make that offer, subject to the same objection?

(A recess was here taken until 2 o'clock.)

AFTER RECESS.

WILLIAM BRIDGEWATER resumes the witness stand.

Direct examination (continued).

By Mr. Carr:

Q. I show you a paper, printed on the outside cover, "Ocean City Annual, Containing the Fourth and Fifth Annual Reports of the President of The Ocean City Association, published by order of the Association, 1885," and I ask whether or not you ever had this book, or a book like it?

A. I had that book.

Q. How did you get that book?

A. I got that from the association at the annual meeting of stockholders.

Mr. Carr: I offer the book in evidence.

Mr. Bourgeois: We make the same objection; it is incompetent and irrelevant as against the Atlantic Land Development Company.

(Said book is marked "Exhibit C23.")

Mr. Bleakly: None of the defendants are bound by any statement contained in that book.

Q. At the annual meetings were the officers named in these annual reports, present at the meetings?

Mr. Bourgeois: That is objected to; the best evidence is the minutes.

The Court: Objection overruled.

A. Yes, sir.
Q. Do you know who those officers were that were present at the meetings?

Mr. Bourgeois: The same objection.

The Court: Objection overruled.

A. Ezra B. Lake, William B. Wood, George B. Langley and Mr. Borrell.
Q. Suppose you refer to the list and say, if you can, which of the officers were present at the annual meetings of the stockholders.

Mr. Bourgeois: We object to his refreshing his memory from some memorandum not made by himself.

The Court: The objection is sustained.

Q. Do you know whether the Rev. William B. Wood was present at the meeting at which these reports were distributed?

Mr. Bourgeois: That is objected to.

The Court: Objection overruled.

Q. Was the Rev. William B. Wood present at these meetings?
A. Yes, sir.
Q. Was Rev. W. H. Borrell present?
A. Yes, sir.
Q. And the Rev. Wesley S. Lake, was he present?
A. Yes, sir.

Q. Was G. E. Palen present?

A. Yes, sir.

Q. Do you know what offices those gentlemen held?

A. Mr. Wood was president, Mr. Borrell vice-president and S. Wesley Lake, I don't know hardly what his office was exactly, but Ezra Lake was superintendent.

Q. And Mr. Palen?

A. He was treasurer.

By the Court:

Q. Did any of these men, these officers, hand you this book, or a book like it?

A. Yes, and they were given out every annual meeting.

Q. By whom?

A. By these association members.

Q. Who?

A. William Wood and the others.

Q. By the officers of the association?

A. Yes, sir, I had them to 1889.

By Mr. Carr:

Q. Was that done at the annual meetings?

A. Yes, sir.

Q. Is this same S. Wesley Lake still connected with the association?

A. Yes, sir.

Q. Do you know what office he holds?

A. President.

Q. Whom do you say was the superintendent of the association?

A. Ezra B. Lake.

Q. Who was the surveyor, the engineer?

A. William Lake.

Cross-examination.

By Mr. Bleakly:

Q. Mr. Bridgewater, where do you live?
A. Ocean City.
Q. What part of Ocean City?
A. Fifth and Asbury.
Q. How long have you lived there?
A. For about twenty years, not quite twenty, but on the eve of twenty.
Q. At this one house?
A. In the one house, yes, sir.
Q. Didn't you live in another part of Ocean City?
A. Yes, sir.
Q. When did you live there?
A. I lived there about two years.
Q. Where was that?
A. Eleventh and Asbury Avenue.
Q. Didn't you live near Second or Third Streets?
A. No, sir, I did not.
Q. Have you been engaged in business in Ocean City in the last twenty years?
A. Yes, sir.
Q. What business?
A. Real estate.
Q. And that took you all over the town?
A. Well, sometimes.
Q. Now, you said you saw this Buchanan Hotel or boarding house, being built, at Sixth and Ocean, I think?
A. Well, now, I didn't see it built; how could I see it built when it wasn't built there?
Q. It was moved there?
A. Yes, sir.
Q. Well, do you know that it was moved there?
A. I know it was moved there.

Q. Did you see it?

A. Yes, sir.

Q. You saw it being moved?

A. Yes, sir.

Q. Do you know where it came from?

A. Well, about a couple of squares away from there.

Q. Do you know about how long they were moving it; was it a week or ten days, or two weeks?

A. I don't know nothing about it.

Q. Do you know whether it was longer than a day?

A. I don't know.

Q. It's quite a large house, isn't it?

A. It's a large house now.

Q. About five or six years ago, it was enlarged?

A. Some years ago I know it was enlarged.

Q. After it was moved there, and had been there five or six years, Mrs. Buchanan enlarged it?

A. It wasn't there that long before they enlarged it.

Q. Well, three or four years?

A. I don't know exactly.

Q. It was there for some years?

A. Yes.

Q. And then she enlarged it, building a wing to it?

A. Yes, sir.

Q. It was a three or four-story hotel or boarding house before she enlarged it?

A. No, I don't think so; it was a small place.

Q. It was three stories, wasn't it?

A. It may be, but I doubt that.

Q. It was a boarding house of 30 or 40 rooms before she enlarged it?

A. No, sir.

Q. Well, 20 or 30?

A. No, sir.

Q. Do you know how many rooms there were?

A. No, sir.

Q. Do you know the extent of the addition that was put on?

A. No, sir, I never was in that.

Q. From seeing it on the outside?

A. I saw there was some improvement made on the outside.

Q. And that ran all the way from the third to the first story, didn't it?

A. Something about like that.

Q. Would you say whether that doubled the capacity of the house or not?

A. I can't say.

Q. Would you say whether it added materially to the size of the house?

Mr. Carr: That is objected to as not cross-examination.

The Court: The objection is overruled.

Q. Would you say, Mr. Bridgewater, whether that added materially to the size of the house?

A. Of course, it did.

Q. I think you said there was a house built on Wesley Avenue?

A. Well, between Wesley and Ocean, two of them.

Q. They are not there now?

A. No.

Q. The Buchanan house is the only one of them that is there now?

A. Yes, sir.

Q. You filed your bill in the Court of Chancery against the Ocean City Railroad in 1890, or about that time, did you not?

A. I believe so.

Q. Well, Mrs. Buchanan at that time hadn't built any house at all, had she, on this property, or moved it there?

A. I can't say.

Q. That is some 23 years ago, isn't it; you wouldn't say she moved this house on this plot of ground at Sixth and Ocean, prior to this time?

A. No, I didn't.

Q. Now, was this Cresse boat house or dwelling house or summer residence, erected on the bay front in 1890?

A. No.

Q. When was it erected?

A. I don't know exactly.

Q. About when?

A. I couldn't say exactly; I didn't keep the date.

Q. How do you know it was put there at all?

A. I know it is there.

Q. When did you first find out it was there?

A. Some four or five years ago.

Q. When did you first ascertain that Mr. Masland's boat house was there?

A. I couldn't answer that question exactly; I don't go much that way.

Q. A long time?

A. It has been there a good while.

Q. You are sure of that?

A. Sure it is, yes.

Q. You can't give us any idea when this Cresse house was built, can you, whether in the summer time or winter time?

A. No, sir, I am not posted on that.

Q. Are you posted as to when the Buchanan boarding house was moved?

A. No, sir.

By the Court:

Q. About how long was that?
A. I guess eleven or twelve years ago.

By Mr. Bleakly:

Q. Can you remember whether that was moved in the summer time, or spring, or fall, or winter?
A. It was moved in the spring, I believe.
Q. Now, you said you attended some meeting of the association; was that back in 1880?
A. Yes, sir.
Q. What ones did you attend, the annual meetings?
A. I attended every one of them: 1880, 1881, 1882, up to 1889. Fifteen years, up to 1915.
Q. You mean 1895?
A. I was in that association 15 years.
Q. How can you recollect who was present at every one of those meetings?
A. No, sir, I can't exactly, it is too many years for me to do that at the age I am.
Q. What members or directors or officers were present at the annual meeting in 1895?

Mr. Carr: Objected to; he has not testified to 1895.

The Court: The objection is overruled.

A. I was present at the meeting.

(The stenographer repeats the question.)

A. Well, William Borrell was there and William Wood; the meetings was pretty near all alike.

Q. Can you remember particularly what officers were present at the annual meeting in 1885?

A. Not exactly.

Q. Can you remember particularly what officers were present at the annual meeting in 1884?

A. William B. Wood, Wesley Lake, and all them was there, I told you.

Q. What aid have you got for your memory, to say that at the annual meeting in 1884 these particular men were present?

A. Well, I have had plenty of reason to know they were there.

Q. Are you testifying from what you know of your general knowledge, that at most of these meetings some of the officers were present; is that what you mean to say?

A. Yes, sir.

Q. You don't know who gave out these alleged annual reports, do you, at some of these meetings?

A. Those annual reports was given out by Ezra B. Lake, the superintendent.

Q. Do you know when he died?

A. No.

Q. Now, you remember these two gentlemen being present at the 1884 meeting?

A. There was more than two.

Q. I mean, that you remember?

A. Yes, sir.

Q. Do you remember anyone else present at that particular meeting?

A. Yes.

Q. Who?

A. I have told you.

Q. Kindly tell me again.

A. I told you William B. Wood was there, and Mr. Borrell was there, the president and vice-president.

Q. Do you recall anybody else being present, that is, by name?

A. Mr. Palen was there.

Q. Anybody else?

A. Yes, there was others there.

Q. Do you know who was present at the annual meeting in 1882, what officers?

A. The same officers were there then.

Q. That you have mentioned?

A. William B. Wood was there and gave out those annual reports and diagrams.

Q. Did he give them out in 1882 or 1883?

A. Both.

Q. In 1884, too?

A. Yes, him and Ezra B. Lake.

Q. Were you present in 1885 at the annual meeting?

A. I was there in 1885.

Q. What officers were present that you recall, can you name any of the officers that were present, of your own knowledge, at that meeting?

Mr. Carr: I object to that; it has been asked and answered.

The Court: Objection sustained.

Mr. Carr: Have you got the third annual report of 1883? We gave notice to produce it.

(The said annual report is produced by counsel for defendants.)

Mr. Carr: I offer in evidence the third annual report of the Ocean City Association, produced by the Ocean City Association.

By Mr. Carr:

Q. I ask you whether you received a report like that at the stockholders' meeting? (Witness shown report.)

A. Yes, sir.

Mr. Bourgeois: I object to it, unless they indicate the pages of it.

Mr. Bleakly: I make the same objection as before.

The Court: The objection is overruled.

(Said report is marked "Exhibit C24.")

By the Court:

Q. Who conducted the sale of these lots in the month of May, 1880?

A. I am not positive that I know the man's name.

Q. I don't mean the auctioneer, but who was carrying on the sale, who was selling the lots at the time.

A. William B. Wood made the speeches.

Q. All the speeches?

A. Yes, sir.

Q. And they had an auctioneer to sell the lots?

A. Yes, sir.

Q. Did they put them up singly?

A. Yes, sir.

Q. When, with reference to the time that the auctioneer put up these lots for sale, did Mr. Wood make the statement you have already stated?

A. When they had sold about nine or ten lots, and it came to the lots on the west side of the camp

ground, and he jumped up on the stair and said, "Gentlemen, these lots ought to bring a great deal more money ——"

Q. Were there any lots put up after that by the auctioneer?

A. Yes, sir.

Q. Was anybody giving the auctioneer directions how to sell the lots?

A. William B. Wood was giving the directions.

Q. Who conducted the sale in June, the second sale?

A. The second sale was conducted by young Scorson.

Q. An auctioneer?

A. Yes, sir.

Q. Who gave him instructions in the selling of the lots?

A. William B. Wood.

Q. And Mr. Wood at that time was president of the association?

A. Mr. Wood was president of the association, yes.

Robert Fisher, sworn on behalf of the complainant, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Fisher, where do you live?

A. Ocean City.

Q. Do you hold any official position there?

A. Yes, sir.

Q. What?

A. Commissioner of public works.

Q. How long have you lived at Ocean City?

A. 33 years.

Q. You were Mayor at one time?

A. Yes, sir.

Q. Were you at one time connected with the Ocean City Association?

A. Yes, sir.

Q. You worked for them?

A. Yes, sir.

Q. What sort of a job did you have?

A. A variety of employment at different times; first of all, I was assistant to the engineer who was running the lines for the streets; subsequently, I became their bookkeeper and local secretary of the office of the association.

Q. How long were you in the office in the capacities you have mentioned?

A. Four years or thereabouts, possibly a little more.

Q. When did you first come to the association?

A. On the 22nd of February, 1880.

Q. Were you present when the first public sale of lots was had?

A. I was.

Q. That was in May, 1880?

A. Yes, sir.

Q. Do you remember Mr. Wood being there at the sale?

A. Yes, sir.

Q. What was his connection with the association?

A. At that time he was president of the Ocean City Association.

Q. Were there other officers of the association present at that time?

A. Yes, sir.

Q. Were they practically all there?

A. I couldn't say at this time; I haven't such a distinct recollection of it as to individualize all of them.

Q. Do you know the names of any of them?

A. William B. Wood, Rev. Ezra Lake and Simon Lake, the father of the Lake boys, were there,—he was the secretary of the association at that time.

Q. Is it your recollection that there was or was not a number of the directors and officers there?

A. Yes, sir, I daresay it would be true that all the directors were there.

Q. Is that a conclusion from your remembrance or recollection?

A. Yes, sir.

Q. Was the sale or not widely attended?

A. It was very fairly attended.

Q. Do you know whether it had been previously advertised?

A. Yes, sir.

Q. How?

A. It had been advertised in various ways, by posters and newspaper notices.

Q. I show you "Exhibit C14," Ocean City Journal, of May, 1880, and I ask you whether you recognize that as being one of the advertisements of the first sale?

A. Yes, sir.

By the Court:

Q. Who issued that paper?

A. It was issued under the auspices of the Ocean City Association.

Q. How do you know?

A. Because I happened to be in close connection

with them; I was not in the office at the time, but I was privy to many of the things at that time.

By Mr. Carr:

Q. Do you know whether or not there were any lithographed maps distributed at the sale?

A. There were.

Q. General or otherwise?

A. I reckon, from recollection, that anyone got them—that anyone could have one that asked for it; I don't know that. They were handed out indiscriminately.

Q. Can you recognize one of such maps?

A. Yes, sir.

Q. "C15," do you recognize that?

A. Very well, indeed.

Q. What is that?

A. That is such a map as was used at the early sale.

Q. Do you know under whose authority they were prepared?

A. No.

Q. Do you know under whose authority they were distributed?

A. They were to be had in the superintendent's office.

Q. Of the association?

A. Yes, sir.

Q. Were they generally distributed from the office of the superintendent of the association?

A. I should say generally.

Q. Do you know whether that corresponds with the plotting of the lines which you assisted the engineer in running?

A. Yes, that is the formation, and no changes have been made in it.

Q. Who was the engineer?
A. William Lake.
Q. Did he prepare the first map?
A. Yes, sir.
Q. Have you any knowledge of the preparation of the first map?
A. No, not as to any participation in it.
Q. In any way?
A. No, I just merely remember it as a fact.
Q. Did you see the map before it was filed?
A. I don't believe I did.
Q. Did you see any of the maps of the association before they were filed with the county clerk?
A. I believe I have, but my memory is not sufficiently clear to testify to it; I couldn't individualize in one special case.
Q. There has been offered in evidence certified copies of two maps, the originals of each filed in the clerk's office at Cape May; I ask you whether, by reference, you can identify either of those two maps?

Mr. Bourgeois: That is objected to; the witness has already said he could not.

The Court: Objection overruled.

A. I can.
Q. Do you identify them?
A. Yes, sir, this one.
Q. And this one is what?
A. Sections A, B and C.
Q. Is that the 1880 map?
A. That is the original map of that section.
Q. Did you actually participate in the work of making up that map?
A. No, not that, I participated in the work of running the lines.

Q. But the lines you ran, did they coincide with the lines of this map here?

A. These maps are the results of the lines that were run.

Q. Does that answer apply to the larger map of 1883?

Mr. Bleakly: That is objected to.

The Court: Objection sustained.

Q. Do you identify in any way the 1883 map?

A. Only as I know it as representing the sections that are included within this map, and as being the current map in Ocean City of the sections included in it.

Q. In connection with your work for the association, did you or not, have reference to a map like the 1883 map, or a map corresponding with it?

A. Yes, sir, either one of them, as far as the location of lots in the territory therein described is concerned.

Q. Did you make use of such a map in connection with your duties for the Ocean City Association; I refer to the 1883 map?

A. Yes, sir.

Q. Do you know whether or not the lots were sold with reference to the 1883 map?

A. Yes, sir, I know that lots have been sold by it, but——

Q. I mean, what was the custom?

A. To sell by the maps.

Q. The custom of the association itself?

A. Yes, sir, and all their successors since.

Q. To sell by those two maps?

A. By its maps——

Mr. Bourgeois: That is objected to.

Q. Were you present at the second sale of lots?
A. Yes, sir.
Q. When did that occur?
A. In June, 1880.
Q. Was that a public sale of lots?
A. It was.
Q. Were any statements made at the first sale by Mr. Wood, with reference to the area between Fifth and Sixth Streets, the bay and the ocean?

Mr. Bourgeois: That is objected to.

The Court: Objection overruled.

A. There were.
Q. What statements were made?
A. That is objected to, unless it is shown that authority was had to make the statement.
Q. What were the circumstances of the making of these statements?
A. The only statement pertinent to the case, I presume that was——

Mr. Bourgeois: That is objected to.

Q. Was there or not, a sale in progress?
A. There was a sale in progress in May, 1880.
Q. Now, at any time during the progress of that sale, was any statement made by Mr. Wood?
A. Yes, sir.
Q. At what time in the progress of the sale?
A. After the middle of the day, about two or three o'clock in the afternoon, about two o'clock in the afternoon, as I recollect it; they were in the

neighborhood of the camp meeting grounds, and the statement was made that this territory, indicating the camp meeting grounds——

Mr. Bourgeois: That is objected to; he is relating the circumstances, not the statement.

A. The statement was, that the camp meeting ground, from bay to ocean, was to remain open.

Q. Between what streets?

A. The camp meeting grounds only extend between Fifth and Sixth.

Q. How long was it to be kept open?

A. Eternally.

Mr. Bleakly: I move to strike out the answer.

The Court: The motion is overruled.

Q. Were you present at the second sale of lots?

A. Yes, sir.

Q. Who was there, in the way of officers or directors of the company?

A. The president was there, President Wood, and the Rev. Ezra B. Lake, those were the only two I can swear positively were there.

Q. Do you know whether there were any members there, whose names you cannot recall now?

A. No.

Q. Were any statements made then by Mr. Wood, in reference to the sale of lots?

A. I have no recollection of it.

Q. After the statement made by Mr. Wood at the first sale, were there any sales of lots made that day?

A. I couldn't swear to that.

Q. Do you know whether the sales continued in progress?

A. Yes, sir, but I have no recollection of the results.

Q. For how long?

A. Until four or five o'clock in the afternoon.

By the Court:

Q. Who was the auctioneer?

A. Davidson Harvey.

Q. Who gave directions to the auctioneer?

A. I couldn't divide the authority, the president and the superintendent were together.

Q. Giving the directions?

A. Yes, sir.

By Mr. Carr:

Q. In your employment in the office of the association, do you know whether statements were made, from time to time, by those in charge of the office, with reference to that place that you have mentioned, between the bay and the ocean, on Fifth and Sixth Streets?

Mr. Bourgeois: That is objected to; statements to whom?

The Court: The objection is overruled.

A. It was freely admitted, if that is the——

Mr. Bourgeois: I move to strike that out.

The Court: The motion is granted.

(Stenographer repeats the question.)

A. I do.
Q. Who made such statements?
A. The superintendent.
Q. Who had charge of the sale of lots there?
A. He had.
Q. To whom did he make these statments?
A. Prospective customers, purchasers.
Q. Was he a member of the board of directors of the association?
A. He was.
Q. What statements did he make?

Mr. Bleakly: That is objected to as not pertinent to this case.

Mr. Bourgeois: It is objected to on the ground that it does not appear that the man who made them had authority to make them.

The Court: The objection is overruled.

Q. What statements did he make to prospective purchasers with reference to the ground I have already spoken of?

Mr. Bourgeois: That is objected to.

The Court: Objection overruled.

A. The same as was spoken by the president on the day of the sale, that the property was to remain open from bay to ocean forever, from Fifth to Sixth Streets.

Mr. Bourgeois: I ask that the first part of the answer be stricken out; it is irrelevant, and is his conclusion. I object to it.

The Court: The objection is overruled.

Q. Did some of these prospective purchasers buy after the statement was made by the superintendent?
A. That I couldn't swear to.
Q. You were not in charge of that end of it?
A. No.

By the Court:

Q. Do you know they were would-be buyers, seeking to buy?
A. They were.
Q. These parties to whom these statements were made?
A. Yes, sir.
Q. Do you know whether the Ocean City Association had a special form of deed or not?
A. I do.
Q. Are you familiar with the form of deed used by the Ocean City Association?
A. I am.
Q. I show you a deed dated the 11th day of June, 188, Ocean City Association to Matilda C. Barnes, and I ask you whether that is the printed form of deed used by the association?

Mr. Bourgeois: The objection is that he is not qualified to speak,—not being there.

The Court: Objection overruled.

A. That is the form of deed used by the Ocean City Association.
Q. Do you know whether that was the form used in 1882 and 1883?

Mr. Bourgeois: We will admit that the printed part of the deed is the form of deed of the Ocean City Association.

Mr. Carr: I offer the deed in evidence only as to the form.

(Said deed is marked "Exhibit C25.")

Cross-examination.

By Mr. Bleakly:

Q. Witness is shown what purports to be a lithograph map of Ocean City Association, "C15;" did I understand you to say that the sales were made from this map while you were connected with the office or in the office of the association?

A. My answer was, that it was the map from which the sales were made in May or June of 1880, as I recollect it.

Q. Is this the form of map that the association had in its offices when you were there connected with the office?

A. These maps were there, and subsequently, this second edition.

Q. This 1880 map?

A. Yes, sir.

Q. How long were you in the office there?

A. Four years or thereabouts, possibly a month or two more, or a month or two less.

Q. When you say that sales were made by a certain map, you mean that the sales were made the same as this form of deed you testified to, "Exhibit C25," by following the reference, do you not, "Plan of lots of said Ocean City Association"?

A. Yes, sir, and the description, the number and section.

Q. That is the form invariably used in making sales by the Ocean City Association, "Plan of lots of the Ocean City Association"?

A. Only that it did not always obtain; there was——

Q. I am speaking of these particular words in reference to the plan?

A. Yes, sir.

Q. They were the words used in reference to the plan?

A. Yes, sir.

Q. Did the association have in its office a plan?

A. Yes, sir.

ISAAC B. SMITH, sworn for the complainant, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Smith, where do you live?

A. I am living in Elizabethtown, Pennsylvania.

Q. How old are you?

A. 83 years old.

Q. Do you remember going to Ocean City in 1880?

A. I went there in 1879.

Q. Were you down there when they held the first public sale of lots?

A. I was, sir.

Q. That was held in May, 1880, was it not?

A. I don't know exactly the date, but it was held——

Q. But sometime about that time?

A. Yes, sir.

Q. Do you know whether or not that sale was largely attended?

A. Well, it was reasonable, for the first sale, and a new place just started.

Q. Was it an auction sale?

A. It was a regular auction sale.

Q. Do you know whether there was any of the officers of the Ocean City Association there?

A. Yes, sir.

Q. Who?

A. Mr. Wood and Mr. Borrell was there, and Mr. Matthews was there and Mr. Wood was there, the regular board was there.

Q. Did you hear Mr. Wood make any announcement with regard to the sale?

A. Mr. Wood got up and spoke in the usual way in opening a sale, and entered a remark, and told them the conditions and such things as that, and what they were buying, and what they were selling, rather.

Q. What, if anything, did he say about the space between Fifth and Sixth Streets and between the bay and the ocean?

Mr. Bourgeois: That is objected to.

The Court: The objection is overruled.

A. He said there was no property for sale there; that that was to be kept open for the benefit of the camp grounds of the association.

Q. Did he make any mention of the time it was to be kept open?

Mr. Bourgeois: That is objected to as leading.

The Court: Objection sustained.

Q. State as fully as you can, what Mr. Wood said about the space we have just been talking about.

Mr. Bourgeois: That is objected to; it is not pertinent in this case. As to what the exact remarks were and the space, we claim that is limited. Mr. Carr puts in the mouth of this witness the space, as he understands it.

The Court: The objection is overruled.

Mr. Bourgeois: I move to strike out the testimony of the complainant, Mr. Bridgewater, in response to the questions that your Honor asked the witness; and we move to strike out the statements made by the witnesses Bridgewater and Fisher, that during the course of this sale, Mr. Wood remarked that the land between the ocean and the bay and Fifth and Sixth Streets were to remain open, or whatever his language may have been.

The Court: I will overrule the motion.

Mr. Bleakly: We make the same motion as to this last witness.

The Court: I make the same ruling.

(The stenographer repeats the question, as follows: State as fully as you can, what Mr. Wood said about the space we have just been talking about.)

Mr. Bourgeois: That is objected to.

The Court: The objection is overruled.

A. In regards to what he said when he got up on the floor for the sale?

Q. Yes.

A. He said, "There has been no property for sale, but in Fifth and Sixth here, bay to ocean, that will be kept open," and I had as good a chance to know about that as anybody; I had to bid——

Mr. Bourgeois: I move that that be struck out.

Q. Were you a bidder at that sale?

A. No, sir, I had already—they were building the hotel at the time of the first sale, building the hotel.

Q. Do you know whether the sale continued after the statement made by Mr. Wood?

A. Yes, sir, it went on as usual, and there was many bidders; whether there was bona fide sales or not, I don't know.

Q. Do you know whether any officer of the association made any objection to the statement made by Mr. Wood?

A. I didn't hear any.

Q. Do you know whether or not the statement made by Mr. Wood at the sale was in any way publicly challenged by the association?

A. That I couldn't say.

Q. Did you hear it challenged?

A. That is, cried off to different ones?

Q. No; what I mean is, did you hear any officer of the Ocean City Association say that Mr. Wood's statement was incorrect, or was not binding upon the company?

Mr. Bourgeois: That is objected to as incompetent and irrelevant, as the officers would be acting in their individual capacity, and would not be called upon to disclaim, and the association would not be bound, unless they executed a deed.

The Court: The objection is overruled.

A. Nothing of the kind.

Q. Did you hear the auctioneer make any statement with regard to the space we have been talking about?

A. Well, he made his usual talks as an auctioneer does when he gets up; what he has got to sell, and that is about the interest.

Q. Did the auctioneer make any statement at all in regard to the space between the bay and the ocean and Fifth and Sixth Streets?

A. I can't say he repeated any more than the usual way of auctioneers, getting on the stand and telling them what he has got and the conditions, and the conditions were repeated to all of us.

Mr. Bourgeois: I move to strike that out.

The Court: The motion is overruled.

Q. Do you know whether or not there were any lithograph maps distributed at the sale held in May, 1880?

A. I do not.

Q. Did you attend the second sale of lots?

A. Well, I wasn't particularly at the sale; I knew the sale was going on, but I was busy with my business; I was trying——

Q. Did you hear any announcement made at the second sale?

A. No, I was not at the sale.

Q. You didn't attend the sale?

A. I didn't attend the sale.

The Court: Counsel for the defendants state that they have no witnesses to challenge the statements made by the last three witnesses, as I understand; that is, as to the statement made by Mr. Wood at the time of these two sales; is that correct?

Mr. Bleakly: We challenge the authority; we don't know whether they were ever made or not; we have no knowledge of their being made.

ELMER ENGLISH, sworn in behalf of the complainant, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. English, do you have any official position in Ocean City?

A. City assessor.

Q. How long have you been city assessor?

A. I think somewhere between sixteen or seventeen years.

Q. As assessor, do you know how the presence of the open space between Fifth and Sixth, from bay to the ocean, affects the value of the adjoining land?

Mr. Bourgeois: That is objected to.

The Court: I want to know from the defence whether they intend, during the course of the trial, by witnesses, to challenge the statement of the witnesses Bridgewater, Fisher and Smith, as to what Mr. Wood said at the time of these two sales?

Mr. Bleakly: We deny the authority, and we deny we are bound by it.

The Court: Will you answer my question?

Mr. Bleakly: We would have to ask them.

The Court: Do you mean to say you don't know the extent of your case at the present time?

Mr. Bleakly: Those statements are brand new to us.

Mr. Bourgeois: I would say, that from my present information, we are not going to challenge those statements, but if, before the next sitting we run across witnesses to challenge those statements, we will let the other side know.

Mr. Bleakly: Yes, I think we are all agreed on that.

(It is admitted by counsel, that Mr. Wood was president of the Ocean City Association in the years 1880, 1881, 1882 and 1883.)

Harry Stites, sworn for the complainant, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Stites, are you connected with the Cape May County board of taxation?
A. Yes, sir.

Q. How are you connected?

A. Secretary.

Q. Was there filed with the county board of taxation a petition of appeal of the Ocean City Association in the year 1906?

A. According to the records, yes; I was not there at that time.

Q. This paper which you produce; does that come from your custody as clerk of the county board of taxation?

A. Yes, sir.

Q. And is one of the records of that body?

A. Yes, sir.

Q. And the other paper which you produce, marked "Judgment, in the matter of the appeal of Ocean City for property in the First Ward of Ocean City, county of Cape May, for the year 1906," does that come from your custody as clerk of the board?

A. Yes, sir.

Mr. Carr: I offer the certified copies of those papers in evidence.

Mr. Bourgeois: That is objected to as not relevant.

The Court: I will admit it.

Mr. Bleakly: I have no questions. We object on the part of the defendants, such as Masland and Buchanan and the rest, on the ground that it is not pertinent or binding.

COMPLAINANT RESTS.

Adjourned until Septemebr 22, 1913, at Camden, at 9.30 A. M.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM H. BRIDGEWATER,
Complainant,
and
OCEAN CITY ASSOCIATION,
et als.,
Defendants.

ON BILL, &C.
TESTIMONY.

Testimony taken in the above-entitled cause, at the Camden County Court House, on Wednesday, the tenth day of December, 1913, at nine-thirty A. M.

Before HON. JOHN H. BACKES, Vice-Chancellor.

APPEARANCES:

MESSRS. WILSON & CARR, by MR. CARR, and ANDREW G. BOSWELL, ESQ., for complainant.

MESSRS. BOURGEOIS & COULOMB, by MR. BOURGEOIS; MESSRS. BLEAKLY & STOCKWELL, by MR. BLEAKLY; J. FITHIAN TATEM, ESQ.; CYRUS D. MARTER, ESQ.; DAVID ROSE, ESQ.; and JOHN BOYD AVIS, ESQ., for the several defendants.

Mr. Carr: If your Honor please, I would like to make a motion to open the complainant's case to put in further proofs showing notice to the several defendants and to the grantees, mediate and immediate of the Ocean City Association. I think that may be in view of the fact that all of these defendants, other than the Ocean City Association, have sought to make emphasis that they are holders for value. The dedication was partly parol in its nature, and we have the means of bringing notice home to them, as we believe.

The Court: Did the case go beyond your closing?

Mr. Carr: No.

The Court: The motion is granted.

Mr. Carr: There are three cases set down before your Honor for trial today and tomorrow, and precisely the same issues are involved in each case, the exception being that the names of the parties and the defendants in some of the cases differ, but each complainant is seeking to enforce against the Ocean City Association and a number of defendants who are common to all of the suits, precisely the same acts of dedication and the same rights. It seems to me that it would be a great waste of time to take those proofs three times before your Honor. My suggestion, therefore, is that all proofs taken apply to the three cases, subject to any objection for irrelevancy.

The Court: The cases we were trying some months ago have been continued to today?

Mr. Carr: Yes; there are three cases now.

Mr. Bleakly: We will apply the evidence that is pertinent to the individual cases. The complainants do not stand in practically the same position.

Mr. Carr: In the Bradley case, there was a change of title. Bradley conveyed to Riley while the suit was pending, and Riley had been substituted in the place of Bradley.

I want to offer in evidence an original deed, dated the 11th day of November, 1910, from Henry Bradley and wife to Mary Ann Theresa Riley, recorded in the office of the clerk of Cape May County, in Book 257 of Deeds, page 107, &c., and conveying lot 701 in section A on plan of lots of the Ocean City Association.

(Said deed is marked "Exhibit C28.")

I offer in evidence a deed, an original deed, from Charles W. Strunk and wife to Henry Bradley, dated the 9th day of April, 1906, and recorded in the office of the clerk of Cape May County, in Book 231 of Deeds, page 420, &c., conveying lot number 701, in section A.

(Said deed is marked "Exhibit C29.")

I offer in evidence the Carroll deed, a deed dated November 22, 1880, from the Ocean City Association to William G. Carroll, recorded in the office of the clerk of Cape May County, in Book 49 of Deeds, page 5, &c., conveys lots numbers 508 and 510 in section A.

(Said deed is marked "Exhibit C30.")

I offer in evidence a certified copy of a proposition made by the Ocean City Association to the city of Ocean City, proposing terms upon which the camp meeting dedication should be vacated, under the provisions of an act of the legislature. I ask whether there is any objection to the use of the certified copy, in lieu of the original.

Mr. Bleakly: We object to the sufficiency of it, not to the form of proof; we object to the sufficiency and relevancy. In the first place, as far as the defendants who are not parties to this paper are concerned, they are not bound by it, and it is not relevant to this issue or competent to affect the issues now being tried.

The Court: Ocean City is a party defendant?

Mr. Carr: Yes, sir.

The Court: Isn't this a declaration against interest?

Mr. Carr: It is asked to be admitted for that purpose and another purpose.

The Court: I will admit it, subject to its being struck out later on, if I find it necessary.

Mr. Carr: The paper is marked "Proposition from Ocean City Association to the City of Ocean City (Camp Ground), Certified Copy presented to the Ocean City Council on the 10th of October, 1904."

The Court: It is admitted that the original of this was signed and presented?

Mr. Bleakly: I don't think there is any dispute about that.

(Said paper is marked "Exhibit C31.")

Mr. Carr: The next paper I wish to offer is a certified copy of a resolution adopted at a meeting of the Ocean City Council on the 10th day of October, 1904, and purporting to accept the proposition of the Ocean City Association set forth in "Exhibit C31."

Mr. Bleakly: That is objected to on the same grounds; it is an action by a corporate body not a party to this suit.

(Said resolution is marked "Exhibit C32.")

Mr. Carr: I offer in evidence a certified copy of ordinance 137, requiring the removal of certain restrictions on the camp ground, which was passed at a meeting of the common council of Ocean City, held the 11th day of October, 1904.

Mr. Bleakly: That is objected to on the same ground.

The Court: I will admit it.

(Said copy is marked "Exhibit C33.")

Mr. Bleakly: My objections will be recorded, I suppose.

Mr. Marter: In order that we may not be objecting each time, will it be understood that when one counsel objects, it is for the benefit of all?

The Court: When counsel makes an objection, it will apply to the benefit of all.

Mr. Carr: I offer in evidence a certified copy of a resolution of the common council of Ocean City, approved on the 11th day of October, 1904, giving notice of the submission to the qualified voters of Ocean City at the general election on the 8th day of November, 1904, of the question of the vacation of the camp ground dedication.

Mr. Bleakly: The same objection.

(Said paper is marked "Exhibit C34.")

(It is agreed that the matter in question was submitted to the voters, and that 373 votes were cast for, and 28 votes against at the election held November 8, 1904.)

Mr. Carr: I have here, if your Honor please, the files of the Ocean City Ledger. I wish to offer in evidence several of the issues, commencing in September and running through until November, 1904. My purpose in making these offers is, to show that it was widely known throughout Ocean City, that this camp ground had been dedicated. The articles contain a history of the litigation, starting with the Lennig case and the Bridgewater case, telling the whole story in this paper; the Ocean City side of this story. It was claimed that William D. Wood, the president, had made these statements, and it was held by the Court that these grounds were subject to this dedication. They tell how they put houses there and removed them; then they conduct a campaign of publicity, and then they put in the papers the official

advertisement required by statute, publishing the fact that there is to be voted for at the next election the question of the dedication; and at that election 375 voted for it, and 28 voted against it, and it was widely known and was a matter of common knowledge; and that the notice which the legislature deemed sufficient to advise the voters was actually given, pursuant to the statute, and was a part of the statutory scheme of vacations of dedications. I think we have a right to show that, as a matter of common knowledge in the community.

Mr. Bleakly: It is objected to.

The Court: I will admit it for the purpose of showing that in this election there was a notice published, that the legal notice was published; and also, as one of the steps in bringing to the notice of these defendants that which is contained in these publications, provided that it is proved later on that some of the defendants read them.

Mr. Bleakly: I object; I fear that your Honor does not have in mind this whole proceeding. Two acts of the legislature were passed for the purpose of giving Ocean City the right to acquire this land, and all these proceedings were based on those acts

———

The Court: But if these publications by the defendant association ——

Mr. Bleakly: All these things were done by Ocean City. They can't dedicate this land, and the owners of the land were not obliged to pay a bit of attention to it.

The Court: But if some of these purchasers bought after the publication and advertisement, it put them on notice. Here is a publication distributed broadcast through the town; some of them probably saw it; if they did, it put them on notice.

Mr. Bourgeois: It doesn't bind the defendants.

The Court: It might put them upon their notice to make an examination before they bought, if they had notice of the publication. I will admit it for the purpose of proving the legal publication, and also, to prove notice, provided testimony is introduced later on to show that the defendants had actual notice of these things.

(Said book containing the issues of said newspaper is marked "Exhibit C35.")

The Court: Upon the appeal of this case, I will settle the case so far as these publications are concerned, and so far as any other documentary evidence is concerned.

Mr. Carr: I will just read the headlines and the dates, and I would like the stenographer to make a transcript of them at his leisure before these books are released. I now want to identify them, and later, to have them copied in the record.

The Court: Not unless you bring these articles to the notice of the defendants. I have let the book in for the present. If you can show notice, then I will have it read into the record.

Mr. Carr: I offer the files of the Ocean City Ledger from September, 1904, to September, 1905, which are offered with reference to the following issues and the following articles.

The issue of September 24, page 1, caption, "Ocean City Association's Offer to City; Letter from President Lake offers Terms of Settlement in Camp Meeting Plot Matter. What the Terms Are." Article continued to page 5.

The next is dated ——

The Court: You are not going to put all that in, are you?

Mr. Carr: Suppose we put in the legal notice; it is a notice used for the purpose of election, and if I can show that those voters voted at that election and their ballot contained this proposition, I think I have a right to do that.

In the issue of October 15, 1904, there appears a notice to Ocean City voters: "Take notice, that pursuant to an Act of the Legislature of this State, entitled, 'An Act relative to the vacation by the governing body of any city, town, township, borough or other municipality of this State of any land situated in such municipality, and wholly or partially dedicated or devoted to public use, and the extinguishment of all public rights therein. Approved March thirtieth, 1904.' And an ordinance entitled, 'An Ordinance relative to the vacation of certain lands situate, lying and being at Ocean City, Cape May County, New Jersey, between Fifth and Sixth Streets, and extending from the Atlantic Ocean to Beach Thoroughfare (an arm of Great Egg Harbor Bay) dedicated to public use, and the extinguishment of all public rights therein,' was on the eleventh

day of October, 1904, duly passed and adopted by the Common Council of Ocean City, and that under said ordinance it is proposed to vacate and extinguish all public rights in and to all that tract of land in Ocean City, New Jersey, located between Fifth and Sixth Streets and extending from the Atlantic Ocean to Beach Thoroughfare (an arm or part of Great Egg Harbor Bay) as provided in said ordinance.

"And take further notice, that the proposition to so vacate and extinguish such public rights, will be submitted to the qualified voters of Ocean City for their approval at the general election for members of Assembly, to be held in Ocean City on November 8th, 1904, and that the proposition to be so submitted will be worded and printed on the ballots used in said election, as follows:

'For'

or

'Against'

'the vacation and extinguishment of the public rights in and to all the following described lot of land situate in the City of Ocean City, County of Cape May, New Jersey, bounded on the East by the Atlantic Ocean, on the West by Beach Thoroughfare, which is a part or arm of Great Egg Harbor Bay; on the North by Fifth Street and on the South by Sixth Street, excepting, however, all that block or square between Wesley or Asbury Avenues and Fifth and Sixth Streets.'

T. Lee Adams,
City Clerk.

Dated, October 12th, 1904."

Mr. Carr: The dates of the items I wish to call attention to are: September 24, 1904, August 1,

1904, August 8, 1904, August 15, 1904, October 22, 1904, October 29, 1904, November 5, 1904, and November 12, 1904.

W. Elwell Lake, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Lake, are you connected with the Ocean City Association?

A. I am.

Q. What is your position?

A. Secretary.

Q. You are subpoenaed to produce releases of claims by the Ocean City Association, or given by various lot owners in Ocean City releasing their claim against the camp meeting ground dedication; have you produced them?

A. I sent to the office for them, but the only release I know of, of that nature—I don't know where it is; the president of the association is here.

Q. Mr. Lake, do you know whether releases were obtained from lot owners, other than those fronting upon the camp meeting ground?

A. I don't know.

Q. Did you ever have the custody of those releases?

A. No, sir.

Q. Who had the custody of them?

A. They were in charge of the office force at the association office.

Q. Who were they, the president?
A. Yes.
Q. He is here?
A. Yes, sir.
Q. Were you subpoenaed to produce them?
A. Yes, sir.
Q. And did you make a request of the president?
A. Yes.
Q. What was his reply?
A. He said that the original release was not at the office; it had been given in some law suit and had not been returned; he couldn't locate it.
Q. Have you here the minute books of the association?
A. Yes.
Q. Are these the minute books (handing witness a bundle)?
A. Yes, sir.
Q. Won't you open them to the date of September, 1904; won't you find for me the first record in your minute books of the submission of the proposed—the submission to the city council of Ocean City of a proposition on the part of the association for the release of the dedication of the camp ground tract?

Mr. Bleakly: In view of the fact of the way we are trying these cases, all together, of course, we could not be bound by certain defendants; I don't want to repeat the objections.

The Court: You will not be bound by anything that don't bind you.

A. I find in here, October.
Q. No; look back in 1904; what book have you got?
A. October 11, 1904.
Q. Look a little ahead of September 24, 1904.

Mr. Carr: I offer it in evidence.

Mr. Bourgeois: We object to the minute book going in as a whole.

Mr. Carr: I offer in evidence the minute book of the Ocean City Association, No. 3.

Mr. Bourgeois: That is objected to as irrelevant and immaterial.

(Said minute book is marked "Exhibit C36.")

Mr. Bourgeois: There may be some proofs that are not relevant there.

The Court: You can't very well put part of the book in; I will let the whole book in, and reference will be made to certain parts.

Mr. Carr: I offer in evidence minute book No. 4 of the association.

Mr. Bourgeois: The same objection.

(Said book is marked "Exhibit C37.")

Mr. Carr: I also offer in evidence minute book No. 2 of the association.

(Said book is marked "Exhibit C38.")

Mr. Carr: I also offer in evidence minute book No. 1 of the association.

Mr. Bourgeois: The same objection. It is admitted that these books are proved.

(Said book is marked "Exhibit C39.")

Q. Mr. Lake, is it not a fact that petitions for release of the camp ground dedications were generally circulated throughout Ocean City, to be signed by all lot owners, whether abutting upon the camp ground or not?

A. I believe so. I didn't live in Ocean City.

Mr. Bourgeois: That is objected to, and I move to strike it out.

The Court: Strike it out.

Q. How long have you been secretary?

A. Since 1900, but I have lived away from Ocean City since 1902.

Q. But you had the custody of the company's records from 1900 until the present time?

A. The custody has been with the office force at Ocean City. I simply wrote the minutes at the meeting.

Q. You have written the minutes in that time?

A. Yes, sir.

Q. Do you know, from your knowledge of the company's affairs, from what you learned at their meetings, whether or not such a petition was circulated?

A. I believe so.

Q. That is based upon what you learned at their meetings?

A. Yes.

Q. Mr. Parker was very active in circulating the petition?

A. I have heard so.

Q. Don't you know, as a matter of fact, that Henry D. Moore signed that petition?

A. I do not.

Q. Do you know whether Mr. Masland signed it?

A. I don't.

Q. Do you know whether Cresse signed it?

A. I do not.

Q. Do you know whether Mary J. Buchanan signed it?

A. I don't know.

Q. Do you know whether S. Wesley Lake signed it?

A. I don't know; I don't know who signed it.

Q. Do you mean you have no present recollection of any person who signed it?

A. I don't know who the signers were.

Q. Answer my question.

A. If I don't know who the signers were, I couldn't recollect them.

Q. You have no present knowledge of who any of the signers were?

A. No, I have no present knowledge, and never had any other knowledge.

Q. Did you see these releases?

A. I may have at the meeting, but I have no recollection of that.

Q. You are familiar with the Ocean City Ledger, aren't you?

A. I take it.

Q. Is that the official organ of the camp meeting association, if you know?

Mr. Bourgeois: That is objected to; it calls for a conclusion; I am willing that the relationship should be shown.

Mr. Carr: The question is withdrawn.

Q. Do you know what relationship, if any, exists between the Ocean City Ledger and the Ocean City Association?

A. Well, I don't know that I can state that clearly and definitely. At the present time, the Ocean City Association owns the Ocean City Ledger, practically; that has not always been so, and whether it was true at that time, I can't say.

Q. Do you know when they acquired this ownership?

A. It may have been after that date; I don't remember. I wouldn't be surprised but that it was after that date.

Q. Did you read various articles in relation to the vacation of the camp meeting tract property in the Ocean City Ledger during the five or six weeks prior to the election of 1904?

Mr. Bourgeois: That is objected to as irrelevant and immaterial.

Mr. Carr: I will withdraw the question for the present.

Q. Do you know whether the articles appearing in the Ocean City Ledger, commencing September 24, 1904, and continuing until November 12, 1904, were published by authority of the Ocean City Association?

A. They were not published by the authority of the association to the best of my recollection.

Q. Were they published by the authority of Mr. Lake, the president of the association?

A. Not to my knowledge.

Q. Do you have any knowledge at all on the subject?

A. Not in relation to authorizing the publication.

Q. Do you know whether these articles were discussed by the officers of the Ocean City Association before their publication in the Ledger?

A. I have no recollection.

Q. Was S. Wesley Lake president of the Ocean City Association in 1904?

A. Yes.

Cross-examination.

By Mr. Bourgeois:

Q. Who was the publisher of the Ocean City Ledger in 1904, if you know?

A. The publisher, I believe, was the New Jersey Methodist Publishing Company.

Q. That is a corporation?

A. That is a corporation.

Q. Has the Ocean City Association ever published the Ocean City Ledger?

A. Not directly; it is still published, I think, by the New Jersey Methodist Publishing Company.

Q. What do you mean?

A. I mean to say that the stock is owned by the Ocean City Association.

Q. The Ocean City Association held a majority of the stock?

A. Yes.

Q. But the paper is published by an independent association?

A. Yes, sir.

Q. And always has been?

A. Yes.

Further cross-examination.

By Mr. Bleakly:

Q. Mr. Lake, do you know whether the Ocean City Association, as a corporation, owns a single share of stock of this paper; I am not speaking of the individual members of the association, but as a corporation?

A. I couldn't say definitely about that question, whether the association itself does; of course, the members do.

Mr. Bleakly: We ought not to have to disprove this; it should be proved by the stock books themselves.

Samuel H. Hahn, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Hahn, did you have any connection with the Ocean City Ledger in 1904?

A. I think I did; I couldn't tell the year; I was editor of the Ocean City Ledger a number of years; I think, preceding that time and at that time.

Q. You can probably refresh your memory by a glance at the issues of that paper of the year 1904, could you not?

A. Yes.

Q. (Showing witness book.) Will you kindly see by reference to the files?

A. Yes, I was editor of the Ledger at that time.

Q. Will you kindly see whether you were editor from September 24, 1904, until November 12, 1904?

A. Yes, sir.

Q. A number of articles appear there setting forth the terms of an offer made by the Ocean City Association to the city of Ocean City, for the release or dedication of the camp ground plot; won't you see, and tell us from what source the information therein contained reached you?

Mr. Bourgeois: It is objected to as irrelevant and immaterial from what source he received it.

The Court: The objection is overruled.

A. From memory, as I recall now, I received it from communications that were made by Doctor Lake, the president of the Ocean City Association to city council, when the matter came up and action was asked of the city, and also from statements made by him and others to me.

Mr. Bourgeois: I ask that that be stricken out as irrelevant and immaterial; you can't bind the Ocean City Association by having the president of the association write some articles.

The Court: The motion is overruled for the present.

Q. Do you wish to add something to your answer?

A. I recall from memory that there was a commu-

nication that appeared in the Ledger over Dr. Lake's signature; I don't know whether it is between these dates or before this.

Q. Can you identify it if I call your attention to it?

A. Yes, I think I could.

Q. I call your attention to an article in the issue of September 24th, commencing with "Ocean City Association's Offer," &c.

By the Court:

Q. Did you write that article, the caption or any of it?

A. No, sir.

Q. Who did?

A. The caption, I suppose, was written by ——

Q. Some one in the office?

A. Yes, and not by me.

Q. Who wrote the article under the caption, you?

A. I am under the impression that I wrote the explanation of the article at the head.

Q. The introduction to the letter?

A. Yes, sir.

By Mr. Carr:

Q. The letter came from what source?

A. That was written by Dr. Lake, and is the letter that I had in mind.

Q. Will you kindly refer to the issue of October 1st, page 1, with the caption "Camp Meeting Plot; History of this Matter Stated"; it has reference to giving the status of the title to this ground, and so forth. Can you say whether or not that was furnished to you by Dr. Lake?

A. I can't recall the source of my information.

From memory, I would say that I wrote the article, and that my information was secured from the records of the case.

By the Court:

Q. The sources you have already referred to?
A. Yes, sir; and also some statements made by Dr. Lake.

By Mr. Carr:

Q. Was it at his instance that this history of the association's side of the controversy was published in the paper?
A. I don't think so.
Q. What was the connection between the Ocean City Association and the Ocean City Ledger at that time?
A. The Ocean City Association owned a very considerable block of the stock of the Ocean City Ledger at that time.
Q. Was it a majority control, do you know?
A. I couldn't say, but I would say not; but I would say that the association's stock and Mr. Lake's stock and his brother's stock would control.
Q. Were you selected as editor by the Ocean City Association?
A. No, sir, by the New Jersey Methodist Publishing Company as such.
Q. But at the instance of the Ocean City Association?

Mr. Bourgeois: That is objected to as clearly leading.

The Court: Objection sustained.

Q. Did the Ocean City Association have anything whatever to do with your selection as editor of the Ledger?

A. I don't know about that.

Q. You can't tell?

A. I couldn't say whether they took any action concerning it or not.

Q. Did the Ocean City Association have anything whatever to do with the control or the policy of the Ocean City Ledger?

A. I don't think they did.

Q. Nothing at all?

A. I think not; of course, I conferred with Mr. Lake and all that, but I don't think they did; of course, I was ——

Q. Can you say whether or not the policy of the Ocean City Ledger was to further the interests of the Ocean City Association?

Mr. Bourgeois: That is objected to as incompetent and irrelevant.

The Court: The objection is overruled.

A. In a general way, I would say yes.

Q. And in publishing these various articles you were publishing the side of the Ocean City Association?

Mr. Bourgeois: That is objected to as leading.

Mr. Carr: I will withdraw the question.

By the Court:

Q. Who dictated the policy of this paper?
A. I did, myself.

By Mr. Carr:

Q. Entirely free of any control in any way of the Ocean City Association?
A. Yes; I don't think they ever attempted to control me, as far as I recall.
Q. How wide a circulation did this paper have at that time?
A. I couldn't say.
Q. Give us the best idea you can.
A. I had nothing to do with that; Mr. Thomas, who had charge of the circulation, knew about that; but I would say from 600 to 1,000.

By the Court:

Q. Daily or weekly?
A. Daily in the summer time, and weekly through the year.

By Mr. Carr:

Q. How large was your publication at that time?
A. In September?
Q. Yes.
A. I couldn't say.
Q. You reached practically everybody down there?

Mr. Bourgeois: That is objected to as leading.

The Court: Objection sustained.

Q. To what extent was the paper circulated in Ocean City at that time?

Mr. Bourgeois: That is objected to as irrelevant and immaterial.

The Court: Objection overruled.

A. I would say that two-thirds, maybe, of the circulation, was in Ocean City.

Q. Can you say whether or not such distinguished a gentleman as Senator Cresse was a subscriber?

A. I think he was.

Q. How about Henry D. Moore?

A. I couldn't say.

Q. What about Mr. Masland?

A. I think he was.

By the Court:

Q. Were the papers delivered to them?

A. Through the mail, except in the summer time they were sold by a carrier.

Q. Were the issues delivered to these two gentlemen, Mr. Cresse and Mr. Masland?

A. I think they were.

By Mr. Carr:

Q. How about James E. Lake; was he a subscriber?

A. Yes, I think he was.

Q. And S. Wesley Lake, the president?

A. I think he was.

Q. William Watson Adams?
A. I don't know.
Q. Do you know the Ocean City Tabernacle Association—were they subscribers?
A. I don't think they were.
Q. Were you a subscriber?
A. I received the paper.

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Hahn, touching the policy of the Ocean City Ledger, sometimes your notion of the work to be done by the Ocean City Ledger differed from the notion of the Ocean City Association, didn't it?

Mr. Carr: That is objected to.

Mr. Bourgeois: I withdraw the question.

Q. Did you, in your view, always agree with the directors, that is, individual, of the Ocean City Association touching public matters in Ocean City?
A. Not always.
Q. Did you agree with them touching semi-public matters in Ocean City, quasi-public matters, at all times?

Mr. Carr: The question is objected to as too obscure.

The Court: Objection is overruled.

A. I would have to have an explanation of your question.

Q. I will ask another. When you differed from the judgment of the directors of the Ocean City Association as to what should be published in your paper, whose judgment prevailed?

A. Mine, while I was editor.

Q. Did the Ocean City Association, as a corporation, own any of the stock of the Ocean City Ledger?

A. I think they did.

Q. Wasn't it all owned by the different stockholders of the association and not by the association itself as a corporation?

A. I think not.

Q. Now, will you turn to the publication of October 1st, and near the end of it, and refresh your memory, and then tell me if you think Dr. Lake, probably, gave you the information or you discussed that article with him? The last paragraph reads as follows: "Doctor Lake, President of the Association, has been away from home during the past week, and is still away at the time of this writing, and, hence, it is impossible to state his views. The Ledger, however, believes" ——

A. I suppose, from what this states, Doctor Lake was away from home, and that I didn't consult him at the time of the writing of the article; nevertheless, I got that information in the way I stated a few minutes ago.

Q. Where is the one of October 15th?

A. Here it is.

Re-direct examination.

By Mr. Carr:

Q. I call your attention to an article under date of October 22, 1904, with the euphonious title "Graft," and signed by S. Wesley Lake. Did that come from Dr. Lake, of the association, that article?
A. Yes, I would say so.

Mr. Bourgeois: I object to that part of the book going in evidence.

The Court: The objection is overruled.

Q. Doctor, I find in your publication, advertisements of the First National Bank of Ocean City, giving as the officers, L. M. Cresse, president, and Dr. L. M. Cresse, S. Wesley Lake, Henry D. Moore and Charles Matthews, as directors. Do you know whether those advertisements came in in the regular course of business?

Mr. Bourgeois: That is objected to as irrelevant and immaterial.

The Court: Objection sustained.

R. CURTIS ROBINSON, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Robinson, you are in the newspaper business?
A. Yes, sir.
Q. What paper have you to do with?
A. The Ocean City Sentinel and the Daily Reporter.
Q. How long have you been connected with the Sentinel?
A. 28 years.
Q. And are you still on the paper?
A. Yes, sir.
Q. What is your connection with the paper?
A. Owner and proprietor.
Q. You say you are still on the job?
A. Yes, sir.

By the Court:

Q. You are owner and proprietor?
A. Yes.
Q. For how long a time, how far back?
A. Individually, since November, 1885.

By Mr. Carr:

Q. 1885?
A. 1885.

Q. Have you here your files of the Ocean City Sentinel covering from September 8, 1904, inclusive, until November 3, 1904, inclusive?

A. I have.

Q. Will you produce it, please?

(Witness produces files.)

Q. Won't you turn to the issue of September 8, 1904, page 1? Do you find there an article entitled: "Association offers to City $30,000 Worth of Land for a High School and $10,000"?

A. Yes.

Q. Do you find under date of September 22, on page 2 of that date, an article with the caption beginning: "No Enthusiasm Greets Offer; Council Wants to Know Just what Ocean City Association Desires"?

A. Yes.

Q. Turn to the issue of October 6, page 3; do you find an article under the caption: "Settlement May Soon Be Reached; Council and Association Trying to Get Together on Two Disputes"?

A. Yes.

Q. Turn to October 13, page 1; do you find an article under the caption: "Voters to Decide Upon Camp Ground Dispute," &c.?

A. Yes, sir.

Q. Do you find there the publication of an ordinance relating to the vacation of the camp ground dedication, and a resolution to submit the same to the voters, and a notice to the voters of Ocean City, that the question will be submitted at the next general election to be held on November 8, 1904, do you?

A. I do.

Q. Now, look at your issue of October 20, page 4;

do you find there the publication of the same ordinance, resolution and notice to voters that you find in the issue of October 13th?

A. Yes.

Q. Turn to your issue of October 27, page 4; do you find a publication of the same legal notice and ordinance?

A. I don't find the resolution. The ordinance and the notice to voters.

Q. You find the ordinance and notice to voters?

A. Yes, sir.

Q. Now, turn to your issue of November 3rd, page 2; do you find an article under the caption of "Won't Hold up Vote; Writ of Certiorari in Camp Ground not Granted"?

A. I do.

Q. On page 4, do you find the same publication of the notice to voters?

A. I do.

Q. Was this paper a legal publication in Ocean City?

A. It was.

Mr. Carr: I offer the book in evidence, with particular reference to the dates.

The Court: Preliminary to bringing it within the notice of the defendants?

Mr. Carr: Yes, sir.

Mr. Bourgeois: It is objected to.

Mr. Carr: So far as the legal notice was concerned, I offer it as a legal notice to the voters of Ocean City.

Mr. Bourgeois: My objection is, that it is irrelevant and immaterial, and it also introduces in this case an issue collateral to the one we are trying.

The Court: I will admit it.

(Said files are marked "Exhibit C40.")

Q. Do you know whether Senator Cresse subscribed to your paper?

A. He is a subscriber; I don't know for how long he has been such.

Q. Was he in 1904?

A. I presume so, but I couldn't answer that question.

Q. Who knows about that?

A. I don't know.

Q. Is Henry D. Moore a subscriber?

A. Yes, but for how many years, I can't say.

Q. For a number of years?

A. Yes.

Q. How about Masland—was Charles W. Masland a subscriber?

A. One of the Maslands is; I don't know which one.

Mr. Bourgeois: No questions.

S. Wesley Lake, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Carr:

Q. Dr. Lake, are you connected with the Ocean City Association?

A. Yes, sir.

Q. For how many years?

A. 34.

Q. What position do you hold with the company?

A. President.

Q. And have been for how long?

A. 18 or 20 years; I don't remember.

Q. You were certainly president in 1904?

A. Yes.

Q. Doctor Lake, do you recall the Ocean City Association obtaining a number of releases from various lot owners of the camp meeting dedication?

A. You mean deeds, don't you?

Q. Well, yes.

A. Yes, they did.

Q. And they obtained a large number of such releases?

A. Yes, several hundred.

Q. And not only those fronting on the camp ground space, but generally, throughout the city?

A. Yes.

Q. What became of those releases?

A. My recollection is, they were turned over to Bleakly and Stockwell for record, and I suppose they have been recorded; they had charge of that matter at that time; I have not seen them since.

Q. Did the secretary, W. Elwell Lake, request that you make a search for them?

A. He wrote to me, and I didn't get the letter until Saturday, and I have had no chance since.

Q. Not from Saturday?

A. Not to go to the clerk's office.

Q. I mean, so far as the Ocean City Association is concerned, you have not got them?

A. No.

Q. How recently were they fowarded to the clerk's office?

A. At the time the work was done.

Q. When?

A. It was down to the time this settlement was trying to be made.

Q. Prior to 1904?

A. Somewhere along back there.

Q. Were they all recorded?

A. I don't know that any of them were recorded; I suppose they were.

Q. Were all that were obtained forwarded to your counsel for the purpose of record?

Mr. Carr: I want to show that Mr. Cresse and Mr. Masland and a number of these defendants executed these releases prior to 1904.

Q. Did Senator Cresse execute such a release?

A. I don't know.

Q. Did Henry D. Moore?

A. I don't know.

O. Did Charles W. Masland?

A. I don't know that.

Q. Did James S. Lake execute such a release?

A. I presume so; I couldn't swear to it.

Q. Did S. Wesley Lake?
A. I presume I did.
Q. That is you?
A. Yes.
Q. Can't you say yes or no to that; did you execute any release whatever of the dedication of the camp ground, you as an individual?

Mr. Bourgeois: That is objected to; the releases are the best evidence, if they can be had.

The Court: Objection is overruled.

A. I presume I didn't on the lots around the camp ground; there are two kinds of releases; I didn't think I owned them myself; but the general release I did, because I had lots in the city.
Q. Was that prior to 1904?
A. I think not; I can't say.
Q. Can't you tell me that, Doctor?
A. No.
Q. Wasn't the effort made to get these releases prior to the municipal action in 1904?
A. I couldn't say.
Q. What relation, in point of time, did the obtaining of these releases bear to the passage of the ordinance in 1904; was it before or after?
A. I don't know.

Mr. Bourgeois: No questions.

GEORGE B. PARKER, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Parker, where do you live?
A. Ocean City.
Q. How long have you lived there?
A. About 18 years, I think.
Q. Do you remember circulating some petition on behalf of the Ocean City Association with regard to the vacation of the camp ground dedication?
A. I do.

The Court: As a public dedication or a private dedication?

Mr. Carr: A private easement.

Q. To what extent was that circulated, so far as you were concerned?
A. Throughout Ocean City, and I think I got quite a number of signatures outside of Ocean City.
Q. What did you do in Ocean City; to what extent was it signed in Ocean City?
A. I suppose, really, all the property owners there individually.
Q. All the property owners in Ocean City?
A. As far as I can recollect now.
Q. Was this before or after the passage of the ordinance in 1904, submitting to the voters the question at the general election in 1904?

Mr. Bleakly: That is objected to as not being the best evidence.

The Court: The objection is overruled.

A. I couldn't say just the date.
Q. Was it before October, 1904?
A. Not before October, 1904.
Q. When was it?
A. It was in the fall of 1904, but I couldn't tell you what month it was.
Q. You commenced in the fall of 1904?
A. Yes.
Q. That was the year of the presidential election; do you remember whether it was before or after the presidential election?
A. I don't know.
Q. Do you recall whether or not Senator Cresse signed that release?
A. I think so, yes.
Q. You think he did?
A. Yes.
Q. Don't you know he did?
A. Yes.
Q. Did S. Wesley Lake sign it?

Mr. Bourgeois: That is objected to as not being the best evidence.

The Court: The objection is overruled.

A. To the best of my recollection, he did sign it.
Q. How about Henry D. Moore?

Mr. Bourgeois: That is objected to on the same ground.

The Court: With the same ruling.

A. I think he did; Mr. Moore signed it.
Q. What about Charles W. Masland?
A. I don't just recall whether he signed it or not; I couldn't tell you.
Q. What about James E. Lake?
A. Yes, sir.

By the Court:

Q. He did?
A. Yes.

By Mr. Carr:

Q. William Watson Adams?
A. I don't know.
Q. What about Ebenezer Adams?
A. I think so.
Q. Doctor Hahn, did he sign?
A. Yes; I don't remember whether he did or not.
Q. Didn't you say you went to everybody in Ocean City?
A. Yes; but it has been some time.
Q. Have you any reason for thinking Dr. Hahn didn't sign?
A. I have no reason to think he would have any objection to signing it.
Q. You were attempting to get everybody to sign?
A. Yes.
Q. What reason have you to think he didn't sign?

Mr. Bourgeois: That is objected to.

The Court: Objection sustained.

Q. What is your best recollection as to Dr. Hahn?
A. The best recollection I have, he did sign it.
Q. What about Mary J. Buchanan?
A. I don't know.
Q. You don't remember?
A. No.
Q. You have no recollection at all?
A. No.
Q. Nor belief?
A. No.

Mr. Bourgeois: No questions.

Lewis M. Cresse, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Cresse, you live in Ocean City?
A. I do.
Q. How long have you lived there?
A. About 15 years.
Q. And you have been somewhat active in public affairs there?
A. Somewhat, yes.
Q. At one time you were senator from Cape May County?
A. Yes, sir.
Q. During what years?
A. I really don't remember; in the neighborhood of 1904 or '05.

Q. 1903, '04 or '05?
A. Quite likely.
Q. You were in the legislature in 1904?
A. I am quite sure I was.
Q. Do you remember having Mr. Ayres introduce a bill in the House of Assembly, dealing with the releasing of dedications where land had become burdensome, or otherwise, to a municipality?

Mr. Tatem: That is objected to; the passage is not disputed, but he is asked whether he had some one else introduce a bill.

The Court: The objection is overruled.

A. I don't recall the gentleman's name, but I was instrumental in getting some one to do it; I suppose it was Mr. Ayres.
Q. Did that bill have any particular reference to the conditions at Ocean City?
A. It was intended to.
Q. To clear up the dedication situation?
A. It was.
Q. And it was handed by you to some assemblyman to be introduced?
A. That is my recollection.
Q. You were somewhat active in using your influence to have it passed?
A. I was.
Q. The bill in question, which I refer to, is chapter 205 of the laws of 1904, passed in March, 1904; is that the bill? (Showing witness a paper.)

Mr. Bourgeois: There is no question about it at all; there were two acts; there is a companion act right next to it.

Q. Senator, you are president of the bank down there in Ocean City?

A. Yes, sir.

Q. Which bank?

A. The First National.

Q. How long have you been in that bank?

A. Since its organization, I think, in 1902.

Q. Is Mr. Moore a director of that bank?

Mr. Bleakly: Objected to as irrelevant.

Q. Do you know Mr. Henry D. Moore?

A. I do.

Q. Have you ever had any talk with him about the release of the camp ground dedication?

A. I have.

Q. Did you have any talks with him in 1904 about it?

A. I don't recall that I did, in 1904; although I may have.

Q. During the period when this legislation was pending, and when the proposition to Ocean City was pending, during that time, did you have any talks with Mr. Moore, or did he know of the situation?

A. I can't say; I don't know whether he knew of the situation; I imagine he did; but, of course, I don't know.

Q. Do you know whether it was talked about in his presence?

A. I don't think it was in any board meeting, although it may have been.

Q. Do you know whether it was a question freely discussed in Ocean City?

A. Yes, it was.

Q. Mr. Moore was down there all summer in 1904?

A. I can't recall; he spends a good deal of time in Maine during the summer, and I can't recall.

Q. Senator, you were subpoenaed to produce your title papers, the deed and searches; have you brought them with you?

A. Mr. Tatem has them.

(The acts of the legislature to which the witness's attention was called, are chapters 205 and 206, pages 366 and 368 of the Pamphlet Laws of 1904.)

Q. Senator Cresse, you purchased from the Ocean City Association, did you not, certain lands back in the bay front, between Fifth and Sixth Streets?

A. I did.

Q. You have brought here your title papers?

A. I have.

Q. I show you a deed, Ocean City Association to Lewis M. Cresse and Cecelia H., dated September 12, 1905, and recorded in Book 200 of Deeds, folio 3, &c., and conveying land "Beginning at a point on the Northwesterly line of Pleasure Avenue, two hundred and twenty-three (223) feet Southwestwardly from the Southwesterly line of Fifth Street, containing in front or breadth Southwestwardly on the said Northwesterly line of Pleasure Avenue, one hundred and fifty (150) feet, and of that width extending in length or depth, Northwestwardly between lines parallel with said Fifth Street to a line parallel with and three feet Southeasterly of the high water mark of the Southeasterly shore of Beach Thoroughfare." I ask you if you have title to those lands?

A. Yes, sir.

Mr. Carr: I offer it in evidence.

(Said deed is marked "Exhibit C41.")

Q. I show you a deed from the riparian commission of New Jersey to the Ocean City Association, dated January 11, 1906, and recorded in the office of the county clerk at Cape May Court House in Book 203 of Deeds, page 178, &c., conveying lands on the high water line on the Southwesterly shore of Beach Thoroughfare, and I ask you whether that is a part of your chain of title?

A. Yes, sir.

Mr. Carr: I offer the deed in evidence.

(Said deed is marked "Exhibit C42.")

Q. I show you a deed from the Ocean City Association to Lewis M. Cresse and wife, dated February 5, 1906, and recorded in the office of the clerk of Cape May County in Book 203, page 163, conveying the three foot strip immediately adjoining the lands described in "Exhibit C41"?

A. That is the deed that conveys that three-foot strip.

Q. You are the grantee named in it?

A. Yes.

Mr. Carr: I offer the paper in evidence.

(Said deed is marked "Exhibit C43.")

Q. I show you a deed, Ocean City Association to Lewis M. Cresse and wife, dated February 7, 1906, and recorded in the office of the clerk of Cape May

County in Book 200 of Deeds, page 483, conveying certain riparian lands, and ask you whether you are the grantee named in that deed?

A. Yes.

Mr. Carr: I offer the deed in evidence.

(Said deed is marked "Exhibit C44.")

Q. I show you a deed, Ocean City Association to Lewis M. Cresse, dated the 17th day of April, 1909, and recorded in the office of the clerk at Cape May Court House in Book 233 of Deeds, page 307, and I ask you whether you are the grantee in that deed? The deed conveys lands Beginning at a point in the Northwesterly line of Pleasure Avenue at the distance of one hundred and seventy-three (173) feet Southwestwardly from the Southwesterly line of Fifth Street, extending Southwestwardly of said point in the Northwesterly line of said Pleasure Avenue, fifty (50) feet, and of that width extending Northwestwardly in length or depth between lines parallel with the said Fifth Street (extended), one hundred (100) feet, more or less, to within three feet of the high water line of the Beach Thoroughfare; are you the grantee in that deed?

A. Yes, sir.

Mr. Carr: I offer the deed in evidence.

(Said deed is marked "Exhibit C45.")

Q. I show you a deed from the riparian commission of New Jersey, dated August 5, 1909, to the Ocean City Association, endorsed "Recorded in Liber S. Folio 263, &c." apparently not recorded in

the county clerk's office, and I ask you whether that is part of the land that was afterwards assigned to you?

A. It is.

Q. I show you a deed, Ocean City Association to Lewis M. Cresse, dated November 30, 1909, and recorded in Book 246 of Deeds, page 34, &c., in the county clerk's office of Cape May County, and conveys land, "Beginning at a point three feet Southwesterly from mean high water on the Beach Thoroughfare, distant two hundred and twenty-three (223) feet Southwesterly from the Southwesterly line of Fifth Street, and at right angles from the same, and runs from thence (1) Northwesterly, parallel with Fifth Street, extended, and along the Northwesterly line of land under water, granted by the State of New Jersey to the Ocean City Association January 11, 1906, two hundred and thirty-six and one-tenth (236.1) feet to the exterior line established by the Commissioners appointed under the authority of the Act entitled, 'An Act to ascertain the right of the State and of riparian owners in the lands under the water of the Bay of New York and elsewhere in this State,' approved April 11, 1864, and the supplements thereto; thence Northeasterly along the exterior line, as shown on their map annexed to said grant, 50 56/100 feet to a point; thence Southeasterly, parallel with the line first run down, to said exterior line, and fifty feet Northeasterly, at right angles therefrom, two hundred and forty-three (243) feet to a point three feet Eastwardly of the line of mean high water on the Beach Thoroughfare; thence Southwesterly, parallel with the line of high water, and three feet Easterly of the same to the Beginning." You are the grantee named in that deed, Mr. Cresse?

A. I am.

Mr. Carr: I offer the deed in evidence.

(Said deed is marked "Exhibit C47.")

Mr. Carr: I offer in evidence the previous deed.

(Said deed from the riparian commission to the Ocean City Association, dated August 5, 1909, is marked "Exhibit C46.")

Q. Senator, what part of your boat house, if any, is on the land outside of the state's riparian grant to you?

A. None of it; all of my boat house is on riparian ground.

Q. Is any of your structure whatever on the three-foot strip?

A. No.

Q. None whatever?

A. No.

Q. Are you speaking now with exact knowledge, Senator?

A. Yes, sir.

Q. As a result of some survey made?

A. Yes.

Mr. Bourgeois: No questions.

HENRY D. MOORE, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Moore, are you a summer resident of Ocean City?

A. I have been there quite a number of summers, irregularly.

Q. You have a summer home there?

A. Yes.

Q. How long have you been going to Ocean City?

A. I think I went there the first summer in 1880 or '85, or somewhere like that.

Q. Have you been going there ever since?

A. About half the season.

Q. You are a director in one of the banks down there?

A. A director in the trust company, not in a bank.

Q. Were you down there in the summer of 1904?

A. I am not sure, but I think I was; I am not sure.

Q. Do you remember the summer that the agitation was on towards taking municipal action towards getting rid of the dedication?

A. I have no clear recollection of that, no, sir; I know something was coming on; I am not clear about that; I am not sure.

Q. Did you hear any discussion of those questions before the election was held?

A. I have no recollection of any, no.

Q. You were pretty active down there in Ocean City, weren't you?

A. In my own affairs, but nothing about municipal affairs.

Q. You bought public franchises, didn't you, the light?

A. Yes.

Q. And gas?

A. Yes, sir.

Q. And street railways, too?

A. Yes, sir.

Q. Do you know Senator Cresse?

A. Yes, sir, I do.

Q. During the summer would you meet him frequently or infrequently?

A. I met him occasionally, yes.

Q. Did Senator say anything to you about the bill they were getting through the legislature in order to try to clear up the dedication problem?

A. I think he did; I have no clear recollection on it.

Q. That is your best recollection?

A. Yes.

Q. And that was at the time it was pending before the legislature, wasn't it?

A. I couldn't tell you.

Q. What is your best recollection?

A. I know there was some discussion going on, but I didn't take any part in it, so far as I remember.

Q. You do remember the discussion of the problem of getting rid of the camp ground dedication?

A. No, I don't.

Q. What I mean, do you remember any general talk in the town of Ocean City?

A. I know there was some talk, but I couldn't give you any clear account of it.

Q. But you did know there was an effort being

made by some legislative action to get rid of the dedication, didn't you?

A. Yes, sir, I think so.

Q. You heard about the election held in 1904, in which the question was put up to the people?

A. I forgot all about it until it was brought up here.

By the Court:

Q. You did know at that time?

A. I think so.

Q. Did you vote at the election?

A. No, I lived in Haddonfield.

By Mr. Carr:

Q. Did you get this paper, the Ocean City Ledger?

A. I have been taking it the last few years.

Q. Were you taking it back in 1904?

A. I think not.

Q. You got franchises in 1901?

A. I don't know.

Q. From the time you got the franchise, didn't you get the local papers?

A. I read them, I know.

Q. To keep posted on what was going on?

A. Yes, sir.

Q. Look at the Ocean City Ledger under date of October 15, 1904, Ocean City Association's offer, and so forth; do you remember seeing that, or something like that at that time?

A. I had forgotten about it.

By the Court:

Q. Do you recall now having seen that article about the time of its publication?
A. I read the paper, but I couldn't remember now.

By Mr. Carr:

Q. You read the paper at that time?
A. I think so, down there.

By the Court:

Q. Your best judgment is, that you read that article at that time?
A. I can't tell you; I have no recollection of reading that article; I don't say I didn't, but it's a long time back, you see.

By Mr. Carr:

Q. You felt some interest in the general question, didn't you?
A. Sure; anything that was of interest in Ocean City, I was interested in.
Q. The result of that election was announced on the 12th day of November; it was announced the 375 votes were given for and 28 against the proposition. Don't you recall having become acquainted with that result through this paper?
A. I don't remember; I have no doubt but what I did, but I have no recollection of it at the present time.
Q. You did know the general question was submitted at the general election?
A. Yes, sir.

Q. And that the Ocean City Association's plan was voted for, and that——

A. Not until I heard it now.

Q. Have you any doubt that yon knew that?

A. I should have known it, I think.

By the Court:

Q. You are heavily interested in properties in that town?

A. Yes, sir.

By Mr. Carr:

Q. Did you also get the Ocean City Sentinel?

A. Yes, it comes to my office.

Q. You got it in 1904?

A. I don't know; I was down at Ocean City then; I must have read it.

Q. Do you recall now having seen articles in the Ocean City Sentinel running in September, October and November, dealing with the submission of this question to the people at the general election?

A. I don't recall it.

By the Court:

Q. You don't recall reading any of these articles, but you have no doubt that you did?

A. No, sir, I have no doubt.

Mr. Carr: There are several deeds of the several co-complainants that have not been brought here because they are not in our possession. For instance, in the Carroll suit; and we would like to ask permission to put that in later.

It is agreed that the notice appearing in the two publications is the legal notice for submitting the proposition to the voters.

CHARLES W. MASLAND, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Carr:

Q. You are one of the defendants in this case?
A. Yes, sir.
Q. And you live at Ocean City?
A. At Philadelphia.
Q. Do you have a place at Ocean City?
A. Yes; a boat house and a residence.
Q. How long have you been going down to Ocean City?
A. 22 years, about.
Q. During the summer season?
A. During the summer season.
Q. Are you a stockholder of the Ocean City Association?
A. I have one share of stock.
Q. How long have you been a stockholder?
A. That came to me from my deceased wife's estate in 1897.
Q. Who was she?
A. Mr. James Lake's daughter.
Q. Were you an officer of the association?
A. I was, during the period of four or five years which terminated about two years ago.
Q. That is, until 1911 or '12?
A. About 1911.
Q. And commencing about when?
A. Four or five years prior to that.
Q. Something like 1904 or 1905?
A. No; much later than that.

Q. '06?

A. '07 or '08.

Q. You were in Ocean City in 1904?

A. Without particular reference to that date, I have not missed any summer that I know since, well, say 1895 or '96.

Q. Do you remember the agitation down there in 1904, to get rid of the camp meeting dedication?

A. I don't particularly recall the date, no, sir.

Q. Do you recall the occasion?

A. If you will particularize the statement, I might.

Q. Do you remember the fact that there was an offer made by the Ocean City Association to the city council, whereby the association engaged to pay $10,000 and make certain payments in land, upon the condition that the tract between Fifth and Sixth Streets and the bay and the ocean, be released from the dedication?

A. I recall a proposition had been made; the terms, I don't know, because I wasn't interested in it.

Q. I thought you heard it during that summer?

A. During that year——

Q. And you do know the fact that the question was put up to the people to be voted upon at the general election, or was to be put up?

A. I believe that was the proposition; the entire matter didn't receive much attention from me.

Q. Do you get the Ocean City Ledger?

A. Yes, and the Sentinel.

Q. And you got the,—that year?

A. I think not the Ledger at that time.

Q. You got the Sentinel?

A. Yes, I think so, and prior to that time, in all probability.

Q. You were familiar with the agitation as it appeared in the local newspapers?

A. Entirely so; familiar with the fact that the question was being considered regarding, as I understood it, that the city proposed to entirely release any claims that they may have been considered to have had on the land in the impairment of the title to any extent they may have been——

By the Court:

Q. You were familiar with that in 1904, while this agitation was going on?

A. I don't recall the date.

Q. During that time, you were familiar with it?

A. Yes.

By Mr. Carr:

Q. You recall the fact that it was to be submitted to the voters at that general election?

A. I wouldn't want to say; that didn't interest me.

Q. When you heard of that agitation, did you have any talks with Mr. Lake of the Ocean City Association?

A. Not that I recall; the information wouldn't have come to me from Mr. Lake in that connection.

Q. You having heard this story, did you talk to any of the officers of the Ocean City Association, or they to you?

A. The information I had was simply general, and by rumor. I didn't, for instance, know what you have told me, the terms of that proposition; and secondly, my knowledge was that of mere rumor in the matter; I had no particular means of information aside from what was commonly known.

By the Court:

Q. You had the means of information as disclosed in the Sentinel?

A. Yes, sir.

Mr. Marter: I have no cross-examination, but I would like to examine him in my own case, I will make him my own witness.

Direct examination.

By Mr. Marter:

Q. I show you a deed from the Ocean City Association, dated the 25th day of August, 1900, and recorded in the office of the county clerk of Cape May County at Cape May Court House, in Book 148, page 74, being a deed to Charles William Masland for two pieces of ground, being the ground alleged to belong to Mr. Masland, and admitted by him in his answer and in the bill of complaint in this case, and I ask you whether that is the property purchased by you from the Ocean City Association?

A. Yes, sir, it is.

Q. What was the consideration given by you for that property?

A. $750.00, being $15.00 a foot front.

Q. The witness is shown deed from Ocean City Association to Charles W. Masland, dated the 12th day of April, 1906, and recorded in the clerk's office at Cape May Court House, in Book No. 200, page 473, purporting to convey to him a three-foot strip and riparian right in front thereof, as set forth in the bill of complaint, and I ask you whether that ground was conveyed to you by the Ocean City Association?

A. Yes, sir, that is correct.

Q. What consideration did you give, if any, for that ground?

A. That is $150.00, that is the riparian right to the association; I gave $150.00 which was paid to the state by the association.

Q. The witness is shown a map entitled "Map of Bay Front," and I ask you if that shows the conditions of the bay front in the vicinity of your ground?

A. Yes, sir, it does.

Mr. Marter: I offer the deeds in evidence, three of them, also the map.

(Above-named deeds, together with riparian grant from state of New Jersey to Ocean City Association, dated March 8, 1906, and recorded in the clerk's office of Cape May County in Deed Book 203, page 206, &c., are marked "Exhibits D. M. 1, D. M. 2 and D. M. 3," respectively, and the said map is marked "Exhibit D. M. 4 for identification.")

Q. What piece of property purchased by you and from the association is there any building erected on; is there any building erected on that piece of property purchased by you?

A. Yes, sir, a boat house.

Q. When was that boat house erected?

A. In 1900.

Q. What part of 1900?

A. The beginning of the fall of 1900.

Q. Do you recall whether that boat house was erected between the high-water line and low-water line or not?

A. It was erected eastward of the high-water line;

some was on the highland, but in addition to the contract of the builder who erected the house, there was a contract with Abel Scull for putting down piles with his floating pile driver.

Q. Will the ordinary high water come under your boat house?

A. Very largely under the boat house; we had to use the walk which we had built across the sand, approaching usually from Sixth Street, a slatted wooden walk over the sands, and it was used to the easterly door of the boat house.

Q. Why did you use it?

A. The water was so frequently around the entire house.

Q. From what stream?

A. From the bay, flowing in with the tide over the ground to the extent of quite considerably past the rear of the house; so we found it necessary to have this walk there, because we would have to wade through water.

Q. Was that boat house visible from any portion of the ground between Fifth and Sixth Streets, as far east as Wesley Avenue?

A. Yes, sir.

Q. It was visible from what points between Fifth and Sixth Streets?

A. Ordinarily, that could be seen from Wesley Avenue easily.

Q. Were there any other houses built on the bay front at that time between Fifth and Sixth Streets?

A. No.

Q. Have any been built since?

A. Yes, Mr. Cresse's house.

Q. When was that built?

A. About 1905, I think, or 1904; I could approximate it at 1905; I am not positive as to the date.

Q. Did Mr. Bridgewater make any objection to your erecting that house at that time?

A. No.

Q. Has he made any since, up to the bringing of this suit?

A. Not at any time, although I have met Mr. Bridgewater and talked on other matters.

Q. Does this map indicate the correct position of your boat house and wharf bulkhead at the present time?

A. The boat house and wharf; I don't see the bulkhead line.

Q. It does represent the correct position of the boat house and wharf?

A. Yes.

Q. Do you know, of your own knowledge, whether the high-water line changed between 1900 and 1906, at the point in front of your boat house?

A. There was no change, practically no change.

Q. What other improvements, besides the boat house and wharf, have you erected on this property?

A. A bulkhead.

Q. Has there been any streets laid out on your property since you purchased it?

A. Yes, Pleasure Avenue; Bay Avenue had not been made when I bought the property; it was on the map to be extended from Sixth to Fifth; I presume it had not been made at the time.

Cross-examination.

By Mr. Carr:

Q. Mr. Masland, on "D. M. 4" I see a lot marked "C. W. Masland;" that is your lot, is it?

A. Yes, sir.

Q. And do you know what the irregular, heavy line bounding your lot indicates on the map?

A. I would assume——

The Court: Why take up the time for that, Mr. Carr?

Q. The enclosure marked "House," is that your boat house?

A. Yes.

Q. Is it more than one story in height?

A. Two.

Q. Two stories?

A. Yes, sir.

Q. About how high is it?

A. To the peak?

Q. Yes.

A. 23 to 25 feet, I should estimate.

Q. How high would that be above the grade line of, say, Sixth Street?

A. About 18 feet, I should judge.

Q. Proposed location of Pleasure Avenue,—wasn't that a private street laid out by the owners?

A. It was dedicated, not a private street.

Q. I mean it was laid out by the owners rather than by the city, wasn't it?

A. At their initiative, at the initiative of the owners it was opened, and they, of course, paid for the grading.

Q. Has the street been physically put through and graded?

A. Yes.

Q. And the owners paid for the grading?

A. Yes.

By the Court:

Q. And now being worked by the city?

A. Yes.

HENRY S. HAINES, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Bourgeois:

Q. Mr. Haines, you live where?
A. Burlington.
Q. You are what, by profession?
A. Civil engineer and surveyor.
Q. Do you hold some office under the proprietors?
A. Surveyor general.
Q. Did you, about 1880, make a survey of the water line along the Ocean City front?
A. Yes.
Q. On what date?
A. January 27, 1880.
Q. And since that time have you made a map for the purpose of delineating on it the water line as it existed at that time?
A. Yes.
Q. I show you a map containing on it Wesley Avenue, Ocean Avenue, Atlantic Avenue, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Streets, and I ask you if that map was made under your supervision?
A. I made it myself.
Q. What does it show?
A. The low-water line on that date.
Q. How is the low-water line designated on the map?
A. By a heavy, dark line adjoining the blue margin.

Q. I notice inland from that, a dotted line; what does that indicate?

A. High-water line on that date.

Q. And that is how far inland from the heavy line on the map?

A. About 300 feet.

Q. And what was the approximate range of the tide at that time?

A. That was considered to be the range of the tide at that time in that direction.

Q. And the dotted line, you say, is just 300 feet distant; have you a scale?

A. No; but I think that is so drawn on this map.

Q. Now, how did you locate this low-water line?

A. By actual running on the ground.

Q. Will you tell me, please, can you scale this in any manner?

A. I didn't bring a scale with me; the scale is 80 feet to the inch.

Q. I want to know, approximately, how far distant the high-water line was oceanward from the oceanward side of Ocean Avenue at the westerly side of Fifth Street, measured from the intersection of the southeasterly line of Ocean Avenue with the southwesterly line of Fifth Street?

A. 300 feet that appears to be, also; that is about 300 feet.

Q. What is the distance from the intersection of the southeasterly line of Ocean Avenue with the northwesterly line of Sixth Street down to the dotted line?

A. 190 feet.

Q. Now, what is the distance between the southeasterly line of Ocean Avenue and the northeasterly line of Fifth Street down to low-water mark?

A. About 660 feet.

Q. Now, what is the distance from the intersection of the southeasterly line of Ocean Avenue to the northeasterly line of Sixth Street down to the low-water mark as it was when you made the survey in 1880?

A. About 560 feet.

Q. You say this map was made by you from actual measurements?

A. Yes, as to low-water line and location of streets, and everything else except the dotted line.

Q. I call your attention to what appears to be a street line extending from Fifth Street to Sixth Street, in what would be Atlantic Avenue. Do you recall if there is any such line on the original map of dedication?

A. I have known, but I don't recollect now; I don't think it reaches.

Mr. Bourgeois: I offer the map in evidence.

(Said map is marked "Exhibit D1.")

Cross-examination.

By Mr. Carr:

Q. When did you make the map, Mr. Haines?

A. This you have?

Q. Yes.

A. February 23, 1905.

Q. How is it you made the map so many years after the survey?

A. I think this was made for some trial; I don't know now; it was made, I think, for the trial in the Sooy case.

Q. And in the Sooy case—where is the original map?

A. I don't know at present.

Q. You don't know?

A. No.

Q. Where are the original notes from which this map was made?

A. The notes of the original survey are in my pocket; the notes from which this map was made are identical, so far as the notes provide the substance.

Q. Do you mean, from 1880 until 1905, no map was produced as a result of your survey?

A. Yes, there was; a map was made for the original location to the council of proprietors for the appropriation of that land which I made for——

By the Court:

Q. When you made this map in 1905, you did so from your notes in the field book?

A. Yes.

By Mr. Carr:

Q. This is the original map, then, from your 1880 notes?

A. It is an original map made from the notes of that date.

Q. Had you ever previously made a map like this from those notes?

A. Not exactly like that, perhaps, but I made a map which went into the application to the board of proprietors for the location of the land of Peck's Beach.

Q. What was the object in showing what you call

the low-water mark as a heavy line, and the high-water mark as a dotted line?

A. The object was to show, as I now remember, that the property of Mr. Sooy had a riparian frontage at the date on which he purchased it.

Q. The property which you refer to on that map is marked "Hotel Brighton"?

A. Yes.

Q. Did you make more than one survey along here in 1880?

A. I made a repeated survey on the following day, but only one survey for that purpose.

Q. A continuation of the same survey?

A. Yes.

Q. What was the purpose of making this survey in 1880?

A. To take up this land for the proprietors for Simon Lake, who had took up the purchase of Peck's Beach with the object of laying out Ocean City.

Q. At the time that survey was made, these streets were not laid out or anything, were they?

A. No.

Q. These streets did not come into existence on any plan at all until this plan of May 22, 1880, was produced, did they?

A. I couldn't say; the maps were made, but I am not sure.

By the Court:

Q. From what information did you superimpose these streets on a map made from your notes?

A. The surveys began at a point——

Q. Will you answer my question? From what information were you able to locate these streets with reference to the survey?

A. The streets were taken from the official map of

the city later, and had reference to my beginning point. Knowing that Thirteenth Street, or nearly the middle of it was the point at the beginning of my survey at Oil Creek, and that enabled me to locate them.

Q. You didn't locate these streets so as to put them upon this map from an actual survey or by an actual survey?

A. I have made those street measurements.

Q. For this map?

A. In connection with this case to which I alluded; I have made these measurements repeatedly.

By Mr. Carr:

Q. It is because then, of the coincidence of one of your beginning points at Oil Creek, that you were able to superimpose these streets upon this original map?

A. Yes, sir.

Q. That beginning point in Thirteenth Street is not there now, is it?

A. I know how to find it. The objects are not there; it is in the middle of a street now.

Q. And that was the condition in 1905, when you did this work of superimposition?

A. Yes, sir.

Q. So that a slight difference in the location of that beginning point would produce quite different results so far as the superimposition of these streets are concerned?

A. No.

Q. If you moved that beginning point a little either way, you would move that high or low water, wouldn't you?

A. I re-ran the lines on the bay side from the

wharf, which was then at Fourth Street when I made this first survey, to Oil Creek the beginning of my survey.

Q. Oil Creek had been turned into the street at the time?

A. Yes, sir.

Q. And the wharf wasn't there?

A. Yes, and is there yet.

Q. Is it there and unchanged?

A. Not unchanged; considerably changed. The points I recognized are obtainable.

Q. So, both of your boundaries had changed before you began this work of superimposition?

A. Not very seriously; not so seriously that they couldn't be re-established.

Q. When you made your original map, whatever maps you did make from those notes, did you show the high or low-water mark?

A. The low-water mark.

Q. Is that the way you made your surveys in 1880?

A. Yes.

Q. Along the coast?

A. Yes.

Q. You didn't show high-water mark at all?

A. No.

Q. So that the high-water mark is a matter of conjecture with you?

A. No, sir, it's a matter of measurement.

Q. If you didn't locate your high-water mark in 1880, how are you going to locate it in 1905 on a piece of paper?

A. By successive measurements of the range of the tide in later years, and the testimony of residents on that beach, such as life saving men and others, communicated to me.

Q. So that it is the result partly of observation and partly of hearsay from others; is that so?

A. Statements from others who knew.

Q. Whom you think know?

A. Yes.

Q. And did it form a nice parallel strip without a turn of an angle or curve, for a distance of about 2,000 feet?

A. I think nearly so.

Q. Absolutely so?

A. I think nearly. This is a straight dotted line; this line is straight and that is parallel (indicating).

By the Court:

Q. The low-water line is straight, and the high-water line is parallel with it for about a mile?

A. Yes, sir.

By Mr. Carr:

Q. Without a curve?

A. Yes.

Q. Or an angle?

A. Or an angle of any material amount.

Q. Do you see any at all on here?

A. I don't see any, no.

Q. Where would the curve which you deem not material, show on the map?

A. Oh, they would be slight indentations.

Q. Show me some of them.

A. I don't know where.

Q. This is not an actual portrayal of the high-water line as it stood in 1880, is it?

A. I think it is, nearly.

Q. But I understand that you were employed to

produce a map for the purpose of showing that the Hotel Brighton was a riparian lot, for use in the Sooy case?

A. Yes, sir, that was the object.

Q. And you knew that object before you went to work on the map, didn't you?

A. Yes, sir.

Q. And then you sought to obtain from life-savers and people on the beach, statements that would corroborate that view?

A. To ascertain the facts, but I wasn't employed to tell anything that wasn't true; I never did that kind of business.

Q. You, of course, are familiar with this map, "Exhibit C1," the 1880 dedication map, aren't you?

A. I have seen it.

Q. Lots of times, have you not?

A. Yes, sir.

Q. It discloses a condition very different from that portrayed on your map; how are you able to account for the difference?

A. I don't think that is right.

Mr. Bourgeois: I object to this testimony.

Q. Were you down there in May, 1880?

A. I was down there in January, 1880.

Q. Were you there in May, 1880?

A. I don't think so.

Q. When were you next there for the purpose of making any survey after January, 1880?

A. December, 1881.

Q. Did you make that survey for the Ocean City Association?

A. I made it for Charles Matthews, whom I understood, then, was in charge of the interests of the association.

Q. Did you make a survey between Fifth and Sixth Streets, and along the Atlantic Ocean?

A. I made a survey of the whole beach on the front, ocean side.

Q. And that includes the space I have mentioned?

A. Yes, sir.

Q. And did you then ascertain that the map "Exhibit C1" was wrong in its portrayal of the high-water mark?

A. I never had seen map "C" at that time; I didn't know anything of the kind, but I repeated my work because there had been a formation of land at the northeast end of the beach which Mr. Matthews desired to be included in the Ocean City tract.

Q. Was your work embodied in the 1883 map, do you know?

(Witness is shown a map.)

A. I know nothing about that map; I didn't make it.

Q. What was your work embodied in finally?

A. It was embodied in a survey to the council of proprietors of some four hundred odd acres of land.

Q. And for your purpose, the location of the high-water mark with exactness was not essential on your survey?

A. No, sir.

Q. It was a great big four or five hundred acre survey?

A. It was a correct survey of the low-water line, as near as I could make it.

Q. There was no occasion for following with great accuracy the curves of the beach, was there?

A. No—yes, there was necessity for being accurate in doing my work.

Q. For following the general trend; wasn't that sufficient for your purpose?

A. I followed the beach.

Q. But to follow the general trend was sufficient, wasn't it, for your purpose?

A. No, I followed the beach.

Q. Although you say there are a number of minor indentations which you didn't note?

A. Maybe, two or three feet or a dozen feet, but not to affect or be visible on the map I drew.

By the Court:

Q. With the ocean constantly moving, how do you get at your low-water line?

A. It was run out on a day when the water was the lowest. I run across Oil Beach to the sea, and run in the surf with boots on, and I run it on a day of the year when the tide was the lowest, and a time of the day when the tide was the lowest.

By Mr. Carr:

Q. You didn't run any high-water mark?

A. No, sir.

Q. How long were you down there making that survey in 1880?

A. I don't know whether I can tell; I slept in a life-saving station; I was there several days.

Q. Didn't you tell me you were there two days?

A. Not now.

Q. Didn't you say you began it one day and completed it the next?

A. No; I continued it the next; I was there more; I was there several days.

Q. What do you mean by "Several days"?

A. Five days, probably.

Q. And possibly, only three or four?

A. I can't tell.

Q. I want your best recollection.

A. I don't know; probably four days; probably five, and maybe six; I don't think as many as six.

Q. Did you have any assistance on the ground?

A. No, I just had——

Q. Just laborers?

A. Just laborers.

Q. You did all the instrument and calculation work?

A. Certainly.

Q. You recovered how much more than 400 acres?

A. The first survey?

Q. Yes.

A. 2307 acres, I think.

Q. 2307 acres?

A. It contained the whole beach from Oil Creek down to Corson's Inlet.

Q. That is some six or seven miles?

A. I ran it all.

Q. To the bay front?

A. Yes, to the ocean front.

Q. How long was your exterior line going to the water front, approximately?

A. I suppose four miles; I couldn't tell you.

Q. Isn't it six or seven miles from Ocean City——

A. Oh, I was going one way; I can't tell; but I can tell by adding up my calculations.

Q. Tell me, approximately.

A. I can't tell.

Q. Do you know how far Corson's Inlet is from the station?

A. I guess it's more miles than I say, because it's longer from——

Q. Give us the best idea you can of the distance

from Corson's Inlet to the point of Ocean City, the far point of Ocean City.

A. I suppose it may be—I really don't know at all.

Q. Haven't you any idea at all?

A. I can't tell it by——

Q. Is it a matter of eight or nine miles, or thereabouts?

A. More than that; it probably may be eight miles down to the inlet.

Q. And four or five miles on the back side?

A. Probably more than that.

Q. Probably 15 or 16 miles of survey work?

A. I don't know; I decline to answer; I don't know.

Q. Isn't it true that your survey didn't close mathematically?

A. No, sir, it did close.

Q. And do you still say that running along for half a mile, the space between high and low-water mark is absolutely uniform and parallel?

Mr. Bourgeois: That is objected to.

The Court: Objection sustained.

Re-direct examination.

By Mr. Bourgeois:

Q. Let us find out about this survey. When you commenced this survey, how did you locate Oil Creek?

A. I was taken there by Simon Lake.

Q. And from Oil Creek you proceeded where and how?

A. I ran across the beach at that point to the low-water mark to the sea.

Q. What was there at Oil Creek that you took as a beginning point?

A. A post in the creek at that time.

Q. Did you ever see it afterwards?

A. I saw it the next time I went down.

Q. When was that?

A. A year after.

Q. Did you ever see it after this map had been delineated and the street system had been established?

Mr. Carr: That is objected to.

The Court: The objection is overruled.

A. I am not quite sure that I didn't see it when that was being filled in.

Q. After you ran across the beach you ran to what mark?

A. Low-water mark in the ocean.

Q. And from that point you ran how?

A. I ran up the beach as the low-water mark permitted me to do.

Q. Was that a straight or crooked beach?

A. It was apparently straight. As I remember, the first line was half a mile long, and the next three-quarters of a mile.

Q. And in your running you ran how far; did you run around the inlet?

A. Not the first time.

Q. I mean, while you were running around there?

A. No, not the first time; I closed my survey at Oil Creek.

Q. You didn't stop work; you ran three courses?

A. No, sir.

Q. You went how far?

A. I went around the low-water mark all the way to a point opposite the beginning, and then across to the beginning.

Q. You went as far as Egg Harbor Inlet?

A. Yes, sir.

Q. And then around the inlet?

A. Yes.

Q. What did you find on the inlet or bay side, near the junction of the inlet, what monument did you find there?

A. The wharf was there.

Q. And that wharf remained there for years afterwards?

A. Yes, sir.

Q. After the street system was laid out?

A. Yes.

Q. When the street system was laid out, where was the location of the wharf in relation to the street system?

A. At Fourth Street and Bay Avenue.

Q. And then you went on down and closed your survey?

A. Yes.

Q. When you wanted to locate your survey with relation to the street system, what did you do?

A. I ascertained the point in the mouth of Oil Creek by re-measuring on the bay side from the wharf down, or from some known corner that I had to that point, and confirmed it by information given to me by the man that laid out the street.

Q. William Lake?

A. Yes, sir.

Q. He is a surveyor?

A. Yes.

Q. And did he point out where Oil Creek was?

A. Yes.

Q. And how did his location of Oil Creek correspond with your location as you fixed it?

A. Exactly the same.

Q. Exactly the same?

A. The Fourth Street wharf.

Q. I didn't refer to that.

A. I am not answering as to the wharf, I am speaking of the Oil Creek stake.

Q. Was the stake there when you went down with Mr. Lake?

A. No.

Q. What did you do?

A. Conformed my measurement to it along the bay; the stake was there when I first made the survey.

Q. I want to find out where you measured from, where you say his location of this stake at Oil Creek corresponded with your measurements along the bay; where did you measure from?

A. I think I measured for a point or promontory; that was one of my points at the time I made the original survey.

Q. This map was made for the Sooy case?

A. Yes.

Q. At the time you made that map, did you check up the location of your beginning point with the monument of the street system that was then established?

A. Yes.

Q. And does the map that is before the Court, "D1," show the line that was run by you as the low-water mark in 1881, with relation to the street system as it is laid out in Ocean City?

A. Yes.

Q. Tell me whether or not at that time you

checked up the distance along Seventh Street from Ocean Avenue to the low-water mark.

A. Measuring the range of the tide?

Q. Yes.

A. Yes, there and at several other points.

By the Court:

Q. And found it about 300 feet?

A. Yes, sir.

By Mr. Carr:

Q. Is that a flat or steep beach?

A. A flat beach.

Q. Tell me whether or not, during the time you were gathering data for the preparation of this map, if you checked up your survey with measurements then made in 1905, or about that time?

A. I certainly did.

Q. And you re-ran——

A. I re-ran from the supposed point at Oil Creek to the seaside, and then along the ocean, as by the original courses.

Q. With the same or a different instrument?

A. The same instrument.

Q. And were your runnings the same?

A. I calculated the variations of the needle and went the round I had previously run.

Q. And how did it come out when you got around to Fourth Street wharf?

A. I didn't run all around to the wharf.

Q. Did you check up across there?

A. No.

Q. You checked up from Oil Creek, didn't you?

A. Yes, because I started from there; I didn't go around.

Q. Didn't you then go across?

A. No.

Q. I thought you said you did?

A. No.

Q. How did you prove your work?

A. I didn't prove it other than by a repetition of the courses I had run down to a point beyond the place that was then in controversy and down to this street and below, probably.

Q. Could you state whether or not the line you ran in 1905 was the line that you ran in 1881?

A. It was exactly the line.

Q. Exactly the same?

A. Yes.

Q. About this other survey, that Mr. Carr has spoken to you about, was that the survey extending from 13th, up or down, to 64th Street?

A. The second survey?

Q. The one that was made for Mr. Lake, wasn't it?

A. That was Corson's Inlet.

Q. And the other was partly delineated——

A. Oh, yes, that was for Mr. Matthews ("D1").

Re-cross examination.

By Mr. Carr:

Q. When you checked up was in 1888 with Mr. Lake, you say, on the location of Oil Creek?

A. No, sir; I say that in my more recent survey, which may have been several years later,—I don't remember now,—I obtained the assent of Mr. Lake to my location of the mouth of Oil Creek in the streets which he had laid out.

Q. I misunderstood you. He is the surveyor who made "Exhibit C1"?

A. Yes, sir.

Q. Did he make "Exhibit C2" as well? You rejected his map as incorrect, so far as it portrayed the ocean front, but accepted it as correct so far as it portrayed the location of streets, did you not?

A. Taking his word for it, yes.

Q. And that is the way you handled it?

A. Yes, sir.

Q. You remember being in the case of Palen against Ocean City, don't you?

A. I remember now.

Q. About 1900 or 1902, along there?

A. I don't remember the name.

Q. Do you remember being in a case that involved the Fourth Street wharf?

A. I think I remember something about it, yes.

Q. Do you know Mr. Goff, the city surveyor, down there?

A. Very favorably.

Q. Do you remember how you were witnesses on the same side in that case?

A. I don't remember.

Q. Do you remember saying to Mr. Goff at that time, that you had been unable to mathematically close your survey, and that you had to close it by mental estimation?

A. I don't remember.

Q. Will you say you did not?

A. I won't say any such thing; I don't think I did.

Q. If you had accepted as correct Mr. Lake's map, "Exhibit C1" in its delineation of the high-water mark, you would have necessarily got a different result in the locating of your streets upon "Exhibit D1," would you not?

Mr. Bourgeois: That is objected to.

The Court: The objection is overruled.

A. No, sir; that has nothing to do with that whatever.

S. Wesley Lake, being recalled on behalf of the defendants, testified as follows:

Direct examination.

By Mr. Bourgeois:

Q. Doctor, I want to know whether or not this camp meeting ground is and has been assessed for taxation?

Mr. Carr: That is objected to as immaterial.

The Court: I will allow it to go in.

A. It has been.
Q. For how many years?
A. I don't know; sometimes it has been assessed, and sometimes it hasn't.
Q. Was it ever sold for non-payment of taxes?

Mr. Carr: That is objected to.

The Court: Objection sustained.

Q. Doctor, what was the condition of Ocean City at the time you first started this camp meeting? I

mean, so far as the conduct of the camp meetings was concerned,—that was in 1880; how were they conducted; who were the people?

Mr. Carr: That is objected to as immaterial.

The Court: Objection overruled.

A. They were in those days, most of them in tents, and some in cottages and boarding houses and so on; the people,—there were different people——

Q. I didn't mean that. Tell me whether or not the same method of housing campers is used at the present time, or has it been superseded?

Mr. Carr: That is objected to.

The Court: Objection overruled.

A. It is very different now from what it was then; the tenting business has been done away with in the camp ground.

Q. What about the sanitary phase of it?

A. It is very different from what it used to be, because the public and the city require so much more attention to that; they are much more particular; they have sewers and rains now, and we have to connect to them.

Q. What other camp meeting ground are you familiar with besides the camp meeting grounds at Ocean City?

Mr. Carr: That is objected to.

The Court: The objection is overruled.

A. I am familiar with the Seaville camp meeting ground; I don't think they have any tents.

Q. What did they have in 1880?

Mr. Carr: That is objected to.

The Court: Objection overruled.

A. They had tents.

Q. What about Pitman?

Mr. Carr: That is objected to.

The Court: The same ruling.

A. Not very much about that.

Q. What about Malaga?

A. I am not familiar with that.

Q. Are you familiar with Ocean Grove?

A. Yes.

Q. What have they?

Mr. Carr: That is objected to.

The Court: The objection is overruled.

A. They have a good many tents. Some of the tents have been done away with, and bungalows have been put in their place.

Q. Are these tents at Ocean Grove of a temporary nature or practically permanent?

Mr. Carr: That is objected to.

The Court: Objection overruled.

A. The kitchen part is permanent, but on the front they take the tents down in the fall.

Mr. Bleakly: On behalf of Mrs. Buchanan, she sets up that she built a certain addition to the boarding house. I have here the building permit granted by H. C. Smith, the building inspector of Ocean City, March 21, 1897; I offer that in evidence to show the date this work was done.

Mr. Carr: I make no objection to the lack of formal proof, but I object upon the ground that the building inspector's action is in no way material.

The Court: I will admit it for the purpose of showing the date and that the building inspector granted the permit.

(Said permit is marked "Exhibit Buchanan 1.")

Further direct examination.

By Mr. Bleakly:

Q. Do you remember in the spring of 1907, Mrs. Buchanan making an alteration or addition to the boarding house previously erected at 6th Street and Ocean Avenue, Ocean City?

A. Yes; I suppose it was she who owned the property.

Q. I want you to state what occurred about the extent of that alteration?

Mr. Carr: The question is objected to.

The Court: Objection overruled.

Q. Just state the extent of those improvements.

A. They were to enlarge her boarding house about 20 rooms; I suppose three or four thousand dollars.

Mr. Carr: I ask that that be stricken out as not responsive and not within the knowledge of this witness.

The Court: The motion is denied.

Q. How many stories did she build this up?

A. Three stories.

Q. Was it built on this land between Fifth and Sixth Streets on Ocean Avenue?

A. Yes, the corner of Sixth and Ocean.

Q. And on which side of the original structure was this addition built?

A. In the rear.

Q. Was it north?

A. Yes.

Q. North from Sixth Street?

A. Northwest from Ocean Avenue; north runs diagonally.

Q. I want you to state whether that building, previous to this alteration, was occupied and used as a boarding house?

A. Yes.

Q. And subsequent to this alteration, was it used as a public boarding house?

A. Every summer.

Recess until 2 P. M.

AFTER RECESS.

S. WESLEY LAKE resumes the witness stand.

Direct examination. (Continued.)

By Mr. Bleakly:

Q. What kind of a building existed at Sixth and Ocean Avenue, northwest corner, in 1900 and prior thereto?

A. A building used for keeping boarders; a very large cottage; they used it more for keeping boarders.

Q. What was the value of that improvement, Mr. Lake?

A. Eight to ten thousand dollars, maybe more.

Q. How many stories high is it?

A. Three, I think; maybe, four, with the basement; four stories with the basement.

Further direct examination.

By Mr. Bourgeois:

Q. Do you know where Frank Corson's land was, F. F. Corson's land; was it north of Fifth Street?

A. Dr. Frank Corson?

Q. Yes.

A. Yes.

Q. Where was his land?

A. On the north side of Fifth Street, east of Atlantic.

Q. It extended northeasterly along Atlantic Avenue how many feet?

A. 275 or 300 feet.

Q. And adjoined whose land?

A. The association's land.

Q. And how far northeasterly along the east side of Atlantic did he own?

A. He owned it up to the inlet.

Q. The Ocean City Land Company afterwards became the owner of that land?

A. Yes, sir.

Q. From whom did they purchase?

A. From us.

Q. And from Dr. Corson?

A. I think they purchased from us.

Q. And they purchased Dr. Corson's land?

A. Yes, sir.

Further direct examination.

By Mr. Tatem:

Q. You were president of the Ocean City Association in 1897, were you not?

A. I should judge so.

Q. Do you recall in that year the Ocean City Association deeded a considerable number of lots of land to Henry D. Moore?

A. Yes, sir.

Q. And that one of the lots so deeded was this strip 77 feet wide on Bay Avenue, extending to the thoroughfare?

A. Yes, sir.

Q. What consideration did he give the association?

A. We had two blocks, and we gave him one block, half of the land we gave him.

By Mr. Bourgeois:

Q. How far oceanward did Dr. Frank Corson's land extend?

A. It went to the high-water mark.

Q. Did he have the riparian grant, do you recall?

A. I don't think he did; I think we got that afterwards for the land company.

Q. And your land went how far oceanward—1896 I am talking about?

A. Did they buy it as early as that?

Q. No, they didn't; I refer to 1896.

A. At that time, I don't know, but I should judge four or five hundred feet.

Q. Did you go to the high-water mark?

A. Yes.

Q. And he went within three feet of the ocean?

A. I presume so; I don't know what kind of a deed we gave him.

Q. It was either that or it went to the ocean?

A. Yes, sir.

Cross-examination.

By Mr. Carr:

Q. This Buchanan cottage was built somewhere else and moved as a cottage to its location on Sixth and Ocean; isn't that so?

A. Yes.

Q. And it belonged to the Ocean City Association at that time?

A. No, sir.

Q. What interest did they have in that cottage?

A. Nothing.

Q. Did they sell that land and get money for it?

A. No, they didn't get any money for it; they gave him that land for getting these parties to sign off their rights around the camp ground.

Q. They gave Charles Matthews that land for his services in that connection?

A. Yes, sir.

Q. And then Charles Matthews had this house brought there and put upon foundations, didn't he?

A. Yes, sir.

Q. And Matthews at that time was what officer of the association?

A. I don't think he was a member of the association at all.

Q. Was he employed by the association?

A. He made that proposition himself, and we consented to it.

Q. Did he have any other general employment with the association?

A. No, sir.

Q. Do you remember the fact that that house was moved over there very quickly after it was announced that it was located at a point not within the reserved area?

A. It was not.

Q. Don't you know that it was announced that that house was to be placed in another location?

A. I don't know that it was so announced no; they certainly didn't hurry it there very fast; they were a good while putting up the foundation after he got it there.

Q. They got it there, jacked it up and built the foundations afterwards?

A. Yes, sir.

Q. Do you know whether a suit was brought against Matthews to remove that house?

A. No, I don't.

Q. Do you remember the suit that was brought against the association to remove a couple of houses?

A. Yes.

Q. And they were removed by the association?

A. Yes.

Q. That was in 1900?

A. Somewhere along there; a suit was brought against Mrs. Buchanan at the same time.

Mr. Bleakly: That is objected to; that was a voluntary statement.

The Court: Overruled.

Q. When was this last suit you speak of?

A. This suit I speak of is at the same time when we were sued to take ours off.

Q. And you took yours off and the Buchanan cottage is still there?

A. She didn't remove hers, and the city called off the suit afterwards.

Q. It called off all the suits?

A. The others were out of the way, but she wouldn't move hers.

Mr. Bourgeois: I offer in evidence a release from Mark Dana and others to the Ocean City Association, dated the 13th day of February, 1895, and recorded on the 11th day of December, 1896, in the clerk's office of Cape May County at the Cape May Court House in Book 132 of Deeds, folio 19, &c.

(Said deed is marked "Exhibit D2.")

R. FENDALL SMITH, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Bourgeois:

Q. You are a civil engineer and surveyor?

A. I am.

Q. You are familiar with the street system and the tides of Ocean City?

A. Yes, sir.

Q. In 1906, did you make some observations of the range of the tides on Ocean City front, the difference between high and low-water marks?

A. Yes, sir.

Q. For how many months?

A. Extending from June, July, August and September.

Q. And what location on the beach?

A. In front of Sixth Street, Seventh Street and Eighth Street.

Q. What was the average range of the tide for those months at Sixth Street?

A. I can't tell you offhand.

Q. Look at your book.

A. (Looking at book.) The average between the wash lines of high and low water on Fifth Street is 255 feet.

Cross-examination.

By Mr. Carr:

Q. Can you obtain the high-water mark by a single survey; I mean the ordinary high water?

A. It is possible if you have the observations established.

Q. You mean, you depended upon certain data that other surveyors have taken?

A. Or yourself.

Q. That is, certain established levels you know?

A. Yes, determined by yourself or some competent authority.

Q. In the absence of a predetermined level such as you speak of, is it possible to make an ascertainment of high water by a single survey?

A. You know it is the level of that day, but not the average.

Q. Did you find, between Fifth and Sixth Streets, any variation in the distance between high and low-water mark?

A. I didn't have any record of Fifth Street.

Q. What did you have?

A. Sixth, Seventh and Eighth Streets.

Q. Were they all exactly alike?

A. No, sir, the distances were not alike.

Q. How much variance would there be in there?

A. It depends on the formation of the beach.

Q. Tell me what results you did get.

Mr. Bourgeois: That is objected to.

The Court: The objection is overruled.

A. The average of distance at Eighth Street for

the year 1905, was 151 4/10 feet; at Seventh Street, 243 feet; at Sixth Street 255 5/10 feet.

Q. Are the same general differences all along the beach front there?

A. That is constantly changing.

Q. It is a constantly varying line between high and low water—the distance between the two?

A. Subject to the conditions of the weather.

Q. You never get an absolutely parallel line of high and low water——

A. I never found it such.

Q. Was the line of high-water mark an absolutely straight line in front of the lands between Fifth and Sixth Streets?

A. I was not locating high-water mark at that time.

Q. Can't you tell from general knowledge?

A. I have seen it straight for a long ways.

Q. Applying this to between Fifth and Sixth Streets, can you say whether that was a straight line or regular line when you made these observations?

By the Court:

Q. From the best of your knowledge?

A. There was a slight curvature at Eighth Street, I think.

By Mr. Bourgeois:

Q. Was the investigation you made, made for this case?

A. No, sir.

By Mr. Carr:

Q. What was its object?

A. Another case.

Further direct examination.

By Mr. Tatem:

Q. Mr. Smith, I show you the map which has been offered and marked for identification "Exhibit D M. 4," and I ask you if that map was prepared by you?

A. I prepared the original of this map.

Q. And this is a blueprint from that original?

A. Yes, sir, I should say so.

Q. Did you make the measurements which are indicated on this map?

A. I made the measurements indicated.

By the Court:

Q. You made the map from an actual survey?

A. Yes.

By Mr. Carr:

Q. That survey was made at or about the time indicated on the map, September, 1906?

A. Yes, sir.

Q. What does the heavy continuous line along the edge of the lands marked, "Moore, Masland, Cresse," and so on indicate?

A. That indicates the mean average high-water line for the month of September.

(Said line is marked on the map "A. A. A. A.")

Q. That line was placed on the map by you in accordance with the actual survey made by you of the land at that time?

A. It was.

Q. By reference to the map, taking the lot of Henry D. Moore on the northeast side of Sixth Street, what was the distance from the high-water line to Bay Avenue?

A. 292 feet to the northwest line of Bay Avenue.

Q. On the lot marked "L. M. Cresse," on the southwesterly line of said lot, what was the distance from Bay Avenue?

A. I have no measurements for that; I have the measurements for the house only.

Q. What was the distance from the corner of the house, from the easterly corner of the house, to the easterly side of Bay Avenue?

A. 278 3/10 feet.

By the Court:

Q. What are these extensions towards Bay Avenue from the house?

A. Approaches in the nature of a bridge, a plank wooden bridge.

By Mr. Carr:

Q. Was the whole of the house, as shown by your survey, then below high-water line?

A. Yes.

Q. What was the position of the Masland boat-house in relation to the high-water line?

A. The south corner of the house was slightly above the high-water line.

Q. And the rest of the house——

A. Was between high and low-water line.

Q. Describe briefly the character of the building that this Cresse house is.

A. A very substantial structure; I never went into the details.

Q. How many stories?

A. It is a frame structure two stories high; I can't recall what kind of a roof it was.

By the Court:

Q. It was a two-story house?

A. I don't know whether it is two stories and a pyramid roof.

By Mr. Carr:

Q. What is the first story used for?

A. I never had occasion to go in, excepting the portion used as a garage.

Q. Do you remember when that house was built?

A. No, sir.

Q. About when?

A. No.

Q. It was there at the time you made the survey, wasn't it?

A. Yes, sir.

Q. At the present time, Mr. Smith, do you know whether there is a bulkhead in front of the Moore, Masland and Cresse lots?

A. I can't answer that; it has been filled in considerably.

Q. From your observations, would you say that that natural high-tide line on the edge of the thoroughfare was a substantially permanent or a shifting line, the line "A. A. A. A."?

A. The line marked "A. A. A. A." was the average high-water line along there for some time, and had been.

Q. What is the character of the beach at that point which determines the high-water line?

A. At that time it was a meadow sod, sloping off to a broad flat.

Q. From your observation, then, would it be probable that the high-water line or meadow sod or mud flat in front, would remain at about the same location?

A. Very slight change.

By the Court:

Q. What does the line that is marked "B" indicate?

A. That is low water.

By Mr. Bourgeois:

Q. What is the distance from the oceanward side of Ocean Avenue to the oceanward side of Atlantic Avenue?

A. I can't answer that offhand.

Q. Have you any data that can tell you?

A. No, sir.

By Mr. Avis:

Q. Mr. Smith, will you indicate on this map a point 123 feet southwesterly from the southwesterly line of Fifth Street in the northwesterly line of Pleasure Avenue?

A. I will measure it.

Q. I have put a mark at a point on this map where I have marked "H"?

A. Yes, sir.

Q. I would like you to indicate a point 123 feet southwesterly from the beginning point that I have already mentioned?

A. I have marked the point and drawn a line through the same, marked "H2".

(It is agreed that the place marked by the enclosure is the Hann lot.)

Q. That is outside of the mean high-water line?
A. It is for 1906.

Cross-examination.

By Mr. Carr:

Q. Mr. Smith, won't you tell me how much of the Masland house encroaches within high-water line on the inside of high-water line; can you give the distances along the division line between Moore and Masland?

A. The map is marked along the front of the house, extending 10 4/10 feet southwesterly——

Q. That is from the division line between Moore and Masland, southwesterly, 10 4/10 feet?

A. I am not answering it correctly.

Q. (Stenographer repeats the question, as follows): "Mr. Smith, won't you tell me how much of the Masland house encroaches within high-water line, on the inside of high-water line; can you give the distances along the division line between Moore and Masland?" Tell me what portion of the Masland house is inside of the line of high water, that is, the landward side.

A. The high-water line passes northeast of the south corner 10 4/10 feet and northwesterly of the south corner 16 4/10 feet.

RALPH L. GOFF, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Bourgeois:

Q. You are the city surveyor of Ocean City?
A. I am.
Q. What is the distance between the northeasterly line of Ocean Avenue, and the northeasterly line of Atlantic?
A. There is no northwest——
Q. What is the distance between the oceanward line of Ocean Avenue and the oceanward line of Atlantic Avenue?
A. 345 feet.

(Mr. Carr concedes that the location of the Hann lot is correctly shown by Mr. Smith, the witness who marked it on the map "H".)

Further direct examination.

By Mr. Tatem:

Q. Mr. Goff, as city surveyor, you were familiar with the location of the high tide line on the day, between Fifth and Sixth Streets, in 1900?
A. Yes, sir.
Q. I show you a map, marked "Exhibit D. N. 4," made by R. Fendall Smith, surveyor, and I ask you if the line marked "A. A. A. A." to the best of your knowledge shows the location of the high-water line at that time?

A. It appears to be substantially correct.

Q. Are you familiar with the structure known as the Cresse Building; do you know, of your own knowledge, whether the Cresse boat house——

A. (No answer.)

Mr. Bourgeois: I want to offer in evidence a deed of riparian grant from the state of New Jersey to the Ocean City Association for land in front of the camp ground, said deed being dated the 29th day of May, 1901, and recorded in Liber N, folio 781, and recorded in the clerk's office of Cape May County, New Jersey, at the Cape May Court House on the 19th day of August, 1901, in Book 159 of Deeds, pages 497, &c.

(Said deed is marked "Exhibit D3.")

Mr. Carr: We wish to put in evidence later the deeds in the Carroll case; that is, all of the deeds other than those of the complainant, Carroll.

The Court: I think counsel had better send to Mr. Powis a transcript of these deeds to be written in the record, and he will incorporate them in the record.

Mr. Avis: I would like to offer the Hann deeds in evidence. One is a deed dated October 30, 1909, made by the Ocean City Association to Samuel H. Hann and Izetta Hann, his wife, consideration $1,000, and recorded in the clerk's office of Cape May County, November 18, 1909, in Book 245 of Deeds, page 84, &c.

(Said deed is marked "Exhibit D. H. 1.")

Mr. Avis: The other deed is dated August 15, 1912, made by the same party to the same parties, consideration $179.30, recorded in the same clerk's office on October 14, 1912, in Book 281, page 351.

(Said deed is marked "Exhibit D. H. 2.")

Mr. Avis: I also offer in evidence the deed from the state of New Jersey to Ocean City Association, for the riparian grant, including this particular land, said deed being dated May 16, 1912, and recorded in the Cape May County clerk's office on July 16, 1912, in Book No. 279 of Deeds, pages 255, &c.

(Said deed is marked "Exhibit D. H. 3.")

Mr. Bleakly: I want to offer the bill, affidavits and order in the suit of Ocean City Land Company vs. Mary J. Buchanan, file number 29-256 of June 1, 1907, the whole file, if necessary, but the Court, I think, will only refer to parts of it.

Mr. Carr: I haven't seen that file. I understand, though, that all the file consists of is an application for preliminary injunction and refusal; that there is no adjudication there at all. Unless the purpose is stated, I can't see how it is relevant.

The Court: I will admit it.

(Said file is marked "Exhibit Buchanan 2.")

Mr. Tatem: I would like to offer these three deeds, Deed, Ocean City Association to Henry D. Moore, dated December 1, 1897, recorded in Book 137 of Deeds, page 204, &c.

(Said deed is marked "Exhibit Moore 1.")

Mr. Tatem: Also deed, riparian grant, state of New Jersey to Ocean City Association, dated September 29, 1908, and recorded in Book 234, page 380.

(Said deed is marked "Exhibit Moore 2.")

Mr. Tatem: Deed, Ocean City Association to Henry D. Moore, dated September 10, 1909, and recorded in Book 244, page 268.

(Said deed is marked "Exhibit Moore 3.")

HENRY D. MOORE, being recalled on behalf of the defendants, testified as follows:

Direct examination.

By Mr. Tatem:

Q. What improvements have you made on the 77 foot strip west of Bay Avenue, on the thoroughfare?

A. I filled it in and gravelled it and bulkheaded it.

Q. Did you also pay for street improvements?

A. Also street improvements in front.

Q. About how much money did you expend on that tract of land?

A. Well, it is safe to say from $1500 to $2,000.

LEWIS M. CRESSE, being recalled on behalf of the defendants, testified as follows:

Direct examination.

By Mr. Tatem:

Q. Senator, what did you pay the Ocean City Association as the consideration for the conveyance to you of the 200 feet of land on the bay front, west of Bay Avenue, between Fifth and Sixth Streets, the deeds for which have been offered in evidence?

A. $3200.00.

Q. When did you purchase it?

A. In 1905, 150 feet of it at that time.

Q. Describe to the Court briefly the character of the improvements built thereon.

A. I have put up a boat house there, 50 feet square, including the purchase, it cost about $5500, the boat house, residence and garage combined.

Q. How many stories is it?

A. Two and a half stories, or three stories,—I suppose it might pass as a three-story house.

Q. What other moneys did you expend on the property?

A. $2300 for filling and grading.

Q. During what year was the house built?

A. 1906.

Q. During the time that house was building, and down to the commencement of this suit, did Mr. Bridgewater ever object to you in regard to the building of this property?

A. He did not.

Q. Is the whole of that building below the high-water line of the bay?

A. It is.

Cross-examination.

By Mr. Carr:

Q. How high is that building, Senator, to the top of the peak?

A. I don't know; I should guess it was 40 feet; I don't that, however, that is an estimate.

Q. How high above the ground level do you think it is?

A. Substantially the same; it practically rests upon the ground.

Q. Does it constitute any obstruction to view, looking towards the camp ground from the bay?

A. If you were on the other side you couldn't see the bay.

By the Court:

Q. Do you know whether Mr. Bridgewater knew of the building?

A. I don't know; I don't see how he could help it; he lived there during the course of construction, and it is a conspicuous building.

Q. I mean while it was going on?

A. I don't know.

By Mr. Carr:

Q. Mayor Champion did that for you?

A. Yes.

Q. Wasn't he instructed to hurry that along, so as to avoid an injunction?

A. Yes, practically that.

Q. And he did?

A. I hope he did; I told him to, and he usually does as he is requested.

Re-direct examination.

By Mr. Tatem: How long was the house in building?

A. I should think it was about four months in the course of construction.

Q. What time of the year was that?

A. I have it on a copy of a letter, but I haven't it in mind.

Q. Look at the letter.

A. (Looking at letter.) It was started February 26, 1906, and completed August 8, 1906.

Re-cross examination.

By Mr. Carr:

Q. It didn't take it all that time to get under roof, did it?

A. I should think not; I imagine there were some things to be done after the work was finished.

Q. Do you know when the building was roofed in and the outside work done?

A. No, I do not.

DEFENCE RESTS.

Mr. Carr: Mr. Goff has gone; I asked him to remain; I wanted to prove by Mr. Goff that Mr. Haines made a statement to Mr. Goff when they were both witnesses in the same cause, as contradicting him.

The Court: He said he didn't remember; he didn't deny that statement.

Mr. Carr: I offer in evidence deed, Thomas Shaw and wife to Benjamin E. Wheatman, and Ida W. Wheatman, his wife, dated October 3rd, 1896, in the clerk's office of Cape May County, in Book 128 of Deeds, page 481, &c., and conveying lots 542 and 544 in section "A."

(Said deed is marked "Exhibit C48.")

Mr. Carr: I offer in evidence deed, William E. Massey, et ux., et als., to James S. Caterson, dated November 20th, 1901, recorded November 25th, 1901, in the clerk's office of Cape May County, in Book 165 of Deeds, page 295, &c., and conveying lots 973 and 975 in section "A."

(Said deed is marked "Exhibit C49.")

Mr. Carr: I offer in evidence deed, John P. Sloan, executor, to George W. Urquhart, dated June 5th, 1908, recorded in the office of the clerk of Cape May County, in Book 230 of Deeds, page 209, &c., and conveying lots three and five in section "Ten," (10).

(Said deed is marked "Exhibit C50.")

ALL PARTIES REST.

EXHIBITS.

EXHIBIT C1.

[Certified copy of Map of Section A, Ocean City, Cape May County, dated May 22nd, 1880 and recorded June 9th, 1880. See book of maps.]

EXHIBIT C2.

[Certified copy of Map of Sections A, B, and C, Ocean City, Cape May County, William Lake Surveyor, filed April 17th, 1883, in the office of the Clerk of Cape May County. See book of maps.]

EXHIBIT C3.

[Abstract]

DEED.

Ocean City Association	Dated Nov. 27, 1896.
(Corporation of N. J.)	Recd. Dec. 10, 1896.
	Book 132, page 114.
to	Cons. $1.00.
Charles Mathews, Jr.	G. and h.
(Philadelphia, Pa.)	H. and a.

Conveys premises situate in Ocean City, Cape May County, New Jersey:

Lots Nos. 125 and 127, Section "A" on Plan of Lots of Ocean City Association.

Ack. 11-27-1896, before Wm. Lake M. C. C. in Cape May County, by Ezra Lake, Secretary of Ocean City Association.

EXHIBIT C4.

[Abstract]

DEED.

Charles Mathews, Jr.
(Philadelphia, Pa.)
to
Walter S. Ritter,
(Philadelphia, Pa.)

Dated Feb. 24, 1900.
Recd. Mar. 5, 1900.
Book 149, page 277.
Cons. $25,000.
G. and H.
H. and a.

Conveys premises situate in Ocean City, Cape May County, New Jersey:

Lots Nos. 125 and 127, Section A, on Plan of Lots of Ocean City Association.

Being the same premises which Ocean City Association conveyed, by deed of Nov. 27, 1896, Recd. Book 132, page 144, to Charles Mathews, Jr. his heirs and assigns.

Also Lots 838 and 840 and the N. E. half of Lot No. 842 in Section A of the Plan of Lots of Ocean City Association.

Being the same premises which Frank S. Yoder, by deed of April 19, 1895, Recd. in Book 121, page 477, conveyed to the said Charles Mathews, Jr. his heirs and assigns.

Also Lots Nos. 977 and 979 on Section A of the Plan of Lots aforesaid.

Lot No. 977 being the same premises which Ocean City Association by deed of July 6, 1880, Recd. in Book 46, page 465, and Lot No. 979 being the same which Harriet Mathews by deed of June 2, 1891,Recd. in Book 97, page 36, conveyed, inter alia, to the said Charles Mathews Jr., his heirs and assigns.

Also premises Beg. S. E. side of Atlantic Avenue and S. W. side of Sixth Street. Containing in front or breadth on the said Atlantic Avenue 100 ft., and

of that width extending in length or depth between lines parallel with the said Sixth Street, on the N. E. line thereof, and along the S. W. side of said Sixth Street, 1259.21 ft. to the High Water line of the Atlantic Ocean, and along the S. W. line thereof 1224.51 ft. to the High Water line of the Atlantic Ocean.

The said described lot being the accretion made up by the Atlantic Ocean immediately in front of said Lots Nos. 977 and 979 which said lots were partly flowed by tide water at the time of the conveyance of same by the Ocean City Association.

Also that parcel of land flowed by tide water lying at Ocean City aforesaid.

Beg. at a point in high water line of Atlantic Ocean, where same is intersected by W. line of Sixth Street extended, thence S. along the W. line of Sixth Sreet extended, 311.2 feet to the exterior line established by the Commissioners appointed to ascertain the rights of State and of Riparian owners in lands lying and being under the waters of the Bay of New York and elsewhere approved April 11, 1864, thence W. along said exterior line 105.84 ft. thence N. parallel with Sixth Street 100 ft. W. at right angles from the W. line of the same extended 243.51 ft. to the High Water line of the Atlantic Ocean, thence E. along said High Water line to beg.

Being the same which the Riparian Commissioners by deed of Dec. 28, 1899, Recd. in Liber M. folio 733 and at Cape May Court House in Book No. 148 of Deeds, page 100, conveyed to the said Charles Mathews, Jr., his heirs and assigns.

Ack. 2-24-1900, before Chas. Cobb. Van Riper, Commr. for N. J., by Charles Mathews Jr. and Harriet N. his wife.

EXHIBIT C5.

[Abstract]

DEED.

Walter S. Ritter,
(Philadelphia, Pa.)
to
Mary J. Buchanan,
wife of Robert Buchanan
(Philadelphia, Pa.)

Dated Sept. 18, 1900.
Recd. Sept. 19, 1900.
Book 15, page 405.
Cons. $1.00.
G. and H.
H. and a.

Conveys premises in Ocean City, Cape May County, New Jersey.

Lots No. 125 and 127, Map 1 Annex in Section A of Plan of Lots of Ocean City Association.

Being the same premises—inter alia—which Charles Mathews and wife by deed dated Feb. 24, 1900, Recd. Book 149, page 277, conveyed to the said Walter S. Ritter, his heirs and assigns.

Ack. 9-18-1900, before Chas. Cobb: Van Riper, Comm'r. of Deeds, by Walter S. Ritter.

EXHIBIT C6.

[Abstract]

DEED.

Ocean City Association
(Corporation of N. J.)
to
Alfred K. Scholl
(Philadelphia, Pa.)

Dated June 24, 1897.
Recd. Aug. 23, 1897.
Book 134, page 307.
Cons. $1,875.
G. and h.
H. and a.

Conveys premises in Ocean City, Cape May County, New Jersey.

Lot. No. 117, Map No. 1, Annex to Section A on

the Plan of Lots of the said Ocean City Association.

Ack. 6/24/1897, before Wm. Lake, M. C. C., by Ezra Lake, Secretary of the Ocean City Association.

EXHIBIT C7.

[Abstract]

DEED.

Alfred K. Scholl,	Dated June 10, 1898.
and Lucy G. his wife,	Recd. July 16, 1898.
(Philadelphia, Pa.)	Book 139, page 310.
to	Cons. $5,500.
Mrs. Mary J. Lake	G. and h.
wife of Rev. S. Wesley Lake	H. and a.
(Ocean City, N. J.)	

Conveys premises in Ocean City, Cape May County, New Jersey.

Lot No. 117, on Map No. 1, Annex to Section A on Plan of Lots of the Ocean City Association.

Being the same lot conveyed to the said Alfred K. Scholl by Ocean City Association by deed bearing date June 24, 1897, Recd. in Book 134, page 307.

Ack. 6/16/1898, before Edward Ramsey, Commr. of Deeds for State of N. J. for Pa. by Alfred K. School and Lucy G. his wife.

EXHIBIT C8.

[Abstract]

DEED.

Ocean City Association	Dated March 16, 1909.
(Corporation of N. J.)	Recd. March 17, 1909.
to	Book 243, page 40.
Atlantic Land Development	Cons. $50,00.
Company,	G. and H.

(Corporation of N. J.) H. and a.

Conveys premises in Ocean City, Cape May County, New Jersey.

Beg. at E. intersection of Sixth Street and Atlantic Avenue; thence S. E. along the N. E. side of Sixth Street, 1319 ft. more or less to the exterior line established by the Riparian Commissioners; thence E. along said exterior line 675 ft. more or less to a point where said exterior line would intersect with the S. W. side of Fifth Street if extended; thence N. W. along said S. W. side of Fifth Street, 1494 ft. more or less to the S. E. side of Atlantic Avenue; thence S. W. along said Atlantic Avenue 500 ft. to the N. E. side of Sixth street and beg.

Being the land extending from Atlantic Avenue S. E. to the exterior line as established by the Riparian Commissioners between Sixth and Fifth Streets.

It is hereby covenanted and agreed by and between the parties hereto and as part consideration for this transfer that the grant herein contained shall not confer on the said party of the second part or those claiming under such party any right by implied covenant or otherwise to any of the lands lying between Fifth and Sixth Streets and between Atlantic Ave. and the Bay or Beach Thoroughfare in Ocean City.

EXHIBIT C9.

Certificate of Corporation.

1st. The name of the corporation is "Ocean City Association."

2d. Ocean City is situated on an Island in Cape May County, N. J., formerly known as Pecks Beach bounded on the east by the Atlantic Ocean; on the

south by Corson Inlet; on the west by Thurfare Bay or Sound; and on the north by Eggharbor Bay and Inlet.

The object shall be the establishment of a Summer Sea-side Resort, founded on christian principles and affording religious privileges, as well as healthful recreation.

3d. Total amount of capital stock is One Hundred Thousand Dollars.

The amount of stock is divided into two thousand share the par value of which shall be fifty dollars a share.

4th. The names and residences of the stockholders are as follows: Hon. Simon Lake of Pleasantville, Atlantic County, N. J. has 200 shares. Rev. Wm. H. Burrell of Philadelphia, Pa. has 200 shares. Rev. E. B. Lake of Dennisville, Cape May County, N. J. has 200 shares. Rev. Wm. B. Wood, D. D. of Philadelphia, Pa. has 200 shares. Rev. S. Wesley Lake of Atlanticville, Monmouth County, N. J., has 200 shares. And Rev. James E. Lake, B. D. of Little Silver, Monmouth County, N. J. has 200 shares.

5th. Date of organization Oct. 20th, 1879.

Simon Lake. (L.S.)
W. H. Burrell. (L.S.)
Ezra B. Lake. (L.S.)
Wm. B. Wood. (L.S.)
S. Wesley Lake. (L.S.)
James E. Lake. (L.S.)

In Witness Whereof we have hereunto put our hands and Seals this Twelfth day of November, A. D. 1879.

Signed, Sealed and delivered in presence of us.

Chas. C. VanRiper.
Andrew Zane, Jr.

State of Pennsylvania, }
County of Philadelphia. } ss.

Be it remembered that on this Twelfth day of November, A. D. 1879, before me the undersigned A Commissioner duly appointed under and by virtue of the laws of the State of New Jersey to take the Acknowledgment and proof of deeds &c. resident in the County and State aforesaid, personally appeared the above named Simon Lake, W. H. Burrell, Ezra B. Lake, William B. Wood, S. Wesley Lake and James E. Lake, to me personally known to be those who have signed the above instrument and they severally acknowledged that they signed, sealed and delivered the same as their act and deed I having explained to them the contents thereof. All which I certify under my hand and official Seal the day and year above written.

Andrew Zane, Jr.,
(Seal) Commissioner for New Jersey.

Endorsed:

"Received and recorded February 6th, A. D. 1880, in the Clerk's Office of the County of Cape May, N. J., at Cape May Court House, in Miscellany Book D, pages 7 and 8.

Jonathan Hand,
Clerk."

"Filed February 25, 1880 and recorded in Book —— of Incorporations, Page —— &c.

Henry C. Kelsey,
Secy. of State."

State of New Jersey
(Shield)
Department of State.

I, David S. Crater, Secretary of State of the State of New Jersey, do hereby Certify that the foregoing is a true copy of the Certificate of Incorporation of "Ocean City Association," and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Twenty-fifth day of February A. D. 1880, and now remaining on file and of record therein.

In Testimony Whereof, I have hereunto set my hand and affixed by Official Seal at Trenton, this Thirtieth day of April A. D. 1913.

(Seal)

David S. Crater
Secretary of State.

EXHIBIT C10.

Statement by Corporation Transacting Business in the State of New Jersey.

As required by an act of the Legislature of New Jersey, approved March 8, 1877, the Ocean City Association Company renders the following Statement, to be filed in the Department of State of the State of New Jersey:

The principal office of the Company is at No. the corner of Sixth street, and Asbury Avenue, Ocean City, State of New Jersey.

The principal office of the Company in New Jersey is at Ocean City.

The business of the Company is that of a land Company.

At an election held at Ocean City, on the thirty first day of August, 1880, the following named persons were chosen Managers, as noted.

Name.	P. O. Address.	Term.	Expiration of Term.
William B. Wood,	1529 North 20th St., Phila.	1 year,	August 1881.
William H. Burrell,	1630 North 13th St., Phila.	1 year,	August 1881.
Simon Lake,	Pleasantville, Atlantic Co., New Jersey,	1 year,	August 1881.
Charles Mathews, Junr.	204 South 5 St., Phila.	1 year,	August 1881.
Charles Mathews,	631 Chestnut St., Phila.	1 year,	August 1881.
Simon W. Lake,	Atlanticville, N. Jersey,	1 year,	August 1881.
James E. Lake,	Seabright, N. Jersey,	1 year,	August 1881.
Ezra B. Lake,	Ocean City, Cape May Co., N. Jersey,	1 year,	August 1881.
William E. Boyle,	Millville, N. Jersey,	1 year,	August 1881.

The Officers of the Company are: President, William B. Wood, Vice President, William H. Burrell, Superintendent, Ezra B. Lake, Secretary, Simon Lake. Treasurer, Charles Mathews.

Dated Octr. 26th, 1880.

The foregoing statement is correct and true.

Wm. B. Wood, President.

Attest:

Simon Lake, Secretary.

Endorsed:

"Filed Oct. 30, 1880

Secretary of State."

Office, Cor. 6th & Asbury, 7th Febry. 1883.

Hon. Hy. C. Kelsey,

Sir: The following persons were elected directors of The Ocean City Assen. at the annual election held at Ocean City on the Third day of October, 1882, viz:

Wm. B. Wood, 1529 North 20th St., Phila., Penna.
Wm. E. Boyle, Ocean City, N. Jersey.
G. E. Palen, 1109 Gerard St., Phila., Penna.
James E. Lake, Atlantic Highlands, N. Jersey.
S. Wesley Lake, Millville, New Jersey.
Chas. Mathews, Jr., 906 Walnut St., Phila., Pa.
Wm. H. Burrell, Ocean City, N. Jersey.
E. B. Lake, Ocean City, N. Jersey.
John C. Lake, Tom's River, N. Jersey.

The above were elected to serve for the term of one year.

The office of the above Association is situate at Ocean City, Cape May County, New Jersey. Business, "Christian Sea Side resort."

Wm. B. Wood, President.
W. E. Boyle, Secretary.

Endorsed:

"Filed Feby. 9, 1883."

State of New Jersey
(Shield)
Department of State.

I, S. D. Dickinson, David S. Crater, Secretary of State of the State of New Jersey, do hereby Certify that the foregoing is a are true copy ies of Annual Reports of Officers, Directors &c., of the Ocean City Association, as the same is are taken from and compared with the originals Filed October 30, 1880 and February 9, 1883, respectively, and and now remaining on file and of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal
(Seal) at Trenton, this Thirtieth day of April A. D. 190 1913.

David S. Crater
Secretary of State.

EXHIBIT C11.

[Abstract]

DEED.

Ocean City Association
(Corporation of N. J.)

to

William Bridgewater,
(Philadelphia, Pa.)

Dated Jan. 20, 1885.
Recd. Sept. 22, 1885.
Book 70, page 251.
Cons. $850.
G. and h.
h. and a.

Conveys premises in Ocean City, Cape May County, State of New Jersey.

Lots Nos. 675, 676, and 677 in Section D, on the Plan of Lots of Ocean City Association.

Beg. N. W. side of Central Avenue, 250 ft. S. W. from the S. W. line of Eighteenth Street. Containing together in front or breadth on the said Central Avenue 120 ft. and of that width extending N. W. between lines parallel with the said Eighteenth Street 100 ft. to a 15 ft. wide street.

Ack. 1/20/1885, before Wm. Lake, M. C. C. by S. Wesley Lake, Secretary of the Ocean City Association.

EXHIBIT C12.

[Abstract]

DEED.

George L. Horn
(Philadelphia, Pa.)

Dated April 17, 1896.
Recd. April 20, 1896.
Book 125, page 107.
Cons. $1125.
G. and h.
h. and a.

to

William Bridgewater
(Ocean City, N. J.

Conveys premises in Ocean City, Cape May County, New Jersey.

Lot 21, Section B of the Plan of Lots of Ocean City Association.

Also Lot 184 on the aforesaid plan and in Section North point.

Being the same lots which Caroline C. Borie, wife of Cherie Borie, by deed dated Dec. 22, 1891, Recd. Book 100, page 19, conveyed to the said George L. Horn, his heirs and assigns.

Also Lots No. 410, 411, 412, 414 and 414 on the aforesaid Plan and in Section F.

Beg. on the S. E. side of West Avenue 190 ft. S. W. from the S. W. line of Twenty-fourth Street, and having S. W. of that point a frontage together of 150 ft. on West Avenue with a depth S. E. of 90 ft.

Being part of the same lots which The Ocean City Improvement Co. by deed dated Aug. 11, 1888, Recd. in Book 82, page 160, 161, 162, 163 and 164, etc. conveyed inter alia to the said George L. Horn, his heirs and assigns.

Also Lot 622 on Plan and Section aforesaid.

Beg. on the S. E. side of Asbury Avenue 100 S. W. from the S. W. line of Twenty Seventh Street and having S. W. of that point a frontage of 30 ft. on the said Asbury Avenue with a depth S. E. of one hundred ft.

Being the same lot which the Ocean City Improvement Company by deed dated Nov. 16, 1887, Recd. in Book 79, page 126, conveyed, inter alia, to the said George L. Horn, his heirs and assigns.

Ack. 4/17/1896, before Reuben Ludlam, Commissioner of Deeds, by George L. Horn.

EXHIBIT C13.

[Abstract]

DEED.

Edwin C. Freeman,	Dated May 9, 1894.
(Philadelphia, Pa.)	Recd. May 15, 1894.
	Book 115, page 74.
to	Cons. $1.00.
	G. and h.
William Bridgewater	h. and a.
(Philadelphia, Pa.)	

Conveys premises in Ocean City, Cape May County, State of New Jersey:

Lots 684, and 685, Section F. on Plan of Lots of Ocean City Association.

Beg. N. W. line of Central Avenue 90 ft. N. E. from the N. E. line of Twenty Seventh Street, and having N. E. of that point a frontage together of 80 ft. on said Central Avenue with a depth N. W.

and parallel with Twenty-seventh Street 100 ft. to a fifteen ft. wide street.

Lot. 665 on Plan and Section aforesaid.

Beg. in N. W. line of Central Avenue 90 ft. S. W. from the S. W. side of Twenty-fifth Street and having S. W. of that point a frontage of 40 ft. on said Avenue with a depth N. W. parallel with Twenty-fifth Street 100 ft. to a 15 ft. wide street.

Lot. 672 on Plan and Section aforesaid.

Beg. in the N. W. line of Central Avenue at 130 ft. N. E. from the N. E. side of Twenty-Sixth Street, and having N. E. of that point a frontage of 40 ft. on said Avenue, with a depth N. W. parallel with Twenty-sixth Street 100 ft. to a fifteen ft. wide street.

Lot 731 on Plan and Section aforesaid.

Beg. in S. E. line of Central Avenue 170 ft. N. E. from the N. E. line of Twenty-sixth Street, and having N. E. of that point a frontage of 40 ft. on said Avenue with a depth S. E. parallel with Twenty-sixth Street 100 ft to a 15 ft. wide street.

Lot. 787 on the Plan and Section aforesaid.

Beg. in N. W. line of Wesley Avenue 200 ft. N. E. from the N. E. line of Twenty-Sixth Street and having N. E. of that point a frontage of 50 ft. on said Wesley Avenue, and of that width or depth N. W. parallel with Twenty-Sixth Street 120 ft. to a fifteen ft. wide street.

Lots. 606 and 607 on Plan and Section aforesaid.

Beg. in the S. E. line of Asbury Avenue 100 ft. S. W. from the S. W. line of Twenty-Sixth street and having S. W. of that point a frontage together of 60 ft. on said Avenue, and of that width or depth S. E. parallel with Twenty-Sixth Street, 100 ft. to a fifteen ft. wide street.

Lot. 653, in Section G on the plan aforesaid.

Beg. N. W. side of Central Avenue 130 ft. N. E. of Thirty-second street, and having N. E. of that point a frontage of 40 ft. on said Avenue with a width or depth N. W. parallel with Thirty-Second Street, 100 ft. to a fifteen ft. wide street.

Lot 749 in Section F on the plan aforesaid.

Beg. in S. E. line of Central Avenue at the distance of 50 ft. S. W. from the S. W. line of Twenty-Seventh Street; Containing in front or breadth on said Central Avenue, 40 ft. and of that width extending in length or depth S. E. between lines parallel with said Twenty-Seventh Street 100 ft. to a fifteen ft. wide street.

Lot 624 in the Section last mentioned, on the Plan aforesaid.

Beg. in S. E. line of Asbury Avenue 160 ft. S. W. from the S. W. line of Twenty Seventh Street. Containing in front or breadth on said Asbury Avenue 30 ft. and of that width extending in length or depth S. E. between lines parallel with said Twenty-Seventh Street 100 ft. to a fifteen ft. wide street.

Lot 621, in the Section last above mentioned on the Plan aforesaid.

Beg. S. E. line of Asbury Avenue 70 ft. S. W. from the S. W. line of Twenty-Seventh Street. Containing in front or breadth on said Asbury Avenue 30 ft. and of that width extending in length or depth S. E. between lines parallel with said Twenty-Seventh Street 100 ft. to a fifteen ft. wide street.

Lot 546 in the Section last above mentioned on the Plan aforesaid.

Beg. N. W. line of Asbury Avenue 280 ft. S. W. from the S. W. line of Twenty Seventh Street. Containing in front or breadth on said Asbury Avenue 30 ft. and of that width extending in length or depth

N. W. between lines parallel with said Twenty Seventh St. 100 Ft. to a fifteen ft. wide street.

Also 23 Lots situate in Ocean City, on Peck's Beach, Upper Cape May Township, Cape May County, New Jersey, as laid out on Plan of Lots of Ocean City Association:

Lots 415, 416, 417, 418 and 419, Section F. on the aforesaid plan.

Beg. on the S. E. side of West Avenue in the N. E. line of Twenty Fifth Street, and having N. E. of that point a frontage together of 160 ft. with a depth S. E. of 90 ft.

Lots 420 and 421 on Section and Plan aforesaid.

Beg. S. E. side of West Avenue in the S. W. line of Twenty-Fifth Street and having S. W. of that point a frontage of 70 ft. on the said West Avenue with a depth S. E. of 90 ft.

Lots 332, 333, 334 and 335 on Section and Plan aforesaid.

Beg. N. W. side of West Ave. 40 ft. N. E. from the N. E. line of Twenty-fifth Street and having N. E. of that point a frontage together of 120 ft. with a depth N. W. of 100 ft.

Lots 255, 256, 257 on the Section and Plan aforesaid.

Beg. N. W. side of Haven Avenue in the N. E. line of Twenty-Ninth Street and having N. E. of that point a frontage of one hundred and thirty ft. on the said Haven Avenue with a depth N. W. of 115 ft.

Lots 75, 76, 77, 78, 79, 80 and 81 in Section G. on the Plan aforesaid.

Beg. N. W. side of Simpson Avenue at a point 90 ft. S. W. from the S. W. line of Thirtieth Street and having S. W. of that point a frontage together of 280 ft. on the said Simpson Avenue with a depth N. W. of 115 ft.

Lot 736 in Section E, on the Plan aforesaid.

Beg. S. E. side of Central Avenue at 170 ft. N. E. from the N. E. line of Twenty-fourth Street, and having N. E. of that point a frontage of 40 ft. on the said Central Avenue, with a depth S. E. of 100 ft.

Lot. 606 in Section E, on the Plan aforesaid.

Beg. S. E. side of Asbury Avenue, 40 ft. S. W. from the S. W. line of Twenty third Street and having S. W. of that point a frontage of 30 ft. on the said Asbury Avenue, with a depth S. E. of 100 ft.

Also two Lots situate in Ocean City on Pecks Beach, Upper Cape May Township, Cape May County, State of New Jersey, as laid out on the Plan of Lots of the Ocean City Association.

Lot 786 in Section on the aforesaid Plan.

Beg. N. W. side of Wesley Avenue 200 ft. N. E. from N. E. line of Twenty-fourth Street and having N. E. of that point a frontage of 50 ft. on the said Wesley Avenue with a depth N. W. of 120 ft.

Lot 672 on the Section and Plan aforesaid.

Beg. N. W. side of Central Avenue 130 ft. S. W. from the S. W. line of Twenty-third Street and having S. W. of that point a frontage of 40 ft. on said Central Avenue, with a depth N. W. of 100 ft.

Being the same thirty-eight lots which William Bridgewater et al, by deed of May 4, 1894, and intended forthwith to be recorded, conveyed, inter alia, to the said Edwin C. Freeman in fee.

Ask. 5/9/1894, before Chas. Cobb Van Riper, Commr. for New Jersey, by Edwin C. Freeman.

EXHIBIT C14.

OCEAN CITY JOURNAL.
In God We Trust.
Vol. 1. Ocean City, May, 1880. No. 1.
[The following appears on the first page]
The Camp Ground.

The space allotted to the encampment is 500 feet wide, from the thoroughfare to the ocean, with plenty of tenting ground. It is contemplated to have all the appointments desirable to render the camp meeting a real feast to the thousands who may congregate there for Christian worship. Those coming to tent with them will have every possible facility that with contribute to their comfort. Besides the regular services of the encampment, there will be temperance conventions, anniversaries, and other Christian and philanthropic convocations, fully occupying the season, and making it memorable in interest and profit. No pains will be spared to give the Ocean City a series of religious privileges equal to other resorts of kindred character.

EXHIBIT C15.

[Lithographed copy of Map of Section A of Ocean City, Cape May County, New Jersey. See book of maps.]

EXHIBIT C16.

[Title Page]

OCEAN CITY ANNUAL.
Containing the
First
Annual Report
of the
President
of
Ocean City Association.
Published by order of the Association.
1881.

[The following appears on the fly leaf]

Ocean City Association.
Officers and Managers.
Rev. Wm. B. Wood, D. D. President
1329 North 20th Street, Phila.
Rev. Wm. H. Burrell, Vice-President,
1630 North 13th Street, Phila.
Hon. Simon Lake, Secretary,
Pleasantville, Atlantic County, N. J.
Chas. Mathews, Esq., Treasurer,
631 Chestnut Street, Phila.
Rev. E. B. Lake, Superintendent,
Ocean City, Cape May County, N. J.
Rev. W. E. Boyle, Millville, N. J.
Rev. S. Wesley Lake, Atlanticville, N. J.
Charles Mathews, Jr. Esq.,
204 S. 5th Street.
Rev. James E. Lake, Seabright, N. J.

[The following appears on page 6]

Work Done.

* * * * * * * *

* * * * We have put down 1,000 feet of board walk from the wharf on Fourth Street to West Avenue. From that point we have put in curbing and constructed a good gravel walk, along Fourth Street from West Avenue to Asbury, thence along Asbury avenue from Fourth to Sixth Streets; thence along Sixth Street from Asbury, crossing Central, Wesley and Ocean avenues to the Ocean front, making a continuous walk from the wharf to the Ocean, and around two sides of the Camp Ground and Parks.

The Camp Ground block, extending from the meadow to the Ocean, and from Fifth to Sixth streets, has been cleared of underbrush, drained, and some of the hills leveled.

[The following appears on page 12]

The Coming Year.

* * * * * * *

A suitable Auditorium must be erected for religious services and assemblies; and our Camp-ground and Parks more thoroughly graded. When I look at what has been done in the space of a few months, and the improvements made, I am amazed. But we have only a faint intimation of what can be done and what the place can be made by judiciously directed efforts. Many of our wisest and best ministers and laymen in Philadelphia and New Jersey have secured lots, and have improved or are arranging to improve them.

[To be inserted after line 36, page 420, of the State of the Case]

[The following appears on page 13:]

I cannot, therefore, close this report without calling your attention to the importance of maintaining, in all their integrity, the great moral and religious principles laid down at the beginning, as the foundation of this movement. That something like a spirit of speculation should be awakened by the inauguration of this enterprise is not to be wondered at. But Ocean City was not originated in a spirit of speculation.

New Jersey State Library

EXHIBIT C17.

[Title-Page]

OCEAN CITY ANNUAL.
Containing the Second Annual Report
of the
President
of
Ocean City Association,
Published by Order of the Association.
1882.

[The following appears on the fly-leaf]

Ocean City Association.
Officers and Managers.
Rev. Wm. B. Wood, D. D. President,
1529 North Twentieth Street, Philadelphia.
Rev. Wm. H. Burrell, Vice-President,
Ocean City, New Jersey.
Hon. Simon Lake, Secretary,
Pleasantville, Atlantic County, New Jersey.
Chas. Mathews, Esq., Treasurer,
631 Chestnut Street, Philadelphia.
Rev. E. B. Lake, Superintendent,
Ocean City, Cape May County, New Jersey.
Rev. S. Wesley Lake,
Atlanticville, New Jersey.
Charles Mathews, Jr., Esq.,
906 Walnut Street, Philadelphia.
Rev. James E. Lake, B. D.
Seabright, New Jersey.
Rev. W. E. Boyle,
Ocean City, New Jersey.

[The following appears on page 11]

The Camp Ground Park,

extending from Fifth to Sixth Streets, and from Asbury to Wesley avenues, being more than five hundred feet square, has been fully graded. It has also been laid out in plots, formed by a system of converging walks, suited to the formation of the park, and the location of the auditorium. The walks are fifteen feet wide, and have all been nicely gravelled. Over four hundred trees have been planted in and around the Camp Park and they are all doing well. It has been decided to beautify and ornament the park, and make it a centre of attraction. When our plans for ornamentation have been completed, it will be a "thing of beauty" and we trust a "joy forever."

[The following appears on page 42]

The Camp Ground.

The space allotted to the encampment is five hundred feet wide, from the bay to the ocean, with plenty of tenting ground. It is contemplated to have all the appointments desirable to render the camp meeting a real feast to the thousands who may congregate there for Christian worship. Those coming to tent with them will have every possible facility that will contribute to their comfort. Besides the regular services of the encampment, there will be temperance conventions, anniversaries, Bible readings, and other Christian and philanthropic convocations, fully occupying the season, and making it memorable in interest and profit. No pains will be spared to give to Ocean City a series of religious privileges equal to other resorts of kindred character.

A schedule of "tent rates" will be published early in the season, fixing prices as low as any other similar place. Churches are invited to bring their tents and come in colonies. No charge will be made for the ground occupied by a Church tent. Those applying first, will have the choice of location.

EXHIBIT C18.

OCEAN CITY JOURNAL.
In God We Trust.
Vol. 1. Ocean City, July, 1880. No. 2.

The Camp Ground is 500 ft. from the Thoroughfare to the Ocean. [p. 4.]

EXHIBIT C19.

Original Chancery file in the case of Lennig v. the Ocean City Association.

EXHIBIT C20.

Original Chancery file in the case of Bridgewater v. the Ocean City Association.

EXHIBIT C21.

Original Supreme Court file in the case of Ocean City v. Ocean City Association.

EXHIBIT C22.

Original Supreme Court file in the case of Ocean City v. Mary J. Lake.

EXHIBIT C23.

[Title-Page]

OCEAN CITY ANNUAL.
Containing the Fourth and Fifth Annual Reports.
of the
President
of
Ocean City Association.
Published by Order of the Association.

[The following appears on the fly-leaf]

Ocean City Association.
Officers and Managers.
Officers

Rev. Wm. B. Wood, D. D., 304 N. Fortieth St., Philadelphia, President.
Rev. Wm. H. Burrell, Ocean City, N. J. Vice-President.
Rev. S. Wesley Lake, Pemberton, N. J. Secretary.
G. E. Palen, M. D. 1109 Girard Street, Philadelphia, Treasurer.

Managers.

Rev. Wm. B. Wood, D. D., 304 North Fortieth St., Philadelphia.
Rev. Wm. H. Burrell, Ocean City, N. J.
Rev. E. B. Lake, Ocean City, N. J.

Rev. S. Wesley Lake, Pemberton, N. J.
Rev. James E. Lake, B. D., Camden, N. J.
G. E. Palen, M. D. 1109 Girard St., Philadelphia.
Rev. A. J. Kynett, D. D. 1026 Arch St., Philadelphia.
J. C. Lake Esq., Ocean City, N. J.
Geo. B. Langley, Esq., Millville, N. J.

Superintendent.

Rev. E. B. Lake, Ocean City, Cape May County, N. J.

[The following appears on page 9]

Camp Ground Park.

Our beautiful park has continued to be a centre of interest. Its gravel walks, grass plots, flower beds, trees and vases, together with its

[Map inserted here]

size and location, compel all to admit that it has no equal at any other similar resort. By constant attention it has been kept in good condition. When the young trees have grown to a fair height, and a few tasty pavilions have been erected in various parts, it will be still more attractive.

[The following appears on pages 20 and 21]

Camp-Ground Park.

The great outlay in other directions necessitated. economy here as well as elsewhere. But at a moderate cost the Park was kept in fair condition, and the person having charge of it also acted as janitor at the Auditorium.

EXHIBIT C24.

[Title page]

OCEAN CITY ANNUAL
Containing the Third Annual Report
of the
President
of
Ocean City Association
Published by Order of the Association.

[The following appears on the fly leaf.]

Ocean City Association
Officers and Managers
Officers.

Rev. Wm. B. Wood, D. D., 104 N. Fortieth St., Philadelphia, President.
Rev. Wm. H. Burrell, Ocean City, N. J., Vice President.
Rev. Wm. E. Boyle, Pleasantville, Atlantic County, N. J., Secretary.
G. E. Palen, M. D., 1109 Girard St., Philadelphia, Treasurer.

Managers.

Rev. Wm. B. Wood, D. D.,	104 North Fortieth St., Philadelphia.
Rev. Wm. H. Burrell,	Ocean City, N. J.
Rev. E. B. Lake,	Ocean City, N.J.
Rev. S. Wesley Lake,	Millville, N. J.
Rev. Wm. E. Boyle,	Pleasantville, N. J.
Rev. James E. Lake, B. D.	Atlantic Highlands, N. J.
G. E. Palen, M. D.	1109 Girard St, Philadelphia.
Rev. A. J. Kynett, D. D.	1026 Arch St, Philadelphia.
J. C. Lake, Esq.,	Toms River, N. J.

Superintendent.

Rev. E. B. Lake, Ocean City, Cape May County, N. J.

[The following appears on page thirty-four.]

The Camp Ground.

The space allotted to the encampment is five hundred feet wide, from the bay to the ocean, with plenty of tenting ground. It is contemplated to have all the appointments desirable to render the camp meeting a real feast to the thousands who may congregate there for Christian worship. Those coming to tent with them will have every possible facility that will contribute to their comfort. Besides the regular services of the encampment, there will be temperance conventions, anniversaries, Bible readings, and other Christian and philanthropic convocations, fully occupying the season, and making it memorable in interest and profit. No pains will be spared to give to Ocean City a series of religious privileges equal to other resorts of kindred character.

A schedule of "tent rates" will be published early in the season fixing prices as low as any other similar place. Churches are invited to bring their tents and come in colonies. No charges will be made for the ground occupied by a church tent. Sites will be fixed in the order of application. Those applying first will have the choice of location.

EXHIBIT C25.

[Deed, dated June 11th, 1860, Ocean City Association to Matilda C. Barnes, offered in evidence only as to the form of deed in use at that time by the Ocean City Association.]

This Indenture, made the Eleventh ——— day of June ——— in the year of our Lord one thousand eight hundred and Eighty [1880] ——————— Between The "Ocean City Association," a corporation created by and existing under the laws of the State of New Jersey, of the first part, and Matilda C. Barns, of the City of Philadelphia, State of Pennsylvania ——————— of the second part: Witnesseth, That the said party of the first part, for and in consideration of the sum of Two hundred and twenty dollars ——————— lawful money of the United States of America, unto them well and truly paid by the said party of the second part hereto, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, as well as the payment of the taxes and performance of the covenants, conditions, and restrictions hereinafter mentioned, which are to be kept and performed by the said party of the second part hereto, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said party of the second part, her —— heirs and assigns, All those two certain lots —— or pieces of ground, situate, lying and being in Ocean City, on Peck's Beach, Upper Cape May Township, Cape May County, State of New Jersey, and numbered 701 & 703 in Section A ——— on the plan of lots of the said "Ocean City Association." Beginning on the West side of Wesley Avenue, at the respective distances of One hundred feet, and One hundred and fifty feet Southward from the South side of Sixth street, each lot containing in front or breadth on the said Wesley Avenue Fifty feet, and of that width extending in length or depth Westwardly between lines parallel with the said Sixth street One hundred and twenty feet to a fifteen feet

wide street. _____
_____
_____
_____
_____
_____

Under and Subject to the payment of such Tax or Taxes as may from time to time be assessed or levied on the above-mentioned premises, by the said party of the first part hereto, to enable them to carry out such sanitary and municipal laws or regulations as may hereafter from time to time be made or enacted by them. And also under and subject to the express conditions and restrictions that no building, of any description whatever, shall at any time be erected within ten feet of the front line of said avenue, nor within four feet of the side lines of said lots (excepting where a party may own two or more continuous lots, then a building may be erected on any part of the lot or lots the owner thereof may desire, without regard to the intervening line or lines, provided the same is not built within four feet of the outside lines of said lots, nor within ten feet of the front lines thereof), and also that no building, or any part thereof, erected upon the said lot or lots shall be used or occupied as a livery or sales stable, dye-house, bone-boiling or skin-dressing establishment, soap, candle, glue, starch, lamp-black, poudrette or fish-guano manufactory, slaughter-house, piggery, or tannery. Nor shall any building be used or occupied as a drug store, without the written consent of the said party of the first part hereto. Also under and subject to the express condition and restriction that no spirituous, malt, intoxicating or vinous liquors, preparations, or substances in the nature thereof, shall be manufactured, bought, sold, or kept for sale as a beverage on the above-described prem-

ises. It being expressly understood and agreed that the said grantee, and her ——— heirs or assigns, shall not at any time hereafter use said premises, or erect or set up, or cause to be erected or set up, on said premises, any building to be used as a house of prostitution, bawdy-house, or house of ill-fame, or dance or gambling-house, or other establishment in the nature thereof. And that no business of any kind whatever shall at any time hereafter be carried on upon the said premises upon the Lord's Day (commonly called the Sabbath or Sunday), nor shall any act, matter or thing be done thereon, that is a desecration of said Lord's Day. And also under and subject to the express condition and restriction that all private stables, privies, etc., must be erected on the rear line of said lots —— and conform in every particular to the laws and regulations now made, or that may hereafter from time to time be made, by the said party of the first part hereto. And also under and subject to the express conditions, restrictions, and regulations, which may hereafter from time to time be made, by the said party of the first part hereto, for carrying out and enforcing the above conditions and restrictions, and the rules and regulations necessary to insure the original intention and purpose of the party of the first part in securing the whole Island as a Christian sea-side resort.

Together with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and the reversions, and remainders, rents, issues, and profits thereof, and of every part and parcel thereof: And also, all and singular the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in, and to the said premises, and

every part thereof, with the appurtenances: To have and to hold the said lots — or pieces — of ground, with all and singular the appurtenances, hereditaments, and premises unto the said party of the second part, her —— heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, her —— heirs and assigns forever. Under and subject, nevertheless, to the payment of taxes as above mentioned, and the conditions and restrictions above particularly set forth. And the said "Ocean City Association," for themselves and their successors, do by these presents covenant, grant, and agree to and with the said party of the second part, her —— heirs and assigns, that they, the said "Ocean City Association" and their successors, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, her —— heirs and assigns, against them the said "Ocean City Association" and their successors, and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof, by, from, or under them or any of them, shall and will, subject as aforesaid, warrant and forever defend. And the said party of the second part hereto for herself her —— heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree to and with the said party of the first part hereto, their successors and assigns, not to violate nor fail to comply with any of the above-mentioned conditions, restrictions, regulations, or provisions, or any other conditions, restrictions, regulations, or provisions, which now are or may be hereafter made from time to time by the said party of the first part hereto, but faithfully keep and perform the same. And in the event of any violation

or failure to comply with said conditions, restrictions, or provisions, then the said party of the first part hereto, their successors and assigns, do reserve the right to enter forthwith upon said premises without previous notice, and use whatever force may be necessary under the circumstances to abate said violation, without any liability for damages on the part of the said party of the first part hereto, their successors and assigns, to any action at law, equity, or otherwise, to the said party of the second part, her —— heirs, executors, administrators, or assigns, for so doing. The said party of the second part hereto, for herself her —— heirs, executors, administrators and assigns, hereby giving and granting to the said party of the first part hereto, their successors and assigns, full power and authority in law or otherwise so to do, for which this shall be a sufficient warrant.

In Witness Whereof, The Corporate Seal of said party of the first part to these presents, and the hand — of William B. Wood ——— President, and Simon Lake ——— Secretary of the said "Ocean City Association," and also the hand — and seal — of Matilda C. Barns ——— have hereunto been affixed, dated the day and year first above written.

Wm. B. Wood
President
(Seal)

Simon Lake
Secretary
(Seal)

Matilda C. Barns
(L. S.)

Signed, Sealed and Delivered
in presence of
Andrew Zane Jr

State of New Jersey, Pennsylvania } ss.
County of Cape May. Philadelphia }

Be it Remembered, That on the Eleventh ——— day June ——— A. D. 1880 before me the subscriber, a Commissioner of Deeds &c for the State of New Jersey residing in the County and State aforesaid personally appeared the above-named Simon Lake ——— Secretary of the "Ocean City Association" aforesaid, and being duly sworn, affirmed deposeth and saith, that he was personally present at the execution of the above deed, and saw the common seal of the said Corporation duly affixed thereto, and that the seal so affixed thereto is the common or corporate seal of the "Ocean City Association" aforesaid, and that the above Indenture was duly sealed and delivered by, as, and for, the act and deed of the "Ocean City Association" aforesaid, for the uses and purposes therein mentioned, in pursuance of a resolution of the Board of Managers of the said Association, passed the Thirty first ——— day of May ——— A. D. 1880 and that the name of this deponent subscribed to the said Indenture, as Secretary, and the name of William B. Wood as President, of the said Corporation, in attestation of the due execution and delivery of the said Indenture, are of this deponent's and the said William B. Wood's own proper handwriting.

Simon Lake

Sworn affirmed and subscribed to before me the day and year aforesaid.

Andrew Zane Jr
Commissioner for New Jersey

(Seal)

(Endorsed on back)

Deed.
The
"Ocean City Association"
to
Mathilde Matilda C. Barns

Received, July 5th, A. D. 1889 and recorded in the Clerk's Office of Cape May County, N. J. at Cape May C. H. in Book No. 46, of Deeds, folio pages 416, 417, 418, 419 & 420.

Jonathan Hand
Clerk.

State of New Jersey, Pennsylvania
County of Cape May. Philadelphia } ss.

Be it Remembered, That on the Eleventh day of June A. D. 1880 before me the subscriber, a Commissioner of deeds &c duly appointed under and by virtue of the laws of the State of New Jersey to take the acknowledgment and proof of deeds &c resident in the County and State aforesaid personally appeared the within-named Matilda C Barns ——— who I am satisfied is the grantee named in the within deed, and having made known unto her the contents thereof and she in due form of law acknowledged the within Indenture to be her ——— act and deed ——— and desired the same to be recorded as such. Witness my hand and official seal, the day and year aforesaid.

Andrew Zane Jr
(L. S.)
Commissioner for New Jersey

(Seal)

EXHIBIT C26.

In the matter of the application of Ocean City Association for the reduction of the tax assessment for the year 1906, on property situate in the City of Ocean City County of Cape May and State of New Jersey } Petition.

To the Cape May County Board of Taxation:

Your Petitioner, Ocean City Association, residing at 317 Market Street, Camden, New Jersey, in the County of Camden and State of New Jersey, respectfully shows that it is the owner of certain property, situate in the taxing district of Ocean City, County of Cape May, consisting of lots lying between Fifth Street and Sixth Street and consisting of what has been styled the camp ground tract. Your petitioner shows that said property has been assessed for purpose of taxation for the year nineteen hundred and six at a total valuation of Two Hundred and Six Thousand Four Hundred and Fifty ($206,450.00) Dollars, as shown by four tax bills received by the applicant from the Collector of Taxes of Ocean City, at which assessment your petitioner is aggrieved, because the said assessment is in excess of its true value, and your petitioner shows that as to a portion thereof, to wit, lots 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443 and 444, your petitioner is not the owner thereof but the owner is the Atlantic City Railroad Company, or a subsidary company and as to the balance of said large tract, your petitioner shows that even if the said property had any present

market value that value would be smaller than the assessed value as aforesaid by at least Twenty Five per cent of said assesses value; but your petitioner shows that the said premises known as the camp ground tract, have no present market value and it could not be sold because the title thereto is clouded by what is termed a dedication for Camp Meeting purposes, by reason thereof, your petitioner has no use of said property, and your petitioner shows that if said tract known as the camp ground tract, between Fifth and Sixth Streets, as aforesaid, is to be assessed at all, said assessment should be only for a nominal valuation.

Your petitioner has, therefore, not paid the taxes so levied for the year nineteen hundred and six and prays that the said assessment be reduced as aforesaid.

Dated December 10, 1906.

Ocean City Association.
by
S. Wesley Lake,
President

[Ocean City
Incorporated
Oct 28th
Seal
1879
Cape May Co N J.]

State of New Jersey }
County of Camden } ss.

S. Wesley Lake, being duly sworn according to law upon his oath says that he is President of the Ocean City Association, the Petitioner, and that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true.

S. Wesley Lake

Sworn and subscribed before me this 18th day of December, 1906.

Reuben Ludlam,
Justice of the Peace.

[Reuben Ludlam
Justice
Seal
of the
Peace
Ocean City New Jersey]

State of New Jersey } ss.
County of ..... }

....., being duly sworn according to Law, on his oath says that he served a copy of the above petition and affidavit on ....., ... of ....., personally this ..... day of December, Nineteen Hundred and Six.

.....

Sworn and subscribed before me this ..... day of December, Nineteen Hundred and Six

---

State of New Jersey } ss.
County of Cape May }

On this 10th day of April 1913, personally appeared before me Alberta Hall and George H. Barritt, to me known to be the persons named and who on being duly sworn did depose and say—that they have this day compared the foregoing with the original document on file in the office of the Cape May County Board of Taxation at Cape May Court House, New Jersey, and do swear that the foregoing is a true and correct copy of the original.

Clinton B Price
Commissioner of Deeds

EXHIBIT C27.

The Cape May County Board of Taxation.

In the matter of appeal of Ocean City Association from the assessment of Property in the First Ward of the City of Ocean City, County of Cape May, New Jersey, for the year 1906.	Judgment.

An appeal in writing having been filed with the Cape May County Board of Taxation, duly verified according to the rules of practice prescribed by said Board, by the Ocean City Association, a Corporation of the State of New Jersey.

in which it is alleged that an injustice has been done the said complainant by the assessment of its property for taxation for the year 1906, located in the First Ward of the City of Ocean City, in the County of Cape May, consisting of "Lots lying between Fifth Street and Sixth Street and consisting of what has been styled the "Camp Ground Tract" and alleging that a portion thereof, to wit:—Lots Nos. 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443 and 444 are not owned by said petitioner, but are owned by the Atlantic City Railroad Company or a subsidary Company, and that its property is assessed relatively higher according to its true value than other property in the same taxing district, and that it is assessed higher than the true value thereof;

After hearing evidence produced on the part of the said complainant, and the argument of Bleakley and Stockwell, Attorneys, for the complainant, and after considering the same, it is on this Twenty-second

(22nd) day of January, nineteen hundred and Seven (1907), at a session of the Cape May County Board of Taxation, Ordered, Adjudged and Decreed, under and by virtue of Chapter 120 of the Laws of 1906, that the assessment of Two hundred and six thousand four hundred and fifty dollars, be not approved; but that the same be hereby reduced to the sum of Fifteen Thousand Dollars—And that the assessment to the Petitioner of Lots Nos. 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443 and 444, is hereby annulled, reversed and for nothing holden as to petitioner, the same being shown to belong to some other person or corporation; and that the appeal be to that extent sustained.

And it is further ordered, That this order be certified to the Collector of The City of Ocean City, County of Cape May, New Jersey.

Eugene C. Cole
James T. Hoffum
Attest. Stillwell H. Townsend,
Jonathan Hand,
Secretary.
Cape May County Board of Taxation.

State of New Jersey
County of Cape May } ss.

On this 10th day of April 1913, personally appeared before me Alberta Hall and George H. Barritt to me known to be the persons named and who on being duly sworn did depose and say—that they have this day compared the foregoing with the original document on file in the office of the Cape May County Board of Taxation at Cape May Court House, New Jersey, and do swear that the foregoing is a true and correct copy of the original.

Clinton B. Price
Commissioner of Deeds

EXHIBIT C28.

[Abstract]

DEED.

Henry Bradley, and
Mary Jane, his wife,
(Philadelphia, Pa.)

to

Mary Ann Theresa Riley,
wife of John P. Riley,
(Philadelphia, Pa.

Dated Nov. 11, 1910.
Recd. Jan. 4, 1911.
Book 257, page 107.
Cons. $2000.
G. and h.
h. and a.

Conveys premises in Ocean City, Cape May County, New Jersey.

Lot 701 in Section 2 on Plan of Lots, of Ocean City Association.

Being the same premises which Charles W. J. Struck and Kate, his wife, by deed of April 9, 1906, Red. in Book 213 of Deeds, page 420, conveyed unto the said Henry Bradley, his heirs and assigns.

Ack. Nov. 11, 1910, before J. Powell Atkinson, Foreign Commissioner of Deeds for New Jersey in Pennsylvania, by Henry Bradley and Mary Jane Bradley, his wife.

EXHIBIT C29.

[Abstract]

DEED.

Charles W. J. Struck, and
Kate, his wife
(Philadelphia, Pa.)

to

Henry Bradley

Dated April 9, 1906.
Recd. October 30, 1906.
Book 213, page 420.
Cons. $2,500.
G. and h.
h. and a.

(Philadelphia, Pa.
Conveys premises in Ocean City, Cape May County, New Jersey.

Lot No. 701, Section A on Plan of Lots of the Ocean City Association.

Ack. April 9, 1906, before J. Powell Atkinson, a Foreign Commissioner of Deeds for New Jersey in Pennsylvania, by Charles W. J. Struck and Kate, his wife.

EXHIBIT C30.

[Abstract]

DEED.

Ocean City Association, (Corporation of N. J.) to William G. Carroll.

Dated Nov. 22, 1880.
Recd. Dec. 17, 1880.
Book 49, page 5.

Conveys premises situate in Ocean City, Cape May County, New Jersey:

Lots Nos. 508 and 510 in Section A on Plan of Lots of Ocean City Association.

EXHIBIT C31.

Proposition
From
Ocean City Association
to
City of Ocean City. (Camp Ground)
Certified Copy.

To the City Council of the City of Ocean City:

Gentlemen:

The Ocean City Association desires to call the attention of your honorable body to the unimproved tract of land in the heart of our city, owned by our Association, lying between Fifth and Sixth Streets and extending from the Bay of the Ocean.

It is unnecessary to more than mention to your honorable body the fact that this large tract of land in the very heart of our city has never been improved and remains to this day an eyesore to the community-at-large, owing to an alleged dedication to certain specific uses when Ocean City was originally laid out.

Our citizens have for some time been impressed with the necessity of a proper use being made of this piece of property. The square in the center of this tract has been set apart for the Auditorium and such other buildings as may be necessary and proper for the promotion of the Camp Meetings and other religious and educational purposes. The public have come to the conclusions that the best interests of the city demand that the balance of this tract shall be put to some use which will be a benefit to the citizens of Ocean City and those who make this city their summer home.

We feel also that it should either be devoted by our Association to that use for which it was originally set apart, as determined by our courts or that steps should be taken to remove the alleged limitation upon its use and the property be improved as its location demands.

We have been asked by many of the most prominent business men of our community and by those who have the welfare of Ocean City at heart, if some arrangement could not be made whereby the latter course could be pursued, their thought being that the progress of Ocean City in the past has been materially hampered by this waste land in the heart of the city; that the surrounding property values have been kept down, and the taxable property of our community has not advanced as it should have done, owing to the unsightly character of this unimproved tract.

This matter has been given careful consideration by our Association with the result that we have deemed it our duty to submit to your honorable body for its consideration the proposition hereinafter named.

At the outstart, it should be clearly understood that the legal fee of this property is in our Association. The City has no interest therein saving as trustee for the public to see that this plot is used, while the limitation remains, as a Camp Meeting ground. It lies within the power of our City, however, by co-operation with our Association, to remove this restriction placed upon the use of this property. We therefore make the following proposition:

If the City of Ocean City, by its Council, and Citizens will by proper ordinance and other necessary action:

1. Remove from this Camp Meeting plot the alleged dedication or restriction now affecting the same, so that this tract may be improved by the erection of large and substantial buildings, and

2. Give to our Association a receipt for, or release in full from liens for taxes, assessments, or charges in the nature thereof, that might be claimed by the city to effect said plot, up to the date of settlement under this proposition, so that there shall remain outstanding no financial differences between our Association and the city, the Association will thereupon deed to the city Five (5) lots on the Southeasterly side of Ocean Avenue, and Five (5) lots on the Northwesterly side of Atlantic Avenue, adjoining Fifth Street; and eight (8) lots on the Northwesterly side of West Avenue, adjoining either Fifth or Sixth Streets, or, if the city prefers, instead of the eighteen lots aforesaid, we will deed the following twenty-

four lots, viz: Eight (8) lots on the Northwesterly side of Asbury Avenue and Eight (8) lots on the Southeasterly side of West Avenue, adjoining either Fifth or Sixth Street, and Eight (8) lots on the Northwesterly side of West Avenue adjoining either Fifth or Sixth Street.

It being understood that said lots so to be selected shall be used for city purposes and not for ball or athletic grounds.

In addition to the above, and upon the accomplishment of the removal of the said restriction, if the city will build a High School building on a portion of the ground so selected by it, costing at least $25000. our Association will contribute $10000. in cash, or its equivalent, toward the erection of said building; also if the city will secure the erection of a library building on one or more of the said lots so selected, by Mr. Carnegie, or otherwise, said building to cost not less than $20000. then our Association will present to the City, to be placed in said library building, $2000 worth of choice library books.

Or if the city does not care to have the high school and library buildings as referred to above but prefers to use the present school building as a high school building and to erect two buildings for primary schools, one north of Sixth Street and the other south of Ninth Street, we will contribute in cash or its equivalent toward the erection of said two school buildings Ten Thousand Dollars. And we will also pay the sum of Two Thousand Dollars, if necessary, toward the expenses of clearing the title to this property, provided that we may employ our own attorneys out of said sum of Two Thousand Dollars, and whatever portion of said sum of Two Thousand Dollars is not used or expended in clearing said title and paying said attorneys we will add to the Ten

Thousand Dollar sum above mentioned, to be used in the erection of said school buildings.

Our Association will also, upon the removal of said restriction as above set forth, and within one year from the date thereof, make improvements on this camp ground plot aggregating at least $10000.

This proposition must be accepted by the city on or before December 1st, 1904, or it shall be considered as void. This limitation is made because it is important that some move should be made at once, one way or the other.

We trust that your honorable body will see its way clear to bring about these many improvements for the benefit of Ocean City and her citizens:—

A New High School,

A New Public Library,

Thousands of Dollars of valuable property deeded to the city,

$10000 in cash in the city treasury,

$2000 worth of library books,

$10000 worth of improvements,

Thousands of Dollars each year in taxes, where none are now received.

These, it seems to us, are considerations which should move your honorable body to speedy action in this matter; and the Ocean City Association as owner of the legal fee in said lands hereby consents to said vacation and extinguishment of said public rights on the terms herein set forth.

Respectfully submitted,

(Signed) S. Wesley Lake
President of Ocean City Associa'n

I hereby certify that the above is a true and correct copy of a certain proposition presented by the Ocean City Association to the City Council of Ocean City on the Tenth day of October, nineteen hundred

and four, regarding the removing of certain restrictions from the Camp Ground.

John E. Adams
City Clerk.

EXHIBIT C32.

Resolution

Resolved, that the proposition of the Ocean City Association just submitted in reference to the vacation of the public rights in and to certain lands at Ocean City between Fifth and Sixth Streets and extending from the Atlantic Ocean to Great Egg Harbor Bay, excepting that block of land between Fifth and Sixth Sts. and Wesley and Asbury Aves. and the removal of the present alleged dedications and restrictions therefrom, be accepted and that the City elect to take, under item two of said proposition the first eighteen (18) lots mentioned, instead of the last twenty-four (24) lots mentioned in said item, and that the City also elect to erect two school buildings, instead of a high school and a library building, and that with these elections, the other propositions and agreements of the said Ocean City Association be accepted; Provided, However, that the Ocean City Association shall also, in addition to the considerations named in said proposition, sign an agreement with the City of Ocean City, to permit the said City of Ocean City to build a plank or board-walk of the uniform width of Thirty-two (32) feet over and across such property as the Ocean City Association owns on the beach front in the City of Ocean City, New Jersey, between Fifth Street and Seventeenth Street, according to the plan proposed with the other

lot owners in Ocean City, subject, however, to the restrictions contained in the Ocean City Association deeds, as may be provided in the ordinance to be passed vacating said public rights.

Adopted at Council Chamber this 10th day of October, A. D. 1904.

(Signed) Geo. O. Adams,
President of Council.

Certified to this 10th day of October, A. D. 1904.
(Signed) T. Lee Adams, City Clerk.

Approved this 10th day of October, A. D., 1904.
(Signed) Jos. G. Champion, Mayor.

I hereby certify that the above is a true and correct copy of an resolution now on file in my office.
Dated, September 20, 1913.

John E. Adams
City Clerk of Ocean City, N. J.

EXHIBIT C33.

Certified Copy of
Ordinance No. 137.
Regarding the removal of certain
restrictions on the Camp Ground.

An ordinance relative to the vacation of certain lands situate, lying and being at Ocean City, Cape May County, New Jersey, between Fifth and Sixth streets, and extending from the Atlantic Ocean to Beach Thoroughfare, (an arm of Great Egg Harbor Bay) dedicated to public use, and the extinguishment of all public rights therein. Approved on the eleventh day of October, nineteen hundred & four duly passed & adopted by the common council of Ocean City.

Whereas, in laying out Section A. at Ocean City, New Jersey, on the plan of lots of the Ocean City Association, on or about the Ninth day of June 1880, the said Ocean City, Association recorded a map, called "Section A. Ocean City," in the Cape May County Clerk's office, which said map is dated May 22, 1880, and which said map shows an open space between Fifth and Sixth streets, marked "Camp Ground," in the centre of the block;

And Whereas, in 1881 the said Ocean City Association issued a pamphlet, called the "Ocean City Annual," which contained the first annual report of the president of said Association, and which referred to said camp ground, and which also referred to said map "Section A.," comprising 995 lots, besides the camp ground, tenting ground and parks;

And whereas, in the year 1882, the said Association again published a pamphlet called the "Ocean City Annual," and referred to the camp ground park as follows: "The camp ground park extending from Fifth to Sixth streets and from Asbury to Wesley Avenues, has been fully graded and laid out into plots, etc.," in which last mentioned pamphlet was also contained a printed plan of a portion of the camp ground park referred to, and on which plan was printed the words "Park," "Auditorium," and "Grove," etc;

And whereas, on or about the Seventeenth day of April, 1883, the said Association filed another map in the Cape May County Clerk's office, showing Sections A., B. and C. of said tract, on which map the space between Fifth and Sixth streets is indicated to be open from the bay to the ocean, making in all seven blocks;

And whereas, two of said blocks within said open space are marked "Park," and one of them is

marked "Grove," and the block between Wesley Avenue and Asbury Avenue and Fifth and Sixth streets is marked with the words "Auditorium," and "Camp Ground";

And whereas, it is alleged and claimed that the whole of said lot of land between Fifth and Sixth streets, and extending from the Atlantic Ocean to said Great Egg Harbor Bay, or an arm or part thereof, at Ocean City aforesaid, has been wholly or partially dedicated or devoted to public use by virtue of the above maps, publications and other acts of the said Association;

And whereas, all of said land, excepting the square or block bounded by Wesley and Asbury Avenues and Fifth and Sixth streets, is deemed by the governing body of the City to be unsuited to and undesirable for such public use, and the maintenance of the same in its present condition considered to be otherwise burdensome and disadvantageous to the public and the said municipality;

Now, Therefore, in pursuance of the provisions of an act of the legislature of the State of New Jersey, entitled "An act relative to the vacation by the governing body of any city, town, township, borough or other municipality of this state of any land situated in such municipality and wholly or partially dedicated or devoted to public use, and the extinguishment of all public rights therein," approved March 30, 1904;

Be It Ordained by the common council of Ocean City;

Section 1: That the said plots or blocks of ground at Ocean City, located between Fifth and Sixth Streets and extending from Beach Thoroughfare (an arm or part of Great Egg Harbor Bay) to the Atlantic Ocean, with the exception of the square or

block bounded by Wesley Avenue and Asbury Avenue and Fifth and Sixth Streets, are, in their present condition, unsuited to and undesirable for public use, and the maintenance of the same in their present condition is considered to be otherwise burdensome and disadvantageous to the public and the said municipality:

Section 2.—That, with the consent of the Ocean City Association, the owner of the legal fee of said ground, and in consideration of the said owner of the fee thereof making certain payments, grants and conveyances hereinafter set forth, the rights of the public and of the municipality of the City of Ocean City and all other public rights, other than those of the holder of the fee, be and they are hereby vacated and extinguished in and to all of the said tract of land located at Ocean City, Cape May County, New Jersey, aforesaid, bounded and described as follows, viz: On the East by the Atlantic Ocean, on the West by Beach Thoroughfare, which is a part or arm of Great Egg Harbor Bay; on the North, by Fifth Street, and on the South by Sixth street, Excepting, However, all that block or square included between Wesley and Asbury Avenues and Fifth and Sixth streets; and that the said lot of land and premises aforesaid, with the exception aforesaid of said block or square above mentioned, be and the same are hereby restored to the Ocean City Association, the holder of the legal fee thereof, freed and discharged from all public rights therein as if such public rights therein had never existed, as provided in and by an act of the Legislature of the State of New Jersey, entitled, "An Act relative to the vacation by the governing body of any city, town, township, borough, or other municipality of this state of any land situated in such municipality and wholly or partially dedi-

cated or devoted to public use, and the extinguishment of all public rights therein," approved March 30, 1904.

Section 3.—That, in consideration of said vacation and extinguishment, and on the proper and lawful accomplishment thereof, and on the proper and lawful removal of the said alleged dedications and restrictions, now affecting the same, the said Ocean City Association shall convey by deed, in the usual form of the said Ocean City Association deeds, to the said City of Ocean City, Five (5) lots located on the Southeasterly side of Ocean Avenue, and Five (5) lots located on the Northwesterly side of Atlantic Avenue, adjoining Fifth street, and all of which said ten lots are fifty (50) feet in front by one hundred and thirty (130) feet in depth; and also Eight (8) lots on the Northwesterly side of West Avenue, adjoining Sixth street, having a frontage on West Avenue of two hundred and fifty (250) feet, by a depth on Sixth street of one hundred (100) feet; that the conveyance of said eighteen lots shall be subject also to the restriction that none of them shall be leased or used for base ball, foot ball, or other athletic purposes; that as a further consideration for the vacation and extinguishment of said public rights and on the proper and lawful removal of said dedications and restrictions, the said Ocean City Association is to contribute and pay the sum of Ten Thousand Dollars ($10000.) in cash to the City of Ocean City, to be used in the erection of two school buildings, one to be located North of Sixth Street, and the other South of Ninth street; that as a further consideration for the vacation and extinguishment of said public rights, the said Ocean City Association, within one year after the proper and lawful removal of said dedications and restrictions and the vacation and

extinguishment of said public rights as above set forth, is to make improvements on the land so vacated, by the erection of houses or other buildings thereon to the amount of at least Ten Thousand Dollars ($10,000.), that as a further consideration for said vacation and extinguishment of said public rights and immediately after the passage of this ordinance and the adoption of a resolution directing the submission of the said proposition to so vacate and extinguish said rights to the voters of Ocean City for their approval at the next November election the said Ocean City Association is to grant and convey, subject to the Ocean City Association deed restrictions, the right to the said Municipality of "Ocean City" to erect a plank or board walk of the uniform width of Thirty-two (32) feet, over and across any of the property of the Ocean City Association, at Ocean City aforesaid, in the beach front between Fifth and Seventeenth streets, according to the proposed plan of said municipality.

Section 4.—That the proposition contained in the three preceding sections of this ordinance shall not operate to effect said vacation and extinguishment of the public rights in the said lands above described until the same shall have been submitted to and approved by a majority of the qualified voters of the City of Ocean City voting at the general election for members of the Assembly, to be held on the Eighth day of November, A. D., 1904, public notice of the submission of which proposition shall be given by advertisements, signed by the Clerk of the said City of Ocean City and posted in at least ten (10) public places in the said City, and also published in at least two newspapers printed or circulating in said City, at least twenty (20) days before such election.

Section 5.—That the proposition to be so submit-

ted shall be worded and printed on the ballots used at the said election as follows: "For" or "against" the vacation and extinguishment of the public rights in and to all the following described lot of land, situate in the City of Ocean City, County of Cape May, New Jersey, bounded on the East by the Atlantic Ocean, on the West by Beach Thoroughfare, which is a part or arm of Great Egg Harbor Bay; on the North, by Fifth Street, and on the South by Sixth street, Excepting, However, all that block or square included between Wesley and Asbury Avenues and Fifth and Sixth streets."

Section 6.—That this ordinance shall take effect at once.

Adopted this Eleventh day of October A. D., 1904.

(Signed) Geo. O. Adams,
President of Council.

Certified to this Eleventh day of October, A. D., 1904.

(Signed) T. Lee Adams,
City Clerk.

Approved this Eleventh day of October, A. D., 1904.

(Signed) Jos. G. Champion,
Mayor.

I hereby certify that the above is a true and correct copy of an ordinance numbered 137, adopted by Common Council of Ocean City, at a meeting held the eleventh day of October, 1904, regarding the removing of certain restrictions from the Camp Ground.

John E. Adams,
City Clerk.

EXHIBIT C34.

Resolution.

Whereas, an ordinance, entitled, "An ordinance relative to the vacation of certain lands situate, lying and being at Ocean City, Cape May County, New Jersey, between Fifth and Sixth Streets, and extending from the Atlantic Ocean to Beach Thoroughfare, (an arm of Great Egg Harbor Bay) dedicated to public use, and the extinguishment of all public rights therein," has been adopted by the Common Council (being the governing body) of the City of Ocean City; Now therefore, be it

Resolved, that the proposition contained in said ordinance shall be submitted to the qualified voters of the City of Ocean City at the general election for members of the Assembly, to be held on the Eighth day of November, A. D., 1904, and the vote on said proposition shall be taken at such election according to the provisions of an Act of the Legislature of the State, entitled, "An Act relative to the vacation by the governing body of any city, town, township, borough or other municipality of this State of any land situated in such municipality and wholly or partially dedicated or devoted to public use, and the extinguishment of all public rights therein," Approved March Thirtieth, Nineteen Hundred and Four.

Adopted at Council Chamber this 11th day of October A. D., 1904.

(Signed) Geo. O. Adams,
President of Council.

Certified to this 11th day of October, A. D., 1904.

(Signed) T. Lee Adams,
City Clerk.

Approved this 11th day of October, A. D., 1904.
(Signed) Jos. G. Champion, Mayor.

I hereby certify that the above resolution is a true and copy of a resolution now on file in my office.

John E. Adams
City Clerk of Ocean City, N. J.

Dated, September 20, 1913.

EXHIBIT C35.

Article in Ocean City Ledger, Issue of Saturday, September 24, 1904.

Ocean City
Association's
Offer to City.

Letter from President Lake Offers Terms of Settlement in Camp Meeting Plot Matter.

What the Terms Are.

For some time rumors have been in circulation in Ocean City concerning the terms on which it would be possible to settle the differences between the Ocean City Association and the city of Ocean City in the Camp Meeting plot matter. The details of this were not known by the public, however, until the meeting of City Council on last Monday night when a communication was laid before Council signed by Rev. S. W. Lake, D. D. President of the Association. By suggestion of Councilman Graham a copy was requested to be sent to each member of Council and the Mayor. This, it is understood, will be done. The following is a copy of Dr. Lake's letter to Council:

To the City Council of the City of Ocean City:

Gentlemen:

The Ocean City Association desires to call the attention of your honorable body to the unimproved tract of land in the heart of our city, owned by our Association, lying between Fifth and Sixth streets and extending from bay to ocean.

It is unnecessary to more than mention to your honorable body the fact that this large tract of land in the very heart of our city has never been improved, and remains to this day an eyesore to the community at large, owing to an alleged dedication to certain specific uses when Ocean City was originally laid out.

Our citizens have for some time been impressed with the necessity of a proper use being made of this piece of property. The square in the centre of this tract has been set apart for the Auditorium and such other buildings as may be necessary and proper for the promotion of the camp meetings and other religious and educational purposes. The public has come to the conclusion that the best interests of the city demand that the balance of this tract shall be put to some use which will be a benefit to the citizens of Ocean City and those who make it their summer home. We feel, also, that it should either be devoted by our Association to that use for which it was originally set apart, as determined by the courts, or that steps should be taken to remove the alleged limitation upon its use, and the property be improved as its location demands. We have been asked by many of the most prominent business men of our community and by those who have the welfare of Ocean City at heart, if some arrangement could not be made whereby the latter course could be pursued, their thought being that the progress of Ocean

City in the past has been materially hampered by this waste land in the heart of the city; that surrounding property values have been kept down, and the taxable property of our community has not advanced as it should have done, owing to the unsightly character of this unimproved tract.

This matter has been given careful consideration by our Association, with the result that we have deemed it our duty to submit to your honorable body for its consideration the proposition hereinafter named.

At the outstart, it should be clearly understood that the legal fee of this property is in our Association. The city has no interest therein, saving as trustee for the public, to see that this plot is used, while the limitation remains, as a camp meeting ground. It lies within the power of the city, however, by cooperation with our Association to remove this restriction placed upon the use of this property. We therefore make the following proposition:

If the City of Ocean City, by its Council, and citizens, will by proper ordinance and other necessary action:

1. Remove from this camp meeting plot the alleged dedication or restriction now affecting the same, so that this tract may be improved by the erection of large and substantial buildings, and

2. Give to our Association a receipt for, or release in full from any liens for taxes, assessments, or charges in the nature thereof, that might be claimed by the city to affect said plot, up to the date of settlement under this proposition, so that there shall remain outstanding no financial differences between our Association and the city, the Association will thereupon deed to the city Five (5) lots on the Southeasterly side of Ocean Avenue, and Five (5) lots on

the Northwesterly side of Atlantic Avenue, adjoining Fifth Street; and eight (8) lots on the Northwesterly side of West Avenue, adjoining either Fifth or Sixth streets, or, if the city prefers, instead of the eighteen lots aforesaid we will deed the following twenty-four lots, viz.: Eight (8) lots on the Northwesterly side of Asbury Avenue, and Eight (8) lots on the Southeasterly side of West Avenue, adjoining Fifth or Sixth street, and eight (8) lots on the Northwesterly side of West Avenue, adjoining either Fifth or Sixth Street.

It being understood that said lots so to be selected shall be used for city purposes, and not for ball or athletic grounds.

In addition to the above, and upon the accomplishment of the removal of the said restrictions, if the city will build a High School building on a portion of the ground so selected by it, costing at least $25,000, our Association will contribute $10,000 in cash, or its equivalent, toward the erection of said building; also, if the city will secure the erection of a library building on one or more of the said lots so selected, by Mr. Carnegie, or otherwise, said building to cost not less than $20,000, then our Association will present to the city to be placed in said library building, $2,000 worth of choice library books.

Our Association will also, upon the removal of the said restriction as above set forth, and within one year from the date thereof, make improvements on this camp ground plot aggregating at least $10,000.

This proposition must be accepted by the city on or before December 1st, 1904, or it shall be considered as void. This limitation is made because it is important that some move should be made at once, one way or the other.

We trust that your honorable body will see its

way clear to bring about these many improvements, for the benefit of Ocean City and her citizens:—

A new High School.

A new public library.

Thousands of dollars of valuable property deeded to the city.

$10,000 in cash in the city treasury.

$2,000 worth of library books.

$10,000 worth of improvements.

Thousands of dollars each year in taxes, where none are now received.

These, it seems to us, are considerations which should move your honorable body to speedy action in this matter.

Respectfully yours,
S. Wesley Lake,
President of Ocean City Association.

Article in Ocean City Ledger, Issue of Saturday, October 1, 1904.

Camp Meeting Block

History of this matter stated. Decisions referred to giving status of title to this ground. Provisions of the new law and how they apply.

Property Owners Demand Settlement

Following the proposition made by the Ocean City Association to City Council, giving terms of settlement of the so called Camp Meeting plot matter, and which appeared in the Ledger, interest has been aroused and inquiries have been made concerning the status of the case and what is contemplated in the proposed deal.

The following is given with a view to having the public fully informed touching this important matter.

The Ocean City Association, in its plans adopted, arranged to have this section kept for Camp Meeting purposes. Certain statements made at the sale of lots in the early history of Ocean City and maps filed were interpreted to mean that the space from 5th to 6th streets from Ocean to bay, was not to be built upon.

An attempt made by the Association to lease parts of this space to people on which it was proposed to erect cottages, was followed by a suit to enjoin by George G. Lennig which was followed by a decision by the Chancellor to the effect that the proposed plan of the Association was not a violation of the covenant. An appeal was taken, however, and the Court of Errors decided that the Association could not lease the ground as proposed.

Following, the Association received a quit-claim deed to the right, title and interest from all the property owners abutting on the Camp Meeting plot. They then erected several substantial houses and a suit was begun in the name of the city looking toward ejectment. The Association moved their houses and the suit was withdrawn. In the meantime the Ocean City Railroad Co. took title to a strip of ground on Haven Avenue and began the erection of a passenger railway station. A suit was begun by William Bridgewater, a property owner, but not immediately adjoining the Camp Meeting plot. The decision in this case by Vice Chancellor Grey was in favor of Mr. Bridgewater, and against the company.

The decision in effect held that "Where a general scheme of land improvement is announced to

invited purchasers of lots and part of the promulgated scheme is the declaration that a named portion of the lands within the general plan shall be devoted to special purposes which are held out to be advantageous to all the lots to be sold, an implied covenant is thereby entered into by the owner with the lot purchasers that the named portion shall be devoted to the announced uses. It also held that each purchaser of a lot, and his grantees may enforce this covenant against the grantor, or his grantees who purchased with notice of this implied covenant.

It will thus be seen that the courts have held that the dedication which the Association made holds as against this land, so that it must be used for Camp Meeting purposes, and that any person who has taken title to land which composed a part of the general scheme which the Association had at that time, has had conveyed to him certain proprietary rights in view of the dedication referred to.

And that this is not a fee to the land and carries with it no right, except that of demanding that the land shall be used for camp meeting purposes or that cottages shall be erected according to the plan proposed when the land was sold.

For several years, there has been a growing conviction that the dedication made which held this land for the specific use mentioned, was a mistake; that this strip of land in the centre of the city, unimproved, was a hindrance to the development of the city, and that it seriously affected values, especially in the section of the city above 5th street, and that whereas it was practically without value to the city by the fact that its taxable value was injuriously affected, it being impossible to derive a revenue from it by the owners and that if the dedication had not been made, or if it could be lifted, it

would be a great benefit directly and indirectly both to the city as a whole and to every individual property owner as well. It is safe to say that this view is held today by well-nigh every person in Ocean City who understands the situation as it is.

Sharing it, the City officials, Board of Trade and the leading men of the city united at the last session of the Legislature to secure the passage of laws which were believed to furnish a solution to this vexatious problem and give relief. These laws were passed largely by the efforts of Senator Cresse who lives in this city, and hence knowns the situation thoroughly. One of the laws referred to provides that when in any city, town, township borough or other municipality in this State any land has been dedicated wholly or partially to public use and it shall be considered or deemed by the governing body of such municipality to be unsuited to or undesirable for such public uses, or otherwise useless, burdensome to such municipality said governing body shall have power and authority by ordinance to vacate or extinguish the public right. The law further provides that such ordinance shall not operate to effect until the proposition shall be submitted to a vote of the people. The law provides the form of ballot to be used and that a majority of the qualified voters voting at any general election for members of Assembly, shall decide.

The other law passed, the provisions of which are believed to apply to this case, provides a way by which the governing body of any city, town, township, borough, or other municipality of this State, may condemn and extinguish any right, title or interest in any land dedicated wholly or in part to any public use. This is to be done by ordinance, providing, however, that it shall not be effective until,

as in the other act, the matter has been submitted to a vote of the people.

If the proposition shall carry, then City Council may proceed under the act of 1900 which is an act to regulate the ascertainment and payment of compensation for property condemned or taken for public use.

In this case notice is to be served upon all parties interested and an award for damages made as in any other such proceeding taken.

The above in brief is a history of the Camp Meeting plot matter and the plan proposed for relief.

So far as the Ledger is able to understand there is no difference of opinion concerning the wisdom of action which in the end, will mean the improvement of this piece of land in the centre of the city. Inquiries made have been followed in every case by an expression of opinion "That it would be one of the very best things which could come to pass."

In two instances individuals have stated to the writer the opinion as given above, but have followed it with the statement that they were opposed to it on personal grounds, but as to the benefit which would follow, there was no question but that it would be great.

A gentleman, familiar with values when asked what would be the effect said: "It would increase them very much, both above Fifth St. and below Sixth St. and the city would experience a great gain. When asked what in his judgment would be the damage to any individual who in view of the dedication has a proprietary right, he said:

"There would be no damage at all, but a gain. The city at once would derive a large revenue from taxes direct and the improvements which would be sure to follow would increase the revenue every year."

And so far as the Ledger is informed, this is the view universally held.

The only question discussed concerns the offer of the Association to the city.

Is the offer such that the city will receive what it ought to receive?

The offer is as follows:

One half block or 10 lots on Ocean and Atlantic Avenues adjoining Fifth street and eight lots on the west side of West Avenue adjoining either Fifth or Sixth streets, making 18 lots in all. Of if the city prefers the Association will give eight lots on the west side of Asbury, eight lots on the east side of West avenue and eight lots on the west side of West avenue adjoining either Fifth or Sixth streets, making 24 lots in all. And if the city will erect a high school building on a portion of the ground costing not less than $25,000, $10,000 in cash will be added and if the city will secure the erection of a library building to cost not less than $20,000, $2,000 will be added. In addition the Association agrees to expend not less than $10,000 in improvements on the plot of ground between bay and ocean and Fifth and Sixth streets within one year.

Following inquiries made concerning this offer the Ledger has failed to find a person who does not say that the offer made is a fair one, and that it ought to be accepted, and the necessary steps taken to adjust this matter as speedily as possible.

In the discussion following the offer reference has been made to the expense involved in the proceedings necessary in order to complete the deal.

Dr. Lake, President of the Association, has been away from home during the past week and is still away at the time of this writing and hence it is impossible to state his view. The Ledger, however, be-

lieves that the expenses ought not to be a hindrance in the way of settlement. In the judgment of those who have given the matter thought there ought to be comparatively little expense. It is known that in response to request made, Dr. Lake has placed in the hands of every member of Council and the Mayor, a copy of his proposition, and at the time the Ledger goes to press, it is rumored that a conference will probably be held between Council and Dr. Lake with a view to reaching a conclusion concerning this matter.

Case Like Ocean City's

In view of the interest in the settlement of our camp meeting matter, it is in place here to state that Wildwood has a similar case which is now up for settlement. Council having an ordinance for that purpose pending before it.

The ground dedicated by the Baker Bros. as a Public Park is to be opened for sale. Steps are being taken to abrogate the dedication by taking advantage of the law passed at the last session of the Legislature. The proposed settlement will be submitted to the people at the November election and in nearly every respect the case is like that of Ocean City.

Article in Ocean City Ledger, Issue of Saturday, October 8, 1904.

Settlement May Soon Be Reached.

Council and Association Trying to Get Together On Two Disputes.

At an executive meeting of Council at which Mayor Champion presided and Rev. S. Wesley Lake, President of the Ocean City Association, was present, held Monday night, a fuller and better understanding was reached by all concerned in the camp ground and boardwalk disputes. The possibilities are that an amicable agreement will soon be reached between the city and the association.

Regarding the proposition made to the city by the association it seemed to be the opinion of Council that it would be better if the association would give $12,000 for the erection of two school buildings one each for the northern and southern sections of the city, instead of $10,000 toward a new high school not needed now and not likely to be needed for a long time to come. The association's offer is $10,000 and a site for a new high school. The additional $2,000, as Council viewed the matter, is to be taken from the money to be donated for the Carnegie library purposes.

Mayor Champion wanted to know how the association felt toward signing the new boardwalk easement deed.

Rev. Mr. Lake told Council that this is another matter. Being pressed for an answer, the head of the association said that they would want a pavilion outside in which to hold religious services, and that they objected to the taking up of tickets on the Sabbath.

Told that if these matters were the only things

standing in the way of the associtaion signing the easement deed, a remedy could soon be had by the association putting these restrictions in the easement deed before signing. Rev. Mr. Lake said that he would present both matters to the members of the Executive Committee of the association at a meeting to be held on Wednesday evening of this week.

Councilman Graham said that he is opposed to the city paying for the litigation that is likely to come up on the camp ground matter.

Rev. Mr. Lake replied that, so far as the litigation is concerned, he does not believe there will be any.

Then Council adjourned until this (Thursday) evening, when a report of the result of the association's deliberations is expected.

Mayor Champion opened business by saying that the time had come to have an understanding in the camp ground dispute. According to the attorney for the Ocean City Association, every property owner is compelled to sign away his title if he agrees to the proposition made by the association. The city, through its Mayor, would like to hear from the President of the association.

Rev. Mr. Lake answered that perhaps there is a misunderstanding. The city would probably never be able to get the signature of every property holder. The idea of the association is to have a majority of the property owners here agree to the plan and vote their views at the coming election. Perhaps it is too late to go into that now, as it would have to be advertised for twenty days previous to the election.

The Mayor asked if it is Rev. Mr. Lake's understanding that all it would be necessary for Council

to do is to pass an ordinance to have the matter voted upon at the November election.

Rev. Mr. Lake said that he thought it was. He did not believe the city would ever have to use condemnation proceedings. He suggested that the best thing to do is to have a consultation with their respective lawyers.

Speaking of some of the restrictions in the proposition submitted by the association, the Mayor referred to the school building matter. He said that the location is not a proper one. The city needs two school buildings—one in the upper section and the other in the lower portion of the place. The place for a high school is about where the present structure stands.

Councilman Headley said that a high school building as proposed by the association would be expensive to build and would cost considerable to maintain.

George O. Adams, president of Council, remarked that the cost seemed to be one of the principal objections, he thought that the people would not favor a new high school building at this time. He was not in favor of putting up a proposition that the people would vote down.

Councilman Headley in answer to the association's offer said that the city has a high school at the present time, one of the best in the state, according to reports, and this is sufficient. He expressed the thought that it would be better to have a complete understanding in this matter and incorporate it in the proposed ordinance.

Mayor Champion said that as the association showed a disposition to do something, it is proper that they should have several important matters adjusted.

Rev. Mr. Lake favored the suggestion of establishing a primary school above and below the camp ground and keeping the present site of the high school.

The Mayor said that if the association will give the sum of money named, without restrictions, he had no doubt the people would agree.

President Adams concurred with this view.

The Mayor suggested that it would be wise to cut out the $2,000 for the proposed Carnegie library and devote it to the schools.

Several of the Councilman were of the opinion that the Carnegie gifts are always expensive, having as they do, a string attached.

Rev. Mr. Lake said that his thought was that it would be a good thing to have a new high school; it would help business and increase the city's capital at little expense to the municipality.

Councilman Graham's idea was to have the association get together and prepare a proposition without the objectionable features complained of.

Councilman Headley here suggested that the association add to the school fund the $2,000 mentioned for the Carnegie library.

President Adams asked who would pay for possible litigation, when buildings were erected upon the camp ground after the association's conditions have been accepted.

To this query, Rev. Mr. Lake replied that there is nothing stated in the proposition.

Asked if he were not the association, the reverend gentleman smilingly admitted that he is not, although the other officers are largely controlled by his views. He added that the councilmen are looking for trouble that is not likely to occur.

Councilman Graham's view was to not commit the city until the solicitor has been heard from.

Councilman Headley desired information as to the whereabouts of the City Solicitor. He expressed the view that the city had better get a City Solicitor who would be on hand when needed.

Councilman Graham wanted to know whose fault it is. Senator Cresse was chosen as an intermediary, and here the association ignores him and comes into Council with its own representative.

Councilman Headley called attention to the neglect of the Ocean City Association to sign the boardwalk easement deed.

Rev. Mr. Lake said that this is another matter, but he was of the opinion that there should be some way by which the city and the association could get together.

Mr. Headley did not see how anyone can object to signing the deed, and to this Rev. Mr. Lake replied that the city can proceed to condemn.

Councilman Graham expressed himself as firmly opposed to the city paying for any litigation.

Asked as to what the association objects to in the boardwalk easement deed, Rev. Mr. Lake answered that they wanted a pavilion outside in which to hold religious services and they object to the taking of tickets on Sunday. He said that he thought these are the only objections.

Councilman Headley remarked that the association can have a clause covering these points inserted in the deed.

Rev. Mr. Lake replied that he did not know that this could be done. He was assured that such was the case.

Rev. Mr. Lake, going back to the camp ground matter, said that so far as the litigation is concerned, he does not think there will ever be any. If a man objects, he can't get the land, any way.

President Adams: "Why not make a proposition that the association will pay for litigation?"

To this Rev. Mr. Lake answered that he did not know what the association will do.

He stated further, that a meeting of the association's board would be called for Wednesday night, and the motion to have Council and the association's representatives meet this evening was agreed to.

The above is taken from a paper published in this city and is a report of the proceedings of the meeting referred to.

The Ledger acknowledges its indebtedness to the paper in question, for the report of this matter in which all the people of Ocean City are interested.

A representative of the Ledger inquiring of a member of Council before the meeting was told that it was not to be public. The report above states that it was an executive meeting.

A member of Council when his attention was called to the fact that a representative of the Sentinel was present at the meeting on Monday night stated that he did not know that any reporter was there. The Ledger congratulates the Sentinel man on his ability to sit in a meeting as long as he did in that meeting and take notes verbatim without being known. A newspaper reporter who can play the Dr. Jekyl and Mr. Hyde act in this way, is of inestimable value to any newspaper with which he may be identified.

The Ledger man confesses his inability. On Thursday evening another meeting between Council and the Association was held and the Ledger man tried the Dr. Jekyl and Mr. Hyde act but it didn't work. He was told that he could not be there unless the other fellow was and that no reporters were wanted at all.

Since the meeting the Ledger man has been in-

formed that the Sentinel man was invited to be present at the executive session on Monday evening in order that the City's side of the case might be correctly reported. The Ledger is perfectly willing for a comparison to be made with the statement which appeared in the Ledger of last week touching this important case and that a conclusion shall be reached as to which more fully and correctly states the case.

Though discriminated against the Ledger has tried to get the facts concerning the meeting on Thursday night. As far as can be learned an agreement was reached by which the Association's offer stated in last week's Ledger was changed to meet the wish of Council. As revised, it embraces the same land and the same amount of cash, viz.: $10,000 with the understanding that the money may be used in the erection of two school buildings, one for the upper and one for the lower section of the city. It was also stated that the Association was to bear a share of any expense involved in settlement and that in the deal was a provision that the easement deed to the boardwalk should be signed.

It is stated that an ordinance will be prepared and will be introduced at the meeting of City Council on next Monday night. The Ledger will do its level best to keep its readers informed, if by no other process is it obtained than by the mention of its contemporary's representative who has ability to sit in a meeting of the City Fathers as he did on last Monday night, "and it was not known that he was there."

Article in Ocean City Ledger, Issue of Saturday, October 15, 1904.

Ocean City Association's Offer Accepted.

Camp Meeting Dedication to be Extinguished. City to Receive Eighteen Lots and $20,000 in Cash. Two New School Houses to be Erected with the Money Paid.

Vote on the Proposition on November 8

As stated in another column, on last Monday evening at an adjourned meeting of the City Council, The Ocean City Association presented another proposition to City Council touching the settlement of the camp meeting plot. It was as follows:

To the City Council of the City of Ocean City.

Gentlemen:

The Ocean City Association desires to call the attention of your honorable body to the unimproved tract of land in the heart of our city, owned by our Association, lying between Fifth and Sixth streets and extending from bay to ocean.

It is unnecessary to more than mention to your honorable body the fact that this large tract of land in the very heart of our city has never been improved, and remains to this day an eyesore to the community at large, owing to an alleged dedication to certain specific uses when Ocean City was originally laid out.

Our citizens have for some time been impressed with the necessity of a proper use being made of this piece of property. The square in the centre of this tract has been set apart for the Auditorium and such other buildings as may be necessary and proper for the promotion of the camp meetings and other religious and educational purposes. The public has come to the conclusion that the best interests of the city demand that the balance of this tract shall be put to some use which will be a benefit to the citizens of Ocean City and those who make it their

summer home. We feel, also, that it should either be devoted by our Association to that use for which it was originally set apart, as determined by the courts, or that steps should be taken to remove the alleged limitation upon its use, and the property be improved as its location demands. We have been asked by many of the most prominent business men of our community and by those who have the welfare of Ocean City at heart, if some arrangement could not be made whereby the latter course could be pursued, their thought being that the progress of Ocean City in the past has been materially hampered by this waste land in the heart of the city; that surrounding property values have been kept down, and the taxable property of our community has not advanced as it should have done, owing to the unsightly character of this unimproved tract.

This matter has been given careful consideration by our Association, with the result that we have deemed it our duty to submit to your honorable body for its consideration the proposition hereinafter named.

At the outstart, it should be clearly understood that the legal fee of this property is in our Association. The city has no interest therein, saving as a trustee for the public, to see that this plot is used, while the limitation remains, as a camp meeting ground. It lies within the power of the city, however, by cooperation with our Association to remove this restriction placed upon the use of this property. We therefore make the following proposition:

If the City of Ocean City, by its Council, and citizens, will by proper ordinance and other necessary action:

1. Remove from this camp meeting plot the alleged dedication or restriction now affecting the same, so that this tract may be improved by the erection of large and substantial buildings, and

2. Give to our Association a receipt for, or release in full from any liens for taxes, assessments, or charges in the nature thereof, that might be claimed by the city to affect said plot, up to the date of settlement under this proposition, so that there shall remain outstanding no financial differences between our Association and the city, the Association will thereupon deed to the city Five (5) lots on the Southeasterly side of Ocean Avenue, and Five (5) lots on the Northwesterly side of Atlantic Avenue, adjoining Fifth Street; and eight (8) lots on the Northwesterly side of West Avenue, adjoining either Fifth or Sixth streets, or, if the city prefers, instead of the eighteen lots aforesaid we will deed the following twenty-four lots, viz.: Eight (8) lots on the Northwesterly side of Asbury Avenue, and Eight (8) lots on the Southeasterly side of West Avenue, adjoining Fifth or Sixth street, and eight (8) lots on the Northwesterly side of West Avenue, adjoining either Fifth or Sixth street.

It being understood that said lots so to be selected shall be used for city purposes, and not for ball or athletic grounds.

In addition to the above, and upon the accomplishment of the removal of the said restrictions, if the city will build a High School building on a portion of the ground so selected by it, costing at least $25,000, our Association will contribute $10,000 in cash, or its equivalent, toward the erection of said building; also, if the city will secure the erection of a library building on one or more of the said lots so selected, by Mr. Carnegie, or otherwise, said build-

ing to cost not less than $20,000, then our Association will present to the city to be placed in said library building, $2,000 worth of choice library books.

Or if the city does not care to have the high school and library buildings as referred to above, but prefers to use the present school building as a high school building and to erect two other buildings for primary schools one north of Sixth street, and the other south of Ninth street, we will contribute in cash or its equivalent toward the erection of said two school buildings Ten Thousand Dollars. And we will also pay the sum of Two Thousand Dollars, if necessary, toward the expenses of clearing the title to this property; provided that we may employ our own attorneys out of said sum of Two Thousand Dollars, and whatever portion of said sum of Two Thousand Dollars is not used or expended in clearing said title and paying said attorneys we will add to the Ten Thousand Dollar sum above mentioned, to be used in the erection of said school buildings.

Our Association will also upon the removal of the said restriction as above set forth, and within one year from the date thereof, make improvements on this camp ground plot aggregating at least $10,000.

This proposition must be accepted by the city on or before December 1st, 1904, or it shall be considered as void. This limitation is made because it is important that some move should be made at once, one way or the other.

We trust that your honorable body will see its way clear to bring about these many improvements for the benefit of Ocean City and her citizens:—

A new High School.

A new public library.

Thousands of dollars of valuable property deeded to the city.

$10,000 in cash in the city treasury.

$2,000 worth of library books.

$10,000 worth of improvements.

Thousands of dollars each year in taxes, where none are now received.

These, it seems to us, are considerations which should move your honorable body to speedy action in this matter, and the Ocean City Association as owner of the legal fee in said lands hereby consents to said vacation and extinguishment of said public rights on the terms herein set forth.

Respectfully yours,

S. Wesley Lake,

President of Ocean City Association.

Immediately following the reading of the proposition, a resolution was adopted, the full text of which is printed on this page.

An ordinance providing for the legal steps necessary was introduced and passed first reading. This was passed to second reading and then to a third and final passage at a special meeting called for that purpose and held on Tuesday evening, as stated in report of Council proceedings found in another column.

The ordinance was immediately signed by Mayor Champion.

A resolution was then adopted providing that the proposition be submitted to a vote of the people on Nov. 8.

A resolution embodying a notice of election and notice to voters were adopted.

The resolution accepting the proposition, the ordinance, the resolution directing the submission of the proposition to a vote of the people, the resolution specifying the form of notice of election and the notice of election itself, as adopted by Council follow and are here officially published.

Resolution.

An Ordinance.

Resolution.

Resolution.

Notice to Ocean City Voters.

It will be seen by the resolution of acceptance and ordinance adopted by Council that the city is to receive 10 lots on Ocean and Atlantic Avenues adjoining Fifth street and eight lots on the northwest side of West Avenue adjoining Sixth street and $10,000 with which to erect two school buildings, one north of 6th and one south of 9th street and whatever of two thousand dollars is left after paying the expenses of clearing the title, is to be added to the ten thousand dollars mentioned. Also as a part of the consideration the Association is to sign the easement deed for the new boardwalk site. And also the Association agrees to expend the sum of Ten Thousand Dollars on improvements within one year.

All of the above the Association agrees to do providing the city will remove the alleged dedication or restrictions so that the tract may be improved by the erection of large and substantial buildings and that a receipt in full be given for all taxes claimed to be due the city on this plot of ground.

This City Council has agreed to do and it remains for the citizens of the city to give their approval at the election to be held on Nov. 8.

As stated in last week's Ledger, the opinion well

nigh, if not universally held in the city, is in favor of the settlement.

So far as the offer of the Association is concerned the Ledger believes it is of such a character as to meet the approval of well nigh all the people in Ocean City.

That this view is held by City Council was evidenced by the fact that the vote on all resolutions and ordinances passed affecting the matter, was unanimous. On every hand expressions of approval are heard concerning the action of the Mayor and City Council, and of others who have had to do with it concerning the manner in which this important matter has been brought to its present stage of settlement.

Resolution.

Ocean City, N. J., October 11th, 1904.

Resolved, That the attached form of notice to the "Legal voters of Ocean City," be posted by the Clerk in ten conspicuous places in Ocean City, for at least twenty days prior to November 8th, and be published in two newspapers in Ocean City for at least 20 days before November 8th.

Adopted at Council Chamber this 11th day of October, A. D. 1904.

Geo. O. Adams,
President of Council.

Certified to the 11th day of October, A. D. 1904.

T. Lee Adams,
City Clerk.

Approved this 11th day of October, A. D. 1904.

Jos. G. Champion,
Mayor.

Notice to Ocean City Voters

Take notice that pursuant to an Act of the Legislature of this State, entitled, "An Act relative to the vacation by the governing body of any city, town, township, borough or other municipality of this State of any land situated in such municipality and wholly or partially dedicated or devoted to public use, and the extinguishment of all public rights therein," approved March Thirtieth, nineteen hundred and four, an ordinance, entitled, "An ordinance relative to the vacation of certain lands situate, lying and being at Ocean City, Cape May County, New Jersey, between Fifth and Sixth streets, and extending from the Atlantic Ocean to Beach Thoroughfare, (an arm of Great Egg Harbor Bay), dedicated to public use, and the extinguishment of all public rights therein," was on the Eleventh day of October, 1904, duly passed and adopted by the Common Council of Ocean City and that under said ordinance, it is proposed to vacate and extinguish all public rights in and to all that tract of land in Ocean City, New Jersey, located between Fifth and Sixth streets and extending from the Atlantic Ocean to Beach Thoroughfare (an arm or part of Great Egg Harbor Bay), as provided in said ordinance.

And take further notice that the proposition to so vacate and extinguish such public rights will be submitted to the qualified voters of Ocean City for their approval at the general election for members of assembly to be held in Ocean City on November 8th, 1904, and that the proposition to be so submitted will be worded and printed on the ballots used at said election as follows:

"For"

or

"Against"

"the vacation and extinguishment of the public rights in and to all the following described lot of land, situate in the City of Ocean City, County of Cape May, New Jersey, bounded on the east by the Atlantic Ocean, on the west by Beach Thoroughfare, which is a part or arm of Great Egg Harbor Bay; on the north, by Fifth Street and on the south by Sixth street, Excepting, However, all that block or square between Wesley and Asbury avenues and Fifth and Sixth streets."

T. Lee Adams,
City Clerk.

Dated, October 12th, 1904.

Resolution, Ordinance, etc. published in the Ocean City Ledger on Saturday, October 15th, 1904.

Notice to Ocean City Voters published in the Ocean City Ledger on Saturday, October 29th, 1904.

Notice to Ocean City Voters published in the Ocean City Ledger on Saturday, November 5th, 1904.

Article in Ocean City Ledger, Issue of Saturday, November, 12th, 1904.

The Significance of the Vote on the Camp Meeting Plot Matter.

The vote which was cast in Ocean City, on Tuesday last for and against the proposition to extinguish the public right in the Camp Meeting Plot is significant. As stated in another column there were 403 votes cast and of these there were 375 cast "for and only 28 cast "against." Or in other words 93 per cent. of the voters of Ocean City voted in favor of the extinguishment of the public right in this plot of ground. The returns show that there were only 80 voters who did not vote at all. It is known that a

number of these did not vote for the reason that they overlooked the fact that they were to erase one of the words on the ballot. And there were others who voted in the second ward on the voting machine who forgot to pull the lever in the column to vote on questions. If they had voted at all they would have voted "for." Again there were others who are not property owners who conscientiously refrained from voting on this question, in the belief that property owners alone ought to settle this matter and not the voters who owned no property. If all these persons had voted the percentage in favor would have been even larger than it was.

The practically unanimous vote in favor tells what the people most interested in the welfare and prosperity of Ocean City think of this question. The people who know what is best for Ocean City have expressed the opinion that the offer of the Ocean City Association is a fair one. The people here know that a lot of valuable land is now idle with no prospect of revenue to the City or to others and with improvements as contemplated the city would be a large gainer in the increased value of taxable property at once available to say nothing of other improvements which will follow in the development of this tract of land. Conservative estimates made even by those who out of personal prejudice have opposed the project show that the increase of taxable property in Ocean City will be increased by the clearing of the title to this property so as to affect favorably the whole financial status of the city. The plan adopted by which the city as a whole shall receive the benefit, rather than any individual or individuals, meets with approval on every hand. The plan, the Ledger is informed, will be strictly adhered to and under no circumstances will any con-

sideration be paid by the holders of the fee which is not paid to the City.

Much credit is due to the City officials who to a man have acted out of public spirit in taking steps to untangle this affair. Also all the public spirited citizens whether in official or other relation who have assisted in bringing this matter to an issue. It is to be hoped that all obstructionists will feel keenly their position and will bury all objection and assist rather than hinder advance.

EXHIBITS C36 to 39, Inclusive.

[Being minute books of the Ocean City Association from 1880 to date. The following are excerpts from the above exhibits.]

February 10th, 1880, p. 10: On motion Simon Lake and E. B. Lake were appointed a committee to locate the Camp Ground.

April 26th, 1880—p. 14: On motion the superintendent was authorized to procure a steam boat for the day of sale.

On motion Charles Matthews, Jr., was appointed a committee to arrange for sale of lots.

On motion William B. Wood, E. B. Lake, William H. Bunell and C. Matthews, Sr., be a committee to attend to the excursion on the day of sale at Philadelphia and make the best management they can.

May 10th, 1880—p. 15: William B. Wood reported that he had made an arrangement with Mr. Shaw of the firm of Shaw & Son to cry the sale on May 25th, but no terms were stated.

On motion the President was directed to make the best terms he can with the auctioneers.

May 17th, 1880—p. 18: William B. Wood reported that the Shaws had consented to cry the sale but no compensation had been agreed upon.

On motion ordered that Mr. Shaw be engaged at the best possible price, but not to exceed $25.00.

May 31st, 1880—p. 22: On motion ordered that a public sale of lots be held on June 22nd, 1880.

June 14th, 1880—p. 25: On motion William E. Boyl was appointed to act as auctioneer at the sale of Lots June 22nd, 1880.

A bill from Jonathan Hand, County Clerk of Cape May County for recording plan amounting to $29.00, which was referred to Charles Matthews, Jr., with a request he would see Mr. Hand and ascertain if a reduction would not be made in price.

June 21st, 1880—p. 26: A committee was received from W. E. Boyl stating it would be impossible for him to act as auctioneer upon the day of sale.

On motion E. B. Blake, superintendent, was authorized to procure an auctioneer, expense not to exceed $5.00.

On motion, William B. Wood, President, E. B. Lake and George L. Horn were appointed a committee to decide which lots shall be sold and at what price.

July 20th, 1880—p. 29: On motion ordered that the Association issue a monthly paper under the title of "The Ocean City Journal."

August 31st, 1880—p. 33: William B. Wood presented a bill from McCrelish A Quigley for 300 copies of "Ocean City Journal," amount $35.46—received and ordered paid.

August 31st, 1880—Stockholders' meeting p. 36. Resolved, that this annual meeting of the stock-

holders of Ocean City Association, in view of the prosperity of said enterprise, endorse and confirm all the acts and administration of the Board of Managers for the year just closed.

Nov. 30th, 1880—p. 14: Moved and seconded that 1000 copies of the President's report be printed, also 1000 copies of the by-laws be printed and bound together with the President's report.

Dec. 1st, 1880—p. 48: On motion resolved that we write proposals for grading Camp Ground, proposal to be presented at the next special meeting.

Moved and seconded that the surveyor proceed to prepare a new plan of Section A and B and present them at the next regular meeting, said survey to be under the instructions of Charles Matthews, Jr.

March 1, 1881—p. 60: On motion the superintendent was instructed to grade the camp ground.

April 5, 1881—p. 62: On motion resolved that we rent the ocean front per foot, except in front of the camp ground for strand privileges.

April 6th, 1881—p. 64: On motion the plan presented by the superintendent for laying out the alleys, grading and gravelling the same on the camp ground was accepted.

May. 4th, 1881—p. 71: On motion the superintendent was ordered to have Mr. A. Cox house removed as cheap as possible.

Sept. 7th, 1881—p. 90: Moved and seconded that the camp ground, between Sixth and Seventh Streets and between Asbury and Wesley Avenues be improved and beautified by sowing it down with grass and erecting mounds, flower beds, etc.

April 4th, 1882—p. 141. The Committee of Park reported that grass seed had been sown and rolled, the flower beds made and evergreens planted, and as soon as the weather would permit the flowers would be set out.

May 3rd, 1882. P 161. E. B. Lake moved that we take two columns in Ocean City Sentinel, which was adopted.

Jan. 6th, 1882. P 163. The Park Committee reported progress.

Oct. 3rd, 1882. V 2, P 2. At annual meeting of stock holders of association, the Committee on Public Parks, reported that the plants and flowers, which had adorned the public grounds during the season, have been removed, and those which were valuable properly cared for.

April 3rd, 1883. P 40. Form of lease for rental of auditorium park lots, reported the work in the hands of the printer. On motion report was accepted.

May 1st, 1883. P 48. Moved and seconded that there be a vacant space of not less than two feet, between the small cottages on the leased lots in auditorium park. Carried.

June 5th, 1883. P 55. Moved and seconded that Dr. William B. Wood and E. B. Lake, be a committee to look after the injunction placed upon the leasing of auditorium park lots, to report at the July meeting. (No report was entered in July).

Feb. 5th, 1884. P 110. On motion the locating of the Government Life Saving stations, was left to the superintendent, with instructions that no house be allowed on the camp ground block.

May 6th, 1884. P 137. The Park Committee urged the importance of immediate attention to the park, when on motion the superintendent was instructed to have the park cared for for the season at an expense not to exceed $150.00.

Oct. 6th, 1884. P 171. On motion the value on the camp ground block and the block at the point was placed at $15,000.00.

[To be inserted after line 21, page 486, of the State of the Case]

April 9th, 1886, p. 273. Whereas, it appears that the word "park" was written on a certain map of the land of this Association at Ocean City, made by William Lake and filed of record in the Clerk's Office of Cape May County at Cape May Court House, April 17th, 1883, entitled "Map of Sections A, B, & C," without the knowledge or authority of the Association, and without any thought or purpose on the part of this Association or any of its officers of dedicating the land so designated as a park to public uses forever; and whereas, misconception and misunderstanding may arise in relation to the use of the word "park" if lots are sold and conveyed by said map; therefore, be it now resolved by this Association, that the said map be rejected by this Association, and that no lots shall be sold or conveyed by or according to it, but that a new map or maps of the same grounds be prepared and filed to be used by this Association in making sales and conveyances.

April 9th, 1886. P 266. President's report—I am happy to report that the injunction suit to restrain us from the erection of suitable buildings upon our camp ground, for the accommodation of persons during the summer services, has been decided in our favor. The injunction was dismissed and the costs put on the prosecutors * * * * the injunction being removed from the camp ground, I suggest that the outer sections of the auditorium park, be laid off in lots of suitable size and that a sufficient number of them be set apart, so that in the organization of a camp meeting and a summer service association, such ministers and laymen, uniting with us in such association, have the use of one lot free, on which to erect a suitable cottage and the balance of the lots be leased at such price as may be deemed proper to other suitable parties, to be used for the same purpose * * * * I am satisfied that this would be a proper movement, and would bring us in a revenue toward meeting the expenses incurred in running our summer services.

April 3rd, 1888. P 331. On motion it was decided to lease our lots on camp ground this year for a period of ten years, at a discount of 1/3 from the prices fixed.

Jan. 7th, 1890. V 3, P 41. On motion the Executive Committee were instructed to consider the propriety of buying some small adjustable cottages for the camp ground. Also to get estimate of what it would cost to build small cottages and report at the next meeting.

April 1st, 1890. P 47. The Executive Committee reported favorably to having some cottages built on the camp ground. When on motion they were instructed to have one small house erected and covered with paper as a sample.

Oct. 6th, 1891. P 89. President made his report, which was referred to the board with instructions to print as much of it as they may think best.

Oct. 6th, 1896. P 251. The prices were fixed on the camp ground lot, east of Wesley Avenue, as follows:—(See printed list).

April 13th, 1897. P 267. On motion Dr. A. K. Scholl was allowed to purchase lot in camp ground block at the old schedule price.

May 7th, 1912. V 4, P. 66. On motion voted to sell our bay front lot, between 5th and 6th Streets, including riparian rights.

On motion decided to bulkhead our lots, if not sold when adjoining in same block are bulkheaded.

EXHIBIT C40.

Article in Ocean City Sentinel, Issue of Saturday, September 8, 1904.

Association's Offer
To City.

$30,000 Worth Of Ground, Land For A High School And $10,000.

At a meeting of those interested, held in the Temple, Thursday evening, the first public announcement was made of the offer of the Ocean City Association to the civic authorities looking toward the settlement of the Camp Ground controversy. It was stated that the Association has agreed to give the city $30,000 worth of property for public buildings, etc., and is also willing to donate

ground for a public High School building to cost $30,000, toward the payment of which building the Association will contribute $10,000. Rev. S. Wesley Lake, the president, stated that the courts had decided that the grounds in dispute cannot be sold under the present conditions. Affairs are shaping themselves so that it is expected that before long the people will have an opportunity of deciding the matter.

President Lake said that the Association has been carrying the Camp meeting work along for twenty-five years. Now it is growing and improvements are necessary. It is intended to enlarge the Auditorium considerably by making it square-shaped. In the contemplated work, they would like to have the co-operation and assistance of the people. All in sympathy with the movement were requested to give in their names and a meeting to discuss affairs can be held later.

It was also stated that it is desired to have 100 preachers at the Camp Meeting next season, the men to be brought here from Baltimore, Wilmington, Pennsylvania and New Jersey. It is planned to secure subscriptions of $5.00 each from 100 persons with which to pay the board of the ministers for the week they are here. Mr. Lake said that he had 15 names of subscribers already.

Article from Ocean City Sentinel, of Thursday, September 22nd, 1904.

No Enthusiasm Greets Offer.

Council Wants to know just what Ocean City Association desires.

In its efforts to have the Camp Ground dispute settled the Ocean City Association through its president Rev. S. W. Lake made a proposition to the city at the meeting of Common Council on Monday evening.

After the proposition had been read, Councilman Graham suggested that it would be wise to send a copy of the offer to each of the 7 memebers of Council and to Mayor Champion.

Councilman Headley said that the proposition would probably look very nice in print but when it came to getting every property owner to sign away his right and title at the city's expense another complexion was put on the matter.

Mr. Graham stated that he would not take any hand in the affair until he sees in black and white just what the Ocean City Association wants, over the president's signature.

The Communication started off with the statement that "The Ocean City Association desires to call the attention of your honorable body to the unimproved tract of land in the heart of our city owned by our Association lying between Fifth and Sixth Streets and extending from bay to ocean." Then after referring to the necessity of improving it the Association makes the following proposition: [Proposition same as set forth in Sept. 24th issue of Ocean City Ledger, Exh. C35, pp. 455-459.]

Article from Ocean City Sentinel of Thursday, October 6th, 1904.

Settlement May Soon
Be Reached.

Councilmen and Association trying to get together on two disputes.

At an executive meeting of council at which Mayor Champion presided and Rev. S. W. Lake, President of the Ocean City Association, was present, held Monday night, a fuller and better understanding was reached by all concerned in the Camp Ground and Boardwalk disputes. The possibilities are that an amicable agreement will soon be reached between the city and the association.

Regarding the proposition made to the city by the association, it seemed to be the opinion of Council that it would be better for the association to give $12,000 for the erection of two school buildings, one each for the Northern and Southern Sections of the city, instead of $10,000 toward a new High School not needed now and not likely to be needed for a long time to come. The Association's offer is $10,000 and a site for a new High School. The additional $2,000 as Council viewed the matter is to be taken from the money to be donated for the Carnegie library purposes.

[The remainder of the article is devoted to an account of the meeting verbation; and is substantially the same as that printed in the Oct. 8 issue of the Ocean City Ledger, Exh. C35, pp. 466-472.]

Article in Ocean City Sentinel of Thursday, October 13th, 1904.

Voters To Decide Upon
Camp Ground Dispute.

Council Passes Ordinance Mutually Agreed Upon By City's Governing Body And The Association. The Association Will Sign Easement Deed For New Boardwalk If Ordinance Is Accepted.

Common Council of the City of Ocean City and the Officers of the Ocean City Association having reached an amicable agreement in the matter of the camp ground controversy, it now remains for the voters to accept or reject the proposition at the coming election in November.

An ordinance embodying the agreement between the city and the association was introduced and given its first reading at Council's meeting on Monday evening. A special meeting of council was held on Tuesday night when the ordinance was passed.

The revised proposition of the association was read at the Monday night meeting after a private meeting of Council with former Judge Thompson, the city solicitor, during which the matter was thoroughly discussed. The proposed new city ordinance, together with a couple of resolutions bearing on the subject, came in for a lengthy deliberation.

The ordinance is along the lines of the association's original proposition with several important eliminations and concessions referred to in the Sentinel last week, and as mutually agreed upon between the members of Common Council and the officers of the association, which include the signing by the association of the easement deed for the new boardwalk.

Among the important portions of the ordinance are those restoring to the association all the land "alleged to have been dedicated to the city for park purposes," except from Wesley to Asbury between Fifth and Sixth Streets, and the agreement of the association to give $10,000 for the erection of two primary schools, one North of 6th street and the other south of 9th street.

In reference to the city having to pay for any possible litigation, city solicitor Thompson told Councilman Graham that the $2,000 originally intended for the use of the talked-of Carnegie library would be sufficient should anything in the way of law suits develop later. Under the proposition submitted, the city is not to be taxed for any litigation that may follow.

The revised proposition of the Ocean City Association was called up and read at the meeting of Council on Monday evening. It is as follows:

[Proposition same as set forth in Oct. 15th issue of Ocean City Ledger, Exh. C.35, supra, pp. 473-477.]

At the conclusion of the reading of this paper, Councilman Headley moved that it be placed on file, which was agreed to.

It was further decided that the latest proposition from the Association be acepted, if the latter would agree to certain conditions named by the terms of the City Council, including the building of two primary schools and the Association agreeing to sign the easement deed subject to a couple of restrictions for the new boardwalk. These restrictions give the Association the privilege of holding religious services outside of the walk and prevent the taking of tickets on the Sabbath.

When City Solicitor Thompson said that under the proposition, the city is not to be taxed for any litigation that may follow, President Adams of Common Council asked Mr. Stockwell, who represented the Association, if that was his understanding. The lawyer took the former Judge's view.

Mr. Headley called back to that portion of the

proposition which reads, "It being understood that said lots so to be selected shall be used for city purposes and not for ball or athletic grounds." He had not remembered the exact reading and asked if there is anything in the clause which could be construed as preventing children of a property owner playing baseball in their own yard.

Judge Thompson replied that the courts would not take such a view.

The ordinance was finally given its first reading. Resolutions bearing on the matter were passed also.

The following is the manner in which the matter was disposed of by Common Council, the said resolutions, &c, being the official documents in the case.

Resolution.
Ordinance.
Resolution.
Notice to Ocean City Voters.

in the same order as they are found on page 5 of the Ocean City Ledger, Issue of October 15th, 1904.

[In the issue of the Sentinel for Thursday, October 20th, 1904, there is printed again the Notice to Ocean City Voters, three resolutions and ordinance.]

[Issue of the Sentinel of October 27th, 1904, Notice to Ocean City Voters, proposed ordinance, etc., were printed again.]

EXHIBIT C41.

[Abstract]

DEED.

Ocean City Association
(Corporation of N. J.)

to

Lewis M. Cresse and
Cecelia H. Cresse, his wife
(Ocean City, N. J.)

Dated Sept. 12, 1905.
Recd. Sept. 19, 1905.
Book 200, page 3.
Cons. $1.00.
G. and h.
h. and a.

Conveys premises in Ocean City, on Pek's Beach, Upper Township, Cape May County, New Jersey

Beg. in N. W. line of Pleasure Avenue, 223 ft. S. W. from the S. W. line of Fifth St., containing in front or breadth S. W. on the said N. W. line of Pleasure Avenue 150 ft. and of that width extending in length or depth N. W. between lines parallel with said Fifth St. to a line parallel with and three feet S. E. of the high water mark of the S. E. shore of Beach Thoroughfare.

Ack. Sept. 15, 1905, before Wm. Lake, M. C. C., by W. Elwell Lake, Secretary of the Ocean City Association.

EXHIBIT C42.

[Abstract]

DEED.

State of New Jersey

to

Ocean City Association
(A corporation of N. J.)

Dated Jan. 11, 1906.
Recd. Apr. 19, 1906.
Book 203, page 178.
Cons. $450.
G. and h.
S. and a.

Riparian grant of premises flowed by tide water lying at Ocean City, Cape May County, New Jersey.

Beg. in high water line of S. E. shore of Beach Thoroughfare, 223 ft. S. W. at right angles from the S. W. line of Fifth Street; thence N. W. parallel with Fifth Street extended, 233.1 ft. to the Exterior Line; thence S. W. along said Exterior Line 151.67 ft. more or less; thence S. E. parallel with and distant 150 ft. S. W. at right angles from the line first run down to said Exterior Line 155.53 ft. to the High water line of the S. E. shore of Beach Thoroughfare; thence E. along said high water line to beg.

Ack. Jan. 26, 1906, before William J. Davis, M. C. C., by John C. Payne.

EXHIBIT C43.

[Abstract]

DEED.

Ocean City Association, (Corporation of N. J.) — Dated Feb. 5, 1906. Recd. Apr. 9, 1906. Book 203, page 163. Cons. $1.00. G. and h.

to

Lewis M. Cresse and Cecelia H. Cresse (Ocean City, N. J.) — h. and a.

Conveys lot situate in Ocean City, on Peck's Beach, Upper Township, Cape May County, State of New Jersey in Section B on the Plan of Lots of the Ocean City Association.

Beg. in the high water line of the S. E. shore of

Beach Thoroughfare 223 ft. S. W. at rightangles from the S. W. line of Fifth Street, thence S. E. along a line parallel with Fifth Street, 3 ft.; thence W. along line parallel with and 3 ft. from the said high water line to a point 373 ft. at right angles from the S. W. line of said Fifth Street; thence N. W. parallel with said Fifth Street 3 ft. to the said high water line; thence E. along said high water line to beg.

Ack. Feb. 5, 1906, before Wm. Lake, M. C. C. by W. Elwell Lake, Secretary of the Ocean City Association.

EXHIBIT C44.

[Abstract]

DEED.

Ocean City Association (New Jersey Corporation)

to

Lewis M. Cresse and Cecelia H. Cresse, (Ocean City, N. J.)

Dated Feb. 7, 1906.
Recd. Apr. 9, 1906.
Book 200 page 438.
Cons. $1.00.
G. and h.
h. and a.

Conveys lot situate in Ocean City, on Peck's Beach, Upper Township, Cape May County, New Jersey;

Beg. in the high water line of the S. E. shore of Beach Thoroughfare, 223 ft. S. W. at right angles from the S. W. line of Fifth Street; and thence N. W. parallel with Fifth Street extended 233.1 ft. to Exterior Line; thence S. W. along said Exterior

Line 151.67 ft. more or less to a point; thence S. E. parallel with and distant 150 ft. S. W. at rightangles from the line first run down to said Exterior Line 155.53 ft. to the high water line of S. E. shore of Beach Thoroughfare; thence E. along said high water line to beg.

Being the same premises conveyed to Ocean City Association by grant from the State of New Jersey, dated Jan. 11th, 1906, and intended to be forthwith recorded.

Ack. Feb. 7, 1906, before Wm. Lake, M. C. C. by W. Elwell Lake, Secretary of Ocean City Association.

EXHIBIT C45.

[Abstract]

DEED.

Ocean City Association	Dated April 17, 1909.
(Corporation of N. J.)	Recd. May 1, 1909.
	Book 233, page 307.
to	Cons. $1.00.
	G. and h.
Lewis M. Cresse,	h. and a.
(Ocean City, N. J.)	

Conveys premises in Ocean City, on Peck's Beach, Upper Township, Cape May County, New Jersey.

Beg. N. W. line of Pleasure Avenue 173 ft. S. W. from the S. W. line of Fifth Street; extending S W. of said point in the N. W. line of said Pleasure Avenue, 50 ft. and of that width extending N. W. in

legth or depth between lines parallel with the said Fifth Street (extended) 100 ft. more or less to within 3 ft. of the high water line of Beach Thoroughfare.

Ack. April 17, 1909, before Wm. Lake, M. C. C., by W. Elwell Lake, Secretary of Ocean City Association.

EXHIBIT C46.

[Abstract]

DEED.

The State of New Jersey	Dated Aug. 5, 1909.
	Recd.
to	Book S, Folio 263.
	Cons. $150.
Ocean City Association	G. and h.
(Corporation of N. J.)	S. and a.

Riparian grant of that parcel of land flowed by tide water lying at Ocean City, County of Cape May, New Jersey:

Beg. in high water line of S. E. shore of Beach Thoroughfare, tt2 S. W. at right angles from the S. W. line of Fifth Street; and from thence N. W. parallel with Fifth Street extended, and along the N. E. line of lands under water granted by the state of N. J. to Ocean City Association, Jan. 11, 1906, 233.1 ft. to Exterior Line; thence N. E. along said Exterior Line 50.56 ft.; thence S. E. parallel with the line first run down to said Exterior Line and 50 ft. N. E. at right angles therefrom, 240 ft. to the high water line of S. E. shore of Beach Thoroughfare; thence S. W. along said high water line to beg.

Ack. Aug. 20, 1909, before Francis V. Dobbins, M. C. C. of N. J. by John C. Payne.

EXHIBIT C47.

[Abstract]

DEED.

Ocean City Association (Corporation of N. J.)

to

Lewis M. Cresse (Ocean City, N. J.)

Dated Nov. 30, 1909.
Recd. Dec. 18, 1909.
Book 246, page 34.
Cons. $250.
G. and h.
h. and a.

Conveys premises in Ocean City, on Peck's Beach, Upper Township, Cape May County, State of New Jersey.

Beg. 3 ft. S. E. from mean high water on Beach Thoroughfare, 223 ft. S. W. from S. W. line of Fifth Street; and at right angles from the same; and runs from thence (1) N. W. parallel with Fifth Street extended and along N. E. line of lands under water, granted by the State of N. J. to the Ocean City Association, Jan. 11, 1906, 236.1 ft. to the Exterior Line; thence N. E. along said Exterior Line 50.56 ft. to a point; thence S. E. parallel with the line first run down to said Exterior line and 50 ft. N. E. at right angles therefrom 243 ft. to a point 3 ft. E. of the line of mean High Water on Beach Thoroughfare; thence S. W. parallel with the line of high water and 3 ft. E. of the same to beg.

Being the Riparian Grant from State of N. J. to Ocean City Association, dated Aug. 5, 1909, together with a strip of land 3 ft. in width adjoining said grant on the E. side or end of said grant.

Ack. Dec. 15, 1909, before Wm. Lake, M. C. C. by W. Elwell Lake.

EXHIBIT C48.

[Abstract]

DEED.

Thomas Shaw and
Ann Jane, his wife
(Philadelphia, Pa.)

to

Benjamin F. Wheatman
and Ida W. his wife
(Camden, N. J.)

Dated Octo. 3, 1896.
Recd. Nov. 9, 1896.
Book 128, page 481.
Cons. $6500.
G. and h.
h. and a.

Conveys Lots Nos. 542 and 544, Section A on Plan of the Lots of Ocean City Association.

Ack. before Reuben Ludlam, Commissioner of Deeds, Oct. 3, 1896, by Thomas Shaw and Ann Jane Shaw, his wife.

EXHIBIT C49.

[Abstract]

DEED.

William E. Massey and
Mina Radcliffe,
his wife, and
Reuben W. Edwards and
Annette G.,
his wife
(All of Ocean City, N. J.)
to

James S. Caterson
(Philadelphia, Pa.)

Dated Nov. 20, 1901.
Recd. Nov. 25, 1901.

Book 165 of Deeds,
page 295.
Cons. $4750.
H. and a.
G. and h.

Conveys premises in Ocean City, Cape May County, New Jersey.

Lot No. 973, and 975 in Section A on Plan of Lots of Ocean City Association.

Being the same lots which Mabel E. Jennings, single by deed of March 8, 1901, recd. Book 156, page 292, conveyed to William E. Masses and Reuben W. Edwards, their heirs and assigns.

Ack. Nov. 20, 1901, before Reuben Ludlam, Commissioner of Deeds, by William E. Massey and Mina Radcliffe Massey, his wife and Reuben W. Edwards and Annette G., his wife.

EXHIBIT C50.

[Abstract]

EXECUTOR'S DEED.

John P. Sloan, executor of the last will and testament of Joseph A. Boothroyd, late of Ocean City, N. J. (of Philadelphia, Pa.)

Dated June 5, 1908.
Recd. June 9, 1908.

Book 230, page 209.
Cons. $5,600.
G. and h.
H. and a.

to

George W. Urquhart
(Philadelphia, Pa.)

Conveys premises in Ocean City, Cape May County, New Jersey.

Lot No. 3 on section 10 on Plan of Lots of the Ocean City Land Co.

Beg. E. line of Fifth St. 50 ft. S. from S. line of Atlantic Avenue, thence (1) E. parallel with Atlantic Avenue 100 ft. to the W. line of a 15 ft. wide alley; (2) S. along and in said W. line of said 15 ft. alley and parallel with Fifth Street, 40 ft., (3) W. and parallel with said Atlantic Avenue 100 ft. to the E. line of said Fifth Street; (4) N. along and in said E. line of Fifth Street 40 ft. to beg.

Being the same premises which were coneyed to the said Joseph A. Boothroyd by deed from Rebecca J. Smith, of Octo. 1, 1901, recd. in Book 165, page 137.

Lot No. 5 on section 10 on Plan aforesaid.

Beg. E. line of Fifth Street 90 ft. S. of S. line of Atlantic Aenue; thence (1) E. parallel with Atlantic Avenue, 100 ft. to the E. line of a 15 ft. alley; (2) S. along and in said E. line of said 15 ft. wide alley 40 ft. (3) W. parallel with Atlantic Avenue 100 ft. to the E. line of said Fifth Street; thence (4) N. along and in said E. line of Fifth Street 40 ft. to beg.

Being the same premises conveyed to the said Joseph A. Boothroyd by deed rom Ocean City Land Company of October 9, 1901, recd. in book 163, page 513.

Ack. June 5, 1908, before Thomas Tobin, foreign commissioner of deeds for New Jersey, by John P. Sloan.

EXHIBIT D1.

[Map made by Henry S. Haines of property in Ocean City Cape May County, New Jersey. See Book of Maps.]

EXHIBIT D2.

[Abstract]

DEED.

Mark Dana, et als., to Ocean City Association.

Dated Feb. 13, 1895.
Recd. Dec. 11, 1896.
Book 132
Folio 19.

EXHIBIT D3.

RIPARIAN GRANT.

The State of New Jersey, to The Ocean City Association.

Dated May 29, 1901.
Recorded Cape May County, August 19, 1901.
Book 159, page 497, &c.
Consideration $6786.45

Conveys—All that parcel of land flowed by tide water lying at Ocean City, in the County of Cape May and State of New Jersey, described as follows:

Beginning at a point in the high water line of the Atlantic Ocean where the same is intersected by the northeasterly line of Sixth Street; thence southeasterly in line with the northeasterly line of Sixth Street extended, Three hundred and fifteen 00/100 (315 00/100) feet more or less to the Exterior Line established by the Commissioners appointed under the authority of the act entitled "An Act to ascertain the rights of the State and of Riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State," approved

April 11th, A. D., 1864, and the supplements thereto; thence northeasterly along said exterior line as shown on the map hereto annexed, Three thousand four hundred and ninety-two and 61/100 (3492 61/100) feet to the southwesterly line of North Street extended southeasterly to said Exterior Line; thence northwesterly in line with the southwesterly line of North Street extended ten hundred and seventy and 00/100 (1070 00/100) feet more or less to the high water line of the Atlantic Ocean; thence southwesterly along said high water line to the place of beginning.

Excepting out of the above described tract of land under water the following described tracts of land flowed by tide water:

First: The land under water lying in front of First, Second, Third, Fourth and Fifth Streets, between the northeasterly and southwesterly lines of said streets extended southeasterly in straight lines from the high water line of the Atlantic Ocean to the Riparian Commissioners' Exterior Line above referred to.

Second: The land under water beginning at the high water line of the Atlantic Ocean where the same is intersected by the southwesterly line of Second Street; thence southeasterly in line with the southwesterly line of Second Street to the Riparian Commissioners' Exterior Line above referred to; thence southwesterly along said Exterior Line to a point distant three hundred feet southwesterly at right angles from the southwesterly line of Second Street extended; thence nothwesterly parallel with Second Street extended to the high water line of the Atlantic Ocean; thence northeasterly along said high water line to the place of beginning.

With the right and privilege, under the covenants

and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water by filling in or otherwise improving the same, and to appropriate the lands under water above described to its and their exclusive private uses.

[For map referred to see Book of Maps.]

EXHIBIT DM1.

[Abstract]

DEED.

Ocean City Association	Dated Aug. 25, 1900.
(Corporation of N. J.)	Recd. Aug. 28, 1900.
	Book 148, page 474.
to	Cons. $750.
	G. and h.
Charles William Masland	h. and a.
(Philadelphia, Pa.)	

Conveys premises in Ocean City, on Peck's Beach, Upper Township. Cape May County, New Jersey.

No. 1. Beg. in N. W. line of Bay Avenue, 373 ft. S. W. from S. W. line of Fifth Street, and thence extending along the N. W. line of Bay Avenue S. W. 50 ft. and of that width extending in length or depth N. W. 115 ft. to a 15 ft. street.

No. 2. Beg. in N. W. line of a 15 ft. street, 130 ft. N. W. from N. W. line of Bay Avenue and 373 ft. S. W. from S. W. line of Fifth Street, thence extending S. W. along said line of a 15 ft. wide street, parallel with Bay Avenue 50 ft. and of that width ex-

tending in length or depth N. W. 150 ft. more or less to within 3 ft. of the mean high water marks of Great Egg Harbor Bay or Thoroughfare.

Ack. Aug. 25, 1900, before Wm. Lake, M. C. C. of N. J. by W. Elwell Lake, Secretary of Ocean City Association.

EXHIBIT DM2.

[Abstract]

DEED.

Ocean City Association (Corporation of N. J.)

to

Charles William Masland (Philadelphia, Pa.)

Dated April 12, 1906.
Recd. May 8, 1906.
Book 200, page 473.
Cons. $150.
G. and h.
h. and a.

Conveys premises in Ocean City, on Peck's Beach, Upper Township, Cape May County, New Jersey.

Beg. in high water line of S. E. shore of Beach Thoroughfare 373 ft. at right angles from S. W. line of Fifth Street, and thence S. E. parallel with Fifth Street 3 ft. to a point; thence S. W. parallel with said high water line to a point 423 ft. at right angles from the S. W. line of Fifth Street; thence N. W. parallel with Fifth Street 3 ft. to the said high water mark, thence N. E. along said high water line to beg.

Also parcel of land flowed by tide water in the City, County and State aforesaid.

Beg. in high water line of S. E. shore of Great Egg Harbor Bay or Beach Thoroughfare 373 ft. at right angles from the S. W. line of Fifth Street, thence N. W. parallel with Fifth Street extended, 155.53 ft. to the Exterior Wharf Line, thence S. W. along said Exterior Wharf Line 50.56 ft. more or less to a point 423 ft. at right angles from the S. W. line of Fifth St. thence S. E. parallel with Fifth Street extended 147.01 ft. to said high water line, thence N. E. along said high water line to beg.

Ack. April 14, 1906, before Wm. Lake, M. C. C. of N. J. by W. Elwell Lake Secretary of Ocean City Association.

EXHIBIT DM3.

[Abstract]

DEED.

State of New Jersey — Dated March 8, 1906.
Liber Q, Folio 637.
to — Cons. $150.
G. and h.
Ocean City Association — S. and a.
(Corporation of N. J.)

Riparian grant of parcel of land flowed by tide water lying at Ocean City, Cape May County, New Jersey.

Beg. in high water line of S. E. shore of Great Egg Harbor Bay 77 ft. N. E. at right angles from N. E. line of Sixth Street; thence N. W. parallel with Sixth Street extended 147.01 ft. to Exterior Wharf Line, thence N. E. along said Exterior Wharf Line 50.56 ft. more or less, thence S. E. parallel with line first run down to said Exterior Wharf Line and 50 ft. N. E. at right angles from same 155.53 ft. to

the high water line of S. E. shore of Great Egg Harbor Bay; thence S. W. along said high water line to beg.

Ack. March 16, 1906, before John W. Heck, M. C. C. of N. J., by John C. Payne.

EXHIBIT DM4.

[Map of Bay Front, Ocean City, Cape May County, New Jersey. See Book of Maps.]

EXHIBIT D-BUCHANAN-1.

[Abstract]

BUILDING PERMIT.

[Building Permit granted by H. C. Smith, the Building Inspector of Ocean City, March 21, 1897]

EXHIBIT D—BUCHANAN—2.

Original files in the Chancery suit of Ocean City Land Company vs. Mary J. Buchanan.

EXHIBIT D—MOORE—1.

[Abstract]

DEED.

Ocean City Association (Corporation of N. J.) to Henry D. Moore. (Haddonfield, N. J.)

Dated Dec. 1, 1897. Recd. Jan. 17, 1898. Book 137, page 204. Cons. $1.00. G. and h. h. and a.

Conveys premises in Ocean City, Cape May County, New Jersey.

Lots 37 to 48, inclusive, in Section B on Plan of Lots of Ocean City Association.

Lots 133 to 144, inclusive, in Section B on Plan aforesaid.

Lots 229 to 240, inclusive, in Section B on Plan aforesaid.

Lots 61 to 64, inclusive, in Section B on Plan aforesaid.

Lots 157 to 161, inclusive, in Section B on plan aforesaid.

Lots 253, to 257, inclusive in Section B on plan aforesaid.

Lot 70, in Section B on plan aforesaid.

Lots 75 to 81 inclusive, in Section B on plan aforesaid.

Lots 172 to 177, inclusive, in Section B on plan aforesaid.

Lot in Section B on plan of lots aforesaid:

Beg. at intersection of N. W. line of Bay Avenue and N. E. line of Fifth Street, containing in front or breadth on said Bay Avenue 200 ft. and of that width extending in length or depth N. W. at right

angles to said Bay Avenue and between lines parallel with and along N. E. line of said Fifth Street. 370 feet more or less to point within 3 ft. of line of ordinary high water mark on Beach Thoroughfare.

Lot in Section B on plan aforesaid:

Beg. at intersection of N. W. line of Bay Avenue and N. E. line of Sixth Street, containing in front or breadth on said Bay Avenue 77 ft. and of that width extending in length or depth N. W. at right angles to said Bay Avenue and between lines parallel with and along the N. E. line of said Sixth Street, 370 ft. more or less to point within 3 ft. of the line of an ordinary high water mark on Beach Thoroughfare.

Lot in Section B on plan aforesaid:

Beg. at intersection of N. W. line of Bay Avenue and S. W. line of Sixth Street, containing in front or breadth on said Bay Avenue 146 ft. and of that width extending in length or depth N. W. at right angles to said Bay Avenue and between lines parallel with and along the S. W. line of said Sixth Street 370 ft. more or less to point within 3 ft. of ordinary high water mark on Beach Thoroughfare.

Ack. Dec. 1, 1897, before Wm. Lake, M. C. C. of N. J. by Ezra B. Lake, Secretary of Ocean City Association.

EXHIBIT D—MOORE—2.
[Abstract]

DEED.

State of New Jersey

to

Ocean City Association
(Corporation of N. J.)

Dated September 29, 1908.
Liber S, Folio 164.
Cons. $231.
G. and h.
S. and a.

Riparian grant of parcel of land flowed by tide water, Ocean City, Cape May County, New Jersey.

Beg. in high water line of S. E. shore of Beach Thoroughfare, where same is intersected by N. E. line of Sixth Street; thence N. W. in line with N. E. line of Sixth Street extended, 148.53 ft. to Exterior Wharf Line, thence N. E. along said Exterior Wharf line 77.85 ft. more or less to point; thence S. E. parallel with Sixth Street extended and 77 ft. N. E. at right angles from N. E. line of same, 147.01 ft. to high water line of S. E. shore of Beach Thoroughfare; thence S. W. along said high water line to beg.

Ack. Jan. 23, 1909, before M. J. Currie, M. C. N. J. by John C. Payne.

EXHIBIT D—MOORE—3.

[Abstract]

DEED.

Ocean City Association — Dated Sept. 4, 1909.

(Corporation of N. J.) — Recd. Sept. 18, 1909.
Book 244, page 268.

to — Cons. $231.
G. and h.

Henry D. Moore — h. and a.
(Haddonfield, N. J.)

Lot in Ocean City, on Peck's Beach, Upper Township, Cape May County, New Jersey:

Beg. 3 ft. E. from line of high water on Beach Thoroughfare, where same is intersected by N. E. line of Sixth Street, (1) N. W. in line with N. E. line

of Sixth Street extended 151.53 ft. to Exterior Wharf Line, thence N. E. along Exterior Wharf Line 77.85 ft. more or less to point; thence S. E. parallel with said Sixth Street extended, and 77 ft. N. E. at right angles from N. E. line of same, 150.01 ft. to a point three ft. E. from high water on Beach Thoroughfare; thence S. W. 3 ft. from and parallel with high water to place of beg.

Being lands which Riparian Commissioners of New Jersey conveyed to Ocean City Association by deed of Sept. 29, 1908, together with a strip of land 3 ft. in width adjoining said Riparian Grant.

Ack. Sept. 10, 1909, before Wm. Lake, M. C. C. by W. Elwell Lake, Secretary of Ocean City Association.

EXHIBIT DH1.

[Abstract]

DEED.

Ocean City Association
(Corporation of N. J.)

to

Samuel H. Hann, and
Izetta Hann, his wife
(Haddon Heights, N. J.)

Dated Oct. 30, 1909.
Recd. Nov. 18, 1909.
Book 245, page 84.
Cons. $1000.
G. and h.
h. and a.

Conveys lot situate in Ocean City, on Peck's Beach, Upper Township, Cape May County, State of New Jersey.

Beg. in N. W. line of Pleasure Avenue 123 ft W. from S. W. line of Fifth Street, containing front or breadth on the said N. W. line of Pleas Avenue 50 ft. and of that width extending in len or depth N. W. between lines parallel with said F Street, 75 ft. more or less to line 3 ft. S. E. of o nary high water line of Beach Thoroughfare.

Ack. Nov. 3, 1909, before Thomas Whitaker, C missioner of Deeds, by W. Elwell Lake, Secretar Ocean City Association.

EXHIBIT DH2.

[Abstract]

DEED.

Ocean City Association (N. J. corporation)

to

(Haddon Heights, N. J.)
S. H. Hann, and
Izetta Hann

Dated Aug. 15, 1
Recd. Oct. 14, 1
Book 281, page
Cons. $17
G. an
h. an

Conveys premises in Ocean City, on Pe Beach, Upper Township, Cape May County, Je

in line parallel with and 3 ft. S. E. of nary high water mark of Beach Thorough as it located in a deed from the said Ocean City A ciation to said S. H. Hann and Izetta Hann d Oct. 30, 1909, said point being 123 ft. at right an from S. W. line of Fifth Street; thence along

re Avenue 123 ft
Street, containing
W. line of Plea
extending in len
rallel with said F
e 3 ft. S. E. of o
horoughfare.
mas Whitaker, C
ll Lake, Secretary

12.

Dated Aug. 15, 19
Recd. Oct. 14, 19
Book 281, page 2
Cons. $17
G. an

h. an

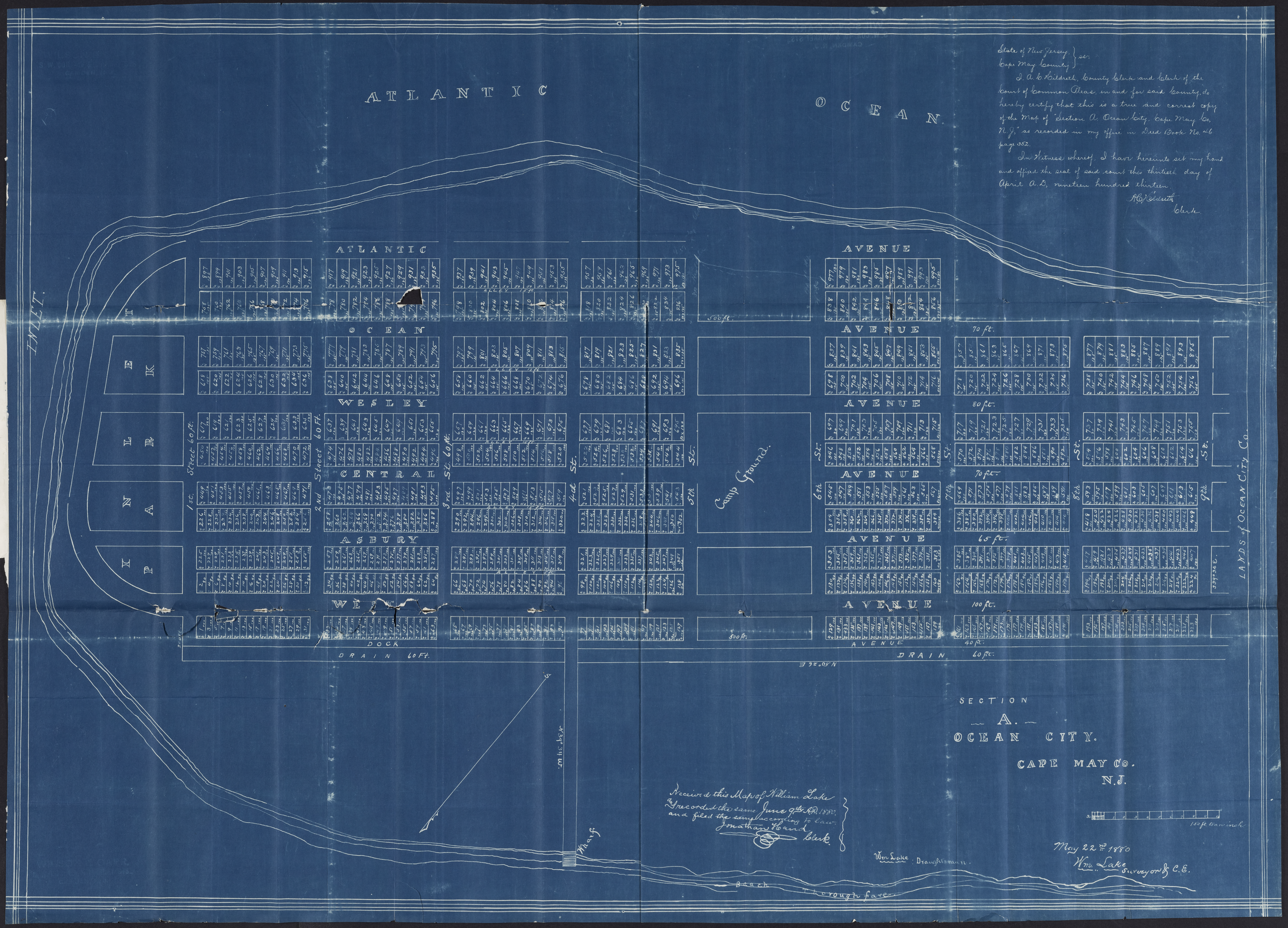
n City, on Dec
e May County, N

d 3 ft. S. E. of
Thorough as it
id Ocean City A
d Izetta Hann d
23 ft. at right an
et; thence along

ar

Court of Errors + Appeals

Vol. 716
1918
p. 513



State of New Jersey } ss:
Cape May County }

I, A. C. Hildreth, County Clerk and Clerk of the Court of Common Pleas, in and for said County, do hereby certify that this is a true and correct copy of the Map of "Section A. Ocean City, Cape May Co., N.J." as recorded in my office in Deed Book No. 46 page 352.

In Witness whereof, I have hereunto set my hand and affixed the seal of said court this thirtieth day of April A.D., nineteen hundred thirteen.

A. C. Hildreth
Clerk

line in a general S. W. direction to point 173 ft. at right angles from S. W. line of Said Fifth Street; thence N. W. in a line parallel with said Fifth Street extended, 243 ft. more or less to Exterior Line; thence N. E. along said Exterior Line 52 ft. more or less to point distant 123 ft. at right angles from the S. W. line of said Fifth Street extended; thence S. W. in line parallel with said Fifth St. extended, 297 ft. more or less to place of beg.

The land flowed by tide water in above premises being part of Riparian Grant of State of New Jersey to Ocean City Association dated May 24, 1912 and recd. in Book 279 of Deeds, pages 255.

Ack. Aug. 27, 1912, before Wm. Lake, M. C. C. by W. Elwell Lake, Secretary of Ocean City Association.

EXHIBIT DH3.

DEED.

State of New Jersey
to
Ocean City Association.

Dated
May 6, 1912

ATLANTIC AVE.

NEPTUNE AVE.

WAVE AVE

6TH ST. | 5TH ST. | 4TH ST. | 3D ST. | 2D ST. | 1ST ST. | NORTH ST.

1280'

500 OCEAN CITY ASS'N

175' FRANK CORSON

OCEAN CITY ASS'N.

OCEAN CITY ASS'N

O.C. ASS'N

300' HADAY

HIGH WATER LINE

OCEAN CITY ASS'N

OCEAN CITY ASS'N

244.5.14

315'

EXCEPTED

EXCEPTED

EXCEPTED

EXCEPTED

EXCEPTED

107.6'

529.19

529.19

529.19

EXTERIOR LINE

211.67

3492.61

317.51

529.19

529.19

ATLANTIC OCEAN

SCALE 1" = 300

ATLANTIC OCEAN

INLET

BAY

ATLANTIC AVE

OCEAN AVENUE

WESLEY AVENUE

CENTRAL AVENUE

ASBURY AVENUE

WEST AVENUE

FIRST ST. SECOND ST. THIRD ST. FOURTH ST. FIFTH ST. SIXTH ST. SEVENTH ST. EIGHTH ST. NINTH ST. TENTH ST. ELEVENTH ST.

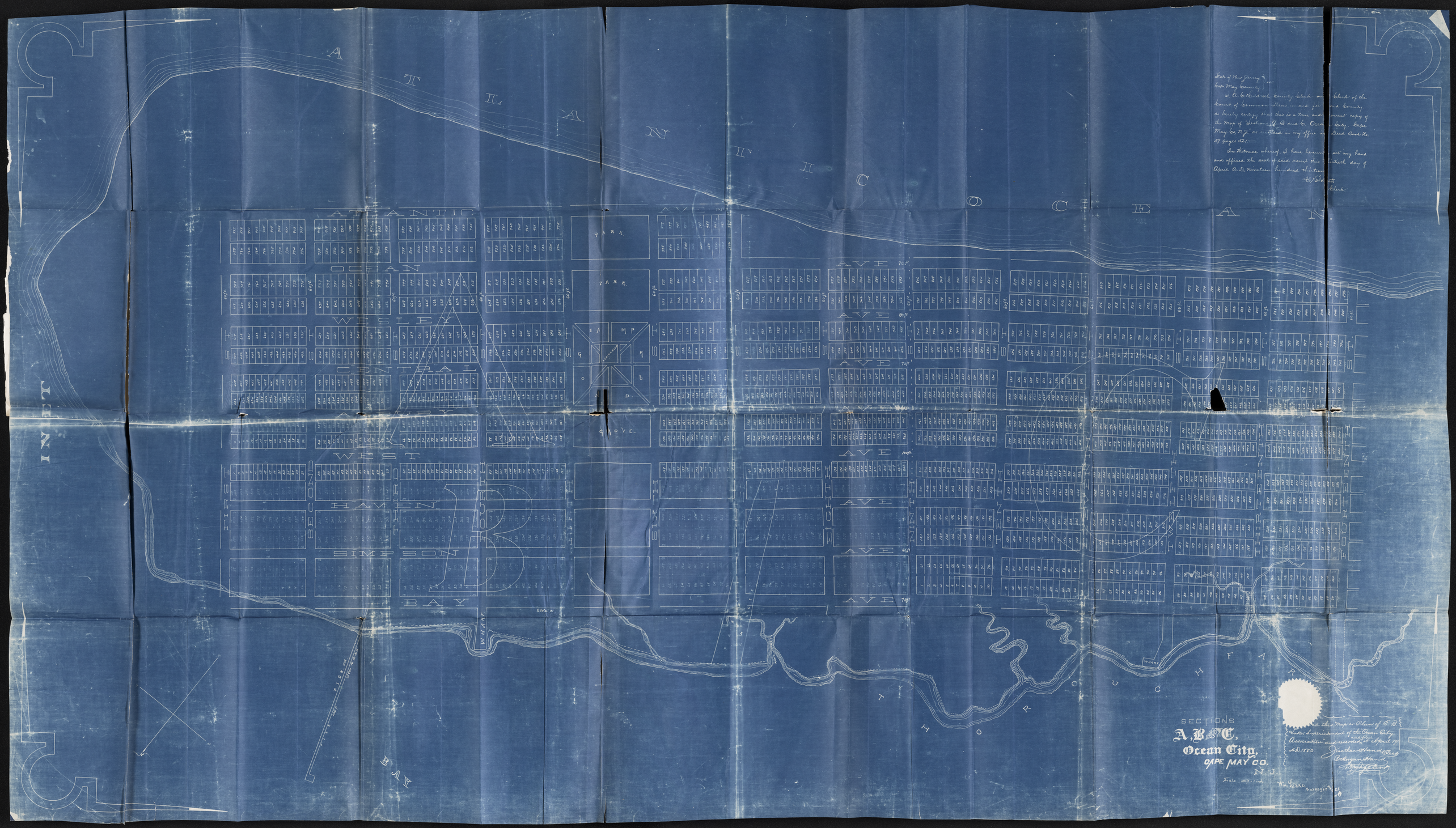
CAMP GROUND

DRAIN

20 FEET

WHARF

SECTION A OF OCEAN CITY, CAPE MAY COUNTY. NEW JERSEY.


ATLANTIC OCEAN
ATLANTIC AVE
OCEAN AVE
WESLEY AVE
CENTRAL AVE
WEST AVE
HAVEN AVE
SIMPSON AVE
BAY AVE
PARK
GROVE
WHARF
THOROUGHFARE
BAY
SECTIONS
A, B & C,
Ocean City,
CAPE MAY CO.
N.J.
Scale 100 ft = 1 inch
Wm. Lake Surveyor & Co.
State of New Jersey
Cape May County
I, A. C. Hildreth County Clerk and Clerk of the Court of Common Pleas in and for said County, do hereby certify that this is a true and correct copy of the Map of "Sections A, B and C, Ocean City, Cape May Co. N.J." as recorded in my office in Deed Book No. 57 pages 521—
In Witness whereof, I have hereunto set my hand and affixed the seal of said court this fourteenth day of April A.D. nineteen hundred thirteen
A. C. Hildreth
Clerk