New Jersey Court of Errors and Appeals.

THE STATE *ex rel.* AARON RAYMOND *et al.*, (Pros) Plaintiffs, *vs.* THE MAYOR, ETC., OF RUTHERFORD, Defendants.	On Writ of Error.

Defendants' Brief.

I.

STATUTES.

Statutes bearing on the case are :

1878, p. 403, Supp., p. 44. The general Borough Act.

1890, p. 526, Act defining boundaries of the Borough of Rutherford and (§2), incorporating the same and (§6) creating it "a separate and distinct municipality in all things"

1881, p. 194, Supp., p. 602 § 487, Act providing that no assessment, etc., be set aside or reversed for irregularity or illegality of assessment, provided the person is liable to assessment, and empowering the Court to

amend, correct any assessment, and to make a proper assessment in any case where a lawful assessment can be made.

1887, p 126, §§ 1, 2, 3, empowering the Mayor and Council of Boroughs (such as B. of R.) to institute, carry out and complete improvements such as grading, etc., at the instance, as the agents, and at the expense of property owners.

§ 4 directs the cost and expense of such improvements to be ascertained by Mayor and Council, and assessed upon property, benefited in proportion to benefits received, the balance to be paid out of Borough road tax.

§§ 5, 6, 7 directs the assessment of benefits to be made and reported by Commissioners appointed by Mayor and Council who shall be (§ 5) "three disinterested freeholders of said Borough," State *ex rel.* Pollion *vs.* Mayor, etc., of Rutherford—argued February Term, 1891, memorandum of decision June, 1891, and directs that such report shall be examined and confirmed by Mayor and Council, § 7.

§ 8 directs the method of collecting the assessments.

§ 9 directs that the lands assessed (upon which said assessments are a lien from date of confirmation, § 7), shall be liable to sale, etc., if the assessments are not paid within 90 days after confirmation of said report.

§ 10 authorizes the issue of certificates of indebtedness in anticipation of collection of said assessments.

1888, p. 226, amends § 1 of 1887, p. 126, by increasing the powers of Mayor and Council

in the matter of such improvements, in respect of the kind of improvements they may make, and in respect of the number of petitioners necessary to authorize proceedings to be instituted.

We do not find any other legislation bearing on the case.

II.

Calculations Respecting Assessment.

Prosecutors' assessment, N. Ey. side of street		$ 1,497 16
Prosecutor's assessment, S. W. side of street		1,495 31
Total		$2,992 47
Total cost and expense of improvement		$ 9,706 42
Less assessed against the Borough at large		183 44
Total benefits assessed		$ 9,522 98
Ratio of benefits assessed against prosecutors compared with benefits assessed against all properties	2,992 47 ÷ 9,522 98	31 2/5%
Frontage of prosecutors, N. E. side	2,065 06	
Frontage of prosecutors, S. W. side	2,062 50	
Total frontage prosecutors		$ 4,127 56
" " of all properties on street,		13,409 96

Ratio of prosecutors' frontage to all frontages	4,127.56 ÷ 13,409.96	30 4/5%
Disparity between ratio of assessment and ratio of frontage (31 2/5—30 4/5).....		3/5%

III.

Statement Respecting Items of Cost and Expense

(Book, p. 91).

No objection was made as to the amount of the cost and expense, although the prosecutors appeared before the Mayor and Council before the report was confirmed (Book, p. 83).

No objection was taken on this ground in the reasons filed (Book, p. 25a).

Hence no objection on this account can properly be made. On the argument below, however, items Nos. 6, 12, 13 and 19 were objected to (see particulars of cost, book, p. 91.) These items aggregate just $185.

Items Nos. 6, 12 and 19 are undoubtedly properly included in the cost and expense (see book, pp. 93, 94, 96.)

State *vs.* Jersey City, 5 Dutch., p. 448, *et seq.*

State *vs.* Elizabeth 1 Vroom, 365; S. C., 2 Vr., 551.

Davis *vs.* Newark, 25 Vr., 144.

This leaves only in question item No. 13, $75, which may, we think, be properly considered an expense incident to the work petitioned for by these relators (see Petition Book, p. 2, *et seq.*), which was incurred solely by reason of difficulties encountered respecting relators' premises (see book, pp. 95, 96), and which they are virtually estopped

from objecting to. Besides, it appears that the assessment against the Borough was a much larger amount than this; so that if there was error in including it, it has worked the prosecutors no harm.

Taking now in their order the reasons alleged by the prosecutors, we observe:

I.

The first reason is not sustained, but is negatived, by the testimony:

Prosecutors' Witnesses.	Defendant's Witnesses.
H. R. Jackson, pp. 36, 37.	Chas. H. Warner, p. 68.
Louis Beck, p. 39.	Thomas Daniel, pp. 68, 69.
Benj F. Crane, pp. 46, 47, 48, 49.	Peter H. Kip, p. 71.
J. G. Van Riper, p. 52.	Charles Planer, p. 81.
Max Mathe, p. 59.	Joseph P. Cooper, pp. 87, 88.
Aaron Raymond, p. 105.	Wm. H. Smith, Jas. N. Edgar, J. J. Ketcham. } Comrs. as per their Report.
James Van Roden (roll, p. 43)	

The benefits assessed must be present benefits immediately accruing from the work.

State *vs.* Elizabeth, 8 Vroom, 330.

Merely conflicting evidence as to the value of benefits will not suffice to set aside Commissioner's award. The evidence that their judgment was wrong must be cogent.

Pudney *et al. vs.* Passaic, 8 Vroom, 65.

Davis *vs.* Newark, 25 Vroom, 144.

The claim that the assessment against the prosecutors is larger than their benefits, is, in fact, based only and solely on the fact that their property is a large, unoccupied tract. But it is submitted that this, so far from implying that the Commissioner's judgment is faulty in the matter, ought reasonably to have quite the opposite inference drawn from it.

It is matter of common knowledge that the en-

hancement of value of lands adjoining a center of population, immediately follows the extension of thoroughfares through it.

When all the facts in the cause are taken into consideration, it will appear, it seems to us, beyond dispute, that the judgment of the Commissioners was just and right.

See petition book, p. 2 *et seq.*, Exhibits D 18 and D 19, and the map, Exhibit P 2, showing the line of railroad and the situation of relator's property with reference to Carlton Hill depot. Note also the extensive river front of prosecutor's lands made available and valuable by this improvement. Note also the very important facts disclosed by the profile map, Exhibit P 1, by which it appears that this improvement, which was asked for by the prosecutors, required the heaviest part of the work to be done on their lands.

This map shows--

That from station 160 to Riverside avenue the cuts and fills of any consequence represent a total of 2,740 feet out of 5,177 feet, the remainder, nearly one-half, closely following the old grade. From Riverside avenue, a distance of 2,080 feet, about, the considerable cuts and fills cover a distance of 1,480 feet, or over seven-tenths of the distance.

The salableness of prosecutors' lands, and hence their value, is necessarily increased by the grading of a street through them, because this grading is a preliminary step necessary to the establishment of a public street through them (Supp., p. 49, § 30). It needs no argument to establish the proposition that value of land is increased by the establishment of a public street along it, especially when situated, as in this case, near to a rapidly growing center of population.

The Commissioners' map shows a number of cross streets on the prosecutors' property intersected by this Union avenue. The existence of these streets, as part of a plan for the development

of their property, was admitted by the prosecutor, Mr. Raymond (see Book, p. 102), for, while he there says they do not exist on the ground, he does not then nor afterwards deny their existence as a paper scheme, nor does he question that they are properly shown on said map, although his attention was expressly called to the fact, they were so shown on it.

On p. 103 the same witness testifies that prosecutors have expended $75,000 in improving this property.

The fact is apparent that the whole of this tract is held by these relators with the expectation of bringing it into the market, that, for twenty years, they have so held it, and that now, for the first time, the improvement of this street has brought the property into a marketable condition and has greatly enhanced its value.

The varying opinions of witnesses as to the value of this improvement are necessarily of slight assistance to this Court; as said by Mr. Justice Dixon in Jeliff *vs.* Newark, 19 Vr., 109, "the area of special benefits is so largely a matter of opinion that the judgment of the Commissioners must stand unless very convincing evidence be adduced against it."

There is no doubt that the same rule applies to the amount of special benefits.

The matters which do help the Court in this matter are the unbiased evidences of the surroundings and the situation of the property, all of which confirm the Commissioners' judgment, which, be it noted, was reached after carefully examining the premises with a full knowledge of all the surrounding conditions.

Note also that one of the prosecutors' witnesses, James Van Roden, testified on direct-examination that in his opinion the property owners ought to have been assessed the entire cost of the improvement.

The only conceivable present benefit derived by the making of this public street through the prosecutors' lands is to the prosecutors; the burden of maintaining it is on the municipality, the defendant in this cause.

2.

The second reason is not sustained by the evidence. The Commissioners determined that no lands other than those fronting on Union avenue were benefited (Report Book, p. 10; Test. of Ketchum, p. 65). This judgment is sustained by the evidence of the prosecutors (Book, pp. 39, 58), and is not really impeached by anything in the facts of the case.

The judgment of the Commissioners must stand, unless very convincing evidence be adduced against it.

Hunt *vs.* Rahway, 10 Vroom, 646; s. c. 11 Vroom, 615.
Righter *vs.* Newark, 16 Vroom, p. 109.
Jelliff *vs.* Newark, 19 Vroom, p. 109.
Burlington *vs.* Atlantic, 20 V., 408.
Hegeman *vs.* Passaic, 22 Vroom, 113.

The only lands the prosecutors raised any question concerning, in respect of this reason, are four, viz.:

1. A small strip of Jackson's property (Book, p. 30), being about five feet wide.

2. A plot in the rear of plot 76 (Trubshaw, Book, p. 44).

3. A plot in the rear of plot 72 (Quinn, Book, p. 44).

4. A plot in the rear of plot 60 (Luke, Book, p. 44).

As to all of these, see defendant's testimony, pp. 85–6, and prosecutors' testimony, pp. 39 and 58.

But assuming that all these parcels should have been assessed, $75 would have been extravagant assessment for the whole four of them, and as the assessment against the borough at large is greater than this, no harm has been done prosecutors, even if there was an omission.

Righter *vs.* Newark, 16 Vroom, 109.
Davis *vs.* Newark, 25 Vroom, 144.

3–4.

These reasons do not call for any discussion. The Commissioners' map, which is in evidence (D 3), disposes of them.

The statute does not authorize the Commissioners to divide the prosecutors' lands by a line into such portions as are suggested.

5.

The fifth reason is only true so far as it alleges that the Commissioners' judgment was that the special benefits in this case were proportional to frontage. That this was their judgment is measureably true, although an examination of their report shows that they exercised a sound discretion in the matter, and that the rate of various assessments is by no means the same per foot, except where conditions were identical. Such a procedure is sound in law.

Hand *vs.* Elizabeth, 2 Vroom, 547 (p. 551).
State *vs.* Jersey City, 1 Vroom, 529.
Pudney *vs.* Passaic, 8 Vroom, 68.
Hunt *vs.* Rahway, 10 Vroom, 649.

"The principle (of a frontage assessment) is not necessarily wrong in all cases. That is as great an error as to assume it right in all cases."

Ch. J. Whelpley (1 Vr., 529).

6.

The sixth reason is unimportant. There is no evidence that the Commissioners were not disinterested, there is strong evidence to the contrary (book, p. 67), and they are required by law to be tax payers, because they must be resident and freeholders in Rutherford.

Act of 1887, p. 126, § 5.
Poillon *vs.* Rutherford, Aug. t., Feb. t., 1891, decision June t., 1891.

It appears that they were such (Book, pp. 61,63, 64).

7.

The seventh reason is hardly a serious one.

A counsel who is conducting a cause ought not to testify on controverted points in the cause.

Roston *vs.* Morris, 1 Dutch., 173.

The judgment below should be affirmed with costs.

COPELAND & LUCE,
Attorneys for Defendants.

New Jersey Court of Errors and Appeals.

THE STATE, *ex rel.* AARON RAYMOND *et al.*, (*Pros.*) *Plaintiffs*, *vs.* THE MAYOR, etc., of RUTHERFORD, *Defendants.*	ON WRIT, &c.

DEFENDANTS' BRIEF.

COPELAND & LUCE,
Attorneys.

The New Jersey Court of Errors and Appeals.

THE STATE (Aaron Raymond, et als, prosecutors), *Plaintiffs in Error*, vs. THE MAYOR and Council of the Borough of Rutherford, *Defendants in Error.*	*On Writ of Error.* *Plaintiff's Brief.* ADDISON ELY, *Plff's Att'y.*

This action in the Supreme Court was a writ of certiorari, directed to the Mayor and Council of the Borough of Rutherford to remove the assessments laid by commissioners appointed by the Mayor and Council, to assess the cost and expenses of grading Union avenue in the Borough of Rutherford.

No other feature of the proceedings taken for the said grading was brought before the court and the only question to be decided is:

Has the assessment been legally laid and are the special benefits to the lands of the prosecutors two thousand nine hundred and ninety-two dollars and forty-one cents ($2,992.41), the amount assessed against them by the commissioners.

Union Avenue is one of the two main thoroughfares in the Borough of Rutherford.

It led from Rutherford directly to lands of prosecutors and thence along them to the city of Passaic. From the point where it touched the prosecutors' lands it has been extended across them to the Passaic River a distance of about two thousand (2,000) feet over an old road laid there twenty years ago by the prosecutors.

The whole of Union Avenue as thus extended has been graded.

The property of the prosecutors consists of about one hundred and sixty (160) acres of land lying between the River Road on the east, the Passaic River on the west and the Erie Railroad on the north. It is about six thousand (6,000) feet from north to south and varies from about two thousand (2,000) feet wide at the railroad to a point at its southern extremity.

There are no improvements of any kind on the tract except an old unoccupied mansion.

There are no streets or roads on the premises except Union Avenue.

Just to the easterly of the premises on the old part of Union Avenue is a very deep cut.

Beginning at River Road, for about 1,300 feet the prosecutors' property is filled from one to nine feet and for a distance of seven hundred (700) feet it has been cut. No allowance is made for this heavy fill by which the presecutors' lands are thus depressed from the level of the street, but they are charged the full rate of assessment. Before the grading now done the street was already much elevated above the surrounding land.

POINT I.

The Commissioners (P. 11, L. 26): "Fourth. That we have justly, fairly and equitably assessed the aforesaid cost und expense upon the lands and real estate especially benefited by such improvement to the extent of and not beyond such benefit." I respectfully submit that the report of the Commissioners appears upon its face the most conclusive evidence of the falsity of this statement.

The assessment map shows that the property of the prosecutors was 4,000 feet deep on the south side of the road graded, and 2,000 feet on the north side.

The Commissioners have levied their assessment upon the whole of this property and by so doing, have declared that all of the prosecutors' property to its entire depth of 4,000 feet on the south side and 2,000 feet upon the north side is especially benefited by the improvement to the extent of the amount of the assessment levied against the prosecutors.

The prosecutors' lands are bounded upon the east by the River Road and the Commissioners have decided that the property upon the easterly side of the River Road is only especially benefited to the depth of 150 feet, or thereabouts, from Union Avenue, upon which the improvements have been made.

I respectfully submit that there is no law or equity or any possible inference which can be derived from the facts, why the Commissioners should hold that the property of the prosecutors is especially benefited for a depth of 4,000 feet, while lands immediately across the road therefrom are held by the Commissioners to be only especially

benefited for a depth of 150 feet.

The assessment district on prosecutors' property is made to include a depth from the improved road of 4,000 feet upon the southerly side and 2,000 feet upon the northerly side. If the prosecutors' land was especially benefited for such a distance beyond the road improved by every equitable and legal inference that can be drawn from the surroundings, the other property is benefited for an equal distance therefrom.

While I respectfully submit that this a sound proposition to all of the territory through which this improved road ran it is particularly true of the lands immediately opposite prosecutors' lands on the River Road, and is also particularly true of all of the lands which lie along the side streets which cross Union Avenue.

The most ordinary observation will show that the improvement of Union Avenue would especially benefit the lands along the lateral streets which cross it for a considerable distance upon either side of Union Avenue. The value of the special benefit decreasing in ratio as the distance from Union Avenue increase. The Commissioners recognized this principle and applied it to the lands of the prosecutors by assessing them for especial benefits for a distance of 4,000 feet from Union Avenue. An examination of the assessment map will show that in other places they assessed the benefits for only a distance of fifty feet from Union Avenue, and at no place, except upon the lands of the prosecutors, have they assessed the benefits for a greater distance than 200 feet.

I am aware that the learned Judge in his opin-

ion (Page L. Line 12) says:

> "I find no evidence assailing the area of the assessment whatever may be said of the benefits accruing within its limits. The judgment of the Commissioners was that the especial benefits in this case were clearly limited to the frontage.

The assessment does not bear out this remark. It shows that the assessment area upon prosecutors' lands is declared to be more than twenty times the depth of the assessment area in other places and whereby on the map's own showing the benefits of the other property have accrued for fully as great a depth as upon prosecutors' lands.

At Page L., Line 30 the learned Judge says:

> "The principle of frontage assessment is not necessarily wrong; if we may properly distribute the benefits among the owners of the property benefited, there can be no objection to its use."

I respectfully submit that I have no objection to this principle of law. It is sound and well settled, but there is an "if" in it.

"If we may properly distribute the benefits &c., there can be no objection."

But how can it be said that a frontage assessment which declares special benefits to the lands reaching a depth of 4000 feet in one place, while immediately across the roadway [River Road] the Commissioners declare that the special benefits only reach for a distance of 200 feet, and in places less than that.

At Page L., Line 38 the learned Judge says :

> "The Commissioners assessed the lands which in their judgment were benefited. This judgment has not been conclusively assailed by the evidence or facts."

I respectfully submit that the assessment map carries upon its face the most distinct and unequivocal denial of this proposition. It shows conclusively that the Commissioners did not assess all the lands which were benefited and the map itself conclusively assails the judgment which the Commissioners show they exercised.

The assessment map is evidence of not only what the Commissioners intended to do, but it is evidence of just what they did do. It takes the question of conflicting evidence entirely out of the case, for it is conclusive and undeniable and it clearly shows that injustice has been done to these prosecutors. It seems to me impossible to reconcile this finding of the Commissioners with justice and equity and the monstrous proposition that an assessment district should be 4,000 feet deep on one side of the River Road and 200 feet or less upon the other side.

POINT II.

The Commissioners admit that they favored making every street pay for itself without regards to benefits.

The learned Judge who wrote the opinion below : (Page E., Line 36) says :

> "It might well be found, upon examination of all the circumstances, that the policy of making each street, in the

> Borough of Rutherford pay for its own improvement, might not be discordant to the application, practically of the principle: that such improvements to lands should be assessed only in proportion to benefits received."

Such a finding might be made, but if made it would be in discordance with every principle of equity and justice and law, which the facts in this case show.

These commissioners found that it was good policy to make this street pay for itself, but in so finding they violated every idea of justice and right.

We respectfully submit that we are entitled to the most careful examination of the soundness of their findings; that all of the improvements to this old thoroughfare between Passaic and Rutherford should be paid for by land owners fronting upon the street.

The commissioners we necessarily appointed from among the free-holders of Rutherford. They were consequently interested in their own decision. Every dollar which they saddled upon the borough at large meant just so much taxation to themselves. The assessed valuation of Rutherford is only about one million dollars, and yet these commissioners decided that the improvements to this old thoroughfare, in which every resident of Rutherford had an interest, should be paid for by the borough at large, it would have made a tax of nearly one per cent., upon the taxable property of the borough.

Not only were these commissioners interested, and necessarily so, because they were free holders, but they were not even *disinterested free holders.*

The chairman declared (P. 7, Line 17:)

> "It is a policy of the borough to assess the cost of street improvements upon the street improved and they calculated to make each street pay for its own improvement."

I protested against this principle and insisted that at least one-third of the whole expense for grading Union Avenue was a public charge.

The learned Judge (P. E, 30), says:

> "It does not appear that their attention was again called * * * * or that it was more than a casual remark, &c."

But here the learned Judge erred.

The ennunciation of a principle so at variance with the well fixed laws by which assessments are made by a juror, for the commissioners are but jurors, taints him with suspicion and should cause the rejection of any assessment he might make.

The prosecutors were entitled to have their case considered by a legally constituted commission who must be strictly impartial.

The commissioners who laid this assessment clearly announced at the beginning their determination to follow an illegal method, and the testimony as to benefits taken in this case shows they carried out this wrong principle by which the prosecutors are to be mulcted $3,000. An expression such as this from a juror on a civil case would at once cause his removal from the jury box. Is the law more lax in this cause?

What might have been is not what was.

The witness was present to object to this very assessment and if any speculation were allowable

as to what took place before the commissioners it must be presumed that the chairman was the spokesman and fairly expressed the opinion of the whole commission, which in fact was the case, as is fully borne out by the evidence of the commissioners taken herein, which shows that they not only announced the principle but that it governed them in laying this assessment.

The apportionment of the burden among those who are chargeable is in the discretion of the Commissioners, but the question who is chargeable is not.

20 Johnson N. Y. 430.

William H. Smith, one of the Commissioners produced by the defendant, says: (P. 62 L. 26).

> Q. Is it a fact that in assessing the principle you consider is that the property was accessable for the costs of the street solely with reference to its frontage on Union Avenue? A. Yes, sir.
>
> Q. If it had no frontage on Union Avenue you would not assess it? A. No, sir.

James N. Edgar another of the commissioners was examined by the defendant. (P. 63). Counsel had just had his attention called to this erroneous principle but he purposely omitted asking Mr. Edgar anything about it. All the commissioners were present at the examination of witnesses and did not contradict the testimony of Mr. Ely on this subject and it is only a fair inference that the assessment, which was already laid at the time Mr. Ely appeared before the commissioners, was laid on the principle indicated.

The record here referred to and the testimony alluded to shows conclusively that this commission entered upon its work with no intention of assessing the benefits of this improvement upon the property specifically benefited but that their intention was solely to assess all of the benefits upon the frontage of Union Avenue regardless of the fact that other property was equally as much improved.

POINT III.

The prosecutors' lands were assessed for about one third of the whole improvement. The assessment district upon their land, as I have already stated, was made 4,000 feet deep on one side and 2,000 feet deep on the other. This was a greater proportion of the whole cost than their land should have borne.

The witness have testified as to the benefits of this improvement:

H. R. Jackson P. 31 as to the thirteen hundred feet of fill says: L. 39:

> It is no special benefit because it requires it to be filled up to the grade.

Mr. Benjamin Crane, Appraiser for the Howard Savings Institution, American Insurance Company, Mutual Benefit Insurance Company and who was Commissioner for laying the assessments for the Essex County Road Board and many of the Newark street improvements, P. 47 L. 8, says:

> Q. Wouldn't you regard the fill for the distance through the prosecutor's lands as an injury. A. I would put upon the township at large just enough to cover these extreme cases.

Jacob G. Von Riper, a surveyor since eighteen sixty-two, says, (P. 54 L. 37 :)

> Q. Do you consider the fill through the Raymond property and the grade established there generally a positive benefit to the property? A. Well in my judgment I think it is not a positive benefit, I think the injury is as great as the benefit.
>
> Q. What does the injury consist in? A. It consists in that the road is raised above the property so that you have to fill it up to make it suitable for building sites.

Max Mathe, (P. 59, L. 11.)

> A. Well in my judgment I don't see that it was any benefit.
>
> Q. Why is that so Mr. Mathe? A. Well on account of the cuts and the heavy filling on their property, I judge that it has not been any benefit whatever.

William J. Slingerland, produced by the defendant and member of the Borough Council (P. 67 L. 11.)

> Q. Have there been any benefits you consider accruing to them by the opening? A. I do not know.

Thomas Daniel produced by the defendant. (P. 68, L. 39.)

> Q. How great a benefit do you think it was? A. That I could not say.

Worthington M. Jacobus produced by the defendants, the engineer who made the map, was not asked about the benefits.

Charles Planer produced by the defendant, is assessor of the Borough, on cross examination says:

> Q. Mr. Planer what will it cost to grade Raymond's land up to the street? Give me an idea? I will read this to you, (Reading from the affidavit made on the eleventh day of May, eighteen ninety-two, by witness) "Deponent says that he is familiar with the cost of grading and filling property after it is graded, that he estimates the costs to bring the property of Clark, Raymond and Hastings up to the grade as now established at about two hundred dollars a city lot or about eight dollars a front foot on the streets so graded." Is that a part of the affidavit that you made some time ago? A. Yes sir.
>
> Q. That is still your opinion of what it will cost to bring it up to grade? A. Yes sir, on the left hand side.

Aaron Raymond; one of the prosecutors, says, (P. 98, L. 33):

> Q. Has the grade established by the Mayor and Council improved your property in any way? A. I do not so consider it.
>
> Q. What portion of the whole street as graded through your property is a fill as nearly as you can arrive at it? A. About thirteen hundred feet.

Page 99, line 4:

Q. How high is the street as it is now graded above the surrounding land? A. Seven to eight feet at least. Perhaps more in some places.

Line 15:

Q. Was there any necessity for filling the first thirteen hundred feet to the extent of seven or eight feet as you have testified? A. No necessity for us, we did dot consider it any benefit at all.

Q. Was there a large cut just easterly of your land on Union Avenue? A. Yes, sir; I think there was quite a hill there.

Q. What was done with that dirt? A. I do not know from positive knowledge. I was told the cut was made to fill up the filling through our property.

P. 100, L. 23:

Q. Mr. Raymond, have you any idea what it would cost to bring your lands up to grade for the first thirteen hundred feet westerly of Riverside Avenue on Union Avenue? A. Not exactly, only I have been told that it would cost nearly as much as the land is worth.

The whole of the foregoing testimony shows that the prosecutors have not been benefited by this grade for the first thirteen hundred feet, but have been injured. It needs no testimony to prove that the erection of a bank of earth through one's property is not an improvement.

If the premises are to be laid out hereafter all

the connecting streets must be raised to the grade of Union Avenue and thus further and greater injury will be worked to the prosecutors.

It must be remembered that the prosecutors had a good street through these lands before; they had graded all their lands north of Union Avenue to the railroad including Union Avenue.

POINT IV.

The grading was not a special benefit to the street itself. The chief benefit arising from the grade was the establishment of an easy thoroughfare between Rutherford and Passaic and therefore a very large proportion of the cost should have been paid by the Borough at large.

The learned judge in his opinion has referred to this and says in substance that the opinion and judgment of the commissioners must stand.

But the court will bear in mind that these commissioners in this seven by nine borough were greatly interested as tax payers not to put any assessment on the borough at large and they had announced themselves as prejudiced jurors at the outset. Their judgment therefore should be held of little value in this matter and their conclusions closely examined.

The witnesses examined say, in regard to this, as follows: On behalf of the plaintiffs I protested against this principle and insisted that at least one third of the whole expense * * * was a public charge * * * It is one of the two thoroughfares * * * is the principle drive between Rutherford and Passaic. (See Mr. Ely's testimony P. 27 L. 20 &c.)

The grade of Union Avenue was not a general benefit to the property on the street and in many places was a very great injury to it * * * it has made a level thoroughfare * * * and was a very great public benefit and a very large part of the cost in my opinion would have been fairly laid if put upon the public at large.

I believe that Union Avenue being a public street the public should pay one third. (See testimony H. C. Jackson P. 32 L. 15).

I do not think it was a great benefit to property owners on the avenue. (See Louis Beck testimony P. 38 L. 29).

I think one fourth at least should be assessed against the public at large. (Same witness (P. 39 L. 25.

I should think taking the whole thing that a just assessment would be about one-third upon the township at large and the balance on property adjoining. (See testimony of Benjamin F. Crane, P. 43, L. 18.)

I think the public has been benefited outside of the property owners. To what extent would you say? In my judgment the property of the whole borough is benefited to about one-third as much as the property owner. (See testimony of Jacob G. VanRiper, P. 53, L. 35, &c.)

What proportion of the cost for grading Union Avenue should be laid on property along Union Avenue? Well, I should judge about three-fourths or two-thirds. (See testimony of Mathe, P. 59, L. 17.)

Don't you think the public at large ought to pay part of that assessment? Not on others but on mine I think so. (See testimony Peter Kip.)

It was an injury to you, Mr. Planer? I consider it so. (Testimony of Charles Planer, P. 81, L. 32.)

I think it is more benefit to other people than it is to us. (See testimony A. Raymond, P. 105, L. 38.)

The Court will notice that all of the witnesses of the defendant were office holders and directly interested in laying and sustaining this assessment. They were councilmen, the commissioners who laid the assessments, the borough assessor and engineer.

The commission erred in laying this assessment. They erred in the principle which they adopted, and now they come into court, with their friends, and try to sustain this unjust and illegal charge against the prosecutors in the face of reliable testimony that the benefits accruing from the grading were largely to the Borough at large.

The learned judge erred in his conclusions as to the facts, but having already sustained the illegal principle he could do no less.

POINT V.

According to the evidence of the defendant's witness Slingerland, this grade is a part of a system by which the lands in the borough of Rutherford are to be graded and drained.

It is the outlet of many side streets and it carries the travel and drainage of a large part of the borough. It is an important artery in the system of drainage and streets. The benefit of its grading extended both north and south to the extent of its drainage area.

Without any evidence on this point the circumstances of the case would lead to the conclusion

that the whole of its drainage area should be assessed.

But how could such an assessment be made when the commissioners say they will not assess unless the lands have a frontage on the avenue graded.

POINT VI.

That the commissioners after notice have allowed an imperfect map to be made showing Riverside Avenue as sixty-six feet wide, when as a matter of fact it is only thirty-two feet wide as abundantly appears by the testimony.

This error not only causes an asssessment on sixty-four feet to be lost, but it places a cloud upon the title to a strip of the plaintiff's lands sixteen feet wide and six thousand feet long.

CONCLUSION.

I respectfully submit that the assessment as to these prosecutors should be vacated and that a new assessment should be ordered, or the present assessment should be modified as to the prosecutors in such a manner as justice and equity demand. All of which is respectfully submitted,

ADDISON ELY,
Of Counsel.

INDEX.

TESTIMONY.

NEW JERSEY, SS.:

{ L. S. } *The State of New Jersey to our Justices of our Supreme Court, greeting:*

Because in the record and proceedings, and also in the giving of the judgment in a plaint, which was in our said Supreme Court, before you, between the State (Aaron Raymond, Jonas G. Clark and W. H. Phillips, trustee for the estate of C. C. Hastings, prosecutors), plaintiffs, and the Mayor and Council of the Borough of Rutherford, defendants, on a certiorari issued out of our said Supreme Court, to the said Mayor and Council of the Borough of Rutherford, defendants, as is said manifest error hath intervened to the great damage of the said State (Aaron Raymond, Jonas G. Clark and W. H. Phillips, trustee for the estate of C. C. Hastings, prosecutors), plaintiffs as aforesaid, as by their complaint we are informed, we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you that if judgment be thereupon given, then you send distinctly and openly, under your seal, the record and proceedings and plaint aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals, before the judges thereof, on the twenty-second day of August instant, and this writ, and that the records and proceedings aforesaid being inspected, we may cause to be further done thereupon what of right and according to law ought to be done.

Witness, Alexander T. McGill, our Chancellor and President Judge of our said Court of Errors and Ap-

peals, at Trenton, this fourth day of August, A. D., one thousand eight hundred and ninety-three.

HENRY C. KELSEY,
Clerk.

ADDISON ELY,
Attorney of Plaintiff.

---

10 *The answer of the Justices of the Supreme Court of New Jersey within named:*

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

M. BEASLEY,
Chief Justice.

20

New Jersey Supreme Court.

THE STATE, (AARON RAYMOND, et als Prosecutors), *Plaintiffs in Certiorari* *vs.* THE MAYOR AND COUNCIL OF THE BOROUGH OF RUTHERFORD. *Defendants in Certiorari.*	On Certiorari to remove the Union avenue Assessment. 10

NEW JERSEY, SS:

L. S. *The State of New Jersey to the Mayor and Council of the Borough of Rutherford, in the County of Bergen—Greeting:*

We being willing, for certain reasons, to be certified of a certain assessment of the cost and expense of grading Union avenue, from Erie avenue to the Passaic River, confirmed by you the said Mayor and 20 Council of the Borough of Rutherford, on the thirteenth day of February, one thousand eight hundred and ninety-two.

We do command that the aforesaid assessment confirmed by the Mayor and Council of the Borough of Rutherford, on the thirteenth day of February, eighteen hundred and ninety-two, together with all things touching or concerning the making of the said assessment, as fully and entirely as before you they remain, to our justices of our Supreme Court of 30

Judicature, at Trenton, on the fourth day of June next you certify and send together with this writ, that therein may be done what of right and according to the laws of this State should be done.

Witness, Mercer Beasley, Esq., Chief Justice of our Supreme Court at Trenton, the sixteenth day of May, in the year one thousand eight hundred and ninety-two.

BENJ. F. LEE, *Clerk.*

10 ADDISON ELY, *Attorney.*

In obedience to the command of the writ hereto annexed to us directed we do hereby certify and send the said assessment together with all things touching or concerning the making of the said assessment as fully and entirely as before us they remain as in said writ commanded as appears by the schedule hereto annexed.

In witness whereof we have caused the Borough seal to be hereto affixed and attested by the Borough
20 Clerk and these presents to be signed in our behalf by Joseph P. Cooper, Mayor.

The Mayor and Council of the Borough of Rutherford.

L. S.

JOSEPH P. COOPER,
Mayor.

Attest:

ALEXIS MCNULTY,
Borough Clerk.

30 COPELAND & LUCE.
Attorneys.

To the Mayor and Council of the Borough of Rutherford.

Gentlemen:

The undersigned, owners in fee in the aggregate of at least lineal feet of land fronting on Union avenue, within the Borough of Rutherford, do hereby respectfully petition that said avenue be graded to its entire width and length, in conformity to the grade now established or to be

established thereon prior to the letting of contract for the work herein contemplated by the Mayor and Council of the Borough of Rutherford. That said avenue be properly shaped, smoothed, and all debris and obstructions removed therefrom, and that a proper part thereof on either side of the roadbed be appropriated to and properly graded for sidewalk purposes, according to such rules and regulations as the Mayor and Council may adopt or have adopted.

And we do further petition and consent that in case the Mayor and Council deem it advisable, they proceed, after the completion of said grading, to curb and gutter said avenue its entire length.

And it is further stipulated and agreed that the cost and expense of the work herein and hereby contemplated, shall be assessed upon the property benefited in proportion to the benefits derived thereby and in accordance with the statute and law in such case made and provided.

Witness our hands, this twentieth day of March, eighteen hundred and ninety.

NAMES OF OWNERS.	LINEAL FEET OWNED BY EACH.	
George B. Kettell	145	
J. W. Mileham	132	
Rutherfurd Heights Association	160	(Trubshaw)
by H. G. Bell, Treasurer	150	(Quinn)
	100	(Hunt)
	50	(Terry)
	75	(McKenzie)
	50	(Cowan)
	50	(Lukens) $952\frac{1}{2}$
	125	(Hastie)
	$192\frac{1}{2}$	
E. N. Bell	about 750	
Peter H. Kip	about 1960	
Henry Ivison	378	
Charles Planer	99	
H. R. Jackson	75	
Aaron Raymond		

Jonas G. Clark
by A. Raymond 4000
W. H. Phillips, Trustee for
Estate of C. C. Hastings.
Slingerland & Hilton.....120

ORDINANCE No. 67.

An Ordinance to provide for the grading of Union avenue from Erie avenue to the Passaic River.

10 Whereas application in writing for the grading of that part of said avenue herein described, signed by the owners of at least one-fourth of the lineal feet of land fronting on said Union avenue, has been presented to the Mayor and Council of the Borough of Rutherford, and due notice thereof given as provided by law, therefore,

SEC. 1. Be it enacted and ordained by the Mayor and Council of the Borough of Rutherford, that all of Union avenue from Erie avenue to the Passaic 20 River, (being within said Borough) be graded to its entire width, according to the grades heretofore established thereon by the Mayor and Council on the 6th day of July 1888, and 5th day of May, 1890, as shown by the profile maps thereof filed in the Borough Clerk's office on the 6th day of July, 1888 and 5th day of May 1890 made by Hilton & Menger, surveyors.

SEC. 2. And be it further enacted and ordained 30 that the Street Committee procure specifications for said work, and that upon the adoption thereof by the Mayor and Council said committee advertise for proposals for the said work to be submitted to the Mayor and Council,

SEC. 3. And be it further enacted and ordained that this ordinance shall take effect on the 29th day of September, 1890.

Approved Sept. 16, 1890.

WM. A. PRESTON, *Mayor.*

The foregoing ordinance was passed at a regular

meeting of the Mayor and Council of the Borough of Rutherford held on the 15th day of September, 1890.

CHAS. E. TOLHURST,
Borough Clerk.

Extract from the minutes of the Mayor and Council.

(Page 20.)

"Minutes of a regular meeting * * Monday evening, April 7, 1890." 10

* * Petition for grading Union avenue and communication from J. P. Cooper as to same matter laid over to next business * *

(Page 21.)

The petition for grading Union avenue and communication from J. P. Cooper were on motion of Councilman Alyea laid over for one month.

"Minutes of a regular meeting * * May 5, 1890."

(Page 26.) 20

Petition for grading Union avenue was laid over to new business. * *

(Page 27.)

The grade maps of Union avenue, from Santiago avenue to the Passaic River, and Stuyvesant avenue from Pierrepont avenue to Borough limits were then taken up, and after being inspected by the property owners interested and considerable discussion thereon the same were each separately adopted by the unanimous vote of the Council. 30

Mr. H. G. Bell presented an application for change of Union avenue, between Montross and Santiago avenues * * on motion of Councilman Alyea the following resolution was adopted.

Application being made for change of the grade now established upon that part of Union avenue between Montross and Santiago avenues, therefore be it

Resolved, that the Clerk give public notice by advertisement in both of the newspapers published in

the Borough that on Monday, May 19, the Mayor and Council will consider such application and proceed to act thereon and that the Clerk also send a copy of such notice to the owners on affected part if their post office address be known.

On motion of Councilman Alyea the petition for grading Union avenue was laid over."

(Page 30.) "Minutes of a regular meeting. * * May 19, 1890.

10 The petition for the grading of Union avenue was, on motion, received and ordered to be laid on table until funds in hands sufficient to go ahead with the work * * Councilman Dannheim moved to reconsider the motion to take the petition for grading Union avenue, carried.

Councilman Dannheim then moved that the petition be laid over until next meeting. Carried. * *

(Page 31.)

The matter of change of grade of Union avenue 20 between Montross and Santiago avenues was taken up, and after the property owners interested had examined the proposed change as shown by the Engineer, on motion of Councilman Alyea the change was adopted and was ordered to be shown on the original map by a red line."

(Page 32.) "June 3, 1890. * *

The petition for grading Union avenue was taken up and on motion of Councilman Dannheim the Clerk was instructed to give the proper notice for 30 objections to said grading to be presented to said Mayor and Council on or before July 2."

(Page 39.) "Regular meeting * * July 7, 1890.

The Ordinance Committee were on motion instructed to prepare ordinances for the grading of Union, Mortimer and Stuyvesant avenues as asked for in the several petitions already presented.

"Regular meeting * * Aug. 4, 1890."

(Page 43.)

The Ordinance Committe introduce the following

ordinances, Ordinance for grading Union avenue * * These ordinances were each read on first reading and laid over."

(Page 46.) "Regular meeting * * Sept. 2, 1891.

The following ordinances were read on second reading * * Grading Union avenue."

(Page 48.) "Sept. 15, 1890.

Ordinance No. 67 for grading Union avenue was read on 3rd reading and duly passed to take effect Sept. 29, all voting in the affirmative * * Council- 10 man Dannheim offered the following resolutions—Resolved that the matter of grading of Union avenue, from Erie avenue to the Passaic River * * be referred to the Street Committee with the power to have the necessary specifications prepared and to advertise for proposals and that all proposals received be opened and read at the next meeting of the Mayor and Council."

(Page 50.) "Regular meeting. October, 6. 1890."

Bids for grading Union avenue were then opened 20 and read as follows:—

E. T. Galloway, earth wk. 26 ½ c. cub. yd. Rock 75 cu. yd.

Pipelinge & Shussnan, earth wk. 52½ c. cub. yd. Rock 1.00 cu. yd.

H. C. N. Johnson, earth wk. 23 c. cu. yd. Rock 75 cu. yd.

Councilman Alyea offered the following resolution, which was adopted, all the councilmen voting aye. 30

Resolved, that the contract for grading of Union avenue be awarded to H. C. N. Johnson, and that the Mayor and Clerk be authorized to sign the contract upon the approval by them of the requisite bond.

(Page 119.) October 5., 1891.

Final certificate of Engineer showing amount due contractor on Union avenue grading to be $1696.21 approved by Street Committee.

On motion of Mr Warner certificate was received and an improvement certificate was directed to be issued to Mr. Johnson for $1696.21 the balance of his contract—all voting aye.

(Page 120.)

Mr. Warner offered the following resolution, which was duly adopted.

Whereas the cost and expense of grading Union avenue has been ascertained and determined, there-
10 fore be it resolved, that William H. Smith, James N. Edgar and John J. Ketchum be and they are hereby appointed commissioners to assess the cost and expense of such grading according to law."

(Page 139.) Monday, January 18. 1892.

"The report of commissioners to assess the cost of grading Union avenue was presented and on motion February 1. 1892, at 8 o'clock, P. M., at No. 2 Engine house was appointed as the time and place to hear
20 final objections to said report, and the Clerk was directed to give necessary notice—all voting aye."

(Page 141.) Monday, February 1. 1892.

The report of the commissioners to assess the cost of grading Union avenue was taken up as advertised, Mr. Luther Shafer appeared for Mr. J. H. Trubshaw and Mrs. Catherine Ehrman and objected to the confirmation of the report on the ground that assessments against his clients were excessive. He claimed the right to call witnesses, and no objection being
30 made he called J. H. Trubshaw, who being duly sworn by the Clerk, testified that his house was built five years ago, before street was graded his lot was one and one half feet above the street in front and from two, to two and one half feet below it on the rear. After street was graded, lot was one foot below the street in front. Before street was graded, water ran off naturally, but afterward water backed into his cellar; to overcome which he had filled in his lot in front to a level with cellar window at a cost of $25. or $30. * *

Mr. Addison Ely appeared for Henry R. Jackson and the Raymond estate. He claimed the map was not correct and suggested the whole matter be referred to a Master in Chancery to take evidence and submit the same to the Council for their action. Councilman Miller moved a special meeting of the Council be called on Tuesday, the 9th inst. at the Mayor's office, on Erie avenue, to further consider the report.

Adopted, all voting aye. 10

(Page 142.) Feb. 9., 1892, to consider Union avenue report.

Protest from Henry Ivison was read, received and filed.

Protests of J. H. Trubshaw, Mrs. Catherine Ehrman and William Rogers were also read, received and filed.

Mr. Ely, on behalf of Raymond, Hastings & Clark presented affidavits from H. R. Jackson, Max Mattie, Charles Planer and John Kehoe to substantiate his 20 objection to confirmation of the report.

On motion of Councilman Dannheim they were received and filed.

(Page 143.) February 13. 1892.

"Dannheim moved that the assessment of J. H. Trubshaw be reduced from $114.40 to $54.40 and the difference $60. be charge against the Borough assessment—carried, all voting aye."

On motion of Councilman Dannheim, the assessment of Mrs. A. Quinn was reduced from $112.50 30 to $72.50 and the difference $40 was added to the Borough assessment, all voting aye.

Councilman Dannheim offered the following resolution which was adopted unanimously, all voting aye.

The commissioners appointed to assess the cost of grading Union avenue in the Borough of Rutherford having duly filed their report in writing with the Clerk of the Borough, and thereupon the Mayor and

Council fixed the first day of February, 1892, at the council room in the house of Engine Co. No. 2, at 8 p. m., as the time and place for its examination completion, and confirmation and due notice thereof having been given; after due consideration and examination had and it appearing that the several tracts of land in said report described were by said Commissioners assessed in proportion to the benefits specially received by each individual lot or parcel of land
10 therein described, and that no individual lot of land had been assessed for more than the benefit by it received.

Now therefore be it Resolved, that the said report as corrected be and the same is hereby ratified and confirmed in all things, and it is further resolved that the several tracts of land in said report described, be and the same are hereby assessed the several sums of money set opposite each lot or parcel of land in said report described and which said report is made
20 a part hereof."

(Page 183.) Saturday May 28, 1892.

"Mayor Cooper stated he had been served with a a certiorari in the matter of grading Union avenue issued at the instance of Aaron Raymond et als, and made returnable June 4, 1892.

On motion the Clerk was instructed to supply the Corporation Counsel all the necessary papers in regard to the matter.

30

UNION AVENUE GRADING.

ASSESSMENT COMMISSIONERS' REPORT.

STATE OF NEW JERSEY. }
Borough of Rutherford. } SS.

We the undersigned William H. Smith, James N. Edgar and John J. Ketchum, Commissioners duly appointed by the Mayor and Council of the Borough of Rutherford to make an assessment of the cost and expense of grading Union avenue, within the Bor-

ough of Rutherford, lying between Erie avenue and Passaic River, do hereby respectfully report as follows, to wit:

First. That upon receipt of notification of our appointment as such Commissioners, and being duly qualified to act as such, we severally took and subscribed the oath required by statute and thereafter organized by electing William H. Smith, Chairman of the Commission, and Charles E. Tolhurst, (the Borough Clerk,) Secretary thereof. 10

That we caused an assessment map to be made of said Union avenue, which said map is entitled, "Commissioners Map for the grading of Union avenue, Rutherford, N. J., Hilton & Menger, Civil Engineer's and Surveyors, Nov. 1891," and which map is hereby made part of this our report and duly subscribed by us and attested by the Secretary.

Second. That the total cost and expense of the said grading amounts to the sum of nine thousand seven hundred and six 42-100 dollars. 20

Third. That we and each of us have personally and thoroughly examined the said Union avenue and adjacent property and lands specially benefitted by said grading.

Fourth. That we have justly, fairly and equitably assessed the aforesaid cost and expense upon the lands and real estate specially benefitted by such improvement to the extent of and not beyond such benefit, and that in making the assessment we have in each and every case had due regard and consider- 30 ation to the benefits received by such lot and parcel of land from such improvement over and above any and all damages sustained by each of said lots or parcels of land, and that in no case have we assessed any lot or parcel of land more than the amount of such benefit.

Fifth. That the following, the assessments for benefits for the said improvements made by us upon and against the several tracts of land so benefitted, and which said several tracts of land are hereinafter par-

ticularly described and are likewise shown upon the aforesaid assessment map for the grading of said Union avenue, that is to say:

Union Avenue Northeasterly Side.

Lawrence Pike and Jeannette Goire.—Plot 304 91-100 feet front on northeasterly side of Union avenue commencing at the northerly corner of Union avenue and Erie avenue, on Assessment Map numbered 1.... $228.68

Estate of James Eddy.—Plot 33 feet front on northeasterly side of Union avenue, commencing at the northerly corner of Union avenue and Agnew Place, on Assessment Map numbered 2..... 24.75

Bernard Earle.—Plot 34 50-100 feet front on northeasterly side of Union avenue, commencing 33 feet northwesterly from northerly corner of Union avenue and Agnew Place, on Assessment Map numbered 3... 25.87

Bernard Earle.—Plot 33 50-100 feet front on northeasterly side of Union avenue, commencing 67 50-100 feet northwesterly from the northerly corner of Union avenue and Agnew Place, on Assessment Map numbered 4..... 25.12

Bernard Earle.—Plot 33 50-100 feet front on northeasterly side of Union avenue, commencing 101 feet northwesterly from the northerly corner of Union avenue and Agnew Place, on Assessment Map numbered 5..... 25.12

Bernard Earle.—Plot 33 50-100 feet front on northeasterly side of Union avenue, commencing 134 50-100 feet northwesterly from the northerly corner of Union avenue and Agnew Place, on Assesment Map numbered 6,..... $25.12

J. McFadden.—Plot 33 feet front on north-

easterly side of Union avenue, commencing at the easterly corner of Union avenue and Chestnut street, on Assessment Map numbered 7 ..... $24.75

Estate of Ellen M. Bellchambers.—Plot 350 25-100 feet front on northeasterly side of Union avenue, commencing at the northerly corner of Union avenue and Chestnut street, on Assessment Map numbered 8 ..... 253.93

Henry Miller.—Plot 350 25-100 feet front on northeasterly side of Union avenue, commencing at the easterly corner of Union avenue and Maple street, on Assessment Map numbered 9 ..... 271.44

Mrs. C. McKinney.—Plot 307 feet front on northeasterly side of Union avenue commencing at the northerly corner of Union avenue and Maple street, on Assessment Map numbered 10 ..... 230.25

Peter H. Kipp.—Plot 369 24-100 feet front on northeasterly side of Union avenue, commencing 307 feet northwesterly from the northerly corner of Union avenue and Maple street on Assessment Map numbered 11 ..... 267.69

D. D. McKoon.—Plot 22 feet front on northeasterly side of Union avenue, commencing at the easterly corner of Union avenue and Wood street, on Assessment Map numbered 11½ 16.50

Henry Ivison.—Plot 348 75-100 feet front on northeasterly side of Union avenue, commencing at the northerly corner of Union avenue and Wood street, on Assessment Map numbered 12 ..... 261.56

A. B. Stewart.—Plot 348 75-100 feet front on northeasterly side of Union avenue, commencing at the easterly corner of

Union avenue and Montross avenue, on Assessment Map numbered 13..... $172.63

J. C. Hastie.—Plot 50 feet front on northeasterly side of Union avenue, commencing at the northerly corner of Union avenue and Montross avenue, on Assessment Map numbered 14..... 24.75

J. L. Hastie.—Plot 75 feet front on northeasterly side of Union avenue, commencing 50 feet northwesterly from the northerly corner of Union avenue and Montross avenue, on Assessment Map numbered 15. 56.25

M. R. Lukens. Plot 50 feet front on northeasterly side of Union avenue, commencing 125 feet northwesterly from the northerly corner of Union avenue and Montross avenue, on Assessment Map numbered 16. 38.75

Rebecca G. Campbell.—Plot 50 feet front on northeasterly side of Union avenue, commencing 175 feet northwesterly from the northerly corner of Union avenue and Montross avenue, on Assessment Map numbered 17..... 38.75

Maria Cowan.—Plot 50 feet on northeasterly side of Union avenue commencing 225 feet northwesterly from the northerly corner of Union avenue and Montross avenue on Assessment Map numbered 18..... 38.75

J. Makenzie.—Plot 75 feet front on northeasterly side of Union avenue commencing at the easterly corner of Union avenue and Prospect Place, on Assessment Map numbered 19..... 58.12

Samuel E. Tenny.—Plot 50 feet front on northeasterly side of Union avenue, commencing at the northerly corner of Union avenue and Prospect Place, on Assessment Map numbered 20..... 37.50

Charles H. Hunt.—Plot 100 feet front on

northeasterly side of Union avenue, commencing 50 feet northwesterly from the northerly corner of Union avenue and Prospect Place, on Assessment Map numbered 21 ..... $72.50

Mrs. C. Ehrman.—Plot 147 60-100 feet front on northeasterly side of Union avenue, commencing at the easterly corner of Union avenue and Carmita avenue, on Assessment Map numbered 22 ..... 102.57

Elizabeth N. Bell.—Plot 348 80-100 feet front on northeasterly side of Union avenue, commencing at the northerly corner of Union avenue and Carmita avenue, on Assessment Map numbered 23 ..... 261.60

William Rogers.—Plot 353 80-100 feet front on northeasterly side of Union avenue, commencing at the easterly corner of Union avenue and Beech street, on Assessment Map numbered 24 ..... 252.97

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing at the northerly corner of Union avenue and Beech street, on Assessment Map numbered 25 ..... 15.88

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing 25 feet northwesterly from the northerly corner of Union avenue and Beech street, on Assessment Map numbered 26 ..... 15.88

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing 50 feet northwesterly from the northerly corner of Union avenue and Beech street, on Assessment Map numbered 27 ..... 15.88

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing 75 feet northwesterly from the northerly corner of Union avenue and Beech street, on

Assessment Map numbered 28 ..... $15.88

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing 100 feet northwesterly from the northern corner of Union avenue and Beech street, on Assessment Map numbered 29..... 15.88

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing 125 feet northwesterly from the northerly corner of Union avenue and Beech street, on Assessment Map numbered 30..... 15.88

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing 150 feet northwesterly from the northerly corner of Union avenue and Beech street, on Assessment Map numbered 31..... 15.88

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing 175 feet northwesterly from the northerly corner of Union avenue and Beech street, on Assessment Map numbered 32..... 15.88

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing 200 feet northwesterly from the northerly corner of Union avenue and Beech street, on Assessment Map numbered 33 ..... 15.88

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing at the easterly corner of Union avenue and Wells Place, on Assessment Map numbered 34..... 15.88

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing at the northerly corner of Union avenue and Wells Place, on Assessment Map numbered 35..... 15.88

Unknown. Plot 25 feet front on northeasterly side of Union avenue commencing 25 feet northwesterly from the northerly cor-

ner of Union avenue, and Wells Place, on Assessment Map numbered 36..... $15.88

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing 50 feet northwesterly from the northerly corner of Union avenue and Wells Place, on Assessment Map numbered 37..... 15.88

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing 75 feet northwesterly from the northerly corner of Union avenue and Wells Place, on Assessment Map numbered 38..... 15.88

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing 100 feet northwesterly from the northerly corner of Union avenue and Wells Place, on Assessment Map numbered 39..... 15.88

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing 125 feet northwesterly from the northerly corner of Union avenue and Wells Place, on Assessment Map numbered 40 ..... 15.88

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing 150 feet northwesterly from the northerly corner of Union avenue and Wells Place, on Assessment Map numbered 41..... 15.88

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing 175 feet northwesterly from the northerly corner of Union avenue and Wells Place, on Assessment Map numbered 42..... 15.88

Unknown.—Plot 25 feet front on northeasterly side of Union avenue, commencing 200 feet northwesterly from the northerly corner of Union avenue and Wells Place, on Assessment Map numbered 43 ..... 15.88

Unknown.—Plot 55 57-100 feet front on northeasterly side of Union avenue, com-

mencing 2,225 feet northwesterly from the northerly corner of Union avenue and Wells Place, on Assessment Map numbered 44..... $35.40

Unknown.—Plot 25 3-100 feet front on northeasterly side of Union avenue, commencing 280 75-100 feet northwesterly from the northerly corner of Union avenue and Wells Place, on Assessment Map numbered 45..... 16.14

H. R. Jackson.—Plot 67 40-100 feet front on northeasterly side of Union avenue, commencing at the easterly corner of Union avenue and Riverside avenue, on Assessment Map numbered 46..... 48.19

Clark, Raymond & Hastings..—Plot about 2,065 6-100 feet front on northeasterly side of Union avenue, commencing at the northerly corner of Union avenue and Riverside avenue, on Assessment Map numbered 47.....1,497.16

Union Avenue, Southwesterly Side.

Robert S. Walker.—Plot 66 74-100 feet front on southwesterly side of Union avenue, commencing at the westerly corner of Union avenue and Erie avenue, on Assessment Map numbered 48..... 50.04

Charles Planer.—Plot 49 feet front on southwesterly side of Union avenue, commencing 66 74-100 feet northwesterly from the westerly corner of Union avenue and Erie avenue, on Assessment Map numbered 49..... 36.75

J. F. Satherthwaite.—Plot 55 50-100 feet front on southeasterly side of Union avenue commencing 115 74-100 feet northwesterly from the westerly corner of Union avenue and Erie avenue, on Assessment

Map numbered 50 ..... $41.62

Mary L. Candee.—Plot 50 feet front on southwesterly side of Union avenue, commencing 171 24-100 feet northwesterly from the westerly corner of Union avenue and Erie avenue, on Assessment Map numbered 51 ..... 37.50

Hackensack Water Co., Reg'd.—Plot 50 feet front on southwesterly side of Union avenue commencing 221 24-100 feet northwesterly from the westerly corner of Union avenue and Erie avenue, on Assessment Map numbered 52 ..... 37.50 10

J. O. Farrington.—Plot 50 feet front on southwesterly side of Union avenue commencing 271 24-100 feet northwesterly from the westerly corner of Union avenue and Erie avenue, on Assessment Map numbered 53. 37.50

James Wilson.—Plot 51 50-100 feet front on southwsterly side of Union avenue, commencing 321 24-100 feet northwesterly from the westerly corner of Union avenue and Erie avenue, on Assessment Map numbered 54 ..... 38.62 20

Ellen Shugg.—Plot 51 50-100 feet front on southwesterly side of Union avenue, commencing 372 74-100 feet northwesterly from the westerly corner of Union avenue and Erie avenue, on Assessment Map numbered 55 ..... 38.62 30

J. O. Farrington.—Plot 56 feet front on southwesterly side of Union avenue, commencing 424 24-100 feet northwesterly from the westerly corner of Union avenue and Erie avenue, on Assessment Map numbered 56 ..... 42.00

H. Balcom.—Plot 50 feet front on southwesterly side of Union avenue, commencing 480 24-100 feet northwesterly from the

westerly corner of Union avenue and Erie avenue, on Assessment Map numbered 57. $37.50

H. Balcom.—Plot 50 feet front on southwesterly side of Union avenue, commencing 530 24-100 feet northwesterly from the westerly corner of Union avenue and Erie avenue, on Assessment Map numbered 58. 37.50

H. Balcom.—Plot 50 feet front on southwesterly side of Union avenue, commencing at the southerly corner of Union avenue and Chestnut street, on Assessment Map numbered 59 ..... 37.50

Wm. H. Luke.—Plot 100 feet front on southwesterly side of Union avenue, commencing at the westerly corner of Union avenue and Chestnut street, on Assessment Map numbered 60 ..... 75.00

Executors H. P. Kip.—Plot 50 feet front on southwesterly side of Union avenue commencing 100 feet northwesterly from the westerly corner of Union avenue and Chestnut street, on Assessment Map, numbered 61 ..... 37.50

J. L. Bottger.—Plot 50 feet front on southwesterly side of Union avenue, commencing 150 feet northwesterly from the westerly corner of Union avenue and Chestnut street, on Assessment Map numbered 62.. 34.75

J. F. Satherthwaite.—Plot 50 feet front on southwesterly side of Union avenue, commencing 200 feet northwesterly from the westerly corner of Union avenue and Chestnut street, on Assessment Map numbered 63 ..... 29.75

David W. Erskine.—Plot 45 feet front on southwesterly side of Union avenue, commencing at the southerly corner of Union avenue and Home avenue, on Assessment Map numbered 64 ..... 29.03

J. M. Donohue.—Plot 100 feet front on southwesterly side of Union avenue, commencing at the westerly corner of Union avenue and Home avenue, on Assessment Map numbered 65 ..... $75.00

Buys.—Plot 50 feet front on southwesterly side of Union avenue, commencing 100 feet northwesterly from the westerly corner of Union avenue and Home avenue, on Assessment Map numbered 66 ..... 37.50 10

Peter H. Kip.—Plot 1,591 15-100 feet front on southwesterly side of Union avenue, commencing 150 feet northwesterly from the westerly corner of Union avenue and Home avenue, on Assessment Map numbered 67 ..... 1,193.36

Slingerland & Hilton.—Plot 120 34-100 feet front on southwesterly side of Union avenue, commencing at the southerly corner of Union avenue and Montross avenue, 20
on Assessment Map numbered 68 ..... 47.53

J. N. Mileham.—Plot 132 feet front on southwesterly side of Union avenue, commencing at the westerly corner of Union avenue and Montross avenue, on Assessment Map numbered 69 ..... 91.74

Geo. B. Kettell.—Plot 140 71-100 feet front on southwesterly side of Union avenue, commencing 132 feet northwesterly from the westerly corner of Union avenue and 30
Montross avenue, on Assessment Map numbered 70 ..... 105.53

Elizabeth N. Bell.—Plot 425 84-100 feet front on southwesterly side of Union avenue, commencing at the southerly corner of Union avenue and Carmita avenue on Assessment Map numbered 71 ..... 319.38

A. Quinn.—Plot 150 feet front on southwesterly side of Union avenue, commencing at

the westerly corner of Union avenue and Carmita avenue, on Assessment Map numbered 72 ..... $72.50

E. F. Gordon.—Plot 85 feet front on southwesterly side of Union avenue, commencing 150 feet northwesterly from the westerly corner of Union avenue and Carmita avenue on Assessment Map numbered 73.. 63.75

Rutherfurd Heights Ass'n.—Plot 42 50-100 feet front on southwesterly side of Union avenue commencing 235 feet northwesterly from the westerly corner of Union avenue and Carmita avenue, on Assessment Map numbered 74 ..... 31.86

Wm. N. Rushforth.—Plot 42 50-100 feet front on southwesterly side of Union avenue, commencing at the southerly corner of Union avenue and Santiago avenue, on assesment Map numbered 75..... 31.86

H. Trubshaw.—Plot 160 feet front on southwesterly side of Union avenue, commencing at the westerly corner of Union avenue and Santiago avenue, on Assessment Map numbered 76..... 54.40

West End Engine Co.—Plot 25 feet front on southwesterly side of Union avenue, commencing 160 feet northwesterly from the westerly corner of Union avenue and Santiago avenue, on Assessment Map numbered 77..... 17.88

Rutherfurd Heights Association.—Plot 100 feet front on southwesterly side of Union avenue, commencing at the southerly corner of Union avenue and Springfield avenue, on Assessment Map numbered 78.... 71.50

Rutherfurd Heights Association.—Plot 300 feet front on southwesterly side of Union avenue, commencing at the westerly corner of Union avenue and Springfield avenue,

on Assessment Map numbered 79..... $179.50

Rutherfurd Heights Association.—Plot 316 23-100 feet front on southwesterly side of Union avenue, commencing at the southerly corner of Union avenue and Riverside avenue, on Assessment Map numbered 80. 210.37

Clark, Raymond & Hastings.—Plot about 2062 50-100 feet front on southwesterly side of Union avenue, commencing at the westerly corner of Union avenue and Riverside avenue, on Assessment Map numbered 81. 1,495.31

Borough of Rutherford.—That after assessing as above set forth the lands specially benefitted by the aforesaid improvement we find that the sum of one hundred and eighty-three 44-100 dollars remains unassessed, and that therefore we do, pursuant to statute in such case made and provided assess the said sum of one hundred and eighty-three 44-100 dollars upon and against all the taxable property within the Borough of Rutherford to the end that the same may be collected in the manner prescribed by law..... 183.44

All of which is respectfully submitted.

RUTHERFORD, N. J., December 30, 1891.

W. H. SMITH,
JAMES N. EDGAR, } *Commissioners.*
JOHN J. KETCHUM.

Attest:

CHARLES E. TOLHURST,
Secretary.

BOROUGH OF RUTHERFORD, SS.

We, the undersigned, Commissioners in the foregoing report referred to, do hereby certify that we fixed the 11th day of January, 1892, at 8 o'clock P. M., at the house of Rutherford Engine Company No. 2., in said Borough, as the time and place for hearing all parties interested therein, and the examination, correction and completion of the foregoing report and directed the Secretary, Charles E. Tolhurst, to give the notice thereof required by law.

And we, the said Commissioners, met at the time and place aforesaid, due notice of said meeting having been given, and Mr. Henry Ivison having appeared in person and having offered the same objections which he previously filed with the Mayor and Council.

Mr. William Rogers appeared in person and objected to said report and also filed written objections. Mr. J. H. Trubshaw also appeared in person and by Luther Shafer, his attorney and filed written objections. Mrs. Catherine Ehrmann appeared by Luther Shafer, her attorney, and filed objections to said report. Mr. A. Ely appeared for Messrs. Clark, Raymond and Hastings, and Mr. H. R. Jackson and filed written objections for each party and Mr. H. P. Kip also appeared in person and offered verbal objections.

And said commissioners thereupon duly adjourned to meet on January 13., 1892, at * * * the same place for further consideration of the above objections.

And the said Commissioners met on the thirteenth day of January, 1892, at 8 P. M. at the house of Engine Company No. 2.. all present and having duly considered the objections filed and presented and having resolved that said objections be overruled and that the assessments remain as originally fixed and having duly examined, corrected and completed their report, they ordered the same to be signed

by the Commissioners and attested by the Secretary and returned to be filed in the office of the Borough Clerk and presented to the Mayor and Council.

Dated RUTHERFORD, N. J., January 13, 1892.

W. H. SMITH,
JAMES N. EDGAR, } *Commissioners.*
JOHN J. KETCHUM.

Attest:

CHARLES E. TOLHURST, 10
Secretary.

New Jersey Supreme Court.

10

THE STATE, (AARON RAYMOND, et als Prosecutors), *Pltffs. in Cert.* *vs.* THE MAYOR AND COUNCIL OF THE BOROUGH OF RUTHERFORD, *Defts. in Cert.*	Certiorari to remove the assessment for the improvement of Union avenue. Reasons.

20

The prosecutors in this case by Addison Ely, their attorney, insist that the said assessment on the lands of of the prosecutors for the improvement of Union avenue ought to be set aside, vacated and for nothing holden for the following reasons, viz:

First.—Because the said assessment upon the lands of the prosecutors for the said improvement is largely in excess of all benefits the said lands will derive from the said improvement.

30

Second.—Because the said Commissioners in making the said assessment have not included therein all the lands benefited by the said improvement.

Third.—Because the said Commissioners have not defined the extent of the lands of the prosecutors and other land owners fronting on the said avenue upon which the said assessment is to become a lien.

Fourth.—Because the said assessment is made

upon large tracts of lands of the prosecutors that are not in any way benefited by the said improvement.

Fifth.—Because the said assessment is made upon the frontage of the lands fronting on the said avenue without any regard to the size, value or depth of the lots assessed.

Sixth.—Because the commissioners that made the said assessment were taxpayers in the borough of Rutherford, and were not disinterested.

Seventh.—Because said Commissioners admitted that they favored making every street pay for itself without regard to benefits. 10

Eighth.—Because the said assessment is in divers other respects erroneous and contrary to law.

ADDISON ELY,

Attorney of Prosecutors.

20

New Jersey Supreme Court.

10

THE STATE, (AARON RAYMOND, et als Prosecutors), *Plffs. in Cert.* *vs.* THE MAYOR AND COUNCIL OF THE BOROUGH OF RUTHERFORD, *Defts. in Cert.*	On Certiorari, etc. Depositions.

20

Examination of witnesses, etc., in the above stated proceedings, on the part of the prosecutors, before me, George S. Cassedy, Supreme Court Commissioner of New Jersey, at the office of Addison Ely, Esq., in Rutherford, New Jersey, in the presence of Addison Ely, counsel of prosecutors, and Edward J. Luce, counsel of the defendants.

It is agreed by counsel that the testimony be taken by a stenographer and that the signature of the wit-
30 ness be waived.

John M. Bell was then duly sworn to take the testimony truly and correctly to the best of his ability.

Addison Ely, a witness produced on the part of the prosecutors, being duly sworn according to law, deposes and saith:

I am Attorney for the plaintiffs. I appeared before the commissioners appointed to assess the benefits for grading Union avenue in behalf of the plaintiffs, and objected to the amount of the assessment laid against the plaintiffs on the ground that it

was more than the special benefits to the plaintiffs, and on the ground that all the property benefitted had not been assessed. I objected also to the commissioners map because it did not show all the frontage owned by the plaintiffs, and because it did not show that Riverside avenue, and intersecting street, was laid sixty-six feet wide and thus placed a cloud upon sixteen and one-half feet of the lands of the plaintiffs. I also objected to the assessment on the ground that all the lands benefitted were not assessed, 10 and that a large proportion of the cost of opening Union avenue was properly assessable to the public at large, and also because it was laid on frontage only and because there was no limit to the lien of the assessment. These objections were mainly in writing.

The Commissioners, through their chairman, said to me, that it was the policy of the borough to assess the cost of street improvements upon the street improved and that they calculated to make each street 20 pay for its own improvement. There was no dissent as to this expression on the part of the other commissioners. On behalf of the plaintiffs, I protested against this principal and insisted that at least one-third of the whole expense for grading Union avenue was a public charge. Union avenue is an old street probably two hundred years old and connected with the Newark and Hackensack road on the east of the Borough of Rutherford and with the River River Road which lead from Newark to the City 30 of Passaic, it is one of the two thoroughfares in the Borough of Rutherford and is the principal drive between the Borough of Rutherford and the City of Passaic. The lands of the plaintiffs lie west of River Road and extend from the Erie Railroad on the north nearly a mile to the south, they are bounded on the west by the Passaic River and contain an area not far from one hundred and fifty acres. Union avenue did not formerly extend through these lands but ended at the River Road. Prior to the pres-

ent grade of Union avenue there was a passable driveway extending from River Road westerly through lands of the plaintiffs to the Passaic River, but a little to the north of the middle line of their property. When the proposition to grade Union avenue was made, the plaintiffs dedicated to the Borough of Rutherford, the land needed for the extension of Union avenue from the River Road to the Passaic River, where the street has since been extended, that having practically coincided with the old driveway that had existed through the lands and which was partly a graded street. The grade of Union avenue was not of general benefit to the property on the street (defendant objects to the testimony) and in many places was a very great injury to it, but it has made a level thoroughfare and so constituted a good road for travel and was a very great public benefit and a very large part of the cost of the grading of Union avenue, in my opinion, would have been fairly laid if put upon the public at large. Through the property of Raymond, Hastings and Clark there is no travel whatever on the avenue there being no bridge over the Passaic River at that point nor any residences or business properties on the line of the avenue, there is no occasion to travel over it. For about two-thirds of the distance westerly from River Road there is a continuous fill which elevates the road above the lands on each side.

(Plaintiffs offer grade maps of Union avenue which are marked exhibits P-1.)

CROSS-EXAMINED BY MR. LUCE.

Q. What is the length of Union avenue through the plaintiffs lands?

A. The total length of the avenue through the plaintiffs property is 2,065 feet on the north side and 2,062 feet on the south side.

Taken and sworn to this 24th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

Supreme Court Commissioner of N. J.

Henry R. Jackson, a witness produced on the part of the prosecutors, being duly sworn according to law, deposes and saith:

EXAMINED IN CHIEF BY MR ELY.

Q. Mr. Jackson, you live in Rutherford, do you not?

A. Yes sir.

Q. You have lived for many years on the River Road near the junction of River Road and Union avenue? 10

A. Yes sir, for 16 years.

Q. Mr. Jackson how wide was the River Road at the junction of Union avenue, before Union avenue was graded?

A. The only thing I know about the road is by a map given me by Aycrigg of whom I bought my property on which it is marked at only 50 feet wide. I don't know what authority he had for that, I am sure. 20

Q. The actual width was 40 feet at Union avenue?

A. Yes sir.

Q. Are you acquainted with Riverside avenue in other parts of the avenue?

A. Yes sir.

Q. What appears to be the width of the avenue generally in other parts?

A. It varies in width, it is just as wide as travel has made it. 30

Q. But where it has been actually opened and worked?

A. It is very narrow.

Q. How wide is it?

A. I should say 40 feet.

Q. You have been down on River Road below a place called Union, have you not?

A. Below the second bridge.

Q. Yes, below the second bridge?

A. I have been there.

Q. How wide is it there?

A. About 40 feet, I think.

Q- Is it at any point so far as your knowledge goes, 60 feet?

A. No Sir.

Q. How wide does the grade map make the avenue?

A. My recollection is that it is 66 feet wide.

Q. How many feet short is your bill for assess-
10 ment?

A. 6 or 8 feet.

Q. This grade takes off the frontage of your property?

A. It takes very little, but a slight cut.

Q. Is the sidewalks graded?

A. The Union avenue sidewalk is graded but the River Road sidewalk is not cut.

(Showing witness assessment map of Union avenue is asked.)

20 Q. How is your property denoted on this map?

A. By the number 46 on the northeast corner of Riverside avenue and Union avenue.

Q. How many feet are you assessed for on that map?

A. I am assessed for 67 feet and should be assessed for 72 feet.

Q. Why are you assessed for less than that number of feet?

A. Because Riverside avenue is shown on the as-
30 sessment map at 66 feet wide, a matter which was contested before the council and before the commission.

Q. Did you appear before the commissioners and object to the width given Riverside avenue?

A. Yes sir.

Q. Did you also object before the Council?

A. Yes sir. The matter was abandoned by the Council altogether.

Q. The matter of making Riverside avenue 66 feet wide was abandoned by the Council?

A. Yes sir.

Q. Your assessment bill has been rendered for the incorrect number of feet?

A. Yes sir.

Q. Then the opening of Riverside avenue to 66 feet places a cloud upon your property?

A. Yes sir.

Q. Mr. Jackson, you are acquainted with the Raymond property?

A. Yes sir. 10

Q. Is Union avenue through the Raymond property used at the present time to any extent whatever?

A. On occasion of a pleasure ride.

Y. It has no practical use at present?

A. No sir.

Q. How has the grade affected the property?

A. That embarrasses me a little, because from the standpoint of an owner I claim it was an injury, but from the standpoint of a citizen the grade is very 20 proper and easy.

Q. That is, you would rather the plaintiffs would pay their assessment than have any part of it put on you?

A. Yes sir.

Q. Now as to the cuts and fills, how does the street look?

A. I think it looks very well.

Q. What proportion of Union avenue from Riverside avenue westerly is a fill and what is a cut? 30

A. For about 700 feet easterly from the river it is a cut and the rest of the distance to Riverside avenue, except about 150 feet, is a fill.

Q. Now then, as to the portion of the lands that are filled, what are the special benefits in your opinion to these?

(Objected to on the ground that the witness is incompetent.)

A. It is no special benefit to it because it requires it to be filled up to the grade.

Q. Is Union avenue a thoroughfare?

A. From Riverside avenue to Rutherford it is a pretty hard worked thoroughfare.

Q. Then the making of a good street there is a benefit to whom in particular?

A. To the residents of Rutherford. Most of the lumber used on these new houses is brought over that road.

Q. If you were a disinterested person and not a
10 taxpayer in the borough of Rutherford what proportion of the whole expense of laying out that avenue would you say should be laid on the public at large?

(Objected to by defendant.)

A. I believe that Union avenue, being a public street, the public should pay one-third.

Q. Mr. Jackson, to what extent is the lands of Raymond, Hastings & Clark benefited on the extreme southern end by the grading of Union avenue?

A. Not at all.

20 Q. To what extent are they benefited along the line of the Erie Railroad?

A. None at all.

(Showing witness grade map and pointing out assessment No. 60, William H. Luke, corner Chestnut street and Union avenue. is asked:)

Q. Is all the property on the Union Avenue Corner of Chestnut street that is benefited assessed?

(Objected to by defendant).

A. Yes sir, I think so,

30 Do you think property on cross streets benefited by the grading should be assessed?

A. Yes sir, it should be assessed on cross streets.

(Calling the attention of witness to the limit of assessment which is denoted in most cases by a black line.)

Q. Is there any other property shown on that map that should be assessed?

(objected to by defendent as incompetent.)

Q. Is not other property shown on that map not assessed, benefited?

(Objected to by defendant as leading.)

A. Yes sir.

Q. What property shown on that map is benefited that is not assessed?

(Objected to by defendant as incompetent.)

A. Premises south of Luke should be assessed, the lands on Erie Avenue are benefited and should be assessed. I can give a general answer to that, it should be laid at a uniform depth without regard to property lines. 10

As this map is regard has been had to property lines?

Yes sir.

Q. Now Mr. Jackson you have bought and sold real estate to some extent and been acquainted with the management of real estate for some years?

A. Yes sir.

Q. Will you tell me in your opinion as to whether one lot valued at $2,500 and another valued at $100 on the same avenue should be assessed alike, should 20 they have the same assessment for grading?

A. Do you want to take the value after the grade is made?

Q. I will state the case plainer. Plot 48 on assessment map is 50 feet and valued at $2,500. Should these two plots be assessed at the same rate per front foot; In other words, should regard be had to the value?

(Objected to by defendant).

H. I do not see that at present as to the matter of 30 grading.

Q. You know when they assess for grading they assess the special benefits; should not those special benefits be greater per lineal foot when the lands are worth four times as much as others?

(Objected to by defendant.)

A. It depends on what benefit is derived from the grading.

Q. If you consider this lot right adjoining here as any more improved than any other lot on the ave-

nue, should not the grade be laid according to the value of the land?

A. I do not think so.

Q. You know the commissioners who made this assessment?

A. Yes sir.

Q. They are old residents of the borough of Rutherford?

A. Yes sir.

10 Q. All of them taxpayers?

A. Yes sir.

Q. Nice men outside of being commissioners?

A. Yes sir.

CROSS-EXAMINED BY MR. LUCE.

Q. You are not one of the prosecutors in this case?

A. No sir.

Q. Do you know who the prosecutors in this case are?

20 A. Yes sir.

Q. Who are the prosecutors in this case to your knowledge?

A. The trustee of the estate of Charles C. Hastings, Aaron Raymond and Jonas Clark.

Q. Who represents the estate of Hastings.

A. William H. Phillips.

Q. Are you in any way related to either of these prosecutors?

A. No sir.

30 Q. Are you acquainted with either or all of them?

A. I know them all.

Q. How long have you known them?

A. I have known Mr. Raymond over 30 years, Mr. Clark for 25 years, and Mr. Phillips since Mr. Hasting's death, say 7 years.

Q. Are you in any manner interested in any of the property of the prosecutors?

A. No sir.

Q. Have you ever, at their request or the request of either of them, had anything to do with the man-

agement of their property?

A. Yes sir; while I lived there I was in charge of the property.

Q. How many years was that, about?

A. Fifteen years since I came there.

Q. During that time was any part of the property of the prosecutors occupied?

A. During my residence the hotel property was occupied by the janitor and tenants at different times.

Q. Are those the only two portions of the property that are improved? 10

A. Yes sir.

Q. And the hotel property is over on the bank of the river?

A. Yes sir.

Q. And your property that you speak of is at the corner of Riverside avenue?

A. Yes sir.

Q. With these exceptions all the rest of this property of the prosecutors is unimproved land, is it not? 20

A. Yes sir.

Q. Up to the time that the present grading work on Union avenue was done there was no easy access through that land, was there?

A. No sir, any more than Union avenue was partially opened before that.

Q. What kind of a traveled way was there lying westerly from River road before this grading of Union avenue?

A. It was graded on the surface otherwise it was 30 a country road and neglected, of course, only the roadway was used and the gutters were filled up to some extent, but the outlines of a street were there.

Q. Was the grading which you speak of as if it had formerly been done such as to have left a practicable roadway there?

A. Yes sir, there was a slight cut near the river bank.

Q. Was there anything but a couple of ruts?

A. That was the effect of the travel, there was a

drain pipe crossing the road and a sewer crossing.

Q. What did they do when they graded it in 1872?

A. They filled up some parts.

Q. Did they shape the road in 1872?

A. Yes sir.

Q. How far west did they carry that operation?

A. To the river.

Q. Is that where the present extension now runs?

10 A. Yes sir.

Q. That operation I persume was one in which there was very little filling or excavation done, merely an operation to form a street?

A. Yes sir.

Q. And within the 20 years that elapsed since that time the traces of that work had become almost obliterated?

A. Yes sir, part of the road had, but where there was a cut of course not.

20 Q. Had there been much of a cut?

A. Yes sir, that near the hotel.

Q. Running a short distance?

A. About 100 feet.

Q. Is this part of Union avenue that lies through the property of the prosecutors at all travelled by the public?

A. Only occasionally a pleasure wagon.

Q. You said some time ago in your direct examination that you thought one-third of the cost of 30 grading Union avenue ought to be assessed on the borough at large, because it was the second if not the first thoroughfare of the borough, is that true at all of that portion which lies through the property of the prosecutors?

A. No sir.

Q. Is the grading of Union avenue through the property of the prosecutors in your opinion of any benefit whatever to the public at large?

A. Not without a bridge.

Q. And there is no bridge there?

A. No sir.

Q. Are you somewhat familiar with grading operations?

A. No I am not.

Q. Are you able to say from your knowledge of Union avenue as it now is and of such grading operations whether the work done on the part of the avenue which runs through the prosecutors' property is on the average the same as the work shown on the rest of the avenue—I mean the amount of it; are you able to say? 10

A. I am not.

Q. You never represented the prosecutors before the Mayor and Council with reference to agreeing to have this street so graded, did you?

A. I cannot remember whether I appeared before them or not. I did represent them in a general way.

Q. Is it not true to you knowledge that they knew what the grade map was before work was begun? 20

A. Yes, they knew in a general way from my representations.

Q. And they gave their consent?

A. Yes sir.

Q. In the part of the prosecutors' property where this road had to be filled what was the character of that? was it dry, or marshy and wet?

A. Very low and wet on the south side.

Q. Therefore to make those lots ever worth anything it would be necessary to make a good road by there? 30

A. Yes sir.

Q. The grading of the street by them is an improvement of these lots?

A. Yes sir.

RE-DIRECT EXAMINATION BY MR. ELY.

Q. There was a good road there before?

A. Yes sir.

Q. Elevated at the grade shown?

A. Yes sir.

Q. It was an easy road to travel through?

A. Yes, for pleasure.

Taken and sworn to this 24th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,
Supreme Court Commissioner of N. J.

(Louis Beck, a witness produced on the part of the prosecutors, being duly sworn according to law, deposes and saith:)

EXAMINED IN CHIEF BY MR. ELY.

Q. Mr. Beck, you live in Boiling Springs Township?

A. Yes sir.

Q. It is just across the railroad from the borough of Rutherford?

A. Yes sir.

Q. Are you acquainted with Union avenue in the borough of Rutherford?

A. Yes sir.

Q. How many years have you known it as a street?

A. Going on 22 years.

Q. Have you been over it since it has been graded?

A. As far as River road.

Q. Was the grading of the avenue of special benefit to a good deal of the property along the line of the road, or was it an injury?

A. I do not think it was a great benefit to the property owners.

Q. Was Charles Planer benefited by the grading of Union avenue?

A. No sir.

(Objected to by defendant as irrelevant.)

Q. Were the cottages just beyond along Chestnut street benefitted?

A. No sir.

(Showing witness grade map.)

Q. Do you find property along Chestnut street on the south side not assessed that is benefitted?

(Objected to by defendant.)

A. On the corner lot.

Q. On Carmita avenue, was there any benefit to the residents of Carmita avenue from the grading of Union avenue?

(Objected to by defendant).

A. I don't think there was.

Q. The grading of Union avenue has made a good street for public travel?

A. Yes sir, first class.

Q. What kind of travel passes over Union avenue most? 10

A. The most travel is heavy wagons with building material.

Q. And most of the lumber used in this locality comes over Union avenue?

A. Yes sir.

Q. Then the grading of Union avenue is a public benefit in your opinion?

A. Yes sir, a benefit to Rutherford.

Q. What proportion of the cost of grading Union avenue do you think should be assessed against the public at large? 20

(Objected to by defendant.)

A. I think one-fourth at least.

Q. You are not a taxpayer in the borough of Rutherford?

A. No sir.

CROSS-EXAMINED BY MR. LUCE.

Q. How long Mr. Beck is it since lumber came to Rutherford by the way of Union avenue? 30

A. I think ever since the street is graded.

Q. Where does that lumber come from?

A. Part from Passaic.

Q. From the Anderson Lumber Co.?

A. Yes sir.

Q. Their place in Passaic is located very near the junction of the River road and the Paterson plank road?

A. That is the sawmill. The lumber is on the other side of the river.

Q. So the nearest way to bring lumber to Rutherford is to come down the Plank road to Boiling Spring avenue and cross the railroad into the borough here?

A. No sir; they take the River road along the Lorillard estate.

Q. By the Plank road route it is a macadamized road all the way?

A. Yes sir.

10 Q. By the Union avenue route, then, they go over a dirt road more than one-half the way?

A. Well, no; not more than half way.

Q. You do not mean to say, Mr. Beck, that the heavy traffic on Union avenue has come since the macadamizing is done?

A. You could not travel over it during the macadamizing.

Q. And the macadamizing came pretty close on the heels of the grading, did it not?

20 A. No the macadamizing began only a couple of months ago.

Q. When was the grading finished?

A. They worked on it last year.

Q. So that for more than a year last past it has been in such a condition that it was hardly fit to be traveled over.

A. No sir.

Q. Have you Mr. Beck carefully examined each piece of property fronting on Union avenue from 30 where it begins down at Erie avenue up to the River Road and determined what you thought each piece of property fronting on it has been benefitted by the grading?

A. No sir.

Q. You have not the slightest idea of the amount of the benefits?

A. No sir.

Q. Have you gone over it and carefully looked at it at other times?

A. No sir.

Q. Beyond the River road to the point where Union avenue runs through the lands of the prosecutors in this case you have never rode?

A. Not since it has been graded.

RE-DIRECT EXAMINATION BY MR. ELY.

Q. There was a good road through the property before it was graded?

A. Yes sir, as far as the hotel.

CROSS-EXAMINED BY MR. LUCE.

Q. You heard Mr. Jackson's testimony with reference to that roadway, was what he stated substantially true? 10

A. I don't know.

Q. The road that was there followed the natural surface of the ground?

A. It went according to the ground.

RE-DIRECT EXAMINATION BY MR. ELY.

Q. It had been graded there before?

A. Yes sir.

Q. You meant it followed the surface of the ground after grading? 20

A. Yes sir.

Taken and sworn to this 24th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,
Supreme Court Commissioner of N. J.

(Benjamin F. Crane, a witness produced on the part of the prosecutors, being duly sworn according to law, deposes and saith:) 30

EXAMINED IN CHIEF BY MR. ELY.

Q. Mr. Crane where do you live?

A. Newark.

Q. You are not a taxpayer in the borough of Rutherford?

A. No sir.

Q. What is your business Mr. Crane?

A. Real estate business for the last 27 years.

Q. Have you had some experience in appraising property?

A. Yes sir.

Q. What experience have you had?

A. I am appraiser for the Howard Savings Institution and the American Insurance Co., and was for some years appraiser for the Mutual Benefit Insurance Co,

Q. How many years experience have you had as an appraiser of property?

A. I have an experience of the last fifteen years.

10 Q. Where?

A. In the City of Newark and surrounding country.

Q. You have frequently been to Rutherford to appraise property?

A. Yes sir.

Q. Have you had any experience as a commissioner in laying assessments on property?

A. I was one of the commissioners for laying the assessment on Park avenue, and on a portion of

20 South Orange and Bloomfield avenue.

Q. How long are those threets beginning at Bloomfield avenue?

A. Bloomfield avenue extends from the City of Newark to the Morris County line about twelve miles, and Park avenue about two and a half miles and South Orange avenue about five miles.

Q. Those roads were built by the Essex County Road Board?

A. Yes sir.

30 Q. What was the commissioners appointed for on these roads?

A. To assess benefits.

Q. Have you had any other experience as a commissioner of assessments?

A. The grading of streets, paving and sewer assessments.

Q. You have been on commissions for these different purposes?

A. Yes sir.

Q. Where have you served?

A. I have served for the repaving of Broad street from the Morris & Essex Railroad to Bloomfield avenue, perhaps 1.500 feet, I have been on a great many assessments.

Q. Mr. Crane you know where the Raymond property is in the borough of Rutherford?

A. Yes sir.

Q. You have been over Union avenue since the grading?

A. Yes sir, to the Passaic river. 10

Q. Will you give us your opinion as to where the benefits should be assessed for grading of the street?

(Objected to by defendant.)

Q. Give us the principle you would employ in assessing that street if you were on the commission to assess it?

A. The avenue of course in places has been cut down to grade and in others been filled more or less. I should think taking the whole thing that a just assessment would be about one-third upon the township at large and the balance on property adjoining. 20

Q. Where a street is cut down in front of property is that property generally increased in value?

A. No sir, very seriously damaged sometimes.

Q. Does the mere fact of the grading of a street past a man's property always increase its value?

A. Not always, this increase of value to a certain extent depends upon the conditions as to the grading of the street.

Q. Now is it a fair principle Mr. Crane to make each street in the city or village pay for its own improvements? 30

(Objected to by defendant as irrelevant.)

A. I think where a street is graded for the public at large, a considerable portion of the expense should be paid by the township or city for the improvement, particularly of thoroughfares. I know in Essex County they have opened thoroughfares and extended them through various portions of the county and it has been of very great benefit to prop-

erty at large.

Q. As much as to frontage?

A. Yes sir.

Q. The assessment here is laid on the average price of frontage, is that a proper way to lay the assessment in your opinion and from your experience as a commissioner?

(Objected to by defendant.)

A. No, but the practice is to lay the assessment
10 for lineal feet without regard to the value of the property.

Q. Of course you would consider any advantage because of special benefits to property you are assessing?

A. Yes sir.

Q. Should not property on cross streets be assessed?

(Objected to by defendant).

A. I think the proper way would be to draw lines
20 100, 150 or 200 feet from the line of the street to be improved and assess all alike.

(Showing witness assessment map.)

Q. I refer you to assessment of Luke No. 60, also Quinn No. 72, also Trubshaw No. 76; is all the property in that locality that is benefited assessed?

(Objected to by defendant.)

Q. The assessment extends for only 50 feet; should not the property lying south of the properties named be assessed?

30 (Objected to by defendant.)

A. The property should be assessed the full depth to a regular line drawn.

Q. Then you think the line to which assessment extends on each side should be defined?

A. Yes sir.

Q. Is it so on that map?

A. It is not.

Q. You find in some cases that the line of the assessment extends back 143 feet, in other cases it is unlimited and in other cases it is away back 152 and

200 feet, is it limited or not in the case of the prosecutors ?

A. No sir, there seems to be no limit in their case.

Q. Other things being equal is not the extent of the benefit uniform, or does not the benefit extend to a uniform distance on each side of the avenue ?

(Objected to by defendant.)

A. I can see no good reason why it should not be assessed the same on both sides.

Q. Did you notice the southerly extremity of the 10 prosecutors' property down by the coal yard ?

A. Yes sir.

Q. Is that portion of the prosecutors' property lying about the coal yard benefitted any more than the property directly opposite, that is I mean on the other side of Riverside avenue ?

A. I don't know, I think not.

Q. The property opposite the prosecutors' property benefitted to the same extent down by the coal yard ?

A. Yes sir, benefitted in the same proportion. 20

Q. Is there any special benefits to that portion of the prosecutors' property which lies about the coal yard ?

A. I do not know any.

Q. The benefits arising to them through the grading of Union avenue is the same as the benefit arising to other adjacent property equally distant from the avenue ?

A. Yes sir.

Q. Is the property along the railroad line belong- 30 ing to Raymond, Hastings & Clark any more benefitted than the lands directly opposite theirs on Riverside avenue ?

A. I do not know why it should be.

Q. If there is any benefit to their lands lying as described away from the avenue it is the same benefit arising to all of the lands in common which are not assessed ?

A. Yes sir.

Q. Mr. Crane did you notice what kind of a street

had been constructed over the prosecutors' property, I mean as to fills and cuts?

A. Well they have cut a portion a little way from the river, and then there is a portion which seems to be on grade, and then it is filled.

Q. Is it a considerable fill?

A. Yes sir.

Q. What, in your opinion, is the amount of special benefits to their property by reason of that
10 grade as constructed?

A. There is some portions of it where the street is graded up, the land seems to be marshy and it is necessary to fill the street up and the lands adjoining will have to be graded up to a corresponding grade to make it of value. I do not think that property is benefited any more particularly than other property on the line of the street, but it appears to be the most just way to make an even assessment on all the property alike.

20 Q. Do you consider in making the assessment where a man's property is depressed by reason of a fill that he ought to be assessed as much as where the street is ready for the grade or where the grade makes property above the surface of the street?

A. I make the assessment equal all the way through.

Q. Would you lay the assessment upon frontage without regard to the assessed value or depth of the lands?

30 A. Without regard to depth, I would make a line and assess up to that line.

Q. Was it your custom when laying assessments if the road injured a man's property greatly to relieve that man from some of the expense of grading?

(Objected to by defendant.)

A. My impression is that we did make some distinction in extreme cases.

Q. The principle you used was to lay assessment where it did not injure property at all and where it was of direct benefit?

A. Yes sir, I think the assessment was laid except in extreme cases, equally.

Q. Wouldn't you regard the cut on Union avenue just east of the prosecutors' lands an extreme case?

(Objected to by defendant as irrelevant.)

A. Well I think those are cases where there might be some difference made in the assessment.

Q. Wouldn't you regard the fill for the distance through the prosecutors' lands as an expense and an injury? 10

A. I should put upon the township at large just enough to cover these extreme cases.

Q. Then you would relieve a man from the assessment when the injury was positive to him?

A. Yes sir.

Q. And you would assess him when the benefit was positive?

A. Yes sir.

CROSS-EXAMINED BY MR. LUCE.

Q. Do you consider Mr. Crane that the prosecutors' lands on either side of the street where there is a fill have been at all damaged by the fact that there is a fill there? 20

A. I should say that in the low land described it is no damage to that.

Q. Is it not a great improvement to the land?

A. I think it is.

Q. What, in your opinion, is the character of this street in its entire length through the prosecutors' lands—that is, is it a good, well graded street? 30

A. Well, I should think it was fair grading.

Q. Have you surveyed the whole of the land and the surrounding conditions and estimated the benefit that the grading of that street conferred upon the lands of the prosecutors, exactly?

A. No sir.

Q. Your idea that one-third of the cost of grading the entire street should fall upon the borough at large is the result of a general principle and not the result of an estimation by you of the actual benefits

they may have received?

A. Yes sir.

Q. As I understand it you have examined this property of the prosecutors and know that it extends on either side of Union avenue north and south a considerable distance?

A. Yes sir.

Q. There are no other streets running across it?

A. None visible on the ground.

10 Q. The property is entirely unimproved so far as any buildings are concerned?

A. Yes sir, with the exception of the hotel property.

Q. That is considerable distance north of the western end of the road?

A. Yes sir.

Q. You were able to see by your examination that Union avenue west from River road is not a traveled thoroughfare?

20 A. No sir, it is not traveled.

Q. Do you think that there is any benefit to the borough at large for them to open a street which is not a thoroughfare and which is not traveled on and will not be traveled on?

A. If there was a bridge it would be a very great improvement.

Q. At present there is no particular benefit to the borough, is there?

A. Well there is as much benefit to the borough 30 as to the property.

Q. Where is there any benefit to the taxpayers at large from opening the street through there?

A. That part of the avenue of course that is no more benefit to property or land or the township, but would be some.

Q. It is not true that the only benefit to the borough that it would be, will be when that property along there is built upon?

A. When there is either another street opened along the river or a bridge.

Q. And from the lack of those two things the borough is not particularly benefited that you know of?

A. No sir.

Q. Would it make any difference in your opinion, as to what would be a fair share for the borough at large to pay for the grading of Union avenue, that the property owners or prosecutors in this case petitioned the borough to open and grade this street?

(Prosecutors object to the implication that any such petition was presented.) 10

A. I suppose if there had been a petition for the regrading presented before this action was taken for the regrading of Union avenue, and if it was so I think the township should bear one-third of the expense of grading.

Q. Assuming that this presumption as to a petition to the borough government to cross that property, that particular portion, would that make any difference in your opinion? 20

A. It might make some difference inasmuch as it is not a thoroughfare; it is what you might call a pocket now; the thoroughfare runs off on the road to Passaic.

Q. The fact is, Mr. Crane, that the borough in grading that street across these prosecutors' lands have done a thing so far as immediate conditions go which is greatly for the benefit of those property owners?

A. It might form a convenient place for them to cut the road and throw the earth when grading the street below. 30

Q. Under present conditions the portion of Union avenue which runs through Raymond, Hastings and Clark's property is of no benefit at all to the general public outside of an occasional picnic excursion to the bank of the Passaic river?

A. It would seem not.

Q. It is no benefit to the public to have a street opened over the lands of the prosecutors without

first obtaining a bridge across the Passaic river or persons to come there and occupy their lands?

A. If these parties could succeed in getting a bridge across the river the township at large of course would be benefited; without it their benefits are very small indeed.

Q. When a bridge is put across there will not the fact that there is a road through the prosecutors' lands largely increase the value of these lands?

10 A. No doubt it would.

Q. Is there any likelihood that a bridge ever would go across there unless a road was there for it to go to?

A. No, of course it would be necessary to have a road.

Q. You know something of the City of Passaic?

A. Yes sir.

Q. Do you know how populous a place it is?

A. About eight or ten thousand inhabitants.

20 Q. Do you know how near the settled part of the City of Passaic comes to this part of the road?

A. My recollection is that it is some little distance.

Q. It would be a short distance between the City of Passaic and Rutherford as compared with any other road?

A. Yes sir.

RE-DIRECT EXAMINATION BY MR. ELY.

Q. If no one was to receive any benefit Mr. Crane 30 except the prosecutors, ought they to pay for an assessment which would amount to more than the cost of putting that dirt in?

(Objected to by defendant.)

Q. Ought they to be at any expense for the other part of the avenue?

A. Well, I think not.

Q. Don't you think in giving the land to the public without cost and making it possible to have a continuous drive to the river that it benefited investors on other streets in the same light as the owners

of property on Union avenue?

A. I think they should pay the difference of the expense of grading and I presume they should pay their fair proportion of the other assessment.

Q. Ought they to be regarded as all other owners on Union avenue?

A. Yes sir.

Q. If there are parts of Union avenue entitled to some reduction from the assessment for grading the avenue the prosecutors are entitled to their share of that reduction? 10

A. Well it would seem as if they were.

Q. It is the ordinary custom to consider prospective benefits in making assessments?

A. Yes sir.

Q. Is laying sewers a benefit to the public at large?

A. Yes sir.

Q. If the prosecutors were led into a grand scheme by the owners of property or interested persons on Union avenue to make a grand thoroughfare from the one end of the borough to the other would that entitle them to damages from the other owners of property on the street? 20

(Objected to by defendant.)

A. Yes sir.

Q. Would such a fill have been necessary there had the prosecutors graded their own property?

(Objected to by defendant).

A. Well I do not know but what it would be necessary. 30

Q. Does the fill bear any relation to the cut on the Raymond property?

(Objected to by defendant.)

A. I think it does somewhat.

Q. What was the relation?

A. Well to make a good grade for the avenue it is necessary to grade the low land up a little to conform to the adjoining high land.

Q. Did not the fill make a convenient place to dump the dirt from the cut east of the Raymond

property.

A. Yes sir, but it was just what the property needed.

Taken and sworn to this 24th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,
Supreme Court Commissioner of N. J.

Jacob G. Van Riper, a witness produced on the
10 part of the prosecutors, being duly sworn according to law deposes and saith :

EXAMINED IN CHIEF BY MR. ELY.

Q. Mr. Van Riper where do you live ?

A. In Boiling Springs.

Q. Have you lived many years in the locality ?

A. All my life time.

Q. At least 50 years ?

A. Yes sir.

Q. You know where Union avenue is ?

20 A. Yes sir.

Q. Have known it all your life ?

A. Yes sir.

Q. What has been your business Mr. Van Riper ?

A. The latter part of my life surveying.

Q. How many years ?

A. Ever since 1862.

Q. Do you know where the Raymond property is ?

A. Yes sir.

30 Q. Have you been over Union avenue since it was graded ?

A. I have.

Q. Was the Raymond property benefited any more by the grading than the property just this side of it ?

(Objected to by defendant.)

A. No sir.

Q. Is it benefited any more than any other property on the avenue ?

A. No sir.

Q. What in your opinion has been the effect of the grading through the Raymond property commencing at Riverside avenue?

A. Well in my opinion the Raymond property was not benefited by that grade.

Q. Has it lifted the roads above the lands on both sides beginning at Riverside avenue and running to to the river?

A. For a certain distance the grade of the road conforms to the ground, then there is a fill which lifts the road above the lands on each side and a considerable cut on the north side near the cottage. 10

Q. There was a grade on the avenue before this grade?

A. Yes, a partial grade.

Q. It was filled in some above the surrounding lands?

A. Very little, only right in the ravine.

Q. Mr. Van Riper have you thought about what expense it would be to bring the lands on either side of the avenue on the Raymond property up to the grade of the road? 20

(Objected to by defendant.)

A. No sir, I made no calculation of it.

Q. Suppose Mr. Van Riper there was an average fill along a fifty foot plot of three feet that would give 450 cubic feet one foot deep, what would it be worth to fill a cubic yard on that place?

A. I am not an expert and I do not want to answer. 30

Q. Mr. Van Riper to what extent have the public been benefited by the grading of Union avenue outside of the property owners along the line of that street?

(Objected to by defendant.)

A. It is a question Mr. Ely I have never considered, I think the public has been benefited outside of the property owners.

Q. To what extent would you say?

A. In my judgment the property of the whole

borough benefited about one-third as much as the property owners.

Q. Have you examined this assessment map Mr. Van Riper?

A. I have not.

(Shows witness assessment map.)

Q. Are the assessments as shown on that map laid on all the lands benefited?

A. No sir I think not.

10 Q. What lands are there benefited that are not assessed?

A. These lands lying in the rear of Trubshaw and in the rear of Quinn.

Q. Will you notice that on the southerly side of Union avenue the depth of the assessment is 141 feet while on the northerly side the depth of the land assessed is only 97 feet; is that an equitable assessment?

A. I should say not. I do not see why the land 20 on the southerly side should be assessed to a greater depth than on the northerly side.

Q. Do you think the assessment should extend to the same depth on both sides?

A. I think it would be fair, honest and right.

Q. You notice that many of these lines are deeper than others?

A. Yes sir.

Q. And these lines represent the rear part of the lands assessed. Does that make an equitable assess- 30 ment?

A. No sir.

Q. Is the Raymond property benefitted down by the coal yard at the southern extremity by the opening of Union avenue?

A. No sir.

Q. Is it benefited up at the railroad?

A. No sir.

Q. Do you consider the fill through the Raymond property and the grade established there generally a positive benefit to the property?

A. Well, in my judgment, I think is is not a positive benefit. I think the injury is as great as the benefit.

Q. What does the injury consist in?

A. It consists in that the road is raised above the property so that you have to fill it up to make it suitable for building sites.

Q. You are acquainted with Riverside avenue or old River road?

A. Yes sir. 10

Q. Along where it intersects with Union avenue?

A. Yes sir.

Q. Have you ever surveyed on it?

A. No sir, not farther than the Carlton Hill depot.

Q. You have lived on Riverside avenue in your life time?

A. Yes sir, near Belleville.

Q. What has been the width of that avenue to your knowledge? 20

A. It has been all kinds of widths.

Q. How wide has it been opened?

A. It has been opened to all kinds of widths.

Q. Has it ever been opened to a width of 66 feet?

A. Not to my knowledge.

Q. How wide has the road been known?

A. I never heard any question as to its width.

Q. You never heard any one speak of the width of that road?

A. No sir, the road is very narrow. 30

Q. What point did you measure it at?

A. Down by the Brown property.

Q. Can you give the width now?

A. My recollection is it was about 40 feet wide.

Q. Did you ever measure it at the property of John V. S. Winkle?

A. I think I did.

Q. How wide did you find it there?

A. By grading each side there it was fifty feet. I measured it at the turn in the road beyond the

bleachery down to the bridge by Mr. Van Winkle's.

Q. What was its width down at the point where it intersects with Union avenue?

A. I cannot answer that question; it was very narrow.

Q. There is a large cut just this side of Riverside avenue on Union avenue?

A. Yes sir.

Q. What was done with that dirt?

10 A. That is a question I cannot answer.

Q. Was it necessary to make such a fill through the Raymond property?

A. Probably it was necessary.

Q. The dirt was not on the ground to fill?

A. Not all of it.

Q. I suppose the Raymond property towards the river had some dirt taken out before?

A. I am not able to say.

20 *CROSS-EXAMINED BY MR. LUCE.*

Q. Were you familiar with the property of the prosecutors before this grading was done?

A. Yes, sir; I traveled over it.

Q. Did you ever before that time travel over it in a particular way to see what the roadway across it was like?

A. No, sir; nothing more than to travel along the road.

Q. You say you do not think that the property 30 was much benefited by this grade?

A. I did.

Q. The street as it is graded is a good grade, is it not?

A. The street is graded pretty well.

Q. The cut in your opinion is about right?

A. Wherever there is a cut it is all right?

Q. You think the fill is a little too much?

A. Yes sir.

Q. How much less of a fill would be better?

A. It would have been better if the largest fill had

been one and a half feet less?

Q. That was because it would have made less filling on the property?

A. Yes sir.

Q. The grading of that road through there of course has benefited that property some, has it not?

A. Yes sir, benefited it some some ways and injuree it in another.

Q. Have you examined carefully this property of the prosecutors along the street by the grading that has been done and estimated carefully what the benefit to them in dollars and cents is? 10

A. No sir, it is only a matter of judgment without calculation.

Q. Why do you think that the assessment for the cost of grading should be laid upon adjoining property to the same depth all the way along the street?

A. I think it proper because if one part has benefited to that extent the rest has too.

Q. Do you understand that there is anywhere a law which obliges commissioners to assess to a certain depth? 20

(Objected to as incompetent.)

A. I do not know.

Q. Why do you think that the borought ought to stand one-third?

A. I thought this because being a public road it will be a very great improvement.

Q. Then you make up your mind without any reference to the total amount of the special benefits? 30

A. The special benefits will be to the property owners, that to the public by the making of a roadway and a bridge across the river.

Q. You never have taken the property along Union avenue for the whole distance and carefully estimated what in your opinion each persons benefit has been by the grading of that road?

A. I made no estimate.

RE-DIRECT EXAMINATION BY MR. ELY.

Q. Is there any reason why any man is assessed

50 feet deeper than his neighbor on the same line of the street?

A. I do not see that there should be any reason from my standpoint.

Q. Are you acquainted with the general appearance of the land at the corner of Carmita and Union avenues?

A. No sir, I have not noticed it very particularly.

10 Q. On the corner of Carmita avenue I notice on the assessment map A. Quinn No. 72, on the west side of him is a plot marked E. F. Gordon 200 feet deep. Quinn's plot is 50 feet deep; now, are you sufficiently acquainted with the end of that land at Carmita and Santiago avenues, similar land in value, is there any reason why all that block should not be assessed to the depth of 150 feet?

A. It seems, in my judgment, that it should be.

CROSS-EXAMINED BY MR. LUCE.

20 Q. It is no advantage, Mr. Van Riper, with his frontage on some other street is it?

A. No sir.

Taken and sworn to this 24th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,
Supreme Court Commissioner of N. J.

Max Mathe, a witness produced on the part of the prosecutors being duly sworn according to law 30 deposes and saith:

EXAMINED BY MR. ELY.

Q. Mr. Mathe where do you live?

A. In Lodi Township.

Q. You know where Union avenue is Mr. Mathe?

A. Yes sir.

Q. Are you well acquainted with the street?

A. Well fairly.

Q. What is your business Mr. Mathe?

A. I have no particular business. I assist Mr. Van Riper sometimes.

Q. Have you had any experience as a contractor in grading streets?

A. I have graded.

Q. You keep a horse, do you not?

A. Yes, several.

Q. And travel around the roads a good deal?

A. Yes sir.

Q. What in your opinion has been the benefit to the Raymond property by reason of the grading lately made on Union avenue through their lands? 10

A. Well in my judgment I don't see that it was any benefit?

Q. Why is that so Mr. Mathe?

A. Well on account of the cuts and heavy filling on their property, I judge that it has not been any benefit whatever.

Q. What portion of the cost of the grading of Union avenue in your opinion should be laid on property along Union avenue?

(Objected to by defendant as incompetent.) 20

A. Well I should judge about three-fourths or two-thirds.

CROSS-EXAMINED BY MR. LUCE.

Q. You say you think that the grading of Union avenue across the prosecutors' lands has resulted in no benefit to their property?

A. No sir.

Q. Then are your aware of what the statute which governs in the assessing of the cost of grading requires? 30

(Objected to as incompetent.)

A. No sir.

Q. The statute governing the assessment of the cost of grading in cases like this says: "The Mayor and Council shall ascertain the whole amount of the cost and expense of said improvement and shall cause to be made a just and equitable assessment thereof upon the lands and real estate benefited thereby in proportion to the benefits received thereby, and no lands or real estate shall be assessed beyond benefits,

and in case the cost and expense exceeds the benefits the excess shall be paid out of the general road tax." Now if you think that the lands of the prosecutors were not benefited at all by this road crossing there, in view of the law just read to you, what makes you think that they ought to be assessed at all?

A. I do not know that they ought to be assessed anything.

Q. Did't you say that you thought the Raymond
10 property was not benefited at all by this grading because the cuts through the property were too deep and the fills too heavy?

A. Yes sir.

Q. How did you get at the figure that the prosecutors should pay two-thirds and the borough one-third?

A. Well I judge it this way, the public is reaping the benefit of it, that was merely a judgment of mine.

20 Q. How did you arrive at that judgement?

A. I arrived at that in my opinion the public should pay that portion.

Q. Did you go over the amounts and look carefully at each persons property and consider about what that grade improved their property?

A. No sir.

Q. You never did that with any plot?

A. No sir.

Taken and sworn to this 24th day of October, A.
30 D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,
Supreme Court Commissioner of N. J.

The prosecutors rest with the understanding that they are to have the oportunity to swear two or three witnesses who have not appeared, to-morrow.

(William H. Smith, a witness produced on the part of the defendant, being duly sworn according to law, deposes and saith):

EXAMINED IN CHIEF BY MR. LUCE.

Q. You are a resident of Rutherford, Mr. Smith?

A. Yes sir.

Q. How long have you lived here?

A. Almost six years.

Q. You are a freeholder, Mr. Smith?

A. Yes sir.

Q. And own property on Donaldson avenue, in the borough?

A. Yes sir.

Q. Were you appointed one of the commissioners to assess the cost and expense of grading Union av- 10 enue?

A. Yes sir.

Q. I show you a document entitled "Union Avenue Grade Assessment Commissioners' Report," purporting to be signed by William H. Smith, James N. Edgar and John J. Ketchum; Is that the report of the assessment made by you and the other commissioners?

A. Yes sir.

Q. Now, in making that assessment, Mr. Smith, after the grading was done did you go up and down 20 the whole length of the avenue and examine carefully the property on both sides?

A. Yes sir.

Q. Did you examine each piece of property carefully?

A. Yes sir.

Q. Did you examine them carefully and impartially?

A. Yes sir.

Q. Did you try to determine if each piece of prop- 30 erty was benefited by the grade?

A. Yes sir.

Q. Are the figures in that report your judgment what those benefits are?

A. To the best I know how.

Q. Are you familiar with the borough and its surroundings?

A. I think I am somewhat.

Q. Have driven through and around them a good deal?

A. Yes sir.

Q. Have taken an interest in public concerns since you live in the town?

A. Somewhat, yes.

Q. Keep yourself informed as to what is going on in the town?

A. I try to.

Q. And as to the value of property in different locations?

10 A. Yes sir.

Q. And know well the pieces of property through which this street runs?

A. Yes sir, I think I do.

Q. Now something has been said by the prosecutors in their testimony with regard to the fact that land in the rear of a lot on Union avenue in one or two instance where the lot runs lengthwise on Union avenue and has a frontage of only fifty or sixty feet on the cross street, something has been said as to 20 the value of one or two of these properties and their not being assessed?

A. My recollection is that the property in behind lots fronting on this street had already been assessed for benefits on other streets that lie behind

Q. Is it a fact that in assessing, the principle you consider is that the property was assessable for the cost of the street solely with reference to its frontage on Union avenue?

A. That has been the practice through all the 30 grading in the borough.

Q. So if a piece of land was ten feet wide and but one foot deep, if it had a frontage on Union avenue, you would have assessed it according to that frontage?

A. Yes sir.

Q. If it had no frontage on Union avenue you would not assess it?

A. No sir.

(No cross-examination.)

Taken and sworn to this 24th day of October, A.

D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,

Supreme Court Commissioner of N. J.

James N. Edgar, a witness produced on the part of the defendant, being duly sworn according to law deposes and saith :

EXAMINED IN CHIEF BY MR. LUCE.

Q. Mr. Edgar, you are a resident of the borough ?

A. Yes sir.

Q. And a freeholder ? 10

A. Yes sir.

Q. Were you one of the commissioners to assess the cost of the grading of Union avenue ?

A. Yes sir.

Q. I show you the report of the commissioners of which you were one and ask you if you concurred in making that report ?

A. Yes sir ; that is my signature.

Q. Before concurring in this report did you go on to the street and examine the adjoining property from one end to the other ? 20

A. Yes sir.

Q. Did you make your examination carefully and deliberately and so far as you were able justly ?

A. Yes sir.

Q. Are the amounts mentioned in this report as to the assessment against the several properties in your opinion fair, just and equitable regarding any benefits conferred upon the owners by the grading of that street ? 30

A. Yes sir, I should say so.

Q. How long have you lived in Rutherford ?

A. Twenty-four years.

Q. During all that time or almost all that time you have been familiar and acquainted with the properties and lands or circumstances of things in Rutherford, have you not ?

A. Yes sir.

Q. And consider yourself competent to give a just

judgment upon such matters as this?

A. Yes sir.

(No cross-examination.)

Taken and sworn to this 24th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,
Supreme Court Commissioner of N. J.

John J. Ketchum, a witness produced on the part of the defendant, being duly sworn according to law, deposes and saith:

10

EXAMINED IN CHIEF BY MR. LUCE.

Q. Mr. Ketchum you are a resident of Rutherford?

A. Yes sir.

Q. And a freeholder?

A. Yes sir.

Q. You are one of the commissioners appointed to assess the cost of the grading of Union avenue?

20

A. Yes sir.

Q. As one of those commissioners you concurred in signing the report which I now show you?

A. Yes sir.

Q. How long have you lived in Rutherford?

A. About six years.

Q. During the time you have lived here you have become thoroughly acquainted with Rutherford and surrounding country and the property and condition of property in Rutherford.

30

A. Pretty thoroughly.

Q. And consider yourself competent to give a fair judgment with regard to the benefit of any such improvement as this?

A. I do.

Q. Before concurring in that report did you make a careful, deliberate examination of the property adjoining on each side of it from beginning to end?

A. Yes sir.

Q. And your concurring in that report is the result of that examination?

A. Yes sir.

Q. How did the commissioners proceed to determine the amount that was to be assessed upon the respective properties for their share of the cost of grading?

A. The properties were examined foot by foot and the assessment was made in proportion to the benefits derived as the commissioners thought according to frontage.

Q. You have heard the testimony of the other commissioners. 10

A. Yes.

Q. Do you agree with what they have testified to.

A. I agree with what they have said except that I differ from Mr. Smith on one point.

Q. What particular part of Mr. Smith's testimony do you object to?

A. Mr. Smith testified that the commissioners only considered property immediately fronting on the street; on entering the commission I had become aware that the commissioners have the right to assess property lying back from the street if the property is benefited by the improvement and when we made the assessment on Union avenue it was made with distinct reference to that; but notwithstanding the fact that I knew we could go away from the avenue to assess benefits, I signed the report as a just and fair asssessment of the benefits received by property fronting on the avenue? 20

Q. Then do you mean to say that whether you assessed back property or not, or whether you had included back property or not, your assessment would have been the same? 30

A. Yes sir.

(No cross-examination.)

Taken and sworn to this 24th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,

Supreme Court Commissioner of N. J.

(Defendant offers in evidence assessment map of Union avenue and it was marked D-1.)

William J. Slingerland, a witness produced on the part of the defendant, being duly sworn according to law, deposes and saith:

EXAMINED IN CHIEF BY MR. LUCE.

Q. Mr. Slingerland you are a resident of Rutherford?

A. Yes sir.

10 Q. Was a member of the borough council?

A. Yes sir, I have been.

Q. For what years?

A. 1882 to 1889.

Q. Was a member of the council at the time the grade map of Union avenue from its easterly end to the Passaic river was adopted?

A. Yes sir.

Q. Do you know whether upon the adoption of that grade map the present prosecutors in this case 20 or anybody representing them appeared before the council?

A. I do not remember that they did at this late day.

Q. Was there any objections on the part of anybody made to the adoption of that map at the time it was adopted?

A. I am not positive on that matter. I believe that Mr. Ivison was the only objector to the profile map.

30 Q. As a member of the borough council and as a member of the Street Committee during part of your service you had considerable to do with the borough streets and grades?

A. Yes sir.

Q. Is the grade on Union avenue as it now is a part of an entire system made to govern the whole borough?

A. I consider it to be, yes sir.

Q. Almost all the grades within the borough have been established within the last 6 years?

A. Yes sir.

Q. Largely with the end in view of having a consistent system?

A. That has been the idea from the start.

Q. You are well acquainted with Union avenue?

A. Yes sir, thoroughly acquainted.

Q. In your opinion is the grade of the street through the land of the prosecutors a good grade?

A. I think so. 10

Q. Have there been any benefits you consider accruing to them by the opening?

A. I do not know.

Q. You know the commissioners who made the award?

A. Their reputation cannot be questioned at all.

Q. You own property along the line of the street yourself?

A. Yes sir.

Q. Were you assessed? 20

A. Yes sir, and paid my assessment.

Q. And you considered it a just assessment?

A. I did.

(No cross-examination.)

Taken and sworn to this 24th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,

Supreme Court Commissioner of N. J.

Charles H. Warner, a witness produced on the 30 part of the defendant, being duly sworn according to law deposes and saith:

EXAMINED IN CHIEF BY MR. LUCE.

Q. Mr. Warner you are a resident of Rutherford?

A. Yes sir.

Q. You were a member of the borough council?

A. I was.

Q. You know of the grade established on Union avenue?

A. I do.

Q. You have been on the line of the street on the prosecutors' lands since the grading was done?

A. Frequently.

Q. Thoroughly acquainted with the street and the lands themselves?

A. Yes sir.

Q. In your opinion was the putting that street through their lands a benefit to those lands?

A. Most decidedly.

10 Q. Do you know what the condition there was before that street was graded with reference to the part of the street where there is a fill?

A. My recollection of it is that is was marshy.

(No cross-examination.)

Taken and sworn to this 24th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,
Supreme Court Commissioner of N. J.

20 Thomas Daniel, a witness produced on the part of the defendant, being duly sworn according to law deposes and saith:

EXAMINED IN CHIEF BY MR. LUCE.

Q. Mr. Daniel you are a resident of Rutherford?

A. Yes sir.

Q. And was for three years ending last Spring, a member of the borough council?

A. Yes sir.

Q. As such you are conversant with Union ave-
30 nue?

A. Yes sir.

Q. You are and have been thoroughly acquainted with those premises there?

A. Yes sir.

Q. What have you to say as to the question of whether this grade was a benefit to that property or not?

A. I think it was a benefit.

Q. How great a benefit do you think it was?

A. That I could not say.

Q. Was it a benefitof light or of great importance?

A. Of considerable importance as it is on any street that is graded through a section of property.

Q. What is and was the character of the land there?

A. It was very low land and very wet and damp.

Q. Could it have been used for building purposes in the condition it was before the grading?

A. I should not think so before it was filled up.

Q. Does the fact that the street runs by it now make it more valuable? 10

A. I think so.

Q. Does the grading of that street through the whole of the prosecutors' lands in your opinion make them any more saleable or marketable than they were before that street was graded?

A. Yes, I think so.

Q. You have never estimated carefully just how much increase in value there might be?

A. No sir. 20

CROSS-EXAMINED BY MR. ELY.

Q. Have you any idea of the present value of the marshy land, Mr. Daniel?

A. No sir.

Taken and sworn to this 24th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,
Supreme Court Commissioner of N. J.

Worthington M. Jacobus, a witness produced on the part of the defendant, being duly sworn according to law deposes and saith: 30

EXAMINED IN CHIEF BY MR. LUCE.

Q. You were in the employ of the Borough Council, Mr. Jacobus, to oversee as engineer this grade?

A. I was employed by Hilton & Menger, who were the engineers at that time.

Q. Do you know whether the fill that was made by this grade on the prosecutors' lands was made

simply in order to get a convenient place to dump the dirt in?

A I think not. I think the fill was occasioned by being very low land, only 9 feet above tide water, and the tide flows in and out at that point.

(No cross-examination.)

Taken and sworn to this 24th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,

10 *Supreme Court Commissioner of N. J.*

Joseph N. Mileham, a witness produced on the part of the defendant, being duly sworn according to law, deposes and saith:

EXAMINED IN CHIEF BY MR. LUCE.

Q. Mr. Mileham, you are a resident of Rutherford?

A. Yes sir.

Q. And own property at the corner of Montross and Union avenues?

20 A. Yes sir.

Q. Was assessed for grading of Union avenue where it runs by your place?

A. Yes sir.

Q. Do you know anything about this property of the prosecutors?

A. I have been over it before, but not since it has been graded?

Q. Are you well acquainted with property generally in this neighborhood?

30 A. Yes sir.

Q. And know surrounding conditions and population as it is?

A. Yes sir.

Q. Do you not consider every grade a benefit to the property?

(No cross-examination.)

Taken and sworn to this 24th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,

Supreme Court Commissioner of N. J.

Peter H. Kip, a witness produced on the part of the defendant, being duly sworn according to law deposes and saith :

EXAMINED IN CHIEF BY MR. LUCE.

Q. You are a life-long resident of Rutherford ?

A. Yes sir.

Q. And own a large tract of property on Union avenue ?

A. Yes sir.

Q. And was assessed a large sum for the grading of the street by your place ? 10

A. I was.

Q. Are you thoroughly acquainted with the property and country in Rutherford and surroundings ?

A. Yes, quite somewhat.

Q. Have you looked over the property of the prosecutors in this case since the grading has been done ?

A. I have been over the land.

Q. Have you been familiar with their property ? 20

A. Yes sir.

Q. What do you think has been the effect of that grading on the prosecutors' lands ?

A. It has benefited them.

Q. Is it a great or small benefit ?

A. It is a great benefit.

Q. Do you consider that there is any property on that street benefited more than the lands of the prosecutors by that grading ?

A. I think that it has benefited as much as any of it ? 30

CROSS-EXAMINED BY MR. ELY.

Q. Don't you think that the public at large ought to pay part of that assessment ?

A. Not on others but on mine I think so.

RE-DIRECT BY MR. LUCE.

Q. The street where it passes your property passes at almost grade the entire distance ?

A. Yes, most of it.

Q. There is a very great frontage on the avenue ?

A. I think 1,691 feet or something like that.

Q. And almost all the way on grade?

A. There is about 150 feet of a fill much worse than that on the Raymond property and then there was a cut too.

Taken and sworn to this 24th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,
Supreme Court Commissioner of N. J.

10 Examination adjourned until 2 p. m. Tuesday, October 25, 1892, at same place.

Tuesday, October 25, 1892. Examination resumed in the presence of Addison Ely, counsel for the prosecutors, and Edward J. Luce, counsel for defendant.

William McKenzie, a witness produced on the part of the prosecutors, being duly sworn according to law deposes and saith:

EXAMINED IN CHIEF BY MR. ELY.

20 Q. Mr. McKenzie, where do you live?

A. Carlton Hill.

Q. What is your business?

A. Am proprietor of the Bleachery there.

Q. How many years have you lived there?

A. I have lived there seven years.

Q. And lived on the line of the River road or Riverside avenue as it is called on the assessment map, and occupy the property just across the railroad from the premises of the prosecutors?

30 A. Yes sir.

Q. Have you been over the River road or Riverside avenue, Mr. McKenzie?

A. Not much.

Q. What is the width of the River road about where your factory is and adjoining the Raymond property?

A. About 48 feet.

Q. Have you made the road wider since you have been there?

A. Yes sir.

Q. How wide?

A. We put our fence back since I have been there.

Q. How many feet?

A. Probably three or four feet.

Q. Is the road any wider running from your place south in front of the Raymond property than it is at your factory?

A. That I don't know, it does not seem to be, there is no fence there.

Q. Are you acquainted with the width of the road in other places north of the Raymond property toward Passaic? 10

A. Yes it varies in places, the widest portion is at the school house.

Q. How wide is it at the school house?

A. At the school house it is fifty feet.

Q. And going on toward Passaic what is its width?

A. One place near Van Winkle's property just at the bend of the road it is 26 or 27 feet? 20

Q. Are the fences up on both sides of the road?

A. The entire way.

Q. The sides of the road are well defined?

A. Yes sir.

CROSS-EXAMINED BY MR. LUCE.

Q. Do you mean that at Van Winkle's place it is 26 feet wide from fence to fence?

A. Yes sir.

Q. At the point in the turn of the road just before coming to the river? 30

A. Yes sir.

Q. Do you know how wide the traveled portion of the River road or the land which is included by the road within the borough of Rutherford at any point is?

A. I do not.

Q. Are you at all acquainted with this property of the prosecutors in this case?

A. No sir, no farther than I know the property is there.

Q. You have never been over Union avenue since it has been graded through the property?

A. Yes sir, I went through once.

Q. Do you think the grading of that avenue through their property was any benefit to it?

A. I do not know, I never gave it a thought.

RE-DIRECT BY MR. ELY.

Q. Is the road any wider in front ol the Raymond
10 property than it is at your factory?

A. I do not think it is as wide.

BY MR. LUCE.

Q. The traveled part of the way does not seem to be wide?

A. I should judge it is not as wide as our side.

Q. The traveled part of the road there ends on either side in a fringe of bushes does it not?

A. Well in bushes and trees.

Q. A regular line of trees on each side?

20 A. I do not know that I noticed that.

Q. Don't you know as a matter of fact that the trees you speak of along the sides of the River road at this place are some distance farther in from the traveled track itself?

A. No sir, I walked it up the other day and I think they were right on the road.

Q. There is no fence there to show the width?

A. No sir.

Q. Do you know how wide the road is where the
30 barn is?

A. No sir.

Q. What is there to mark the eastern boundary of the road?

A. There is a hill there and the road has been cut.

Q. Do you take the width of that road at the bottom of that slope or the top?

A. I would judge where the cut was made.

Q. Is there much of a slope?

A. Quite some.

Q. Fifteen or twenty feet of a slope?

A. Yes sir.

Q. That cut there is an old one, is it not?

A. I think so.

Taken and sworn to this 25th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,

Supreme Court Commissioner of N. J.

Isaac Van Winkle, a witness produced on the part of the prosecutors, being duly sworn according to law deposes and saith: 10

EXAMINED IN CHIEF BY MR. ELY.

Q. Mr. Van Winkle, where do you live?

A. I live at Carlton Hill.

Q. Do you live near the lands of Raymond, Hastings & Clark?

A. The railroad separates them.

Q. How many years have you lived in that spot?

A. Since I was born. 20

Q. Have you frequently traveled over River road?

A. Not in two or three years.

Q. Prior to that did you frequently?

A. Yes sir.

Q. Have you been over it all within two or three years or any part of it?

A. Well I have to Newark once or twice and once this spring as far as Union avenue.

Q. Are you acquainted with the general width of the River road? 30

A. It varies; I am not acquainted with all the widths.

Q. What is the general width so far as you know?

A. Between thirty and thirty-five feet.

Q. Do you know where it is wider than that?

A. Yes right near my place.

Q. You are acquainted with the street in front of Raymond, Hastings & Clark?

A. Yes sir.

Q. How is the River road bounded along the westerly edge, I mean more particularly defined?

A. I do not recollect.

Q. Are there any trees there?

A. I do not remember.

Q. It is not defined on the easterly side?

A. There are some trees.

Q. Don't you know that there is a bank there?

A. Yes sir.

10 Q. Is the road any wider from the railroad to Union avenue in front of the Raymond property than it is from the railroad towards your house?

A. About as narrow and may be a little narrower.

CROSS-EXAMINED BY MR. LUCE.

Q. How wide?

A. Between thirty and thirty-five feet.

Q. There are places where it is wider than that?

A. It varies in different places.

20 Q. It is a very old road?

A. Yes sir.

Q. How old?

A. I do not know.

Q. Commonly said to be the first road traveled in this vicinity?

A. Yes sir.

Q. Is it not true that through the whole length of that road for miles and miles that its width is undefined?

30 A. I heard that it was laid a thirty-two foot road.

Q. But it is not certain?

A. I do not think it is very certain.

Q. With the exception of an occasional fence there is very little to mark the exact boundary of the road?

A. No sir.

Q. And the fences are not always true?

A. No sir.

Q. Where it runs by valuable dock property or home property the width is greater on the average

than elsewhere is it not?

A. I do not think it is.

Taken and sworn to this 25th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,
Supreme Court Commissioner of N. J.

John C. Post, a witness produced on the part of the prosecutors, being duly sworn according to law deposes and saith: 10

EXAMINED IN CHIEF BY MR. ELY.

Q. Mr. Post where do you live?

A. I live in Lyndhurst.

Q. You live on the River road?

A. Yes sir.

Q. How far away from the Santiago property belonging to the prosecutors?

A. Well I don't know, I suppose the neighborhood of two miles.

Q. On the same road that that is on? 20

A. Yes sir.

Q. For how many years?

A. Twenty-five years.

Q. How long are you acquainted with the River road?

A. Ever since I can remember anything

Q. How many years?

A. Seventy-three years.

Q. How wide is the River road in front of your house? 30

A. About thirty-six feet.

Q. Has the road been made wider there?

A. I put my fence in three feet.

Q. What is the average width of the road in the neighborhood where you live?

A. Some places narrower than that and some place wider.

Q. Would it pass for a two rod road?

A. I could not say whether it would or not.

Q. Is the road any wider along by the river to-

wards the Santiago property than it is by your place?

A. There is more ground laid open going on the edges of the water?

Q. Going farther up the road where the road leads away from the river, how does the width there compare with the road by your place?

A. I guess it is a little wider up there.

Q. Is it twice as wide?

10 A. No sir.

Q. Is it more than forty feet?

A. No sir.

(No cross-examination.)

Taken and sworn to this 25th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,
Supreme Court Commissioner of N. J.

Tunis Brown, a witness produced on the part of the defendant, being duly sworn according to law,
20 deposes and saith:

EXAMINED IN CHIEF BY MR. ELY.

Q. Mr. Brown, where do you live?

A. I live at Lyndhurst at present, on the hill.

Q. Have you ever lived on the River road?

A. Yes sir.

Q. How many years did you live on the River road?

A. Nearly all my life.

Q. You have lived on that road fifty years?

30 A. Yes sir.

Q. You have been acquainted with the road during the whole of that period?

A. Yes sir.

Q. Accustomed to travel it frequently?

A. Yes sir.

Q. Were you ever a township officer?

A. Yes sir, a township officer several times.

Q. Were you ever overseer of the roads in that township?

A. Yes sir.

Q. Was the River road in your district?

A. Yes sir, in my district from below the Avondale bridge to Passaic.

Q. Then you have worked the portion of the road in front of the whole of the prosecutors' property?

A. Yes sir.

Q. How many years have you known what is now the prosecutors' property?

A. When I first recollect it was Van Winkle's then.

10

Q. What was the general width of the road at the time you were overseer and worked the road?

A. I suppose it was a two-rod road.

Q. There were fences there then?

A. Yes sir.

Q. Was it not difficult for wagons to pass?

A. In a great many places.

Q. Was it a longer distance between fences than two rods in some places?

A. In places yes, along the river.

20

Q. How wide was it in front of your property?

A. I do not think it was two rods.

Q. Is there any place on the road where the road is opened four rods wide?

A. No sir.

Q. You are acquainted with the property now occupied by Mr. Van Winkle, are you not?

A. Yes sir.

Q. What is the width of the road there?

A. I could not tell you, I think it is a little wider there now; Mr. Van Winkle opened it some.

30

Q. You keep a horse and drive about?

A. Always have.

Q. Did you cut wood at any time in the woods of the Santiago property?

A. Yes sir.

Q. That brought you frequently in the neighborhood of the Santiago property?

A. Yes sir.

Q. What was the custom years ago, did they lay

out four rod or two-rod roads?

A. I have never known a four-rod road.

Q. What two-rod roads have you known?

A. Valley Brook avenue is one, I helped to lay that.

Q. The Meadow road is a two-rod road?

A. That was before my time. I suppose it to be a two-rod road.

(No cross-examination.)

10 Taken and sworn to this 25th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,

Supreme Court Commissioner of N. J.

Prosecutor offers map of Rutherford Park made by Henry A. Baker, 1870, which fairly shows the general features of the streets and roads, &c., in the borough of Rutherford. Marked Exhibit P-2.

The attorney for the prosecutors states that Mr. 20 Raymond, one of the prosecutors, has not arrived from New York because of a mistake in notifying him of the hour of hearing and he therefore rests his case as made.

Defendant offers the petition which it is admitted was signed by all of the prosecutors. Marked Exhibit D-2. Also the original Commissioners' Map of grading of Union avenue. Marked Exhibit D-3.

Charles Planer, a witness produced on the part of the defendant, being duly sworn according to law, 30 deposes and says:

EXAMINED IN CHIEF BY MR. LUCE.

Q. Mr. Planer, you are a resident of the borough of Rutherford?

A. Yes sir.

Q. How many years have you lived here?

A. Twenty years.

Q. Are you familiar with the property of Raymond, Hastings & Clark?

A. Part of it, yes.

Q. Are you familiar with that part of it through

which Union avenue runs ?

A. I am.

Q. Have you been over the line of Union avenue through that property since the road was graded through ?

A. I have.

Q. Mr. Planer, what is your occupation ?

A. I am a carpenter.

Q. Have you followed that occupation in Rutherford for the last twenty pears ?

A. No, about sixteen years. 10

Q. How many of the houses have you built ?

A. I don't know ; about 200 at least.

Q. And are thoroughly familiar with almost every locality in Rutherford ?

A. Pretty well acquainted, yes sir.

Q. Is the grade of Union avenue through the property of the prosecutors in your opinion a benefit to their lands ?

A. It is.

Q. Is it a large or a small benefit ? 20

A. Well I do not quite understand that ?

Q. Is the benefit to their lands a trifling one or one of considerable value ?

A. I think it is of considerable value.

Q. Can you state how valuable you consider the benefit to them ?

A. In money ?

Q. Yes, in money.

A. No, I could not state positively how much it is benefited by opening the street through in a round sum. 30

CROSS-EXAMINED BY MR. ELY.

Q. It was an injury to you Mr. Planer ?

A. I considered it so.

Q. You own property on the street ?

A. Yes sir.

Q. And a taxpayer in the borough of Rutherford ?

A. Yes sir.

Q. And assessor here this year?

A. Yes sir.

Q. Mr. Planer, what will it cost to grade Raymond's lands up to the street? can you give me an idea? I will read this to you, (reading from affidavit made on the 11th day of May, 1892, by witness): "Deponent says that he is familiar with the cost of grading and filling property after it is graded, that he estimates the cost to bring the
10 property of Clark, Raymond & Hastings up to the grade as now established at about $200 a city lot or about $8 a front foot on the street so graded."

Q. Is that part of the affidavit you made sometime ago?

A. Yes sir.

Q. That is still your opinion of what it will cost to bring it up to grade?

A. Yes sir, on the left hand side.

RE-DIRECT BY MR. LUCE.

20

Q. The benefit that you think the grading of the street has been to those lands is in addition to whatever cost they may have for filling?

A. Yes sir.

Q. Is it necessary in order to have made the land where this filling now is at all valuable that they should be filled?

A. I think so, it is undoubtedly.

Q. And the fact that the street has been graded through there renders the grading of the lands less
30 expensive?

A. I do not understand you.

Q. Could you have graded these lands without any filling at less expense than if the street was graded?

A. I think not.

Taken and sworn to this 25th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,

Supreme Court Commissioner of N. J.

Joseph P. Cooper, a witness produced on the part of the defendant, being duly sworn according to law deposes and saith:

EXAMINED IN CHIEF BY MR. LUCE.

Q. Mr. Cooper, you are Mayor of the Borough of Rutherford and have held that office since March, 1891?

A. Yes sir.

Q. Were you present at all the meetings of the Mayor and Council in which any action in regard to the petition for grading of Union avenue and subsequent work of grading was taken? 10

A. The petition for the grading was before my time, I was there when the commissioners report came in.

Q. Did either of the prosecutors in this case ever appear in person before the Mayor and Council in reference to the grading of Union avenue?

A. I think not.

Q. What was the first communication that the Mayor and Council received to your knowledge from the prosecutors in reference to the matter? 20

A. The first communication came from Mr. Ely, the prosecutors' counsel.

(Counsel for defendant reads communication.)

"RUTHERFORD, N. J., January 11th, 1892.

"On behalf of Clark, Raymond & Hastings I enter a general objection to the assessment laid for grading Union avenue, being assessments No. 47 and 81, on the ground that they exceed by a large sum the special benefits to their lands by such grade, and also because the assessment map is erroneous. 30

"ADDISON ELY,

"Attorney for Raymond, Hastings & Clark."

"The assessment of Clark, Raymond & Hastings should not be confirmed because it is greater than the special benefits. It is laid on frontage only. There is no limit to the lien of the assessment. The map is in error as it shows the width of Riverside

avenue at 66 feet. The report of the Commissioners shows that they have not assessed all of the property specially benefitted.

"Dated February 1, 1892.

"ADDISON ELY,

"Attorney for Raymond, Hastings & Clark."

Q. Were the communications just read received from Mr. Ely, counsel for the prosecutors?

10 A. Yes sir.

(Communications marked Exhibits D-4 and D-5.)

Q. I show you Commissioners' map and the part marked there on Riverside avenue. Did you formerly own land in the neighborhood?

A. I did.

Q. On which side of Riverside avenue?

A. On the southerly corner.

Q. How long is it since you owned that property?

A. I bought it in 1867.

20 Q. How long did you hold it?

A. Twenty-three or twenty-four years.

Q. What have you to say as to the width of Riverside avenue along there?

A. The width that the road has been cleared varies. The growth in 1867 and the cleared space between the woods, there was no fence there then, was over 50 feet.

Q. From the woods on the one side to the woods on the other?

30 A. Yes sir, and there was a ditch on each side.

Q. How long have you lived in Rutherford?

A. I have lived here since 1866.

Q. You were away how much of that time?

A. I was away from 1878 to 1886.

Q. During all this time has the width of Riverside avenue been substantially as you described it?

A. It has been, yes sir.

Q. You say there is no definite boundary there?

A. There is no fence on either side.

Q. Is it also true that at various points along the

River road the traveled track changes from one side to another?

A. It changes according to the kind of the ground.

Q. Is it not true that some distance south of this point there are two traveled tracks?

A. There have been two traveled tracks.

Q. What is the nature of the country through which Riverside avenue runs from a little above Rutherford avenue to the Erie Railroad?

A. I think from a little to the north of Rutherford avenue right up to the Erie Railroad has been uncultivated for twenty years past. 10

Q. Does not a large portion of it pass through a tangle of bushes and undergrowth?

A. Yes, brush, thickets and brambles.

Q. Has there been any houses to speak of along this road until very recently?

A. No place from Mr. Jackson's to the bridge.

Q. I show you on the same map a plot marked William H. Luke, No. 60, and ask you with reference to the land lying to the south thereof fronting on Chestnut street; in your opinion was the land lying south of said lot benefited by the grading of Union avenue? 20

A. Well, I do not think it was appreciably.

Q. Has Chestnut street been recently graded?

A. I think it was graded about two years ago.

Q. I show you also on said map a lot marked A. Quinn, No. 72 on the corner of Carmita and Union avenues, and call your attention to land south of that and ask you whether in your opinion the land lying southeast of Quinn's lot was benefited by the grading of Union avenue? 30

A. I do not think it was at all.

Q. Has Carmita avenue been graded?

A. No sir.

Q. Is there now a petition before council to grade it?

A. Yes sir.

Q. I show you on said map a lot located on the

corner of Santiago and Union avenues, No. 76 and call your attention to land lying southeast of that. Has the grading of Union avenue benefited all this land southeast of Trubshaw's lot?

A. I think not.

Q. Now, I would like you to state with reference to each one of those lots your reasons for deeming that those lots are not benefited by this grade?

A. I think the benefit back of Mr. Luke's land, 10 there is no appreciable benefit, and I can conceive no reason why it should benefit that part which lies away from it, and the same reasons apply to the second lot, of the land back of Mr. Trubshaw; it is below grade and I do not think adjoining land is benefited.

Q. If there is no benefit by the grading of Union avenue to the land in the rear of Luke, in the rear of Quinn and in the rear of Trubshaw, and if the benefit in each case should be considered equivalent 20 to the benefit received by similarly assessed lands along Union avenue, how much would that benefit amount to in your opinion to the whole of these properties?

A. Well if the lands have received any appreciable benefit the frontage is the main consideration.

Q. Are you familiar with the property of the prosecutors through which Union avenue was graded?

A. I am.

30 Q. Are you thoroughly familiar with property in general in Rutherford?

A. Yes sir, particularly in that part of it.

Q. You knew the property before the grading work was done there?

A. I did.

Q. Been through it since?

A. I have.

Q. Do you consider that grading work a benefit to that property?

A. I do.

Q. A great benefit?

A. A great benefit, an immense benefit.

Q. Will you please state why and in what ways the property is benefited by that grade?

A. It makes it marketable property and gives them a good chance to obtain a bridge to Passaic which they would not have without it.

Q. What as to the low lands there?

A. I actually think a good road could not have been made there without filling in that part. I consider that filling really necessary to make a good road. 10

(The prosecutors object to the testimony of this witness as regards the quality of the grade and as to the prosecutors signing the petition to have the street graded according to the grade map because there is no dispute about the grade, but the dispute is as to the amount of the assessment.)

Q. Mr. Cooper, what in your opinion was the land of the prosecutors worth in this low part before that street was graded through there? 20

A. I do not think it was worth anything in the condition it was. I am speaking of the low, swampy land.

Q. Since the street has been graded through there what is that property worth in your opinion in the low part?

A. Well it is worth more, but it is not worth as much as the other part of the land.

Q. It will require filling up, will it? 30

A. Not necessarily; if a man wants a cellar there it will not require filling.

Q. How would he drain it?

A. By carrying off the water to the low land, either by open drains or otherwise.

Q. Does the grading of that street through there largely benefit the higher portion of the property?

A. Decidedly.

Q. Why?

A. It opens a roadway and prospective thoroughfare.

Q. At what elevation does the road as graded come to the Passaic river?

A. The elevation is over twenty feet down the precipice or bank.

Q. Is that elevation there a benefit to the property and if so, why?

A. Well it has improved it by giving a good, practical grade all the way to the river bank which in case they should build a bridge will enhance its value.

Q. Can you state what in your opinion the special benefits derived by the prosecutors from the grading of that street amount to?

A. I told the prosecutors my opinion of it, that it benefited them $10,000 present and prospective benefits.

Q. Was the work of grading done since you have been Mayor?

A. It was. It was began before I was Mayor and completed after I was Mayor.

CROSS-EXAMINED BY MR. ELY.

Q. Mr. Cooper, you are a taxpayer in the Borough of Rutherford?

A. I am.

Q. When did you measure Riverside avenue?

A. Oh, I judged it; I did not measure it.

Taken and sworn to this 25th day of October, A. D., 1892, at Rutherford, New Jersey, before me,

GEO. W. CASSEDY,

Supreme Court Commissioner of N. J.

(Defendant offers contract for grading Union avenue which is marked D-6.)

Counsel for prosecutors gave the following notice:

I hereby give notice that I will continue the taking of evidence in this case on Monday the thirty-first day of October, at ten o'clock a. m., at the office of

the Commissioner, No. 1 Exchange Place, Jersey City, unless before that day all the items of the cost of grading Union avenue are presented by the defendant to the commissioner.

New Jersey Supreme Court.

10

THE STATE, (AARON RAYMOND, et als Prosecutors), *vs.* THE MAYOR AND COUNCIL OF THE BOROUGH OF RUTHERFORD, *Defendants.*	On Certiorari to remove the Union avenue assessment.

20

Examination of witnesses etc., in the above entitled cause, on the part of the defendants, before me, George W. Cassedy, a Supreme Court Commissioner of the State of New Jersey, at my office, No. 1 Exchange Place, Jersey City, N. J., on Monday, October 31, 1892, at ten o'clock in the forenoon, in the presence of Copeland & Luce, Esquires, attorneys and counsel of the defendants, and Addison Ely, Esquire, attorney and counsel of the prosecutors.

30

On application of the counsel of the defendants, and with the consent of the counsel of the prosecutors, the further taking of testimony in this case was adjourned to Friday, November 4, 1892, at ten o'clock in the forenoon, at the office of Copeland & Luce, in Rutherford, N. J.

GEO. W. CASSEDY,
Supreme Court Commissioner of N. J.

Statement of the cost of grading Union avenue as determined by the Commissioners showing the items thereof and the date when each was paid.

Produced by the defendant upon the call of the prosecutors:

1890.

		Item No.
Dec. 3 First payment to contractor for grading	$690.92	1

1891.

Jan. 5 Second payment to contractor for grading	1,096.83	2
Jan. 19 Payment to Hilton & Menger for engineering work	100.00	3
Feb. 2 Third payment to contractor	1,250.00	4
March. 9 Fourth payment to contractor	700.00	5
March 16 Payment to W. N. Jacobus, temporary walks	69.00	6
April 14 Fifth payment to contractor	950.00	7
May 5 Sixth payment to contractor.	800.00	8
June 15 Seventh payment to contractor	1,200.00	9
Oct. 5 Final payment to contractor.	1,696.21	10
Oct. 5 Payment to Hilton & Menger, engineering work (Item No. 3).	195.68	11
Nov. 16 Payment to McKenney for relaying drain	21.00	12
Dec. 21 Legal expenses in making searches and procuring releases	75.00	13

1892.

Jan. 18 Payment for Commissioner's map	129.85	14
Jan. 18 Payment for Commissioner's fees	180.00	15

1892.

		Item No.
Jan. 18 Advertising for bids.....	7.85	16
Jan. 18 Paid for printing specifications.....	8.50	17
Jan. 18 Paid McGowan for making culvert.....	14.80	18
Jan. 18 Paid Galloway for curbing and guttering.....	20.00	19
Jan. 18 Paid advertising for objections to commissioners report in Bergen County Herald, Rutherford News.....	3.60	20
Jan. 18 Paid for magistrate taking affidavits.....	1.00	21
Interest at six per cent. upon each of the above items from the date of payment of same to May 9, 1892 (ninety days after conformation of Commissioner's report), as calculated by Commissioners.....	496.48	22
Total cost and expense as found.....	$9706.72	

The prosecutors agree that the foregoing as to dates and items is a correct statement of the sums making up the amount of the Union avenue assessment, but leaves open the question as to the propriety of said charges against said assessment, and that items one (1) to twenty-one (21) inclusive have been paid by the defendant.

ADDISON ELY,
Attorney.

November 2, 1892.

On Friday, November 4th, 1892, at 10 o'clock in the forenoon, the examination proceeded at the office of Copeland & Luce in Rutherford, N. J., in the presence of Copeland & Luce, Esq'rs., counsels of the defendants, and Addison Ely, Esq., counsel of the prosecutors.

Worthington M. Jacobus, a witness produced on the part of the defendants. being duly sworn according to law on his oath deposes and says :

BEING EXAMINED IN CHIEF BY MR. LUCE.

Q. You were in the employ of Hilton & Menger and superintended the work of grading Union avenue did you not ?

A. Yes sir.

Q. I show you the sixth item in the statement of the costs of said work, ask you to state what that work was ? 10

A. Pending the grading of the street the old walks had been taken up and these temporary walks were laid by me pursuant to the request of the street committee.

A. I show you item number twelve. payment to McKenney for relaying drain; what was that for ?

A. There was an old drain running across and under the road at station 2130, being six feet below the level of the ground as it was then and having the standpipe running up to the then level of the ground; it was deemed necessary to bring the standpip level of the new grade and as the old pipe was out of order the whole of the old pipe had to be overhauled as well. 20

Q. Did Patrick McKenny do this work ?

A. He did, about nine months in the year, there is a stream of water flowing from the north through this sewer or drain under the road and out to the south through prosecutors lands. The tide also rises as far as this, at extreme high tide. 30

Q. I show you item eighteen paid McGowan for making culverts ? What was that for ?

A. So far as I know this work was to prevent the surface water of the road from flowing down this stand pipe and filling it with sand; it ran across the road at about the same place.

Q. I show you item nineteen paid Galloway for curbing and guttering was that part of this same work ?

A. I think it was.

Q. I show you items one, two, four, five, seven, eight, nine and ten being the eight payments to the contractor and ask you if for each of these payments there was an engineers' certificate that the respective amounts were due the contractor?

A. That there were eight prepared.

Defendant offers seven certificates which are marked exhibits D-10 to 16 inclusive, and it is ad-
10 mitted by counsel of prosecutors that there was a like certificate for the fifth payment of $950 which has been lost.

Q. I show you items three and eleven, being two payments, Hilton & Menger amounting to $295.68. Was this paid to Hilton & Menger to your knowledge, and what was it paid for?

A. We had a contract with the borough for doing the work necessary for the grading as engineers at four cents a foot, and that was the sum that it
20 amounted to.

Q. I show you item fourteen, payment for commissioners' map; was that sum received by Hilton & Menger?

A. Yes sir, we had also a contract to make commissioners' maps at one and three quarters cents a foot.

Taken and sworn to this 4th day of November, A. D., 1892, at Rutherford, N. J., before me,

GEO. W. CASSEDY,

30 *Supreme Court Commissioner of N. J.*

Alexander McGowan, a witness produced on the part of the defendant, being duly sworn on his oath deposes and says:

BEING EXAMINED IN CHIEF BY MR. LUCE.

Defendant admits that no proceedings have been taken by the defendant that are of record or formal resolutions, for opening or accepting the land of prosecutors over which Union avenue has been graded, so far as their official records are concerned,

other than as appears in the return in this case.

Q. I show you in the statement of the costs of grading Union avenue, item number eighteen paid McGowan for making culvert $14.80? Did you do the work and what was the nature and value of the work you did?

A. About a month after the grading was finished I built a culvert and two man-holes across the street to take away the surface water which was found accumulated there. 10

It is admitted that the charge was a reasonable one for the work done.

Taken and sworn to this 4th day of November, A. D., 1892 before me,

GEO. W. CASSEDY,
Supreme Court Commissioner of N. J.

Patrick McKenney, a witness produced on the part of the defendant, being duly sworn on his oath deposes and says: 20

BEING EXAMINED IN CHIEF BY MR. LUCE.

Q. I show you item twelve, payment to McKenney for relaying drain. Where was this done, and was $21.00 a reasonable charge for the work you did?

It is admitted by counsel for prosecutors that $21.00 is a fair charge for the work done.

Taken and sworn to this 4th day of November, A. D., 1892, at Rutherford, N. J., before me,

GEO. W. CASSEDY, 30
Supreme Court Commissioner of N. J.

Henry H. Copeland, a witness produced on the part of the defendant, being duly sworn on his oath deposes and says:

BEING EXAMINED IN CHIEF BY MR. LUCE.

Q. Please state what you know respecting item thirteen in the statement of the cost of grading Union avenue?

A. There arose a question in the matter of Union

avenue as to whether the part of the street north of the River road was properly dedicated and whether there were any encumbrances upon the property. I was employed to secure the dedication D-18 and D-19 of the land occupied by the street and also to make searches to see whether there were any encumbrances upon the land. I found that the land was covered by two mortgages which I obtained releases for so far as the land contained in the street was
10 concerned; this amount was paid me for that work. in doing this I had interviews with Mr. Raymond and Mr. Phillips, obtained their dedications, consulted with their attorney, Messrs. Carter & Ledyard, of N. Y., and Mr. Raymond assisted me in procuring the releases.

Taken and sworn to before me at Rutherford, N. J.,this 4th day of November, A. D., 1892 before me,

GEO. W. CASSEDY,

Supreme Court Commissioner of N. J.

20

Edwin T. Galloway, a witness produced on the part of the defendant, being duly sworn on his oath deposes and says:

BEING EXAMINED IN CHIEF BY MR. LUCE.

Q. Did you do some work on Union avenue on that part of it which runs through the property of Raymond, Hastings & Clark at or about the time the grading was completed and if so what was it that you did?

30 A. Soon after the grading of the street was done I laid curbing and guttering on either side of the street for a space of twenty feet to prevent the surface water from washing out the street, which it had already begun to do.

Taken and sworn to before me at Rutherford, N. J.. this 4th day of November, A. D., 1892, before me,

GEO. W. CASSEDY,

Supreme Court Commissioner of N. J.

Defendant rests.

Counsel for defendant offered without objection papers which are marked by me Exhibits D-10 to D-23 inclusive.

GEO. W. CASSEDY,
Supreme Court Commissioner of N. J.

The taking of further testimony in this cause was resumed at the office of Addison Ely on the 24th day of January A. D. 1893. By consent of counsel it is agreed that the testimony of the prosecutors witnessess be taken before Edward J. Luce, Esq., Master in Chancery of New Jersey, and the defendant's witnessess shall be examined before Addison Ely, Esq., Master in Chancery of New Jersey, without prejudice. Signatures of witnesses being waived by consent.

Aaron Raymond, a witness called on the part of the prosecutors, being duly sworn according to law, on his oath saith:

EXAMINED BY MR. ELY.

A. I am one of the prosecutors in this cause and one of the owners of the property assessed in the name of Raymond, Hastings & Clark, for the grading of Union avenue. Mr. Jonas G. Clark. of Worcester, Mass., is also an owner and Mr. William H. Phillips, trustee of the estate of C, C. Hastings, is the owner of the other share.

Q. Where do you live Mr. Raymond?

A. I live in New York City.

Q. How did you become aware of the proceedings to grade Union avenue?

A. I was called upon by Mr. Henry R. Jackson.

A. What did he say to you?

A. He said that the people out here wanted to have the street opened through there.

Q. The people in Rutherford?

A. Yes, and he wanted us to give the land free—solicited us to do that.

Q. Had there been a street through your property where Union avenue is now graded?

A. We graded a street through there, yes.

Q. Was it a good passable road?

A. We thought so. It was done under the engineering of H. G. Baker.

Q. How wide was it?

A. I think 60 feet. I think so, but I will not swear positively.

Q. It was in passable condition?

A. Very good condition.

10 Q. Whom did Mr. Jackson say he represented when he came to see you?

A. He did not mention any one in particular of the people who were living here.

Q. Were you waited upon by the Mayor and Council in relation to it?

A. Never until after the assessment was made.

Q. Did not the borough counsel come to you in relation to opening of the street?

A. I think not. I think he came to see me since.

20 Q. On Mr. Jackson's representations did you dedicate the lands?

A. We did.

Q. Did it not practically coincide with the street you formerly had there?

A. Decidedly.

Q. What is the width of Riverside avenue where it passes your property?

A. I do not know. It was a narrow road not over 40 feet at the outside.

30 Q. Through your property?

A. Yes sir.

Q. Has the grade as established by the Mayor and Council improved your property in any way?

A. I do not so consider it.

A. What portion of the whole street as graded through your property is a fill as nearly as you can arrive at it?

A. About 1,300 feet.

Q. Was that portion which is now filled formerly filled to some extent?

A. It had been filled to grade.

Q. It was somewhat higher than the surrounding land before?

A. Yes sir.

Q. How high is the street as it is now graded above surrounding lands?

A. Seven to eight feet at least, perhaps more in some places.

Q. The other portion of the street is a cut, is it not? 10

A. Yes sir.

Q. With regard to your own land, is the present grade for the first 1,300 feet west of Riverside avenue as good as the former grade?

A. I do not think so.

Q. Was there any necessity for filling the first 1,300 feet to the extent of seven to eight feet as you have testified?

A. No necessity for us, we did not consider it any benefit at all. 20

Q. Was there a large cut just easterly of your lands in Union avenue?

A. Yes sir, I think there was quite a hill there.

Q. What was done with that dirt?

A. I do not know from positive knowledge. I was told the cut was made to fill up the filling through our property.

(Objected to by Mr. Luce.)

Q The dirt on your lands was not sufficient to make the fill that there is? 30

(Objected to by Mr. Luce because it does not appear that the witness knows whether there was or not.)

A. There was very little cut on our land.

Q. Mr. Raymond, how far does your property extend to the north of Union avenue as now graded?

A. To the railroad.

Q. Can you tell me about how many feet that is?

A. I cannot tell the exact distance, I should say it was more than 2,000 feet.

Q. How far does it extend to the south?

A. It extends farther than that south, about 3,000 to 4,000 feet.

Q. Was there any benefit to your property at the extreme south from the opening of Union avenue?

A. I do not so consider it.

Q. Was there any benefit to your property along the railroad from the opening of Union avenue.

A. No sir.

10 Q. Was there any benefit to the land east of Riverside avenue?

A. No sir.

Q. It is not assessed at all?

A. No sir.

Q. If your lands are benefited through there to any extent by the opening of this street are not all the lands on both sides of the avenue equally benefited?

A. I think that they were benefited more than 20 ours, the street down our way is not used, if there were buildings and houses down there, there would be some benefit.

Q. Mr. Raymond, have you any idea of what it would cost to bring your lands up to grade for the first 1,300 feet westerly of Riverside avenue on Union avenue?

A. Not exactly, only that I have been told that it would cost nearly as much as the land was worth.

Q. As to the amount of travel over Union avenue, 30 what kind of a street would you call it?

A. It is traveled pretty thoroughly.

Q. Up to Riverside avenue it is a thoroughfare?

A. That is all.

Q. From Riverside avenne to the river so far as your property is concerned it is no better than it was before?

A. No sir.

Q. If there was a bridge there?

A. I would consider it a great benefit; that was one of the inducements to give the property to the

borough. I asked Mr. Jackson particularly what the assessment would be for regulating and grading this street and he assured me it would be less than $1,000.

Q. Have you ever taken any pains to ascertain what the actual cost of making this grade should have been?

A. No, I have not directly.

Q. Mr. Raymond, what would you consider as a fair assessment for grading that street through your lands? 10

A. With the contemplation of a bridge over there I was willing to pay an assessment of $1,000.

Q. There is no one living on the premises?

A. No one, only in charge of the property.

Q. Produces no income?

A. None whatever.

Q. What income has it produced in the last 15 years?

A. None whatever; we had some tenants but never got any rent. 20

CROSS-EXAMINED BY MR. LUCE.

Q. Mr. Raymond how long have you been familiar with Rutherford?

A. Twenty-three years.

Q. During the last three or four years how often have you been out here looking at that property?

A. Not more than twice a year the last three or four years.

Q. Do you know the names of the various streets or most of them that you cross in going along Union 30 avenue from the Erie depot to your property?

A. I do not know.

Q. I suppose it is true Mr. Raymond that you are not much if any acquainted in Rutherford?

A. I know a good many people here.

Q. I do not mean the people I mean the place?

A. I am acquainted with the land for many years.

Q For the last three or four years you were not here more than twice a year?

A. No sir.

Q. On these few visits of recent years did you come to the Rutherford depot or the West Rutherford depot?

A. As much to the one as to the other I frequently got off at Rutherford.

Q. Have you any idea from personal observations of what sort of a place Rutherford is now?

A. Yes sir.

10 Q. How did you get it?

A. From seeing when I have been here, and talking to the people here.

Q. I mean by personal observation?

A. Yes sir.

Q. Is your knowledge of the place now limited to your visits to your property?

A. I have drove around to where Bell was building houses and other places.

Q. It is true, is it not, that as you leave the Erie
20 depot and go along Union avenue towards your property, that Union avenue and all cross streets are well traveled up to as far as Carmita avenue?

A. I don't know where that is.

Q. Carmita avenue is where Mr. Bell lives?

A. I consider it is traveled pretty thoroughly.

Q. When you get to Riverside avenue from there on across your property those streets marked on the commissioners' map as cross streets do not exist except on paper, do they?

30 A. No sir.

Q. And from Riverside avenue down to Springfield avenue there are no cross streets there traveled, are there?

A. Last time I was there some people back toward the Erie Railroad were cutting streets.

Q. When did you first hear of the possibility of a bridge going across the Passaic river?

A. I heard of it twenty years ago.

Q. It was always in your mind that it was one of the things to come?

A. Yes sir.

Q. If a bridge ever does go over there would it not be necessary to have a road built first?

A. I do not think it would be necessary.

Q. In your opinion would you have been likely to get a bridge there without a road?

A. The road was good enough before.

Q. How high was the road above the Passaic river at high water mark?

A. I do not know. 10

Q. How did you know that it was high enough?

A. It was good enough and safe to Riverside avenue to drive over and they said it was high enough for a bridge.

Q. Did you examine the work that was done when that original grade was made that you speak of?

A. I looked at it, yes.

Q. I mean the work done twenty years ago?

A. Yes sir. 20

Q. Was there anything practically done except marking the side lines of the streets?

A. We filled in many acres of ground.

Q. Did you excavate practically anything?

A. Yes sir.

Q. Make much excavation?

A. Yes, considerable.

Q. Was there any fill to speak of?

A. Quite considerable.

Q. At that time you graded other parts of the 30 property?

A. Yes sir.

Q. How large a piece?

A. Six or seven acres.

Q. How many acres is there in the grounds?

A. Without the eight acre piece there is 170.

Q. How long were they doing that work?

A. Two or three years.

Q. Have you any idea what it cost?

A. About $75,000.

Q. Does that include the price of land too?

A. No sir.

Q. Was there any of that original grade work on that street apparent before this recent work was done?

A. We thought that we had all the property north of Union avenue to the railroad brought to such grade as was necessary.

Q. Before the borough graded Union avenue
10 recently was there much trace of the old grade of Union avenue which you set forth?

A. Yes sir, there was a good road, we used it when the hotel was open.

Q. How many years ago was that?

A. The hotel has not been open for eight or ten years.

Q. Has there been any repairs put on that street since your old grade of twenty years ago?

A. I do not think there was.

20 Q. And originally it was only a dirt road?

A. Well that was all, it is no more than that now.

Q. Mr. Raymond, you signed the petition asking to have Union avenue graded?

A. Yes sir.

Q. Signed the petition on behalf of yourself and Mr. Clark?

A. Yes sir.

Q. I presume that you know that Mr. Phillips signed too?

30 A. Yes sir.

Q. Did you take the trouble at the time you signed that consent to come out and look at the profile map in the Borough Clerk's office?

A. No sir.

Q. Never in any way intimated to the Mayor and Council that you desired to be heard on the question of grade?

A. No sir, the whole business was done through Mr. Jackson.

Q. Mr. Jackson was a friend of yours?

A. Yes sir.

Q. You did not think he was connected in any way with the Borough Council?

A. No sir.

Q. He owned property down near your property then?

A. Yes, he owned a house there then. He has sold it since.

Q I think you said that you thought that the property had not been benefited there by the grading of that street? 10

A. I said that with a view of helping to get a bridge there, Mr. Jackson intimated that it would be had immediately when the street was graded if we gave the land. I thought it would be a step towards getting a bridge across the river which would be a great benefit to our property. I conversed with him about the grade and the expense of it and he came back and reported that it would not be over $1,000. We were perfectly willing to allow the work to go 20 ahead with our consent and would be willing to pay that in view of having a bridge to cross there and was one of the greatest inducements to give the land. When the assessment came in about $3,000 we thought it a little too much.

Q. What do you think Mr. Raymond that the grading of that street has benefited that property from Riverside avenue over to the river, taking into consideration the whole piece of property all the way across? 30

A. Without a bridge I do not consider that it was benefited one dollar.

Q. Have you any reason to suppose the street is a benefit to anybody or any property anywhere?

A. Well, it makes a nice drive over there.

Q. Is it a benefit to anybody?

A. I think it is more benefit to other people than it is to us.

Q. Is it in your opinion a benefit to any of the property along it?

A. It is some benefit to property on this side.

Q. Do you think it is any benefit to any property along it?

A. Certainly it is.

Q. Will you point out what property it has benefited?

A. I think it has benefited all the property.

Q. Has it benefited your property?

A. It is no benefit to us.

10 Q. Why not?

A. Because we had a good road through there before.

Q. If you did not think that street was going to be any benefit to your property why did you sign the petition to have it graded?

A. I have just told you it was in contemplation of a bridge.

Q. Did the petition say anything about a bridge?

A. No sir.

20 Q. Did the petition that you signed say that your assessment should not exceed $1,000?

A. No sir, it did not, I only had Mr. Jackson's representations.

Taken and sworn before me, this 24th day of January, 1893,

E. J. LUCE,
Master in Chancery.

30

James Van Roden, a witness produced on the part of the prosecutors, being duly sworn according to law, deposes and saith:

EXAMINED IN CHIEF BY MR. ELY.

Q. Mr. Van Roden, where do you live?

A. In Boiling Springs.

Q. You are a member of the Township Committee? 10

A. Yes, sir.

Q. You have lived there how long?

A. Twenty-five years.

Q. Are you acquainted with Union avenue in the borough of Rutherford?

A. Yes, sir.

Q. You know where the Raymond property is?

A. Yes, sir.

Q. Have yon been over the avenue since it was graded? 20

A. Yes, sir.

Q. In what condition has it left the Raymond property?

A. I don't know what you mean.

Q. How has the grade left the property with regard to cuts and fills?

A. Some places there is a cut; other places a fill.

Q Has the Raymond property in your opinion been benefitted as much as any other property on Union avenue? 30

A. Well, now, I have not taken particular notice of the other property on Union avenue.

Q. Whom has the grade of Union avenue benefitted.

A. What do you mean by benefitted?

Q. Who has reaped the benefit from having the

street graded ?

A. All the property owners have reaped the benefit.

Q. Has anybody got any benefit out of the grading of Union avenue except the property owners ?

A. To some etxent, yes.

Q. Why are the public benefitted ?

10 A. Because it is a thoroughfare.

Q. If you had been one of these commissioners, what proportion of the assessment would you have put on the property and what proportion would you have put on the public ?

(Objected to as irrelevant.)

A. That is a question I would hardly be able to answer now; it depends somewhat.

Q. You say you would put some assessment on the public at large ?

20 (Objected to by defendant.)

A. Yes, sir

Q. In your township when streets are paved, who pays for it ?

A. The public pays for it.

Q. You do not think that the public should pay for the grading of Union avenue ?

A. No, sir; I do not.

Q. What part do you think the public should

30 pay for ?

A. A very small part of it.

Q. Give us your idea of what part you would assess.

A. About one tenth of it.

Q. Why do you think that the public should not pay for roads and streets ?

(Objected to by defendant.)

A. Because the property along the line of the street is directly benefitted.

Q. And should pay the amount of the special benefits?

A. Yes, sir.

Q. Is the property owner who uses the street to go backwards and forwards to his residence benefitted more than any other citizen? 10

A. Yes, sir; I think he is because the improvement of the street increases the value of his property.

(No Cross-examination.)

Taken and sworn to this 24th day of October, A. D. 1892, at Rutherford, New Jersey, before me.

GEO. W. CASSEDY,

Supreme Court Commissioner of New Jersey.

New Jersey Supreme Court.

10

THE STATE, THE ESTATE AARON RAYMOND, *et als.*,
Prosecutors,
vs.
THE MAYOR AND COUNCIL OF THE BOROUGH OF RUTHERFORD,
Defendants.

20

The principle of frontage assessment for the special benefits arising from street improvements is not necessarily wrong. If that mode, in any particular case, properly distributes the benefits among the owners benefited, there can be no objection to its use.

30

ON CERTIORARI.

Argued February Term, 1893, before Justices Depue and Lippincott.

ADDISON ELY,
For Prosecutors.

COPELAND & LUCE,
For Defendants.

The opinion of the Court was delivered by Lippincott, J. This certiorari brings up for review the final assessment for grading Union avenue, from Erie avenue to the Passaic river, in the Borough of Rutherford.

The whole length of the improvements was 13,409.96 feet. There are two plots assessed to the prosecutors. The plot on the northwesterly side of the avenue has
10 a frontage thereon of 2,065.06 feet, and is designated as plot No. 47 on the assessment map, and is assessed for the sum of $1,497.16. The plot on the southeasterly side of the avenue has a frontage thereon of 2,062.50 feet, and is designated as plot No. 81 on the assessment map, and is assessed for the sum of $1,495,-31. The total cost and expense of the improvement amounted to the sum of $9,706.43.

The whole of the amount, with the exception of
20 $183.44, was assessed as benefits received upon the owners of lands claimed to have been benefited.

This sum of $183.44 was by the commissioners of assessments adjudged to be an excess of benefits, and was placed upon the borough at large.

The reasons for setting aside the assessment will be taken up in the order in which they were discussed in the argument.

The sixth reason or objection is that the commis-
30 sioners making the assessment are taxpayers in the borough and, therefore, are not disinterested.

The objection is not well founded. By the fifth section of the act, entitled "A further supplement to an act," entitled "An act for the formation of borough governments approved April 5, 1878," which further supplement was approved April 1, 1887 (Laws 1887, page 126), it is provided "That the Mayor and Coun-
"cil shall appoint three disinterested *freeholders* of

"said borough, residing in different wards, if the bor-
"ough be divided into wards, commissioners to make
"the assessment of the costs and expenses of such im-
"provement or work done in the manner herein con-
"templated." It is not contended that this provision of the statute was not followed in the appointment of these commissioners. This statute was approved in the case of the State *ex. rel.* Poillon *v.* The Mayor, etc., of Rutherford, at the June Term, 1891, of this 10 Court; a memorandum of that decision is filed.

The seventh objection is, that the commissioners admitted that they favored making every street pay for its own improvements; that is, pay for itself, without regard to benefits, and that, therefore, they are not disinterested commissioners.

It appears from the evidence of Mr. Ely, a witness in the case, that after the making and filing of the report of assessments and upon the hearing of objections 20 at the time appointed for such hearing, in the discussion which ensued, the chairman of the commissioners said to him that it was the policy of the borough to assess the cost of the improvement of the streets upon the streets so improved, and they calculated to make each street pay for its own improvement; and that, at this time, there was no dissent expressed by the other commissioners.

It does not appear that their attention was again 30 called to the matter in connection with this street improvement, or that it was anything more than a casual remark, and it is not such an expression as would warrant a legal conclusion that the commissioners were not disinterested. It might well be found, upon examination of all the circumstances, that the policy of making each street, in the Borough of Rutherford, pay for its own improvement, might not be discordant

to the application, practically, of the principle; that for such improvements lands should be assessed only in proportion to benefits received.

Union avenue was an old street, or road, and a thoroughfare between Newark and Passaic, with the exception of that part which crosses the lands of the prosecutors. This old road or old street extends, as will be seen by referring to the map, from what is
10 known as Erie avenue, running along the Erie Railroad to Riverside avenue. It connects with the Newark and Hackensack road, on the east of the borough, and with the river road which leads from Newark to Passaic. It is one of the two thoroughfares in the Borough of Rutherford. It is the principal road between Rutherford and Passaic. The river road is what is now marked on the assessment map as Riverside avenue. It is about 2,000 to 2,100 feet from the
20 point where Riverside avenue intersects Union avenue to the river. The lands of the prosecutors lie west of Riverside avenue, and extend, as shown on the map of this section of country, from the Erie Railroad on the north to about a mile to the south; these lands are bounded on the west by the river, and the tract of their land, through which Union avenue as now graded extends, contains about one hundred and fifty acres. Union avenue, before it was graded, did not extend
30 through these lands, but ended at Riverside avenue. Before Union avenue was graded, there existed no street through their lands. There was, as shown by the evidence, a sort of a passable road or drive-way through the lands of the prosecutors from Riverside avenue to the river, a little to the north of the middle of their property. When it was contemplated to grade Union avenue, the prosecutors dedicated to the Borough of Rutherford the land needed for its exten-

sion from Riverside avenue, sometimes called "River Road," to the river, a dedication practically coinciding with the old drive-way already there.

The commissioners' map of the improvement through the lands of the prosecutors shows a number of cross streets intersecting Union avenue. These appear to have been made in accordance with a plan of development of this property by the prosecutors. None of these cross streets are yet public streets by dedication 10 or otherwise. It is shown that the prosecutors had done some filling and grading in reference to the lines of these streets.

There can be but little question that this improvement renders the lands of the plaintiffs much more available for the only purpose for which they hold them. Before this improvement, these lands were almost entirely without any outlet and unavailable. It is apparent, from the evidence, that the whole of this 20 large tract of land was held by the prosecutors with the expectation of bringing it into market. The feasibility of the erection of a bridge over the Passaic river, at the end of Union street as now graded, has been much discussed by them. The situation of the lands, as shown in connection with their communication with the Borough of Rutherford, and other places, indicates at once that this improvement is one very desirable to the lands of the prosecutors. 30

The prosecutors themselves dedicated the lands for this improvement by deeds of dedication formally executed and delivered to the borough, and also with others formally petitioned for this improvement; and, as is shown by the evidence, expected to be quite heavily assesssd for its benefits.

I notice that in the argument and brief, of counsel for the prosecutors, it is contended that the assess-

ment includes various items of expenses not properly chargeable to the land-owners assessed. It appears that no objection was taken on this ground, although the prosecutors appeared before the Mayor and Council before the report was confirmed.

Upon the argument objections were urged to certain items, amounting in all to $185.19. This expense of $185.19 consists of four items in the statement of costs.

1—March 16, payment to W. N. Jacobus, temporary walks, . .	$69.00
2—November 16, payment to McKinney for re-laying drain . . .	21.00
3—December 21, legal expenses in making searches and procuring releases, ...	75.00
4—January 18, paid Galloway for curbing and guttering, . . .	20.19
Total, ...	$185.19

The making of the drains, walks, and curbing and guttering, was entirely necessary to the proper grading, as shown by the evidence on pages 93, 94 and 96 of the testimony.

The item of legal expenses was for services in relation to the dedication of that portion of Union street extending through the prosecutors' lands.

These expenses were incident to the work of grading the street.

State, Vanderbeck et als. v. Jersey City, 5 Dutch 448.

State, Hand et als. v. Elizabeth, 1 Vroom 365; S. C. 2 Vroom 551.

Davis v. Newark, 25 Vroom 144.

I think these items are properly included in the costs and expenses of the grading.

It is to be noticed that there is no reason filed covering this objection.

The second reason is that the commissioners, in making the assessment, have not included therein all the lands benefited by the improvement. The commissioners under their oaths certify that no other lands except those assessed were benefited, and their 10 judgment, so far as the general area over which the assessment extends, remains unassailed by any evidence in the case. The commissioners determined that no other lands than those fronting on Union avenue were benefited.

I think this judgment is not contradicted by the evidence on the part of the prosecutors, and, so far as the evidence on the part of the defendant is concerned, their judgment is fully confirmed. The testi- 20 mony of the commissioners upon this point is fully sustained by the evidence of those witnesses whose judgment in this matter can be regarded.

There were only four particular plots to which the prosecutors raised any question in respect to this reason. One was a strip of about five feet wide, supposed to belong to Mr. Jackson. It is very difficult to determine whether this is included in the assessment or not. When he received his assessment bill 30 for benefits to his plot of land, he discovered he had been assessed for 67 feet instead of 72 feet, and under the evidence I cannot ascertain that he owns any more than 67 feet. There were three small plots in the rear of plots 60, 72 and 76, which the prosecutors assert should have been assessed on the ground that all lands to the depth of 150 feet should have been assessed.

I see no reason why the judgment of the commissioners should be disturbed in this matter. The evidence is quite convincing that these plots were not benefited. There is some evidence of benefits received by them.

The conclusion reached is that they were not benefited, but if so, the utmost assessment which could be laid upon all these plots of land, according to the evi-
10 dence, would not exceed the sum of $75.00.

The judgment of the commissioners must stand. There is no convincing evidence against it.

Hegeman v. Passaic, 22 Vroom 408.
Burlington v. Atlantic, 20 Vroom 113.

Assuming these parcels should have been assessed $75.00 would have been the utmost assessment for the whole four of them, and the assessment against the
20 borough at large was greater than this; and, therefore, no injury has arisen to the prosecutors by this omission.

The State, Righter v. Newark, 16 Vroom 109.
Davis v. Newark, 25 Vroom 144.

In the third reason the objection urged is that the commissioners have not defined the extent of the lands of the prosecutors and other land-owners front-
30 ing on said avenue upon which the assessment is made a lien.

Now, whether the lands of the prosecutors have been benefited or not, or whether assessed in excess of benefits, is a question to be discussed by itself, and so can the question whether the frontage assessment is upon correct principles or not, but the evidence and the report of the commissioners here answers fully this objection. The plots of the prosecu-

tors' lands are laid down upon the assessment map, and referred to in the report of the commissioners, by plot numbers, as laid down on the map, and they show the frontage of each lot on either side of Union avenue. The map is scaled and the dimensions of the plots assessed are determined and marked exactly the same as the plots of other land-owners fronting the improvement.

The contention of the prosecutors is that the assess- 10 ment, even if correctly laid as to its distribution on the frontage, is a lien upon large tracts of lands of the prosecutors, some parts of which may not be benefited, whilst the front to some certain depth might be benefited by assessment imposed. This situation, if correct, would not call for a reversal of the assessment, but only for some action directing the commissioners to properly apportion the assessments.

And it may be, in this case, that this would be a 20 very proper proceeding, but the assessment of benefits to the prosecutors will not be set aside for this reason.

The fifth reason urged for nullifying this assessment against the prosecutors is, that the whole assessment including that made upon the lands of the prosecutors is made upon the frontage of lands, fronting on said avenue, without regard to the size, value or depth of the lots assessed.

This contention is not sustained by the evidence. 30

The report of the commissioners is, "That we, and each of us, have personally and thoroughly examined the said Union avenue, and adjacent property, and lands specially benefited by said grading; that we have justly, fairly, and equitably assessed the aforesaid cost and expense upon the lands and real estate specially benefited by such improvement to the extent and not beyond such benefit, and that in making such

assessment we have in each and every case had due regard and consideration to the benefits received by such lot and parcel of land from such improvement over and above all damages sustained by each of said lots or parcels of land, and that in no case have we assessed any lot or parcel of land more than the amount of such benefit"

This is the standard of assessment provided for by
10 the borough laws governing this subject matter. Laws 1887, p. 126, sec. 4.

I find no evidence assailing the area of the assessment, whatever may be said of the benefits accruing within it. The judgment of the commissioners was that the special benefits in this case were clearly limited to the frontage. It will be found that the rate of the various assessments is not always the same. In most instances it will be found that the conditions
20 were merely identical, and there was but little reason for any difference.

But the judgment of the commissioners is that the benefits laid by them were special benefits, laid according to benefits bestowed, and not in excess thereof. There is no evidence that in laying the benefits, so far as there were benefits, upon the frontage, the commissioners did not conform to the principle of peculiar benefits.

30 The principle of frontage assessment is not necessarily wrong. If that mode properly distributes the benefits among the owners of property benefited, there can be no objection to its use.

Jersey City v. Howeth, 1 Vr. 529.
Pudney v. Passaic, 8 Vr. 63.

The commissioners assessed all the lands which in their judgment were benefited. This judgment has

not been successfully assailed by the evidence or facts of the case.

Hunt v. Rahway, 10 Vr. 469.

The last reason to be discussed—the first among the reasons of the prosecutors as an objection to this assessment—is, that "the said assessment upon the lands of the prosecutors for the said improvement is largely in excess of all benefits the said lands will derive from said improvement," and this includes a consideration of the contention of the prosecutors that a very large portion of this cost and expense should have been borne by the borough at large.

These questions were discussed at length by counsel and reviewed very voluminously in their briefs.

It cannot be expected that all the evidence and contentions arising out of it can be taken up and discussed. The report of the commissioners is before us, and the rule of law is clear that upon these points their judgment cannot be interfered with, unless the force of the circumstances and evidence convinces us that it is wrong, and that an injustice has been done.

The rule is well established that the assessments for benefits for street improvements, where the commissioners have been over the ground and examined the premises, and made their report of estimates according to the principles prescribed in the charter, will not be set aside upon conflicting evidence of the justice or sufficiency of said assessment.

It must clearly appear that injustice has been done before an assessment will be set aside upon all the facts.

This is the rule, notwithstanding the statute which

authorizes the Court to determine disputed questions of fact, as well as law.

Jeliff v. Newark, 19 Vroom 101.
Hegeman v. Passaic, 22 Vroom 113.

It will be remembered that the prosecutors were urgent applicants for this improvement, and that this improvement affords access to the populous part of
10 Rutherford and other places from their lands along the river, and renders the lands of the prosecutors available for almost any use, that of residence, or other uses; that this improvement is an outlet to other places besides Rutherford. It opens a large tract of land for use; opens it to the main portion of Rutherford, and their river front made available. The improvements run nearly through the middle of a large tract belonging to the prosecutors, and, accord-
20 ing to their own plans, opens it up to development.

The question of benefits and damages to their lands has been extensively discussed, and many witnesses have been called on both sides. It appears in evidence that the prosecutors, before the improvement was commenced, and at a time when they had joined with others in applying for it, were willing to be assessed quite heavily for it.

Some of the witnesses think that a portion of the
30 expenses should have been a burden upon the borough; some fix a small proportion; others fix a large proportion; others contend that it should all be borne by the land benefited. The conclusion, from an examination of the evidence in connection with the report of the commissioners is, that the great weight of the evidence is in support of the assessment as made.

A discussion of this evidence in detail appears to be useless. The fact that the evidence is conflicting as

to benefits does not suffice to disturb the assessment.

Jeliff v. Newark, 19 Vroom 101.
Hegeman v. Passaic, 22 Vroom 113.

The assessment must be sustained.

A true copy.

BENJ. F. LEE,
Clerk. 10
Per A. LAWSHE,
Deputy.

The Court having heard the argument of counsel, and inspected the assessment removed by the writ of certiorari in the cause, and duly considered the reasons filed, it is ordered that said assessment be in all things affirmed, with costs to defendants. 20

Entered June 20, 1893.

On motion of
COPELAND & LUCE,
Attorneys.

ASSIGNMENT OF ERRORS.

And now, at this day, the plaintiffs in error assign 30 the following causes of error, to wit.:

First. Because the Supreme Court adjudged that the final assessment for grading Union avenue from Erie avenue to the Passaic river, in the Borough of Rutherford, brought up by the writ of certiorari herein be sustained; and, therein, erred in law.

Second, Because said Supreme Court adjudged that the said assessment was lawfully made, and confirmed

the same; whereas, the said assessment was made illegally and upon erroneous principles, and in so doing erred in law.

Third, Because said Supreme Court adjudged that said plaintiffs in error were not injured by said illegal assessment, and confirmed said assessment; whereas, it was, in fact, proved before said Supreme Court that said plaintiffs were not assessed for said
10 improvement in proportion to the benefits received by them, and were assessed therefor an amount exceeding the benefits received by them; and, therein, said Supreme Court erred in law.

Fourth, Because said Supreme Court adjudged that the commissioners who made said assessment were not interested, and confirmed said assessment; whereas, in fact, said commissioners were, by the evidence proved to be interested, and were acting as judges in
20 their own case; and, therein, said Supreme Court erred in law.

Fifth, Because said assessment was contrary to law, for the reasons assigned and filed in said Supreme Court, by said plaintiffs in error, and nevertheless, said Supreme Court confirmed said assessment and dismissed the certiorari of said prosecutors; and, therein, said Supreme Court erred in law.

Sixth, Because the judgment of said Supreme Court
30 in other respects was erroneous and unlawful and should be reversed and set aside with costs.

ADDISON ELY,
Attorney of Plaintiffs in Error.