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**Notice of Appeal.**

(Filed August 30, 1929.)

**In Chancery of New Jersey**

Between

FLORA A. MORRISON,  
Complainant,

*and*

STANDARD OIL COMPANY OF NEW  
JERSEY (a corporation of the  
State of Delaware),  
Defendant.

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Notice of Appeal.

FLORA A. MORRISON, the above named complainant, hereby appeals from a certain interlocutory order or decree made the 20th day of August, A. D. 1929, in favor of the defendant and against the complainant, discharging the order to show cause made herein on July 23, A. D. 1929, and from every part thereof, to the Court of Errors and Appeals in the last resort in all causes. 20

Dated, August 29, A. D. 1929.

IRVING W. TEEPLE,  
Solicitor of Complainant-  
Appellant.

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I conceive that there is good cause for the above stated appeal.

IRVING W. TEEPLE,  
Of Counsel with Complainant-  
Appellant.

Endorsed:

Service of a copy of the within Notice of Appeal is hereby acknowledged this 30th day of August, 1929. 40

LINDABURY, DEPUE & FAULKS,  
Solicitors of Defendant.

**Amended Notice of Appeal.**

(Filed September 7, 1929.)

## IN CHANCERY OF NEW JERSEY.

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Between

FLORA A. MORRISON,  
Complainant,*and*STANDARD OIL COMPANY OF NEW  
JERSEY (a corporation of the  
State of Delaware),  
Defendant.Amended Notice  
of Appeal.

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FLORA A. MORRISON, the above named complainant, hereby appeals from a certain interlocutory order or decree made by the Chancellor on the advice of Vice-Chancellor John Bentley, the 20th day of August, A. D. 1929, in favor of the defendant and against the complainant, discharging the order to show cause made herein on July 23, A. D. 1929, and from every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

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Dated, September 6, A. D. 1929.

IRVING W. TEEPLE,  
Solicitor of Complainant-  
Appellant.

I conceive that there is good cause for the above stated appeal.

IRVING W. TEEPLE,  
Of Counsel with Complainant-  
Appellant.

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Endorsed:

Service of a copy of the within Amended Notice of Appeal is hereby acknowledged, this 7th day of September, A. D. 1929.

LINDABURY, DEPUE & FAULKES,  
Solicitors of Defendant.

**Petition of Appeal.**

(Filed September 18, 1929.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

Between

FLORA A. MORRISON,  
Complainant-Appellant,*and*STANDARD OIL COMPANY OF NEW  
JERSEY (a corporation of the  
State of Delaware),  
Defendant-Respondent.

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Petition of  
Appeal.

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*To the Honorable, the Court of Errors and Appeals in the Last Resort in All Causes:*

The petition of Flora A. Morrison, the appellant in the above stated cause, respectfully shows that your petitioner finds herself aggrieved by a final order made in the Court of Chancery, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor John Bentley, bearing date the 20th day of August, A. D. 1929, wherein the said Flora A. Morrison was complainant, and the said Standard Oil Company of New Jersey (a corporation of the State of Delaware) was defendant, in this respect, to-wit:

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That the said order discharged a certain order of the Court of Chancery bearing date the 23rd day of July, A. D. 1929, requiring the said defendant to show cause why an injunction should not be granted, enjoining and restraining it, the said defendant, from proceeding with the erection and con-

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*Petition of Appeal.*

struction of a certain proposed plant for the storage and distribution of gasoline, kerosene, fuel oil and furnace oil, in the Borough of Atlantic Highlands, in the County of Monmouth and State of New Jersey, on the Bay Shore of Sandy Hook Bay, and further refusing to grant a restraint against the said defendant.

Your petitioner humbly appeals from that part of the order of the Chancellor which discharges the aforesaid order to show cause and which denies the motion of petitioner for a temporary injunction, or restraining order, until the final hearing of her case; also from each and every part of the said order so dated August 20, A. D. 1929, as aforesaid.

And your petitioner alleges as her ground for appeal, that the said order discharging the said order to show cause is erroneous and prejudicial to the rights of this appellant in this, that appellant having filed a bill of complaint in this cause charging that the said projected storage and distribution plant of said defendant, with the storage therein of large quantities of inherently dangerous, highly inflammable and explosive petroleum products, with the odors and gases and fumes naturally and necessarily exuding therefrom, and spreading in, over and about the neighborhood of complainant's premises, and interfering with the light and air in and about complainant's premises, will constitute a continuing menace and danger and nuisance, and praying that said defendant be restrained and enjoined from erecting and constructing said storage and distribution plant, the motion for a temporary restraining order or injunction, until final hearing, should have been granted, and the said order to show cause should have been made absolute.

*Petition of Appeal.*

Your petitioner therefore prays that the said order of the said Chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioner may have the said temporary restraint, and such other and further relief in the premises as to this Honorable Court shall seem meet. 10

IRVING W. TEEPLE,  
Solicitor and of Counsel with  
Complainant.

Endorsed:

Service of a copy of the within Petition of Appeal is hereby acknowledged this 20th day of September, 1929. 20

LINDABURY, DEPUE & FAULKS,  
Solicitors of Defendant.

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**Answer to Petition of Appeal.**

(Filed September 21, 1929.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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Between

FLORA A. MORRISON,  
Complainant-Appellant,

*and*

STANDARD OIL COMPANY OF NEW  
JERSEY (a corporation of the  
State of Delaware),  
Defendant-Respondent.

Answer to Peti-  
tion of Appeal.

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The answer of the above named defendant-respondent to the petition of appeal of the above named complainant-appellant.

30 This defendant-respondent, not acknowledging any or all of the matters which in the said petition of appeal are contained, to be true, for answer thereto nevertheless says and admits that a certain order was on the 20th day of August, 1929, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof this defendant-respondent prays to refer thereto when the same shall be produced. And this defendant-respondent is advised and believes that the said order is agreeable to equity and it prays that the same may be

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*Answer to Petition of Appeal.*

affirmed, with costs to be adjudged to this defendant-respondent.

LINDABURY, DEPUE & FAULKS,  
Solicitors for and of Counsel with  
Defendant-Respondent.

Endorsed: 10

Service of a copy of the within Answer to Petition of Appeal is hereby acknowledged this 20th day of September, 1929.

IRVING W. TEEPLE,  
Solicitor for Complainant-  
Appellant.

**Bill of Complaint.** 20

(Filed July 23, 1929.)

IN CHANCERY OF NEW JERSEY.

*To His Honor, Edwin Robert Walker, Chancellor  
of the State of New Jersey:*

FLORA A. MORRISON, residing at #111 Bay Avenue, in the Borough of Atlantic Highlands, in the County of Monmouth, and State of New Jersey, respectfully shows unto your Honor: 30

1. Complainant is, and for many years last past has been, the owner of premises known by the street number 111 Bay Avenue, being about One Hundred Feet (100') wide in front and rear, and extending back from Bay Avenue through the block to Center Avenue, a distance of Two Hundred and Sixty Feet (260') on either side, in the Borough of Atlantic Highlands, in the County of Monmouth and State of New Jersey. 40

*Bill of Complaint.*

2. The Borough of Atlantic Highlands is a duly incorporated borough of the State of New Jersey, wholly within the territorial limits of the County of Monmouth, in said State. Said Borough of Atlantic Highlands contains a population, numerally, of about Fifteen Hundred (1500) men, women and children; said Borough is very largely residential in character. The northerly boundary of said Borough is Sandy Hook Bay, or Raritan Bay.

3. Within the territorial limits of said Borough of Atlantic Highlands is a certain tract or parcel of land comprising about Eighteen and one-half (18½) acres, heretofore known as the "Benson Tract", located north of Center Avenue and west of Avenue D, east of Wagner's Creek, and having a frontage of approximately Twelve Hundred and Twenty feet (1220') on the aforesaid Sandy Hook Bay, or Raritan Bay.

4. That the aforesaid premises called the "Benson Tract", in question here, were recently acquired by or on behalf of the Standard Oil Company of New Jersey, a corporation of Delaware, for use as the basis for construction thereon immediately, of a plant consisting, among other things, of six large storage tanks for the storage of gasoline, kerosene, furnace oil, fuel oil, and other petroleum products, all of a more or less inherently dangerous, inflammable and highly explosive character; and it is the intention and design of said Standard Oil Company of New Jersey, in connection with the aforesaid plant, to receive the aforesaid gasoline, kerosene, furnace oil, fuel oil, and other petroleum products, by means of and from tank steamers fastened at the end of a pier to be built and extending out into

*Bill of Complaint.*

Sandy Hook Bay, or Raritan Bay, for a distance of Twenty-five Hundred feet (2500'), with pipe lines thereon, for the unloading of said tank steamers; and it is the announced purpose of the said Standard Oil Company of New Jersey, in connection with the aforesaid structures, to convey and distribute the said petroleum products from its said storage plant aforesaid, in and throughout the Borough of Atlantic Highlands and in and throughout the County of Monmouth and other places, by means of commodious tank trucks operating through the streets and over the roads of the said Borough, and likewise of the said County. 10

5. That title to the said premises for use as the site of the plant above generally described, has already been acquired for and on behalf of said Standard Oil Company of New Jersey, by deed, in and during the month of June, A. D. 1929, same being recorded in the Monmouth County Clerk's office, in Book 1481 of Deeds, on page 378, and the said Standard Oil Company of New Jersey, by its agents, has publicly, and in writing, announced its intention to immediately begin operations for the construction of its said plant upon the said premises. 20

6. That the municipal authorities of the Borough of Atlantic Highlands, in spite of the repeated protests of a large number of citizens, property owners and tax payers in and of said Borough of Atlantic Highlands, and others, did, in the early part of the month of July, A. D. 1929, grant a permit, or permits, for the erection of said storage plant and the several structures thereof. 30

*Bill of Complaint.*

10 7. That the said premises and the said storage plant for storing highly explosive petroleum products are located and intended to be located within the territorial limits of the Borough of Atlantic Highlands, in a residential zone, at a place immediately adjoining a main highway, and not over approximately one thousand feet (1000') from a church and school property representing a value of approximately One Hundred and Fifty Thousand Dollars (\$150,000.), or more, and upon the Bay front of the said Raritan Bay.

20 8. That the said Borough of Atlantic Highlands has been, and is, without any zoning ordinance, and has been, and is, powerless to effectually prevent the locating and building of structures for the receipt, storage and distribution of gasoline and other inherently dangerous, highly inflammable and explosive products by the said Standard Oil Company of New Jersey.

30 9. That if the said Standard Oil Company of New Jersey shall be suffered or permitted to construct the said storage tanks and buildings for the storage of gasoline and other petroleum products as aforesaid, and shall be suffered and permitted to receive, store and distribute the said inherently dangerous, highly inflammable and explosive petroleum products as aforesaid, the keeping and handling of said products will constitute not only a nuisance, but a continuing menace and danger in and about the neighborhood and locality thereof, in the Borough of Atlantic Highlands aforesaid, and there will be ever present the risk and danger of pollution of the shores and waters of Raritan Bay, or Sandy Hook Bay, and the Shrewsbury River, with great loss consequent thereon to the recreational and business pursuits,

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*Bill of Complaint.*

including the fisheries and clamming industry thereof, and likewise to property values in and about the neighborhood, and particularly the complainant's said property, by reason of the danger of dripping and seepage of said petroleum products into the said waters; and in like manner will be ever present the menace and danger of fires and explosions in and about the said storage plant, and from odors and gasses escaping therefrom and spreading over, in and about the neighborhood, and great danger of injury to the health, lives and pleasures of the people residing in and about the locality of the Borough of Atlantic Highlands aforesaid; and with heavy trucks and trailers passing in and throughout the streets of Atlantic Highlands aforesaid, the repose and quiet of the community will be greatly disturbed, and the children of said community and others necessarily attending said church and the said school aforesaid, will constantly be in danger of injury or death from the said storage plant and from the operation of heavy tank trucks and trailers loaded with gasoline and other petroleum products likely to take fire and explode at any moment.

10. That the said plant of the said Standard Oil Company of New Jersey, with the storage therein of large quantities of inherently dangerous and highly explosive petroleum products, in a residential neighborhood, and near the said highway and the said church and the said school, and upon the Bay Shore of Raritan Bay, or Sandy Hook Bay, within the Borough of Atlantic Highlands aforesaid, will in all probability constitute a continuing menace and danger, with irreparable injury, loss and damage, naturally and proximately following thereon as aforesaid.

*Bill of Complaint.*

11. That the said storage plant of the said Standard Oil Company of New Jersey, if located as aforesaid within the Borough of Atlantic Highlands, and containing millions of gallons of gasoline, will constitute a continuing menace and danger to a much greater extent than either gun powder or nitro-glycerine, and will exude odors and vapors insidious and treacherous, and almost uncontrollable as respects the danger of explosion; and the said odors, if suffered to exude and escape from the said storage plant, will likewise be detrimental and deleterious to the health and welfare of the citizens, residents, and taxpayers of Atlantic Highlands aforesaid.

12. That complainant's home for many years has been located as aforesaid, within the Borough of Atlantic Highlands, and within One Hundred feet (100') of the boundary of the said premises of the said Standard Oil Company of New Jersey where it is designed to locate the said storage plant for the handling and storage of said inherently dangerous petroleum products; and by reason of the premises aforesaid, complainant verily believes that her property will greatly depreciate in value, and that her easement of light and air will be greatly interfered with by the erection and placing of the said oil storage plant as aforesaid.

13. That the title to the said premises for the aforesaid oil storage plant was, as complainant is informed and verily believes, taken in the month of June, A. D. 1929, by the Standard Oil Company of New Jersey. And it has been stated in a letter purporting to have been signed by Edwin S. Hall, Esq., one of the attorneys for the said Standard Oil Company of New Jersey, writ-

*Bill of Complaint.*

ten to Honorable John R. Snedeker, Mayor of Atlantic Highlands, in the month of June, A. D. 1929, that:

“It is promised by the Standard Oil Company of New Jersey to use that part of the property lying north of the proposed state highway, in extension of Bay Avenue, for the construction of a thoroughly modern plant, costing a large sum, for the storage of \* \* \* quantities of fuel oil, furnace oil, gasoline and kerosene. The present plans contemplate the erection of a garage, office building, and six storage tanks. The entire group of storage tanks will be surrounded by an earthen embankment of sufficient capacity to contain the contents of all oil tanks, and the tanks will be separated by earthen embankments of sufficient capacity to separately contain a large part of the contents of the tank as surrounded. The construction will include such construction along the water front as will retard any further erosion of the shore.”

And your complainant, therefore, respectfully submits and contends that in the absence of a menace and danger of explosion and fire, with spreading fumes from said oils and gasses, and pollution of the waters of Raritan Bay, or Sandy Hook Bay, there would be no necessity for, and would in fact be a complete absence of such characteristic construction, and that the said letter of the said Edwin S. Hall, Esq., the said attorney of the said Standard Oil Company of New Jersey, carries an admission, by inference, of this conclusion.

Complainant is without adequate remedy in the Courts of law, and therefore prays:

(a) That the defendant, Standard Oil Company of New Jersey, may full, true and per-

*Bill of Complaint.*

fect answer make, without oath, to each, every and all of the allegations, statements, and charges hereinbefore set forth in this bill of complaint;

10 (b) That the said Standard Oil Company of New Jersey, its agents, servants and employes, may be restrained and enjoined from proceeding with the erection of the aforesaid plant, or any plant for the storage of any inherently dangerous, highly inflammable or explosive products, including gasoline, kerosene, fuel oil and furnace oil, or otherwise, upon the premises hereinbefore referred to, until the further order or decree of this Court in the premises;

20 (c) That it may please your Honor, the premises considered, to grant unto this complainant the State's writ of injunction issuing out of and under the seal of this Honorable Court, to be directed to the said Standard Oil Company of New Jersey, restraining it, and its agents, servants and employes, from causing, permitting or allowing to be erected or constructed upon the premises aforesaid, any buildings, structures, or tanks, for the storage of petroleum products, including gasoline, kerosene, fuel oil, furnace oil, or any other inherently dangerous, highly inflammable and explosive products;

30 (d) And also the State's writ of subpoena likewise issuing out of and under the seal of this Honorable Court, to be directed to the said Standard Oil Company of New Jersey, therein and thereby commanding it to appear before this Honorable Court at a certain day and under a certain penalty therein to be provided, and to stand to, abide by and perform such order or decree as to your Honor shall seem meet; and

40 (e) That complainant may have such other and further relief in the premises as may be

*Bill of Complaint.*

just and according to equity and good conscience.

And your complainant will ever pray, &c.

IRVING W. TEEPLE,  
Solicitor for and of Counsel  
with Complainant.

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**Affidavit of Flora A. Morrison.**

(Filed July 23, 1929.)

STATE OF NEW JERSEY, }  
COUNTY OF MONMOUTH, } ss.:

FLORA A. MORRISON, of full age, being duly sworn according to law, on her oath deposes and says: 20

I reside at, and own the premises known by the street number 111 Bay Avenue, in the Borough of Atlantic Highlands, in the County of Monmouth and State of New Jersey, where I have made my home for many years last past.

I am the complainant named in the within bill of complaint, and I have read said bill of complaint and know the contents thereof, and the same is true to the best of my knowledge, information and belief. 30

Particularly is it true that for many years last past I have been the owner of the premises where I live as aforesaid, the same being located on Bay Avenue, about One Hundred feet (100') wide in front and rear, and extending back from Bay Avenue through the block to Center Avenue, a distance of Two Hundred and Sixty feet (260') on either side, in the Borough of Atlantic Highlands, in the County of Monmouth and State of New Jersey. 40

*Affidavit of Flora A. Morrison.*

The Borough of Atlantic Highlands is a duly incorporated borough of the State of New Jersey, wholly within the territorial limits of the County of Monmouth, in said State. Said Borough of Atlantic Highlands contains a population, numerally, of about Fifteen Hundred (1500) men, women and children; said Borough is very largely residential in character. The northerly boundary of said Borough is Sandy Hook Bay, or Raritan Bay.

Within the territorial limits of said Borough of Atlantic Highlands is a certain tract or parcel of land comprising about eighteen and one-half (18½) acres, heretofore known as the "Benson Tract," located north of Center Avenue and west of Avenue D, east of Wagner's Creek, and having a frontage of approximately Twelve Hundred and Twenty feet (1220') on the aforesaid Sandy Hook Bay, or Raritan Bay.

I have been informed, and verily believe it to be true, that the aforesaid premises called the "Benson Tract," in question here, were recently acquired by or on behalf of the Standard Oil Company of New Jersey, a corporation of New Jersey, for use as the basis for construction thereon immediately, of a plant consisting, among other things, of six large storage tanks for the storage of gasoline, kerosene, furnace oil, fuel oil, and other petroleum products, all of a more or less inherently dangerous, inflammable and highly explosive character; and it is the intention and design of said Standard Oil Company of New Jersey, in connection with the aforesaid plant, to receive the aforesaid gasoline, kerosene, furnace oil, fuel oil, and other petroleum products, by means of and from tank steamers fastened at the end of a pier to be built and extending out into Sandy Hook Bay, or Raritan Bay, for a distance of Twenty-five Hun-

*Affidavit of Flora A. Morrison.*

dred feet (2500'), with pipe lines thereon, for the unloading of said tank steamers; and it is the announced purpose of the said Standard Oil Company of New Jersey, in connection with the aforesaid structures, to convey and distribute the said petroleum products from its said storage plant aforesaid, in and throughout the Borough of Atlantic Highlands and in and throughout the County of Monmouth and other places, by means of commodious tank trucks operating through the streets and over the roads of the said Borough, and likewise of the said County. 10

I have been informed, and verily believe it to be true, that title to the said premises for use as the site of the plant above generally described, has already been acquired by said Standard Oil Company of New Jersey, by deed, in and during the month of June, A. D. 1929, same being recorded in the Monmouth County Clerk's office, in Book 1481 of Deeds, on page 378, and the said Standard Oil Company of New Jersey, by its agents, has publicly, and in writing, announced its intention to immediately begin operations for the construction of its said plant upon the said premises. 20

That the municipal authorities of the Borough of Atlantic Highlands, in spite of the repeated protests of a large number of citizens, property owners and taxpayers in and of said Borough of Atlantic Highlands, and others, did, in the early part of the month of July, A. D. 1929, grant a permit, or permits, for the erection of said storage plant and the several structures thereof. 30

That the said premises and the said storage plant for storing highly explosive petroleum products are located and intended to be located within the territorial limits of the Borough of Atlantic Highlands, in a residential zone, at a place imme- 40

*Affidavit of Flora A. Morrison.*

diately adjoining a main highway, and not over approximately one thousand feet (1000') from a church and school property representing a value of approximately One Hundred and Fifty Thousand Dollars (\$150,000.), or more, and upon the Bay front of the said Raritan Bay.

10

That the said Borough of Atlantic Highlands has been, and is, without any zoning ordinance, and has been, and is, powerless to effectually prevent the locating and building of structures for the receipt, storage and distribution of gasoline and other inherently dangerous, highly inflammable and explosive products by the said Standard Oil Company of New Jersey.

20

I verily believe that if the said Standard Oil Company of New Jersey shall be suffered or permitted to construct the said storage tanks and buildings for the storage of gasoline and other petroleum products as aforesaid, and shall be suffered and permitted to receive, store and distribute the said inherently dangerous, highly inflammable and explosive petroleum products as aforesaid, the keeping and handling of said products will constitute not only a nuisance, but a continuing menace and danger in and about the neighborhood and locality thereof, in the Borough of Atlantic Highlands aforesaid, and there will be ever present the risk and danger of pollution of the shores and waters of Raritan Bay, or Sandy Hook Bay, and the Shrewsbury River, with great loss consequent thereon to the recreational and business pursuits, including the fisheries and clamming industry thereof, and likewise to property values in and about the neighborhood, and particularly to my property and that of my neighbors immediately adjoining, by reason of the danger of dripping and seepage of said petroleum prod-

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*Affidavit of Flora A. Morrison.*

ucts into the said waters; and in like manner will be ever present the menace and danger of fires and explosions in and about the said storage plant, and from odors and gases escaping therefrom and spreading over, in and about the neighborhood, and great danger of injury to the health, lives and pleasures of the people residing in and about the locality of the Borough of Atlantic Highlands aforesaid; and with heavy trucks and trailers passing in and throughout the streets of Atlantic Highlands aforesaid, the repose and quiet of the community will be greatly disturbed, and the children of said community and others necessarily attending said church and the said school aforesaid, will constantly be in danger of injury or death from the said storage plant and from the operation of heavy tank trucks and trailers loaded with gasoline and other petroleum products likely to take fire and explode at any moment.

That the said plant of the said Standard Oil Company of New Jersey, with the storage therein of large quantities of inherently dangerous and highly explosive petroleum products, in a residential neighborhood, and near the said highway and the said church and the said school, and upon the Bay Shore of Raritan Bay, or Sandy Hook Bay, within the Borough of Atlantic Highlands aforesaid, will in all probability constitute a continuing menace and danger, with irreparable injury, loss and damage, naturally and proximately following thereon as aforesaid.

That the said storage plant of the said Standard Oil Company of New Jersey, if located as aforesaid within the Borough of Atlantic Highlands, and containing millions of gallons of gasoline, will constitute a continuing menace and danger to a much greater extent than either gun

*Affidavit of Flora A. Morrison.*

powder or nitro-glycerine, and will be likely to exude odors and vapors insidious and treacherous, and almost uncontrollable as respects the danger of explosion; and the said odors, if suffered to exude and escape from the said storage plant, will likewise be detrimental and deleterious to the health and welfare of the citizens, residents, and tax-payers of Atlantic Highlands aforesaid.

10

That my home for many years has been located as aforesaid, within the Borough of Atlantic Highlands, and within One Hundred feet (100') of the boundary of the said premises of the said Standard Oil Company of New Jersey where it is designed to locate the said storage plant for the handling and storage of said inherently dangerous petroleum products; and by reason of the premises aforesaid, I verily believe that my easement of light and air will be greatly interfered with by the erection and placing of the said oil storage plant as aforesaid.

20

That the title to the said premises for the aforesaid oil storage plant was, as I am informed and verily believe, taken in the month of June, A. D. 1929, by the Standard Oil Company of New Jersey. And it has been stated in a letter purporting to have been signed by Edwin S. Hall, Esq., one of the attorneys for the said Standard Oil Company of New Jersey, written to Honorable John R. Snedeker, Mayor of Atlantic Highlands, in the month of July, A. D. 1929, that,—

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“It is promised by the Standard Oil Company of New Jersey to use that part of the property lying north of the proposed state highway, in extension of Bay Avenue, for the construction of a thoroughly modern plant costing a large sum, for the storage of \* \* \* quantities of fuel oil, furnace oil, gasoline and kerosene. The present plans contemplate the

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*Affidavit of Flora A. Morrison.*

erection of a garage, office building, and six storage tanks. The entire group of storage tanks will be surrounded by an earthen embankment of sufficient capacity to contain the contents of all oil tanks, and the tanks will be separated by earthen embankments of sufficient capacity to separately contain a large part of the contents of the tank as surrounded. The construction will include such construction along the water front as will retard any further erosion of the shore." 10

I, therefore, respectfully submit and contend that in the absence of a menace and danger of explosion and fire, with spreading fumes from said oils and gases, and pollution of the waters of Raritan Bay, or Sandy Hook Bay, there would be no necessity for, and would in fact be a complete absence of such characteristic construction, and that the said letter of the said Edwin S. Hall, Esq., the said attorney of the said Standard Oil Company of New Jersey, carries an admission, by inference, of this conclusion. 20

FLORA A. MORRISON.

Sworn to and subscribed before me, }  
 this 19th day of July, A. D. 1929. }

NICHOLAS W. KAISER, 30  
 A Master in Chancery  
 of New Jersey.

**Order to Show Cause.**

(Filed July 23, 1929.)

## IN CHANCERY OF NEW JERSEY.

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Between:

FLORA A. MORRISON,  
Complainant,*and*STANDARD OIL COMPANY OF NEW  
JERSEY (a corporation of the  
State of Delaware),  
Defendant.

On Bill, etc.

Order to  
Show Cause.

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This matter being opened to the Court by Irving W. Teeple, solicitor for and of counsel with the complainant, whereupon, and upon reading and filing the bill of complaint and the affidavit annexed thereto, and the Court being satisfied of the sufficiency of the application made in this cause:

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It is, on this 23rd day of July, A. D. 1929, ORDERED, that Standard Oil Company of New Jersey, the above named defendant, show cause before the Chancellor, at the Chancery Chambers, at #1 Exchange Place, in the City of Jersey City, County of Hudson and State of New Jersey, on Monday, the 29th day of July, A. D. 1929, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an injunction should not issue according to the prayer of the bill of complaint; and

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*Order to Show Cause.*

It is FURTHER ORDERED, that a copy of the bill of complaint and the affidavit thereto annexed, as well as a copy of this order (which copies may be certified by the solicitor of the complainant), shall be served upon the defendant, by leaving the same with the office manager or any person of full age appearing to be in charge of the office of the Bayonne or Newark office of the said Standard Oil Company of New Jersey, and within three days from the date hereof.

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E. R. WALKER,  
C.

Respectfully advised,

JNO. J. FALLON,  
V. C.

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**Stipulation.**

## IN CHANCERY OF NEW JERSEY.

10	Between <p style="text-align: center;">FLORA A. MORRISON, Complainant,</p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">STANDARD OIL COMPANY OF NEW JERSEY, a corporation of the State of Delaware, Defendant.</p>	} On Bill, &c. Stipulation.
----	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------

20 It is hereby stipulated by and between the parties to the above entitled cause that the hearing upon the Order to Show Cause made herein on July 23, 1929, shall be continued until Monday, August 5, 1929, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, at the Chancery Chambers, No. 1 Exchange Place, in the City of Jersey City, New Jersey.

Dated, July 25, 1929.

30 IRVING W. TEEPLE,  
Solicitor for Complainant.

LINDABURY, DEPUE & FAULKS,  
Solicitors for Defendant.

40

**Acknowledgment of Service.**

IN CHANCERY OF NEW JERSEY.

Between

FLORA A. MORRISON,  
Complainant,

*and*

STANDARD OIL COMPANY OF NEW  
JERSEY, a corporation of the  
State of Delaware,  
Defendant.

10

On Bill, Etc.  
On Rule to  
Show Cause.  
Acknowledgment  
of Service.

Service is hereby acknowledged this 31st day of  
July, 1929, of true copies of the annexed affidavits  
of Charles G. Black, Robert W. Black, Charles  
M. Franklin, John F. Winchester and John E.  
Skehan, and of the exhibits referred to herein  
and attached thereto, which will be submitted on  
behalf of the defendant at the hearing upon the  
Rule to Show Cause in the above entitled suit.

20

IRVING W. TEEPLE,  
Solicitor for Complainant.

30

40

**Affidavit of Charles G. Black.**

(Filed August 12, 1929.)

IN CHANCERY OF NEW JERSEY.

10

Between

FLORA A. MORRISON,  
Complainant,*and*STANDARD OIL COMPANY OF NEW  
JERSEY, a corporation of the  
State of Delaware,  
Defendant.

On Bill, etc.

On Rule to  
Show Cause.

Affidavit.

20

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

CHARLES G. BLACK, being duly sworn according to law on his oath, deposes and says:

30

I am the President of the Standard Oil Company of New Jersey, the defendant in the above-entitled cause. I have been connected with the defendant and its predecessor in business for upwards of forty years last past. I have heretofore occupied many other positions in connection with the operation of the said business, among others that of the Manager of the large refinery which the defendant owns and operates in Linden, New Jersey, known as the Bayway Refinery. I am thoroughly familiar with the methods employed by the Company in the construction, maintenance and safeguarding of the tanks which it uses in its numerous distributing stations. My experience with regard to these matters has been a practical one and I am thoroughly familiar not only with such tanks, but with everything connected with their operation and maintenance.

40

*Affidavit of Charles G. Black.*

The plant which the defendant proposes to construct in the Borough of Atlantic Highlands, New Jersey, is of the most modern and approved type. There is included therein every form of protection against fire or explosion that has been developed not only by the representatives of the Company and its predecessor in business over a period of many years, but by representatives of the National Board of Fire Underwriters, the American Petroleum Institute and other organizations associated with the National Fire Protection Association. Where such methods are employed in the maintenance and operation of a plant of the kind proposed to be installed by the defendant in the said Borough of Atlantic Highlands, the risk of fire and explosion therefrom is negligible.

10

20

CHARLES G. BLACK.

Sworn to and subscribed before  
me, a Notary Public in and for  
the County of New York, in  
the State of New York, at  
the City of New York, in said  
County and State, this 31st  
day of July, 1929.

CHARLES E. HILL

Notary Public in and for the  
County of New York in  
the State of New York.

30

(SEAL)

CHARLES E. HILL

Notary Public, Kings County No. 404  
New York County No. 7  
Commission expires March 30, 1931

40

**Affidavit of Robert W. Black.**

(Filed August 12, 1929.)

## IN CHANCERY OF NEW JERSEY.

10

Between

FLORA A. MORRISON,  
Complainant,*and*STANDARD OIL COMPANY OF NEW  
JERSEY, a corporation of the  
State of Delaware,  
Defendant.

On Bill, etc.

On Rule to  
Show Cause.

Affidavit.

20

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

ROBERT W. BLACK, being duly sworn according to law, on his oath deposes and says:

I have been employed as an engineer in the General Engineering Department of the defendant and its predecessor in business for more than nine years last past, and am so employed by the defendant at the present time.

30

I am thoroughly familiar with the property mentioned in Paragraph 3 of the Bill of Complaint which defendant recently acquired in the Borough of Atlantic Highlands, New Jersey, and upon which it is planning to construct a new distributing station for its products. Such property contains about 17.34 acres of land and is bounded on the north by Sandy Hook Bay, on the east by Avenue D, on the south for the most part by Center Avenue, and on the west by Wagner Creek. It is shown as Plot 31 on the index

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*Affidavit of Robert W. Black.*

map of said Borough, a blueprint of which is annexed hereto, made a part hereof and marked "Schedule A". An aerial photograph of the portion of said Borough in which defendant's said property is located is annexed hereto, made a part hereof and marked "Schedule B". Defendant's said property is outlined in white on this photograph and complainant's property and the property of St. Agnes Church and Parochial School, referred to in Paragraphs 7, 9 and 10 of the Bill of Complaint, are designated thereon by white circles. 10

As appears from said photograph, defendant's said property is located at the extreme westerly end of said Borough and in a sparsely settled section thereof.

The complainant's said property is located on the south side of Bay Avenue 50 feet east of the easterly side line of Avenue D and 100 feet east of the easterly boundary line of defendant's property. It consists of a lot 100 feet in width extending south from Bay Avenue to Center Avenue. No part thereof is located on Sandy Hook Bay, the northerly boundary line thereof being distant more than 500 feet north of the high water line of said bay. 20

The defendant proposes to use only a part of its property for its said distributing station, which will consist of a tank field containing six storage tanks surrounded by a reinforced concrete retaining wall, a pipe line pier with pipe lines thereon, a reinforced concrete and hollow tile garage and office building, a steel loading platform, a pump house and a foam house. The general arrangement plan of said station is shown on the blueprint thereof annexed hereto, made a part hereof and marked "Schedule C". 30 40

*Affidavit of Robert W. Black.*

The tank field, as appears from said "Schedule C", is proposed to be located on Sandy Hook Bay approximately 130 feet west of the westerly side line of Avenue D and 380 feet north of the northerly side line of Center Avenue. The distance from the tank nearest to complainant's said property will be approximately 335 feet, and such tank will be even farther away from any building now erected on complainant's said property. Six storage tanks having the following dimensions and capacities are proposed to be constructed in said field:

10

20

<i>Tank Size</i>		<i>Contents</i>	<i>Capacity in Barrels</i>
<i>Diameter</i>	<i>Height</i>		
35'	x 42'	24 Plus Fuel Oil.....	6,046
35'	x 42'	Furnace Oil .....	6,046
35'	x 42'	Kerosene .....	6,046
50'	x 42'	Esso .....	12,340
70'	x 42'	Gasoline .....	24,184
60'	x 42'	Standard Heating Oil....	17,767

30

These tanks will be similar to the other tanks used by defendant in its 76 existing distributing stations in New Jersey. They will be built entirely of steel with standard cone-roofs and will be so constructed as to be gas-tight.

40

A reinforced concrete retaining wall is to be constructed around the tank field. Such wall will be of sufficient height to impound the entire capacity of all the tanks within the field. In addition to such outside retaining wall, each tank will also be separated from every other tank by an intermediate earthen wall capable of impounding a large portion of the contents thereof. Each of said tanks will also be equipped with the most modern

*Affidavit of Robert W. Black.*

type of foam protection as an additional insurance against fire hazard.

The pipe line pier will extend from the shore of the bay to within 10 feet of the United States Government pierhead line as indicated on "Schedule C". Such pier will be similar in its essential respects to the other piers extending from the Borough of Atlantic Highlands into Sandy Hook Bay and will be constructed in strict accordance with Government and State requirements. Pipe lines consisting of steel line pipe with screwed joints will be laid on said pier for the transmission of petroleum products from tank barges to the storage tanks. Each of these pipe lines will have a check valve and gate valve on either end thereof so as to prevent leakage. In addition to these valves, the open ends of the pipe lines at the pierhead will be capped with steel plates and securely screwed to the joint so as to make them leak-proof when not in use. 10  
20

The garage and office building indicated on "Schedule C" will be a fire-proof structure built of reinforced concrete and hollow tile.

The loading rack indicated on said Schedule will be constructed of structural steel covered with a sheet iron roof so as to eliminate the possibility of fire. The defendant's trucks will be loaded by means of pipe lines extending from the respective storage tanks to the loading rack. Each of such pipe lines will be equipped with a gate control valve and the loading terminal thereof will be equipped with a self-closing faucet so as to prevent an overflow of the tanks on the trucks during the process of filling. In addition to the gate valve and automatic faucet on each of the pipe lines leading from the storage tanks to the loading rack there will be also a gate valve on each of such 30

*Affidavit of Robert W. Black.*

lines outside of the storage tanks and a "swing pipe" device inside of each tank to prevent the contents of the tank from discharging in case the valves on the pipe line should fail to function.

10 The pump house proposed to be located on the easterly end of the tank field will house six small auxiliary pumps which will be used in case the contents of the tanks becomes too low to flow by gravity to the loading rack.

The foam building located north of the pump house will contain two pumps for pumping the chemicals generating the foam protection into the storage tanks in case of fire.

20 The method of construction proposed to be employed by defendant in building its said distributing station at Atlantic Highlands and the safety devices proposed to be installed therein for use in the operation thereof, will reduce the possibility of fire and explosion to a minimum, and even though the contents of the tanks should ignite or explode there will be no possibility of their escaping either into the bay or onto the adjoining property and causing injury or damage thereto.

30 As above stated, the defendant owns and operates 76 distributing stations in New Jersey at the present time. During the past nine years the defendant and its predecessor in business has handled and stored billions of gallons of their products at these distributing stations, and in so far as I know, there has never been a fire or explosion in any of its storage tanks. The official report of the American Petroleum Institute on records of oil tank fires in the United States from 1915 to 1925, inclusive, shows that out of 11,132 distributing stations operated by 87 companies throughout the United States there were

40

*Affidavit of Robert W. Black.*

only 19 tank fires, or an average of one fire per station every 5,860 years. This demonstrates that the danger from fire and explosion in distributing stations of this kind is negligible and remote, and not real and imminent as the complainant would make it appear.

ROBERT W. BLACK.

10

Sworn to and Subscribed before me, }  
 a Notary Public of New Jersey, }  
 this 31st day of July, 1929. }

HAROLD J. BROWN  
 Notary Public of New Jersey.


(Notary Seal)

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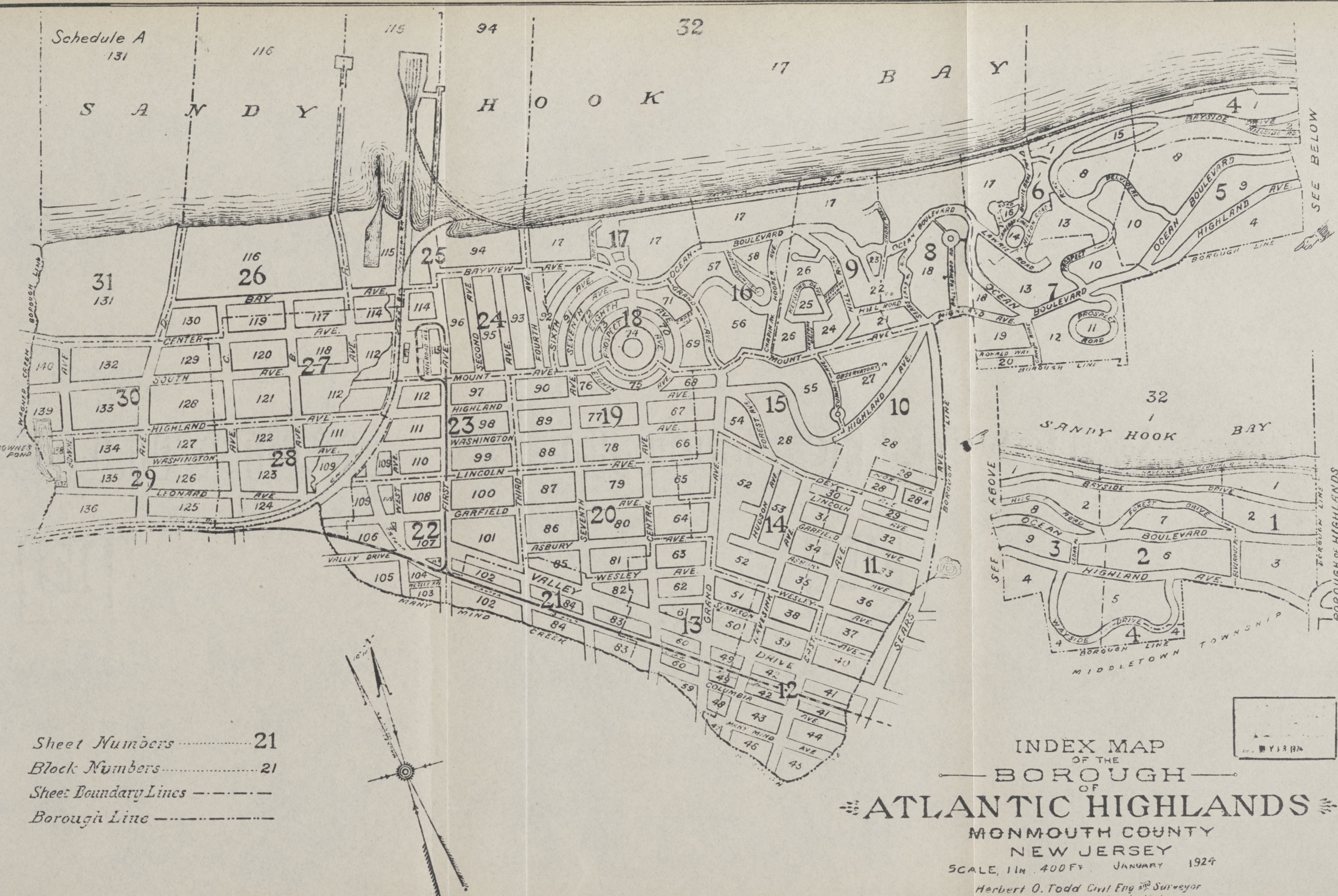
**Schedule A.**

(*Opposite*) 

Schedule A  
131

116 115 94 32 17 B A Y  
S A N D Y H O O K

M I D D L E T O W N T O W N S H I P



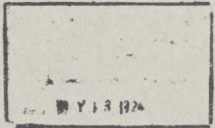
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Block Numbers ..... 21  
Sheet Boundary Lines - - - -  
Borough Line - - - - -

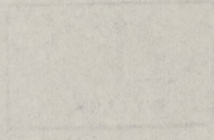
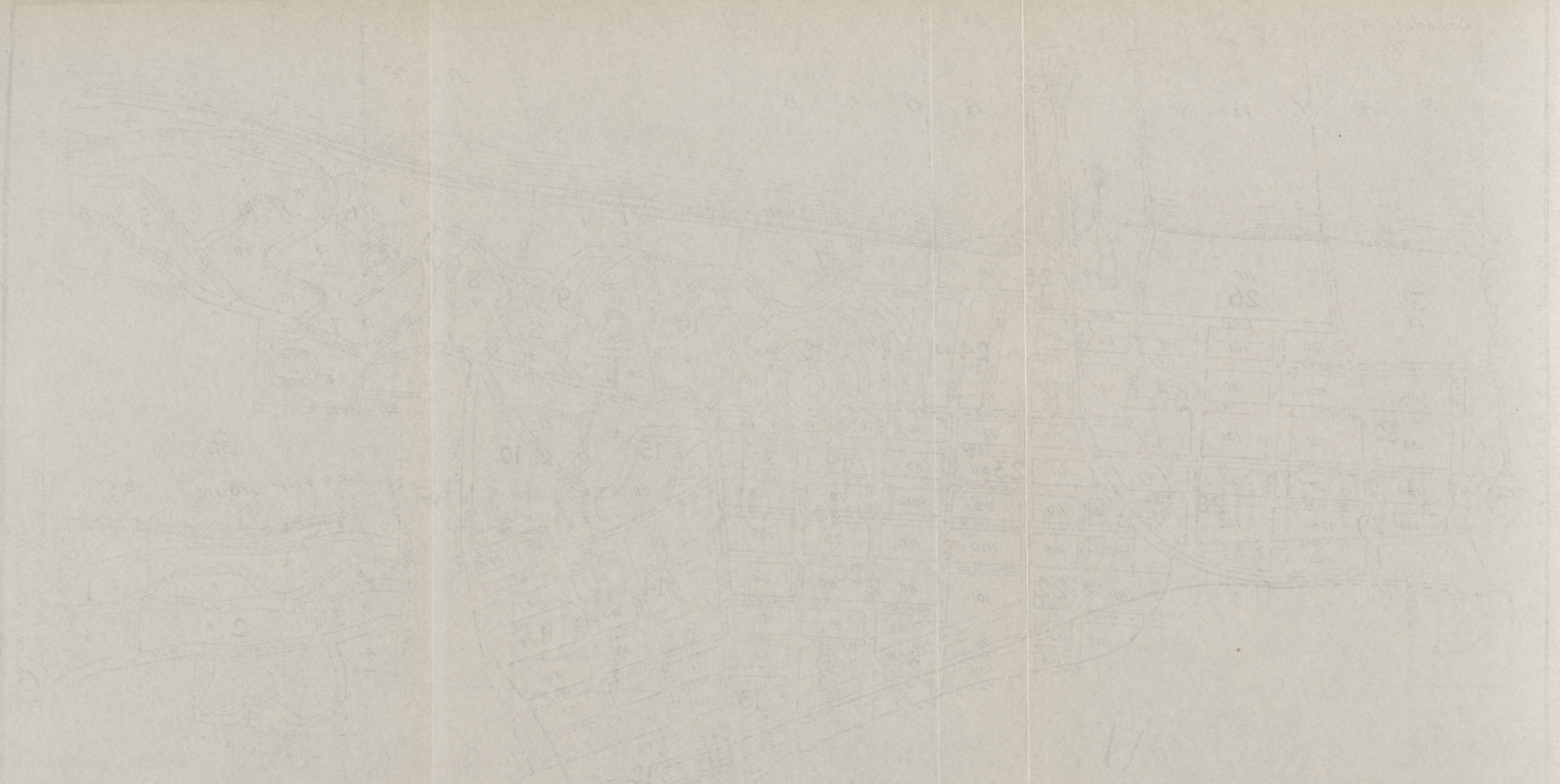


M I D D L E T O W N T O W N S H I P



INDEX MAP  
OF THE  
BOROUGH  
OF  
**ATLANTIC HIGHLANDS**  
MONMOUTH COUNTY  
NEW JERSEY  
SCALE, 1 IN. = 400 FT. JANUARY 1924  
Herbert O. Todd Civil Eng. & Surveyor  
Atlantic Highlands, N. J.






ATLANTIC HIGHLANDS  
BOROUGH  
INDEX MAP

MUNICIPALITY OF ATLANTIC HIGHLANDS  
NEW JERSEY  
1910

Sheet No. 1  
Scale 1:25,000  
Date 1910



**Schedule B.**

*(Opposite)* 

SCHEDULE D

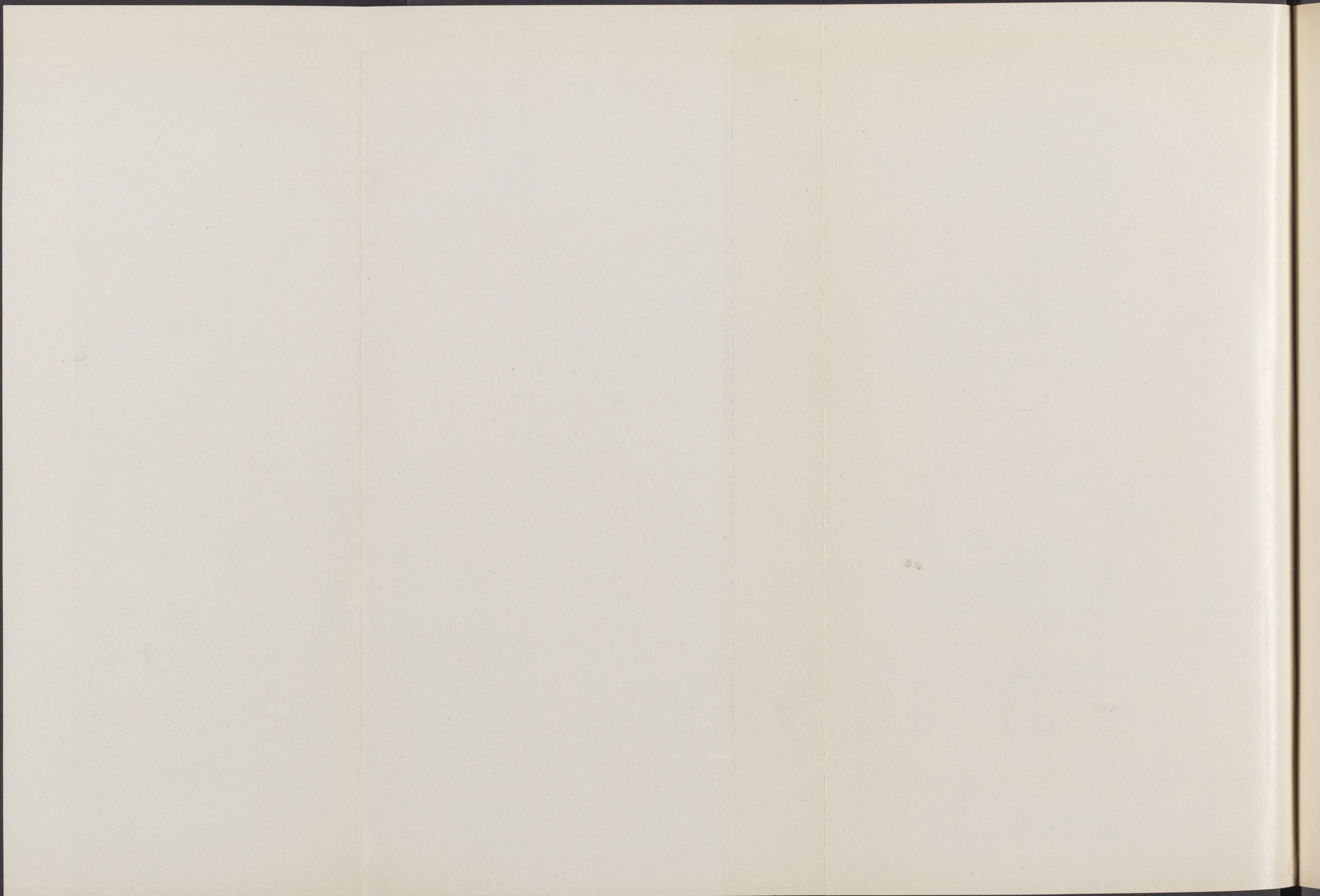
St Agnes Church

St Agnes Parochial School

Complainants Property


Defendants Property



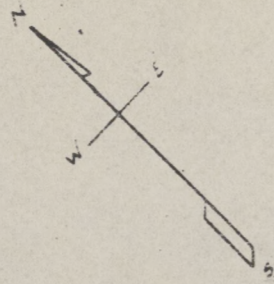




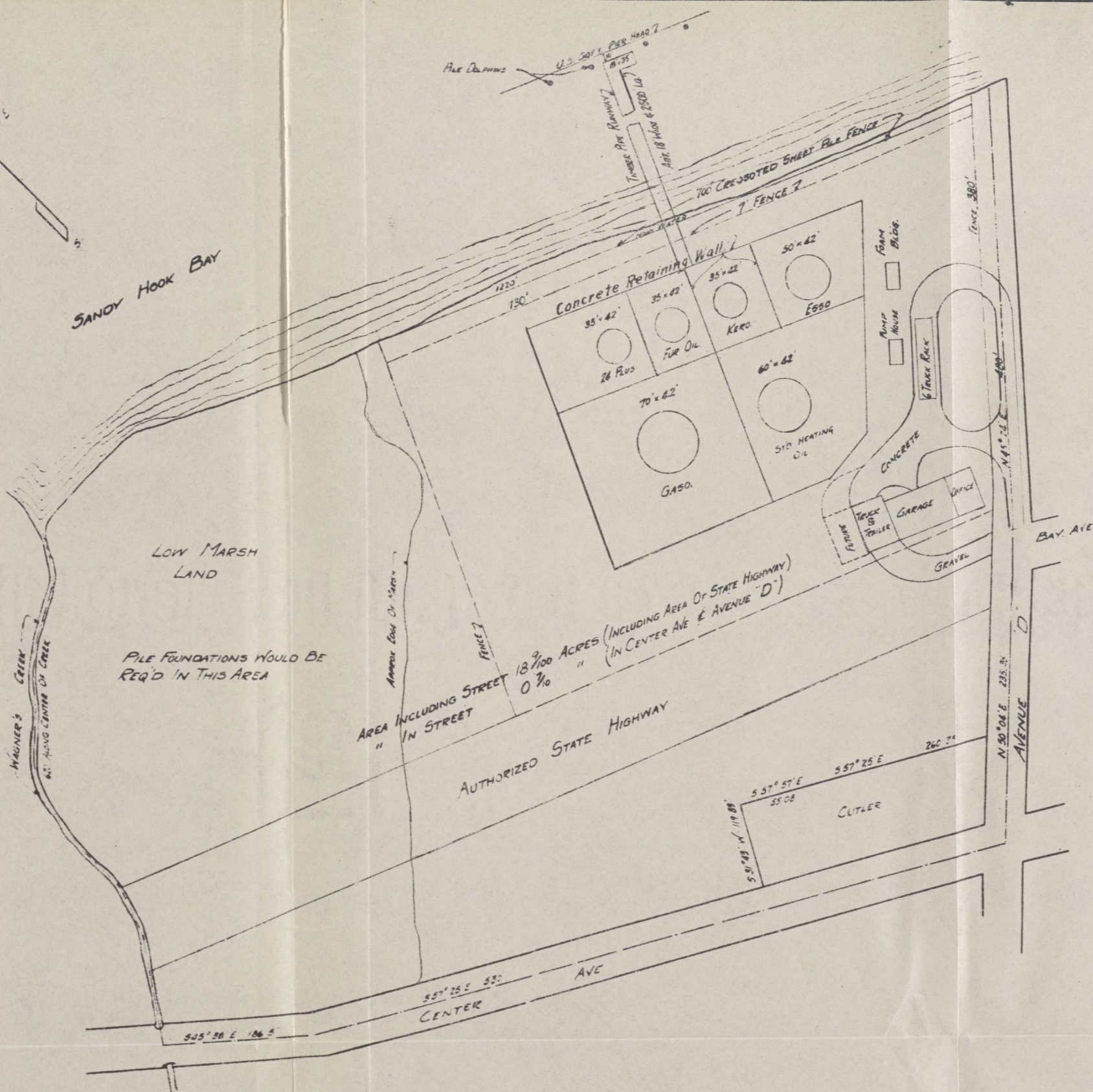
**Schedule C.**

(*Opposite*) 

Schedule C



SANDY HOOK BAY



I	II	III	IV	V	VI	VII	VIII
DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE

PROPERTY SURVEY TAKEN FROM  
HERBERT O. DODD - SURVEYOR

BUCKET TERMINAL LAYOUT	
ATLANTIC HIGHLANDS N.J.	
DOMESTIC SALES	
STANDARD OIL DEVELOPMENT CO	
GENERAL ENGINEERING DEPT	
ELIZABETH N.J.	
SCALE APPROX 1" = 60'	DATE 5-21-29
DESIGNED	DRAWING NO. 134
DRWN. NOTODD	
TRACED	SHEET 01
CHECKED	DRAWER NO. 290
DATE CHECKED	





**Affidavit of Charles M. Franklin.**

(Filed August 12, 1929.)

## IN CHANCERY OF NEW JERSEY.

10

Between

FLORA A. MORRISON,  
Complainant,*and*STANDARD OIL COMPANY OF NEW  
JERSEY, a corporation of the  
State of Delaware,  
Defendant.

On Bill, etc.

On Rule to  
Show Cause.

Affidavit.

20

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } SS.:

CHARLES M. FRANKLIN, of full age, being duly sworn according to law, upon his oath, deposes and says:

30

I have been employed by the Standard Oil Company of New Jersey, the defendant in the above entitled cause, and its predecessor in business, for the past twelve years, and am employed by the defendant at the present time. During the past seven years I have been the engineer in charge of construction and maintenance work for the defendant and its predecessor in the State of New Jersey, and particularly of the construction and maintenance of the distributing stations owned and operated by defendant in said State.

40

At the present time the defendant has 76 distributing stations located in the various municipalities of New Jersey designated on the blue-

*Affidavit of Charles M. Franklin.*

print annexed hereto and marked "Schedule A", several of which are located in much more congested and built-up areas than the site of such proposed new station.

Defendant's storage stations at Newark, East Rutherford, Hackensack and Atlantic City are located on tide water and are supplied by tank barges with the petroleum products distributed therefrom. The remainder of said stations are presently supplied by tank cars from railroad sidings, although the stations at Trenton, Camden, Bridgeton, Salem and Bivalve are located along navigable streams and could readily be equipped for receiving petroleum products from barges instead of tank cars. In addition to defendant's distributing stations above referred to, its principal competitors have more than 100 similar stations in New Jersey which are likewise located in the principal cities and towns of the State.

The distributing station proposed to be constructed by defendant at Atlantic Highlands will be similar in all respects to its station in Atlantic City, a photograph of which is annexed hereto as "Schedule B".

As stated in the annexed affidavit of Mr. Robert W. Black, defendant's proposed tank field in Atlantic Highlands is to be located along Sandy Hook Bay approximately 130 feet west of the westerly side line of Avenue D and 380 feet from the northerly side line of Center Avenue, and in a sparsely settled section of said community. Six steel storage tanks of the most modern type of construction are to be built within this field at the respective locations shown on the map entitled "Barge Terminal Layout, Atlantic Highlands, New Jersey", a blueprint of which is annexed to Mr. Black's said affidavit. These tanks are to be

*Affidavit of Charles M. Franklin.*

of a uniform height of 42 feet; three thereof are to be 35 feet in diameter and of the remaining three, one thereof is to be 50 feet, one 60 feet, and one 70 feet in diameter. As originally designed, the tank field was to be surrounded by an earthen embankment of sufficient height to impound the entire capacity of the tanks. This is the usual means employed by defendant, when sufficient area is available, for safeguarding the locality adjoining the tank field against loss or damage by fire or explosion in case an unforeseen accident should arise. Where the area of the land is not large enough to permit the erection of an earthen retaining wall around the tank field it has been the practice of the defendant to surround such field with a reinforced concrete wall. Such condition existed in Atlantic City and it was for this reason that defendant's tank field there is surrounded by a concrete wall instead of an earthen wall.

After the original plan of the proposed station at Atlantic Highlands had been prepared and submitted to the Mayor and Common Council of the Borough, the officials of the defendant company invited such Mayor and the members of said Common Council to inspect its Atlantic City Station. Upon inspecting such station, said officials expressed entire satisfaction therewith and requested defendant to make the construction of its proposed station in Atlantic Highlands conform thereto, including a reinforced concrete retaining wall instead of an earthen embankment around its tank field. Pursuant to such request, the defendant changed its original plans so as to substitute a concrete retaining wall for such earthen embankment. Such request was not made and complied with, however, until after Mr. Edwin S. Hall, one of the defendant's attorneys, wrote the letter

*Affidavit of Charles M. Franklin.*

referred to in Paragraph 13 of the Bill of Complaint to the Mayor of Atlantic Highlands, and it is for this reason that Mr. Hall stated in such letter that the tank field would be surrounded by an earthen embankment instead of a reinforced concrete wall as is now proposed. Such concrete wall will be just as effective, if not more so, as an earthen wall. In addition to such concrete wall surrounding the tank field, each of the tanks will be separated from the others by an intermediate earthen wall capable of impounding a large portion of the contents thereof, as stated in Mr. Hall's said letter. Each of said tanks will also be equipped with the most modern type of foam protection as an additional insurance against fire hazard. 10

It is, of course, a recognized fact that petroleum products are inflammable. Standard forms of protection against fire or explosion where such products are contained in such distributing stations have been developed by the National Board of Fire Underwriters, the American Petroleum Institute, and other organizations associated with the National Fire Protection Association, and when used the risk of fire and explosion is negligible. It has been defendant's policy to follow the recommendations of these respective agencies in the construction of its distributing stations, and its plans for the construction of the station in question will embody those most recently promulgated. These include the tank spacing, the details of tank construction, the location of the respective pipe lines, the arrangement of valves and fittings, the reinforced concrete retaining wall around the tank field, the earthen embankments between the tanks, and the most modern type of foam protection on each tank. As so constructed, the possibility of fire and explosion is reduced to a mini- 20  
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*Affidavit of Charles M. Franklin.*

10 mum, and even though the contents of the tanks should ignite or explode, there is no possibility of their escaping into Sandy Hook Bay or on to the adjoining property and causing injury or damage thereto. While there is a possible risk of fire or explosion due to lightning or some other unforeseen contingency, such risk is extremely remote and there has not been a tank fire or explosion in any of the defendant's 76 distributing stations during the past 12 years while I have been in its employ, or that of its predecessor in business, and in so far as I know, there has not been a tank fire or explosion in the distributing stations of any of the defendant's competitors during said period.

20 The tanks at the proposed station will be filled from tank barges by means of pipe lines laid on a pier proposed to be constructed from the shore line to within ten feet of the United States Government pierhead line. Such pier is to be constructed of pile bents supporting a heavy timber runway on which the pipe lines will be laid. Such pipe lines will consist of steel line pipe with screwed joints. Both check valves and gate valves will be installed at each end of each line, and in addition thereto the open end of each such line at the pierhead will be capped with a steel plate  
30 securely screwed to the joint and made leak-proof with a gasket when the same is not in use. In unloading a barge the cap just referred to is removed from the end of the pipe line on the pier and a flexible connecting pipe, which is part of the barge equipment, is attached thereto. When such connection has been made the valves on either end of the pipe line are opened and the pumps on the barge are started. When the tanks on the barge become practically empty, air is forced through  
40 the flexible pipe line so as to discharge all oil

*Affidavit of Charles M. Franklin.*

therefrom. As soon as this operation has been completed the gate valve on either end of the pier line is closed, the flexible pipe line on the barge is disconnected, and the cap replaced on the open end of the pier line to prevent leakage.

The utmost care is used in unloading these tankers and none of the product unloaded therefrom is spilled or discharged into the water. 10

CHARLES M. FRANKLIN.

Sworn to and subscribed before me, }  
 this 31st day of July, 1929. }


HAROLD J. BROWN,  
 Notary Public of New Jersey.

(NOTARIAL SEAL) 20

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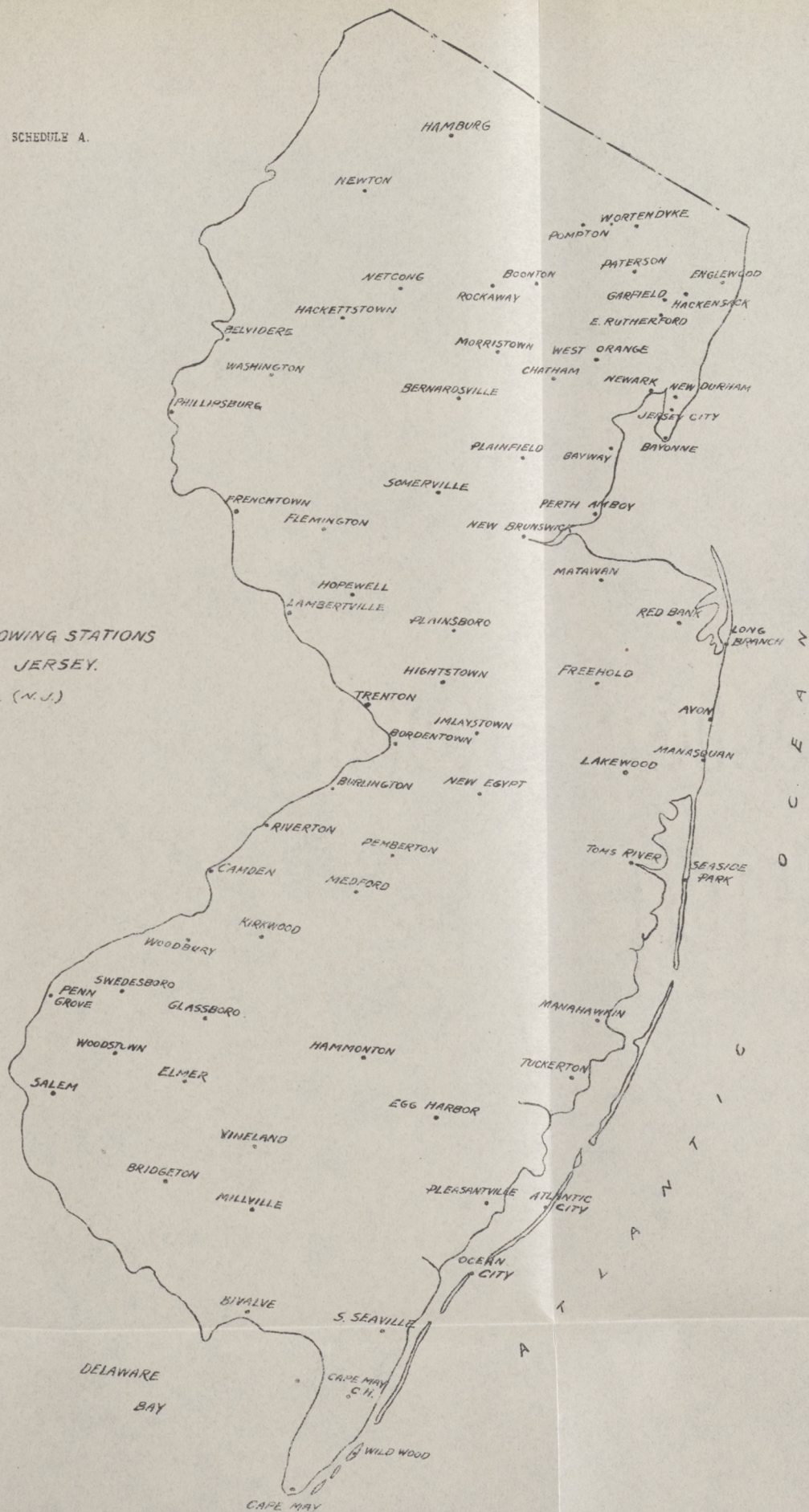
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**Schedule A.**

*(Opposite)* 

SCHEDULE A.

MAP SHOWING STATIONS  
IN NEW JERSEY.  
S. O. CO. (N. J.)

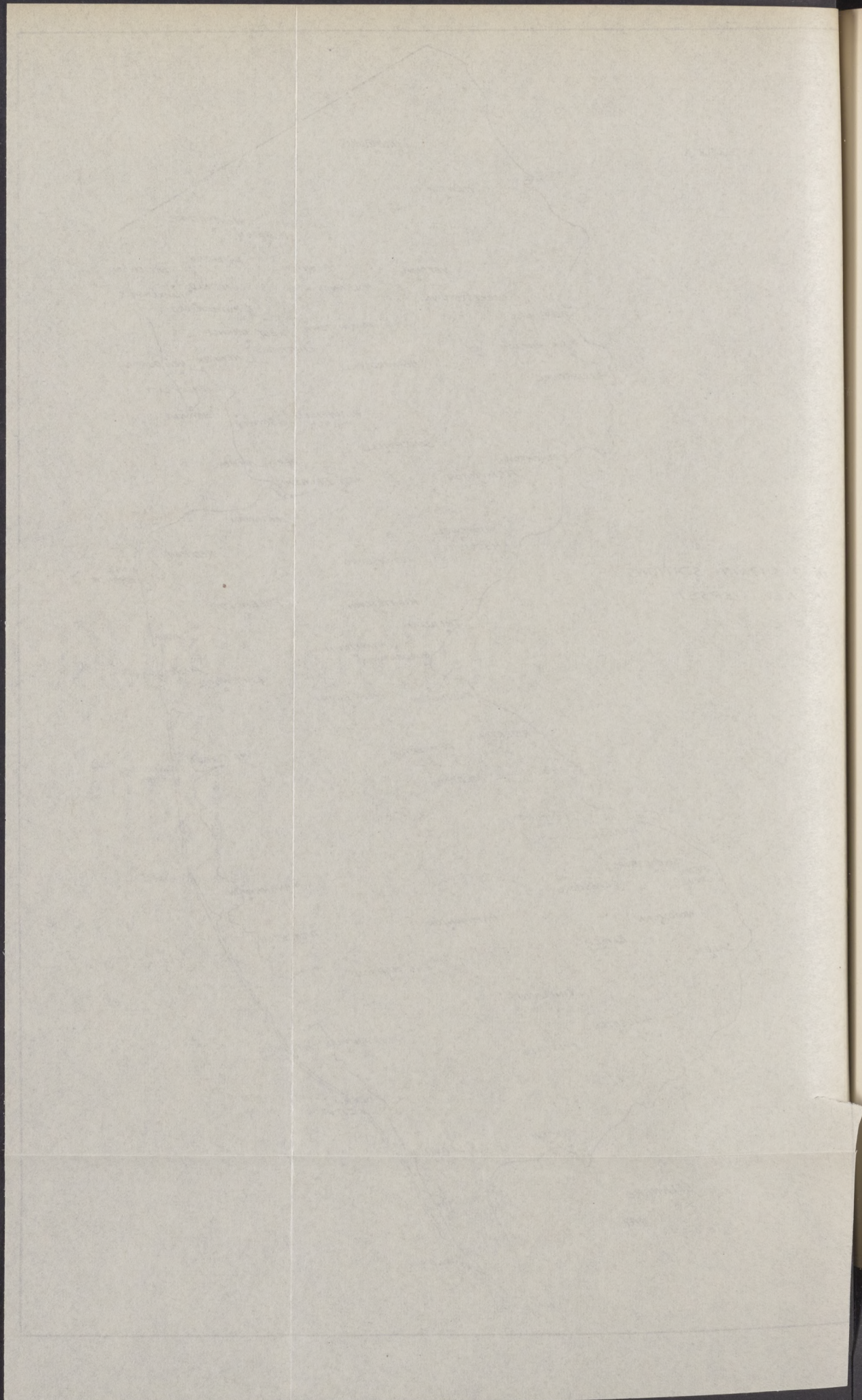


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
DELAWARE  
BAY

CAPE MAY

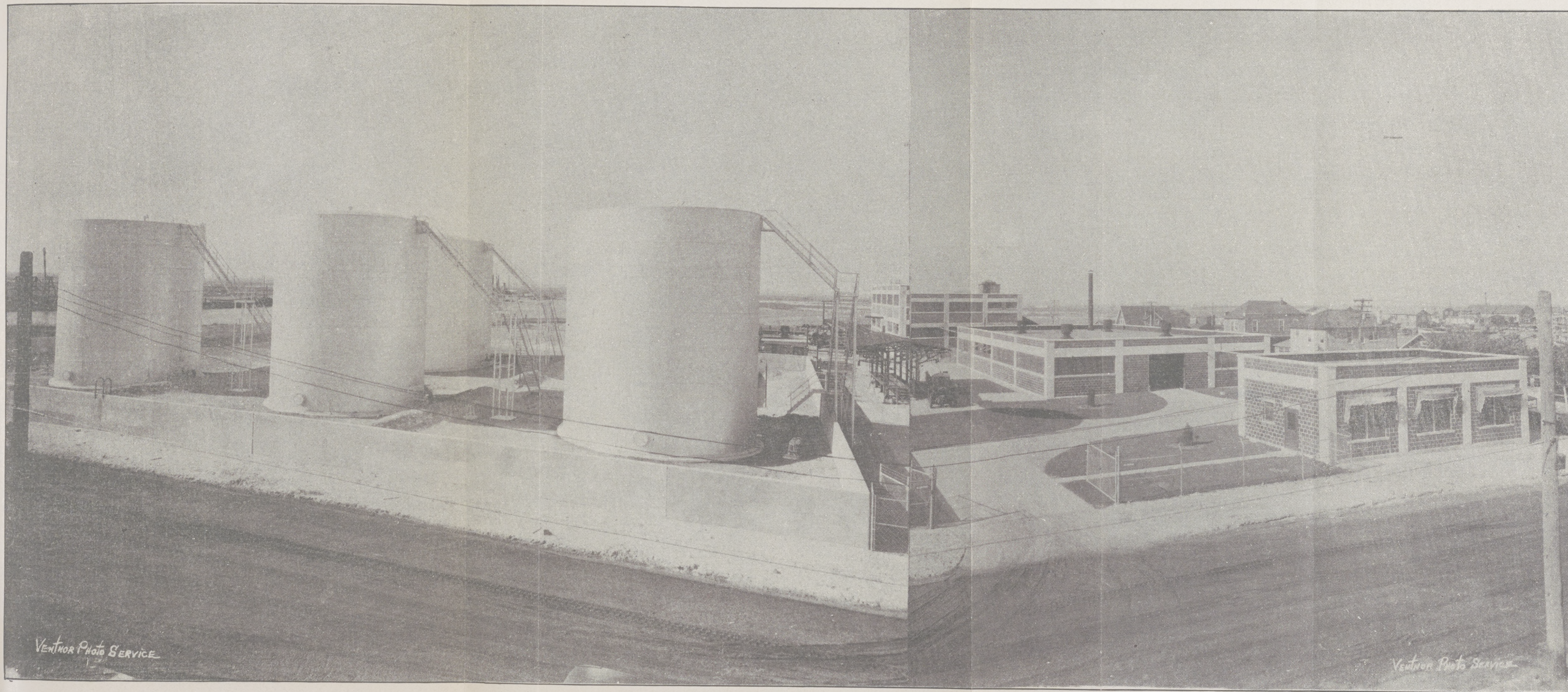




**Schedule B.**

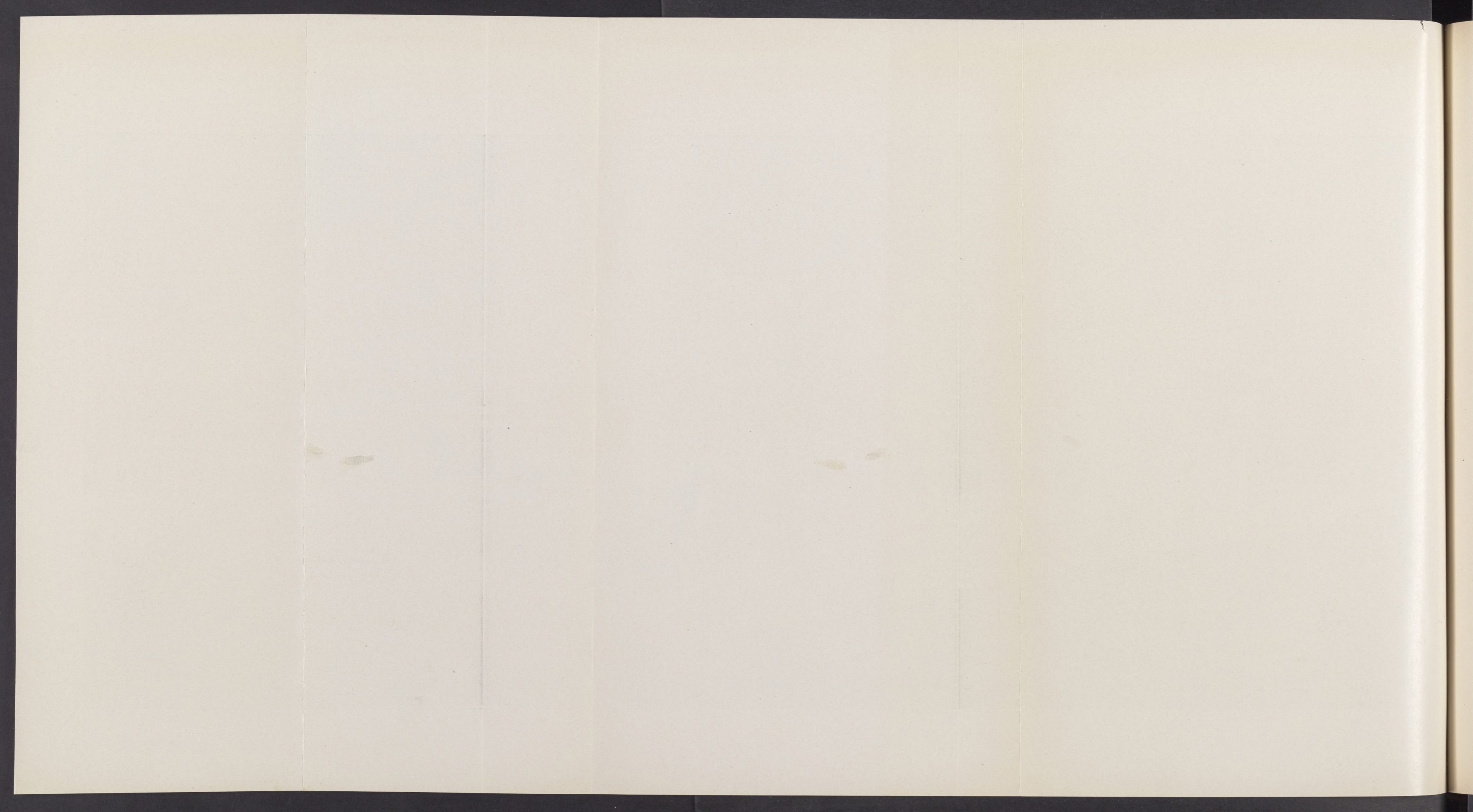
*(Opposite)* 

SCHEDULE B



Ventnor Photo Service

Ventnor Photo Service





**Affidavit of John F. Winchester.**

(Filed August 12, 1929.)

## IN CHANCERY OF NEW JERSEY.

10

Between

FLORA A. MORRISON,  
Complainant,*and*STANDARD OIL COMPANY OF NEW  
JERSEY, a corporation of the  
State of Delaware,  
Defendant.

On Bill, etc.

On Rule to  
Show Cause.

Affidavit.

20

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

JOHN F. WINCHESTER, being duly sworn according to law, upon his oath deposes and says:

I have been employed as an automotive engineer by the Standard Oil Company of New Jersey, the defendant in the above entitled cause, and its predecessor in business for the past seventeen years. I am now and during the past

30 fourteen years have been supervisor of all the motor equipment in the State of New Jersey of the defendant and its said predecessor, and am and during all of such period have been responsible for the design of all trucks and trailers acquired and used in this State by the defendant or its said predecessor during such period.

At the present time the defendant operates 384 tank trucks and trailers in hauling and delivering its petroleum products throughout the State of

40 New Jersey. These vary in size from 400 gallons

*Affidavit of John F. Winchester.*

to 3,000 gallons capacity each. During the past year the defendant delivered approximately 270,000,000 gallons of such products in New Jersey by means of such trucks and trailers, which during said period travelled a total distance of approximately 2,250,000 miles over the highways of said State. During the past five years such tank truck equipment has delivered approximately 1,110,000,000 gallons of said products in this State and has traversed approximately 11,000,000 miles in so doing. These operations were carried on without injury or death to persons or damages to property resulting from fires or explosions. In addition to the trucks and trailers so operated by defendant in this State its competitors are operating at least 500 similar units therein, making a total of nearly 900 such units in operation in New Jersey at the present time. The majority of them are in constant use in the larger cities and in the most congested areas. In so far as I know, no suggestion has ever been made by the National Board of Fire Underwriters, the Bureau of Combustibles, the State Board of Health or anyone else that the use of these trucks and trailers for delivering petroleum products to the various service stations throughout the State constitutes a nuisance or a menace to public life, health or property.

The tank trucks and trailers proposed to be used by defendant in delivering its petroleum products from its proposed new distributing station in Atlantic Highlands will be similar to those presently used by it in this State, except that they will be equipped with the most advanced design of safety appliances and devices. The total number of such units which defendant proposes to use in connection with such new distributing station

*Affidavit of John F. Winchester.*

does not exceed 4% of the total number of similar  
 units operated by it throughout the State, and is  
 less than 2% of the total number of such units  
 operated by defendant and its competitors  
 throughout the State. All of said trucks and  
 10 trailers will be operated under a well organized  
 and carefully supervised department, which will  
 enforce strict compliance with all State laws and  
 local ordinances regulating the use thereof on the  
 public highways so as to minimize the possibility  
 of accidents by collision or otherwise. Said trucks  
 and trailers will be equipped with the most modern  
 design of safety appliances, including double  
 valves on the tank spigots to prevent leakage and  
 automatic governors on the engines to prevent the  
 20 trucks from being operated at an excessive speed.  
 With these safeguards, such danger as might  
 otherwise accompany the handling and transpor-  
 tation of liquid petroleum products by truck is  
 reduced to a minimum and the risk of personal  
 injury or property damage resulting from fire or  
 explosion is negligible. None of defendant's  
 trucks or trailers have ignited or exploded while  
 on any public highway in this State during the  
 past eight years, and I am credibly informed that  
 the same is true as to the trucks and trailers of  
 30 defendant's competitors.

JOHN F. WINCHESTER.

Sworn to and subscribed before me, }  
 this 30th day of July, 1929.        }

HAROLD J. BROWN  
 Notary Public of New Jersey  
 (Notary Seal)

**Affidavit of John E. Skehan.**

(Filed August 12, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

FLORA A. MORRISON,  
Complainant,

*and*

STANDARD OIL COMPANY OF NEW  
JERSEY, a corporation of the  
State of Delaware,  
Defendant.

10

On Bill, &c.  
On Rule to  
Show Cause.  
Affidavit.

20

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

JOHN E. SKEHAN, of full age, being duly sworn according to law, upon his oath, deposes and says:

I am the Manager of the New Jersey branch of the defendant in the above suit and as such have charge of the conduct of its business throughout the State of New Jersey, other than the refining of its products, with which I have nothing to do. As such manager I have charge and general oversight of the construction and maintenance of its distributing stations throughout such State and also of the automotive equipment by which its products are distributed therefrom to its service stations and customers within such State.

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I have been connected with the defendant and its predecessor in business continuously for the last twenty-seven years and am thoroughly famil-

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*Affidavit of John E. Skehan.*

iar with the manner in which the same is conducted in the State of New Jersey, except as to the portion thereof which is carried on at its refining plants.

10 I have read the affidavit of Charles M. Franklin, attached hereto and to be submitted herewith in the above entitled cause, and know that the matters and things stated therein are true. Under my direction, Mr. Franklin is in charge of the construction and maintenance of all of the defendant's distributing stations in the State of New Jersey, and to my knowledge is intimately familiar with all of the matters set forth in his said affidavit.

20 I have also read the affidavit of Robert W. Black, attached hereto and to be submitted herewith in the said cause, and know that the matters and things therein stated are true. Mr. Black is in direct charge of the construction of defendant's proposed distributing station in the Borough of Atlantic Highlands which is sought to be prevented by the bill of complaint filed in said cause, and has an intimate knowledge of all of the matters referred to in his affidavit.

30 I have also read the affidavit of John F. Winchester, attached hereto and to be submitted herewith in the above entitled cause, and know that all of the matters and things therein stated are true. Mr. Winchester has direct charge of all of the defendant's automotive equipment in the State of New Jersey, as well as in several other states where it does business, and has a thorough knowledge of all of the matters stated in his affidavit.

40 The methods of safeguarding the maintenance and operation of the defendant's said proposed new distributing plant are of the most modern, complete and effective kind. They are such as

*Affidavit of John E. Skehan.*

are now employed not only by the defendant but its largest competitors in connection with the construction, maintenance and operation of similar distributing plants. It is the uniform practice to surround the tanks in such stations by an earthen embankment or a concrete wall of sufficient capacity to contain the contents of the tanks. These and the other safeguards which defendant intends to use at its said proposed new distributing station have proved ample to avoid any danger which might otherwise exist from such distributing stations being located and maintained even in thickly congested localities. My statement to this effect is based upon long experience and extended observation, and I am certain that defendant's said proposed distributing station in the Borough of Atlantic Highlands will constitute no nuisance and no menace either to complainant's property or to any other property. 10 20

I have examined the fire records of the defendant and its predecessor for the past fifteen years. These records show that neither the defendant nor its predecessor have had a storage tank fire or explosion in New Jersey during said period. In fact, I do not recall there ever having been a storage tank fire or explosion in this State during the twenty-seven years that I have been employed by defendant or its predecessor. 30

JOHN E. SKEHAN.

Sworn to and subscribed before me, }  
 this 31st day of July, 1929. }

HOWARD J. BROWN

Notary Public of New Jersey.

(Notary Seal)

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**Acknowledgment of Service.**

IN CHANCERY OF NEW JERSEY.

10	<p>Between</p> <p style="text-align: center;">FLORA A. MORRISON, Complainant,</p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">STANDARD OIL COMPANY OF NEW JERSEY, a corporation of the State of Delaware, Defendant.</p>	<p>On Bill, Etc. On Rule to Show Cause. Acknowledgment of Service.</p>
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20      Service is hereby acknowledged this first day of August, 1929, of true copies of the annexed affidavits of Charles M. Franklin and John E. Skehan, which will be submitted on behalf of the defendant at the hearing upon the Rule to Show Cause in the above entitled suit.

IRVING W. TEEPLE,  
Solicitor for Complainant.

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**Supplemental Affidavit of Charles M. Franklin.**

(Filed August 12, 1929.)

IN CHANCERY OF NEW JERSEY.

<p>Between</p> <p style="text-align: center;">FLORA A. MORRISON, Complainant,</p> <p style="text-align: center;"><i>and</i></p> <p>STANDARD OIL COMPANY OF NEW JERSEY, a corporation of the State of Delaware, Defendant.</p>	}	<p>10</p> <p>On Bill, etc. On Rule to Show Cause. Affidavit.</p> <p>20</p>
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STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

CHARLES M. FRANKLIN, of full age, being duly sworn, according to law on his oath, deposes and says:

I am the Charles M. Franklin who has heretofore made an affidavit in the above-entitled cause on behalf of the defendant, the same having been verified on July 31, 1929. I desire to and do supplement said affidavit by the following statement: There is no possibility that any odors or vapors that will be in anywise obnoxious or detrimental or deleterious to the health, comfort or welfare of either the complainant or any other persons who may at any time be within the Borough of Atlantic Highlands will be likely to escape or will escape from the distributing station which the defendant proposes to locate in said Borough, as

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*Supplemental Affidavit of Charles M. Franklin.*

set forth in my said previous affidavit. I base  
 this statement not only upon my knowledge as to  
 the methods that will be employed in the construc-  
 tion of said station and that will be followed in the  
 maintenance and operation thereof, but upon my  
 10 long experience in connection with the construc-  
 tion, maintenance and operation of many of the  
 defendant's other distribution stations and my  
 observation thereof as the result of many visits  
 thereto and inspections thereof.

CHARLES M. FRANKLIN.

Sworn to and subscribed before me }  
 this 1st day of August, 1929. }

20 HAROLD J. BROWN,  
 Notary Public of New Jersey.

[NOTARY SEAL]

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**Supplemental Affidavit of John E. Skehan.**

(Filed August 12, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

FLORA A. MORRISON,  
Complainant,

*and*

STANDARD OIL COMPANY OF NEW  
JERSEY, a corporation of the  
State of Delaware,  
Defendant.

10

On Bill, etc.  
On Rule to  
Show Cause.  
Affidavit.

20

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

JOHN E. SKEHAN, of full age, being duly sworn, sworn, according to law on his oath, deposes and says:

I am the John E. Skehan who has heretofore made an affidavit in the above-entitled cause on behalf of the defendant, the same having been verified on July 31, 1929. 30

I have read the additional affidavit of Charles M. Franklin herein verified on August 1, 1929, and know that the facts and things stated therein are true. As the Manager of the New Jersey branch of the defendant's business I visit numerous of its distributing stations from time to time. No odors or vapors are ever permitted to or do escape therefrom that are in anywise unwholesome, detrimental or deleterious to the health, comfort or wel- 40

*Supplemental Affidavit of John E. Skehan.*

fare of any of the residents or persons in the vicinity of any such station, and I know from the plans prepared for the defendant's proposed new distributing station in the Borough of Atlantic Highlands that the same thing will be true as to this station.

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JOHN E. SKEHAN.

Sworn to and subscribed before me }  
this 1st day of August, 1929. }

HAROLD J. BROWN,  
Notary Public of New Jersey.

(NOTARY SEAL)

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40

**Acknowledgment of Service.**

(Filed August 12, 1929.)

## IN CHANCERY OF NEW JERSEY.

Between	}	10
FLORA A. MORRISON, Complainant,		
<i>and</i>	}	20
STANDARD OIL COMPANY OF NEW JERSEY, a corporation of the State of Delaware, Defendant.		

On Bill, &c.  
On Rule to  
Show Cause.  
Acknowledgment  
of Service.

Service is hereby acknowledged this 8th day of August, 1929, of true copies of the annexed affidavits of Arthur Fishbein, Fred H. Hill, William P. Irwin, Cornelius M. Britton, Jr., Frank A. Heimbold, David P. Smith, Richard F. Lockwood and William J. Buckley, and of the exhibits referred to therein and attached thereto, which will be submitted on behalf of the complainant at the hearing upon the Rule to Show Cause in the above entitled suit. 30

LINDABURY, DEPUE & FAULKs,  
Solicitors for Defendant.

**Affidavit of Arthur Fishbein.**

(Filed August 12, 1929.)

## IN CHANCERY OF NEW JERSEY.

10

Between:

FLORA A. MORRISON,  
Complainant,

*and*

STANDARD OIL COMPANY OF NEW  
JERSEY (a corporation of the  
State of Delaware),  
Defendant.

On Bill, &c.  
Affidavit.

20

STATE OF NEW JERSEY, }  
COUNTY OF MONMOUTH, } ss.:

ARTHUR FISHBEIN, of full age, being duly sworn according to law, on his oath deposes and says:

I am a professional photographer, and have my place of business at Atlantic Beach Park in Atlantic Highlands, New Jersey.

30

On or about the 27th day of July, 1929, I took a photograph of the bay front of Sandy Hook Bay,—looking toward the Borough of Atlantic Highlands to the left, and toward that part of Middletown Township called Leonardo, to the right. The photograph was taken from the end of a long pier extending out into Sandy Hook Bay from the foot of Avenue D. As you look at the photograph, you are looking in an approximately southern direction. The distance of the shore

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line shown on the photograph is approximately a

*Affidavit of Arthur Fishbein.*

mile and a half. The property in question recently acquired by the Standard Oil Company of New Jersey is to the immediate right of the pier, beginning at Avenue D and extending westerly to Wagner's Creek, where the boat works and water tower are shown. To the right of the photograph from the boat works, is the locality known as Leonardo, a part of Middletown Township. 10

The photograph is hereto attached and made a part hereof, and marked "C-1".

ARTHUR FISHBEIN.

Sworn to and subscribed before me, }  
 this 7th day of August, A. D. 1929. } 20

WILLIAM P. IRWIN,  
 Justice of the Peace.

(OFFICIAL SEAL  
 ATTACHED)

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**Affidavit of Frederick H. Hill.**

(Filed August 12, 1929.)

## IN CHANCERY OF NEW JERSEY.

10 Between:

FLORA A. MORRISON,  
Complainant,

*and*

STANDARD OIL COMPANY OF NEW  
JERSEY (a corporation of the  
State of Delaware),  
Defendant.

20

On Bill, &c.  
Affidavit.

STATE OF NEW JERSEY, }  
COUNTY OF MONMOUTH, } ss.:

FREDERICK H. HILL, of full age, being duly sworn according to law, on his oath deposes and says:

30 I have taken and made a series of photographs for the purpose of showing the character of the residences and buildings in the immediate neighborhood of the Standard Oil property in the Borough of Atlantic Highlands, recently acquired. While these buildings were separately photographed, they have been placed on a plan made by me, drawn from a map of the immediate locality, so as to show how they are situated with reference to the premises in question. The measurements shown on said plan were made by me within the past two weeks, with a tape line held at one end by William P. Irwin, local Justice of the Peace, and the other end by myself. While 40 the measurements are not perfect, I believe them

*Affidavit of William P. Irwin.*

to be reasonably correct. (Marked "C-2". Submitted herewith.)

FRED. H. HILL.

Sworn to and subscribed before me, }  
this 7th day of August, A. D. 1929. }

NICHOLAS W. KAISER,  
A Master in Chancery  
of New Jersey.

10

**Affidavit of William P. Irwin.**

(Filed August 12, 1929.)

IN CHANCERY OF NEW JERSEY.

Between:

FLORA A. MORRISON,  
Complainant,

*and*

STANDARD OIL COMPANY OF NEW  
JERSEY (a corporation of the  
State of Delaware),  
Defendant.

On Bill, &c.  
Affidavit.

20

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STATE OF NEW JERSEY, }  
COUNTY OF MONMOUTH, } ss.:

WILLIAM P. IRWIN, of full age, being duly sworn according to law, on his oath deposes and says:

I reside in the Borough of Atlantic Highlands, and I own a number of pieces of property and am the local Recorder and Justice of the Peace.

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*Affidavit of William P. Irwin.*

10 I accompanied Mr. Frederick H. Hill and held a tape line at one end while he held it at the spool, and thus assisted him in making measurements in and about the locality of the property recently acquired by Standard Oil Company of New Jersey in Atlantic Highlands Borough, for use as a gas and oil storage plant. I assisted in making the measurements, and have seen the measurements as made by Mr. Hill, and would say that the measurements shown on the said plan made by Mr. Hill are reasonably correct. The measurements were made on the ground, and immediately noted, and thereafter transferred to the plan worked out by Mr. Hill.

20 When it was first rumored that an oil company was considering acquiring the premises in question for a gasoline and oil storage plant, I protested vigorously to the Mayor and Borough officials against allowing such a plant to be erected within the limits of the Borough of Atlantic Highlands.

30 I know of my own knowledge, that many property owners in Atlantic Highlands Borough, also protested. I was present at a meeting of the Borough Council in the latter part of the month of June, 1929, when petitions of Three Hundred and ninety-five property owners against such a plant were filed with the Mayor and Council of the Borough. The petitions were merely filed without comment, and no action taken thereon. Lately, I have learned that the Borough Officials are now considering, if not actually drawing, a sort of zoning ordinance to prevent the erection of any further such plants or other enterprises of an objectionable nature in the Borough of Atlantic Highlands.

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*Affidavit of William P. Irwin.*

I have resided in the Borough of Atlantic Highlands for the past 45 years, and I verily believe that such a plant as that contemplated by the defendant will be a great detriment to the community; that it will lower property values seriously, and will be a nuisance, a detriment, and a constant menace and danger to the health, safety and welfare of the community. 10

I, therefore, beg leave to join in the prayer of complainant for the relief sought in this matter.

WILLIAM P. IRWIN.

Sworn to and subscribed before me, }  
this 7th day of August, A. D. 1929. }

NICHOLAS W. KAISER, 20  
A Master in Chancery of  
New Jersey.

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**Affidavit of Cornelius M. Britton, Jr.**

(Filed August 12, 1929.)

IN CHANCERY OF NEW JERSEY.

10 Between

FLORA A. MORRISON,  
Complainant,

*and*

STANDARD OIL COMPANY OF NEW  
JERSEY (a corporation of the  
State of Delaware),  
Defendant,

On Bill, etc.  
Affidavit.

20

STATE OF NEW JERSEY, }  
COUNTY OF MONMOUTH, } ss.:

CORNELIUS M. BRITTON, JR., of full age being duly sworn according to law on his oath deposes and says:

30 I am a resident of Middletown Township, Monmouth County, N. J., in that part of the township which is known as Leonardo and adjoins the Borough of Atlantic Highlands.

40 At the present time I am living on Burlington Avenue at the corner of Bellevue Avenue and have a lease on the property in which I now reside. This property has about 75 feet frontage on Burlington Avenue and has a depth of about 200 feet on Bellevue Avenue running from Burlington Avenue to the low water line of Sandy Hook Bay. The house on the ground is very large and it is used by me as a boarding house which I call Camp

*Affidavit of Cornelius M. Britton, Jr.*

Raritan for boys ranging in age of 5 to 13 years. These boys are from the families of middle class people and are taken in by the week or for the season. The principal source of exercise and enjoyment for these boys who number about 30 when the house is filled to capacity is the bathing beach. They are carefully guarded under my personal supervision and are also instructed in swimming. The beach is a sort of flat table land and one on which there is absolutely no danger. 10

I have managed after hard striving to build up the reputation of this camp for boys, where parents can be assured that they are as well taken care of as if they were in their own home and have through it gained my livelihood.

This property is almost next to the Putnam Tract and is only separated from it by Bellevue Avenue a street about 50 feet wide. If the Standard Oil Company is permitted to build its tanks on the tract of land which they have bought about 500 feet south of the property I occupy, it will not only present a continuing menace to life and property by reasons of the hazards through explosion and fire, but it will mar the beauty of the locality, which is made up of private homes all around the vicinity and instead of presenting a shore line of trees and inviting homes and grounds it will present an oil town such as Bayonne, Bayway, Linden, Carteret and other places in the State of New Jersey of which there are already far too many. This will result not only in a marked depreciation in value of property in the neighborhood but will also affect its saleability and leaseability. It being common knowledge that the majority of property along the shore fronts are leased and rented for the season. 20 30

*Affidavit of Cornelius M. Britton, Jr.*

10 In my own case after having built up a profitable means of livelihood, I was about to negotiate for a long term lease, but have abandoned the plan because of the impending erection of the tanks. Knowing from the unsightliness of oil and gasoline storage tanks and the pollution of the water from the oil drippings and leakage, I shall be unable to conduct my business and must close it up with consequent great damage to myself and the loss of a tenant by the owner of the land.

I join the complainant in her prayer for relief in the above matter.

CORNELIUS M. BRITTON, JR.

20 Subscribed and sworn to before me this }  
6th day of August, A. D. 1929. }

NICHOLAS W. KAISER  
A Master in Chancery  
of New Jersey.

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**Affidavit of Frank A. Heimbold.**

(Filed August 12, 1929.)

IN CHANCERY OF NEW JERSEY.

Between:

FLORA A. MORRISON,  
Complainant,

*and*

STANDARD OIL COMPANY OF NEW  
JERSEY (a corporation of the  
State of Delaware),  
Defendant.

10

On Bill, &c.  
Affidavit.

20

STATE OF NEW JERSEY, }  
COUNTY OF MONMOUTH, } ss.:

FRANK A. HEIMBOLD, of full age, being duly sworn according to law, on his oath deposes and says:

I am a resident, tax payer and property owner in the Borough of Atlantic Highlands, in the County of Monmouth and State of New Jersey: The title to my property, however, is vested in my wife. 30

I live at #107 Bay Avenue therein, and own premises as aforesaid, 50' x 130'.

I have lived in said premises for about 21 years.

These premises are located about 200 feet from the easterly boundary line of defendant's premises.

I have protested to the Mayor and Council of the Borough of Atlantic Highlands, against permitting the Standard Oil Company of New Jersey, or any other oil concern, to erect within the Borough of Atlantic Highlands any place for the 40

*Affidavit of Frank A. Heimbald.*

storage of large quantities of gasoline or other explosive and inherently dangerous and highly inflammable products. I am an engineer by profession and have been in engineering work for upwards of 30 years.

10 I verily believe that even with the utmost care used in connection with the best known and most modern structures and careful maintenance, that it is not possible to so conduct such a plant as the defendant has publicly announced its intention of constructing and maintaining, to eliminate the danger of the escape of fumes and noxious odors, as well as the danger of pollution of the air therefrom, and the danger of pollution of the waters and beaches of Raritan Bay, or Sandy Hook Bay, by the dripping of oil and gasoline into the said waters, while unloading petroleum products from tank steamers, and likewise the constant danger of explosions from sparks caused by friction arising from the movements of tank trucks and tank steamers from ordinary careless human conduct on the part of chauffeurs and boatmen; from lightning in the time of storm; from sparks and fires occurring on other premises adjoining defendant's premises, as well as from unknown and unnamable causes, and that, therefore, the said plant and the several structures thereof, will, in my opinion, be and become a nuisance from the very outset, because of the large quantities of highly inflammable, explosive, and inherently dangerous petroleum products to be stored therein.

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I, therefore, join in the prayer for relief contained in the bill of complaint and affidavit of complainant in the above cause.

FRANK A. HEIMBOLD.

40 Sworn to and subscribed before me, }  
this 2nd day of August, A. D. 1929. }

NICHOLAS W. KAISER,  
A Master in Chancery of  
New Jersey.

**Affidavit of David P. Smith.**

(Filed August 12, 1929.)

## IN CHANCERY OF NEW JERSEY.

Between:

FLORA A. MORRISON,  
Complainant,

*and*

STANDARD OIL COMPANY OF NEW  
JERSEY (a corporation of the  
State of Delaware),  
Defendant.

10

On Bill, etc.  
Affidavit.

20

STATE OF NEW JERSEY, }  
COUNTY OF MONMOUTH, } ss.:

DAVID P. SMITH, of full age, being duly sworn according to law, upon his oath deposes and says:

I reside at the corner of Avenue D and Highland Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, and have been a resident, taxpayer and voter in said borough for the past 35 years. I have also been interested in the civic affairs of the Municipality, having been elected and held office as a member of the Borough Council over 16 years ago. I am also a member of a committee for the purpose of draughting a Zoning Ordinance for the Borough by virtue of the recent amendment to the Constitution of the State of New Jersey giving Municipalities the right to establish Zoning Ordinances and restricting localities to residential uses.

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*Affidavit of David P. Smith.*

The Borough of Atlantic Highlands is a strictly residential town, made up of private homes, boarding houses and hotels, and in fact is typical of most places along the North Jersey shore district. Some of the houses are modest, others pretentious, but it is in general a place of homes only and in no way an industrial locality.

10

At the time the Mayor and Borough Council invited the Standard Oil Company to locate in Atlantic Highlands on the Benson Tract I led a large group of citizens in protest against the action of the Mayor. We attended a subsequent meeting of the Borough Council and told them we were against the installation of oil and gasoline storage tanks on the Benson Tract. I then called for a first reading of the Zoning Ordinance, which would have prohibited the erection of anything such as the Standard Oil Company contemplates erecting on the Benson Tract. There had been 2 readings of a Zoning Ordinance in the year 1925, before the State Constitution was amended.

20

The Borough Clerk was unable to locate it, for apparently the Mayor had either pigeonholed it or through chicanery disposed of it, so that it could not be located. This was about the middle of June, 1929.

30

Further protest was subsequently presented to the Mayor in the form of a petition against the tanks signed by over 300 of the 1,500 residents at the meeting of the Mayor and Borough Council on June 25th, 1929. At this meeting the Standard Oil Company was represented by four men, and from the questions put to them and the general antagonistic attitude of the citizens they ought to have seen that the people were against their company coming into Atlantic Highlands. From

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the beautiful description they gave of their pro-

*Affidavit of David P. Smith.*

posed storage tank one might imagine they intended putting in a rose garden with bronze statuary, fountains and art museums, instead of stenching oil, explosive and highly inflammable gasoline, unsightly tanks and dirty sheds.

The Benson Tract, which the Standard Oil Company has purchased, is the only large vacant tract of land in its vicinity. There are houses all around it. My property, which is across the street from the home of the late Robert B. Mantell, being about 4 blocks away from the tract. 10

Should the oil and gasoline storage tanks be erected by the Standard Oil Company, the value of property would depreciate and become unsalable.

It is my opinion that a condition such as exists in Carteret, Bayway, Bayonne and other places in New Jersey, which are already too numerous, will come about. The paint will be ruined on the houses, properties will fall in disrepair and decay, land values would certainly not increase, but, on the other hand, would decrease, as would the values of buildings, insurance risks would be higher and, in general, there would be great damage to myself and people in the community, because we cannot sell our property for factory sites. It is a locality of homes only. 20 30

I join the complainant in her prayer for relief in the above matter.

DAVID P. SMITH.

Subscribed and sworn to before me }  
this 7th day of August, A. D. 1929. }

NICHOLAS W. KAISER,  
A Master in Chancery of  
New Jersey.

**Affidavit of Fred H. Hill.**

(Filed August 12, 1929.)

## IN CHANCERY OF NEW JERSEY.

10

Between:

FLORA A. MORRISON,  
Complainant,

*and*

STANDARD OIL COMPANY OF NEW  
JERSEY (a corporation of the  
State of Delaware),  
Defendant.

20

On Bill, &c.  
Affidavit.

STATE OF NEW JERSEY, }  
COUNTY OF MONMOUTH, } ss.:

FRED H. HILL, of full age, being duly sworn according to law, on his oath deposes and says:

I own the premises at West Valley Drive, in the Borough of Atlantic Highlands, in the County of Monmouth and State of New Jersey.

30

I have protested to the Mayor and Council of the Borough of Atlantic Highlands against permitting the Standard Oil Company of New Jersey, or any other oil concern, to erect within the Borough of Atlantic Highlands any place for the storage of large quantities of gasoline or other explosive and inherently dangerous and highly inflammable products.

I am engaged in the oil business; I own, control and conduct in the State of New Jersey three

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*Affidavit of Fred H. Hill.*

gas stations, and am in daily personal experience with the handling, storing and dispensing of gasoline and petroleum products, and know the nature of the substance. I have been actively and personally engaged in said business for the past thirteen years, and am still so engaged.

I have visited, examined and inspected both land and water stations of oil companies, including the Standard Oil Company of New Jersey, in the State of New Jersey, Pennsylvania, Massachusetts, and elsewhere, and I have seen gasoline, oils and petroleum products loaded from steamers into such storage stations and reloaded upon trucks for distribution from such storage stations, and I have never seen in a number of years of experience in observance, examinations and inspections of such storage stations, a single one of such stations where there were not some odors and fumes from escaping gasoline or there were not drippings from pipe lines, hoses, boats and trucks in and about said stations.

I verily believe that even with the utmost care used in connection with the best known and most modern structures and careful maintenance that it is not possible to so conduct such a plant as the defendant has publicly announced its intention of constructing and maintaining, to eliminate the danger of the escape of fumes and noxious odors, as well as the danger of pollution of the air therefrom and the danger of pollution of the waters and beaches of Raritan Bay, or Sandy Hook Bay, by the dripping of oil and gasoline into the said waters, while unloading petroleum products from tank steamers, and likewise the constant danger of explosions from sparks caused by friction arising from the movements of tank trucks and tank steamers from ordinary careless human conduct

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*Affidavit of Fred H. Hill.*

10 on the part of chauffeurs and boatmen; from lightning in the time of storm; from sparks and fires occurring on other premises adjoining defendant's premises, as well as from unknown and unnamable causes, and that, therefore, the said plant and the several structures thereof, will, in my opinion, be and become a nuisance from the very out-set, because of the large quantities of highly inflammable, explosive, and inherently dangerous petroleum products to be stored therein.

I, therefore, join in the prayer for relief contained in the bill of complaint and affidavit of complainant in the above cause.

FRED H. HILL.

20 Sworn to and subscribed, before me, }  
this 2nd day of August, A. D. 1929. }

NICHOLAS W. KAISER,  
A Master in Chancery  
of New Jersey.

30

40

**Affidavit of Richard F. Lockwood.**

(Filed August 12, 1929.)

## IN CHANCERY OF NEW JERSEY.

Between

FLORA A. MORRISON,  
Complainant,*and*STANDARD OIL COMPANY OF NEW  
JERSEY (a corporation of the  
State of Delaware),  
Defendant.

10

On Bill, &c.  
Affidavit.

20

STATE OF NEW JERSEY, }  
COUNTY OF MONMOUTH, } ss.:

RICHARD F. LOCKWOOD, of full age, being duly sworn according to law, on his oath deposes and says:

I am a tool and dye maker, and am master mechanic of a machinery plant in New York. I have been in this business for the past fifteen years. I live at Leonardo, in the Township of Middletown, Monmouth County, New Jersey. I have seen, and have handled, and worked upon and with valves of many kinds during all of my career, but I have never seen one which would completely and perfectly confine gasoline and oil. After a time they will leak, or drip,—some slowly, and others not so slowly; and I am of the opinion that it is not possible, at least has not been possible up to the present time, to make a valve which is

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*Affidavit of Richard F. Lockwood.*

10 absolutely oil proof from dripping. The same valve which would be water-proof against dripping, would by no means be oil-proof against dripping. This, in my opinion, is due to the fact that the metal parts of the valve are ground on emery wheels, which are more or less irregular, and although polished as well, the pieces of metal cannot be so put together with opportunity for movement against each other that they will not permit oils to come through and drip, particularly after they have been used for a time.

RICHARD F. LOCKWOOD.

20 Sworn to and subscribed before me, }  
 this 7th day of August, A. D. 1929. }

WILLIAM P. IRWIN,  
 Justice of the Peace.  
 (OFFICIAL SEAL ATTACHED)

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*Affidavit of William C. Buckley.*

gasoline. It is true that such valves customarily used in such construction are water tight, and that new valves are frequently oil tight and gas tight when first used, but petroleum products deteriorate such valves and it is not long before they are leaky to a greater or lesser degree.

10 These tanks for the storage of gasoline and oils are usually provided with vents. Through these vents the tank "breathes", and hence, gases and fumes escape in more or less quantities, especially when the tanks are being filled. Screw pipes are usually used for conveying the gasoline from the tankers to the tanks, and they become leaky at the joints after a little use.

20 In every gasoline storage plant that I have seen, ordinary human carelessness results in the spilling and wasting of gasoline from time to time. The drivers in loading the tank trucks frequently allow the gasoline to spill; the boatmen on the tankers often spill the gasoline and oil on the tankers and afterwards sweep it off into the water. This, of course, is not done intentionally, but it occurs often, due to ordinary every-day human familiarity with the handling of petroleum products, and it is the usual thing to expect at times. And from my observation of storage plants over the

30 country, it is almost impossible to handle petroleum products without some leakage or spillage; and when the gasoline gets out of its confinement, it rots and kills everything it touches; besides, the fumes become very disagreeable.

WILLIAM C. BUCKLEY.

Sworn to and subscribed before me, }  
 this 7th day of August, A. D. 1929. }

40 WILLIAM P. IRWIN  
 Justice of the Peace.

(OFFICIAL SEAL ATTACHED)

**Opinion.**

## IN CHANCERY OF NEW JERSEY.

Between

FLORA A. MORRISON,  
Complainant,

*and*

STANDARD OIL COMPANY OF NEW  
JERSEY (a corporation of the  
State of Delaware),  
Defendant.

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On Bill, &c.  
Opinion.

August 20, 1929.

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IRVING W. TEEPLE, Esq., for the Complainant.

MESSRS. LINDABURY, DEPUE & FAULKS, Solicitors,  
FREDERIC J. FAULKS, Esq., of Counsel,  
for the Defendant.

—————  
OPINION  
—————

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1. A suit by a private person will not lie to enjoin a public nuisance unless it be shown that there is danger of a special injury to the complainant, distinct and different from that threatened to the public at large.

2. Citizens Coach Co. Case, 29 N. J. Eq., 299, followed.

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*Opinion.*

BENTLEY, V-C.:

On motion for preliminary injunction.

The complainant is the owner of a parcel of real estate at Atlantic Highlands where the defendant has recently taken title to another piece of land  
10 upon which it has secured permission from the governing body of the borough to erect large tanks in which to store gasoline. The bill recites:

20 . . . "the keeping and handling of said products (petroleum products) will constitute not only a nuisance, but a continuing menace and danger in and about the neighborhood and locality thereof, in the Borough of Atlantic Highlands aforesaid, and there will be ever present the risk and danger of pollution of the shores and waters of Raritan Bay, or Sandy Hook Bay, and the Shrewsbury River, with great loss consequent thereon . . . and likewise to property values in and about the neighborhood, and particularly the complainant's said property, . . . and in like manner will be ever present the menace and danger of fires and explosions in and about the said storage plant, and from odors and gases escaping therefrom and spreading over, in and about the neighborhood," etc.

30 It is also alleged that the large motor vehicles which will be used to distribute the gasoline will disturb the people of the community, and that those using the public thoroughfares will live in danger of injury or death from the large collection of gasoline and the operation of the defendant's trucks.

40 A further allegation is, that the gasoline will exude odors and vapors which are "almost uncontrollable". Likewise, that these emanations will be detrimental to the health of the adjoining neighbors.

*Opinion.*

Counsel for complainant relies largely upon the opinion of Vice-Chancellor Garrison in *O'Hara v. Nelson*, 71 N. J. Eq., 161. It is impossible, however, to intelligently apply excerpts from that elaborate opinion without bearing in mind the facts with which the Court was dealing, as, of course, is always the case. He was dealing with a matter, as the head-note shows, where it was intended to store large quantities of gasoline "in a frame building" situated in a thickly built-up portion of a large city. Since the date of that opinion (February, 1906) the use of gasoline as a fuel for internal combustion motors has increased beyond anything that man had then conceived. This product of petroleum is now stored in quantities sufficient to do incalculable harm and damage, if exploded, in every community, large and small, from one end of the country to the other. But, of course, intelligent regulations, worked out by the police authorities and the manufacturers, such as the defendant, have resulted in safeguarding life and property so that injury from this source is a most unusual thing. If it were intended to accumulate great stores of gasoline in a populous neighborhood and within a wooden building, the Vice-Chancellor's alarms might be as well founded today as they were nearly a quarter of a century ago, before the methods of storing and handling this commodity had been so greatly improved as they are now.

The storing of gasoline, even in large quantities, cannot be said to constitute a nuisance, *per se*. 46 C. J. 709. I agree with counsel for the defendant that it may become so only if the plant is negligently constructed or operated. The affidavit of the defendant's engineer, Black, shows, however, that the most meticulous pains will be taken to prevent danger to the persons in the neighbor-

*Opinion.*

hood and their property. It is true that a number of affidavits presented by the complainant indicate a fear that danger will exist and damage ensue to persons, property and property rights. But the only affiants whose affidavits are of any value are Lockwood, a tool and die maker, and  
10 Buckley, who says he is superintendent of the structural steel business "for a large New York concern". They both express a fear that no valve can be manufactured which will not become leaky after being in use "for a time", although they both agree that valves can be manufactured that will be tight at first. Each of them seems to have overlooked the simplicity with which a valve may either be reconditioned or replaced by a new one.  
20 It would be difficult for me to believe that an organization such as the defendant would carelessly imperil its own large investment, to say nothing of its duty to the public and the enormous litigation, and probably indictment, which it would face as the result of any such catastrophe as the complainant fears. The above quotation from the bill shows that the complainant is alarmed by inferences and conclusions she draws, while Black deals with facts from which I may arrive at my own opinion. In short, I think her  
30 fears entirely unfounded.

The complainant could not obtain the relief she now seeks even if her fears seemed to be well founded. In the first place, the facts set out in her bill show no danger of direct or special injury to the complainant even if, for the moment, they be taken at their face value. It has been the invariable rule in this state that a bill such as this "can be maintained by a private person only upon  
40 the ground of apprehended, special (and peculiar) injury to him distinct from that done to the public at large". *Allen v. Freeholders*, 13 N. J.

*Opinion.*

Eq. 68. A bill by an individual will not lie to enjoin a public nuisance. Only the state may secure such relief through the Attorney General.

- Hinchman v. Paterson &c. Co.*, 17 N. J. Eq. 75;  
*Higbee & Riggs v. Camden & Amboy R. R. Co.*, 19 N. J. Eq. 276; 10  
*Morris & Essex R. R. Co. v. Prudden*, 20 N. J. Eq. 530;  
*Van Wagenen v. Cooney*, 45 N. J. Eq. 25;  
*Anthony Shoe Co. v. West Jersey R. R. Co.*, 57 N. J. Eq. 607.  
*Humphreys v. Eastlack*, 63 N. J. Eq. 136.  
*Bouquet v. Hackensack Water Co.*, 90 N. J. L. 203. 20

There is not a word in the bill to indicate that the complainant is threatened with any injury of any of her rights except, as she thinks, as every other member of the public would be affected if the defendant is not put under injunction.

There is an allegation in the bill to the effect that the completion of the defendant's plan will diminish the value of her property. That is no ground for an injunction.

- Zabriskie v. J. C. & Bergen R. R. Co.*, 13 N. J. Eq. 314; 30  
*Morris & Essex R. R. Co. v. Prudden* (*supra*);  
*Halsey v. Rapid Transit St. Ry. Co.*, 47 N. J. Eq. 380;  
*Northfield v. Atl. County*, 85 N. J. Eq. 47.

Finally, no relief should be given at this time, no matter what might be shown upon final hearing, because the proofs on behalf of the defendant 40

*Opinion.*

completely meet and controvert those filed by the complainant. *Citizens Coach Co. v. Camden Horse R. R. Co.*, 29 N. J. Eq. 299. That case has been followed without exception by the Court of Errors and Appeals until at least as recently as *Feld v. Kantrowitz*, 99 N. J. Eq. 847.

10 For each and all of these reasons the order to show cause should be discharged.

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**Order Discharging Order to Show Cause.**

(Filed August 20, 1929.)

IN CHANCERY OF NEW JERSEY.

20	Between:  FLORA A. MORRISON, Complainant,  <i>and</i>  STANDARD OIL COMPANY OF NEW JERSEY, a corporation of the State of Delaware, Defendant.	On Bill, etc. Order Discharg- ing Order to Show Cause.
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An order having been made herein on July 23rd, 1929, requiring the defendant to show cause why an injunction should not be granted enjoining and restraining it from proceeding with the erection and construction of a proposed petroleum products distributing station on its property in the Borough of Atlantic Highlands, New Jersey, until the further order of this Court, and the hearing thereon having been duly continued until August

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*Order Discharging Order to Show Cause.*

12, 1929, and then having been had in the presence of Irving W. Teeple, Esquire, of counsel with the complainant, and Frederic J. Faulks, Esquire, of counsel with the defendant, and the Court having heard and considered the arguments of said counsel and having read and considered the Bill of Complaint and the affidavit of the complainant attached thereto, the affidavits of Charles G. Black, Robert W. Black, Charles M. Franklin, John F. Winchester and John E. Skeehan, filed on behalf of defendant; and the counter affidavits of Arthur Fishbein, Frederick H. Hill, William P. Irwin, Cornelius M. Britton, Jr., Frank A. Heimbold, David P. Smith, Fred H. Hill, Richard F. Lockwood and William C. Buckley, filed on behalf of complainant;

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IT IS ON THIS 20th day of August, 1929, on motion of Messrs. Lindabury, Depue & Faulks, solicitors for the defendant, ORDERED that the said Order to Show Cause shall be and the same is hereby discharged with costs to be taxed.

Respectfully advised,  
JOHN BENTLEY,  
V. C.

E. R. WALKER,  
Chancellor.

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**Stipulation as to Exhibit.**

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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Between

FLORA A. MORRISON,  
Complainant-Appellant,

*and*

STANDARD OIL COMPANY OF NEW  
JERSEY (a corporation of the  
State of Delaware),  
Defendant-Respondent.

Stipulation as to  
Exhibit.

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IT IS HEREBY STIPULATED between the solicitors of the respective parties to the above entitled suit, that the folder diagram with photographs pasted thereon, referred to in the affidavit of Fred H. Hill on behalf of complainant, called Exhibit "C-2" may be referred to and used upon the argument of the appeal herein by either party, without necessity of reproducing same and printing it in the State of the Case, subject, however, to the approval of the Judges of this Court.

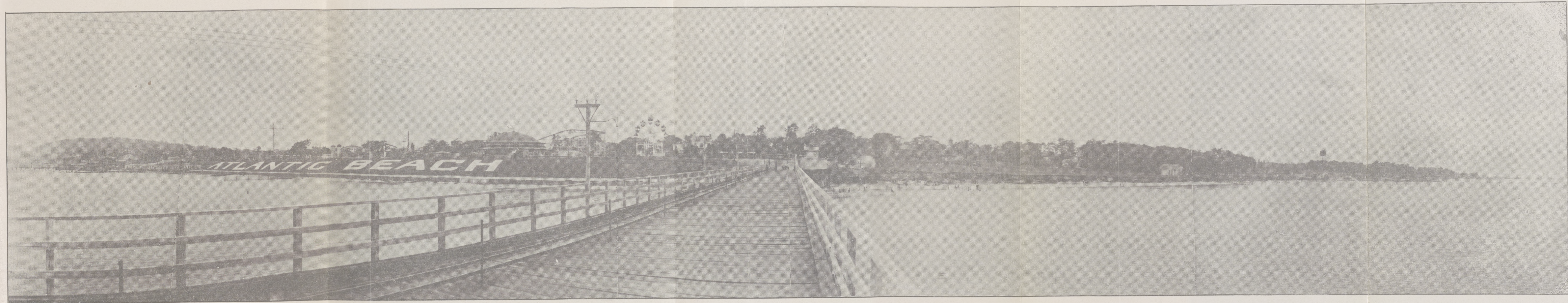
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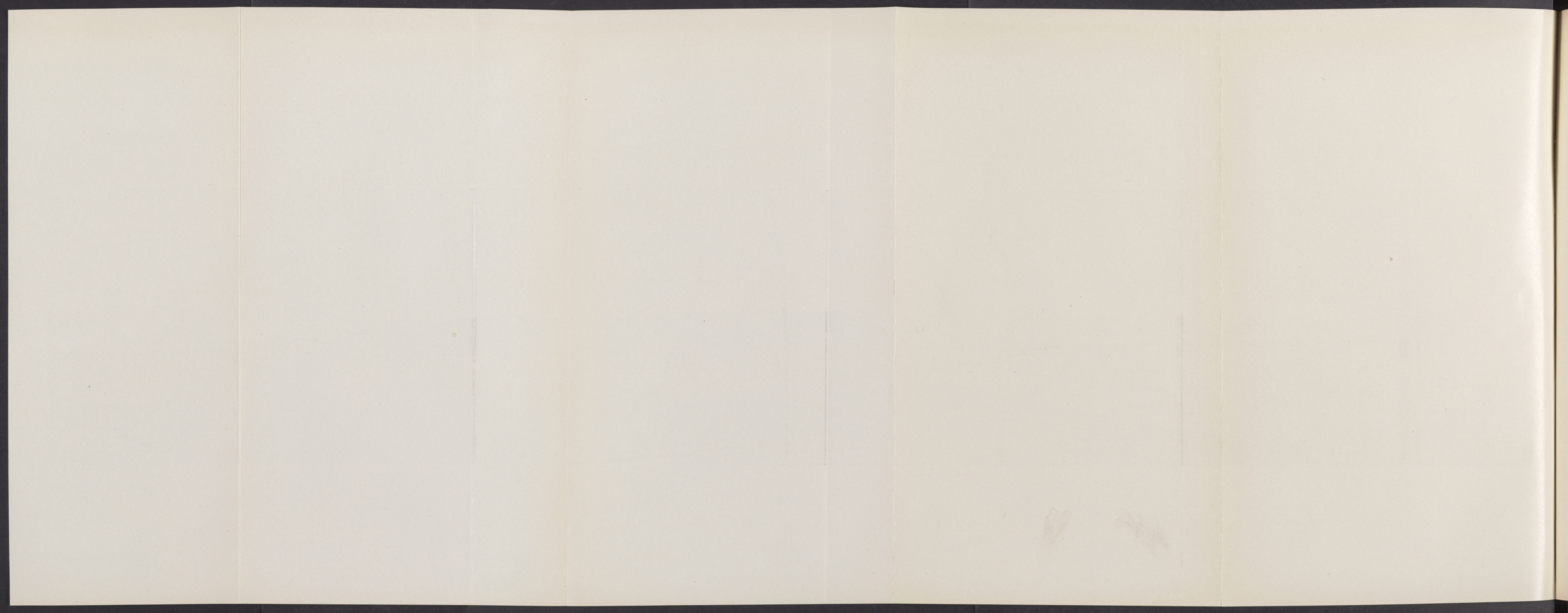
Dated, September 25, 1929.

IRVING W. TEEPLE,  
Solicitor of Complainant-Appellant.

LINDABURY, DEPUE & FAULKS,  
Solicitors of Defendant-Respondent.

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THE HISTORY OF THE

ROYAL SOCIETY OF LONDON

FROM ITS INSTITUTION

TO THE PRESENT TIME

BY JOHN VAUGHAN

IN TWO VOLUMES

VOLUME THE SECOND

LONDON

PRINTED BY R. CLAY AND COMPANY

BUNGAY, SUFFOLK

1912

BY APPOINTMENT TO HER MAJESTY

THE QUEEN, HISTORICAL RECORDERS

AND TO HIS MAJESTY THE KING

OF SWEDEN, HISTORICAL RECORDERS

OF DENMARK, HISTORICAL RECORDERS

OF NORWAY, HISTORICAL RECORDERS

OF THE NETHERLANDS, HISTORICAL RECORDERS

OF BELGIUM, HISTORICAL RECORDERS

OF GERMANY, HISTORICAL RECORDERS

OF AUSTRIA, HISTORICAL RECORDERS

## New Jersey Court of Errors and Appeals

Between

FLORA A. MORRISON,  
Complainant-Appellant,

*and*

STANDARD OIL COMPANY OF NEW  
JERSEY (a corporation of the  
State of Delaware),  
Defendant-Respondent.

ON BILL FOR  
INJUNCTION.

### BRIEF FOR COMPLAINANT-APPELLANT.

#### Statement.

This is a suit brought by Flora A. Morrison, a private property owner, of the Borough of Atlantic Highlands, County of Monmouth, as complainant, for an injunction to restrain Standard Oil Company of New Jersey, a private corporation, as defendant, owning land near complainant's premises, from erecting upon its said land a plant consisting, among other things, of six (6) large tanks, for the receipt and storage therein of some millions of gallons of gasoline, kerosene, fuel oil, furnace oil, and other inherently dangerous, highly inflammable, and explosive petroleum products, on the ground that the creation and use of said oil storage plant on the shore front of Sandy Hook Bay, and in a residential locality near complainant's premises, will constitute a nuisance, primarily as to complainant, and incidentally as to other residents and property owners in the immediate neighborhood thereof, in the Borough of Atlantic Highlands.

On July 23, A. D. 1929, complainant filed her Bill of Complaint, accompanied by her Affidavit, in this suit, and thereupon, the same day, an Order was made by the Chancellor, upon the advice of Vice-Chancellor John J. Fallon, requiring the above named defendant to show cause before the Chancellor, at the Chancery Chambers, in the City of Jersey City, on Monday, the 29th day of July, A. D. 1929, why an injunction should not issue according to the prayer of the bill of complaint.

Thereafter, the matter was continued from time to time, for the taking of affidavits *ex parte*, until the 12th day of August, A. D. 1929, when said affidavits were filed, and the matter was argued before Vice-Chancellor John Bentley, who reserved decision thereon.

On August 20, 1929, Vice-Chancellor Bentley filed his opinion concluding that the Order to Show Cause should be discharged, and advised an order discharging the aforesaid order to show cause.

## POINT I.

**The bill of complaint charges a private nuisance primarily.**

An examination of the bill of complaint (S. of C., p. 7, line 20) discloses complainant's ownership for many years last past, of premises known by the street number 111 Bay Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey; that defendant Company recently acquired neighboring premises consisting of about eighteen and one-half (18½) acres, known as the "Benson Tract," distant about one hundred feet (100') from complainant's line; that the defendant intends to use its

said land, recently acquired, as a basis for construction thereon immediately of a plant consisting, among other things, of six (6) large storage tanks for the storage of gasoline, kerosene, furnace oil, fuel oil, and other petroleum products of a more or less inherently dangerous, inflammable, and highly explosive character; that the said premises with the storage thereon of large quantities of inherently dangerous and highly explosive products near complainant's said premises, in a residential neighborhood, will constitute a nuisance and be an ever present menace, with danger of fires and explosions in and about the said storage plant, and from odors and gases escaping therefrom and spreading over, in and about the neighborhood, with danger of injury to the health, lives and pleasures of people residing in and about the locality (including, of course, complainant), and (Par. 12) "that complainant's home for many years has been located as aforesaid, within the Borough of Atlantic Highlands, and within one hundred feet (100') of the boundary of the said premises of the said Standard Oil Company of New Jersey, where it is designed to locate the said storage plant for the handling and storage of said inherently dangerous petroleum products; and by reason of the premises aforesaid, complainant verily believes that her property will greatly depreciate in value, and that her easement of light and air will be greatly interfered with by the erection and placing of the said oil storage plant as aforesaid."

This suit follows, in general, the lines of *Cleveland vs. Citizens Gas Light Company*, 20 N. J. Eq. 201, and *O'Hara vs. Nelson*, 71 N. J. Eq. 161.

We contend that because complainant's next door neighbors may be injured in the same way that she suffers injury, can afford no substantial reason why complainant is not entitled to the relief she seeks.

## POINT II.

**The keeping and handling of explosive and highly inflammable substances in large quantities in the vicinity of dwellings, is a nuisance per se.**

In the case of *O'Hara vs. Nelson*, 71 N. J. Eq. 161, at page 170, Vice-Chancellor Garrison, refers to the rule with respect to gunpowder \* \* \* quoting from *Heeg vs. Licht*, 80 N. Y. 579, where the Court said: "The keeping or manufacturing of gunpowder or of fireworks does not necessarily constitute a nuisance *per se*. That depends upon the locality, the quantity, and the surrounding circumstances, and not entirely upon the degree of care used", and the learned Vice-Chancellor said:

"If this be the rule with respect to gunpowder, *a fortiori* should it be applied to gasoline? 'As an explosive', it is said, 'the danger is ten times greater than that of gunpowder. It ignites as soon as the blaze is applied to it and becomes explosive when the vapor from it mingles with the atmosphere, in which there happens to be a burning lamp or other light.' *Standard Oil Co. vs. Tierney*, 14 L. R. A. 677 (at p. 682)."

Earlier in the same opinion (*O'Hara vs. Nelson, supra*, at p. 165), the Vice-Chancellor, discussing the expert testimony, said:

"The expert testimony adduced is fortunately not conflicting, and may, in fact, be said to be accordant. This testimony shows that what is commonly termed 'gasoline' is the fourth distillate of crude petroleum. This fourth distillate consists of what is termed 'Naphtha', which, in turn, is subdivided into 'Naphtha A, B and C', and gasoline is the common term applied to 'Naphtha C'. It is so

readily inflammable that it can scarcely be said to have any 'flash point'. Flame coming in contact with it will almost inevitably and invariably ignite it without any appreciable period of previous heat.

If gasoline is brought in contact with flame, when the gasoline is unconfined within narrow limits, it will ignite without exploding. But if the gasoline is confined, and has been vaporized by coming in contact with the air, a gas or vapor is formed, which, when ignited, explodes with all of the incidents connected with the most disastrous character of explosion. One of the witnesses gave an instance of the explosion of a barrel of gasoline on the basement floor of a five-story building which completely wrecked the building, blowing off its roof and killing five persons. Gasoline vaporizes almost instantly upon coming in contact with oxygen. So that, in common use, as soon as gasoline is exposed to the air some of it, at least, always goes off in the form of vapor, which vapor, being heavier than the air, tends to sink. The gravest source of danger with respect to handling gasoline is that since this vapor sinks it is not readily perceptible to one standing upright in a room, because it is along the lower levels and close to the floor, and if it is not agitated by the atmosphere so as to dissipate and blow away out of the room, is likely to be ignited by coming in contact with flame, the ignition causing an explosion, which, as before stated, is of sufficient force to cause great damage. This vapor, unless dispelled by a current of air and dissipated, is likely to travel considerable distance through a building, and will almost inevitably ignite and explode upon coming in contact with any flame."

The learned Vice-Chancellor was there discussing the elements of gasoline. Can it be reasonably said that gasoline is any different to-day than it was then? And should it be necessary at this

late day to again prove what gasoline is and what it does?

This Court said in the case of *McAndrews vs. Collerd*, 42 N. J. L. (13 Vr.) 189, at p. 192:

“The keeping of gunpowder, nitroglycerine, or other explosive substances, in large quantities, in the vicinity of a dwelling-house or place of business, is a nuisance *per se*, and may be abated as such by action at law or injunction in equity; and if actual injury results therefrom, the person keeping them is liable therefor, even though the act occasioning the explosion is due to other persons, and is not chargeable to his personal negligence. Wood on Nuisances, Sec. 142; *Cuff vs. N. & N. Y. R. R. Co.*, 6 Vr. 17.”

In a comparatively recent case, very similar to the case at bar, namely, the case of *Hendrickson vs. Standard Oil Company*, decided by the Court of Appeals of Maryland, June 24, 1915 (95 Atl. 152), the opinion was written for the Court by Judge Urner, who said, among other things, at page 155:

“The seventh paragraph avers that the defendant has recently purchased land adjacent to that of the plaintiff, and the latter is informed and believes that the defendant intends to construct in immediate proximity to the plaintiff’s houses, a tank in which will be stored vast quantities of highly inflammable and explosive oils, whereby, if permitted, the value of the plaintiff’s property will be entirely destroyed.”

And later on, at page 157, the learned Judge states:

“The views we have expressed enable us to deal very briefly with the allegations of the seventh paragraph of the bill, which relate to the prospective installation of a large tank for the storage of inflammable and explosive

oils in immediate proximity to the plaintiff's houses. This would undoubtedly be a nuisance against which the plaintiff would have a clear right to preventive relief."

In the foregoing case, but one tank was referred to. In the case presently at bar, six (6) tanks, to contain millions of gallons of petroleum products, are involved. Therefore, the risk, menace and danger is increased at least six-fold.

In *Zeppenfeld vs. Franklin Motor Service Co.*, 134 N. E. 487 (1922), it was held with respect to the installation of two storage tanks of large capacity, containing some 32,000 gallons, that the installation should be enjoined where they were a menace to the residential neighborhood in which they were located.

To the same effect was the ruling in the case of *Rudder vs. Koopmann*, 37 L. R. A. 487, and *Rhodes vs. Dunbar*, 57 Pa. St. 274.

In the *Koopman* case (*supra*), it was said:

"It is not on the ground alone of their liability to fire, primarily or even secondarily, that they may possibly be dealt with as a nuisance, but on account of their liability to explosion by contact with the smallest spark of fire, and the utter impossibility to guard against the consequences, or set bounds to the injury, which, being instantaneous, extends alike to property and persons within its reach. The destructiveness of these agents results from the irrepressible gases, once set in motion, infinitely more than from the fires which might ensue as a consequence. Persons and property in the neighborhood of a burning building, let it burn ever so fiercely, in most cases, have a chance of escaping injury. Not so when explosive forces instantly prostrate everything near them, as in the instances of powder, nitroglycerine, and other chemicals of an explosive or intensely inflammable nature."

In the case of *Cleveland vs. Citizens Gas Light Company*, 20 N. J. Eq. 201, at p. 205, Chancellor Zabriskie said in the course of a strong opinion:

“Any business, however lawful, which causes annoyances that materially interfere with the ordinary comfort, physically, of human existence, is a nuisance, and should be restrained; and smoke, noise, and bad odors, even when not injurious to health, may render a dwelling so uncomfortable as to drive from it anyone not compelled by poverty to remain.”

That case was one very similar to our present case. There the complainants were tenants in common of four brick houses occupied as dwellings, on Lombardi Street, in the City of Newark. The houses were about four hundred feet from Broad Street. The Citizens Gas Light Company commenced erecting their gas works. It was said (p. 204):

“The gas holder or tank will be about one hundred and eighty feet distant from the complainants' houses, and the retort house, purifier, and other works for the manufacture will be between three hundred and four hundred and fifty feet distant.”

The complainants alleged that the building and working of the gas works so near their houses, would greatly injure their value and render them unfit for residences; that gas works always and necessarily send forth noisesome and unpleasant vapors and smoke which are diffused to an extent greater than the distance to these houses, which will render living in them uncomfortable and unhealthy, and alleged further that gas in holders is liable to explode, and that the explosion of so large a quantity as will be contained in this holder, which it is admitted will be ninety feet in diameter and forty feet high, will destroy the buildings

within several hundred feet of it, and therefore, it is a dangerous erection that should not be permitted in the thickly inhabited part of a city.

The Chancellor said further, at p. 205:

“The principles of law and equity that must govern this case were fully considered and determined by me, in the case of *Ross vs. Butler*, 4 C. E. Green, 294, and I have not found any reason to change the opinion there expressed.”

In concluding the opinion, the learned Chancellor held (p. 210):

“An injunction must issue to restrain the defendants, the gas company, from using what is known as the lime process in purifying their gas, or any process of which lime is a substantial part; and from manufacturing gas in any way that will produce any annoyance to persons dwelling in the houses of the complainants, by any smoke, gases, other effluvia or odors, that may issue from the works.”

And with reference to the buildings themselves, he said (page 210):

“But if after this, in face of the general protest against it, they go on to complete their works, they cannot expect the Courts to take into consideration the total loss of their expenditure, if any annoyance to the comfort of the complainants, or others similarly situated, should require the use of their works to be suppressed.”

In *Ross vs. Butler* (19 N. J. Eq. 294), *supra*, Chancellor Zabriskie said (p. 307):

“An injunction must issue against using the building for burning earthen ware, or any manufacture with pine wood, or any fuel that may emit large quantities of dense

smoke. The injunction, of course, may be removed or modified, if, upon the final hearing of the cause, it appears that the consequences on which this decision is founded, will not follow from such use of the premises."

The erection of a manufacturing plant to make and store gases, hydrogen and oxygen, and the discharge of gases, chemicals and noxious odors was a private nuisance. This gas plant caused reasonable fear of injury to health or property, depreciated the property, and gave out odors offensive to ordinary persons. *Champa vs. Washington Compressed Gas Co.*, 262 Pacif. Rep. 228; Supreme Ct. Washington, 1927.

An excavation for the erection of a powder magazine, intended for the reception of powder, was restrained. The erection was contemplated on the line of a public highway, over a half mile distant from the plaintiff's residence. Erection was restrained without the existence of actual irreparable damage, but to prevent it. *Weir's Appeal*, 74 Pa. St. 230.

The maintenance of underground tanks holding 20,000 gallons of gasoline within a short distance of a dwelling, was a nuisance. *Whittemore vs. Baxter Laundry Co.*, 181 Mich. 564.

A refining plant constituted a nuisance where a necessary consequence of the manufacture was the emission of vapors which constituted a nuisance at common law. *Commonwealth vs. Kidder*, 107 Mass. 188.

The oil storage station here consisting largely of tanks, must be constructed with *vents* and *valves*, as the affidavits disclose.

The affidavit of Buckley (S. of C., p. 81), states:

“I have superintended the building of oil tanks such as the ones proposed to be built on property recently acquired in Atlantic Highlands Borough by Standard Oil Company of New Jersey. I have never seen nor known of a valve which would confine gasoline or oil without some dripping or escape of the valve, and I am of the opinion that it is not possible to make a valve which will be leak-proof as to oil and petroleum products, including gasoline. . . .

“These tanks for the storage of gasoline and oils are usually provided with vents. Through these vents the tank ‘breathes’, and hence, gases and fumes escape in more or less quantities, especially when the tanks are being filled. . . .”

If this were not so, of course, the tanks would explode.

The affidavit of Lockwood, a tool and die-maker and master mechanic, of a machinery plant in New York (S. of C., p. 79), is to the like effect. He says: “I have seen and have handled, and worked upon and with valves of many kinds during all of my career, but have never seen one which would completely and perfectly confine gasoline and oil. After a time they will leak, or drip,—some slowly, and others not so slowly; and I am of the opinion that it is not possible, at least has not been possible up to the present time, to make a valve which is absolutely oil proof from dripping.”

Frank A. Heimbald, an engineer for thirty years, gives his opinion in the following language (S. of C., p. 72):

“I verily believe that even with the utmost care used in connection with the best known and most modern structures and careful maintenance, that it is not possible to so conduct such a plant as the defendant has publicly

announced its intention of constructing and maintaining, to eliminate the danger of the escape of fumes and noxious odors, as well as the danger of pollution of the air therefrom; and the danger of pollution of the waters and beaches of Raritan Bay, or Sandy Hook Bay, by the dripping of oil and gasoline into the said waters, while unloading petroleum products from tank steamers; and likewise the constant danger of explosions from sparks caused by friction arising from the movements of tank trucks and tank steamers; from ordinary careless human conduct on the part of chauffeurs and boatmen; from lightning in the time of storm; from sparks and fires occurring on other premises adjoining defendant's premises, as well as from unknown and unnamable causes; and that, therefore, the said plant and the several structures thereof, will, in my opinion, be and become a nuisance from the very outset, because of the large quantities of highly inflammable, explosive, and inherently dangerous petroleum products to be stored therein."

Therefore, it would appear that the emission of odors and vapors and gases from the said tanks will be inevitable.

This conclusion is further borne out by the affidavit of Hill (S. of C., p. 77), who states:

"I am engaged in the oil business; I own, control and conduct in the State of New Jersey three gas stations, and am in daily personal experience with the handling, storing and dispensing of gasoline and petroleum products, and know the nature of the substance. I have been actively and personally engaged in said business for the past thirteen years, and am still so engaged.

"I have visited, examined and inspected both land and water stations of oil companies, including the Standard Oil Company of New Jersey, in the State of New Jersey, Pennsylvania, Massachusetts, and elsewhere, and I have seen gasoline, oils and petroleum prod-

ucts loaded from steamers into such storage stations, and re-loaded upon trucks for distribution from such storage stations, and I have never seen, in a number of years of experience in observance, examinations and inspections of such storage stations, a single one of such stations where there were not some odors and fumes from escaping gasoline or there were not drippings from pipe lines, hoses, boats and trucks, in and about said stations."

These statements from the affidavits submitted by the complainant, state facts based upon knowledge, and opinions based upon observation and experience.

It has been said that it is not necessary for the purpose of an injunction, that the odors or gases arising in the carrying on of defendant's business should be noxious or unwholesome; it is sufficient if they are so unpleasant or disagreeable as to render life uncomfortable.

*Meigs vs. Lister*, 23 N. J. Eq., 199;  
*Rowland vs. N. Y. Stable Manure Co.*,  
101 Atl. 521.

The drilling and operation of an oil well upon a city lot in close proximity to a dwelling house on an adjoining lot, is a nuisance which may be restrained.

*Cline vs. Kirkbride*, 22 Oh. Cir. Ct., 527.

One may recover damages, in proper cases, for injuries by fumes and gases cast upon his property from an oil refining plant, but what constitutes a nuisance depends upon the reasonableness thereof in the particular locality and the manner and circumstances of its conduct. *Dahl vs. Utah Oil Refining Co.*, 226 Utah Rep., p. 269.

Oil and gas wells are not nuisances *per se*. Whether they are nuisances to a dwelling house and its appurtenances, depends upon their location, capacity and management. When such a well has such capacity, management and location with regard to a dwelling house and its appurtenances as to materially diminish the value thereof as a dwelling, and seriously interfere with its ordinary comfort and enjoyment, it is an abatable nuisance. *McGregor vs. Camden*, 34 S. E. 936 (W. Va.).

A nuisance may consist in the causing of noxious fumes, gases, or vapors, which escape onto neighboring premises.

- Kroecker vs. Camden Coke Co.*, 88 Atl., 955;  
*Wolcott vs. Melick*, 11 N. J. Eq., 204;  
*Ross vs. Buttler*, 19 N. J. Eq., 294;  
*Cleveland vs. Citizens Gas Light Co.*, 20 N. J. Eq., 201;  
*Sayre vs. Newark*, 58 N. J. Eq., 136 (Reversed on other grounds, 45 Atl., 985);  
*Miller vs. Thomas Co.*, 89 N. J. L., 364;  
*Bohan vs. Port Jervis Gas Light Co.*, 122 N. Y., 18;  
*Andrews vs. Perry*, 127 Misc., 320;  
*Pritchard vs. Edison Electric Illum. Co.*, 87 N. Y. S., 225;  
*Rausch vs. Glazer*, 74 Atl., 39;  
*Ross vs. Devan*, 137 Atl., 416.

Quoting from the opinion of Vice-Chancellor Pitney in the very interesting and instructive case of *Hennessy vs. Carmony* (50 N. J. Eq., 616, at p. 624):

“To be prohibited, therefore, from doing the wrongful act which must lead to such results, cannot be regarded, with respect to the defendant, as anything inequitable. Nor,

under such circumstances, can a court of equity rightly withhold its hand on the ground of any supposed inconvenience to those who are the customers of this Company. In a similar situation the English chancellor refused to listen to such an appeal. Such an appeal was made in the case of *Broadbent vs. Imperial Gas Co.*, 7 DeG., M. & G. 436. The complaint was, that vegetables growing in the market-garden of the complainant were injured by the gas of that Company, and when the argument was pressed that this injury was slight in comparison with the benefits conferred by the Company on the public, and that on that account this court would not exercise its power to restrain the manufacture of the gas, Lord Cranworth uses this strong language: He says (at p. 462): 'If it should turn out that the Company had no right so to manufacture gas as to damage the plaintiff's market garden, I have come to the conclusion that I cannot enter into any question of how far it might be convenient for the public that the gas manufacture should go on.' He further remarks, 'but unless the Company had such a right, I think the present is not a case in which this court can go into the question of convenience or inconvenience, and say, where a party is substantially damaged, that he is only to be compensated by bringing an action *toties quoties*. That would be a disgraceful state of the law and I quite agree with the Vice-Chancellor in holding that in such a case this court must issue an injunction, whatever may be the consequence with regard to the lighting of the parishes and districts which this Company supplies with gas.' "

And the Vice-Chancellor proceeds to say:

"This seems to me to settle the rule in this State."

In the case of *Harrigan vs. Sinclair & Valentine Co.*, 85 N. J. Eq., p. 85, Vice-Chancellor Lewis said orally:

“The application is that an injunction may issue restraining the Sinclair & Valentine Company, a corporation doing an ink business in the Borough of Edgewater, from maintaining a nuisance upon its premises. The complainants, Mrs. Ellen E. Harrigan and a large number of the residents of the place, property owners, allege that there issue from the defendant’s property noxious and unwholesome fumes which render living in the vicinity of it not only unbearable, so far as physical comfort goes, but destructive to health. . . .” (at p. 87) “In a long line of cases this court has dealt with situations similar to the one disclosed by the evidence in this case. Recently, Chancellor Walker, in *Kroecker vs. Camden Coke Co.*, 82 N. J. Eq. 373, and Vice-Chancellor Stevens, in the Board of Health of Irvington *vs. Schmidt*, 83 N. J. Eq. 35, have expressed views which I shall follow now.

“It seems to me clear that upon the facts in this case the court must grant the relief desired by the complainant.”

### POINT III.

#### **The proofs on behalf of the defendant do not controvert those of the complainant.**

The bill of complaint charges, among other things, and it is supported by the affidavits on behalf of the complainant:

(a) That complainant is, and for many years last past has been, the owner of her premises at #111 Bay Avenue, Atlantic Highlands, County of Monmouth and State of New Jersey. This is not denied.

(b) That the Borough of Atlantic Highlands is a duly incorporated borough in Monmouth County, and contains a population of about fifteen hundred men, women and children; that the said Borough

is very largely residential in character, and that the northerly boundary of said Borough is Sandy Hook Bay, or Raritan Bay. This is not denied.

(c) That within the territorial limits of said Borough of Atlantic Highlands is a certain tract of land known as the "Benson Tract", which the defendant Company has recently acquired. This is not denied.

(d) That the defendant intends to construct on the aforesaid premises called the "Benson Tract", a large plant, consisting among other things of six (6) large storage tanks for the storage of gasoline, kerosene, furnace oil, fuel oil, and other petroleum products, all of a more or less inherently dangerous, inflammable, and highly explosive character, and that it is the intention of the defendant Company in connection with the aforesaid plant, to receive the aforesaid petroleum products by means of and from tank steamers fastened at the end of a pier to be built and extending out into Sandy Hook Bay, or Raritan Bay, for a distance of twenty-five hundred feet, with pipe lines thereon, for the unloading of said tank steamers, and that it is the announced purpose of the defendant Company, in connection with the aforesaid structures, to convey and distribute the said petroleum products from its said storage plant, in and throughout the Borough of Atlantic Highlands and other places, by means of commodious tank trucks operating through the streets and over the roads of the said Borough, and likewise of the said County. This is not denied.

(e) That the defendant Company has publicly, and in writing, announced its intention to immediately begin operations for the construction of its said plant upon the said premises. This is not denied.

(f) That the said premises and the said storage plant for storing highly explosive petroleum products are located and intended to be located within the territorial limits of the Borough of Atlantic Highlands, in a residential zone, at a place immediately adjoining a main highway, and not over approximately one thousand feet from a church and school property representing a value of approximately One Hundred and Fifty Thousand Dollars (\$150,000) or more, and upon the Bay front of the said Raritan Bay. This is not denied.

(g) That the said Borough of Atlantic Highlands has been, and is, without any zoning ordinance, and has been, and is powerless to effectually prevent the locating and building of structures for the receipt, storage and distribution of gasoline and other inherently dangerous, highly inflammable and explosive products by the defendant Company. This is not denied.

(h) That complainant's home for many years has been located as aforesaid, within the Borough of Atlantic Highlands, and within one hundred feet of the boundary line of defendant's premises where it is designed to locate the said storage plant; and that by reason of the premises aforesaid, the complainant verily believes that her property will greatly depreciate in value and that her easement of light and air will be greatly interfered with by the erection and placing of said oil storage plant as aforesaid, and that if odors and gases are suffered to exude and escape from the said storage plant, the same will be detrimental and deleterious to her health and welfare and to the health and welfare of other citizens, residents, and taxpayers of Atlantic Highlands. This is not denied.

The affidavit of defendant's President (S. of C., p. 26) concludes with the statement that the

plant proposed is of the most modern and improved type and "the risk of fire and explosion therefrom is negligible".

The affidavit of defendant's Engineer (S. of C., p. 28) states (at p. 29), that the defendant's property "is located at the extreme westerly end of said Borough and in a sparsely settled section thereof". He does not deny that it is a residential section. He says (p. 30) that the tanks "will be built entirely of steel with standard cone roofs and will be so constructed as to be gas tight". He says nothing about vents or how the tanks will "breathe". He says (p. 31): "Pipe lines consisting of steel line pipe with screw joints will be laid on said pier for the transmission of petroleum products from tank barges to the storage tanks. Each of these pipe lines will have a check valve and gate valve on either end thereof so as to prevent leakage. In addition to these valves, the open ends of the pipe lines at the pier head will be capped with steel plates and securely screwed to the joint so as to make them leak proof when not in use". He does not say that they cannot, and will not leak or drip, and he does not say that the said valves will be tight. He does say (p. 32), that there will also be a gate valve on each of such lines outside of the storage tanks and a "swing pipe" device inside of each tank to prevent the contents of the tank from discharging "in case the valves on the pipe line should fail to function".

This is an admission by inference that at times the valves do fail to function.

He says further, that the foam building located north of the pump house will contain two pumps for pumping the chemicals generating the foam protection into the storage tanks "in case of fire."

Here again is an admission by inference of the risk of fire.

He says further, that the method of construction to be used "will reduce the possibility of fire and explosion to a minimum, and even though the contents of the tank ignite or explode, there will be no possibility of their escaping either into the Bay or onto the adjoining property and causing injury or damage thereto."

This is not a denial, but, on the contrary, a recognition of the risks and dangers involved in the operation of such a plant.

The affiant, however, goes on to say: "During the past nine years the defendant and its predecessor in business has handled and stored billions of gallons of their products at these distributing stations, and in so far as I know, there has never been a fire or explosion in any of its storage tanks."

The number of fires and explosions in oil tanks and tank steamers, with great loss of life and many injured, in the United States since June 1st, last, is known to everyone who reads the newspapers.

The affiant proceeds to state (p. 33): "That the danger from fire and explosion in distributing stations of this kind is negligible and remote, and not real and imminent as the complainant would make it appear."

He does not state that fires and explosions do not or cannot happen in plants similar to the one in question.

The affidavit of another Engineer of defendant (S. of C., p. 40) states (p. 41): "The distributing station proposed to be constructed by defendant at Atlantic Highlands will be similar in all respects to its station in Atlantic City, a photograph of which is annexed hereto as Schedule 'B.'"

That station, however, is not in a residential section or near any church or school, or in a local-

ity where it may cause damage to abutting property owners, by reason of fires or explosions or depressing and uncomfortable fumes and odors.

This affiant also does not deny the risk of fires and explosions, but says (p. 43): "It is, of course, a recognized fact that petroleum products are inflammable." And he goes on to say that "standard forms of protection have been developed, and, when used, the risk of fire and explosion is negligible."

He speaks of the defendant's policy in reference to the construction of its distributing station, and says that when this plant is constructed in accordance with that policy, "the possibility of fire and explosion is reduced to a minimum, and even though the contents of the tanks should ignite or explode, there is no possibility of their escaping into Sandy Hook Bay or onto the adjoining property and causing injury or damage thereto. While there is a possible risk of fire or explosion due to lightning or some other unforeseen contingency, such a risk is extremely remote," etc.

It seems to the writer that the possibility of said risks instead of being "extremely remote", will be quite the contrary.

At p. 44 he speaks of the manner in which the tank barges will be unloaded, and says (p. 45): "As soon as this operation has been completed, the gate valve on either end of the pier line is closed, the flexible pipe line on the barge is disconnected, and the cap replaced on the open end of the pier line to prevent leakage.

He does not say, however, that these pipe lines, valves, etc., do not leak or drip.

Likewise, the affidavit of defendant's Automotive Engineer (S. of C., pp. 50, 51 and 52) states that "the risk of personal injury or property damage resulting from fire or explosion is negli-

gible" in connection with the use of the tank trucks and trailers.

The affidavit of defendant's Manager (S. of C., pp. 53, 54 and 55) states: "I have examined the fire records of the defendant and its predecessor for the past fifteen years. These records show that neither the defendant nor its predecessor have had a storage tank fire or explosion in New Jersey during said period."

He says nothing, however, about its subsidiaries.

The supplemental affidavit of Mr. Franklin and Mr. Skehan, defendant's employes (S. of C., pp. 57, 58, 59 and 60) state that no odors or vapors that will be in anywise obnoxious or detrimental or deleterious to the health, comfort or welfare of either the complainant or any other persons, will be likely to escape, or will escape, from the distributing station which defendant proposes to locate in said Borough.

Not one of the affidavits submitted on behalf of the defendant states a contradiction of the scientific and known facts, with respect to the valves and vents, disclosed by the affidavits of Messrs. Richard F. Lockwood (S. of C., pp. 79 and 80), and William C. Buckley (S. of C., pp. 81 and 82), submitted on behalf of complainant. In other words, the affidavits on behalf of the defendant merely show that the defendant will use modern methods in constructing the said storage tank station, and will not allow to happen, or will use its best endeavors to prevent from happening, the conditions and things charged in the bill of complaint and affidavits submitted on behalf of complainant.

We respectfully submit that these affidavits do not completely meet and controvert those submitted by the complainant.

## POINT IV.

**A preliminary restraining order should have been granted.**

The learned Vice-Chancellor who heard the motion for the Chancellor, in his opinion (S. of C., p. 83 to 88), indicates that he followed the ruling in *Citizens Coach Co. vs. Camden Horse R. R. Co.*, 29 N. J. Eq. 299. In that case complaint was made that the defendant continually used the road and track of the complainant in and upon certain streets of the City of Camden, by driving its coaches upon and along its said roads and rails, and thus hindered, annoyed and obstructed the complainant in the lawful use and exercise of its property and franchises.

The facts of the case were much different than those of the case at bar, and we contend, with due respect to the rules there laid down by this Court, that the same have little or no application to those which should be applied to the case here at bar.

The other cases referred to by the learned Vice-Chancellor were all cases involving the elements of public use, necessity or convenience. Cases wherein the public interest, either actual or constructive, were involved, or where there was proper public authority for the enterprise in question.

In the case at bar, in the first part of his opinion, Vice-Chancellor Bentley said (S. of C., p. 84):

“The complainant is the owner of a parcel of real estate at Atlantic Highlands, where the defendant has recently taken title to another piece of land, upon which it has secured permission from the governing body of the Borough to erect large tanks in which to store gasoline.”

The affidavits do not show (as indeed it is not the fact) that any ordinance on the subject of the "permission" was ever passed by the governing body of the Borough of Atlantic Highlands. The permission referred to in paragraph "6" of the bill of complaint (S. of C., p. 9) was merely a building permit, or permits. The manner in which the authorities of the Borough of Atlantic Highland dealt with this matter is to some extent shown by the affidavits of William P. Irwin (S. of C., pp. 65 to 67) and David P. Smith (S. of C., pp. 73 to 75). So that it cannot strictly be said that the defendant had any legal permission, in the absence of an ordinance, to establish its tank station in a residential section of the Borough of Atlantic Highlands. No ordinance has ever been passed by which it could have obtained such permission.

The locating of the proposed tank station in a residential neighborhood, on the very shore of Sandy Hook Bay, near the residences of complainant and others, is, we think, the most ambitious enterprise of its kind ever undertaken by the defendant in this state. Nor have we been privileged to find in the books any ruling by the higher judicial authorities of our state respecting so ambitious a plan, or where the amount of explosive materials to be stored was so great. The greater the quantity, the greater the danger to the surrounding neighborhood.

To permit the establishment of the proposed tank station by the defendant in the neighborhood of complainant's home, will be to impair the value of complainant's property, and to substantially interfere with its comfortable and peaceable enjoyment.

Respectfully submitted,

IRVING W. TEEPLE,  
Solicitor for and of Counsel with  
Complainant-Appellant.

## New Jersey Court of Errors and Appeals

*Between*

FLORA A. MORRISON,  
Complainant-Appellant,

*and*

STANDARD OIL COMPANY OF NEW  
JERSEY (a corporation of the  
State of Delaware),  
Defendant-Respondent.

ON BILL, ETC.  
ON APPEAL  
FROM THE  
COURT OF  
CHANCERY.

### BRIEF ON BEHALF OF DEFENDANT- RESPONDENT.

This is an appeal from an order of the Court of Chancery dated August 20, 1929, advised by Vice-Chancellor Bentley discharging an order to show cause why a preliminary injunction should not issue enjoining respondent from constructing a proposed petroleum products distributing station on its property in the Borough of Atlantic Highlands, New Jersey, until the further order of the Court. The order appealed from appears on pages 88-89 of the Record, and the opinion on which it is based on pages 83-88 thereof. The sole issue involved in the appeal is whether upon the showing made by the affidavits submitted on behalf of the respective parties the Court below was justified in refusing to grant the desired preliminary injunction. On behalf of respondent we respectfully submit that it is too clear to admit

of question that such was the case, and that the order appealed from should therefore be affirmed.

### Statement of the Case.

A concise statement of the facts of the case is required as none is contained in appellant's brief.

Respondent is the owner of a tract of land comprising about 18 acres situate in the Borough of Atlantic Highlands. It is situated on Sandy Hook Bay at the extreme westerly end of the borough and in a sparsely settled section thereof (Rec., p. 29, l. 17). Its location is shown by the aerial photograph appearing opposite page 36 of the record and another photograph appearing opposite page 90 thereof. On each of these photographs respondent's property is to the right of the bridge shown as extending into Sandy Hook Bay. Its location is also shown on a diagram opposite page 38 of the record and the map of Atlantic Highlands opposite page 34 thereof where it is designated as Block 131. From these exhibits it will readily be seen that the location of respondent's proposed distributing station is an isolated one, bounded on two sides by the waters of Sandy Hook Bay and Wagner's Creek.

The station will be similar in all respects to one respondent has in Atlantic City, a photograph of which appears opposite page 48 of the record. It is to consist of six tanks of uniform height, a pier with pipe lines thereon, a reinforced concrete and hollow tile garage and office building, a steel loading platform, a pump house and a foam house. The tanks will be built entirely of steel with standard cone roofs and will be so constructed as to be gas tight. They will be surrounded by a reinforced concrete wall of sufficient height to impound their entire capacity and in addition

thereto each tank will be separated from every other tank by an intermediate earthen wall capable of impounding a large portion of its contents. The entire station will be equipped with the most modern type of safety valves and other devices which every-day experience has shown will insure its safe operation. The tanks will be filled from barges by means of pipe lines extending along the pier to be built out into Sandy Hook Bay, and their contents will be withdrawn into automobile trucks through other pipe lines leading to the loading platform (Rec., pp. 29-32; 41-45).

Respondent already has 76 of such stations throughout the State. As appears from the map opposite page 46 of the record they are located in every part thereof and in municipalities both large and small. Through them it and its predecessor in business has during the past fifteen years or more stored, handled and distributed billions of gallons of their products. Respondent's principal competitors have more than 100 similar stations located generally throughout the State. Many of these stations have been operated for several years and there has never been a fire or explosion in any of the tanks connected with any such stations so operated by respondent or others (Rec., p. 32, l. 28; p. 44, l. 9; p. 55, l. 23).

Appellant is the owner of a house and lot in the same borough. Her property does not adjoin that of respondent although at one point the two properties come within about one hundred feet of each other. The tank of respondent's proposed station that will be nearest to appellant's property will be distant about 350 feet therefrom. Appellant's property is not located on any water front and is distant about 500 feet from the high water line of Sandy Hook Bay (Rec., pp. 29-30).

Appellant's bill of complaint and her affidavit show that the proper municipal authorities have duly granted respondent a permit for the construction of its proposed station for use in the ordinary conduct of its business (Rec., p. 9, l. 30; p. 17, l. 28). Before the permit was granted the Mayor and members of the Borough Council inspected respondent's above-mentioned Atlantic City station and at their request respondent changed the original plans for its proposed station in Atlantic Highlands to conform to those which had been employed in the building of the Atlantic City station (Rec., p. 42, l. 23).

Appellant's primary objection to the proposed station is that *in her opinion* its construction and operation will be detrimental to the community in which she resides and to property values therein. The gravamen of her bill of complaint appears from the following quotation therefrom:

“The keeping and handling of said products will constitute not only a nuisance, but a continuing menace and danger in and about the neighborhood and locality thereof, in the Borough of Atlantic Highlands aforesaid, and there will be ever present the risk and danger of pollution of the shores and waters of Raritan Bay, or Sandy Hook Bay, and the Shrewsbury River, with great loss consequent thereon to the recreational and business pursuits, including the fisheries and clamming industry thereof, and likewise to property values in and about the neighborhood, and particularly the complainant's said property, by reason of the danger of dripping and seepage of said petroleum products into the said waters; and in like manner will be ever present the menace and danger of fires and explosions in and about the said storage plant, and from odors and gases escaping therefrom and spreading over, in and about the neighborhood, and great danger of injury to the health, lives and pleasures of the people

residing in and about the locality of the Borough of Atlantic Highlands aforesaid."

Coupled with these allegations is the further one that the repose and quiet of the community will be disturbed and the use of its streets rendered more dangerous by the operation thereon of respondent's trucks (Rec., pp. 10-11).

It is important to note that the bill makes no allegation of any threatened injury to appellant's property other than this: "*Complainant verily believes that her property will greatly depreciate in value and that her easement of light and air will be greatly interfered with.*" As appears from paragraph 10 of the bill of complaint, appellant merely alleges that a threatened nuisance "will in all probability" result from the operation of the proposed station. There are no facts stated to support this view, and the allegations of the entire bill with respect to the possibility of a nuisance consist merely of statements of conclusions.

So, too, the affidavits in support of the bill as to all material features of the case contain only conclusions unsupported by facts. Like the allegations of the bill, they are based on "*belief*" without anything to indicate that it is well founded. Neither appellant's own affidavit nor those of any other affiant contain a single statement to the effect that her property will be in anywise endangered by respondent's proposed station or that her use or enjoyment thereof will thereby be in any wise impaired or lessened.

On the other hand, every averment of threatened nuisance contained in appellant's affidavits is fully met and overcome by detailed, explicit affidavits made by men of long and large experience in the construction and operation of such stations who are familiar with every detail thereof and of the safeguards which prevent them from constituting a danger either to life or property.

These affidavits demonstrate that appellant's fears as to the injury which *may* result to her, her property or the public from the construction and operation of the station in question are totally unfounded. A review of the affidavits upon which the learned Vice Chancellor based his order denying the preliminary injunction can best be hereinafter dealt with and this is therefore not attempted here.

## ARGUMENT.

### I.

#### **Appellant represents no interest entitling her to the injunction she seeks on the public behalf.**

Everything as to which appellant complains has to do solely with the public interest, viz., the safety of the streets of the Borough of Atlantic Highlands, including the control and regulation of the use and speed of motor vehicles in such streets and the safety appliances with which they are to be equipped; the use, storage, sale and disposition of inflammable or combustible materials; the safeguarding of the health of the community; the protection of life and property from fire, explosion and other danger; and the prevention of the pollution of public waters.

Appellant is in no wise a trustee of the public interest in any such matters. Specific legislation with which the Court is familiar has vested the control and regulation of each of them in public officials. Even were the parties to the suit willing that the Court of Chancery should take jurisdiction of the cause, their consent thereto would be ineffectual. *Hudson County v. Central Railroad Company of New Jersey*, 68 N. J. Eq. 500, 505.

## II.

**Appellant's bill and affidavits make no showing of any such particular, direct and substantial injury to her or her property as entitles her to the injunction for which she prays.**

As already appears, both appellant's bill and affidavit state that the building of respondent's proposed distributing station has been duly authorized by the proper public authorities (Rec., p. 9, l. 30; p. 17, l. 28). Even if its construction constituted a threatened nuisance, the offense would be a public and not a private one, as would also any actual nuisance that might result from the operation of the station after its completion. Appellant therefore has no standing or interest entitling her to enjoin any such offense. Her situation is no different from that of any other member of the community even though her property may be nearer the proposed station than that of some other property owner. Any danger or injury that may possibly result to her or her property from the alleged threatened nuisance differs only in degree from that to which the public generally may be subjected. No such difference entitles one to restrain either a threatened or an actual public nuisance. Before he can do so he must show that the injury to him will be of a different kind from that which other members of the public will sustain, viz., one that will cause him a particular, direct and substantial loss resulting in irreparable injury to him.

This rule is thoroughly settled in this State, as is also the one that the proper remedy against a threatened public nuisance is an information filed by the Attorney-General on behalf of the State, or should the nuisance become an actual one, an indictment of the offender. In *Hinchman v. Pat-*

*erson Horse Railroad Co.*, 17 N. J. Eq. 75, 78, Chancellor Green said:

“In cases of unquestioned public nuisance, a court of equity will not interfere by injunction, except in cases of special and serious injury to the complainant, distinct from that suffered by the public at large.”

In *Higbee & Riggs v. Camden & Amboy Railroad Co.*, 19 N. J. Eq. 276, it was held that

“An individual cannot maintain a suit to restrain a nuisance, which injures him only in rights enjoyed by him as one of the public. In such case, an information must be filed by the public, in the name of the Attorney General, on behalf of the State.”

In *Morris & Essex Railroad Co. v. Prudden*, 20 N. J. Eq. 530, 536, 537, Mr. Justice Depue, speaking for this Court, said:

“The remedy by indictment being so efficacious, courts of equity entertain jurisdiction over public nuisances with great reluctance, whether their intervention is invoked at the instance of the Attorney General, or of a private individual who suffers some injury therefrom distinct from that of the public. \* \* \* There must not only be a violation of the plaintiff’s rights, but such a violation as will be attended with substantial and serious damage. \* \* \* No remedy exists in these cases, by an individual, unless he has suffered some private, direct and material damage beyond the public at large, as well as damage otherwise irreparable. \* \* \* Mere diminution of the value of the property of the party complaining, by the nuisance, without irreparable mischief, will not furnish any foundation for equitable relief.”

In *Van Wageningen v. Cooney*, 45 N. J. Eq. 24, 25, Chancellor McGill said:

“This is a private bill brought to restrain a public nuisance. It is well settled that the remedy by indictment is so efficacious that in cases of public nuisances courts of equity will interfere, at the instance of a private individual, only when his private rights are so violated by such a nuisance that he is subjected to substantial, serious and irreparable damage. He must suffer some private, direct and material damage, beyond that which is suffered by the public at large, and which, but for the interference of equity, will be an irreparable injury to him.”

In *H. B. Anthony Shoe Company v. West Jersey R. R. Co.*, 57 N. J. Eq. 606, 617, Mr. Justice Van Syckel, in delivering the opinion of this Court affirming a decree advised by Vice-Chancellor Pitney, said:

“A suit cannot be maintained to restrain a nuisance which injures the complainant only in rights enjoyed by him as one of the public. In such case an information must be filed for the public in the name of the Attorney General on behalf of the State, and it makes no difference as to the remedy that the individual would be much more inconvenienced by the nuisance than many others. \* \* \* In cases of nuisance it is well settled that a complainant cannot acquire a stable footing in a court of equity without showing some special injury to himself distinct from that done to the public at large.”

In *Humphreys v. Eastlack*, 63 N. J. Eq. 136, Vice-Chancellor Grey said, at p. 142:

“A long line of decisions in this state declares that a private citizen cannot sustain a bill to abate a public nuisance, unless he suffers in himself or his property some special injury peculiar to himself, and not as one of the public. \* \* \* The Court of Appeals has declared that a court of equity will not en-

join an offense against the public at the instance of an individual, unless he suffers some private, direct and material damage beyond the public at large, as well as damage otherwise irreparable.”

A case in this Court showing the extent to which this rule has been applied is *Bouquet v. Hackensack Water Company*, 90 N. J. L. 203. The plaintiff owned land on the Hackensack River on which was a dwelling house used and occupied by him as a boarding house. He had many boarders and did a profitable business, but the water in the river in front of his property was fouled by the act of the defendant, as a consequence of which the boarders remained away and he suffered material loss. In sustaining the judgment below, this Court said at p. 204:

“The rule, as we understand it, is this: ‘That in order that an individual may maintain an action for a public nuisance, he must prove that he thereby suffers a particular, direct and substantial injury.’ \* \* \* It may be conceded that plaintiff’s injury was substantial; there is no more doubt whether it was direct, but that may also be conceded for the sake of argument. It was not, however, particular, as we have already seen. The result is that the trial judge would have been justified in awarding a non-suit or in directing a verdict for the defendant.”

As the learned Vice-Chancellor well said in his opinion below:

“There is not a word in the bill to indicate that the complainant is threatened with any injury of any of her rights except, as she thinks, as every other member of the public would be affected if the defendant is not put under injunction” (Rec., p. 87, l. 21).

## III.

**Even if the use which respondent proposes to make of its property would diminish the value of appellant's property (of which there is no proof), this constitutes no ground for granting the desired injunction.**

The only claim of direct injury to appellant's property is that it is believed that it "will greatly depreciate in value". Even were this belief shown to be well founded, which it is not, this would not entitle appellant to an injunction. In *Zabriskie v. Jersey City & Bergen Railroad Co.*, 13 N. J. Eq. 314, 318, Chancellor Green said:

"A mere diminution of the value of property by the nuisance, without irreparable mischief, will not furnish any foundation for equitable relief."

The same statement was made by Mr. Justice Depue for this Court in *Morris & Essex Railroad Co. v. Prudden*, *supra*, and by Vice-Chancellor Van Fleet in *Halsey v. Rapid Transit Street Railway Co.*, 47 N. J. Eq. 380, 386.

As was said by Vice-Chancellor Leaming in *City of Northfield v. Atlantic Board of Freeholders*, 85 N. J. Eq. 47, 50:

"A person cannot be denied the right to make a lawful use of his property merely because such use is operative to injure the market value of his neighbor's property; \* \* \* the mere disturbance of market value is not regarded as an infringement of an existing right in the party damnified and cannot be made the basis of relief of this nature."

*Bourgeois v. Miller*, 89 N. J. Eq. 285, is to the same effect.

## IV.

**The affidavits upon which the preliminary injunction was denied in nowise support appellant's claim that respondent's proposed distributing station will constitute a nuisance. On the contrary, they entirely disprove such contention.**

The storage of petroleum products, even in large quantities, is, of course, not a nuisance *per se*. *Corpus Jur.*, Vol. 46, p. 709.

Except for mere statements of conclusions based upon conjecture and speculation, there is nothing in appellant's affidavits to indicate that respondent's proposed distributing station will constitute a nuisance. They contain no averments of fact from which a threatened nuisance can be inferred. No claim is made that the proposed station will not be properly built, or that it will not be operated with the highest degree of care under expert supervision and management and with entire safety to appellant, her property and the public.

Appellant, in addition to her own affidavit, submitted those of several other residents of the Borough of Atlantic Highlands and vicinity which for the most part consist of nothing more than mere statements of a belief, without any basis therefor, that the operation of the proposed station will be a menace to the community and depreciate the value of the surrounding property. For instance, the affidavit of *William P. Irwin*, a Recorder and Justice of the Peace in the Borough, says: "I verily believe that such a plant as that contemplated by the defendant will be a great detriment to the community; that it will lower property values seriously, and will be a nuisance, a detriment, and a constant menace and danger

to the health, safety and welfare of the community" (Rec., p. 67, l. 2). *Mr. Britton*, who operates a camp for boys in an adjacent municipality, merely says: "This will result not only in a marked depreciation in value of property in the neighborhood, but will also affect the saleability and leaseability" (Rec., p. 69, l. 33). *Mr. Heimbold*, without any showing of knowledge or qualification to express an opinion, says "the said plant and the several structures thereof will, in my opinion, be and become a nuisance from the very outset, because of the large quantities of highly inflammable, explosive and inherently dangerous petroleum products to be stored therein" (Rec., p. 72, l. 30). *David P. Smith*, a former member of the Borough Council, only says that: "Should the oil and gasoline storage tanks be erected by the Standard Oil Company, the value of property would depreciate and become unsaleable. It is my opinion that a condition such as exists in Carteret, Bayway, Bayonne and other places in New Jersey which are already too numerous, will come about" (Rec., p. 75, l. 15).

*Fred H. Hill*, who owns and operates three gasoline stations, merely says with regard to such stations that he has never seen one "where there were not some odors and fumes from escaping gasoline or there were not drippings from pipe lines, hoses, boats and trucks in and about said stations", and that he does not believe it is possible for respondent to operate its proposed station without danger (Rec., pp. 76-78).

*Richard F. Lockwood*, who is a tool and die maker and familiar with valves but makes no claim of any knowledge as to the construction or maintenance of a petroleum products station, merely says that he has "never seen one (a valve) which would completely and perfectly confine gasoline and oil. After a time they will leak, or

drip,—some slowly, and others not so slowly, and I am of the opinion that it is not possible, at least has not been possible up to the present time, to make a valve which is absolutely oil proof from dripping” (Rec., pp. 79-80).

A similar affidavit is made by *William C. Buckley*, a “superintendent of structural steel construction work”, who says “it is true that such valves customarily used in such construction are water tight, and that new valves are frequently oil tight and gas tight when first used, but petroleum products deteriorate such valves and it is not long before they are leaky to a greater or lesser degree” (Rec., pp. 81-82).

At most, appellant’s affidavits show nothing more than that there may be some “dripping” or “leakage” from the pipes by means of which the tanks will be filled and emptied, *if* the valves are not properly maintained. None of them undertake to say that they will not be properly maintained, or, even if they should not, that this will cause appellant or anyone else any danger or discomfort. The alleged prevalence of some “dripping” or “leakage” at tanks and automobile filling stations which Mr. Hill mentions only goes to prove that no danger or discomfort will result should this occur at respondent’s proposed station.

Nor do appellant’s affidavits in any wise indicate that there will ever be any likelihood of (a) pollution of the air in the neighborhood of appellant’s premises; (b) pollution of the waters of Sandy Hook Bay; (c) danger from the driving of respondent’s automobile trucks; or (d) deprivation by the respondent of any easement of light or air. As to any possible danger to the appellant, her property or the public, they are entirely devoid of facts to support the apprehension they express. In summarizing these affidavits, the learned Vice Chancellor said:

“It is true that a number of affidavits presented by the complainant indicate a fear that danger will exist and damage ensue to persons, property and property rights. But the only affiants whose affidavits are of any value are Lockwood, a tool and die maker, and Buckley, who says he is superintendent of the structural steel business ‘for a large New York concern.’ They both express a fear that no valve can be manufactured which will not become leaky after being in use ‘for a time,’ although they both agree that valves can be manufactured that will be tight at first. Each of them seems to have overlooked the simplicity with which a valve may either be reconditioned or replaced by a new one. It would be difficult for me to believe that an organization such as the defendant would carelessly imperil its own large investment, to say nothing of its duty to the public and the enormous litigation, and probably indictment, which it would face as the result of any such catastrophe as the complainant fears. \* \* \* In short, I think her fears entirely unfounded.”

In contrast with appellant’s affidavits, those of respondent demonstrate that its proposed station will not only be built in accordance with the most modern and approved methods of construction and equipped with the most advanced design of safety appliances and devices, but that it can and will be operated with the highest degree of care with entire safety to appellant and the public.

*Charles G. Black*, respondent’s President, has been connected in business with it and its predecessor for upwards of forty years. He is thoroughly familiar with the methods employed by it in the construction, maintenance and safeguarding of the tanks which it uses in its numerous distributing stations, and the one the construction of which is herein sought to be enjoined. He says:

“The plant which the defendant proposes to construct in the Borough of Atlantic Highlands, New Jersey, is of the most modern and approved type. There is included therein every form of protection against fire or explosion that has been developed not only by the representatives of the Company and its predecessor in business over a period of many years, but by representatives of the National Board of Fire Underwriters, the American Petroleum Institute and other organizations associated with the National Fire Protection Association. Where such methods are employed in the maintenance and operation of a plant of the kind proposed to be installed by the defendant in the said Borough of Atlantic Highlands, the risk of fire and explosion therefrom is negligible.” (Rec., p. 27.)

*Mr. Skehan*, respondent's Branch Manager in New Jersey, who has charge of the construction and maintenance of its distributing stations throughout the State and also of the automotive equipment by which its products are distributed throughout the State, says:

“The methods of safeguarding the maintenance and operation of the defendant's said proposed new distributing plant are of the most modern, complete and effective kind. They are such as are now employed not only by the defendant but its largest competitors in connection with the construction, maintenance and operation of similar distributing plants. It is the uniform practice to surround the tanks in such stations by an earthen embankment or a concrete wall of sufficient capacity to contain the contents of the tanks. These and the other safeguards which defendant intends to use at its said proposed new distributing station have proved ample to avoid any danger which might otherwise exist from such distributing stations being located and maintained even in thickly congested localities. My state-

ment to this effect is based upon long experience and extended observation, and I am certain that defendant's said proposed distributing station in the Borough of Atlantic Highlands will constitute no nuisance and no menace either to complainant's property or to any other property \* \* \*'' (Rec., pp. 54-55).

''As the Manager of the New Jersey branch of the defendant's business I visit numerous of its distributing stations from time to time. No odors or vapors are ever permitted to or do escape therefrom that are in anywise unwholesome, detrimental or deleterious to the health, comfort or welfare of any of the residents or persons in the vicinity of any such station, and I know from the plans prepared for the defendant's proposed new distributing station in the Borough of Atlantic Highlands that the same thing will be true as to this station'' (Rec., pp. 59-60).

The affidavit of *Robert W. Black*, the engineer directly in charge of the construction of the proposed station, describes in detail the manner in which it will be constructed, maintained and operated, and the modern type of safety valves and other devices and appliances which will be installed therein to insure its safe operation. He says:

''The method of construction proposed to be employed by defendant in building its said distributing station at Atlantic Highlands and the safety devices proposed to be installed therein for use in the operation thereof, will reduce the possibility of fire and explosion to a minimum, and even though the contents of the tanks should ignite or explode there will be no possibility of their escaping either into the bay or onto the adjoining property and causing injury or damage thereto.

''As above stated, the defendant owns and operates 76 distributing stations in New Jersey at the present time. During the past

nine years the defendant and its predecessor in business has handled and stored billions of gallons of their products at these distributing stations, and in so far as I know, there has never been a fire or explosion in any of its storage tanks'' (Rec., p. 32).

*Charles M. Franklin*, another of respondent's engineers in charge of the construction and maintenance of all of its distributing stations in this State, shows that at the present time respondent's principal competitors have over one hundred of such stations throughout New Jersey, and respondent has seventy-six thereof located in the various municipalities designated on the blue print appearing opposite page 46 of the Record. Several of these are located in much more congested and built-up areas than the site of the proposed new station. After describing the general layout and the high degree of care with which the proposed station will be operated, Mr. Franklin adds:

"It is, of course, a recognized fact that petroleum products are inflammable. Standard forms of protection against fire or explosion where such products are contained in such distributing stations have been developed by the National Board of Fire Underwriters, the American Petroleum Institute, and other organizations associated with the National Fire Protection Association, and when used the risk of fire and explosion is negligible. It has been defendant's policy to follow the recommendations of these respective agencies in the construction of its distributing stations, and its plans for the construction of the station in question will embody those most recently promulgated. These include the tank spacing, the details of tank construction, the location of the respective pipe lines, the arrangement of valves and fittings, the reinforced concrete retaining wall around the tank field, the earthen em-

bankments between the tanks, and the most modern type of foam protection on each tank. As so constructed, the possibility of fire and explosion is reduced to a minimum, and even though the contents of the tanks should ignite or explode, there is no possibility of their escaping into Sandy Hook Bay or on to the adjoining property and causing injury or damage thereto. While there is a possible risk of fire or explosion due to lightning or some other unforeseen contingency, such risk is extremely remote and there has not been a tank fire or explosion in any of the defendant's 76 distributing stations during the past 12 years while I have been in its employ, or that of its predecessor in business, and in so far as I know, there has not been a tank fire or explosion in the distributing stations of any of the defendant's competitors during said period" (Rec., pp. 43-44).

\* \* \* \* \*

"There is no possibility that any odors or vapors that will be in anywise obnoxious or detrimental or deleterious to the health, comfort or welfare of either the complainant or any other persons who may at any time be within the Borough of Atlantic Highlands will be likely to escape or will escape from the distributing station which the defendant proposes to locate in said Borough. \* \* \* I base this statement not only upon my knowledge as to the methods that will be employed in the construction of said station and that will be followed in the maintenance and operation thereof, but upon my long experience in connection with the construction, maintenance and operation of many of the defendant's other distributing stations and my observation thereof as the result of many visits thereto and inspections thereof" (Rec., pp. 57-58).

All of respondent's affiants are men who have had many years of practical experience and first-hand knowledge as to the matters covered by their affi-

avits which conclusively show that appellant's apprehensions are entirely unfounded.

Appellant's attempt to prevent the construction and maintenance of respondent's proposed station corresponds to those dealt with in several early cases in this State where efforts were made to prevent the construction or operation of railroads, saw-mills, steam engines, garages, gas plants, etc. Illustrations thereof will be found in *Cleveland v. Citizens Gas Light Company*, 20 N. J. Eq. 201, and *Duncan v. Hayes and Greenwood*, 22 N. J. Eq. 25. In the latter of these cases Chancellor Zabriskie said, at pp. 27, 28:

“A court of equity will not restrain, by injunction, any lawful business or the erection of any building or works for such business, because it is supposed or alleged that such business will be a nuisance to a dwelling house near it; it must be clear that the business will be a nuisance and that it cannot be carried on so as not to be such. \* \* \* No lawful occupation will be restrained or interfered with, unless it will actually interfere with the comfortable enjoyment of life, and it appears beyond any reasonable doubt that it will so interfere.”

*Bourgeois v. Miller*, 89 N. J. Eq. 285, represents a more recent effort of the same kind. There it was sought to prohibit the use of a building for a public garage. The building in question was in a residential and closely built-up neighborhood and within twenty feet of a hotel owned by one of the complainants, and about sixty-eight feet from a hotel owned by another thereof. In denying an injunction, Vice-Chancellor Backes said, at pp. 292, 293:

“In confirmation of the views I entertain that a public garage is not of, and in, itself a menace to contiguous life and property, and that whether it is a nuisance in fact depends

upon the manner in which it is kept and the business conducted, I need only point to the myriad in operation throughout the land, erected in densely populated communities, amid and alongside hotels and hospitals, theatres and public buildings, and without casualty more than usual in ordinary trade and enterprise. \* \* \* It may properly be said of public garages, as new institutions in our social and commercial life, as was once upon a time said concerning steam agencies: "They are absolutely necessary to the progress of the community, and each member must suffer the incidental damage and liability to danger which arises from their non-negligent use. They are not nuisances if properly maintained and operated'."

There are also many well considered cases in other states showing that respondent's proposed station cannot properly be regarded as a threatened nuisance. We shall refer to but few of them, and only briefly.

In *Pennsylvania Co., etc. v. Sun Co.*, 138 Atl. 909 (Sup. Ct. Pa. 1927), a demurrer to a bill similar to the one in the instant case was sustained, the Court saying in part as follows:

"In considering the question in this case, we must determine from the disclosed uses to which the property is to be put in the place described, not only whether it possesses the power to do harm, but whether injury will necessarily result from the proposed use, or whether the use subjects the property to such contact with outside agencies that its probable result will be dangerous \* \* \*

"There is no allegation in the bill that the construction is improper, that the equipment is not of the ordinary and usual kind, or that the regulation of the plant and its supervision is not of the best; nor does the bill aver that there will be a failure to afford proper appliances in its conduct. The business is very generally carried on, and the same complaints

as contained in this bill could be made against almost any business. Take, for illustration, gas containers or tanks, storage tanks for automobile use, automobiles, dynamite used in the conduct of business, paper companies using large quantities of paper, or hay in a field or barn—all are readily ignited and susceptible to flame, sparks, lightning and combustion. To stamp them as nuisances *per se* without showing, not merely apprehension or anticipation, but that the reasonable and normal result of the use will be a fire and consequent destruction, would greatly widen the heretofore existing scope of equity jurisdiction, and greatly hamper necessary business through groundless fears.”

\* \* \* \* \*

“The injury must be actually threatened, not merely anticipated; it must be practically certain, not merely probable. It must further be shown that the threatened injury will be an irreparable one which cannot be compensated by damages in an action at law. A mere decrease in the value of complainant’s property is not alone sufficient.”

In *Harper v. Standard Oil Co.*, 78 Mo. App. 338, 344, 345 (1898), the Missouri Court of Appeals said:

“The tanks in question were used for the storage of gasoline and coal oil. While their contents are inflammable they are not spontaneously combustible, and can only be ignited by extrinsic agencies. \* \* \* It is not believed any well considered case holds that the storage of gasoline and coal oil in suitable tanks constitutes a nuisance *per se*. \* \* \* All that appears on this subject in the record is the propinquity of the tanks to plaintiff’s property, a distance of about seventy-five feet, and to the main tracks of the two railroads, a distance of fifty and one hundred feet, respectively. There is no evidence whatever that the tanks are not so constructed as to

prevent ignition from flying sparks or embers from passing locomotives, or that they are not guarded from such dangers by competent watchmen. Conceding for the argument that if the tanks were improperly exposed they would be likely to take fire from passing engines, the difficulty remains that there is no substantial evidence in the record showing that they were left in that condition. \* \* \* it is further apparent that defendant was not guilty of negligence by the mere act of locating its nearest tank seventy-five feet from plaintiff's dwelling. It had the absolute right to the reasonable use of its own property."

To the same effect see *Adams v. Gorrell*, 161 N. E. 786 (Ohio Court of Appeals, 1927); *State ex rel. v. Cozad*, 213 Pac. 654 (Sup. Ct. of Kan. 1923), and *Boren v. Magnolia Petroleum Co.*, 266 S. W. 623 (Tex. Ct. of Civ. App. 1924).

Among the cases upon which appellant relies as supporting her claim that a nuisance is threatened is *Cleveland v. Citizens Gas Light Company*, *supra*. There an attempt was made to enjoin the erection and operation of a gas works on Lombardy Street, Newark, the reservoir of which was proposed to be located about 180 feet from complainants' homes. Practically the same claims were made as in the instant case, but Chancellor Zabriskie refused to restrain the erection or operation of the proposed works or to do more than prohibit defendant from using a certain lime process in the manufacture of its gas, saying in part as follows:

"As to the danger of explosion of the gas holder, I do not think sufficient is proved to show it to be a dangerous nuisance. In the first place, the danger of there being an explosion is small. The instances are rare, and it cannot happen from the ordinary use of the holder; and then the danger to any building at the distance of these of the complain-

ants, does not appear. No proof is given of any injury to buildings at that distance; I do not think it as dangerous as the steam engines which are scattered everywhere through our cities.”

\* \* \* \* \*

“\* \* \* I am of opinion that no injunction against manufacturing gas ought to issue at the present stage of the case. The proof is not clear, except in case the gas shall be purified by lime, that the manufacture will seriously annoy any one at these houses \* \* \*.”

Two years later the same learned Chancellor in *Duncan v. Hayes and Greenwood*, *supra*, commented on the proven wisdom of his decision in the *Citizens Gas Light Company* case, and said:

“No lawful occupation will be restrained or interfered with, unless it will actually interfere with the comfortable enjoyment of life, and it appears beyond any reasonable doubt that it will so interfere.”

The case principally relied upon by appellant is *O'Hara v. Nelson*, 71 N. J. Eq. 161. The situation dealt with there by Vice Chancellor Garrison was entirely different from the one presented in the instant case. The garage there under consideration was a frame building which came within four or five feet of complainant's dwelling. It appears from the Vice-Chancellor's opinion that the decision was based on his belief that the handling of gasoline in such a building, or as he stated several times, within “a room” necessarily involved danger. In the opinion below in the present suit Vice Chancellor Bentley not only points this out, but properly says that it is impossible to intelligently apply excerpts from the opinion in the *O'Hara* case without bearing in mind the facts with which the Court was then dealing. Referring further to the same earlier opinion, he says:

“Since the date of that opinion (February 1906) the use of gasoline as a fuel for internal combustion motors has increased beyond anything that man had then conceived. This product of petroleum is now stored in quantities sufficient to do incalculable harm and damage, if exploded, in every community, large and small, from one end of the country to the other. But, of course, intelligent regulations, worked out by the police authorities and the manufacturers, such as the defendant, have resulted in safeguarding life and property so that injury from this source is a most unusual thing. If it were intended to accumulate great stores of gasoline in a populous neighborhood and within a wooden building, the Vice Chancellor’s alarms might be as well founded today as they were nearly a quarter of a century ago, before the methods of storing and handling this commodity had been so greatly improved as they are now.” (Rec., p. 85.)

None of the other decisions cited by appellant need be reviewed. For the most part they were rendered in cases where (1) a clear, actual or “statutory” nuisance already existed; or (2) the tanks complained of almost touched the complainant’s dwelling, as in *Whittemore v. Baxter*, 181 Mich. 564, where the distance was only eleven feet; or (3) the tanks were attempted to be constructed in direct violation of State and local fire and building regulations, as in *Zeppenfeld v. Franklin Motor Service Co.* 134 N. E. 487; or (4) where dynamite and gun powder were stored in a frame building within the heart of a city, as in *Rudder v. Koopmann*, 37 L. R. A. 487.

To prevent respondent from making the proposed use of its property would not only result in a deprivation of its right to use the same for a clearly lawful purpose, but would necessitate disregarding the safety with which similar distributing stations have been operated by the re-

spondent and others engaged in the same line of business not only throughout the State but throughout the entire country for many years.

## V.

**The preliminary injunction was also properly denied because respondent's affidavits completely met and controverted those of the appellant.**

As already fully appears, every material allegation contained in either appellant's bill or affidavits was directly met and unequivocally controverted. Under the rule laid down by this court in *Citizens Coach Company v. Camden Horse R. R. Co.*, 29 N. J. Eq. 299, a denial of the preliminary injunction sought by appellant was clearly required quite apart from the other grounds upon which the learned Vice Chancellor also properly based his decision. As he points out, this rule has been followed without exception by this Court, and as recently as in *Feld v. Kantrowitz*, 99 N. J. Eq. 847, 848, it said:

“In short, it (defendant's affidavit) specifically traverses the fundamental allegations of the bill, and this calls for the application of the well settled general rule that when, by the answer and affidavits, the material facts in the bill upon which the complainant's equity depends are met by full, explicit and circumstantial denial under oath, a preliminary injunction should not be granted.”

**For the reasons stated we respectfully submit that the order appealed from should be affirmed.**

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FREDERIC J. FAULKS,  
Of Counsel.

