

INDEX

	Page
Bill of Complaint	1
Answer	5
Petition of Appeal	9
Notice of Appeal	11
Final Decree	12
Memorandum	15
Substitution	17
Testimony	18

WITNESSES.

Complainant's:

Margaret Friel,	
Direct	19
Cross	24
Benjamin Kleme,	
Direct	29
Cross	31
Re-direct	33
Michael McCann,	
Direct	33
Cross	34
William Cullen,	
Direct	37
Cross	38
Michael Slator,	
Direct	39
Cross	39
Annie Sagger,	
Direct	40
Rose Friel,	
Direct	41

	Page
John L. Fitzgerald,	
Direct	42
Cross	44
Re-direct	48
Re-cross	49
Sarah F. Johnson,	
Direct	49
William H. Hoff,	
Direct	51
Cross	54
<i>Defendant's:</i>	
Wilbur J. Bernard,	
Direct	60
Re-called:	
Direct	63
James Del Guercio,	
Direct	62
Re-called:	
Direct	68
Cross	72
Frank E. Shephard,	
Direct	72
Cross	76
Re-direct	88
Re-cross	88
Re-direct	89
Re-cross	89
Re-called:	
Direct	90
Cross	91
Alexander M. Borrie,	
Direct	94
Dudley Shephard,	
Direct	95
Cross	98

	Page
John J. Daly,	
Direct	99
John Monahan,	
Direct	100

EXHIBITS.

Complainant's:

	Offered Page	Printed Page
Exhibit C-1—Deed dated Mar. 29, 1892	20	103
Exhibit C-2—Deed dated Aug. 19, 1918	20	108
Exhibit C-3—Deed dated Oct. 4, 1918	20	116
Exhibit C-4—Notice dated June 20, 1896	24	
Exhibit C-5—Notice dated Aug. 22, 1927	24	
Exhibit C-6—Survey of Friel prop- erty	43	121
Exhibit C-7—Book	50	
Exhibit C-8—Map	53	122

Defendant's:

Exhibit D-1—Map	74	
Exhibit D-2—Map of Town of Belle- ville	88	
Exhibit D-3—Survey	90	123
Exhibit D-4—Survey	96	124

New Jersey Court of Errors and Appeals

BILL OF COMPLAINT.

10

IN CHANCERY OF NEW JERSEY

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

The Complainant, Margaret Friel of the Town
of Belleville, Essex County, N. J., respectfully
shows, that:

20

1. She is the owner of premises in the Town of
Belleville, Essex County, New Jersey, described
as follows:

BEGINNING in the Northerly line of John Street
at a point distant measuring in the line of said
street 175 feet Westerly from the line dividing
lands formerly T. B. Coddington, deceased, from
lands of the Widow Ryan, said beginning corner
being also the Southeast corner of a lot hereto- 30
fore conveyed by said party of the first part to—
Holland; thence (1) Northerly along the line of
the same 153 feet and 3 inches to the line of lands
formerly of James Hornblower, deceased; thence
(2) Easterly along the line thereof 24 feet and
3 inches; thence (3) Southerly in a line a little
East of parallel with the first described line to a
point distant Easterly 25 feet from the beginning
corner, measuring in the line of said street; thence 40
(4) Westerly along the line of said John Street 25

Bill of Complaint

feet to the point and place of BEGINNING. The lot described and hereby conveyed is 25 feet on John Street, and 24 feet and 3 inches on Hornblower's line and extends Northerly from John Street to said Hornblower's line.

10 3. That the said premises were conveyed to her late husband, Maurice Friel, by Theodore Sandford and wife *et als*, by Deed dated March 29th, 1893, and recorded in Book R. 56 of Deeds for Essex County, page 542. That this complainant, with her late husband, Maurice Friel, moved into the said premises in October, 1893, and has had actual occupancy and possession thereof ever since.

20 4. Complainant says that the said lot to her knowledge and belief was of a depth of 153 feet and 3 inches, and that fences from time to time have been erected, at that point on the rear of the said lot. Complainant has lived on the said premises since 1893, and to her knowledge the depth of the said lot has never been disputed or questioned until within the last three or four months when one, James Del Guercio, who has
30 purchased the property in the rear of complainant's property, claims that complainant's hedge fence and other shrubbery etc., planted there by complainant encroaches upon his line some six or seven feet. That complainant has been ordered off the premises by said Del Guercio; that on June 20th last, the said Del Guercio served a notice upon complainant, a copy of which is hereto annexed and forms part hereof, marked Exhibit
40 A; that unless the said "hedge fence and other plants planted there" by complainant were

Bill of Complaint

removed that the said James Del Guercio would remove same. Complainant's Solicitor had a conversation at that time with the Attorney representing Del Guercio, Mr. Andrew Boylan, and nothing further was heard regarding the matter until August 22nd, 1927, when complainant
10 received by registered mail, a letter, a copy of which is hereto annexed and forms part hereof, marked Exhibit B, said letter having been sent by Griffinger & Griffinger, Attorneys representing the said Del Guercio, that unless the said hedge fence and other shrubbery were removed by Wednesday, August 24th, 1927, that the said Del Guercio will himself remove the said fence and shrubbery. That in addition the said James Del
20 Guercio has threatened that he will go on the said premises in force and rip up the complainant's said fence and shrubbery.

5. That the said James Del Guercio purchased the said premises from Nicholas Striglio and Rachel, his wife, by Deed dated November 20, 1924, recorded November 21st, 1924, in Book M. 71 of Deeds for Essex County, page 268. That the said premises are described as follows: 30

First Tract: BEGINNING at the corner formed by the intersection of the southerly side of Rutgers Street with the northerly side of Lincoln Street as the same are laid out on a survey made by Frank T. Shepard, dated April 2, 1924, and from said beginning point running thence (1) North 71 degrees 1 minute and 30 seconds west along the said side of Rutgers Street 91.60 feet; thence (2) south 23 degrees west 114.33 feet; 40

Bill of Complaint

thence (3) north 67 degrees west 15 feet; thence (4) south 23 degrees west 169.19 feet; thence (5) south 71 degrees 2 minutes west 119.12 feet to the westerly side of Lincoln Street; thence (6) north 20 degrees 28 minutes east 281.84 feet to the point and place of BEGINNING.

6. That complainant is now the owner of the said premises the same having been conveyed to her by the Belleville Building & Loan Association on October 4th, 1918, by Deed recorded in Book X 60 of Deeds for Essex County, on page 489.

7. That complainant has had made a survey of the said premises in question, and the said survey shows that her property extends to a depth of 153 feet and 3 inches northerly from the line of John Street; and that her surveyor has placed stakes on the said lot which coincided exactly with the line of the hedge fence as now existing and established.

8. Complainant, on account of the threats and notices served by the said James Del Guercio, is fearful lest he, the said James Del Guercio shall trespass upon her land and commit waste thereon to her irreparable injury.

Complainant is without remedy in the Court of Law, and therefore prays:

1. That the said James Del Guercio may answer the bill of complaint and each statement made herein.

2. That the said James Del Guercio may be restrained from trespassing upon the lands of the

Answer

said Complainant, or from committing any injury thereto, until he shall establish his right, if any, upon the lands of said complainant, by a suit at law; and that in the meantime the *status quo* may be preserved.

3. And that Complainant may have such further or other relief as to the Court shall seem equitable and just.

4. That a writ of subpoena may issue commanding the said Defendant, James Del Guercio, to answer the said Bill of Complaint, and to abide by such order or decree as the court may make in the premises.

JOSEPH M. DEGNAN, Solicitor for and of Counsel with Complainant.

ANSWER.

IN CHANCERY OF NEW JERSEY

Between: MARGARET FRIEL, Complainant, and JAMES DEL GUERCIO, Defendant. On Bill etc. Answer

The Defendant, James Del Guercio of the Town of Belleville, County of Essex and State of New

Answer

7. Defendant has not sufficient knowledge or information to form a belief as to the allegations contained in Paragraph Seven of the Complaint.

8. The defendant denies any threatened trespassing upon the land of the complainant.

9. Defendant states that he has legal title to the said six and one-half feet of land in dispute, and said six and one-half feet of land begins on the line of land formerly of James Hornblower and extends six and one-half feet northerly along Lincoln Street for a depth westerly of twenty-four feet and three inches; that the legal title of the defendant to the said six and one-half feet of land on Lincoln Street in dispute, dates back for a period of over sixty years and that the complainant has had no possession inconsistent, superior or paramount to the possession and title of the said defendant and that any possession to the said six and one-half feet of land occupied by the complainant, has always been subservient and permissive to the said legal title of the complainant.

30

FIRST SEPARATE DEFENSE.

1. Defendant denies any title or claim of title in the Complainant.

2. Defendant reserves the right to move to dissolve said Injunction for want of equity in a Bill.

40

Solicitor of Defendant.

Of Counsel.

PETITION OF APPEAL.

(Filed April 30, 1928)

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

The petition of James Del Guercio, appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the 7th day of February, 1928, wherein Margaret Friel was complainant and the said James Del Guercio was defendant, in this respect to wit:

That the said decree adjudges that the complainant has title to, and her predecessors in title, have, ever since March 29th, 1892, been in possession of certain lands in the Town of Belleville, fronting on the westerly side of Lincoln Street, starting at the intersecting point of the northerly line of John Street, and thence running 153 feet 3 inches in a northerly direction to the boundary line of a tract of land owned by petitioner.

And said decree further adjudges that there is a shortage of six and a half feet of land abutting on said Lincoln Street, between John and Rutgers Streets; and that respondent, Margaret Friel, has title to the said six and a half feet by adverse possession and therefore petitioner is enjoined from entering into and upon said boundary line henceforth and forever; and taxing costs and a counsel fee of \$500.00 against petitioner.

20

30

40

Petition of Appeal

And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid that the respondent has title to said land abutting on said Lincoln Street, forming the boundary line between the lands of the parties of this litigation, and charging the respondent with the said exorbitant counsel fee, upon the ground that the decree is erroneous, for the said court was without jurisdiction to determine the question of title to said lands; and also because the petitioner should have been given a reasonable opportunity to establish his title and establish in a court of law his right to enter the disputed lands and premises.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the said particulars, reversed, set aside and for nothing holding, and that your petitioner may have such relief in the premises as this Honorable Court shall deem fit, reasonable and proper.

GRIFFINGER and GRIFFINGER,
Solicitors of Appellant.

Dated: March 6, 1928.

A true copy.

Joseph B. Fitzpatrick,
Clerk.

NOTICE OF APPEAL.

(Filed Feb. 18, 1928)

IN CHANCERY OF NEW JERSEY

Between MARGARET FRIEL, <p style="text-align: right;">Complainant,</p> and JAMES DEL GUERCIO, <p style="text-align: right;">Defendant.</p>	}	On Bill etc. Notice of Appeal	10
--	---	-------------------------------------	----

The defendant, James Del Guercio, hereby appeals from the final decree made in the above entitled cause on the Seventh day of February, 1928 by the Chancellor on the advice of Vice-Chancellor Alonzo Church, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in all Causes.
Dated: February 7, 1928.

GRIFFINGER & GRIFFINGER,
Solicitors for and of Counsel
with Defendant, James Del Guercio.

I conceive there is good cause for appeal in the above entitled cause.

HARVEY GRIFFINGER,
Of Counsel with Defendant,
James Del Guercio.

A true copy
Thomas Barber
Clerk

FINAL DECREE.

(Filed Feb. 7, 1928)

IN CHANCERY OF NEW JERSEY

Between 10 MARGARET FRIEL, <div style="text-align: right; padding-right: 20px;">Complainant,</div> <div style="text-align: center; padding: 5px 0;">and</div> JAMES DEL GUERCIO, <div style="text-align: right; padding-right: 20px;">Defendant.</div>	}	On Bill etc.
---	---	--------------

20 This matter coming on to be heard in the presence of Joseph M. Degnan, Solicitor for and of Counsel with the Complainant, Margaret Friel; and Griffinger & Griffinger, Solicitors for the Defendant, James Del Guercio; and it appearing that the Complainant has title to and been in actual possession of premises situate, lying and being in the Town of Belleville, County of Essex and State of New Jersey, described as follows:

30 BEGINNING in the Northerly line of John Street at a point distant measuring in the line of said street 175 feet westerly from the line dividing lands formerly T. B. Coddington, deceased, from lands of the Widow Ryan, said beginning corner being also the southeast corner of a lot heretofore conveyed by said party of the first part to—Holland; thence (1) northerly along the line of the same 153 feet and 3 inches to the line of lands formerly of James Hornblower, deceased; thence
 40 (2) easterly along the line thereof 24 feet and 3 inches; thence (3) southerly in a line a little east of parallel with the first described line to a point

Final Decree

distant easterly 25 feet from the beginning corner; measuring in the line of said street; thence (4) westerly along the line of said John Street 25 feet to the point and place of BEGINNING. The lot described and hereby conveyed is 25 feet on John Street and 24 feet and 3 inches on Hornblower's line and extends northerly from John Street to said Hornblower's line. 10

And that said premises have been in the possession of Complainant and her predecessors in title ever since March 29, 1892. That the beginning point of the described premises extends from the present monumented line of John Street.

And it further appearing that the defendant, James Del Guercio, is the owner of premises, situate, lying and being in the Town of Belleville, County of Essex and State of New Jersey, described as follows: 20

BEGINNING AT the corner formed by the intersection of the southerly side of Rutgers Street with the westerly side of Lincoln Street, as the same are laid out on a survey made by Frank T. Shepard, dated April 2nd, 1924, and from said beginning point running thence (1) north 71
 30 degrees 1 minute and 30 seconds west along the said side of Rutgers Street 91.60 feet; thence (2) south 23 degrees west 114.33 feet; thence (3) north 67 degrees west 15 feet; thence (4) south 23 degrees west 169.19 feet; thence (5) south 71 degrees 2 minutes east 119.12 feet to the westerly side of Lincoln Street; thence (6) north 20 degrees 28 minutes east 281.84 feet to the point and place of BEGINNING. 40

Final Decree

That there is a shortage of six and one-half feet of land abutting on the west side of Lincoln Street, between Rutgers and John Streets.

10 And it further appearing that the premises owned by the Complainant, Margaret Friel, have been enclosed and fenced in accordance with the dimensions in the said premises described herein, for a period of over thirty-four years and therefor complainant has title to the said six and one-half feet in dispute.

20 IT IS THEREUPON, on this 7th day of February, Nineteen Hundred and Twenty-eight, by His Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED, and the said Chancellor doth by virtue of the power and authority of this Court, hereby ORDER, ADJUDGE AND DECREE, that the said Defendant, James Del Guercio, his agents, servants or employees are restrained and enjoined from entering into and upon the premises owned by the Complainant, above described, or any part thereof, henceforth and forever.

30 AND IT IS FURTHER ORDERED that the said Defendant, James Del Guercio; do pay to the said Complainant, Margaret Friel, the sum of Five hundred Dollars counsel fee and the costs of this suit to be taxed.

E. R. WALKER,
C.

Respectfully advised.
Alonzo Church,
V. C.

40 A true copy.
Thomas Barber,
Clerk.

MEMORANDUM.

IN CHANCERY OF NEW JERSEY

Between
MARGARET FRIEL,
Complainant,
and
JAMES DEL GUERCIO,
Defendant. 10

This Memorandum is not to be published in the official or unofficial reports.

Joseph M. Degnan for complainant. 20
Griffinger & Griffinger for defendant.

CHURCH, V. C.

This is a bill filed by the complainant to enjoin defendant from trespassing on her land and tearing down a fence and hedge thereon.

Defendant alleges that the fence and hedge encroach on his land which is at the rear of 30 complainant's about six and a half feet.

A temporary restraint was granted on September sixth by Vice Chancellor Backes and the case then came before me on final hearing.

The premises in question were conveyed to Maurice Friel, husband of complainant, on March 29, 1893, and by mesne conveyance subsequently came into the possession of complainant. 40

Memorandum

Complainant testified she moved into the premises on October 25, 1893, and has continuously resided there ever since. The premises were fenced as they are now, when she moved in, and the fences have been maintained on the same lines ever since.

Complainant was corroborated by five witnesses, old residents of the neighborhood, who testified that the fence had been there since 1893, and that the fence now there is on the same line as the original fence.

She also produced two surveyors who testified that her rear line fence coincides with the measurements set forth in her deed. There is no denial by defendant that the complainant's land has been fenced as it is now for over thirty-four years.

It is unnecessary, therefore, to go into a discussion of the paper title. She clearly, as against this defendant, has adverse possession, and I will advise a decree making the injunction permanent.

SUBSTITUTION.**NEW JERSEY COURT OF ERRORS AND APPEALS**

MARGARET FRIEL,

Complainant-Respondent,

vs.

JAMES DEL GUERCIO,

Defendant-Appellant.

10

} On Appeal
} from Chan-
} cery.

It is on this Twenty-seventh day of April, A. D. Nineteen Hundred and Twenty-eight, consented and agreed that Anthony R. Finelli be, and he is hereby substituted as counsel for the Appellant in the above stated cause.

GRIFFINGER & GRIFFINGER,
Solicitors of Defendant,

I accept the foregoing designation.

ANTHONY R. FINELLI.

TESTIMONY.

IN CHANCERY OF NEW JERSEY

November 28, 1927.

10 Between
 MARGARET FRIEL,
 Complainant,
 and
 JAMES DEL GUERCIO,
 Defendant.

20 Transcript of shorthand notes of testimony taken in the above entitled cause before his Honor, Alonzo Church, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, in the presence of Joseph M. Degnan for complainant; Griffinger & Griffinger (By Harry Griffinger) for defendant.

(Complainant's and defendant's counsel open.)

30 The Court: It seems to me, with this opening, that the question is purely one of what this complainant got by her deed.

Mr. Degnan: Exactly.

The Court: I suppose it is admitted that this defendant has tried to get his six feet back and there is no use taking any testimony as to that.

Now, what we want to find out is what the surveys and the searches, and so on, disclose, as to this particular piece of property.

Have you any maps?

40 Mr. Degnan: Yes, sir; I have.

Margaret Friel—Direct

The Court: Well, this is a question for engineers, it seems to me.

Mr. Degnan: Well, it is also a question, if the Court please, of the fence line. If this woman has had possession for thirty-four years, with her fences around it, that would establish of itself— 10
 (interrupted)

The Court: When did she take title?

Mr. Degnan: She moved there in 1894.

Margaret Friel. Pardon me. 1893.

The Court: 1893. All right. That might establish adverse possession.

Mr. Degnan: I was going to prove that by her.

The Court: All right.

Mr. Degnan: Then I will back that up with my 20
 surveyors.

MARGARET FRIEL, sworn for the complainant.

Direct-examination by Mr. Degnan:

Mr. Degnan: We will offer these title deeds in evidence. There is no objection to them; they are admitted in the answer. 30

The Court: You had better describe them for the record. Offer it.

Mr. Degnan: I am offering a deed made by Theodore Sanford, Margaret L. Sanford, his wife, Annie G. Sanford, Edward J. Sanford, and Marie J. his wife, to Maurice Friel. It bears date the twenty-ninth day of March, 1892. It is recorded in the Register's office of the County of Essex in 40

Margaret Friel—Direct

Book R-26 of deeds for Essex County at page 542.

(Paper marked Exhibit C-1.)

Mr. Degnan: The next is a deed from John R. Flavel—

10 The Court: Sheriff.

Mr. Degnan: —sheriff of Essex County, to the Belleville Building & Loan Association. This bears date August 19, 1918, and is recorded in the Register's office of Essex County in Book S-60 of Deeds for Essex County, page 331.

(Paper marked Exhibit C-2.)

20 Mr. Degnan: There is then a deed from the Belleville Building & Loan to Margaret Friel, widow, dated October 4, 1918, and recorded in the Register's office of Essex County in Book X-60 of Deeds for Essex County, page 489.

(Paper marked Exhibit C-3.)

Q. Now, Mrs. Friel, you are the wife of Maurice Friel? A. Yes, sir.

Q. And you are now the owner of premises on 132 John Street, are you? A. Yes, sir.

30 Q. When did you move into the premises that you now reside in? A. October the twenty-fifth, 1893.

Q. And were you married, at that time? A. That was the day I was married.

Q. And you have lived there continuously, have you? A. Always, ever since, yes.

Q. And raised a family? A. Yes, sir.

40 Q. Now, when you entered into the property—what does it consist of? A. Well, a house and a lot, 25 by 153 feet 3 inches.

Margaret Friel—Direct

Q. And was a fence around the property, when you moved into it? A. Yes, sir.

Q. On how many sides was the fence? A. It was around what is now Lincoln Street.

Q. That is on the easterly side? A. All the way up and fenced across the back and as the old 10 fences decayed they were replaced by others.

Q. Was there a fence on the west side? A. Between the property of Holland and I.

Q. Holland was the property on the west? A. Yes, sir.

Q. From that time have always fences been maintained around that property? A. Yes, sir.

Q. Now, has the rear—has there or has there not been always a fence there? A. Yes, sir. 20

Q. Was there any change in the fence line at any time? A. Not that I know of

Q. There is a hedge fence there now, isn't there? A. There is a wire.

Q. There is a hedge fence there now? A. Yes, sir.

Q. And a wire? A. Yes, sir.

Q. When was the wire fence put down? A. Why, two years ago—I can't just remember—as the old fence was decayed it was replaced. 30

Q. About how many years ago would you say the wire fence was put down? A. About seven or eight years.

Q. When was the hedge planted, Mrs. Friel? A. About four years ago, to the best of my memory.

Q. Was the hedge planted inside or outside the wire fence? A. Inside the wire.

Q. Is there or is there not at this time an old 40

Margaret Friel—Direct

fence post standing there, the remnants of an old fence? A. Yes, sir.

Q. Beyond—was there always a fence back of the house next to you on the west, the Holland property? A. On the Holland property, yes.

10 Q. Beyond that was there ever a fence, to your recollection? A. No, sir.

Q. East of your line down toward Washington Avenue was there a fence? A. Well, in the Ryan property, which is now Mr. Monaghan.

Q. Where did that run from? A. Well, it started from the end of his line.

Q. With reference to your line. A. It is even with mine, as near as I can remember.

20 Q. And is a part of that fence still standing there yet? A. It is all there yet, I guess.

Q. And that is on the property of Mr. Monaghan? A. Yes, sir.

Q. Now, Mrs. Friel, when was the first time that you had any—has your possession ever been disputed as to any part of your property there? A. The first time I knew anything about it was when Mr. Del Guercio wanted to put the drop curb there.

30 Q. Prior to that time did anybody dispute your right? A. No, sir; nobody.

Q. When did Mr. Del Guercio want to put the drop curb there? A. About three years ago, as near as I can remember.

Q. Tell us what that incident was. A. Well, the men were there flagging the curbing.

Q. That was on the new street, Lincoln Street? A. Lincoln Street; yes, sir.

40 Q. When was that cut through—for the record? A. About three or four years ago.

Margaret Friel—Direct

Q. That was right alongside of the easterly line of your property? A. Yes, sir.

Q. Did they have to grade Lincoln Street so it left your property above the street level? A. Yes, sir.

Q. About how many feet? A. Well, it must be 10 five or six feet towards the front.

Q. And have you a fence along that easterly line now? A. Yes, sir.

Q. What kind of a fence? A. Wire.

Q. Anything else? A. Well, there is a hedge along the front.

Q. Yes. Now, tell us the incident about this drop curb. A. Well, I was told he was going to have a drop curb there. 20

Q. Never mind. Tell us what you saw. Did you ever have a conversation with Mr. Del Guercio about this property? A. His brother was up there—

Q. No. Did you have a conversation with James Del Guercio, the defendant in this case? A. Not on that day.

Q. Now, when did you have a conversation with Mr. James Del Guercio— A. Well, later on.

Q. —with reference to your rear line. A. Later 30 on. I can't just remember the date. He came to my house one night and told me he had been into my neighbors and that the ground was his six feet or six and a half feet in the rear. I told him I couldn't understand how that was. The line had never been changed and the old stakes were still there.

Q. Yes. A. And he said that Mr. Shepard had made a new line. "Well," I said, "I don't know 40 anything at all about it. It is news to me."

Margaret Friel—Cross

Q. And did you ever have any other conversation with him?

The Court: Well, I don't think there is any necessity of going into this. The defendant admits that he claims this six feet and now she says that the first time that he made this claim was about three years ago. (To witness:) Isn't it?

The Witness: Yes, sir.

The Court: About three years ago?

The Witness: Yes, your Honor.

The Court: And that she has had undisputed possession of it from 1893 until three years ago.

Mr. Degnan: Were you served with—these notices are admitted, are they not?

Mr. Griffinger: We admit that.

Mr. Degnan: I offer in evidence a notice signed by James Del Guercio, dated June the 20th, 1896—1927, directed to Mrs. Margaret Friel, 132 John Street.

(Paper marked Exhibit C-4.)

Mr. Degnan: Then, another notice, a letter from Griffinger & Griffinger, dated August 22nd, 1927, addressed to Mrs. Margaret Friel, 132 John Street, Belleville.

(Paper marked Exhibit C-5.)

CROSS-EXAMINATION by Mr. Griffinger:

Q. Mrs. Friel, when you first went into that particular house, was the land surrounded by any shrubbery or any hedges, I mean, in 1893, if you remember? A. No, sir.

40

Margaret Friel—Cross

Q. And was there a fence around those hedges?

A. There was not any hedge there. There was a wooden fence my husband had put there.

Q. And how long did that fence that your husband put there in 1893 remain there? A. It remained there four years until it decayed and it was replaced by others.

Q. And when was the first time there was a replacement of that? A. Well, I should think, about ten years ago.

Q. And a new fence was put up at the end of ten years? A. Well, boards, here and there, where they were needed.

Q. Now, Lincoln Street is a new street there.

A. Yes, sir.

Q. And was there a fence along what is now Lincoln Street at all times? A. Yes, sir.

Q. And what was the property adjoining yours which is now Lincoln Street, that is, east of your property—or rather—yes, east of your property, before they cut through that street? A. Why, there were two vacant lots there.

Q. What was in the rear of your property up to this time? A. A big hill, green field up there.

Q. Open land? A. Yes, sir.

Q. And running from John Street to this open field, open land, was there a fence between the rear of your property and the open land? A. Yes, sir.

Q. And, when you replaced the fence again, after ten years, it decayed and you said your husband replaced it, when was the next time it was replaced? A. Well, four or five years after that we replaced it as it went, here and there, different places.

40

Margaret Friel—Cross

Q. Now, the hedges are there now. A. Yes, sir.

Q. When were they put there, Mrs. Friel? A. About three or four years ago, but the wire was there before then.

Q. About three or four years ago, and before
10 that what was there in place of those hedges?

A. The wire was there before the hedge was put down.

Q. And, when those hedges were put there, was the wire fence taken down? A. No, sir; it is still there.

Q. Who put those hedges there? A. My son.

Q. And what was he guided by when he put those hedges there? A. He was guided by the
20 surveyor's pegs.

Q. He was guided by what? A. The surveyor's pegs,—stakes, rather.

Q. And when was the first time this peg was put there? A. Well, the old peg was—must have been rooted up when the fence was put there, this wire fence, and Mr. Fitzgerald and the town engineer surveyed my property and put pegs down.

Q. That was recently, was it, Mrs. Friel? A. Yes, sir.

30 Q. And that was after the hedges was there already, wasn't it? A. Oh, there was a peg at the end of my lot that was put there years ago.

Q. And you said that peg was uprooted? A. The old, original peg my husband had put there.

Q. And when the original pegs were uprooted and new pegs were put in, when were the new pegs put in, before the hedges— A. Yes, sir—

40 Q. These present hedges. And did your son guide the placing of these hedges according to those pegs? A. Yes, sir.

Margaret Friel—Cross

Q. Were there any pegs put there recently? A. Well, Mr. Fitzgerald, the town engineer.

Q. And those pegs that were put there recently, are they put in the same place as the old pegs were? A. As far as I know.

Q. And you are not certain, though, whether
10 they are? A. Well, I think they gave me a few inches more ground.

Q. Now, your hedges come out further than the hedges on the adjoining property, don't they? A. Because that man hasn't got his hedge out to his stake.

Q. Have you seen the stakes other places on his property? A. Yes; I did.

Q. And do you know how far your stakes actu-
20 ally extend over the property in the rear of your property; do you know how many feet, exactly? A. Why, what do you mean, my stakes?

Q. Yes. A. Well, all my stakes are on the line of my property.

Q. Sure, but from the survey made by—have you ever seen the survey of the Town of Belleville? A. No, sir; I have not.

Q. Now, the hedges that were put there by your son, have they been replaced since your son put
30 them there? A. No, sir.

Q. The old post that you referred to in your direct testimony, is that any further than the hedge is at the present time? A. Well, that I am not positive; used to be a high hedge behind there which forced the wooden fence post in on both our properties.

Q. But it is a fact, though, that the post is in further than the hedges? A. Well, it is not on
40 the line.

Benjamin Klemc—Direct

Q. Was there any reason you put it in that distance? A. Well, except I didn't have it surveyed before and I didn't want to go out further than the old hedge and I didn't know where it was until I had it surveyed.

10 Q. But there was an old fence there? A. Yes; and a big bank of dirt and stones behind pushed the old fence all in.

The Court: How long was that old fence on your property?

The Witness: Well, I have been living there a little over ten years. That was there then.

20 The Court: And the old fence was there ten years?

The Witness: Yes, sir.

The Court: And was the old fence on a line with Mrs. Friel?

The Witness: Well, I had it surveyed last spring.

The Court: No. Did the two old fences come together, her fence and your fence? Was your fence on the line?

30 The Witness: I think mine was more in.

The Court: Yes. How much more in?

The Witness: Well, I guess it was about a little over a foot, I think. I ain't quite sure.

The Court: All right.

Q. Your fence was in a foot from Mrs. Friel's present fence or the old fence? A. The old fence.

40 The Court: Well, Mrs. Friel had a fence there, did she?

The Witness: Yes, sir.

Benjamin Klemc—Cross

The Court: For the ten years you have been there?

The Witness: Yes.

The Court: And was it on the line that the wire is now—her wire?

The Witness: I think it was. 10

The Court: Yes. All right.

CROSS-EXAMINATION by Mr. Griffinger:

Q. Mr. Klemc, have you got that survey you had made? A. Yes; I got it here.

The Court: Well, let us confine ourselves now to the question of adverse possession. Then we will bring in the experts later. 20

Mr. Griffinger: All right.

Q. Now, Mr. Klemc, did you put those hedges there recently? A. They are there about four years in the back.

Q. And when you first put your hedges there did Mrs. Friel have any hedges on her land in the rear? A. Well, she came about the same time.

Q. What was there before she started putting hedges; anything there at all? A. Wire fence and some posts and old boards laying around. 30

Q. And was that fence in further than the hedge is now, at that time, three or four years ago? A. I think it was in a little—

Q. And when she put these hedges on that land, she went out further than when you put your hedges? A. Yes; I think so.

Q. The hedge that you referred to at that time you said was on the line. Was that zigzagged or was that a straight line through what is now Lin- 40

Benjamin Klemc—Cross

coln Street through your land and what is Mrs. Friel's land? A. It used to be a straight line, but the old fence from across the street from Monahan's, the bank was five or six feet high and pushed the posts all in. It was higher than the
10 fence and I had to shove them all back.

Q. When you put these hedges there and the same time Mrs. Friel put those hedges there, there was vacant land in the rear of your properties? A. Yes, sir.

Q. And Mrs. Friel put those hedges there—was there actually a fence there— A. Well, there was—

Q. —or was it vacant? A. It was not quite
20 what you would call a fence, but there were posts and boards hanging onto it.

Q. There were posts and boards hanging onto it? A. Yes.

Q. And from Mrs. Friel's land to your land was there any fence or anything there, when you put those hedges on, three or four years ago? A. From Mrs. Friel's—

Q. From Mrs. Friel's land to your land in the rear. A. Yes. That was all the way along.

30 Q. Now, that fence that was there, was that in further on your land than the fence that was on Mrs. Friel's land? A. A few inches, as far as I knew.

Q. So that fence did run zigzag? A. It was a little crooked, yes.

Q. Is there a fence on the land of Mrs. Friel now, or just hedges? A. Well, I think there is a wire fence and hedges.

40 Q. You are not certain whether there is?

*Benjamin Klemc—Re-direct
Michael McCann—Direct*

Mr. Degnan: She had already admitted there is a wire fence and hedges.

RE-DIRECT EXAMINATION by Mr. Degnan: 10

Q. You think the thing that caused your fence to go in was because of the pressure of the hill of stone behind it? A. Yes, sir.

Mr. Griffinger: I object, your Honor please.

The Court: He has already said it, so it is harmless.

20

MICHAEL McCANN, sworn for the complainant.

Direct-examination by Mr. Degnan:

Q. Mr. McCann, where do you live? A. I live next door to Mr. Klemc, 136 John Street.

Q. Two doors from Mrs. Friel? A. Yes, sir.

Q. How long have you lived in Belleville? A. Thirteen years. 30

Q. How long have you lived in your present place? A. Twelve years.

Q. Do you remember a fence at the rear of Friel's property? A. Always, yes.

Q. Where did that fence run from? A. It ran from Mr. Klemc's line between myself and Mr. Klemc, toward Washington Avenue, as far as I could see, and, whether it connected with the property that ran from—facing the property, I don't know. 40

Michael McCann—Cross

Q. And from the time you have lived in this place, twelve years, was there a fence behind Mrs. Friel's property? A. Yes.

Q. What was its location with reference to the present hedge fence, the wire fence that was
10 there? A. Well, as near as I can tell, the hedge is planted in place of the fence. Of course, I know more about Mr. Klemc's than I do about Mrs. Friel's, because Mr. Klemc is next door and Mrs. Friel is another block away.

Q. You were subpoenaed by the defendant to come here, weren't you? A. Yes.

Q. What does your deed call for, how many feet deep? A. My deed calls for 154 feet.

20 Q. Have you got your deed with you? A. I have not.

CROSS-EXAMINATION by Mr. Griffinger:

Q. Mr. McCann, your hedges are—are on the line further in towards your property—isn't it?
A. Why—

Mr. Degnan: I object to that. It is not material where his hedges are.

30 The Court: What we want to find out is about the fence on Mrs. Friel's property. It doesn't make any difference about his fence.

(Discussion.)

Q. Have you seen the hedges on the Friel property? A. Have I seen them?

Q. Yes. A. Yes; daily.

Q. Now, riding along those hedges, where does the hedge of Friel stop? A. Where did it stop?

40 Q. Yes. A. I don't know what you mean.

Michael McCann—Cross

Q. Does it stop at Klemc's property or does it go right through? A. No; it stops at the Klemc property, of course.

Q. And the hedge of Klemc, is that on a straight line with the hedge of Friel? A. Not exactly.

Q. And that is in towards—that is towards
10 John Street, that hedge? A. Yes; a little bit.

Q. Then that hedge of Klemc's—(interrupted)

The Court: Let him finish. He said, "a little bit".

The Witness: Well—

The Court: How much, a couple of inches?

The Witness: No; it could be more; it
could be six or eight or a foot. I don't
20 know just how much.

Q. Then that hedge of Klemc's continues to the line of your land? A. Yes.

Q. And then your hedge is nearer John Street?
A. Yes.

Q. So it zigzags its way as far as your line?
A. My line is straight; Klemc's line is straight; and Mrs. Friel's line is straight.

Q. But your hedge is nearer John Street than
30 any other? A. Yes. Mr. Klemc is out about four feet further than I am.

Q. Do you remember when Mrs. Friel put these hedges there? A. I remember about the time. I remember—Well, you see, Mr. Klemc planted his hedge, but, you see, I can't say what year. It could be four and it could be six. I seen him plant the hedge and I can't say what year.

Q. And you don't know exactly when Mrs. Friel
40

Michael McCann—Cross

had these hedges put there? A. About the same time as Mr. Klemc, as I understood.

Q. Before the hedges were there, was there anything there at all? A. Yes.

Q. What was there? A. Fence posts and
10 boards.

Q. Old posts and boards? A. Yes.

Q. And these hedges came out further on the land of Del Guercio, after the boards were taken down, didn't they?

The Court: Strike it out.

A. I don't know.

The Court: You are assuming that this
20 land belongs to this defendant.

Q. Well, the hedge extended further towards the rear of Mrs. Friel's property, after this fence was taken down, didn't it? A. Not that I know of.

Q. Do you know how many feet from John Street, along Lincoln Street, the line of Friel runs? A. No; I do not.

Q. And, from John Street to your hedges, what
30 is the depth?

Mr. Degnan: I object to that as immaterial.

The Court: I will sustain the objection.

Q. Do you know how many feet on Lincoln Street on John, along Lincoln Street Mrs. Friel's property extends? A. No.

William Cullen—Direct

WILLIAM CULLEN, sworn for the complainant.

Direct-examination by Mr. Degnan:

Q. Where do you live, Mr. Cullen? A. 140
John Street, now. 10

Q. How long have you lived on John Street? A. I was born on it, forty-four years ago.

Q. And not in the present place where you are living now? A. No. Well, it is 173, now, where I was born, but I live at 140.

Q. How long have you lived in your present place? A. Five years the first of August.

Q. Were you familiar, as a boy, with the fence line behind the Friel property? A. Yes; my
20 father built it. I was a child three or four or five years old, about, when my father helped Mr. Friel to build the fence. That was before Mr. Friel was married.

Q. Now, was there a fence extending from Washington—from the rear of the property on Washington Avenue up to Friel's property? A. No, it didn't go to Friel's property. It went to—
it belonged to people by the name of Ryan, Mr. Monaghan owns it now, but Ryans had a fence
30 up then that was, I should judge, maybe one hundred feet between Friel's property and Ryans' property, ran right out to John Street.

Q. Was the line of Monaghan's property, fence line, on a line with the fence line of Friel's, do you recall? A. Well, about. It looked from the eye—looking with the naked eye it looked it might be. Of course, I wouldn't see right down. I didn't know that. 40

William Cullen—Cross

Q. Did you ever—do you know whether there is a fence behind Mrs. Friel's property now? A. Yes; a wire fence made of chicken wire.

10 The Court: Is that chicken wire on the same line as the old fence?

The Witness: Well, I couldn't say whether it is right down on the hedge.

The Court: Well, within a few inches?

The Witness: It looks to me on the same line.

The Court: And when was this old board fence built?

The Witness: Well, it is built between thirty-five and thirty-eight years ago.

20 The Court: All right. I guess that will do for you.

CROSS-EXAMINATION by Mr. Griffinger:

Q. Who did you build this fence for? A. I didn't build it; my father helped Mr. Friel, before Mr. Friel was married; he owned this house and property before he was married at all, I should judge, oh, I don't know, a couple of years any- way.

30 Q. You don't know whether the hedges or the fence was put there three or four years ago, do you? A. No. Of course, the fence was rotting. It was a solid board fence like sheathing on a house, it was solid all around. They used to be patching it up every once in a while.

Q. You couldn't say when the hedges were put there? A. No.

40 Q. So you can't say these hedges are on the same line as the fence. A. No; I cannot.

Michael Slator—Direct, Cross

MICHAEL SLATOR, sworn for the complain- ant.

Direct-examination by Mr. Degnan:

Q. Mr. Slator, how long have you lived in Belle- ville? A. Sixty years. Born there. 10

Q. Do you know the Friel house and property? A. Yes, sir.

Q. Did your father have anything to do with the house? A. My father painted the house when it was built.

Q. Do you recall a fence to the rear of the Friel property? A. I always remember a fence there.

Q. How far did the fence go, do you recall? A. Well, about in the same lines where the wire fence 20 is now, to the best of my knowledge.

CROSS-EXAMINATION by Mr. Griffinger:

Q. Mr. Slator, did you actually see this fence, every time you came to this property? A. I cer- tainly did, every time I went by there, because it was all open land.

Q. You saw this fence every time it was replaced. Did you see whether it was on the same line as the old fence? A. Well, not every time it 30 was replaced, but, when it was replaced, the fence looked to me to be in about the same place the old fence was, to the best of my knowledge.

Q. Do you remember when the hedges were put on, three or four years ago; do you remember that? A. Yes; I remember when they were put there.

Q. Do you remember whether those hedges are exactly the same line the fence was on? A. Well, 40

Annie Sagger—Direct

the wire fence was there and the hedges, to my way of thinking, is built as close to the line as can be.

Q. You don't know that for an actual fact? A. Well, where the old fence was, or the stakes of the
10 old fence.

Q. It may be a couple of feet— A. No, not—

Q. —this side or the other side? A. You couldn't determine that.

Q. It was about the same line? A. The same line.

Q. Have you been on Lincoln Street recently? A. Yes; been there.

Q. You know these hedges of the Friel prop-
20 erty? A. Yes.

Q. Have you followed through with your eye along that line, the rear of all those properties adjoining the Friel property? A. I worked there.

Q. The hedges run in a zigzag fashion, don't they?

The Court: Wait a minute. That is not cross-examination. He has not said anything about any hedges, except the one on Mrs. Friel's property.

30 Q. Is there a wire there, at the present time? A. Yes, sir; it was there this morning.

ANNIE SAGGER, sworn for the complainant.

Direct-examination by Mr. Degnan:

Q. How long have you lived on John Street?
40 A. I think we must be thirty-nine or forty. I think thirty-nine, anyway.

Rose Friel—Direct

Q. Do you remember when the Friel house was built there? A. Oh, sure.

Q. Do you know Mrs. Friel? A. Yes; I remember well the day she was getting married, coming in. I didn't know her until then.

Q. You have since got acquainted with her? A. 10 Yes.

Q. Do you recall whether there was a fence all the time? A. I remember the old wooden fence.

Q. As far as you remember, there was a fence there? A. I remember, yes, because the boys used to climb over for her peaches and knocked it down for her.

Mr. Griffinger: No questions.

20

ROSE FRIEL, sworn for the complainant.

Direct-examination by Mr. Degnan:

Q. Miss Friel, you are the daughter of the complainant, Margaret Friel? A. I am.

Q. And you have lived in this property all your life? A. I have.

Q. Do you recognize this photograph (showing
30 witness photograph)? A. I do. That is my sister and I.

Q. How long ago was that taken? A. About ten years ago.

The Court: What is it?

Mr. Degnan: It shows a fence right there.

The Court: Do you object to the introduction of the picture?

40

John L. Fitzgerald—Direct

Mr. Griffinger: I object, if your Honor please.

The Court: Why do you object?

Mr. Griffinger: It is not linked up with the property. There is nothing there to indicate any land marks, as far as we can see. Just the vacant ground with two individuals on it, and some kind of fence in the rear.

The Court: I think, unless the photographer is produced, and can identify the property, the objection is proper.

Mr. Degnan: I suggest the witness could identify it and prove representation as of that time.

The Court: I don't think that is essential.

Mr. Degnan: All right.

The Court: The way to prove the photograph is to have the photographer present.

Mr. Degnan: These were taken with a snap shot, you know, and I thought they might aid the Court in ascertaining the facts.

Mr. Fitzgerald, please.

JOHN L. FITZGERALD sworn for the complainant.

Direct-examination by Mr. Degnan:

Q. Mr. Fitzgerald, are you a civil engineer?
A. Yes.

John L. Fitzgerald—Direct

Q. Got any degree of civil engineer? A. Yes; I have a degree of civil engineer.

Mr. Griffinger: I admit his qualifications.

The Court: Qualifications admitted. 10

Q. You are now the Assistant Town Engineer of Belleville? A. Yes.

Q. On July first of this year did you make a survey of Mrs. Friel's property? A. Well, on or about that date I did, yes.

Q. And is this a copy of the survey you made (showing witness paper)? A. Yes, sir.

The Court: Well, let us introduce it.

Mr. Degnan: Any objection to this survey being introduced in evidence? 20

The Court: This survey was made by you or under your direction?

The Witness: It was made by me.

The Court: I will admit it.

Q. You took the description from this old deed? A. I made the survey from this deed and from the maps we have in the town, yes.

The Court: Let the survey be marked. 30
(Survey marked Exhibit C-6.)

Q. The lines of your survey coincide exactly with the description of the deed? A. Yes.

Q. Full dimensions 153 feet? A. Yes, sir.

Q. Does it show any indications of any monument to the rear? A. Well, the only indication of that monument that I could—no monument, no, sir. 40

John L. Fitzgerald—Cross

Q. What did you find there? A. I found a survey made by a man for the town there prior to myself and I found the remains of an old fence.

Q. And you drew your line from that? A. Yes.

10 The Court: Now, on this survey, Mr. Fitzgerald, you see here on this corner—what corner would that be?

The Witness: That would be the northwest corner.

The Court: Northwest corner, you found an old fence post?

20 The Witness: Why, I found—I showed the post on the corner, but the post is a little to the south of the corner, but I didn't make—I just showed the post as a sign of occupation.

The Court: Any cross-examination of this man?

Mr. Griffinger: Yes, sir.

CROSS-EXAMINATION by Mr. Griffinger:

30 Q. Now, Mr. Fitzgerald, you say you made this survey from the description in that deed and the town map; is that right? A. Yes, sir.

Q. Did you find the Hornblower line on that land? A. I find—why, I found the Hornblower—or the remains of the old fence, what evidently might have been the Hornblower line.

Q. How far did that extend from John Street in on Lincoln Street? A. 153 feet and 3 inches, more or less, the fence was.

40 Q. Now, I refer you to the map that you said you used in the Town of Belleville.

John L. Fitzgerald—Cross

Mr. Degnan: I object, your Honor please. He didn't mention any particular map.

Mr. Griffinger: He said he got the map from the Town of Belleville; that is what he said. 10

The Court: He said he used the town map.

Mr. Degnan: He didn't say what particular map.

The Court: Naturally he would. Why wouldn't he get all the data available?

Q. Is this the book you used, Mr. Fitzgerald?

A. No, sir.

20 Q. What book did you use? A. Used the book furnished by the Engineering Department, by Mr. Shepard.

Q. And did you see this map? A. I have seen that map; yes, sir.

Q. And how many feet is indicated on that map of this particular plot?

Mr. Degnan: Just a moment. Which map are you referring to?

Mr. Griffinger: The map of this property 30 on John Street and Lincoln Street.

The Court: Let him see it. Give it to him.

The Witness: The reason for using the town map was not to get the depths of the lots on John Street north, it was to determine the angle of Lincoln Street. It had nothing to do with the depth of the lot.

John L. Fitzgerald—Cross

Q. You saw this map in town, this map here?

A. Yes, sir; I saw that map.

Q. I show you this—

10 The Court: You cannot use that until you introduce it in evidence. You cannot put in your own case on cross-examination.

Mr. Griffinger: I am cross-examining him on the basis of that survey he claims he made from the deed and this map—a map he referred to.

The Court: You cannot introduce this map yet.

20 Mr. Griffinger: Will the Court permit me to ask him how many feet he found on the map in the Town of Belleville that he referred to on his direct testimony, in making his survey?

The Court: He has already told you that he referred to the town map to get an angle, not a depth.

Q. Did you find in any of your location stakes based upon the deed or deeds less than 150 feet extending from John Street? A. I don't know
30 what you mean by that question.

Q. The amount of feet running from John Street, did you find less than 153 feet at any time?

Mr. Degnan: I object to that.

A. No. I found 153 feet. I followed the deed. I did not—(interrupted).

Q. What does the map of the Town of Belleville show?

40

John L. Fitzgerald—Cross

Mr. Degnan: I object to that.

The Court: I will sustain the objection.

Q. When did you put the stakes down last on that property? A. Why, I could tell by looking at the survey that I made. I don't remember the exact date. 10

Q. It is dated July 1, 1927. A. They were put on the day before that.

Q. Put on the day before that? A. Approximately the day before. I am not exactly sure the day I placed the stakes.

Q. Now, referring to this survey, when you put those stakes there on July 1st, or the day before July 1st, 1927, did you place the stakes beyond the hedge that is there now, or within the hedge? 20
A. I can't recall. I didn't make a location survey, and I was more particularly interested in the post in the hedge. I couldn't exactly—I believe the hedge is about on the line that I placed the stakes. It may be a little one way or the other.

Q. Isn't it a fact that the hedges extend further from the stakes as you placed them? A. You mean the top of the hedge or the back of the hedge? 30

Q. From the place where they come out of the ground. A. I would have to make a location survey before I could answer that question.

Q. This post you referred to, is that in further from the hedges or on a line with the hedges? A. That is nearer John Street than the hedges.

Q. It is on a line with the hedges? A. I said it was nearer to John Street.

Q. It was nearer to John Street than to the hedges. How did you drive posts—does that in- 40

John L. Fitzgerald—Re-direct

dicade a monument of the Hornblower property?

A. I would take that as an indication of the property, but I would want more than one post before I established the line.

Q. Did you use that post as a guide in staking?

10 A. No, sir; I used the deed as a guide in staking the property out.

Q. And this is the only deed that you used in making this survey, isn't it? A. I used that deed and a survey that was made prior to mine.

Q. Why did you refer to the town maps? A. As I said before, to determine the angle of Lincoln Street. This deed does not determine the angle.

Q. Did you get anything else from the town
20 map besides the angle? A. No, sir; except to locate the monument with the line of John Street.

Q. Now, was there any monument that you located along Lincoln Street? A. No.

Q. Your measurements, 153 feet, are from the present line on John Street? A. Are from the present line on John Street; yes, sir.

Q. Now, in drawing this survey—in making up this survey, Mr. Fitzgerald, did you take the actual measurements in that deed? A. Yes.

30 Q. And make the survey accordingly? A. Yes.

Q. And the reference in the deed of the Hornblower line, formerly of James Hornblower, how did you locate that line? A. I did not locate that line.

RE-DIRECT-EXAMINATION by Mr. Degnan:

Q. Is there any other line of John Street that
40 you know of except the one that you took? A.

*John L. Fitzgerald—Re-cross
Sarah F. Johnson—Direct*

No, sir; there is no other line that I know of at that particular point.

RE-CROSS-EXAMINATION by Mr. Griffin:
10

Q. Mr. Fitzgerald, how long have you been in Belleville? A. Since—

Q. Surveying, I mean.

Mr. Degnan: Your Honor please, I object to his qualifications being gone into.

The Court: I will sustain the objection. You admitted his qualifications. That is all, sir.
20

SARAH F. JOHNSON, sworn for the complainant.

Direct-examination by Mr. Degnan:

Q. Will you turn to 13397? A. Three nine seven?

Q. Yes. A. Uh huh.

Q. You are employed by the Surrogate of Essex
County, are you, Miss Johnson? A. I am. 30

Q. And you are here in answer to a subpoena I served on you Saturday? A. I am.

Q. What book have you there? A. I have Book 6 of the Maps of Essex County of the Surrogate's office.

Q. What estate have you got there? A. I have not looked over this.
40

Sarah F. Johnson—Direct

Q. I think this is John Williams. A. John Williams.

Q. Partition of John Williams, deceased. Will you turn to the map there? I want to establish the Hornblower line by this old map.

10 The Court: All right; where is the map?

Mr. Degnan: It is here somewhere.

The Court: There is the map.

Mr. Degnan: No; that is not it. There it is, 13397. There is John Street—

The Court: Now, wait a minute. You want to—

Mr. Degnan: Want to have this introduced in evidence.

20 The Court: All right.

Mr. Griffinger: I object. Your Honor please, my objection is addressed to admitting that as evidence because they have not connected up the chain of title from Williams.

The Court: I will admit it.

(Book marked Exhibit C-7.)

(Not physically marked.)

30 The Court: Indicate what you want to show on this.

Mr. Degnan: I want to show the line, the distance from John Street to the Hornblower line.

The Court: Very well. It is indicated on this map is how much?

Mr. Degnan: As being on the northerly side of Lot Number 1 as 157 feet and on the southerly side as 154 feet.

40

William H. Hoff—Direct

The Court: All right. Very well. Is that all you want of this lady?

Mr. Degnan: That is all.

The Court: Well, thank you.

Mr. Griffinger: What is that year?

The Court: 1873. Am I right about that, 10 Miss Johnson?

The Witness: I will look.

Mr. Degnan: March 28, 1873.

The Witness: Yes; 1873.

Mr. Degnan: May I correct the record? I said the northerly side was 157. It is the westerly side is 157 and the easterly side is 154.

The Court: All right. 20

Mr. Degnan: Will you correct that, Mr. Stenographer?

WILLIAM H. HOFF sworn for the complainant.

Direct-examination by Mr. Degnan:

Q. Mr. Hoff, you are a civil engineer and surveyor? A. Yes. 30

Mr. Degnan: Will you admit his qualifications?

Q. How long have you been practicing surveying and engineering in this vicinity? A. Twenty-four years.

Q. Have you ever made any surveys in Belleville before? A. Yes. 40

William H. Hoff—Direct

Q. Did you make a survey of Mr. Klemc on John Street? A. Yes, sir.

Q. In May 1927? A. Yes, sir.

Q. Is this a copy of the survey you made?

10 Mr. Griffinger: I object to any testimony as the Court ruled previously on questions concerning the survey of the other properties.

A. Yes, sir.

Q. Is this the property that adjoins the Friel property on the west? A. Yes, sir. It is the boundary line between the two properties.

20 Mr. Degnan: Yes. I think that is evidential, the Court please.

The Court: The reason I made that suggestion to you was, on cross-examination you must limit yourself to the direct and the direct was only against the Friel property. Now, if he wants to branch out into other properties, that is all right.

Mr. Griffinger: Then it opens up the door.

30 The Court: Certainly. You can cross-examine him on anything that he says on his direct.

Q. Now, did you find the line of John Street? A. Yes, sir. I—

Q. Is it monumented? Have you got your field notes there? A. Yes, sir; I have my field notes here.

40 Q. Is this the deed you took your survey from? A. Yes; that is the deed.

William H. Hoff—Direct

Q. That is from Sanford to Holland? A. Yes, sir.

Q. Before Holland conveyed to Mr. Klemc? A. Yes.

Q. How far is the rear line of the easterly rear line of the property you surveyed from the monumented line of John Street? A. 153 feet 3 inches. 10

The Court: No, it is 154.

The Witness: Well, that is the northerly—this is the line here? Is this the line?

Q. Yes. A. 153 feet 3 inches and 154 feet, more or less.

Q. Well, now, on your description— 20

The Court: Do you want to offer this map?

Mr. Degnan: Yes.

(Map marked Exhibit C-8.)

Q. On this description here there is no course back, is there, from the— A. No.

Q. —(continuing) from the Hornblower Avenue line back here to John Street? A. No angle, you mean? 30

Q. No distance given. A. Yes, sir.

Q. Read that. A. 154 feet, more or less. It says 154 feet to the Hornblower line.

Q. I see. Now, coming back, does it come back here? A. Yes.

Q. It comes south and then back? A. Yes.

Q. How many feet does it say? A. 154 feet on this side, and 153 feet 3 inches on the other.

Q. I see. Did you find any monuments in the rear of this property which would establish the 40

William H. Hoff—Cross

Hornblower line? A. Not any monuments. Fence lines and fence posts.

Q. Anything else? A. And I found a couple of old surveyors' stakes.

Q. You refer here to the stone wall. Just what was that? A. Why, that was an old rubble stone, as we call it, rubble stone work, it was on a terrace and the earth was piled against it. It was a sort of retaining wall.

Q. I see. And does the line that you established as the Kleme line coincide with the line of the Friel property?

Mr. Griffinger: I object, if your Honor please. There is nothing to connect up the Friel property.

A. Oh, yes. He said one of the lines was the separating line between the two properties, yes, sir.

Q. You made this survey not for Mrs. Friel but for Mr. Kleme? A. For Mr. Kleme.

CROSS-EXAMINATION by Mr. Griffinger:

Q. Now, Mr. Hoff, in that deed there is a reference made to the Hornblower line? A. Yes.

Q. And the survey, you would locate that Hornblower line before you would make your survey; is that right? A. Yes.

Q. How did you find that Hornblower line? A. By the deed.

Q. When you went up there how did you locate the Hornblower line itself? A. By running out the line of John Street and tying in the deed an old fence post mark, physical marks on the land.

William H. Hoff—Cross

Q. Then your measurements were from John Street in, that is the present line of John Street in this property? A. The present line and the original established line.

Q. When you say "the original established line" what do you refer to? A. To the line that is now there. It has never been changed, to my knowledge.

Q. This survey was made—what is the date of this survey?

The Court: May the twenty-seventh, wasn't it?

Mr. Griffinger: May twenty-seventh, yes.

The Witness: Yes.

Q. And did you measure from Rutgers Street to locate this line? A. I did not; no, sir.

Q. And there is an indication in the deed that this Hornblower line cannot be located from Rutgers Street.

Mr. Degnan: I object. There is not, as a matter of fact.

The Court: Well, I suppose—

Mr. Degnan: I do not like to get anything on record that is not so. That is one of the defects of the defendant's case, that his property does not run to the Hornblower line, so the Hornblower line cannot do him any good or any harm.

Mr. Griffinger: Our contention is—

The Court: Wait a minute. Just cross-examine.

William H. Hoff—Cross

Q. You made this survey for the Kleme property? A. Yes.

Q. And did you locate the Hornblower line on his property? A. The Hornblower is established by the line of Kleme's deed, the original recorded
10 deed, 1891.

Q. Where was the Hornblower line in relation to the hedges that are on the Kleme property? A. The hedges—the hedge is in about six or eight inches, in off the fence line.

Q. And did you stake out the Kleme property? A. Yes, sir.

Q. Where did you place these stakes? A. 153 feet 3 inches.

20 Q. From the line of John Street? A. Yes, sir.

Q. And did you find that that line, Hornblower line referred to, extends from Lincoln Street all the way up the rear of these properties? A. I beg pardon?

Q. Where did you locate this Hornblower property on Lincoln Street? A. Lincoln Street, I didn't check in from Lincoln Street except by tying in my corners by a right angle measurement.

30 Q. Isn't it a fact that you did not locate this Hornblower line on the Kleme property? A. The right as established by the line of 153 feet by deed and physical marks on the ground.

Q. And the measurements of 153 feet were made from the line of John Street? A. Yes, sir.

Q. And then you located 153 feet and found a good line? A. Yes.

Q. And the way you found that line was by actually measuring 153 feet; is that so? A. Yes.

40 Q. There was no evidence of monuments that you located a line from?

William H. Hoff—Cross

Mr. Degnan: I object. He said there were fence posts and other physical evidences.

The Court: Yes, he did.

Q. Of what nature were these posts there? A. 10 Old fence posts and an old board—post and board fence with wire nailed on it.

Q. Now, is there a post on the line between the Kleme property and the Friel property? A. Yes. Wait just a minute—yes, sir.

Q. And how many feet from John Street is that post? A. From John Street on the Kleme line 153 feet 3 inches.

Q. And how many feet from John Street are the hedges of the Friel property? A. The hedg-
20 ing is in about—

The Court: Six inches, he has already said.

A. —six or eight inches.

Q. And then from this post hedges overlap? A. The hedges on the lady's own property, on the Friel property.

Q. And now what else—from this post extend-
30 ing along the rear of the defendant's property, what was the next mark that you found there or next indication of a monument? A. The Hornblower line you are speaking about.

Q. Yes. Extending along the rear of defendant's property? A. The old fence passed surveyor's stakes.

Q. Well, was there another post at the north-
40 erly point of the Kleme property, at that point there? A. Yes, sir; the post was inside that line.

William H. Hoff—Cross

Q. And there is a post right here also (indicating)? A. Yes.

Q. And both these posts extend 153 feet from two— A. On the north line, on Klemc's line, on the north line is 154 feet.

10 Q. And on the south? A. And on the dividing boundary line between Mrs. Freeman's property 153.3.

Q. Mrs. Friel? A. Friel, yes.

Q. And was that stone wall there in May, 1927, that you refer to on this survey? A. Yes, sir.

Q. What form was it? A. Just a stone wall, throwed up on a terrace like, rough field stone.

Q. And the hedge is within that stone wall?

20 A. No; that was a considerable distance from the established line of 153 feet 3 inches, about two and a half feet.

Q. And in making your survey did you refer only to the deed? A. I referred to old marks and monuments, fence posts.

Q. Did you refer to the map of the Town of Belleville? A. Yes.

Q. And how many feet did you find that land extended on the map of the Town of Belleville
30 from John Street?

Mr. Degnan: I object.

The Court: The map will speak for itself. I will sustain the objection.

Mr. Degnan: That is all. That is the complainant's case.

Mr. Griffinger: On the complainant's case I make a motion. Complainant has failed to establish a chain of title. I do not think
40 they brought in any testimony as to how

Discussion

this title has been brought in to the complainant. They set up one deed and in that deed they depend on the chain of title. We say—or, defendants show that this land does not extend 153 feet and I think on the complainant's own case, establishing the
10 fact by their own witnesses that these hedges have been there for three or four years only, the burden of proof is on the complainant, if your Honor please, to prove that title of the disputed—the actual four and a half feet disputed—that the title of four and a half feet rests in the complainant, who comes in this Court to ask the Court to restrain—(interrupted).
20

The Court: Are you making a motion to dismiss on the complainant's case?

Mr. Griffinger: Yes, if your Honor please.

The Court: Well, you understand the result of that, don't you? If you make a motion to dismiss on the closing of complainant's case, then, after my decision in that matter, you are not entitled to produce any further evidence.

Mr. Griffinger: Well, your Honor please, I reserved that right to myself in my answer.
30

The Court: You cannot reserve. If you want me to decide the question now, I will decide it, and then you are precluded from any further testimony.

Mr. Griffinger: I will withdraw the motion.

The Court: Yes, I think you better.
40

Wilbur J. Bernard—Direct

WILBUR J. BERNARD sworn for the defendant.

Direct-examination by Mr. Griffinger:

Q. What is your occupation, Mr. Bernard? A.
10 I am a counsellor-at-law and Master in Chancery.

Mr. Griffinger: Do you admit his qualifications?

Mr. Degnan: As to what?

Mr. Griffinger: As an attorney.

The Court: Why, of course.

Mr. Degnan: The Supreme Court has already done that.

20 Q. Now, Mr. Bernard, did you search the property of Del Guercio, located on Lincoln Street?
A. I did.

Q. Now, will you please tell the Court the chain of title into Del Guercio?

30 Mr. Degnan: If the Court please, I do not think that is material; he has got a deed. I don't think—I am not questioning that it came down to him. It is a question of how much came down to him. I admit that he claims he owns this property and I admit it in my complaint. We do not dispute his title, except for the six and a half feet.

The Court: I suppose if he can show a record title to the six and a half feet, he is entitled to do so.

I will admit the testimony.

What does your search show?

40 The Witness: The search shows that the

Discussion

property which Mr. Del Guercio purchased—

The Court: When did he purchase it?

The Witness: It was purchased on November 20, 1924, and the deed was recorded in Book M-71, page 268. 10

Mr. Degnan: Just a moment. I think we are entitled to have the deed produced here. We are entitled to the best evidence—

The Court: Yes. The deed must be produced. Of course, I thought he had.

Mr. Griffinger: We have not got the deed with us, your Honor please.

The Court: Very well then, you cannot prove your chain of title. The deed is the 20 best evidence.

Mr. Griffinger: We will have it here, your Honor please. It has been inadvertently left at the office of the defendant, but we will have it here, before the case proceeds, for Mr. Degnan wants to submit this testimony anyhow. It is a matter of record at the courthouse.

Mr. Degnan: I think on records at the 30 courthouse we are entitled to have a certified copy of the deed, not this gentleman's recollection or transcript of it. That is only an abstract from the office.

The Court: You are entitled to have it. If Mr. Degnan insists, you must produce the deed, if you want to prove it.

Mr. Griffinger: Well, I will withdraw this witness and at the afternoon session the deed will be here and we will go ahead on 40 the title.

James Del Guercio—Direct

The Court: If you want to withdraw this witness, that is all right.

Have you anything further?

Mr. Griffinger: Yes, sir.

Mr. Del Guercio, take the stand.

10

JAMES DEL GUERCIO sworn for the defendant.

Direct-examination by Mr. Griffinger:

Mr. Griffinger: In Paragraph 6—5 of the complaint it is admitted there that Mr. Del Guercio purchased the land from Nicholas Striglia and Rachel, his wife, and gives the deed and date and the page number by the complainant in the description.

20

The Court: That is all right, but it does not say how much land it contained.

Mr. Griffinger: Yes, it contains the description in the complaint. Now, we will confine ourselves to that description. Paragraph 5 of the complaint, your Honor please.

30

Mr. Degnan: That is true, if the Court please.

The Court: All right, that seems to be admitted then.

Mr. Griffinger: I will recall Mr. Bernard, please?

40

Wilbur J. Bernard—Direct

WILBUR J. BERNARD re-called for the defendant.

Direct-examination by Mr. Griffinger:

Q. Now, Mr. Bernard, will you please tell the Court the chain of title to Del Guercio? 10

The Court: You can't do that.

Mr. Griffinger: I will withdraw that.

Q. Will you please tell the Court what the deed referred to at page 268, Book M-71 designates?

A. What is the date, again?

Q. The Book M-71, page 268, dated November 20, 1924, recorded November 21, 1924.

The Court: It is stated here by metes and bounds. 20

The Witness: It is a deed from Nicholas Striglia and Rachel Striglia. It covers property—

The Court: There is no use saying that, because it is all admitted.

Mr. Griffinger: It is all admitted.

Q. Now, Mr. Bernard, I refer you to Exhibit C-1 and ask you whether you found this deed on the records in your search of this title. 30

Mr. Degnan: I object, your Honor please. It shows on the face it is recorded.

The Court: I will sustain the objection. It is a recorded deed and it has been admitted in evidence.

Q. Now, Mr. Bernard, did you establish the chain of title into Striglia in your search of this property? 40

Wilbur J. Bernard—Direct

Mr. Degnan: I object.

The Court: He can say yes or no.

A. Yes.

10 Q. And what does the record title show, the number of feet? I mean, what does the record title show as to the Hornblower line, which is established in that land?

Mr. Degnan: I object.

The Court: I will sustain the objection.

Q. Did you examine the chain of title into the Friel property, Mr. Bernard? A. I searched both pieces of property in controversy.

20 Q. You heard the testimony this morning? You heard testimony as to the chain of title into Friel. Now, I ask you to refer to your records and tell the Court when the last deed was given into Friel on this property.

Mr. Degnan: I object. It has been already admitted.

The Court: I will sustain the objection.

30 Q. There is a deed from the Belleville Building & Loan Association to Margaret Friel, dated the fourth day of October, 1918. Will you tell the Court how Mrs. Friel got this title on the fourth of October, 1918?

Mr. Degnan: I object.

The Court: I will sustain the objection.

Mr. Griffinger: Will the Court permit me to offer these records of the search—title search made at the courthouse?

40 The Court: Not over objection. If you

Wilbur J. Bernard—Direct

want to prove chain of title, you must bring the deed.

Mr. Griffinger: Well, we cannot possibly obtain the records from the courthouse because the entire—it has to be from the grantor and grantee books. 10

The Court: You can get certified copies. If there is objection, I cannot admit the searches.

Mr. Griffinger: Well, the first impression happened to be a member of the Bar.

The Court: I have no doubt his searches are perfectly correct, but, if your opponent is going to be technical, of course, I have got to—the best evidence is the deeds themselves and this question involves the title to a certain strip of property, and it has to be accurately decided and therefore the best evidence is the actual deeds themselves. Even the best of us might have overlooked a deed, for instance. 20

Mr. Griffinger: Then will your Honor let me examine on the deeds that have been offered?

The Court: Of course I will. 30

Q. I show you a deed dated the fourth day of October, 1918, and ask you whether that description of the Friel property is according to the description on record based on this old deed.

Mr. Degnan: I object, if the Court please.

The Court: I will sustain the objection. You want to find out whether this description is the same as the description in one of the other exhibits? 40

Wilbur J. Bernard—Direct

Mr. Griffinger: That is right.

The Court: That is all right.

10 Q. Is that description in that deed offered by the complainant the same as the description in this deed? A. They are both the same description in both the deeds.

Q. And in the deed into Del Guercio, did you find a designated line known as the Hornblower line? A. I find that the Del Guercio property comes out of the old Hornblower property.

20 The Court: No, no. Answer the question. That is all. The deed into Del Guercio does not say anything about the Hornblower line.

The Witness: I want to prove that Del-Guercio come—

The Court: Just a moment. Just answer the question.

Q. Did you find how the land in the rear of the Friel property extending to Rutgers Street was made out on your search?

30 Mr. Degnan: I object to that, your Honor please.

The Court: He can answer yes or no.

A. Yes.

Q. Now, how did the land extending from the rear of the Friel property to Rutgers Street along Lincoln Street and going north come into the present title holder

40 Mr. Degnan: If he is referring to notes, I object to it.

The Court: Objection sustained. You

Wilbur J. Bernard—Direct

have to bring in your documents, if you want to prove anything about this title.

10 Q. There is a reference made in the description of the Del Guercio property to the northerly—by the intersection of the southerly side of Rutgers Street. Do you find that description started from Rutgers Street or did you find in that title search of the Del Guercio property—confine yourself to this description—that that description started on Rutgers Street or John Street, the point of beginning?

Mr. Degnan: I object. I do not understand the question, in the first place.

20 The Court: I do not understand it, either. What are you trying to make this man, a surveyor?

Mr. Griffinger: No; a title searcher. (Discussion.)

The Court: If you want to prove any deeds or maps or lines, you must produce the records in Court. What this man searched and found he cannot transfer here over objection. If you want to prove the Hornblower line according to the old deed 30 was so and so, you must get the old deeds and introduce them.

Mr. Griffinger: If your Honor please, I will withdraw this witness.

James Del Guercio—Direct

JAMES DEL GUERCIO re-called.

Examined by Mr. Griffinger:

Q. Mr. Del Guercio, you are the defendant in this action, brought by Mrs. Friel? A. Yes, sir.

10 Q. And you own the property on Lincoln Street? A. Yes, sir.

Q. In the rear of the Friel property? A. Adjoining the rear of the Friel property.

Q. Now, Lincoln Street is a new street on that section, isn't it, Mr. Del Guercio? A. Yes, sir.

Q. And Mrs. Friel's property is now on the corner of Lincoln and John Street? A. Yes, sir.

20 Q. And what is immediately in the rear of Mrs. Friel's property and your property? A. There is a—

Q. I mean, on your property now. A. There is a house there.

Mr. Degnan: Well—

Mr. Griffinger: I don't want him to testify to the Friel property.

The Court: Don't tell him what to say.

30 Q. What is on your property in the rear of the Friel property?

Mr. Degnan: I object.

The Court: I will allow the question.

A. I have a driveway there adjoining with Mrs. Friel and I have a house built in it.

Q. How many feet on your land facing on Lincoln Street? A. You mean the property that is built?

40 Q. Yes, that lot there, at the present time. A. I don't get the question right.

James Del Guercio—Direct

Q. Right in the rear of the Friel property extending from the driveway on and along Lincoln Street, how many feet is in your property? A. You mean, Friel in my property?

Q. Yes. A. Four and a half feet.

Q. And how wide is your lot? A. 95 by 117. 10

Q. That is according to this survey (handing witness paper)?

Mr. Degnan: I object to showing the survey unless it is put in evidence.

Mr. Griffinger: I am going to put it in evidence now. I want to see it is the right one.

The Court: Who made the survey? 20

Mr. Griffinger: Borrie & Kreiner.

The Court: You cannot put the survey in without bringing the man that made it. You cannot ask any questions on a survey until you introduce it.

Q. On Lincoln Street—along Lincoln Street, going south from the line of the building there now to the hedge, how many feet have you got approximately? A. I can give you the exact measurements, if I get the question right. You mean 30 from the house to the edge of the Friel property now?

Q. Yes. Where the driveway is now. A. I have 31 foot 6.

Q. 31 foot 6? A. Now.

Q. And how far on the land are these hedges—how far on your land in the driveway? A. Four and a half feet.

Q. And do you know—how long have these 40

James Del Guercio—Direct

hedges been there, to your knowledge? A. The hedges hasn't been there three and half years.

Q. No more than three and a half years? A. No.

Q. And that was vacant land before you started building up there, wasn't it, Mr. Del Guercio? A. Yes, sir.

Q. And were there any markings before the hedges, that you know of, any fence? A. Before the hedge was put there, there was a fence between the—from Lincoln Street to Mr. Klemc's property and there was a straight fence which aids me with this Monahan's fence that they are mentioning and they took the fence down, because it was all falling apart, and they left just one post there which divides the line from Mr. Friel's—Mrs. Friel did. Mr. Klemc—and Mr. Klemc has placed his hedge about six inches out from the post into my property and Mrs. Friel is about a foot—one foot four out from Klemc's and from this post which is left there as the old fence line.

Q. That Mrs. Friel's hedge is almost two feet out from the post? A. Out from the pole.

Q. And Mr. Klemc's hedge continues from this six inches out from the post, out along his property? A. Mr. Klemc's hedge—he placed it on the right line with the post, that is, the roots up after it spread out. Now, it is back in his—it is six inches into the post and six inches out from the post but the plants were placed at the same line with the post.

Q. And the next property from Klemc adjoining— A. And the next property is four—about four feet in from Klemc's property.

James Del Guercio—Direct

Q. Klemc's hedge, you mean? A. Klemc's hedge.

Q. Yes. And these hedges on the Friel property were put there by Mrs. Friel or some—

Mr. Degnan: I object, if the Court please. He is not—he is not qualified—he has not said he knew that. He has not said he lived there in the period—

The Court: It is a leading question, in the bargain. I will sustain the objection.

Q. How long have you lived in Belleville? A. Four years.

Q. And you know this street? A. Yes, sir.

Q. How far do you live from this street yourself? A. One block.

Q. One block. Besides this post, Mr. Del Guercio, do you know of any other mark there besides—the old fence? A. No, sir.

Q. Is there a wire fence around these fences? A. The wire fence has been put there about seven months ago and there was a two-foot extension from an old post which was painted and this post is not painted now, and they extend out and they put a wire fence around the edge.

Q. Did you see these stakes put down by Mr. Fitzgerald? A. I was not there.

Q. And you have had a survey made of your property? A. Yes.

Q. What is the next street north of John Street, running parallel with John Street? A. Rutgers Street.

James Del Guercio—Cross
Frank E. Shepard—Direct

CROSS-EXAMINATION by Mr. Degnan:

Q. You say that that wire fence was put up seven months ago? A. Yes, sir.

Q. Did you make any protest against its being
10 put up? A. Not a thing.

Mr. Degnan: That is all.

FRANK E. SHEPARD sworn for the defendant.

Direct-examination by Mr. Griffinger:

20 Q. Mr. Shepard, what is your business? A. I am a civil engineer and surveyor.

The Court: I think we can admit Mr. Shepard's qualifications.

Mr. Degnan: I—

Q. How long have you been in that business?

The Court: We have admitted Mr. Shepard's qualifications. Continue.

30 Q. Mr. Shepard, are you acquainted with the property in controversy here today, this Friel-Klemc-Del Guercio property? A. I am.

Q. And will you tell the Court what you found in that property? Have you got the— A. I have the original.

The Court: Did you make a survey of it?

The Witness: Not for Mr. Del Guercio, but I did for the prior owner, Mr. Yudin.

Frank E. Shepard—Direct

Q. Now, what—

The Court: Is this the survey you made of the property including the—

The Witness: This, your Honor, is the Friel lot on this corner (indicating). The
10 question in dispute is right back of this here. This is the Hornblower line running straight through here (indicating).

The Court: This is the map you made of property including Mrs. Friel's?

The Witness: It did not include Mrs. Friel's. I made the map from this point to this point (indicating) and Mrs. Friel
20 joined on on the south.

The Court: Suppose we put that in evidence.

Mr. Degnan: An original map. I think this was made up for the purpose of this trial, wasn't it?

The Court: No, it is not. This is dated August 29, 1927.

Mr. Degnan: Yes, sir; it is after the bill was filed. I think we are entitled to have the original notes, not something that is
30 made up for the purpose of motions in this case.

Mr. Griffinger: Not made up. The map is dated August, 1927. Admittedly Mr. Shepard made that before Mr. Del Guercio, made that over three years ago. He said he made it for a prior owner, Mr. Yubin.

The Witness: I didn't say I made the map for Mr. Yubin. I said I made the survey
40 from this point.

Frank E. Shepard—Direct

Mr. Degnan: But you made this map for the purpose of this litigation, didn't you?

The Witness: Yes, sir.

Mr. Degnan: I object to it.

10 The Court: I will admit it. Mr. Shepard would not make any map that was not right.

Mr. Degnan: I don't suppose he would.

The Court: I will admit it.

Mr. Degnan: Exception.

(Map marked Exhibit D-1.)

Q. Referring to this map, will you look at the so-called Hornblower line? A. The Hornblower
20 line runs from Hornblower Avenue, or did at one time, to Washington Avenue, a straight line, and it is indicated today by an old line of occupation, old posts and old post holes, and that line agrees exactly with the distance from Rutgers Street, which fixes this line at a certain distance in from Rutgers Street that agrees with the old occupation today.

Q. And you fixed this line from Rutgers Street in? A. I did.

30 Q. And then what did you find, fixing this line, that the Friel property extended across John Street? A. I found that it extends—in the Friel deed, the measurements run from the Hornblower line to the monumented line of John Street was short, had been cut; in other words, there had been a cut-off from the old line of John Street to the present monumented statute.

40 Q. And that cut-off was on John Street at the end in front of this property as it is today? A. Yes, sir.

Frank E. Shepard—Direct

The Court: Then they cut off a certain number of feet from the front?

The Witness: Exactly.

The Court: Then what has that to do with the rear?

The Witness: Well, it has this to do, your
Honor; if you measure 157 feet, or whatever the distance was—

Mr. Griffinger: 153.

The Witness: —from the present line of John Street, the monumented line, it brings you over beyond the Hornblower line.

The Court: I see.

The Witness: In other words, you have to take the cut-off in consideration. 20

Q. Had you measured from the old line, would it bring it up to this point? A. It would.

Q. It would not be on the other property? A. It would not be on the Hornblower line.

The Court: When was this old line established?

The Witness: I am unable to give you the date, but Mr. Francisco, who was the first town engineer in Belleville, monumented
30 John Street in 1888 or 1889. I was with him at the time.

The Court: Then the monuments in 1888 and 1889 are what you call the new line of John Street, are they?

The Witness: Yes, sir.

The Court: All right.

Q. And, measuring at that point, taking into consideration the cut-off, the present line would 40

Frank E. Shepard—Cross

be how many feet from the hedges as they are today? A. I think about four and a half or five feet, something like in that neighborhood.

Q. And those hedges are over that Hornblower line about four and a half feet as originally
10 marked out by those monuments over here? A. Yes, sir.

CROSS-EXAMINATION by Mr. Degnan:

Q. Now, which is the older street, John Street or Rutgers Street? A. I am unable to answer that question. I think they are practically about the same age. They are both very old streets.

Q. As a matter of fact, Rutgers Street was just
20 graded opposite the Friel property about the— within the last five or six years, wasn't it? A. No, sir.

Q. How long since? A. I should say twenty years.

Q. Was Rutgers Street laid out from John Street? A. No, sir.

Q. Did you lay out Rutgers Street? A. I did not.

Q. The present line of John Street is the monu-
30 mented line of John Street? A. The present line, yes, sir.

Q. There is an overlap between John Street and Rutgers Street? A. There is a shortage.

Q. A shortage of six and a half feet. Now, you account for that shortage by stating that John Street—the line of John Street was changed? A. I do.

Q. Can you point to any record of that change,
40 Mr. Shepard? A. Not any paper record. It may be on file in the County Clerk's office.

Frank E. Shepard—Cross

Q. You made a search up there, didn't you?
A. No, not in this particular case; but John Street is a funnel shaped street, it is an irregular street; in other words the two lines, the side lines, are not coincident. It is thirty-one feet and three
10 inches in width at Main Street, running out to forty-nine and a half feet where it intersects Wil- liams Street, which is two blocks west of this par- ticular point.

Q. You are familiar with the Williams estate map— A. Yes, sir.

Q. —which I had here in Court this morning from the Surrogate's office which shows that the Hornblower line was back 157 feet north of the
20 line of John Street. A. The old line, yes.

Q. Of the line of John Street. A. The old line.

Q. Then, if that were so, then the 153 feet 3 inches of the Friel property would hit the same line, wouldn't it? A. If that were so, yes, but, as matter of fact, I think one of those deeds is "more or less," which would mean mostly any- thing.

Q. No, it wouldn't.

The Court: Now, wait a minute. Do not
30 argue with the witness.

Q. Now, what was the course—what is the course of John Street today, the angle on John Street, do you know? Can you refer to any notes that will show us? A. I don't quite get the drift.

Q. What is the course of it? How many de- grees from the north was John Street? A. I think the other survey will show. I don't think it is marked on here. There is no bearing marked
40

Frank E. Shepard—Cross

on here, but I think that your other survey will show that.

Q. You fixed this dotted line here as the old deed line. How do you fix that, Mr. Shepard?

A. By measuring out from the Hornblower line and connecting it with the new line of John Street, the monumented line.

Q. Well, it is an arbitrary line fixed by you, isn't it? A. No, sir.

Q. Can you give me the course of that line?

A. Well, the course wouldn't mean anything, to my mind.

Q. It would to mine. A. I think not, because the course—

The Court: Just answer. Can you give him the course or not?

The Witness: No; I cannot.

Q. And how do you measure—how do you make a survey, then, on John Street, taking the old line and the new line? A. By running the new line of John Street and measuring out from the Hornblower line and getting the difference between the two lines.

Q. You are assuming a certain line in the rear is the Hornblower line? A. I am not assuming it. I am fixing that by measurement from Rutgers Street.

Q. But there is a measurement, also, from John Street, isn't there? A. No, sir; not on that map.

Q. Why do you assume that the line of Rutgers Street has never been changed? A. I do not assume it. I know that it has not. That is laid out in a map away back in 1827.

Frank E. Shepard—Cross

Q. As a matter of fact, it was only paved and graded and sidewalked within the last twenty years. A. That is true, but that had nothing to do whatever about fixing the line of it.

Q. I didn't ask you that. It had only been paved and graded and sidewalked within the last twenty years? A. Yes, sir.

Q. And you assume that Rutgers Street is the proper line? A. I did not assume it.

Q. You assume for the purpose of your survey—

Mr. Griffinger: If your Honor please—

The Court: Wait a minute. Let him ask his question.

Q. You assume that the line of Rutgers Street is correct? A. I did not assume it. I affirmed it.

The Court: Well, then, that is what he means.

Q. You take the line—

The Court: You start with the line of Rutgers Street as correct?

The Witness: Yes, sir.

The Court: All right.

Q. And where there is a difference between the dimensions from Rutgers Street and the dimension from John Street, you put that to the—charge that against the old line of John Street; is that right? A. That is right.

Q. Did you have anything to do with the laying out of this old line of John Street? A. I assisted the former engineer in making a number of surveys fixing that line.

Frank E. Shepard—Cross

Q. You stated in your affidavit on the motion here that you supervised the laying out and widening of John Street in 1888, is that so? A. Well, no; I don't think it should have been in that question. I did not supervise it. I assisted.

10 Q. You just said that the only way—you assisted in making subsequent surveys on John Street? A. Yes.

Q. So that—what I want to find out, is there any termination to the so-called old line of John Street, and, if so, where is it?

20 Mr. Griffinger: If your Honor please, Mr. Degnan has gone into the line of Rutgers Street and Hornblower Street thoroughly. He is just repeating the same question over again.

The Court: I will allow it.

(Question read as follows: "So that—what I want to find out, is there any termination to the so-called old line of John Street, and, if so, where is it?")

A. Well, I don't quite get the drift of your question.

30 Q. Does the old line of John Street to the west run into the new line any place? A. No. There is a cut-off all the way up.

Q. Runs all the way up to the town line? A. Not to the town line, but to where it intersects William Street.

Q. But you show on this sketch here that the line runs in and comes into John Street, how many feet below Lincoln Street? Could you scale that
40 off for me? A. That is the east.

Frank E. Shepard—Cross

Q. I beg your pardon. A. You said, to the west. It is about half way, I should judge.

Q. How many feet would you say? A. About two hundred feet about.

Q. That would be down to the Monahan property? A. About. 10

Q. Do you know the Monahan property? A. I do.

Q. Did you ever make a survey for Mr. Monahan? A. I did.

Q. Did you ever have a discussion with him as to where you should place your stakes? A. No, sir.

Mr. Griffinger: I object, if your Honor please. 20

Mr. Degnan: For the purpose of laying the foundation.

The Court: I will allow it.

Q. Do you ever remember having a conversation with Mr. Monahan who asked you why you put your stakes in a certain place, two feet out? A. I had a number of conversations with Mr. Monahan. I don't recall that particular one.

Q. Did you have a conversation with him at one time whereby you changed the stakes on John Street two feet out? A. No, sir. 30

Q. At his demand. A. No.

Q. You know there is a fence behind Monahan's property, isn't there? A. There was.

Q. There is today, isn't there? A. I don't know.

Q. When were you up there last? A. Oh, I have not been there for several years.

Q. This survey was made in August, 1927? A. 40

Frank E. Shepard—Cross

Well, that survey was not made. That is simply a compiling of records.

Q. And the last time you were there—

10 The Court: It is not an actual survey made on the ground then?

Mr. Degnan: No.

Mr. Griffinger: No. That is my objection.

The Witness: Not this map, but compiling of other surveys.

Mr. Griffinger: That was my objection at the beginning.

The Court: Were all the other surveys made by you?

20 The Witness: I made the one for Mr. Yubin about five years ago.

The Court: I say, were all the surveys you used on that map made by you?

The Witness: Yes, sir.

The Court: All right.

Q. These distances are estimated at from information you received from other sources; is that right? A. No. There is one adjoining Mrs. 30 Friel on the west, which shows the cut-off, and there is one at the other corner of Hornblower Avenue made in—the date is on there—which shows a nine-foot cut-off.

Q. At what angle— Let me ask you this question: Does the old line of John Street run off the new line of John Street, the monumented line of John Street? A. Well, that is a difficult question to answer. I haven't the degrees and minutes 40 where those two lines are separated, but it is not a parallel cut-off—

Frank E. Shepard—Cross

Q. Well, evidently not. But when you are fixing property lines, don't you get accurately the angles.

Mr. Griffinger: I object. The witness' qualifications are admitted.

The Court: I will sustain the objection. 10

Q. Then you say, Mr. Shepard, that you do not know the exact angle of that cut-off from the old line of John Street to the monumented line of John Street? A. I can't give it to you in degrees and minutes, but it is about six and a half feet at Lincoln Street and about nine feet up at Hornblower Avenue. It is a matter of computation of the variation of the lines. 20

Q. You knew you were going to testify—

Mr. Griffinger: I object.

The Court: Do not argue with him.

Q. Then all you can say is that it is about six and a half feet? You don't know definitely? A. I do.

Q. Do you state that it is definitely six and a half feet? A. It is the difference between— 30 Just a moment. —it is the difference between 157 feet and twenty-five hundredths and 146 feet and seventy-four hundredths. It is five and a half feet—no, wait a moment. That was one hundred and fifty-three, wasn't it?

Q. One hundred fifty-three. A. One hundred fifty-three instead of one hundred fifty-seven. It is six and a half feet—six feet and fifty one-hundredths on Lincoln Street.

Q. Now, the Williams map, that you know about, should be a distance, from the line of John 40

Frank E. Shepard—Cross

Street to the Hornblower line, of 157 feet, shouldn't it? A. I have not seen the map today, but I will take your word for it.

Q. You are familiar with it, aren't you? A. Yes.

10 Q. And that would mean a nine-foot cut-off from the present line of John Street, would it?

A. On that basis, yes, sir.

Q. Well, is that a true basis? A. Well, I don't know. I haven't measured that distance out.

Q. But you say you made a survey on Hornblower Avenue showing 148 and 95 hundredths?

A. Yes, sir.

20 Q. But you do not show on this survey what the deed called for there. A. Yes, I do. Deed 157. That is nine feet. It is marked right here, Mr. Degan.

Q. But this line up at the top was not marked? A. No. That was the same thing. I didn't mark it there, but it shows us it would be more, if anything.

Q. It would be less, wouldn't it? A. It would be more than a nine-foot cut-off.

30 Q. And so you simply assume it is about the same? A. I am just telling you offhand it is about the same.

Q. You say there are fence lines which show the Hornblower line running from Hornblower Avenue down to the rear of the property on Washington Avenue? A. Yes, sir.

40 Q. As a matter of fact, Mr. Shepard, there never was a fence west of the Kleme property, was there? A. There was. The post holes are there today.

Frank E. Shepard—Cross

Q. The post holes? A. Some of the old posts.

Q. You are sure of that, are you? A. Yes, sir; positive.

Q. In your survey of the property, the Holland property or the Kleme property, adjoining the Friel property— A. Yes. 10

Q. From this sketch of it here you don't show any land marks at all in the back there, do you?

A. We do not. When we are making a survey of a lot where there are no encroachments, we do not, as a rule, mark it on the map. We simply make a map showing four lines.

Q. Not even where there is a discrepancy between the distance stated in the deed and the distance actually shown by your survey? A. We 20 would show it in this manner: Deed 157 feet 3 inches, measures 154 feet, or whatever the case might be.

Q. You don't put any designation on there that would enable anybody to know why the change— why a change was made as to monuments or any change in the line at all. A. The very difference—the very fact of the difference between the deed and the measured distance would indicate that.

Q. You have got all the records that Mr. 30 Francisco had, haven't you? A. Yes, sir.

Q. Have you got any record that would show where he laid out the line of John Street? A. Only a muslin map which would show where he put monuments.

Q. That is the present line? A. The present line, yes.

Q. And you recall working on that job? A. I 40 do.

Frank E. Shepard—Cross

Q. How long have you been in the surveying business?

Mr. Griffinger: I object. The qualifications have been admitted.

10 The Court: I will sustain the objection.

Q. This was done in 1888 was it? A. It was.

The Court: Were you there at that time?

The Witness: I was assisting Mr. Francisco at that time.

Q. Can you produce that, Mr. Shepard? A. I think I can. I haven't got it with me.

20 Q. That is the only record you have which shows a change of the line of John Street? A. Well, I wouldn't say it in that manner, I wouldn't answer it in that manner. It is the only paper record I have of the entire length of the street, but there are other records that show were measurements made from interior lot lines, a case like this, out to the present line of the street, which shows the difference.

30 Q. How many surveys have you made between Lincoln and Hornblower Avenue? A. Between Lincoln and Hornblower Avenue—

Mr. Griffinger: I object to the irrelevancy and immateriality of it.

The Court: I will sustain the objection.

40 Q. Don't all the deeds, Mr. Shepard, that run from John Street, follow the same line, the rear dimensions, as the Friel property? For example, isn't it a fact the survey of the Klemc property will show it so, 153 feet, 3 inches? A. Yes.

Q. And the other lots up above there,—you

Frank E. Shepard—Cross

made a survey for Mr. Cullen, didn't you? A. I think I did, yes.

Q. And all of those deeds run in the same general direction, don't they? They don't take in the new line of John Street at all. A. No. Some of them are "more or less" and some of them are 10 positive depth, but they run from the old line of John Street.

Q. Here is a deed to Mr. Cullen in 1915—

The Court: You are talking about a survey?

Mr. Degnan: Yes. Doesn't the survey and the deed—are not the same. In other words, that the deed runs 154 feet or 155 20 feet.

The Court: He has already said that several times.

Q. Have you ever noticed—where is the Monaghan fence with reference to the Hornblower line, the fence on the rear of the Monaghan property? A. Why, to the best of my knowledge and belief, it is on that line.

Q. It is on the Hornblower line? A. Yes; or very close to it. 30

Q. Do you recall there was a wire fence from Monaghan's line there up to the Friel property up to the vacant lot? A. I don't recall that.

Q. Did you ever see the fence lines from the Friel property? A. I never did.

Q. Never saw them. You made a search for Mr. Klemc, didn't you, the property adjoining, or Mr. Holland? A. Yes.

Q. Was there any fence there? A. Not to my 40 knowledge, there was not.

Frank E. Shepard—Re-direct, Re-cross

Q. How long ago did you make that survey?

A. May I refresh my recollection? I don't know whether the date is on there or not. It is quite awhile ago. 1914, February the twenty-sixth.

10 Q. You don't recall whether there was any fence in the back there or not, do you? A. No.

RE-DIRECT EXAMINATION by Mr. Griffinger:

Q. When you made that search for Mr. Kleme in 1914, what was the line that you established there on that survey from the old line or the new line? A. From the new line.

20 Q. Now, I show you, Mr. Shepard, a map of the town of Belleville, which I want to offer in evidence, and ask you whether you have seen this map and you know this map.

Mr. Degnan: I object to that, your Honor please. The proper way to prove the map is by an official from the town.

Mr. Griffinger: All right. Mr. Borrie.

The Court: Have you finished with Mr. Shepard?

30 Mr. Griffinger: I want to offer this map.

The Court: Did Mr. Shepard make the map?

The Witness: Yes; I did.

The Court: I will receive it.

RE-CROSS EXAMINATION by Mr. Degnan:

Q. Is that your map or the town map? A. This is the town map, but I made it.

40 The Court: Well, he made it. Let it be marked in evidence.

(Map marked Exhibit D-2.)

Frank E. Shepard—Re-direct, Re-cross

RE-DIRECT EXAMINATION by Mr. Griffinger:

Q. Will you refer to the property of Friel as it is shown on this map? A. I think this is the lot here (indicating on map).

Q. How far does it extend from John Street to this point here (indicating)? A. 146.96. 10

Q. 146.96. And that is the measurement as shown on the map— A. Just a moment. I think I will correct my testimony. I think that house is the Friel house, 2494. Yes, this is the Friel—this house was taken down (indicating).

Q. And this is a street that was cut through? A. Lincoln Street.

The Court: All right. That shows how much? 20

The Witness: 146.96.

Q. 146.96? A. The same as this.

Q. And that is from the new line? A. That is from the new line.

Q. And is the guide today in the town of Belleville, 146.96? A. Yes, sir.

RE-CROSS EXAMINATION by Mr. Degnan: 30

Q. Now, Mr. Shepard, aren't you mistaken? Isn't that the Friel property there (indicating)? And as a matter of fact, there was no house where Lincoln Street is now? A. Perhaps I am, but —(interrupted)

Q. It was two vacant lots there owned by the city.

The Court: They are both 146.

The Witness: It doesn't make any difference. Only an inch, anyway. 40

Frank E. Shepard—Direct

Q. Don't you recall—you laid out Lincoln Street, didn't you? A. Yes, sir.

Q. Don't you recall that was in—(interrupted)

10 The Court: That doesn't make any difference. Whichever one it was it is only 146 on that map. Is that all for Mr. Shepard?

Mr. Degnan: That is all.

Noon recess.

20 FRANK E. SHEPARD, re-called.

Examined by Mr. Griffinger:

Q. You said you made a survey up there for what is known as the Yudin property. Now, I ask you whether you made that survey for that property up there, that section? A. I did.

Q. You did. And does that show the Friel property on that survey? A. It shows the rear line of the Friel property.

30 Q. Yes. And how far from John Street—how many feet is it from John Street to this point here, along Lincoln Street? A. That is the rear line of the Friel property. It is 146.74.

Q. And that is from the monumental line— A. Yes.

Q. —of John Street.

Mr. Griffinger: I offer that.
(Paper marked Exhibit D-3.)

40

Frank E. Shepard—Cross

CROSS-EXAMINATION by Mr. Degnan:

Q. You surveyed this from the beginning point on Rutgers? A. Yes.

Q. You wasn't fixing the line, of course, of the Friel property at that time, were you? A. I was fixing all rear lines of the lots fronting on John Street at that time, in conjunction with the survey. 10

Q. You show no monuments whatever on this survey, do you? A. No.

Q. Just plain—just measurements from John Street and from Rutgers Street. A. True.

Q. On this map here, this old line of John Street, as you claim, where does that start as shown on your map there? A. Approximately about half way between Lincoln Street, which is not shown on this map, which was a subsequent development—about half way between Lincoln Street and Washington. 20

Q. Was that above or below Monaghan's property? A. Well, possibly east of it, I will say, about midway between the two blocks. I don't just know the exact point.

Q. You don't know the distance between Lincoln Street and Washington Avenue, approximately? A. Well, yes, about three hundred and fifty, between three hundred and fifty and four hundred feet. 30

Q. That would be about 175 feet? A. Yes, sir.

Q. East of Lincoln Street. A. Yes.

Q. And does it run up—does it meet the line of Bridge Street up here in the west? A. By your question do you mean does that whole line of John Street strike on the south side?

Q. Yes. A. No, it does not. 40

Frank E. Shepard—Cross

Q. Does it turn with the angle of the present line of John Street up at Hornblower Avenue? A. Approximately, yes.

Q. And follows the line of John Street all the way up then? A. Yes.

10 Q. An even number of feet away from the present line? A. It varies. The two lines are not coincident. The old line and the new line are not parallel.

Q. But they have an angle from nothing down to 175 feet east of Lincoln Street to about nine feet up here at Hornblower Avenue? A. Right.

Q. Is that right? A. That is right.

20 Q. And then does it still begin to diverge from John Street as it goes up further? A. I should say that, after it gets to the westerly side of Hornblower Avenue, it follows, practically, the monumented line.

Q. The present line of John Street? A. Not exactly, but practically.

Q. Then it makes a turn somewhere? A. Yes.

Q. And comes in back towards— A. About off at this angle it makes a turn and follows the general old line.

30 Q. Then the only change in John Street is between Hornblower Avenue and about 175 feet east on the present Lincoln Street? A. No; the change applies all the way down to the River road.

40 Q. But you show in your sketch here that it starts at nothing here and comes out at an oblique angle. A. True, true, but the two lines of the street, the old and the new, differ all the way from where William Street intersects John down to the River road, on either side of the street—on both sides of the street.

Frank E. Shepard—Cross

Q. When it converges away, doesn't it go right along straight, right straight over? A. I don't know. No, it does not. It changes east to Washington Street.

Q. When John Street was widened, was it widened on one side or both sides? A. It was not widened. 10

Q. But your testimony is that there are two sides—two lines of John Street. A. There was no widening, as far as I know. It might have been a great many years ago, but John Street was a very old street and the surveyors finally laid it out, I think, thirty-one feet, three inches in width at the River road or Main Street. Now, on either side of the street the old deed lines 20 measuring from the lines of occupation in the rear of lots on either side of the street differ with the monumented line as established by the surveyors in the highway.

Q. You know the Monaghan property there, don't you? A. I do.

Q. Do you know that there was formerly a terrace or a hill right in front of that, which was cut away? A. Yes, sir.

Q. When John Street was graded. A. Yes, sir. 30

Q. Isn't that house in the same position then as it is now? A. As far as I know, it is, yes.

Q. Yes. A. Yes. The cellar now is the first floor of the cut.

Q. Yes, but what was done to John Street was really grading it and not widening it. A. At that time it was graded and improved by the construction of a Telford road, the cutting was made at that time. 40

Alexander M. Borrie—Direct

Q. Did you say that John Street was never widened? A. Well, insofar as the monumented line and the line is measured out from the interior locations, there might have been a widening, there was a widening, because there was a cut-off
10 on either side.

Q. But you have stated that you did widen that in 1888, didn't you? A. I don't think so. I said that the street was monumented in 1888.

Q. And those monuments—

Mr. Degnan: Well, that is all.

The Court: That is all. Anything further?

20

ALEXANDER M. BORRIE, sworn for the defendant.

Direct-examination by Mr. Griffinger:

Q. Mr. Borrie, what is your business? A. I am a surveyor.

Q. How long have you been in the surveying
30 business?

Mr. Degnan: I will admit Mr. Borrie's qualifications.

Mr. Griffinger: All right.

Mr. Degnan: I have known him for a number of years.

Q. Mr. Borrie, I show you a blueprint of survey in which your name, Borrie & Kreiner, appears on
40 top and I ask you to tell the Court whether that

Dudley Shepard—Direct

was made in your jurisdiction or through your—
A. Yes, it was.

Q. Who made that? A. I had that survey made by Mr. Dudley Shepard for my firm.

Mr. Griffinger: That is all.

Mr. Degnan: That is all. No questions. 10

DUDLEY SHEPARD, sworn for the defendant.

Direct-examination by Mr. Griffinger:

Q. What is your business, Mr. Shepard? A. 20
Surveyor.

Mr. Degnan: I will admit his qualifications.

Q. Did you make a survey of this property as indicated on that blueprint? A. I did.

Q. And the measurements on that survey are correct as you found them? A. They are.

Q. At the time you made the survey according to the description? A. They are.

Q. Now, your survey was made with what lines
30 as beginning point and— A. It was made from Rutgers Street.

Q. Rutgers Street. And this survey shows thirty-five feet of Lincoln Street then—from that point did you go further on your survey out to John Street from that point nearest John Street on the Del Guercio property? A. I checked the distance from the south line of this survey to John
40 Street.

Dudley Shepard—Direct

Q. And what did you find? A. The same as shown on the original map made here, a distance of 146.74.

Q. And does that distance go to a point known as a monumental line? A. Monumented line of
10 John Street.

Mr. Degnan: Do you offer that in evidence?

Mr. Griffinger: I offer that in evidence.
(Paper marked Exhibit D-4.)

Q. Now, Mr. Shepard, what is the real line of the Friel property known as? A. It is known as the southerly line of the Coddington property.

20 Q. And is it designated by— A. It is made out on a map of lots shown on the map made for Thomas Coddington.

Q. And is that what they call the Hornblower line?

Mr. Degnan: I object to that as leading, if the Court please.

The Court: I will sustain the objection.

30 Q. Now, referring to that map, how far from Lincoln Street, going north does the land of Del Guercio extend—I mean, how far does it run from this point to that point (indicating)? A. 119.12.

Q. And this line is the rear of that Friel property, of the Kleme property and all properties facing on John Street? A. It is.

Mr. Degnan: That is leading, too.

The Court: Yes, it is.

40 Q. And how far through that tract does that line extend from Lincoln Street to the rear of

Dudley Shepard—Direct

these properties? Do you know what I mean, Mr. Shepard? A. No; I do not.

Q. Say here, Lincoln Street, how far does this line referred to here extending in the rear of the property, go?

10 Mr. Degnan: Just a minute. Which map is this witness testifying to? The survey he made or some other map?

Q. I show you this survey and ask you how far this line extends here from this point on Lincoln Street through the tract? A. It is a straight line from Hornblower Avenue to Washington Avenue.

Q. And this is Hornblower Avenue north of Lincoln Street? A. West of Lincoln Street. 20

Q. West of Lincoln Street. And is that line from Lincoln Street to Hornblower Avenue shown or designated as any—

Mr. Degnan: I object to that.

The Court: He has not finished.

Mr. Degnan: I know what he is going to say.

Q. (Continuing)—designated as a monumental line from the description given you from this
30 survey?

Mr. Degnan: I object to that, your Honor please.

The Court: I will allow it. Is it or is it not?

The Witness: I think the description furnished just ran metes and bounds and was not designated as any particular line. 40

Dudley Shepard—Cross

Q. Do you know, of your own knowledge, Mr. Shepard, whether the Coddington property is known or designated by any other name? A. It is also—it was—formerly belonged to Hornblower before Coddington owned it.

10 Q. Also known as the Hornblower tract? A. The Hornblower line.

Mr. Degnan: I object to that as leading, if the Court please.

Q. And from this survey, Mr. Shepard, you found that the hedges extended over that line—
A. As are indicated on that map.

Q. —as indicated.

20 Mr. Griffinger: Cross-examine.

CROSS-EXAMINATION by Mr. Degnan:

Q. You do not indicate on this survey, Mr. Shepard, the distance from this rear line to John Street, do you? A. No.

Q. And did you measure that? A. I did.

Q. What is the distance from where the wire fence is here to John Street? A. 151.24.

30 Q. Well, you just take that from the computation. You didn't measure it, did you? A. It is an actual measurement.

Q. You took your data from records that your father had, didn't you? A. For the side of the lot, yes.

Q. You work in your father's office? A. I do.

Mr. Degnan: That is all.

The Court: That is all, sir.

John J. Daly—Direct

JOHN J. DALY, sworn for the defendant.

Direct-examination by Mr. Griffinger:

Q. Mr. Daly, what is your business? A. Town clerk of Belleville.

Q. Town clerk of Belleville, and these maps— 10
this map here, is that the official record of the town of Belleville?

The Court: It has been admitted.

Mr. Griffinger: All right.

Q. Now, Mr. Daly, in making up the tax bills of the town of Belleville, do they guide themselves according to the map as indicated here?

Mr. Degnan: I object to that, if the Court 20
please. The town clerk doesn't necessarily know how the taxing officials are guided.

The Court: It wouldn't be important anyway. They might tax—might, and very often do, tax the property in the wrong name.

(Discussion.)

Mr. Griffinger: Defendant rests. 30

Mr. Degnan: Mr. Monahan.

John Monahan—Direct

JOHN MONAHAN, sworn in rebuttal.

Direct-examination by Mr. Degnan:

Q. Mr. Monahan, where do you live? A. I live
on John Street.

10 Q. How many feet east of Lincoln Street? A.
I got one hundred feet on John Street, one hun-
dred fifty some feet on Lincoln Street.

Q. Is there a fence behind your line? A. Yes,
sir.

Mr. Griffinger: Your Honor please, any
additional evidence being offered at this
time I object to it unless it is rebuttal.

20 The Court: Yes. Is this supposed to be
rebuttal?

Mr. Degnan: Yes, sir.

The Court: Well, we will listen to it and
see.

Q. Did you ever have your property surveyed
by Mr. Shepard? A. Yes, sir.

Q. Did you ever have any discussion with him
with reference to stakes that he put down? A.
Yes, sir.

30 Q. Tell us what that conversation was. A.
Well, the last time they graded John Street—

Q. Well, when was that? A. Oh, about five or
six years ago, I should think.

40 Q. What do you mean "graded John Street"?
A. They took—they graded down—they took
about, maybe, eighteen inches off a hill in front
of my place to get it lower—there was a hill there
—to get it lower towards the avenue—to cut this
hill off, that grade and there was terrace in front
of my place and they come along and they started

John Monahan—Direct

to dig the terrace away. I was at work, so when
I come home I found the terrace—

Q. No. About Mr. Shepard, please. A. Mr.
Shepard—I am going to tell you how this thing
started. They graded here and then after they
had me try to take this stake up which he had put
down, which I put back. 10

Q. When did he put that peg down? A. When
he surveyed it.

Q. About when did he survey it? A. Oh, maybe
ten or twelve years ago.

Q. I see. And this was when, when he tried
to take this peg up—how long afterwards? A.
When they were going to grade John Street, about
five or six years ago. 20

Q. And what did you say to him and what did
he say to you? A. I told him, if he bothered that
peg, that I would get another surveyor and take
his back peg and measure from there to the front,
and then, if he didn't give me what was right, I
would bring him to Court, and he said, "Boys,
leave it alone."

Q. Is your pegs that Mr. Shepard laid down
inside or outside of your rear fence? A. They
are outside of my fence. 30

Mr. Degnan: All right. Cross-examine.

Mr. Griffinger: No questions.

The Court: This is the case. Now, do
you want to have the testimony written out
and submit briefs?

Mr. Degnan: I have two other rebuttal
witnesses, if the Court please.

The Court: What is it?

Mr. Degnan: I want to establish—to con- 40

Discussion

tradict the testimony of Mr. Shepard, the surveyor, that there was a line fence from Hornblower Avenue down to the Kleme property.

10 The Court: No. That is not rebuttal. He was contradicting you, that was all. You say there was and he says there was not. Now, there is no use saying it over again.

Mr. Degnan: That is it, anyway. They testified to that.

The Court: Yes. They testified to that.

Mr. Degnan: I see.

20 The Court: Now, how do you want to dispose of it?

Mr. Degnan: Well, it is up to your Honor.

The Court: Do you want to submit briefs?

Mr. Griffinger: I have law I would like to have your Honor look over.

The Court: I can't look over it now.

Mr. Degnan: Briefs would be the thing. It will take too much time now.

30 The Court: If you want opportunity to submit briefs, you must arrange with Mr. Salmon to have the testimony written out and submit your briefs.

Mr. Griffinger: All right. Will your Honor designate any time?

The Court: How long do you think you ought to have for your briefs?

40 Mr. Griffinger: I would not require more than two days, if your Honor please. The law is complete.

Exhibit C-1

The Court: How about ten days after you get the testimony?

Mr. Degnan: That will suit me.

Mr. Griffinger: All right.

10

EXHIBIT C-1.

THIS INDENTURE, made the Twenty-ninth day of March in the year of Our Lord One Thousand Eight Hundred and Ninety-two—BETWEEN Theodore Sandford and Margaret L. his wife Anna D. Sandford, Edmund J. Sandford and Mary J. his wife of the Township of Belleville in the County of Essex and State of New Jersey Charles Sandford of the City of Paterson in the County of Essex and State of New Jersey of the First Part;

AND Maurice Friel of the City of Newark in the County of Essex and State of New Jersey of the Second Part:

WITNESSETH, That the said party of the first part, for and in consideration of Three hundred and fifty dollars lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff,

20

30

40

Exhibit C-1

convey and confirm, to the said party of the second part, and to his heirs and assigns forever, ALL That Certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Belleville in the County of Essex and State of New Jersey.

Beginning in the Northerly line of John Street at a point distant measuring in the line of Said Street One hundred and Seventy five feet westerly from the line dividing lands ofomerly of F B Coddington dec. from lands of the Widow Ryan Said beginning corner being also the South East Corner of a lot heretofore Conveyed by Said party of the first part to Holland thence (1) Northerly along the line of the Same One hundred and fifty three feet and three inches to the line of lands formerly of James Hornblower dec. thence (2) Easterly along the line thereof twenty four feet and three inches, thence (3) Southerly in a line a little East of parallel with the first described line to a point distant Easterly twenty five feet from the beginning Corner Measuring in the line of Said Street, thence (4) Westerly along the line of Said John Street twenty five feet to the point and place of Beginning. The lot described and hereby Conveyed is Twenty five feet on John Street, and twenty four feet three inches on Hornblowers line and Extends Northerly from John Street to Said Hornblowers line

TOGETHER with all and singular, the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the

Exhibit C-1

same belonging or in anywise appertaining: ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof, To HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever; and the said Theodore Sandford, Anna D. Sandford, Edmond J. Sandford and Charles Sandford do for themselves their heirs, executors and administrators covenant and grant to and with the said party of the second part his heirs and assigns, that they the said Theodore Sandford, Anna D. Sandford, Edmond J. Sandford and Charles Sanford are the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever:

AND ALSO, that the said party of the first part now have good right, full power and lawful authority, to grant, bargain, sell and convey the

Exhibit C-1

said land and premises in manner aforesaid, AND ALSO, that they the said Theodore Sandford, Anna D. Sandford, Edmond J. Sandford and Charles Sandford will WARRANT, secure, and forever defend the said land and premises unto the said Maurice Friel his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

IN WITNESS WHEREOF, the said party of the first part have hereunto set our hands and seals the day and year first above written.

20 THEODORE SANDFORD (Seal)
MARGARET L. SANDFORD (Seal)
EDMUND J. SANDFORD (Seal)
MARY J. SANDFORD (Seal)
ANNA D. SANDFORD (Seal)
CHA'S. SANDFORD (Seal)

Signed, Sealed and Delivered
in the presence of
Oliver H. Perry.

30 State of New Jersey, } ss:
County of Essex.

BE IT REMEMBERED, That on this Twenty-ninth day of March in the year of Our Lord One Thousand Eight Hundred and Ninety-two before me Oliver H. Perry a Master in Chancery of New Jersey personally appeared Theodore Sandford and Margaret L. his wife, Edmond J. Sandford and Mary J. his wife, Anna D. Sandford and Charles

Exhibit C-1

Sandford who, I am satisfied are the grantors in the within Deed of Conveyance named; and I having first made known to them the contents thereof, they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

And the said Margaret L. Sandford and Mary J. Sandford being by me privately examined, separate and apart from their husbands, did further acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, FREELY, without any fear, threats or compulsion of their said husbands.

OLIVER H. PERRY, 20
Master in Chancery
of New Jersey.

WARRANTY DEED

Theodore Sandford & wf
Anna D Sandford
Edmond J. Sandford & wf
& Charles Sandford

To 30
Maurice Friel

Dated, March 29th, 1892.

Received in the Register's Office of the County of Essex, N. J. on the 21st day of April A. D., 1892 at 12:10 o'clock, in the afternoon and Recorded in Book R. 26 of Deeds for said County, on pages 542 and 543.

RICHARD E. LOGAN, 40
Register.

EXHIBIT C-2.

*To all Persons to whom these Presents shall come,
or whom they may concern:*

I, JOHN R. FLAVELL, Sheriff of the County of
Essex, in the State of New Jersey, send Greeting:

10 WHEREAS, on the Sixth day of June, in the year
of our Lord nineteen hundred and Eighteen, a cer-
tain writ of Fieri Facias was issued out of the
Court of Chancery of the State of New Jersey,
directed and delivered to me, JOHN R. FLAVELL,
then and still being Sheriff of the said County of
Essex, and which said writ is in the words or to
the effect following—THAT IS TO SAY: NEW JERSEY
20 to wit: THE STATE OF NEW JERSEY TO THE SHERIFF
OF THE COUNTY OF ESSEX: GREETING:

WHEREAS, on the Twenty-fifth day of
May, in the year of our Lord nine-
(L. S.) teen hundred and Eighteen, by a cer-
tain decree made in our Court of
Chancery before our Chancellor at Trenton, in a
certain cause therein depending, wherein Belle-
ville Building & Loan Association is complainant;
and Margaret Friel, Agnes Friel, Catherine Friel,
30 Margaret Friel, Rose Friel, Maurice Friel, Wil-
liam Friel, Hannah Dougherty, Administratrix of
the estate of Catherine Sheridan, deceased, John
Sheridan, Mary Sheridan, Patrick Dougherty,
Thomas Dougherty, Margaret Dougherty, Cath-
erine McCaulley, Thomas McCaulley, Ellen Dyer,
James Dyer, Mary Smith, Charles Smith, Han-
nah Dougherty, William D. Gibby, and A. Leslie
Price, assignees of said Maurice J. Friel and Wil-
40 liam Dougherty, are defendants, it was ordered,
adjudged and decreed that certain mortgaged

Exhibit C-2

premises with the appurtenances in the bill of
complaint in the said cause particularly set forth
and described—that is to say. All the following
tract or parcel of land and premises hereinafter
particularly described, situate, lying and being in
the Township of Belleville in the County of Essex 10
and State of New Jersey:

BEGINNING on the northerly line of John Street
at a point distant measuring in the line of said
street 175 feet westerly from the line dividing
lands formerly of T. B. Coddington, deceased,
from lands of the widow Ryan, said beginning
corner being also the southeast corner of a lot
heretofore conveyed by Theodore Sandford and
others to Holland; thence (1) northerly along the 20
line of the same 153 feet 3 inches to the line of
lands formerly of James Hornblower, deceased;
thence (2) easterly along the line thereof 24 feet
and 3 inches; thence (3) southerly in a line a little
east of parallel with the first described line to a
point distant easterly 25 feet from the beginning
corner measuring in the line with said street;
thence (4) westerly along the line of said John
Street 25 feet to the point and place of BEGIN- 30
NING. The lot described and hereby conveyed is
25 feet on John Street and 24 feet and 3 inches on
Hornblower's line.

Together with all and singular the rights, liber-
ties, privileges, hereditaments and appurtenances
thereunto belonging, or in anywise appertaining,
and the revisions and remainders, rents, issues,
and profits thereto, and also all the estate, right,
title, interest, use, property, claim and demand of 40

Exhibit C-2

the said Defendants, of, in, to and out of the same,
 be sold to pay and satisfy in the first place unto
 the said Belleville Building & Loan Association,
 the sum of \$1224.21, the principal and interest se-
 cured by two certain mortgages given by Maurice
 10 Friel and Margaret, his wife, to complainant, one
 bearing date the 9th of February 1900, and the
 other bearing date the Tenth day of October, in
 the Year One Thousand Nine Hundred and One,
 together with lawful interest thereon from the
 Thirtieth day of January, Nineteen Hundred and
 Eighteen, until the same be paid and satisfied, and
 also the cost of the said complainant; and that for
 that purpose a writ of Fieri Facias should issue,
 20 directed to the Sheriff of the County of Essex,
 commanding him to make sale as aforesaid, and
 that the surplus money arising from such sale, if
 any there be, should be brought into the said
 Court, subject to the further order of the said
 Court, as by the said decree remaining as of rec-
 ord, in our said Court of Chancery, at Trenton,
 doth and may more fully appear.

AND WHEREAS, the costs of the said complainant
 30 have been duly taxed at \$340.89;

Therefore, you are hereby commanded, that you
 cause to be made of the premises aforesaid by sell-
 ing so much of the same as may be needful and
 necessary for the purpose, the said sum of Twelve
 Hundred and Twenty-four Dollars and Twenty-
 one Cents (\$1224.21), and the same you do pay
 to the said complainant, together with lawful in-
 40 terest thereon as aforesaid, and the sum afore-
 said of costs; and that you have those moneys

Exhibit C-2

before our said Chancellor, in our Court of Chan-
 cery, aforesaid, at Trenton, on the Sixth day of
 September next, to render to the said complain-
 ant, and also the surplus money, if any there be,
 to abide the further order of our said Court, ac-
 10 cording to the decree aforesaid. And you are to
 make return at the time and place aforesaid, by
 certificate, under your hand, of the manner in
 which you shall have executed this our writ, to-
 gether with this writ.

WITNESS, EDWIN ROBERT WALKER, Esquire, our
 Chancellor, at Trenton aforesaid, the 6th day of
 June in the year of our Lord, one thousand nine
 hundred and Eighteen. 20

JOSEPH A. CONNOLLY, Solicitor.
 ROBERT H. McADAMS, Clerk.

As by the record of the said writ of Fieri
 Facias in the office of the Clerk of the said Court
 of Chancery, in Book H-10 of Executions, page
 388 &c., may more fully appear,

AND WHEREAS I, the said JOHN R. FLAVELL, as
 such sheriff as aforesaid, did, in due form of law, 30
 advertise the said lot of land and premises to be
 sold under and by virtue of the said writ of Fieri
 Facias, at public vendue, to be held at the Court
 House in the City of Newark, on Tuesday, the
 Sixth day of August, A. D., nineteen hundred and
 Eighteen, at two o'clock in the afternoon of that
 day.

By public advertisement signed by myself, and 40
 put in five or more public places in the said County

Exhibit C-2

of Essex, one of which was in the Township where said real estate is situated, of the time and place appointed for such sale, for at least one month preceding the time appointed for said sale, and publishing the same in the Newark Ledger and the
 10 Belleville Times, two of the newspapers printed and published in the said County, where the lands above described are situated, the same being designated for the publication of the laws of this State, and circulating in the neighborhood of said real estate, for at least four weeks successively, one in each week, next preceding the time so appointed for selling the same, one of which said newspapers to wit:

20 The Newark Ledger, is printed and published at Newark, the County seat of said County at which time and place I did accordingly offer and expose the said lot of land and premises for sale at public vendue under and by virtue of the said writ of Fieri Facias. And thereupon Belleville Building & Loan Association, of the Town of Belleville County of Essex and State of New Jersey, did bid for the same the sum of One Thou-
 30 sand Six Hundred and Seventy-nine Dollars and Sixty-eight Cents (\$1,679.68); and no other person bidding as much, I did then and there, openly and publicly, in due form of law, between the hours of twelve and five in the afternoon, strike off and sell the said lot of land and premises for the sum of One Thousand Six Hundred and Seventy-nine Dollars and Sixty-eight Cents (\$1,679.68); to the said Belleville Building & Loan Association, it being then and there the highest bidder
 40 for the same, and the said sale having been con-

Exhibit C-2

firmed by an order of the said Court of Chancery, dated Nineteenth day of August, A. D., nineteen hundred and Eighteen;

Now, THEREFORE, KNOW YE, That I the said JOHN R. FLAVELL, as such Sheriff as aforesaid, 10 under and by virtue of the said writ of Fieri Facias, and in execution of the power and trust in me reposed, and also for, and in consideration of the said sum of One Thousand Six Hundred and Seventy-nine Dollars and Sixty-eight Cents (\$1,679.68); to me in hand paid, the receipt whereof I do hereby acknowledge, and therefrom acquit, exonerate and forever discharge the said Belleville Building & Loan Association, its successors 20 and assigns, have granted, bargained, sold, assigned, transferred and conveyed, and by these presents do grant, bargain, sell, assign, transfer and convey, unto the said Belleville Building & Loan Association, its successors and assigns all and singular, the said lot of lands and premises, with the appurtenances, privileges, and hereditaments thereto belonging or in any way appertaining: To HAVE AND HOLD the same unto the said Belleville Building & Loan Association, its 30 successors and assigns, to its and their only proper use, benefit and behoof forever, in as full, ample and beneficial a manner as by virtue of the said writ of Fieri Facias I may, can or ought to convey the same

And I, the said JOHN R. FLAVELL, for myself, my heirs, executors and administrators, do hereby covenant, promise and agree to and with the said Belleville Building & Loan Association, its suc- 40

Exhibit C-2

cessors and assigns, that I have not, as such Sheriff as aforesaid, done or caused, suffered or procured to be done, any act, matter or thing, whereby the estate hereby intended to be conveyed in and to the said lot of land and premises, with the appurtenances, is, may or can be changed, charged, encumbered, or defeated in any manner whatever.

IN WITNESS WHEREOF, I the said JOHN R. FLAVELL, as such Sheriff as aforesaid, have hereunto set my hand and seal this Nineteenth day of August, in the year of our Lord, nineteen hundred and Eighteen.

20 JOHN R. FLAVELL (Seal)
Sheriff.

Signed, Sealed and Delivered
in the Presence of
Harold A. Miller.

(Cancelled Two Dollar
Documentary Stamp)

New Jersey, Essex County, ss.

30 I, John R. Flavell, Sheriff of the County aforesaid, do solemnly swear that the land and real estate described in this deed, made by me to Belleville Building & Loan Association, of the Town of Belleville County of Essex and State of New Jersey, was by me sold by virtue of a good and subsisting execution, as is therein recited, that the money ordered to be made has not been, to my knowledge or belief, paid or satisfied, that the time and place of sale of the said land and real estate was by me duly advertised as required by

40

Exhibit C-2

law, and that the same was cried off and sold to a bona fide purchaser for the best price that could be obtained.

JOHN R. FLAVELL
Sheriff.

Sworn before me, one of the Masters in Chancery of the State of New Jersey, on this Twenty-eighth day of August, in the year of our Lord nineteen hundred and Eighteen, and I having examined the Deed above mentioned, do approve the same and order it to be recorded as a good and sufficient conveyance of the land and real estate therein described.

HAROLD A. MILLER
Master in Chancery of New Jersey. 20

Endorsed:

DEED.

JOHN R. FLAVELL, Sheriff

to

BELLEVILLE BUILDING & LOAN
ASSOCIATION. 30

Received in the Register's Office of the County of Essex, N. J., on the 9th day of October, A. D. 1918, at 2:45 P. M. and recorded in book S-60 of Deeds for said County, pages 331-334.

WALTER A. EVANS
Register.

Consideration \$1,679.68
Dated, August 19th, 1918. 40

EXHIBIT C-3.

THIS INDENTURE, made the fourth day of October in the year of Our Lord One Thousand Nine Hundred and Eighteen.

10 BETWEEN THE BELLEVILLE BUILDING & LOAN ASSOCIATION a Corporation, organized under the laws of the State of New Jersey located in the Town of Belleville in the County of Essex and State of New Jersey of the First Part;

AND MARGARET FRIEL, widow, of the Town of Belleville in the County of Essex and State of New Jersey of the Second Part:

20 WITNESSETH, That the said party of the first part, for and in consideration of EIGHTEEN HUNDRED (\$1800.00) DOLLARS lawful money of the United States of America, to it in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these 30 presents does give, grant, bargain, sell, lien, release, enfeoff, convey and confirm to the said party of the second part, and to her heirs and assigns forever,

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Town of Belleville in the County of Essex and State of New Jersey.

40 BEGINNING on the Northerly line of John Street at a point distant measuring in the line of said

Exhibit C-3

street 175 feet Westerly from the line dividing lands formerly of T. B. Coddington, deceased, from lands of the widow Ryan, said beginning corner being also the Southeast corner of a lot heretofore conveyed by Theodore Sanford *et al* to

Holland; thence (1) Northerly along the line 10 of the same 153 feet 3 inches to the line of lands formerly of James Hornblower, deceased; thence (2) Easterly along the line thereof 24 feet 3 inches; thence (3) Southerly in a line a little east of parallel with the first described line to a point distant Easterly 25 feet from the Beginning corner, measuring in the line with said Street; thence (4) Westerly along the line of said John Street 20 25 feet to the point and place of BEGINNING. The lot described and hereby conveyed is 25 feet on John Street and 24 feet 3 inches on Hornblower's line.

Being the same premises conveyed to the said party of the first part by John R. Flavell, Sheriff, by deed dated the nineteenth day of August, Nineteen Hundred and Eighteen, and recorded in the office of the Register of the County of Essex, in Book S-60 of Deeds for said County on pages 331, 30 etc.

This deed being given and accepted, subject to all liens, taxes and assessments that may exist against said premises.

TOGETHER with all and singular, the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining; 40

Exhibit C-3

Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof:

10 To HAVE AND TO HOLD, all and singular the above described land and premises with the appurtenances, unto the said party of the second part, her heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever: And the said party of the first part does for itself and its successors, covenant and grant to and with the said party of the second part her heirs and assigns, that she, the said party of the first part
20 is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the
30 above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever:

AND ALSO, that the said party of the first part now has good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid,

40 AND ALSO, that the said party of the first part will WARRANT, secure, and forever defend the said

Exhibit C-3

land and premises unto the said party of the second part her heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever. 10

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed by its President and attested by its Secretary and its common seal to be hereto affixed, the day and year first above written.

THE BELLEVILLE BUILDING & LOAN ASSOCIATION
By John C. La Faucherie
President. 20

Attest:
RICHARD P. SCAINE
Secretary.

(Seal)

(Two One-Dollar Cancelled Documentary Stamps)

State of New Jersey } ss: 30
County of Essex

BE IT REMEMBERED, That on this Sixth day of November in the year of Our Lord One Thousand Nine Hundred and Eighteen before me, an attorney at Law of New Jersey personally appeared RICHARD P. SCAINE who, being by me duly sworn, doth depose and make proof to my satisfaction, that he well knows the corporate seal of the BELLEVILLE BUILDING & LOAN ASSOCIATION the grantor named in the foregoing deed; that the 40

Exhibit C-3

seal thereto affixed is the proper corporate seal of said company; that the same was so affixed thereto and the said deed signed and delivered by JOHN C. LA FAUCHERIE who was at the date and execution thereof, the President of said company, in the presence of the said deponent, as the voluntary act and deed of the said company, and that the said deponent thereupon signed the same as subscribing witness.

RICHARD P. SCAINE.

Sworn and subscribed before me at the date aforesaid.

Joseph A. Connelly
Attorney-at-Law
of New Jersey

Endorsed:

DEED.

THE BELLEVILLE BUILDING AND
LOAN ASSOCIATION

to

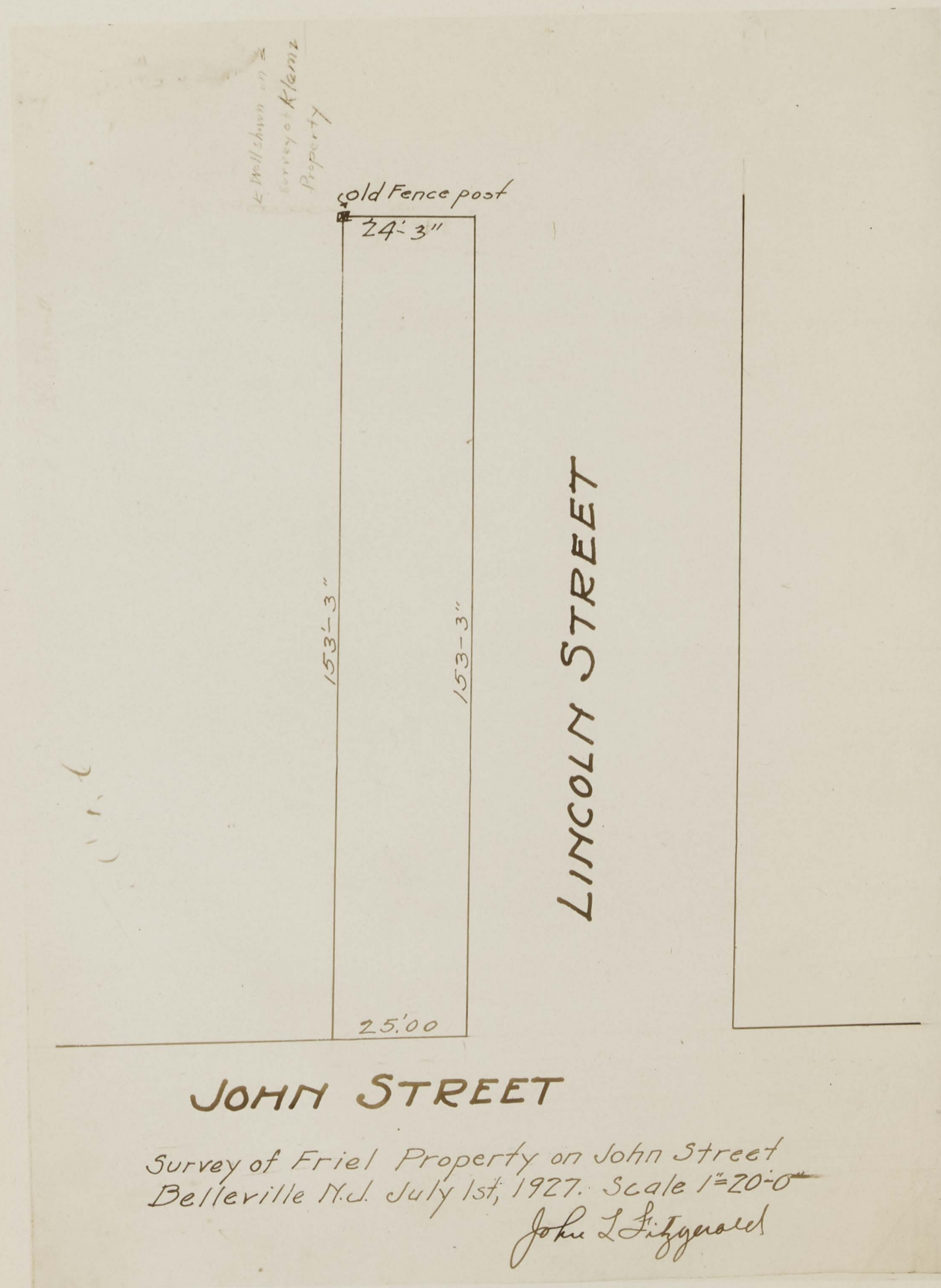
MARGARET FRIEL, widow,

Dated, October 4th, 1918.

Received in the Register's Office of the County of Essex N. J. on the 10th day of December A. D., 1918, at 3:50 o'clock, in the afternoon and Recorded in Book X-60 of Deeds for said County, on pages 489-491.

WALTER A. EVANS,
Register.

EXHIBIT C-6.



William Klemz & Mary his Wife
 Belleville Essex Co
 New Jersey May 1927
 Scale 1"=20'

Civil Engineer & Surveyor
 671 Broad St
 New York, N.Y.

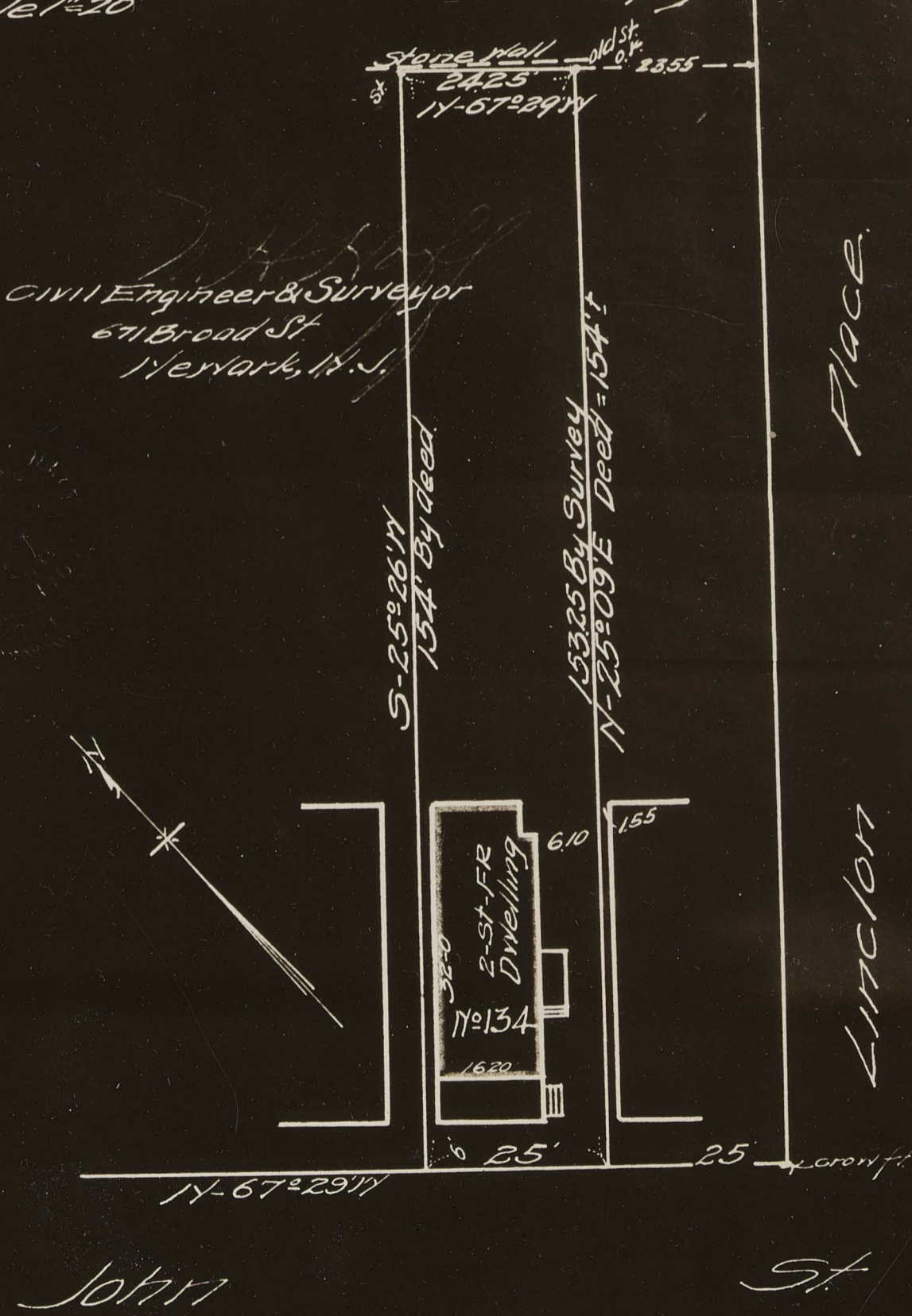


EXHIBIT D-3.

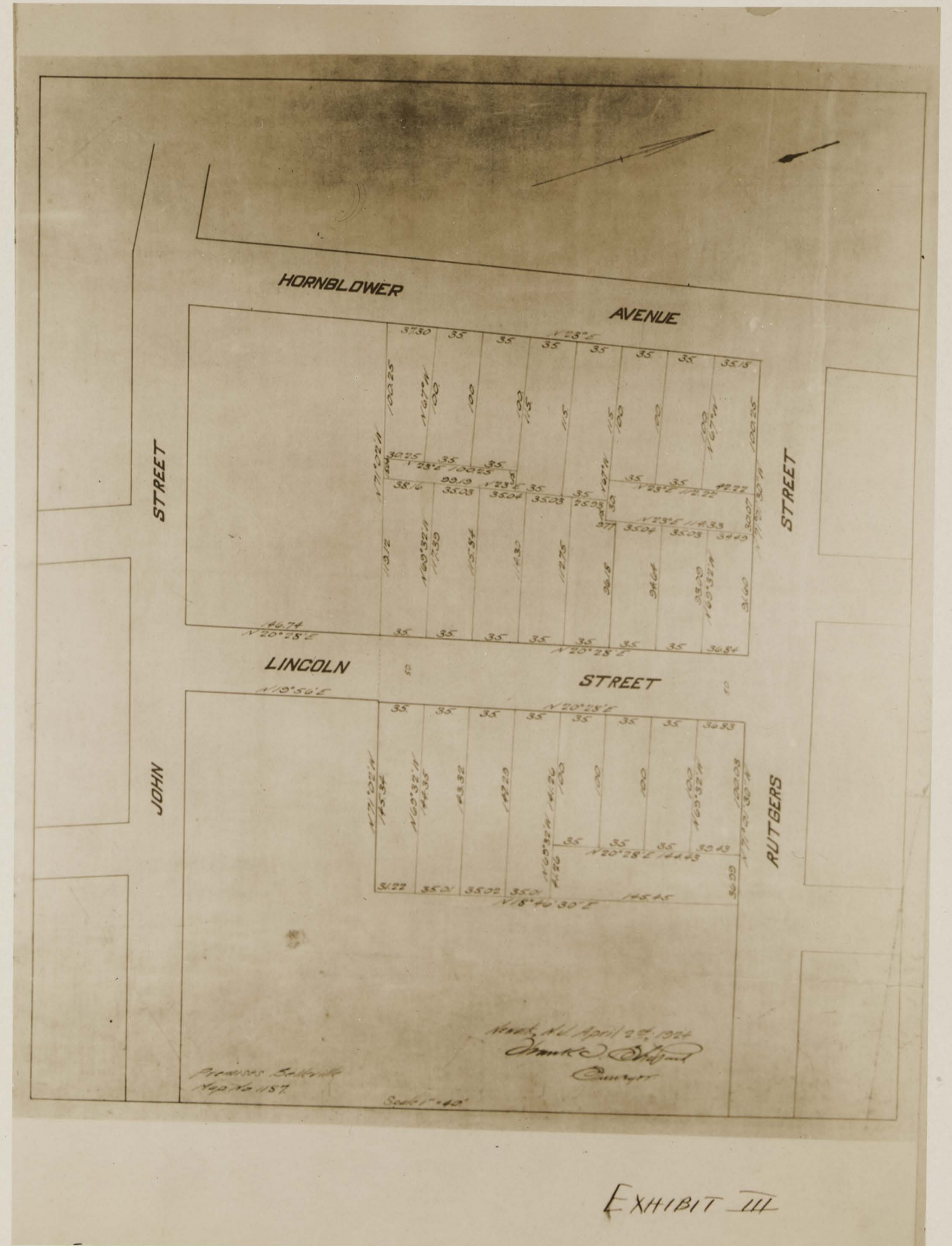


EXHIBIT III

EXHIBIT D-4.

790 BROAD STREET
620 KINNEY BLD G

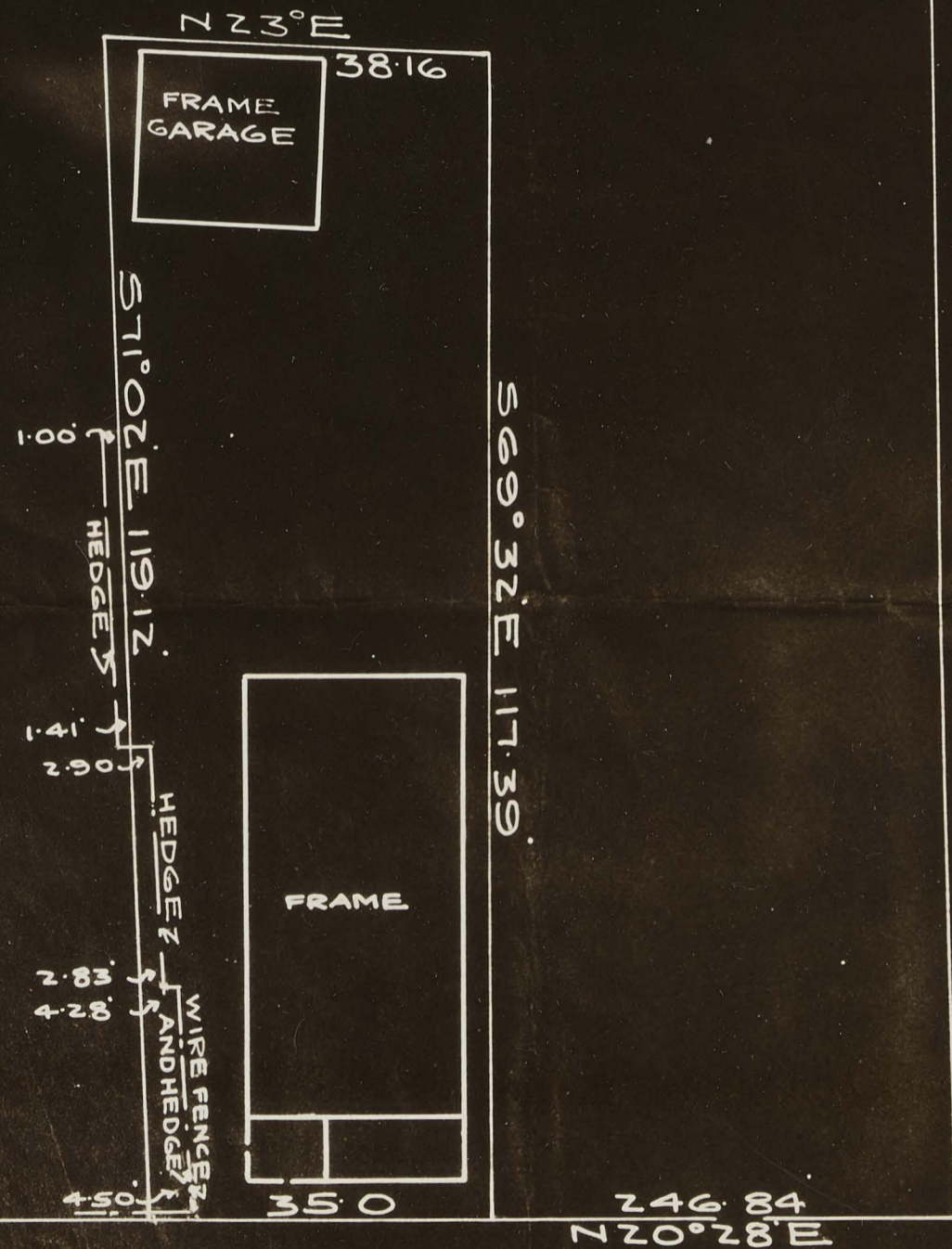
BORRIE & KREINER
SUCCESSORS TO YOUNG & BORRIE
SURVEYORS & MUNICIPAL ENGINEERS
NEWARK, N. J.

PHONE 1009 MULBERRY

MAP OF PROPERTY

BELONGING TO

LOCATED AT BELLEVILLE, N. J.



RUTGERS STREET

LINCOLN STREET

STREET

SURVEY NO. 27-1011 THIS SURVEY IS MADE UPON A REQUISITION OF

MAP NUMBER..... J. L. DELGUERCIO.

TAX SHEET.....

SCALE 1 IN. = 16 FT. AND FOLLOWS THE INSTRUCTIONS THEREIN CONTAINED.

26-1681

NEWARK, N. J., AUGUST 16th 1927

Borrie & Kreiner
SURVEYORS

**New Jersey
Court of Errors and Appeals**

Between:

MARGARET FRIEL,

Complainant-Respondent,

and

JAMES DEL GUERCIO,

Defendant-Appellant.

On Appeal
from Chancery.

**BRIEF OF A. R. FINELLI, FOR THE
APPELLANT.**

This is on appeal in a suit over a boundary line restraining appellant from entering upon a strip of land, owned by him and adjacent to the lands of the respondent in Belleville. There was a decree advised by Vice Chancellor Church on February 7th, 1928, granting the relief prayed for, with costs, including a counsel fee of \$500. The case was heard upon pleadings and proofs taken on final hearing.

BRIEF OF ARGUMENT.

The appellant's land has a frontage on Lincoln Street from the southerly side of Rutgers Street, running northerly 281.84 feet. The respondent's land has a frontage on Lincoln Street from the

northerly side of John Street running north 153 feet and 3 inches. The actual frontage of the westerly side of Lincoln Street running from the northerly line of John Street north to the southerly line of Rutgers Street is 428.58 feet. The actual distance named in the respondent's, as well as appellant's deed on the westerly side of Lincoln Street is 435.09 feet, an overlapping of 6.51 feet. Both litigants claim this 6.51 feet. Her land, however, is limited to the boundary line of land of James Hornblower, as described in her deed.

The testimony of Mr. Frank T. Shepard, well-known surveyor and engineer (p. 74, l. 20) established the Hornblower line as a fixed boundary line, being a line running westerly from Lincoln Street, distance southerly along Lincoln Street 281.84 feet from the southerly line of Rutgers Street, and being identical with the land claimed by the appellant and included within description to him. It includes the 6.51 feet of land in dispute. Mr. Shepard, testified that the measurement of 153 feet, more or less, from the old line of John Street northerly along Lincoln Street, would bring the land of respondent along the Hornblower line, but the measurement of 153 feet, more or less, from the present line of John Street, would bring her land beyond the Hornblower line and in and upon the land of the appellant. He further testified (p. 75, l. 30) that he assisted Mr. Francisco, the then town engineer, in the changing of the street line. The 6.51 feet of land on the southerly side of appellant's property claimed by the respondent as being part of her land is the number of feet cut off from her property by the change of John Street (bottom p. 75). Measuring from the new street line as it

is today, a distance of 153 feet, more or less, northerly, would place the rear line of respondent's property 6.51 feet beyond the fixed and established Hornblower line as set forth in deed to her.

After John Street was widened the respondent's land measured 146.74 feet. And further from the map offered in evidence (p. 88, l. 30), used by the Town of Belleville for tax purposes, it was shown to the Court that her land measures 146.74 feet and thereby again accounting for the shortage of feet of land belonging to her as a result of the cut-off.

The respondent testified that the placing of the shrubbery or hedges was done with the thought that the line of the hedges corresponded with her property line (p. 28, l. 22). Her land contains a house facing on John Street, and to the rear of the house is a vacant strip of land adjoining the southerly side of said structure, he commenced the construction of a driveway to provide for vehicles entering into the rear of his premises to garages constructed by him on his said land.

The respondent seeks to establish ownership in 6.51 feet of appellant's land and depriving him of this strip of land because of the cut-off of her land, facing on John Street. Both of the appellant's surveyors measured in from John Street the distance called for in the deed. The fact is that the only true way of establishing the Hornblower line was to measure the Hornblower property from Rutgers Street south towards John Street. Further, neither of the appellant's surveyors took into consideration the change of street line of John Street and both readily admitted this in their testimony (p. 48).

POINT ONE.

A boundary line dispute involving principally the question of adverse possession does not present an independent ground for equitable relief.

The complainant in this cause made the location of the division line between her premises and those of the defendants, one of the issues in the case. She alleged that the defendant was wrongfully claiming the right to build the driveway over the line onto the respondent's land and destroying the hedges and fences erected. And, among other things in her bill, prayed that the location of her line be determined. The learned Vice Chancellor found that the respondent and her predecessors in title had been in possession of the strip of land involved for more than 20 years last past. And the decree fixes the line to be located where the respondent claimed. It is now contended by respondent that the Court of Chancery having taken jurisdiction by reason of the threatened invasion of the private right, and which intentions of the appellant, if carried out, would have destroyed the inheritance of the respondent. That the Chancellor's decree (pp. 12, 13, 14) establishing the location of the line was valid and effectual. We, for the appellant, urge, however, an essential qualification of the rule contended for by the other side, which rule, as sometimes expressed, is that once equity has taken jurisdiction of a case, it will retain it for all purposes and dispose of the whole matter. The rule, we respectfully urge, should be taken with the qualification usually stated, "*where the jurisdiction of Chancery has been rightfully invoked for that purpose.*" And perhaps a satis-

factory phrasing of the general rule is that when the Court has jurisdiction of the case for one purpose it will be retained for a final disposition of the whole matter. We, for the appellant, claim, however, that the facts in this case are not sufficient to give the Court of Chancery jurisdiction of the controversy over the boundary, as an independent ground for equitable relief, for the case is lacking in all the facts necessary to such jurisdiction.

POINT TWO.

The right of the respondent to keep the possession of the strip of land in dispute, if it exists, is purely a legal one to be determined primarily by a court of law.

The mere fact that a boundary line is in dispute is not of itself sufficient to confer jurisdiction on a court of equity; but there must be some additional ground of distinct equitable jurisdiction. This doctrine has been recognized in our books since the decision of Chancellor Halsted in *Dickerson v. Stall and Aedsell*, 8 N. J. Equity page 294; that was a case to prevent the cutting down of wood and timber on part of a tract of land where the complainant had peacefully possessed and enjoyed the whole of said tract for more than 20 years.

The same doctrine was applied by Chancellor Zabriskie in *Higbee and Riggs v. Camden and Amboy Railroad and Transportation Company*, 20 N. J. Equity 435, holding that an injunction will not be granted when the complainant has a full and complete remedy at law.

Since then, it has been held by the Court of Appeals, that an injunction ought not to be granted by a court of equity where the right of the complainant, on which the relief founded, or at least the principle of law on which it depends, has not been settled by the courts of law. This was the opinion of Justice Depue in this case of *Prudden v. The Morris & Essex Railroad Company*, decided in 1869 (20 N. J. Equity page 530).

The same famous Chancellor in the case of *Stanford v. Lyon*, 22 N. J. Equity 227, which was a case of an injunction to restrain the erection of a building on the rear of the defendant's lot. In that case the complainant claimed the right to pass over the part of the lot where the building was being erected for access to the hydrant and back gate from the store and office occupied by him on the first floor of the building. This right was claimed under a devise in the will of the former owner of the whole premises, on condition that the complainant should be permitted to carry on the business on that part of the premises then occupied by him for his business of a druggist, so long as he desired to use it for the purpose. The part occupied by the complainant at the making of the will was the store on the first floor at the corner, with the cellar below it, and an office east of it on a street, separated from it by the hall opening on the street, and the passageway to and through this hall from the store to the office. The defendants claimed that this devise only gave the right to occupy the store, cellar, office and hall leading from the store to the office and that the use of the hydrant and passage to them and through the back gate, did not pass by the devise, nor did it create easements for these.

The Chancellor says:

“The question in this case appears to me to be controlled by the decision of the Court of Appeals in *Fetters v. Humphreys*, 4 C. E. Green 471. The devise in that case was of a lot occupied by the testator. From the barn on the rear of this lot he had always passed over an adjoining lot belonging to him into the street; there was no other passage open; no other could be opened, except through an ornamental garden beside the dwelling house, into the front street. It was held that the right to pass out over this other lot did not pass as part of the lot occupied by the testator; that the word ‘occupied’ was apparently confined to corporeal hereditaments, and did not include the easements usually enjoyed with the land, unless they were, legally, easements on the land of another, and as such appurtenant to the premises. Neither of the rights claimed here would be a continuous or apparent easement, and they therefore do not pass, or are not created by a conveyance of part of the premises. This view is clearer in this case, the only devise being the privilege reserved of carrying on the druggist's business in the parts then occupied by him. This creates a freehold estate, but it is not so broad as a devise of these parts for the term. It is simply the right to occupy. It is also confirmed by the agreement executed between the parties under their hands and seals, in which the parts occupied by the complainant are recited to be the store, the cellar under it, and the office; no mention is made of the

privileges claimed in the yard. The complainant is not estopped by this recital, but it is evidence of what were the parts occupied by him at the making of the will. And if the rights of the complainant are not settled by the decision in *Fetters v. Humphreys*, yet, as they have not been settled by law or settled in his favor by any determination of a court of law in this state upon a like devise, an injunction should not be granted or continued, until the right on which it depends has been settled at law. *The Morris and Essex R. Co. v. Prudden*, 5 C. E. Green 530."

POINT THREE.

One securing a conveyance of a specific parcel of real estate cannot tack to the period of his holding of an additional parcel the time of his grantor's holding thereof, to establish title by adverse possession.

Respondent's grantor has not conveyed such property or the interest therein and there is no privity. (See the main cause and annotations in 46 A. L. R. 788.)

Rule of this cause is not a harsh one. Suppose A purchases and holds the record title to 145 feet of street front land and by an adverse possession obtains title to an adjoining six and one-half feet, it would hardly be contended that a conveyance by him of the 145 feet acquired by deed would carry with it title to the six and a half feet acquired by adverse possession. So if A acquires by deed 145 feet and obtains an adjoining strip six and a half feet wide, or some inter-

est in it, his conveyance of the 145 acquired by deed does not carry with it his interest in the adjoining strip. It is a phase of the broad rule that one in adverse possession of land cannot tack to his own the possession of a predecessor to make up the period necessary to give title by prescription, unless he is in privity with that predecessor. (See 1 R. C. L. pages 717, *et seq.*) The cases there hold that a deed does not of itself create privity between the grantor and the grantee, as to the land not described in the deed (but occupied by the grantor in connection therewith) although the grantee enters into possession of the land not described, and uses it in connection with that conveyed. (See the case of *Pell and Throp Co. v. Penn. R. R. Co.*, 20 Atlantic Reporter 63; Court of Chancery, June 23, 1890.) There the bill was filed to restrain the defendant company from entering upon the lands mentioned and digging up and removing the soil therefrom, and destroying and removing the buildings therefrom. The question there presented was whether such a case was made by the proofs as might justify the interference of the Court of Chancery. The complainant was the owner of an extensive pottery plant and portions of the buildings comprising such plant stood upon the land in dispute. The railroad company had two tracks over which it ran its trains and desired the land in question for the purpose of making two additional tracks to carry on its business.

"I think" (said Vice Chancellor Bird) "that the pleadings and proofs develop two grounds upon which the courts of equity interfere preliminary, viz., the destruction of the inheritance and the irreparable in-

jury to the complainant, to these may be added that of estoppel, which, although not formally pleaded, may be considered of no little weight in the determination of the question now under consideration."

The Vice Chancellor continues:

"I do not think that the complainant has succeeded in its efforts to show the paper title to the lands which it claims, but as the testimony stands before me, I am bound to conclude that such title is in the defendant,"

and continuing, said:

"It does not appear that, in any of the conveyances there was any effort made to extend to the paper title beyond the line bounding the defendant's land as given above.

"It is evidence, however, that a portion of the lands of the defendant was inclosed by a fence built over 30 years ago by those through whom the complainant claims, which fence has been maintained during all that period by the owners of the title which the complainant now has by its deed. The fact that those under whom the complainant claims have for so long a period maintained this fence, and enjoyed the possession of the land thus inclosed in connection with its own is insisted upon by the complainant as being of the greatest importance in the consideration of the question before the court. This, I think, is so, but only in connection with the other circumstances to be adverted hereafter. I think

it may well be doubted whether it can be safely relied upon as settled law to hold that where title in one parcel of land is conveyed, and the grantor has possession of another parcel adjoining, his grantee takes possession of both and holds adversely to the true owner, and may claim the benefit of the period of time during which his grantor had the possession or not. The negative of the proposition was declared in the case of *Jenkins v. Trager*, 40 Fed. Rep. 726. In every such case the purchaser has notice of the extent or limit of his title by his deed. But, as the case is presented to me, this particular question need not be decided; for other elements enter into it which cannot be overlooked."

In *Myers v. Polkman*, 89 N. J. L. 300, opinion by Mr. Justice Swayze, was an action of ejectment. The record title was in the defendants. The plaintiff claimed by adverse possession. The plaintiff did not pretend that he was personally in possession for 20 years, that he relied upon the possession of his predecessors in title. The Court (which included Justices Minturn and Kalisch), says:

"We think in the present case that on the plaintiff's own testimony he was obliged to claim the benefit of the possession of John D. Doyle, even against his own title. To accomplish this, the plaintiff sets up a lease to John D. Doyle, made by Charles R. Myers, a predecessor in title of the plaintiff, at a time when David Doyle, John D.'s father, was alive and had title to the land. The plaintiff's argument is

that John D. Doyle, as tenant, was estopped to deny the title of Charles R. Myers, and therefore, John D.'s possession was the possession of Myers, and can be tacked to other predecessors to the plaintiff and thus inure to his benefit. The deed from Leedom to Doyle and Myers' own ignorance until 1911 or 1912, made it clear that there was a mere mistaken location of the boundary line and no intent to claim title to Doyle's property. The case differs" (continues Justice Swayze), "from *Davock v. Nealon*, 58 N. J. Law 21 in that Charles R. Myers disclaims any intent to claim what did not belong to him, and apparently never asserted a right to land outside the bounds of his own title. That in 1906 in the deed to Moore, after the description of metes and bounds, he added, 'And also all the right, title, property, possession and estate of the said party of the first part and in and to any and all lands in the possession and occupancy of the said party of the part, and included within the building and fences and enclosing and including the same.' Then, for the first time, the possession became adverse."

Davock v. Nealon, 58 N. J. Law page 21, N. J. Supreme Court (July, 1895), was argued before Chief Justice Beasley and Justices Depue, Reed and Gummere. The syllabus of the court reads:

1. The adverse possession of successive occupants between whom a privity of estate exists, can be tacked so as to make a continuous twenty years adverse possession.

2. Where one encloses and possesses more land than is covered by the description in the deed and sells to another by the same description, who enters in possession of all the land inclosed, the successive possession can be tacked.

The opinion was of Mr. Justice Reed (Mr. Justice Minturn, then at the bar, was counsellor for the defendant). That was also an action of ejectment brought to recover the possession of a strip of land fronting 1-foot in width on Ferry Street, and running 1-foot in width, back from the street, a distance of 100 feet. The facts proved at the trial were these: Davock, in July 1873, bought a lot, No. 17 on a plot. Nealon, owned the adjoining lot, No. 16. When Davock bought, a house stood on his lot, No. 17, one side of which house, with two fences formed the practical line of division between the two lots. One fence ran from Ferry Street, and was joined to the front corner of the house. The other fence ran from the rear corner of the house, back to the depth of the lots. The front fence, the side of the house, and the back fence, together, formed practically a straight line dividing the two lots. Sometime after he had purchased lot 17, Davock raised the house which stood upon his lot, and put a new foundation under it. In doing this, he moved the house one-foot in on his lot, leaving a space of one-foot between the corners to which the ends of the division fence had been attached, and the fence ends. The ends of the two fences, without any change in the location of the fences, were afterwards connected with the two corners. On April 16, 1892, Nealon, tore down these fences, claiming that the true division line between lots 16 and 17 was one-foot over on lot 17, as that lot had been occupied and

fenced. On the trial, Davock did not claim a paper title to this one-foot strip. The description in the deeds from his predecessors in title for lot 17 stopped short of the one-foot strip. He rested his right to the one-foot strip upon two grounds. He claimed, first, that there had been a practical location of the division line between the two lots, by the mutual location of the fence and by acquiescence in such location by the preceding owners of the respective lots. He claimed, secondly, that he had gained title by adverse possession. At the conclusion of the plaintiff's case the trial justice ruled that he had shown nothing from which the jury could find for him upon either ground. Says Mr. Justice Reed

"The question here is not whether a person having a naked possession of a tract of land disconnected from any other land for which he has title, can by parole turn over his possession to another, so as to continue the first adverse person against the legal owner. The weight of authority is that a parole delivery from one to the other of an actual *pedis possession* is sufficient. The cases already cited exhibit this. In instances of constructive adverse possession the rule is different. *Simpson v. Downing*, 23 Wend. 316. But the question here presented is this: If one, holding the legal paper title to a piece of land, in inclosing it, includes within the inclosure a piece of adjoining land, enters into possession of the entire inclosed tract, and then transfers his legal paper title to another, who goes into possession of the entire inclosed tract, can the two adverse possessions be tacked?

Now, it is perfectly obvious that the deed followed by possession of the whole tract is intended to operate as a conveyance of the possession of the whole tract of all within the inclosure. The legal title passes, as to so much of the lot as is within the inclosure and the actual transference of possession of the rest as of part of the lot sold, is sufficient evidence of a transference of possession to raise the required privity between them. This has always, I think, been understood to be the rule in this state constantly enforced at the circuit. The judgment is reversed."

I call the Court's attention to page 14 of the testimony, the cross-examination of Margaret Friel, where the Court stated in sustaining an objection that "she fenced it in and that would seem to indicate she thought it was hers."

In *Folkman v. Myers*, 93 N. J. E. 208, the Court of Errors and Appeals found,

"That where a grantee under a deed entered into possession and occupied the land under belief that his possession corresponded to the title, and by mistake occupied eight feet of adjacent land, but no intention to occupy more land than he purchased, such possession was not adverse."

The situation *Folkman v. Myers* cited, is identical with the facts as presented on this appeal, and there affirming Vice Chancellor Leaming's reason stated as follows:

"A great number of decisions are to be found in the several states, touching the

force to be given to possession by mistake. Although the decisions are in hopeless conflict, nearly all may be said to recognize in some form, the necessity of an intent to disseize to render the possession adverse. Some authorities adopt the view that the mistaken belief that one holds to his own line necessarily includes the intent to disseize; others hold that such a belief is inconsistent with any intent to disseize or to claim the land of another; still others hold that such a belief may appropriately be accompanied with an intent to claim the land only in case there is no mistake touching the true boundary and may also be appropriately accompanied with an intent to claim the land even if found to be the land of another, such cases seek to ascertain which intent in fact existed; a few cases hold intent immaterial. Mr. Freeman, in his note in 24 Am. St. Rep. 389, collects numerous authorities, and, touching the cases holding that possession by mistake of boundary is not adverse, says: 'It appears to be a fair result of the decisions upon this side of the question to say that whenever a person proceeds to take possession of a tract of land which has been conveyed to him, and in so doing he includes within his possession and subsequently holds a portion of the adjacent tract, and it appears probable that his taking possession of the strip not belonging to him arose through his ignorance or mistake with respect to his boundary, then that,

though he believes and claims that all the land of which he is possessed is his, and intends to exclude all persons therefrom, yet that his possession is not adverse, as against the owner of the strip of which he has taken possession, until the true boundary line is ascertained and he for the first time has an opportunity of determining whether he will hold and adversely possess land which he knows not to be included within the boundaries of the conveyance under which his entry was originally made.' In the same note Mr. Freeman suggests that decisions to the contrary do not seem to accord with the presumption usually indulged in respect to the holding of lands. He then proceeds, 'The presumption to which we refer is one incorporated in many of the statutes of limitations, and which we think is generally implied, whether stated in direct terms or not, and is to the effect that possession is always presumed to be held in subordination to the legal title. By reason of this presumption, the mere holding of the lands of another, however long continued, is not sufficient evidence of title by prescription, but must be aided by other testimony, from which the inference may reasonably be drawn that such possession was maintained in hostility to the title of the true owner. The presumption ought to apply with special force when it appears probable that possession of lands adjacent to a boundary line was taken through ignorance or inadvertence, and maintained without thought of disseizing the owner.' Some

additional cases are collected by the same writer in his note to 62 Am. Dec. at page 527, where he says: 'The question whether a party can acquire a title by adverse possession to lands held by him by mistake frequently arises; and the rule is well settled that where the owner of lands, through ignorance, inadvertence or mistake, takes and holds possession beyond his true line, but with no intention of claiming, further than his actual boundaries, such possession is not adverse and will not support a plea of the statute of limitations.' "

POINT FOUR.

The counsel fee is excessive.

This Court in *Farlee v. Farlee*, decided February 11th, 1928, volume 6, Advanced Reports, page 274, reduced an excessive counsel fee. The present case on appeal was not complicated. The defendant-appellant having challenged the jurisdiction of the Court of Chancery in a present practice should have been to retain the bill and send the parties to the law court for the determination of the question of possession (P. L. 1915, p. 184).

We respectfully say that the decree in this case charges the appellant an exorbitant counsel fee; that the Court of Chancery was without jurisdiction to determine the question of title and the decree finally determining that the respondent has title to the land in dispute, without having given the appellant the opportunity to establish his title

and his right to enter the disputed boundary line is too broad.

Dated, May 15th, 1928.

Respectfully submitted,

ANTHONY R. FINELLI,
Solicitor and of Counsel
with Appellant.

New Jersey Court of Errors and Appeals

Between MARGARET FRIEL, <i>Complainant-Respondent,</i> <i>and</i> JAMES DEL GUERCIO, <i>Defendant-Appellant.</i>	}	<i>On Bill &c.</i> <i>On Appeal from</i> <i>Chancery.</i> <i>Church, V. C.</i> <i>Decree for</i> <i>Complainant.</i> <i>Defendant's</i> <i>Appeal.</i>
---	---	---

BRIEF FOR RESPONDENT.

Statement of the Case.

The bill of complaint in this cause was filed by the complainant, alleging that she was the owner of certain premises on the North side of John Street, in the Town of Belleville, N. J., having a frontage of 25 feet on John Street and a depth of 153 feet 3 inches; the Easterly side of which now abuts on a new street called Lincoln Street; that said premises were conveyed to her husband, Maurice Friel, March 29th, 1893, by Theodore Sandford, et als., and by mesne conveyances title came into the complainant. That the said premises shortly after it was conveyed to Maurice Friel in 1893, were fenced in on all four sides, the said fence lines corresponding with the dimensions of his deed.

The bill charged that the defendant was the owner of lands adjacent to the lands of complain-

ant, and that his description begins on the Southerly side of Rutgers Street which is the next street North of John Street; and defendant claimed that his Southerly line overlapped the Northerly line of the complainant's land by some 4½ to 6½ feet; and made oral threats that unless the fence, hedge and shrubbery which had been erected were forthwith removed that he would forcibly remove them. And in addition he served two written notices upon complainant demanding the removal of said fence, hedge and shrubbery, and if not removed that he would do so. Copies of said notices were attached to the bill of complaint and made part thereof, but said notices were not contained in the state of the case. Complainant prayed that defendant be restrained from trespassing upon her lands and premises, and that she might have such further and other relief in the premises as to the court might seem equitable and just.

The answer admitted the ownership of complainant in the premises and the service of notices upon said complainant that she remove said fence and hedge.

Upon presenting this bill, and supporting affidavits to the Chancellor, he signed a rule to show cause with restraint. And the matter then came on to be heard before Vice Chancellor Backes, upon the bill of complaint with supporting affidavits, and counter affidavits filed by the defendant. Vice Chancellor Backes made an order continuing the restraint pendente lite.

Answer and replication were filed, but no copy of the replication is contained in the state of the case.

The matter came up for final hearing before Vice Chancellor Church, who found that complain-

ant had established her title by over thirty years of actual possession. Proof on that point being so clear that the Vice Chancellor found it unnecessary to go into the paper title, and advised a decree restraining defendant from entering upon the lands and premises of the complainant.

Thereafter the defendant served two notices of appeal. Notice was served by the complainant on the counsel for the defendant that complainant's counsel would move to dismiss the case for want of proper prosecution, and relying upon the rules of this court, complainant did not file any answer to the petition of appeal.

That two days after the opening of the Term of this court, defendant filed a State of the Case, and served same on complainant. Upon inspection of said State of the Case, notice was served by complainant on the defendant that objection would be made to the State of the Case because said State of the Case was incomplete, several important exhibits, among other things, not being set up.

Because of a bereavment in the family of counsel for the defendant, the matter was not heard on the opening day of the Term, but was finally heard on May 29th, 1928. The motion to dismiss having been denied, Counsel for the complainant was given twenty days to file brief for complainant, and the defendant's counsel was ordered to file additional exhibits and complete the record.

ARGUMENT.

Title and Possession of Complainant.

The fact that complainant actually had over thirty years possession of the premises on the boundaries set out in her deeds was not disputed. No

evidence was offered by the defendant to controvert that fact.

The single defense interposed by the defendant was that the line of John Street had been changed in 1888 or 1889. The only witness produced by defendant to prove that fact was a surveyor, one Frank T. Shepard, whose testimony begins at page 72 of State of the Case.

It is unnecessary to quote Mr. Shepard's testimony, as it must be read in full. In the first place, Mr. Shepard says page 74, that there had been a cut off and then at page 93 he says that there was no widening and that John Street was a very old Street. Nor could he point to any record of a change in the line of John Street (p. 76, l. 39) and the only extraneous evidence he mentioned was an old muslin map (p. 85, l. 32) which he did not produce.

Location of the Hornblower Line.

Great reliance is put upon the so-called Hornblower line by defendant as a fixed monument, which should govern the extent of complainant's rear line. It might be noted here that defendant's line does not run to the Hornblower line, but to a given distance from Rutgers Street.

No description is proved to show the extent of the "lands formerly of James Hornblower, deceased." The exact location of this line is not proved by any records. Mr. Shepard did not use the Hornblower line in making his surveys, as a monument, but used the line of Rutgers Street as his fixed base (p. 79, l. 28).

The only reliable proof of the location of the Hornblower line is by complainant, whose deeds state the distance of the Hornblower line from John

Street, as does likewise the partition map offered in evidence by complainant as Exhibit C-7 (which exhibit is not made part of the State of the Case).

Mr. Hoff, a Surveyor produced by complainant, testifies (p. 53, l. 40) :

"Q. Did you find any monuments in the rear of this property which would establish the Hornblower line? A. Not any monuments. Fence lines and fence Posts."

(P. 54, l. 13) :

"Q. Anything else? A. I found a couple of old surveyors' stakes."

THE LAW.

Title by Possession is in Complainant.

Mrs. Friel's and her predecessors' in title possession for over thirty years, make her title absolute.

Under Sec. 28, Cumulative Supplement Compiled Statutes, page 1816, it is provided :

"Thirty years' actual possession of any lands, tenements, or other real estate, excepting woodlands or uncultivated tracts, and that sixty years' actual possession of any woodlands or uncultivated tracts, uninterruptedly continued by occupancy, descent, conveyance or otherwise, in whatever way or manner such possession might have commenced, or have been continued, shall vest a full and complete right and title in every actual possessor or occupier of such lands, tenements, or other real estate, and shall be a good and sufficient bar to

all claims that may be made, or actions commenced by any person or persons whatsoever, for the recovery of any such lands, tenements or other real estate."

Model Plan Agency v. Dimond, et als.,
Vol. 5, Advance Reports, page 70.

Even twenty years actual possession of adverse user would give complainant the right to have her present lines maintained irrespective of the later amendment.

3 Comp. Statutes, Sec. 16, page 3169;
Spottiswoode v. Morris & Essex Railway,
61 N. J. Law, 322;
Rheinfort v. Abel, 80 Atl. Rep. 1059.

The line of John Street could not be changed except by some legislative or judicial act.

No legal proof has been adduced to show that the line of John Street has been changed. Such changes are made by due process of law, and the property of abutting property owners cannot be taken without some legal proceeding and without just compensation.

I take it that it is unnecessary to cite any cases upon this point, except the case of Folkman v. Myers, 93 N. J. Equity, 208, an opinion by Vice Chancellor Leaming, which was affirmed unanimously by this court.

This was a suit brought to quiet title to the westerly five feet of land owned by complainant, which strip defendant, Myers, claimed under adverse possession. The question at issue in that

case was similar to the question raised by the defendant in this case; that an alleged shifting of five feet of the line of Missouri Avenue about the year 1884, changed the lines of all the properties in that block.

Vice Chancellor Leaming said at page 210:

"The testimony discloses that about the year 1884 the easterly line of Missouri Avenue was moved westerly about five feet, and is now about that distance westerly of the point where it was at the time the three above conveyances by the Camden and Atlantic Land Company were made. It is, in consequence, now claimed by complainant that in ascertaining the boundary lines between these three tracts the respective fifty feet measurements must be taken with reference to the easterly line of Missouri Avenue as that avenue is now located on the ground.

"I am convinced that that contention cannot prevail. It does not appear that this change in the location of the easterly line of Missouri Avenue was by either adequate legislative authority or judicial sanction, nor does it appear that the new location conformed more accurately than the old to its correct location as that location would have been ascertained from scientific data; but even though its new location should be deemed to be the accurate location as ascertained by scientific data, that ascertainment or change would not have the effect of disturbing the boundary lines between the three tracts. * * * The obvious intention and purpose of the three conveyances was to convey one hundred and fifty feet easterly from a defined point, and that defined point was the

easterly side of Missouri Avenue as that avenue then existed on the ground."

In this case there is not a scintilla of evidence to show a change in the line of John Street, either by "adequate legislative authority or judicial sanction" and therefore the testimony of Mr. Shepard should be wholly disregarded; and when that is done, there is nothing more to defendant's case.

In the case of *De Veney v. Gallagher*, 20 N. J. Eq. 33, third head note holds:

"Where a deed calls for the line of a street, as a monument, the line of the street, as it is opened and built upon, will be held to be the line intended."

There being differences of opinion between surveyors as to the location of the Hornblower line, it should be disregarded as a monument in fixing distances said to be binding upon it.

The Hornblower line has not been established by anything in this case, to be so definitely fixed and located as to be considered an artificial monument, which would control a given distance in a deed.

The only ground that monuments control given distances, is that the law assumes mistakes are more likely to occur with respect to courses and distances than in regard to objects which are visible and permanent.

Thompson on Real Property, Vol. 4, page 225, Section 3129, lays down the rule:

"In locating lands, the following calls are resorted to, and generally in the order stated;

(1) Natural boundaries; (2) artificial marks; (3) adjacent boundaries; (4) course and distance,—course controlling distance, or distance course, according to circumstances; but it has never been said that each of these occupies an inflexible position."

Sec. 3130:

"The rule is recognized only where the monuments are clearly ascertain, and where there is a doubt as to the monuments as well as to the course and distance, there is no reason for declaring that the monuments shall prevail."

The Court of Chancery had jurisdiction in this case and the decree restraining the defendant was proper under the facts proved therein.

The case of *Hart v. Leonard*, 42 N. J. Eq. 416, in this court, is of course the leading case on this subject. Mr. Justice Dixon, speaking for this court, in that case, classifies under nine heads cases where equity will take jurisdiction to protect legal interests in real property.

It is submitted that this case comes under classes 3, 6 and 7, and possibly under class 9.

Under head 3, the complainant's right and title to the premises occupied by her for over thirty years and fenced on the boundaries set out in her deed, settles and establishes her title thereto beyond question; and though the defendant formally disputed her title, it is submitted that there was no substance whatever in said dispute.

Under head 6, Justice Dixon says, that a bill may be maintained to prevent an injury which will be destructive of the inheritance, or (using the con-

unctive), which equity deems to be irreparable. And cites as authority on this proposition, among others, the case of Southmayd v. McLaughlin, 24 Eq. 181; which is practically on all fours with this case.

It is in testimony in this case that Mrs. Friel has lived on these premises all her married life, and raised her family there. Recently a new street has been laid out abutting her easterly side line, and the grading of this street raised her property on a terrace of some six feet or more (pp. 20-23). It is not in evidence exactly what the defendant intends to do with the six and a half feet which he claims, or exactly what he intends to build thereon, but it necessarily means the tearing down of her terrace, and uprooting of her fence, hedge, shrubbery and garden in the rear.

Under head 7, Mr. Justice Dixon cites as authority, the case of De Veney v. Gallagher, 20 N. J. Eq. 33, which is another case not unlike the one before this court.

The possibility of this case coming under head 9, was a situation developed in the case of Hirshberg v. Flusser, 87 N. J. Eq. 588; decision by Vice Chancellor Lane; wherein a person had obtained a judgment in ejectment for an encroachment of a wall, and because the wall could not be removed without damage to defendant's property, and the Sheriff could not tear it down without committing a trespass, relief had to be sought in the Court of Chancery to enforce the judgment obtained at law. Such a situation might arise in this case, the defendant might go ahead and build a structure on this six and a half feet, which he claims, and complainant might obtain judgment in ejectment, but would be powerless to enforce her judgment without resorting to the aid of equity.

There are numerous later cases which apply the rule of Hart v. Leonard, *supra*. But one that would seem to more closely approach the issue in this case is that of Meyers v. Kelly, 83 Eq. 474; decision by Vice Chancellor Leaming, and he says page 475:

"It is a well-established rule that the mere tortious taking and holding of a complainant's real property will not alone afford a ground for equity jurisdiction or justify preventive relief by a court of equity in the absence of threatened irreparable injury. Ballantine v. Harrison, 37 N. J. Eq. 560. But the present bill neither seeks the restoration of complainant's possession nor restraint against the possessory acts of defendants; it seeks to maintain the integrity of complainant's property through coercive restraint against its alteration or change by threatened wrongful acts of defendants. The relief so sought is peculiarly within the jurisdiction of this court and commands the exercise of its beneficial preventive writ in all cases in which complainant's title is unchallenged or clear and defendant's threatened acts are unlawful. Hart v. Leonard, 42 Eq. 416."

The defendant has not pleaded lack of jurisdiction and raised the question for the first time in the brief filed on his behalf in this court.

While failure to plead jurisdiction will not give the court the right to assume jurisdiction, where none exists, the effect would be then to have the Court of Chancery retain the bill and continue the injunction until the legal title was settled at law.

Fulton v. Greacen, 36 N. J. Eq. 216;
Todd v. Staats, 60 N. J. Eq. 507;
Long Branch v. Hoch, 99 N. J. Eq. 356.

The rule has recently been applied in a case before Vice Chancellor Fallon, which is now before this court on appeal from decree rendered by the Court of Chancery. *Rockaway Rolling Mill Corporation v. Delaware, Lackawanna and Western Railroad Company, et al.*, Vol. 5, N. J. Advance Reports, 850.

Conclusion.

It is not thought necessary to specifically reply to brief filed by the defendant-appellant except to say that Point THREE made therein is not applicable to the facts of this case that all our title deeds give the distance 153 feet and 3 inches in depth; and not as implied by the defendant-appellant that some of them went back 147 feet.

As to the allowance to counsel, as there is no record attached to the State of the Case, it would be quite impossible for the court to determine what was done, and how many appearances in court were necessary. But under the criterion of the Farlee case, it would seem that the counsel was underpaid.

It is therefore respectfully submitted that in this case the complainant comes within the narrow limits set by this court, wherein equity may stretch its protective arm to prevent an injury to real property and to settle in one action the title of complainant which has been so conclusively proved.

It is urged, therefore, that the decree of the Court of Chancery should be in all things affirmed.

Respectfully submitted,

JOSEPH M. DEGNAN,
Of Counsel with Complainant-Respondent.