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Summons.

(Served December 10, 1918.)

THE STATE OF NEW JERSEY,

TO COUNTY OF ESSEX,



You, the County of Essex, are summoned to answer the annexed complaint of William C. Morey and Mary A. Morey, in an action-at-Law in the Supreme Court. And take notice, that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. 10

Witness, William S. Gummere, Chief Justice of the Supreme Court at Trenton, this ninth day of December, nineteen hundred and eighteen. 20

ENOCH L. JOHNSON,

Clerk.

JONES & GLEESON,

Attorneys.

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Complaint.

(Filed December 18, 1918.)

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

10

WILLIAM C. MOREY and MARY
A. MOREY,

Plaintiffs,

v.

COUNTY OF ESSEX,

Defendant.

Action
at Law.

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Plaintiffs, who live in the Borough of Verona,
County of Essex and State of New Jersey, say:

FIRST COUNT:

1. That since December 9, 1910, and at the
times hereinafter complained of, plaintiffs were
the owners of land in the Borough of Verona,
County of Essex, particularly described as fol-
lows:

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Complaint.

First Tract: Beginning in the westerly side of Lakeside Avenue distant along the said westerly side 156.02 feet from the northerly side of Hillside Avenue, said beginning point being the intersection of the northerly side of land of the party of the first part, and the said westerly side of Lakeside Avenue; thence along the said westerly side of Lakeside Avenue south 27 deg. 2 min. west 55.20 feet to the northerly side of lot No. 142 on map, of lot No. 142, north 57 deg. 20 min. west 154.38 feet to the easterly side of lot 140 on said map; hence north 32 deg. 40 min. east 53 feet to the northerly line of land of the party of the first part; thence south 57 deg. 53 min. east 150.11 feet to the westerly side of Lakeside Avenue and the point or place of beginning.

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Being lot No. 143 on amended map, showing property of George F. Simpson, Jr., at Verona, N. J., surveyed and drawn by F. W. Crane, Town Surveyor of Montclair, September 21, 1906, and filed in Case 412.

Second Tract: Beginning at a point in the easterly side of Lakeside Avenue, where the same is intersected by the northern boundary of lands of the party of the first part; thence south 27 deg. 2 min. west along said easterly side of Lakeside Avenue 75 feet; thence south 57 deg. 53 min. east parallel with the northerly line of lands of the party of the first part, 626 feet more or less to the easterly boundary of the lands of the party of the first part, the same being located in Verona Lake; thence north 25 deg. 50 min. east along said easterly boundary of lands of party of the first part to the northerly boundary of said lands; thence north 57 deg. 53 min. west 626 feet to the easterly side of Lakeside Avenue and point or place of beginning.

30

40

Complaint.

2. That on the said tract first above described there was erected a substantial dwelling house, facing what was then Lakeside Avenue or Pleasant Valley Way.

10 3. That at the time of the purchase of the premises and for many years prior thereto, defendant had laid out and maintained Lakeside Avenue or Pleasant Valley Way as a public road; that as first laid out and maintained, instead of continuing in a direct line past plaintiffs' homestead, it was laid out and maintained so that at a point about 550 feet northeast of plaintiffs' northerly line, said road curved abruptly to the west in an irregular arc, and returned to what would otherwise be a direct line about 900 feet south of plaintiffs' northerly line.

20

4. That about July, 1914, defendant desiring to straighten the line of Pleasant Valley Way, so as to eliminate the curve described above, did, by its engineers, agents and servants, cause a straight road 60 feet wide, to be laid out beginning at the point where said road commenced to curve to the west, as above described, and ending where the curve or arc returned to the direct line—thus forming a sement.

30

5. That the road thus built, runs through plaintiff's property, covering a strip thereof 75 feet long and 60 feet wide; this strip forming the right of way was filled in extensively, and the grade thereof, raised several feet above that of the surrounding premises of the plaintiff; and in conformity with the rest of the road was substantially paved with warrenite or with some other similar patent pavement; and on the easterly side of said road a substantial fence was built and is still maintained.

40

Complaint.

6. That the land thus taken by the defendant for public use is the private property of plaintiffs. No proper legal proceedings were ever taken by defendant for the acquisition of said land, and no compensation ever paid therefor; no consent was obtained and no proper proceedings to obtain a change of grade; the old road, which the new road is intended to displace, was never vacated.

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7. That such proceedings are contrary to law, and the constitution of this State, and are to the manifest damage of this plaintiff.

SECOND COUNT.

8. They repeat paragraphs one to six of the First Count.

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9. That by reason of the large amount of filling in, and the change of grade in building the new strip of road above referred to, the plaintiffs have been damaged over and beyond the taking of the land in this wise:

That the space in front of plaintiffs' house-lot between the old road which is not vacated, and the new road, has been made an unsightly hollow and of no marketable value, both by reason of its location between the streets and of its limited size. That the land on the east side of the new road cannot be used without a large sum being expended for filling in to conform with the new grade; and further, it is shut off from access to said street by a substantial fence built and maintained by the defendant.

30

THIRD COUNT.

10. They repeat all of the allegations of the previous counts.

40

Complaint.

11. That by reason of said change in the line of Pleasant Valley Way or Lakeside Avenue, plaintiff will be put to large expense in filling in the land in front of his premises, making proper approaches and walks; connecting anew with sewer, gas and water.
- 10.

FOURTH COUNT.

12. Paragraphs one and two are here again repeated.

13. That in July, 1914, defendant entered upon the premises of plaintiffs and plowed up the soil, and removed soil from part thereof, and permanently occupied a portion of said premises above indicated; and ever since said date, has continued to occupy and use the same as a public road.
- 20

Plaintiffs demand \$5,000.00 damages on each of the above counts.

JONES AND GLEESON,
Attorneys for Plaintiffs.

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Answer.

(Filed February 7, 1919.)

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

WILLIAM C. MOREY *et al.*,
Plaintiffs,

v.

COUNTY OF ESSEX,
Defendant.

10

Action at Law.

Defendant, a municipal corporation in and for
the County of Essex, State of New Jersey, says
that:

20

1. It denies the truth of the matters contained
in the complaint except as to paragraphs 1 and 2,
and as to the statements in those paragraphs, it
has not any knowledge or information thereof suf-
ficient to form a belief.

2. That the cause or causes of action stated in
the complaint did not accrue within six years be-
fore the commencement of this action.

HERBERT W. TAYLOR,
Attorney for Defendant.

30

40

William C. Morey, direct.

NEW JERSEY SUPREME COURT,

ESSEX CIRCUIT.

Thursday, May 22, 1919.

10

WILLIAM C. MOREY and MARY A.
MOREY,

v.

COUNTY OF ESSEX.

Action at Law.

Before—Hon. WORRALL F. MOUNTAIN, J., and a Jury.

20

For plaintiffs appear Messrs. JONES &
GLEESON, by CHARLES JONES, Esq.

For defendant appears HERBERT W. TAY-
LOR, Esq.

(A jury is called and sworn.)

(By agreement of counsel, a map produced by
defendant is placed upon the wall.)

Mr. Jones opens for plaintiffs.

Mr. Taylor opens for defendant.

30

WILLIAM C. MOREY, sworn in behalf of plain-
tiffs.

Direct examination by Mr. Jones:

Q. Mr. Morey, where do you live? A. 24 Bell
Street, Belleville.

Q. You have only lived there a few months, have
you? A. Yes, just about a month.

Q. And where did you live for serval years be-
fore that time? A. I lived 108 Lakeside Avenue.

40

William C. Morey, direct.

Q. And is that the property that I just pointed out to the jury? A. The same place.

Q. It is this property on here (indicating on map)? A. Yes, that is it.

Q. You can see it, can you? A. That is it.

Q. And it runs through to the lake, does it? A. 10
Away out in the stream.

Q. You say "away out in the stream"? A. What?

Q. What did you say last? A. I say it runs out to the stream.

Q. I show you a deed (paper shown to witness). Is that the deed by which you got that property? A. It is.

Q. That is your deed, is it not? A. Yes.

Q. That is the only deed you have got, is it not? 20
A. That is all.

(Plaintiffs' counsel shows the paper referred to to defendant's counsel.)

Mr. Jones: I offer the deed in evidence—a deed from George F. Simpson, Jr., and wife, covering premises in Verona, which deed is recorded in Book D 48 of Deeds for Essex County, page 540.

(The paper referred to is marked Ex. Pl.) 30

By the Court:

How much frontage does that give you on the west side of Lakeside Avenue, Mr. Morey? A. On the west side?

By Mr. Jones:

Q. Yes. A. Nearly fifty-five feet.

Q. And on the east side? A. Nearly fifty-five feet.

Q. No, that is the west side. Now, on the east 40

William C. Morey, direct.

side how much? A. Seventy-five feet. That was on the old road.

Q. That is on the old road. Now, when you went there how many roads were there? A. One.

10 Q. That was the only one there was? A. That was all there was.

Q. Which one was that, the straight or the crooked road? A. That is the road (indicating on map).

Q. That is the only one that was there? A. That is the only one.

Q. And after you bought the land what did you do? A. I built a house.

Q. You built a house? A. According to that road.

20 Q. Now, I am showing you a survey made by Mr. Crane and ask you whether that is a survey of your house when it was built (shown to witness)? Is that a survey that you got when you built that house? A. Yes, sir.

(Plaintiffs' counsel shows the survey referred to to defendant's counsel).

Mr. Jones: I offer this in evidence.

(The survey referred to is marked Ex, P2).

30 Q. Now, the property in this survey here covers only your house lot, does it not? A. That is all, yes.

Q. It does not cover the land on the east side—
A. It doesn't cover the land on either side.

Q. On the east side of the street? A. I have got a separate map with it all on.

Q. What is the value of the house that you built?

Mr. Taylor: I object to that .

40 A. \$4,000.

William C. Morey, direct.

Mr. Taylor: I object to the question. It seems to me it is not a question as to what the value is, or, rather, what it cost him to build it.

Mr. Jones: I am trying to show the situation as it was before the county came along and then after it came along. 10

The Court: I sustain the objection. This man can testify as to what he paid for the house, what it cost him to build it, when he built it, and then perhaps you might qualify him as an expert. I sustain the objection.

Q. Let me put it this way: When did you build this house? A. 1911, 1912.

Q. 1911 and 1912? A. Yes, sir.

Q. And what did the house cost you? A. With all the buildings, all together? 20

Q. Yes. A. \$4,000, including my labor.

Q. You are a carpenter, are you? A. Yes, sir.

Q. The house you built on the fifty-five foot lot, did you? A. Yes.

Q. Between the house as shown on this survey and the street, how do you approach the street?

A. The stoop goes right down.

Q. What kind of a stoop? A. Cement, with a banister on it; it goes right down to this road (indicating). 30

Q. And how close to the road is it? A. Right to it.

Q. Are your house and house lot on a level with or above the old road? A. About four feet above.

Q. Now, on the other side of the street prior to this new road coming along you had seventy-five feet of land? A. Yes, sir. 40

William C. Morey, direct.

Q. How did that lie with reference to the road?

A. Well, they raised it about eighteen inches higher.

Q. No. How did it lie with reference to the old road? A. The distance away?

10 Q. No. Was it on a level with or below— A. It is eighteen inches higher.

Q. No. How was it before the new road was put there? A. It was just the slant from the old road right off.

Q. So that on the east side of the old road you had seventy-five feet of good building lots; is that right? A. On the east side, yes, that is right.

20 Mr. Taylor: I object to counsel saying "good building lots." Let him say how many feet he had.

The Court: I sustain the objection. That is not proper, Mr. Jones, to characterize it.

Mr. Jones: Yes, sir; I appreciate that it is very leading.

The Court: Well, it is not leading; it is almost giving testimony yourself. Do you want that stricken out, Mr. Taylor?

30 Mr. Taylor: Yes, I would like to have that stricken out.

The Court: Yes, strike it out and reframe the question.

Mr. Jones: Yes, I will withdraw that.

Q. On the east side of the old road at the time you built your house what was the situation of those lots with reference to the old road? A. Well, they slanted right off to the old road; I had a big gutter in there for the water to run away.

Q. They slanted from the old road to where?

40 A. They slanted up, up west.

William C. Morey, direct.

Q. No, we are talking about the east side of the road, on this side (indicating). A. Oh, on the east side it went down.

Q. (Indicating on map) On this side of the road, that was seventy-five feet? A. Yes, sir.

Q. How was that situated, so far as the level is concerned, with the old road? A. Just slanted off.

10

Q. Gradually slanted off? A. Yes, sir.

Q. Where to? A. Right there (indicating on map).

Q. Now, what happened about five years ago, if anything?

Mr. Taylor: I object to the question, if your Honor please. I think it is very important that the date be fixed, not about five years ago.

20

Mr. Jones: Well, I will change it, if you object to the framing of the question. I do not want to fix any date. I will withdraw that question.

Q. Has there been any change in front of or near your property with reference to roads? A. Yes, they put that straight road through.

Q. And about when? A. Oh, about six years ago, five and a half or six, something like that.

30

Q. Was your house built at that time? A. Yes, sir; it was all built.

Q. Were you present when they made the surveys for the new road? A. Well, I wasn't there; I was at work; but when I came home I could see the stakes.

40

William C. Morey, direct.

Q. Where were the stakes originally put? A. Well, they put them down and pulled them out; they changed it different times.

10 Q. Where were they put with reference to the road that they actually did build? A. They started in to put it this way, to come out to my place to nothing, and then they changed it and put it here (indicating on map).

Q. And you told that by the stakes? A. They changed it.

Q. You saw that by the stakes that the surveyors put in? A. That was straight, yes.

Q. I say you saw that by the stakes that were put in by the surveyors? A. Well, they started to fill it in, too.

20 Q. Who started to fill it in? A. Doriety.

Q. Who was Doriety? A. He was the foreman that was working at it.

Q. He was the contractor that built this road? A. He was the foreman.

Q. The foreman for whom? A. For the contract.

Q. The contractor that built this road? A. Yes, sir; that built that road, that straight road.

30 Q. After they put these first stakes in what happened? A. Well, they changed it, they changed the stakes.

Q. Now, where did they put them? A. They put them out there (indicating). I think they changed them three times.

Q. Did they put them further to the east or further to the west? A. They put them to the west from the time—no, to the east. I get mixed up.

40 Q. Show us on the map which way they put them? A. (Indicating on map.) I guess that is the end. They started to put them this way, to

William C. Morey, direct.

come out to my house, right there, and the people up here objected to it, and then they brought it out here. When I saw that survey, the first survey, I built my house accordingly; I saw the profile of that.

Q. Were you served with any notice by the county? A. No, sir. 10

Q. Did you give any consent to any change of grade? A. No.

Q. Did you give any consent to the road going through your property? A. No.

Q. Were you ever made any party to any condemnation proceedings? A. No.

Q. Did you ever get paid for any of that land? A. No, sir.

Q. Did you ever deed any of that land? A. No, sir. 20

Q. Were you ever negotiated with by the county for that land? A. As soon as they put it through I went down to see Mr. Reimer, and asked him what they were going to do about it. He said, "When it is done we will satisfy you," and I left it right there.

Q. Now, after that new road was put through, will you describe in your own words to the jury the difference, how it has left your property, between the time before the road was built and after? A. Well, I will do the best I can. 30

Q. Tell it in your own words. A. Before the road went through I had a clean deed from there to there; I could give a clean deed; I had a survey and all. Now I have got to give a deed for that and a deed for that and a deed for that (indicating on map). I have got to get it all surveyed over again, and it is so low there; it is all mud there. The road is a dam in front of my place. 40

William C. Morey, direct.

Q Is that old road still there? A. Yes, sir.

Q. And is it used? A. Yes, sir; the milkman and all, they use it; I couldn't stop them.

Q. And is it macadamized? A. Yes, sir.

10 Q. What is in the road itself? A. There is stone on the road.

Q. What is under the road that you have to use? A. What is under the road?

Q. Yes. A. The gas and the water is under there.

Q. You are referring to the old road now? A. Yes, sir; the old road.

Q. And the water that comes to your house and all the adjoining houses is under the old road? A. Yes, sir.

20 Q. And where is the gas? A. The gas is on this side of the road and the water is on this side (indicating).

Q. And where is the sewer? A. The sewer is out here (indicating).

Q. Do you mean to say that the sewer is to the east of the new road? A. It is in the new road, yes.

Q. It is in the new road? A. Yes, sir.

30 Q. Since this new road has been put through how far away is your house from the new road? A. About sixty-five or seventy feet.

Q. Have you any access to it? A. Only through the mud, that is all.

Q. How much lower, if any, is the land between the new road and your house? A. It is about eighteen inches.

Q. Has the old road ever been vacated? A. I couldn't get it vacated.

40 Q. I ask you whether it is vacated? A. No, they use it right along.

William C. Morey, direct.

Q. Does your sidewalk extend to the new road?

A. No, no sidewalk, no.

Q. How do you get from your house to the new road? A. Walk right out on the dirt.

Q. Have you built a sidewalk yet? A. No.

Q. In order to approach it how much sidewalk would you have to build? A. I think about seventy-five feet.

10

Mr. Taylor: I object to that question. He hasn't built it. We do not know whether it will be necessary for him to build it. Until he has built it, it is not evidence. There has never been a sidewalk there.

The Court: There has never been a sidewalk from the house to the old road?

20

Mr. Taylor: From any road.

Q. Was there any sidewalk from your house to the old road? A. Yes, the stoop.

Mr. Taylor: That is not a sidewalk. He said, "Yes, a stoop." We are talking about a sidewalk. That is not responsive.

Q. Will you describe how you get from your stoop to the road? A. Walk right through the mud.

30

Q. I mean the old road. A. You come down the cement stoop.

Q. Is there any sidewalk there before you get to the stoop? A. No, the stoop comes right down to the sidewalk.

Q. So that your house is close to the old road? A. It is about—well, I should judge it is about ten feet, I guess.

Q. And then you have a cement stoop? A. Yes, a cement stoop and a little bit of walk on top.

40

William C. Morey, direct.

Q. Now, the question is how much of a walk would you have to have from the bottom of those steps, or from the old road to the present new road? A. About seventy-five feet.

10 Q. Have you a driveway on your property? A. No, only the mud.

Q. How do you get to your garage? A. Go right through the mud.

Q. Well, have you a garage driveway on your property? A. Yes, I have got it up on top.

Q. How do you get to that from the new road? A. You come down and go right out in the mud.

Q. Why do you say "in the mud"? A. Because there is nothing there, only mud.

20 Q. What causes the mud? A. Well, they filled in a little; and it was worse than it was; Reimer filled in a little.

Q. Is there any way of draining it off? A. Yes, there is a drain right there.

Q. Now, on the east side of this road how has your property been left since the new road was built? How has it left this property since the new road was built (indicating)? A. In the lowest place it is five feet lower than the road.

30 Q. How much frontage have you here (indicating)? A. Seventy-five feet.

Q. Now, taking the property right up to the road there, is it on a level with the road now? A. Five feet—well, I filled in some there; in some places it is almost even, and then it is five feet down.

Q. I did not ask you what you filled in; I asked you how the county left it? A. Five feet down.

Q. And this property down here, you say, is about eighteen inches down (indicating)? A. Yes, about eighteen inches.

40

William C. Morey, direct.

Q. And how big is this little piece between the old road and the new road? A. Well, it varies; it is about sixty-five feet in the center, I should say.

Q. And how deep is it on the north side here (indicating)? A. I don't know what it is on the line.

10

Q. Well, how deep is it on the south side here (indicating)? A. I measured in the center, and I think it is about sixty-five feet in the center.

Q. Well, I am asking about the depth from east to west. A. Yes.

Q. Well, is it deep? A. Sixty-five feet in the center.

Q. You do not mean that. You are talking about this way, are you not (indicating)? I mean depth, east and west, this way (indicating)? A. That is what I mean, sixty-five feet from here to here (indicating).

20

Q. All right. That is your best memory, is it? That is your memory of it? A. What?

Q. You think it is sixty-five feet? A. Yes.

The Court: Where did he say it is eighteen inches? Is that the east side of the old road?

30

Mr. Jones: No, the west side; he said it is about five feet below on the east side.

The Court: And about eighteen inches lower—

Mr. Jones: About eighteen inches here (indicating).

Q. Just look at that again, Mr. Moley, and tell me about this little piece in between the two roads (indicating)? A. Well, that is it. That is as near as I can tell about it, sixty-five feet.

40

William C. Morey, direct.

Q. Have you put a sewer down? A. I have connected the sewer, yes.

Q. And how much further did you have to run by reason of the sewer being located in the new road? A. I had to run about a hundred feet.

10 Q. A hundred feet further than you would otherwise have run? A. Yes, I think about that.

Q. And how much a foot did it cost you? A. \$1.25 a foot.

Q. And you actually put that in? A. Yes, I had to put that in.

Q. And you paid for that? A. I paid for it.

Q. Whom did you pay? A. Carl Heider.

Q. He is a plumber in Verona? A. A plumber in Verona.

20 Q. Now, before you came up to Verona was there any evidence of this new road there? A. Not a bit.

Q. Do you know Mrs. Hornfeck? A. Yes.

Q. Where does Mrs. Hornfeck live with reference to your property? A. She lives a little above.

Q. Can you show us on this map somewheres near? A. Right in here (indicating).

30 Q. And do you know where Mr. Mau's old property was? A. Mau lived right about there (indicating).

Q. Do you know Mrs. Barter? A. Yes, Barter lives on the corner of Peace Avenue.

Q. And they have lived there a good many years? A. Yes.

Q. Now, you say that after the county built this new road on the east side it was about five feet down from the level and on the west side it was about eighteen inches? A. Yes, sir.

William C. Morey, cross.

Q. Did you yourself do anything or try to do anything to remedy that condition? A. I was working all the time on it.

Q. What did you do? A. Wheeling dirt and buying what I could.

Q. Did you buy any loads of dirt to put in there? A. I did; I bought 150 loads. 10

Q. What did you pay on an average a load? A. A dollar a load.

Q. And where did you put most of that dirt? A. Nearly all of it on the east side.

Q. That is down where this place was so low, down in here (indicating)? A. Yes, right in there (indicating).

Cross examination by Mr. Taylor:

Q. Mr. Morey, at the time you began to build your house had you heard anything at all about the road being straightened through there? A. The woman next door told me there was going to be a road built about thirty feet out, and I went down to the Crane building; I seen the profile and all and, as near as I could see, there was going to be about six inches of fill in front of my house, and I built my house according to that survey. 20

Q. Then I understand that you built your house according to a survey that you had seen there, which, you say, was made by the County Engineer; is that right? A. I don't know who made it; I seen it down there. I think it was the old survey. 30

Q. And you saw that prior to the time you built your house? A. Yes, I built my house right up to it.

Q. How do you know that you built your house up to that survey? A. Because I seen where the survey came. I built my house according to that. 40

William C. Morey, cross.

I was very careful. I went and got Charley Bahr to come down there and look at it, so that I could get it right.

Q. Were there any stakes in there at that time?

10

A. No stakes in there at all, but they had the old road and the new road going along there, that they were going to put it in, and I built my house according to that.

Q. What do you mean by the old road and the new road? A. The road that was there, I mean, and the road they were going to put in came along together.

20

Q. I do not quite understand you. Did you know then that there were two roads? A. There wasn't two roads. They said there was going to be a road put in there, and I tried to build that house according to that road, so that I would come right down with it.

Q. But there was a road in front of your house at the time you built it, wasn't there? A. That old road was there, yes.

Q. Well, as a matter of fact, did you not know that at that time the people along there had requested that the road be straightened? A. No, I never heard anything of that kind.

30

Q. You never signed a petition— A. No.

Q. —to the County or the Borough of Verona? A. Never to anybody.

Q. At the time the men were putting through the new road did you make any objections? A. Yes, I came down to Mr. Reimer and made objection to it, but he said he would make it all right when they got done.

40

Q. Now, I understand you to say that the stoop from your house came directly down to the line of the old road? A. Yes, when they got the new

William C. Morey, cross.

road in there would be just about the sidewalk between the road.

Q Now, I am talking about the— A. Yes, it came down to the old road.

Q. So that there was no sidewalk there at all? A. No.

10

Q. And is there a sidewalk on the new road?

A. No, sir; no sidewalk.

Q. No sidewalk anywhere, is there? A. Not now.

Q. I understood you to say that your house cost you to build \$4,000? A. Yes, all the buildings.

Q. What do you mean by "all the buildings"?

A. Well, I have got a garage and I have got a hen-coop, and all the work I have done on it.

Q. Well, let us limit it to the house itself? A. Well, I was building myself; I was about two years building it, just as I got the money. I don't know just how much it cost, but I think it cost me about \$4,000, the whole thing.

20

Q. Do you know when you began to build it? A. I think it was about March.

Q. What year? A. 1911. And I was two years building it.

Q. And it took you about two years to build the house? A. Yes, sir.

30

Q. So that would bring it up to about 1913, would it not? A. I guess it would.

Q. In the meantime had they begun work on this new road? A. I think I had it about done when they came through; I don't know.

Q. Well, do you know? A. I didn't keep any books, you know.

Q. Mr. Morey, speaking of the condition of the property immediately in front of your house and eliminating the new road, the condition prior to

40

William C. Morey, cross.

the new road from the old road that passed immediately in front of your house, the ground sloped, did it not, gradually all the way to the lake? A. Yes.

Q. That is true, is it not? A. Yes.

10 Q. And just to the north of your house there is a brook, is there not? A. There is a sewer runs down there; a drain runs down alongside.

Q. A drain? A. Yes, sir.

Q. That drain was there prior to the building of the new road? A. Yes, and you connected it up with the other one.

Q. When you say, "You connected it up with the other one," you mean the county connected it up with the other one? A. Yes, sir.

20 Q. Now, speaking of the space between the old road and the new road, which you say is about eighteen inches lower than your property—is that right? A. That is right.

Q. That was filled in, too, was it not? A. A little bit.

Q. By whom? A. I don't know who the people were; some men came up there and did it.

Q. Well, the county did it, did they not? A. Yes, Reimer came up there and told them to do it.

30 Q. Now, you testified that you have connected with the sewer since the new road has been built? A. Yes, sir.

Q. Where is the sewer that you connected with? A. Out in the new road.

Q. In the new road? A. Yes, sir.

Q. Or the other side of the new road? A. It is on the other side—no, it is in the new road.

40 Q. Well, what part of the new road? A. Well, it slants up from that lot like that, and comes out in the center just past my house (indicating); it

William C. Morey, cross.

slants up this way; it comes along here, and then it slants up here and comes out in the center.

Q. Well, is it or is it not to the east of the new road? A. Only part of it is in the new road, right there; it comes out of that lot across the road.

Q. I do not quite understand you. A. Well, I will show you (indicating). They come along here to Peace Avenue, and it was deep; they couldn't go down any further and they got permission from Barter, and they ran right up here in the lots; they came along like that until they came to my lot. You can see a manhole right out in that lot. 10

Q. Are those manholes between the old and the new road or to the east of the new road? A. To the east of the new road, and it comes right up and comes out there (indicating). 20

Q. Had there been any sewer in there prior to that? A. No.

Q. I understood you to say that you had connected with the new sewer? A. Yes, I did.

Q. When was that done? A. Well, I don't know. I was to have it paid by the first of March—that is all I know, or January, or something like that.

Q. Well, have you paid for that? A. Yes, sir; it is all paid for. 30

Q. Have you a bill? A. Yes, sir; receipted and all.

Q. Can you produce it? A. Yes, sir.

Q. Will you produce it? A. Yes, sir.

The Court: When was this sewer put in, do you know?

Mr. Taylor: I really do not know.

The Court: Put in after the road was built? 40

William C. Morey, cross.

Mr. Taylor: I imagine it was, but we know nothing about it. I think Mr. Reimer can testify to that.

Mr. Jones: I have these bills and receipts here, if you want them.

10

Mr. Taylor: All right.

Q. What did you pay for this property? A. I traded for it.

Q. What was the consideration of the trade, do you know? A. I gave a house, I think, on Montgomery Street, in Bloomfield, and I got \$500 in money.

20

Q. Well, you know in your own mind what you considered your property was worth in Verona, do you not? A. In Bloomfield, you mean?

Q. No, in Verona, as to what you paid for it, whether you paid in cash or whether you made a trade? A. What it is worth now?

Q. Now, what you considered it worth at the time you purchased it, what you paid for it. You must have fixed a price. A. I don't know; him and I struck a bargain, and I said, "Give me \$500 and I will trade with you."

30

Q. Mr. Morey, as to the old road now passing in front of your house, I understood you to say that was used; is that true? A. Used all the time by the milkman and everybody going through.

Q. Used by anyone besides those who find it necessary to stop at your house? A. Well, anybody that wants to make a short cut, they run through there.

Q. No, that is not the question. The general public passing through, they pass where? A. They use the new road, the general public.

40

William C. Morey, redirect.

Q. But anyone desiring to stop at your house can go over the old road? A. Anybody can go right through there, and they do go through.

Q. And that new road, is that kept in repair by anyone? A. That new road has got a man keeping it in repair all the time.

10

Q. Perhaps I am mistaken; I meant to say the old road. A. No. Charley Bahr used to keep it in repair; he doesn't any more.

Redirect examination by Mr. Jones:

Q. (Indicating.) Mr. Morey, keeping in mind that this way is Verona, over this way is Verona, and this way is West Orange, and this is your house, is there anything in the street at this point to indicate the presence of a sewer in the street? A. The sewer runs a little past my house.

20

Q. What is there in the street to indicate that any sewer is under the street, if anything? A. A manhole. The last manhole is right about there (indicating).

Q. Just the other side of your house? A. It runs off here.

Q. But it returns to the street, does it not? A. The manhole is in there, yes (indicating).

Q. Well, that is how close to your house? A. Well, it is 132—

30

Q. No, I mean in the road, nearly in front of your house, is there any manhole in the center of the new road— A. No.

Q. Well, where is in the center of the new road? A. It is over in the lot, here (indicating).

Q. Is there any manhole in the road that goes past your house? A. There is only one manhole in the road and that is right here, over to the East Orange line (indicating).

40

William C. Morey, redirect.

Q. You mean the West Orange line, do you not?

A. The Orange line is over here—

Q. That is what I thought you were confusing. The Orange line is here (indicating).

10 A. There is a manhole over here in the street by the Orange line, and then it comes off here (indicating).

Q. Now, the old road that leads past your house, do you know any other house that faces that old road exclusively? A. Yes, right here there is a house, a big house (indicating).

Q. And how about the Fresh Air Home? A. The Fresh Air Home is up here, that just comes on the point (indicating).

20 Q. So that people serving any of those persons use which road? A. The milkman comes in there, and that is all.

Q. I say persons serving the people in that house use that road, do they not? A. No, they go across and out the new road.

Q. How do you get up to the Bloemecke house, the one next to you? A. Well, there isn't anything but a mud road right in there.

Q. Which road do they use? A. They use a mud road right across.

30 Q. Do you mean the old road? A. No, they filled in there for them to get in.

Q. Do the occupants of any other house have to use that old road past your house besides you? A. No, there is only two houses on that old road, mine and the other one.

Q. Well, how do the people get to that other house, past that other house? A. Come right across the same as I do.

Q. Using the old road? A. Yes, sir.

40 Q. Who is the Mr. Reimer that you spoke of, the man that you said you complained to? A. That

William C. Morey, recross.

is the man right there (indicating).

Q. He is the County Engineer? A. Yes, sir.

Recross examination by Mr. Taylor:

Q. Mr. Morey, the new road and the old road are practically on a level, are they not? A. No, the new road is eighteen inches higher than the old road, sixteen to eighteen inches. I will tell you how I know. There came a heavy rain and it filled it up so that you can go around in a boat. You can't tell the level better than that.

10

Q. Is it not a fact that the water forms because the ground slopes from the old road to the new road? A. There is a hollow right in there like that between the old road and the new road, and the water lays right in there.

20

Q. But if the engineer should testify that the road surfaces were equal and that the hollow was caused because of the slope of the ground between the old road and the new road, you would agree with that, would you not? A. I would agree to what I have just said. I have had a straight-edge, a spirit-level, on there and tried to find out, as near as I could, the truth of this thing.

Mr. Jones: On account of the age and the physical condition of the two witnesses, Mr. Taylor and I have entered into a stipulation that their depositions shall be read into the evidence with the same effect as though taken in open court, with the reservations that any objections to the testimony shall be passed on by the Court, but there were no objections.

30

Mr. Taylor: No, there were no objections.

Mr. Jones: The depositions that I am

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William C. Morey, recross.

10 about to read to you are of the old lady that Mr. Morey told you lived next to the property, who had lived there about fifty years, and also the deposition of the lady living in the next house toward Verona from that, who had lived there, she said, since 1840.

The first witness is Anna Hornfeck (reading):
"Q. Mrs. Hornfeck, you live on what street? A. Lakeside Avenue.

"Q. Lakeside Avenue is the same as Pleasant Valley Way? A. I think that Lakeside Avenue is a continuation of Pleasant Valley Way from the West Orange line.

20 "Q. Do you know where Mr. Morey's property is? A. I do.

"Q. Where is it in reference to your property? A. Probably between five and six hundred feet from my house.

"Q. How long have you lived there? A. Fifty-four years.

"Q. What was the name of the street that runs in front of your house and Morey's house? A. Corby Lane.

30 "Q. Just south of your place there are at the present time apparently two streets, one runs to the west and the other runs straight. Do you know which is the original road, the straight road or the one that turns to the west? A. The one that turns to the west.

"Q. Is the road that passed Morey's before the county straightened the road, the original road? A. That is the original road.

40 "Q. Did you ever know it to be a straight road from your house down to the bridge before the county fixed it? A. No, not before.

William C. Morey, recross.

"Q. When did that change come about? A. When the county took it over.

"Q. How long ago was it when they finished it? A. Five years ago.

"Q. During all those fifty-four years then there was just one road running south from your house down to that bridge below Morey's? A. That was all.

10

"Q. And is that the one that curved? A. Yes. All those houses on this street were built with reference to the curve.

"Q. Did you ever hear of this road being straight? A. Nothing was ever changed on that road since I lived here.

"Q. Who took care of the road? A. The Town of Verona.

20

"Q. Did you know the workmen for the county? A. No. The people used to work their taxes out on the road. We had a road master, Mr. Bahr, and he did the work.

"Q. About five years ago you say the county changed this road and straightened it? A. Yes.

"Q. Just previous to that time they made some survey, didn't they? A. Only when the plans were started for the new road. I made the objection because they wanted to take my terrace away from my place.

30

"Q. Was that the surveyors or the workmen? A. I think it was the surveyors.

"Q. At the time you made the objection they were laying the road considerably to the west of the road they actually laid down? A. That is true.

"Q. Did you ever have a survey of your own property here? A. I had one.

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William C. Morey, recross.

"Q. Have you got it now? A. I believe my son has it down in the safe because he was the one who wanted it done at the time. Mr. Lehlbach surveyed it.

10 "Q. In the early days fifty odd years ago you knew the street in front of your property which is also the street in front of Morey's property as Corby Lane and afterwards the same road became known as Lakeside Avenue, and had there never been any change in that road since that time? A. I have never known there to be any.

"Q. And you would know, wouldn't you? A. Certainly.

20 "Q. How long ago was it that the name of the street was changed from Corby Lane to Lakeside Avenue? A. I really couldn't say, but to the best of my knowledge it was about thirty-five years ago.

"Q. Have you ever seen any map at all showing the plant of the road in front of your house? A. The only map I saw was the one when they put in the electric lights on the street.

"Q. And how long ago was that? A. I think it was about twenty years ago.

30 "Q. And to the best of your recollection did that map show the road running in front of your house and what is now Morey's house? A. That I couldn't say.

"Q. Well, do you remember whether it showed the line as the plant of the old Corby Lane, so called, or the line of Lakeside Avenue as now laid out? A. It showed the line as now laid out up to that point where Morey's house is. It was the same then as it is now.

40 "Q. And where did you see that map? A. My husband brought it home, because he was one of the committee who worked for the electric light company at that time.

William C. Morey, recross.

"Q. When you first came here Corby Lane was an ordinary country lane, no pavement of any kind? A. No.

"Q. Do you recollect how long after that a permanent pavement was put down, if any? A. No, there never was any put down.

10

"Q. Do you remember the condition of the ground in front of Morey's house prior to the time the county put through the present road? A. Well, it was just as it was here when it was called Corby Lane. It was a road wide enough for two wagons to go on and there is no difference now than it was then.

"Q. Was the ground low immediately in front of Morey's house? A. No, it was a dry lot.

"Q. But speaking now of the old road, the Corby Lane road to the east of this road, what was the condition of this road in front of your house, if you remember; immediately in front of Morey's house was it swampy? A. No, it was not swampy. A brook ran through there and across under the road.

20

"Q. Do you remember whether immediately in front of Morey's house, the road curved around a wet or swampy spot? A. No, I remember that, because Mr. Neary owned that place and he had a grass plot in front of his house and he also had a garden.

30

"Q. But that must have been west of the road? A. It was only the lot that was swampy, there was nothing between the road and the fence.

"Q. Well, then you say, that you requested the workmen when they came through that they move the road farther east so that they would not take a portion of your lawn? A. I didn't request it, I demanded it, because they had no right to destroy

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William C. Morey, recross.

10 the front of my property. I spoke to Mr. Owen, of Montclair, about it down in the Court House. Mrs. Barter was there too. I had recently had my terrace fixed and they wanted to take all that away and run it straight out, without making the little bend there now, and when they ran it straight out they had to cut through his land.

"Q. But you demanded that they move the street farther east? A. I demanded that they did not take my terrace."

Mr. Jones: This is the deposition of Mrs. Barter (reading):

"Q. Mrs. Barter, where do you live? A. On Lakeside Avenue.

20 "Q. And that is the house next north of Mrs. Hornfeck, isn't it? A. Yes.

"Q. About how many feet north are you from her property? A. I think it is about one hundred and eighty or ninety feet.

"Q. That would make it about seven or eight hundred feet from the Morey property, wouldn't it? A. Yes.

30 "Q. In front of your property and Mrs. Hornfeck's property and the Morey property there runs a street which is now called Lakeside Avenue, isn't there? A. Yes.

"Q. How long have you lived on your property? A. Since 1844, the twenty-sixth day of May.

"Q. And you have lived there continuously ever since? A. Yes, ever since.

"Q. What other name did Lakeside Avenue ever have besides its present name? A. Corby Lane.

40 "Q. And was this borough then the borough of Verona, New Jersey? A. It was Caldwell Town-

William C. Morey, recross.

ship, and this place was called Vernon, and this was Vernon Valley, and it was the Vernon Valley that was part of Caldwell Township.

"Q. With respect to your property would Corby Lane run the same as Lakeside Avenue does now?
A. Yes.

10

"Q. And with respect to the property just south of the Hornfeck property? A. It curves.

"Q. It curves to the west and then rejoins the main road where? A. It joins the main road where that bridge is now, and that is about two hundred feet south of the Morey property, I should judge.

"Q. Did you ever know or hear of the road being laid out as a straight road from the Hornfeck property to the bridge as it is now? A. I don't know that I did. It never was laid out to my knowledge.

20

"Q. When did you first know of the straight road? A. When the county put it here.

"Q. And when was that? A. Five or six years ago.

"Q. Did you know when the surveyors came up to lay that road? A. I knew that they were surveying.

"Q. Did you know whether they were making changes in their plans? A. I did not.

30

"Q. Did you know of the trouble Mrs. Hornfeck had with them? A. Yes. And they took my drive away entirely so that I can't get any coal into my cellar without having it carried in.

"Q. Do you know of any change of plans that the surveyors made from the original plans? A. No.

"Q. The road which was started and completed about five years ago was the first you had ever

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William C. Morey, recross.

heard of a straight road from the Hornfeck property down to the bridge? A. Yes. It always had that curve in it, and in my riding I always admired it.

10 "Q. It has been said that the original road was straight and that people started to make this new turn using it as a sort of a cow path to keep out of the swamp which lay in front of what is now the Morey property and the Mau property and Lum property and that this curved part was merely a cow path. A. Well, it was wide enough for two carriages to pass whether it was a cow path or not.

"Q. But from 1844 down to the present time it had always been an actual road and there were no indications of any other road? A. No.

20 "Q. Your son was for a great many years tax collector, and another son is tax collector at the present time, and you yourself have for a great many years taken a keen interest in all borough affairs? A. Yes.

"Q. Have you ever seen any maps showing the road in front of your house? A. I have seen the borough map, that is about all, and I don't think I ever noticed how the road ran.

30 "Q. You are testifying simply from your memory and your experience as a resident here all this time? A. Yes.

"Q. Do you recollect whether, as a matter of fact, immediately in front of the Morey property and to the east of the old road it was swampy or not? A. No.

"Q. You don't recollect that there was a swamp? A. No, I don't recollect that there was a swamp there and I used to go up that way to school.

40 "Q. Do you know from your experience there

Frank W. Crane, direct.

in the neighborhood of any reason why the road took the curve instead of being straight? A. No, I don't, it was always that way, and to the left of the road as you go over it were large rocks so that there couldn't be swamp.

"Q. Well, the Morey property is much lower than the property along here, is it not? A. I think so."

10

FRANK W. CRANE, sworn in behalf of plaintiff.

Direct examination by Mr. Jones:

Q. Mr. Crane, what is your business? A. Civil engineer and surveyor.

Q. How long have you been a surveyor? A. Since about 1872, when I first started.

20

Q. And where is your present office? A. In Montclair, 460 Bloomfield Avenue.

Q. During all those years where has your surveying mostly been done? A. In Montclair and vicinity.

Q. Would that include Verona? A. Verona, Caldwell, Glen Ridge.

Q. And at the present time and for several years last past what office have you occupied in Verona? A. The Borough Engineer.

20

Q. And Borough Engineer involves what? A. Doing the engineering necessary for all municipal work, laying water pipes, sewers, sidewalks.

Q. And making surveys? A. Making whatever surveys they require.

Q. You are acquainted with the Morey property, are you not? Yes, sir.

40

Frank W. Crane, direct.

Q. Who was it that made this survey marked Exhibit P2? A. I made that for the purpose of the loan to Mr. Morey.

Q. So that that sets forth the house lot and position of the house? A. Yes, sir.

10 Q. But is that necessarily a survey of the street in front? A. No, it is not a survey of the street; it is simply a picture to show that the house is on that lot that his deed covers.

Q. It is a survey of the lot? A. Yes, sir.

Q. When did you survey that property? A. I don't remember the date of that. I made a survey of the entire property for Mr. Simpson previous to this time. previous to the time I made the survey for Mr. Morey.

20 Q. When was that A. I made the survey in November, 1905; I graded Hillside Avenue and made him a finished map showing all the lots in 1906.

Q. Where is Hillside Avenue? A. Hillside Avenue is the vacant space running east and west from Lakeside Avenue.

Q. Are you acquainted with the various boundaries in that locality? A. The property lines are defined by the deeds, but there is no record that I have been able to find of Lakeside Avenue as it existed at the time I made the survey.

30 Q. You have made a survey for Lakeside Avenue, or Corby Lane, many times? A. Yes, sir.

Q. And you have again looked at it at my request for the purposes of this case? A. Yes, sir. I can't find any record of Corby Lane.

Q. Is there any in the County Clerk's office? A. I can't find any.

Q. You have hunted for it? A. Yes.

Frank W. Crane, direct.

Q. And that is where it would ordinarily be found, is it not A. That is the only place it would be.

Q. When a surveyor goes to a street to make a survey what do you look for first A. If there is a record we take the record and run it out by the courses and distances given in the record.

10

Q. I understand in this case there is no record? A. In this case, there being no record, we take the line of possession on either side of the street.

Q. Can you show us that on this map here? A. This map does not show but a small part to the east of Verona lake, and to the west, running back nearly a mile, is the property that I made a survey of for Mr. Simpson; it runs away up the top of the mountain, nearly a mile west of Lakeside Avenue.

20

Q. At the time you made that survey did you look for old monuments? A. The only thing I could find was a line of possession that was indicated on the west side of Lakeside Avenue by an old strip of fence, posts, and there were two iron pins in the line of that old fence which were fifty feet apart and were on the corners of a lot that belonged to a man named Nearing.

Q. About where would that be on there? A. Right in there (indicating). It was on the south end of the entire tract of the Simpson property.

30

Q. And where was that old fence? A. The old fence was along on the west side.

Q. Was there anything on the east side of the new road indicating possession? A. There is an old stone fence, mostly all torn down, but the bottom was there.

Q. Did those give indications of having been there a long while or recently? A. They appeared

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Frank W. Crane, direct.

to have been there a long time. The posts were cedar and they had been there so long that a great many of them were ready to fall down.

10 Q. At the time you went through there did you or not find any other monuments, recent monuments? A. I was all over the property. I didn't see any other line of monuments or any stakes or anything that would show anything at all that I could take the line of the street.

Q. If there was a straight road out there with stakes would you in making that survey be apt to find it? A. Yes, sir.

20 Q. Your investigation was thorough enough for that? A. Yes, I worked all over there to find the line of Lakeside Avenue, and the only line of Lakeside Avenue was the line as it was used between the fence and the stone road.

Q. How long have you personally known of the road, not only as a surveyor, but prior thereto? A. I have known it all my life, since I was a small boy.

Q. For forty years? A. Yes, longer than that, fifty.

30 Q. What was the name of the road when you were a boy? A. Corby Lane.

Q. And those two roads that you have on the map there, which is Corby Lane? A. The west-erly one.

Q. That is the curved one? A. Yes, sir.

Q. And when did you first know about this new road? A. I knew that they were building a road across there, I think, in about 1914. I was called upon by Mr. Simpson after the road was finished—I knew they were doing it before that,

Frank W. Crane, direct.

but after the road was finished I was called upon by Mr. Simpson to make a survey and show the line of the new road with reference to the line of the old road.

Q. Did you make that? A. I did.

Q. Is this the one that you gave me (shown to witness)? A. That is the blue print of it; yes, sir.

10

Q. That is on a very small scale, is it not? A. I believe it is 50 feet to the inch; yes, sir; 50 feet to the inch.

Q. For what purpose did you make that survey? A. Why, I think at the time Mr. Simpson was contemplating an action against the Board of Freeholders for land taken. Mr. Simpson owned the entire tract and sold the piece in question to Mr. Morey, and at that time he owned the balance of it out to the southerly line of the whole tract.

20

Q. I noticed the central street on this is Hillside Avenue. Will you show us where Hillside Avenue is on that map? A. (Indicating) This is the entire tract; Simpson owned this from here to here, and he sold this 75 feet to Mr. Morey, and at the time I made that plan he was contemplating an action to get pay for right of way or land taken there by the new street.

30

Q. Does this show the Morey property at all? A. Yes, sir; it shows the line of the Morey property on this edge (indicating).

Q. It is away over to the edge? A. Yes, sir.

Q. It does not quite continue far enough for the Morey property, all of it? A. Yes, that is the westerly side of the Morey property, too; that is the northerly side (indicating).

Mr. Jones: I offer this.

(Marked Exhibit P3.)

40

Frank W. Crane, direct.

Mr. Jones: That is the map made for Simpson.

10 Q. Now, as I understand, this line to the extreme right of this map is Morey's—A. That is Morey's north line.

Q. That is on the last named exhibit, Exhibit P3. On the extreme right it shows Morey north line? A. Yes, sir.

Mr. Jones: We are introducing, by consent, a map made by the county engineer, showing the Morey property and other properties and showing the change that was made.

(Marked Exhibit P4.)

20 Q. Now, referring to this map, Exhibit P4, Mr. Crane, will you look at, first, the Morey property on that? A. This is just the same as the one hanging up.

Q. Yes, but it has dimensions on, has it not?

A. It has some. yes. The one hanging up has none.

30 Q. Now, will you please by reference to that map tell us how wide the new road, the straight road that the county put through, is? A. It is a 50 foot road; that is, 50 feet wide.

Q. And assuming that they took any of the plaintiff's property at all, how much does that show they took? A. It shows that they took a strip 75 feet long and 50 feet wide.

40 Q. And between the new road, the straight road, and the old road, will you show us on that map, or tell the jury what the dimensions are? A. There is a small triangular piece between the new road and the old road—

Frank W. Crane, direct.

Q. How large is that? A. — of Mr. Morey's property.

Q. Mr. Morey said it was 65 feet deep. A. That is, the map shows 25 feet on the north end and 20 feet on the south end. My survey, taking the old stone row, as the boundary of the old road, shows 27 feet 8 inches on the north end. 10

Q. On this side, that strip here, that is shown as 27 feet deep (indicating)? A. Yes, sir.

Q. And on that side (indicating)— A. And on that side runs to nothing.

Q. And on that map it shows about 20 feet? A. That map shows about 20 feet, but this map shows the old road as curving, whereas it actually made quite a sharp angle just to the south of that house. That map shows the old road as curving; it didn't; it ran out at an angle. 20

Q. From any data that you have there, your own survey or the one in front of you, can you tell us the distance between Morey's house and the new road in front of this house? A. Well, I could tell better from my own print, I think.

By the Court:

Q. Do you say that your measurements of that triangle are 27 feet 8 inches on the north end? A. Yes, sir. 30

Q. And what at the last end? A. Nothing on the south end.

(Plaintiff's counsel hands map to witness).

The Witness: I should judge from Mr. Morey's house to the center of the new road—

By Mr. Jones:

Q. I mean the edge of the new road? A. To the edge of the new road, probably about 80. 40

Frank W. Crane, direct.

Q. 80 feet? A. Yes.

Q. Now, you have observed the condition of the land have you not? A. Yes, sir.

10 Q. How recently? A. Well, the land to the east of the new road slopes—there is a gradual slope down to Verona Lake, and before the new road was built the entire plot to the east of the old road had the same general slope towards Verona Lake.

Q. But up to the old road, the land on the east side, did it come up to about the level of the old road or not? A. It was a little below the old road at the time I was there.

Q. What is on the east side of the old road at present? A. The last time I was there there was a puddle of water that was last summer.

20 Q. I mean can you walk directly across the road and get right on Morey's property? A. Yes, you can walk across.

Q. Did you see anything like a fence there? A. I did not.

Q. On the east side of the old road—or the new road? A. On the east side of the new road there is a fence.

30 Q. That is what I meant. What is there on the east side of this new road all the way along there (indicating)? A. One of the County's fences.

Q. A substantial fence? A. Yes, sir.

Q. And that shuts off all of Morey's property there? A. It shuts off the property on the side, yes.

Q. Looking over the fence at the property, is the property left there on a level with the old road? A. No, it is below; that is the reason they built the fence.

40 Q. How much below? A. Oh, four or five feet.

Frank W. Crane, direct.

Q. So much below that it would be dangerous?

A. Yes.

Mr. Taylor: That is the reason it was put there.

Q. Now, on the other side,—that is, the space between the new road and the old road—is that on the level with the new road or the old road? A. Well, the new road, I think, is a little larger than the old road, leaving a slight depression between the two roads.

10

Q. What is the effect of that on a day like this?

A. There is water there.

Q. Do you know where the sewer is with reference to Morey's house? A. Opposite Mr. Morey's house, I think, there is a manhole right in the center of the street, or in the center of the street opposite Mr. Morey's house.

20

Q. When you say "in the center of the street", which street do you mean? A. The new road.

Q. Where are the water mains? A. They are in the old road.

Q. They are all in the old road? A. Yes.

Q. And where are the gas mains? A. They are in the old road.

Q. And are there any other houses facing that old road besides Morey's? A. Yes, there is a large house directly north of Mr. Morey's.

30

Q. And how about the Fresh Air Home? A. The Fresh Air Home is, I think—the two roads come together almost in front of the Fresh Air Home.

Q. During all your years of surveying did you ever hear of this new straight road having been the real road from Verona to West Orange? A. Why, I think I heard Mr. Owen say at one time

40

Frank W. Crane, cross.

that that was the road. I asked him how he made it out, and he said "well, that was the line."

Q. And when you were there you investigated that? A. Well, that was after they were building it.

10 Q. That was after it was built? A. Yes, sir; but previous to the time they built it I never heard of it.

Q. And you have never seen any indication of it? A. No.

Q. Although you have hunted for it? A. Yes, sir.

Cross examination by Mr. Taylor:

20 Q. Mr. Crane, do you show on any of your surveys the width of the old road? A. Not in the figures on this survey; it shows the scale.

Q. What do you show as the width of the old road? A. It is about 35 feet from the old strip fence that was on the west side to the center of the old stone fence that was on the east side.

Q. So that the only way you have of fixing it is by an old fence and an old stone wall? A. By possession, that is all; yes, sir.

30 Q. Well, in your experience as a surveyor, haven't you found that in these old country farm fences, that the farmers put their fences out as far as they can in the road? A. Yes, sir.

40 Q. There is no map, to your knowledge, anywhere showing the lines of the old road? A. No; and I have hunted the deeds for the adjacent property to see if I could get any information from them, but I couldn't, because all properties ran all the way from the middle of Peckman's River, which was the center of Verona Lake, westerly to the top of the mountain, and didn't give any distance from Corby Lane either way.

Frank W. Crane, cross.

Q. Do you know the width of this same road established on the West Orange side? A. No.

Q. You do not know that? A. No.

Q. Do you know whether any grade whatever was established on the old road? A. I don't think so.

10

Q. Mr. Crane, if there had been stakes laid out a number of years ago showing the original intention to run Corby Lane straight, it is possible those might have disappeared, is it not? A. Yes, sir.

Q. And if they did disappear, from the contour of the country there would it not be natural to take the curve that the road did follow? A. The curve that the old road followed?

Q. Yes. I mean the character of the ground; wasn't it such? A. If I answered that I might be criticizing the judgment of the county engineer; I do not like to do that.

20

Q. No, I mean at the time the road was straight? A. I probably don't understand your question or—

Q. Well, referring to the condition of the ground in that particular location before the new road was laid out, wouldn't the public naturally travel around the edge of the ground between what is now the old road and the new road? A. Well, I presume that the reason they travelled where the road is, was because it was easier to build a road there, cheaper, than it would have been to go straight across the way the new road is now.

30

Q. But from the old road there was a gradual slope of the ground down to Verona Lake, was there not? A. Yes.

40

Frank W. Crane, cross.

Q. And it was more or less wet and swampy, was it not? A. After you got down a ways it was; up near the old road it was not.

Adjourned until to-morrow, Friday, May 23, 1919, at ten o'clock A. M.

10

SECOND DAY.

Friday, May 23, 1919.

Met pursuant to adjournment.

Present, counsel as before stated.

The Court: Yesterday you proved the deed, you proved the title, but I do not recollect that you proved present possession. I do not think that is admitted in the pleadings.

20

Mr. Jones: You admit the present possession, do you not?

Mr. Taylor: I understood Mr. Morey to say that he was in possession.

Mr. Jones: Well, to save calling him again, you will admit present possession either in person or through his tenant?

30

Mr. Taylor: Yes, sir.

Mr. Jones: If your Honor please, I offer in evidence map of section of Pleasant Valley Way which was prepared by the county engineer and which is now on the board for the inspection of the jury.

(Map referred to is marked Exhibit P-5.)

40

Carl Mau, direct.

CARL MAU, sworn in behalf of plaintiff.

Direct examination by Mr. Jones:

Q. Mr. Mau, what is your business? A. Real estate business.

Q. How long have you been in that business? A. About thirty years. 10

Q. And you held some public position in Verona for many years, did you not? A. I did.

Q. What were you? A. I was Mayor of Verona.

Q. How long have you lived in Verona? A. Twenty-three years.

Q. Will you look just back of you, Mr. Mau? Take a look at that map for a minute, will you? A. (Witness examines map). Yes, sir.

Q. Do you recognize thereon the Morey property, which is the subject of dispute in this case? A. I do. 20

Q. Will you point out to the jury the road which was always there? A. (Indicating.) The road that was always there is marked here with little dots; that is what they call the old road, commonly known in the deeds as Corby Lane.

Q. Is there any other road there now? A. Yes, sir; there is a road here now called Lakeside Avenue, a straightened out road (indicating). 30

Q. Previous to five or six years ago was that road there? A. No, it was not.

Q. Was there any evidence of it whatsoever? A. No, sir.

Q. Would you be apt to know if it was there? A. I think so; yes, sir.

Q. Where did you live? A. I lived about 250 feet towards north (indicating).

Q. Facing any street? A. Facing Corby Road, or now Lakeside Avenue. 40

Carl Mau, direct.

Q. And during all the period that you lived there did you see any evidences of any road such as is now occupied by the straight road? A. No, sir.

10 Q. Are you acquainted with the buying and selling value of real estate in the immediate vicinity of the Morey property? A. I think so; yes, sir.

Q. Have you examined that property lately? A. no, not intimately; I know about what it is.

Q. Did you know the situation prior to the road being put through—Mr. Morey's property? A. Yes, sir.

Q. Will you describe it? A. The land coming down to what we term the old road—that is, the original old road— If you wish me to go on and explain the situation as I saw it—

20 Q. I want to get at the difference in the situation before the road was put through and afterwards, so far as it relates to the Morey property. A. There was only this one road there; that was there twenty-three years ago, when I came there, and I don't think there were any changes made, except during that time water was put in the road on behalf of the borough, and his property came right up to the street line.

30 Q. Now, how about the general level of the land on each side of the old road previous to the laying of the new road? A. The westerly part was always somewhat higher than the easterly part; the road was a country road, but not swampy.

Q. It is macadamed, is it not; it is a macadam road? A. Well, if you like to call it macadam.

Q. Well, it has a top dressing? A. It has a top dressing on; yes, sir.

40 Q. How much property has Morey got on the west side of the old road? A. Seventy-five feet.

Carl Mau, direct.

Q. On the west side? A. No, on the west side it is between fifty and sixty feet; I don't know; probably fifty-five or fifty-six.

Q. And on the east side? A. Seventy-five feet.

Q. Now, when the new road came through how did it leave this property divided up? A. When the new road came in it came further towards the easterly side and left a strip of land between the old road and the new, graded road, seventy-five feet on the one side and the width of that property on the other side, probably fifty-five or fifty-six feet, and this strip, probably between twenty or twenty-five feet wide, is now between the old original road and the new road created.

10

Q. Is this piece of land large enough to be of any market value? A. Not in its present state.

20

Q. What is the present physical location of that plot between the old road and the new road? A. I don't think it is of any value to anybody.

Q. I mean as to high or low or on the level? A. No, it is somewhat lower than either of these two roads.

Q. And what is the effect after a rainstorm, or anything like that? A. Well, it is not a very pleasant effect, because it isn't kept in shape, as I think a place should be in front of a residence; nothing has been done to it, that I know of.

30

Q. What is the situation of Mr. Morey's land on the east side of the new road? A. On the east side of the new road the land here running down towards the lake, or the creek, is below street grade.

Q. Right up at the street it is nearly on a level with the street, up at the street, or not? A. On this side (indicating)?

Q. Yes. A. No, it is lower than the street.

40

Carl Mau, direct.

Q. How much lower? A. Well, I should think a couple of feet.

Q. And between that land and the road what is there erected? A. Between this land and—

10 Q. And the road? A. Well, where this land ends, of course, the road will begin.

Q. Is there anything that runs along that side of the road? A. On the land side?

Q. Yes. A. I don't know whether the sewer runs there—

Q. No. I mean is there a fence there? A. I believe the county put a fence there.

Q. Now, will you tell me—you say that you have bought and sold land in that vicinity for many years? A. Yes, sir.

20 Q. Will you tell me what, in your opinion, was the value of Morey's land on the east side of the old road previous to the putting down of the new road? A. I should judge \$10 a front foot.

Q. And he had 75 feet there? A. Yes.

Q. That would be \$750? A. Yes, sir.

30 Q. What, in your opinion, is the value of that strip of land that has been taken in the road; that is, 75 feet in width by 50 feet, the width of the road? A. I would consider that a hypothetical question. The land the way it is at present is of no value to Mr. Morey, that I can see.

40 Q. You mean that the fact that the 50 feet was taken right off the front of that lot destroys the entire value of the lot? A. I don't mean to say that; I mean to say that Mr. Morey has his property here, and he has an old road here, and here is a new road. There is a piece of land between the old road and the new road, to which he has no access. While he owns it, he has to trespass, as far

Carl Mau, direct.

as I can see, on somebody else's property in order to get on it.

Q. What I am trying to arrive at is what you think is the value of that piece of land that was taken for the new road? (No response.) Do you think you can answer that question? A. I don't see how I can answer that.

10

Q. What would be the difference in value between the lot which I understand you say is on the east side of the road was worth \$750, or \$10 a foot, before the new road came—what is the difference in value of that lot on the east side and the value of it after the road was built? A. The road as it was originally, the easterly part at that time was of a nature that it was somewhat advantageous, whereas now, having taken away the high part, if there was any, there is only low land that remains now, which invalidates it, of course, very much.

20

Q. Do I understand that the present value is nothing at all? A. No, I wouldn't want to say that, but it depends entirely on who wants it. It seems to me it would be very difficult to interest anybody in a piece of ground that is below level.

Q. Previous to the county taking that road the property on the east side of the old road could be used for building lots, could it not? A. It might be; yes, sir.

30

Q. Could the property on the east side of the new road be used for building lots? A. It could not in its present state, only at a very large expense.

Q. To fill up that lot on the east side, in order to make building lots, would it pay to do it? A. I don't think it could in the present condition in which lots are in Verona.

40

Carl Mau, direct.

Q. What do you mean by that? A. I mean that we have so much unimproved land there that could be improved at less expense than this piece of property that I don't think anybody would do it.

10 Q. So that, as far as the market value is concerned of the lot after the road was built, what have you to say about it? A. I didn't quite catch that.

Q. So far as the effect on the market value of that lot on the east side of the new road, what have you to say about it? A. I don't think it is over desirable.

Q. Has it any market value, in your opinion? A. Anything has a market value.

20 Q. What, then, is the market value of that lot on the east side, if it has any, in your opinion? A. I should think I would put the figure from \$4 to \$6 a front foot.

Q. On the 75 feet? A. Yes, sir.

Q. Now, taking the property on the west side of the new road, which would run from the new road up to the old road and go from the old road to the house, has the placing of the new road had any effect on the value of the house lot and the buildings erected thereon, so far as market value is concerned? A. In its present state it is not as
30 desirable as it was before, nor does it look as well as it did before. When the old road was there there was only this one road, which was the only road that the people knew and the only road that people saw. Now they have the original road, they have a strip of land there and they have the new road.

Q. And that road is practically on the front lawn? A. Well, there never was a front lawn.
40

Carl Mau, direct.

Q. Well, it runs right in front of the house? A. It runs up to his property.

Q. And between his house and the new road?

A. Yes, sir.

Q. Now, what I am trying to get at is, what, in your opinion, was the value of his house and lot before that country road was put down and then afterwards? What is the value of that house and lot after the new road was put down? A. I never went through this property to value it. No doubt there is, through the old road being there and a strip of land unoccupied, it deteriorates from the market value of the property. 10

Q. What, in your opinion, has been the amount of that deterioration? A. I should think that, in fairness to Mr. Morey, that probably he will have to take from six to seven hundred dollars less than otherwise it would have brought. 20

Q. In other words, you think that the market value of the property has been depreciated six hundred dollars or seven hundred dollars? A. I should think so, yes.

By the Court:

Q. You refer to simply the property west of the old road? A. No, I refer to— 30

Q. The whole property? A. I am taking the property as a whole.

Mr. Jones: The question was on the west side of the new road?

Witness: On the west side of the new road; yes, sir.

Q. That is your answer, that it would deteriorate six hundred dollars or seven hundred dollars, the property on the west side of the old road? A. Taking the whole property. 40

Carl Mau, cross.

Q. Yes, taking the whole property west of the old road? A. Yes, sir.

The Court: That is what I meant.

By Mr. Jones:

10 Q. Are there any other houses facing that old road, Mr. Mau? A. Yes, there is one house which is towards the north.

Q. Can you point it out there? A. Right here (indicating).

Q. Was not your old house just about where that road begins? A. Here was my property, this was my old property; here was the old road, and they straightened this out (indicating).

20 Q. You do not own that house now? A. No, sir; I sold it.

Q. And you have no interest in this proceeding? A. No, sir.

Q. And never did have? A. No, sir.

Q. Do you know whether there is any improvement in that old road? A. There is water in there and there is gas.

Q. And they are still there? A. Yes, sir.

30 Q. They have never been put in the new road, have they? A. Not that I know of.

Cross examination by Mr. Taylor:

Q. Mr. Mau, did you ever know of any map on file in the borough showing the dimensions or locations of the old road? A. If there is, I never saw it.

Q. You have never heard of any? A. I have never heard of any.

40 Q. Do you know the size of the gas and water mains that run through the old road? A. The

Carl Mau, cross.

water main must be six inches, because we have nothing less than six inches.

Q. And how about the gas? A. I don't know anything about the gas, except that the gas company have a franchise in Verona permitting them to go overhead or underneath or any other way, over your house or over your lots or in your cellar, or any old way.

10

Q. If that gas pipe were moved, or requested to be moved, would it be incumbent on the gas company, or the Public Service, to move it?

Objected to. Objection sustained.

Q. The fence that you spoke of along the east side of the new road, can you describe it? A. Yes, it is a heavy fence, so far as I know, put there by orders of the county, I was given to understand, to protect the travelling public.

20

Q. Mr. Mau, you were the Mayor of Verona at the time this road was put through, were you not? A. Yes, sir.

Q. And the road was put there upon petition of the Borough Council? A. I believe so.

Q. Do you remember whether or not a request was made by the Borough Council that, instead of following the old road, the new road should be placed further to the east?

30

Objected to.

The Court: The best evidence of that would be the minutes of the council meeting. I sustain the objection.

Q. Now, when you testify as to the value of the frontage by feet along these roads do you take into consideration the depth of the property? A. To a certain extent; yes, sir.

40

Carl Mau, cross.

Q. What did you say the value of a front foot on the westerly side of the old road was? A. On the westerly side of the old road?

Q. Yes. A. I don't believe I gave that.

10 Q. Well, what is the value? A. On the westerly side, where this house stands, I would put a value from \$15 to \$18 a front foot.

Q. \$15 to \$18? A. Yes.

Q. Now, then, is that based on any particular depth of lot? A. The units in our municipality are approximately 150 feet deep, according to location; it may vary; it may be less depth and it may be a great deal deeper, but the units are approximately 150 feet deep.

20 Q. Supposing the depth were, say, 40 feet, that would make a difference, in your opinion, as to the value of a front foot? A. If they are forty feet instead of one hundred and fifty?

Q. Yes. A. Oh, yes, decidedly.

Q. So that the piece of property left between the old road and the new road would not be worth as much as \$15 a front foot? A. No, sir.

Q. What, in your opinion, would it be worth? A. Well, I fail to see that it is worth anything. It is between two roads; you have to trespass to get to it.

30

Q. When you say "trespass," what do you mean? A. He has to go over one road that does not belong to the owner to go to his ground, and in order to get out to the other side trespass on another road which does not belong to him. This piece of property—here is the old road and here is the new road; he doesn't own that or any of it, and he doesn't own this; and here is a piece of property to which he has no access (indicating).

40

W. Barnett Smith, direct.

Q. But he has the right of passing over both roads, has he not? A. Oh, yes.

Q. Now, on the east side of the old road I understood you to testify that the value of property there was about \$10 a front foot? A. Yes, sir.

Q. And that would depend also on the depth of the lot? A. Well, those lots all run down to the creek. 10

Q. Prior to the building of the new road the property belonging to Mr. Morey on the east side of the old road slanted all the way from the old road to the lake, did it not? A. Yes, sir.

Q. Do you know whether or not the old road and the new road are level, so far as their surfaces are concerned? A. I don't quite understand. You mean on the same level, the new road as the old road is? 20

Q. Yes. A. I don't know.

Q. You do not know? A. I should think the new road is somewhat higher.

W. BARNETT SMITH, sworn in behalf of plaintiff.

Direct examination by Mr. Jones:

Q. Mr. Smith, you are in what business? A. A real estate broker. 30

Q. Where is your office? A. In Newark and in Verona.

Q. And you live where? A. I live in Verona.

Q. How long have you lived in Verona? A. Seventeen years.

Q. Will you look at the map back of you and see whether you know the Morey property that we have been discussing? A. (Witness examines.) I do. Here it is (indicating). 40

W. Barnett Smith, direct.

Q. I asked you to look at that particularly with reference to this case, did I not? A. Yes.

Q. Did you look at it? A. I did.

Q. Did you know that property before the new road was put through? A. Yes.

10 Q. Do you know where the old road is that goes past his house? A. Yes.

Q. And you know the new road? A. Yes.

Q. Will you describe to the jury, if you can, the difference between the physical location of the Morey property before that new road was put in and afterwards? A. (Indicating on map.) Well, there was the old road on that curved line, and Morey's house is a little west of the straight line, and then there was this road, which was in fairly good condition, and on the other side of it the land sloped gradually down to the lake. Does that answer your question?

20 Q. Yes, that is right. Now, he had lots then on the east side of the old road? A. Yes.

Q. And how were they located with reference to the old road; that is, were they fairly level up to the old road? A. Well, it sloped from the old road gradually down to the lake. I would say, from my recollection of it, that it was very nearly at grade, his lot, with the level of the road.

30 Q. When you say "the lake", where would the lake be on that map there? A. Down here (indicating).

Q. Quite some distance down? A. Yes. I don't know the number of feet.

Q. What, in your opinion, was the value of Morey's property on the east side of the old road prior to the building of the new road? A. I think it was worth about \$10 a foot.

40

W. Barnett Smith, direct.

Q. Now, referring to the property on the east side of the old road, has there been any change in value since the new road came along and took a piece of it? A. Yes, I considered there has been considerable of a change in value because they have taken a piece of very nearly the best part of it right out. Is that what you mean? 10

Q. Yes. Will you describe how you arrive at the change in value between the situation before the new road came through and afterwards? A. Well, they have taken a plot approximately 50 feet wide and 75 feet long from the westerly portion of Morey's lot.

Q. That is simply gone, is it? A. It is gone. And then they have left a strip between the west side there and the east side of the new road. When I was there to look at it there was quite low land, and water collected there. On the east side of the new road there is a fence there, as is usually constructed along state roads or county roads, and the ground drops off quite abruptly from there, I should say in the neighborhood of three or four feet at the east side of the new road. 20

Q. So that a fence would have to be put there to prevent the public from falling in? A. That was my idea of why they put it there. 30

Q. My question is, is there a difference in the market value of that land which you said was worth \$10 a front foot before—is there a difference between the value of that land before and after the building of the new road? A. I think there is a difference in value, yes.

Q. What? (No response.)

Q. Can you get at it this way? What is the value of the piece of land that the county took, which is a plot 50 by 75? A. Why, they have taken the 40

W. Barnett Smith, direct.

best part of that land. I should say it would make a difference of nearly two-thirds. In other words, if the land was worth \$750 before, the land that they took should be worth in the neighborhood of \$500.

10 Q. That is the land taken? A. Yes, sir.

Q. What is the value of the little piece of land between the old road and the new road? A. I don't consider it has very much value, if any.

Q. Why? A. Well, it is hardly big enough to build upon; I don't know who would want it. In order to establish a value, in my line of business, you have got to find somebody that wants a piece of property like that. I don't know of anyone who would want it.

20 Q. You do not think it has any market value, then? A. Not at the present time; no, sir.

Q. Have you fixed in your mind the value of Mr. Morey's property on the west side of the old road? A. Fixed in my mind the value of it?

Q. Yes. That is, before the new road was put through? A. Well, I think I know about what it was worth.

30 Q. Is there any difference between the market value of that property before the coming of this new road and afterwards? A. Yes, there is a difference in value; it is worth less than it was before.

Q. How much less, in your opinion? A. Well, I had fixed in my mind about a thousand dollars.

Q. A thousand dollars less? A. Yes, sir.

40 Q. How do you arrive at that in your mind? A. Well, if I were taking a man to see the property to try to sell it to him before the new road was built and these changes had been made, I wouldn't have any hesitancy in asking him a fairly good price for it, say \$5,000, in that neighborhood, but I don't think he would purchase the lot at this time.

W. Barnett Smith, direct.

That is the only way I can arrive at the difference, how it would strike a man if he was looking at it to buy it.

Q. Why is that difference in its value? A. Because this house does not face the street; it faces the street, but it is not on the street; and there is the old road to be taken into account. I imagine that somebody owns the road and he does not, and he hasn't really a free right of way on the main thoroughfare at the present time.

10

Q. Does a sidewalk run up to the new road? A. No, there is no pathway—I suppose that is what you mean by a sidewalk—there is no pathway from the new road to the old.

Q. If you took a party up there how would you get from the new road to his house? A. Well, people have driven across there (indicating).

20

Q. There is no sidewalk approach? A. No, sir.

Q. If a person living in the Morey house wants to connect with the sewer where has he got to go now? A. Well, the sewer is in the new street, somewhere near the middle of the street, and he would have to run across from that point to this to get to it (indicating).

Q. That is something like a hundred feet or more, is it not? A. I should say so.

30

Q. And if that street is ever vacated, then he will have quite some distance to lay his water mains and his gas mains? A. I presume he will, if he wants to reach them. They are put in this street, over a hundred feet.

Q. On the north side of the house there is a little driveway going into the garage, is there not? A. I believe it is on this side, if my recollection is correct (indicating).

40

W. Barnett Smith, cross.

Q. And is that cut off, too? A. Yes, sir.

Q. So that if he wants to reach the main road, he has got to drive his car along the curved road until he reaches it? A. Yes, go in this way (indicating).

10 Q. Had you prior to six or seven years ago, when it is said that this new road was actually laid, ever heard of that new straight road there? A. No.

Q. There are several properties that you know of facing and sold with reference to the old road? A. There is a good sized house here and one here (indicating).

Q. There are some lots sold with reference to the old road? A. Yes, sir; there is vacant land here and also there (indicating).

20 Q. There is an actual real estate development there by a real estate company with reference to the old road? A. Yes, sir; they face on this front; I think this is Hillside Avenue; they run up over the hill there and they sold lots on both sides of Hillside Avenue or—

Q. Do I understand that, in your opinion, on the east side of the road prior to the building of the new road it was worth \$10 a front foot—that is \$750 and that the taking of the road diminished that by \$500? A. I should say so.

30 Q. And that the house and lot and the buildings were depreciated to the extent of \$1,000? A. Approximately, yes.

Cross examination by Mr. Taylor:

Q. Mr. Smith, have you ever sold any property in this immediate neighborhood? A. No, I have not.

40 Q. I understood you to testify that the value of the property, the house and lot, on the west side

W. Barnett Smith, cross.

of the old road had diminished because of the fact that a new road had been put through there. Is it not usual that when a new road is put through or put past a piece of property, that it increases its value instead of diminishing it? A. It depends on the circumstances. I can conceive of circumstances under which it would improve it. 10

Q. Well, the old road is still in front of the Morey property, is it not? A. Yes, sir.

Q. And it is passable, is it not? A. Yes, sir.

Q. Well, how do you arrive at your conclusion that with that old road there, which is passable and usable, the property on the west side of the road is damaged because of the fact that the new road has been put through further east? A. Because the principal traffic is on the new road and it seems to set the house back off of the highway—that is the way it impresses me—instead of having the frontage on the highway, it is set back away from it. 20

Q. But is it not considered an advantage in country real estate to have your house back from the road? A. It depends on how deep the snow is at times. Sometimes people like to be close on the road and sometimes they do not. Tastes differ.

Q. Do you know of any sales having taken place there recently of any property in that immediate neighborhood? A. I know there have been sales made, but I was not connected with them. 30

Q. You do not know any of the details? A. No.

Q. You do not know of any of the prices, then? A. No, all I know is the prices asked for property in that neighborhood.

Q. Well, what were the prices asked? A. Well, that is pretty hard for me to remember, too, but I endeavored to refresh my memory on that subject, 40

W. Barnett Smith, redirect.

and I knew that the piece on the south side was held at a price which was approximately \$18 or \$20 a foot; that is, the south adjoining this, that piece there (indicating). That was offered in my office at one time at a price which I figured up at that time would be about \$18 or \$20 a foot; but it was offered in a trade, and I discount that price considerably.

Q. That was on the east side of the road? A. Yes, sir.

Q. But no sale was made? A. I think it was, but I didn't have anything to do with it. Properties come in—I live in Verona, and they had to sell it, or tried to.

Q. But you do not know the price that was paid? A. I hadn't anything further to do with it.

Q. So that you never made a sale there? A. Not right there.

Q. And you do not know of any price paid at all? No, sir.

Q. You testified that the sewer there was in the middle of the street. Are you sure of that? A. I don't know that I said it was in the middle of the street.

Q. I understood you to say so? A. I may have said it was somewhere near the middle of the street. I don't just recollect just where it is.

Q. Where do you think it is? A. I believe it is nearly in the middle of the street.

Q. Which street? A. The new road.

Q. Would you be surprised to find that it was east of the new road? A. Not particularly.

Redirect examination by Mr. Jones:

Q. Mr. Smith, that house of Morey's is built with reference to the old road, is it not? A. It was built on the old road.

William H. Kientz, direct.

Q. Facing the old road? A. Facing the old road, yes.

Q. Is the angle at which it faced the old road the same angle at which the new road comes, as you recall it? A. I couldn't answer that question.

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WILLIAM H. KIENTZ, sworn in behalf of plaintiff.

Direct examination by Mr. Jones:

Q. Mr. Kientz what is your business? A. Builder and contractor, general building and contracting.

Q. How long have you been in Verona? A. Nine years.

Q. Did you know this Morey property before this new road was built through? A. I did.

20

Q. And have you examined that property carefully since, at my request? A. I have gone over it some; yes, sir.

Q. Recently? A. Yes.

Q. Will you tell me the situation, so far as levels are concerned, before the coming of the new road and afterwards? Describe it. A. You mean the level of the old road with respect to the house or lot?

Q. Yes. A. (Indicating on map) I should judge that the house stands up perhaps eighteen or twenty inches, perhaps two feet, from the grade down to the old road, and there is a sidewalk sloping gradually to within four steps of the old road line.

30

Q. A cement sidewalk? A. A cement sidewalk. Cement steps down to the old road line and the curb, and that is probably two feet down from the

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William H. Kientz, direct.

grade, down to the street, and the new road is probably a foot higher than the old road, so that in wet weather there is always water in there.

10 Q. And what is the situation in between the two roads, that little piece? A. Well, between the two roads now?

Q. Yes. A. That is lower. It has been filled in a little bit by Mr. Morey, I presume, but it is still lower in between there, and there isn't any real good method to take away the water, and so forth.

20 Q. How much lower? A. It would take possibly an average of a foot to fill in there all the way across the house frontage, and that originally from the old road sloped gradually back to the lake. Beginning at the old road, it might have been perhaps a foot lower. Anybody building there could have taken the excavated earth and filled in in front of the house, but as it is now it is about five feet from the new road down. The embankment, of course, slopes a little bit, but back of the embankment about three or four feet—

Q. On the east side of the new road, is that on the level of the street or not? A. No, there is about five feet.

30 Q. And separated from the road by a fence? A. Yes, there is a fence alongside of the road to protect traffic.

Q. I asked you to calculate for me how much it would cost to fill that in to approximately the level it was before. A. To make the east side correspond to practically the same as it was—the east side of the old road?

Q. Yes. A. Well, I should judge it would take between 600 and 700 loads to do that.

40 Q. Would it be worth while, so far as value is

William H. Kientz, direct.

concerned? A. Yes, it would make that lot usable and valuable on that side more than it is now.

Q. Well, how much would 600 or 700 loads of dirt cost? A. Depending on where it might be secured. It might cost in the neighborhood of \$1,500 to get it there, I should think.

10

Q. And having put \$1,500 worth of dirt in that lot, is it worth \$1,500? A. Yes, it is worth more than that, because that is a deep lot; that is probably nearly a thousand feet back to the lake; I don't know exactly; I should think it was a thousand feet.

Q. In between the two, as you say, it would take about a foot of dirt to fill it. Did you calculate about the cost of filling there? A. Yes, that can be filled for a hundred dollars; I could fill that in for a hundred dollars.

20

By the Court:

Q. You mean the little triangular strip? A. Yes, sir.

By Mr. Jones:

Q. Now, in order to go from Morey's house, from the end of the sidewalk which he has built, to the old road, in order to continue that sidewalk to the new road, what would it cost? A. There is about 60 feet. Well, \$45.

30

Q. \$45? A. Yes.

Q. And how about the garage road on the side? A. The garage road?

Q. Yes. A. Well, of course, that is now practically as it was before. It comes up to the old road. In coming out there they have to cross that low place from that point to go directly to the new road.

40

William H. Kientz, cross.

10 Q. You think after the grading was done there would not be any change to that? A. I should think there would be a roadway all the way across; they could go straight out, because of the fact that there is nothing done. The old road is there the same as it was, but it is not worked; it is not put in condition; it is left to go to the dogs, as they say, or left alone, so that it is not a road; it is practically nothing.

Q. What is the condition of the strip between Morey's house and the road on a day like this? A. Well, it is wet; you have to wear rubbers or swim.

Q. Do you know the last witness that was on the stand? A. I beg your pardon?

Q. Do you know Mr. Smith? A. Yes, sir.

20 Q. What official is he in Verona? A. Assessor, I believe.

Q. The town assessor? A. Yes, sir.

Cross examination by Mr. Taylor:

Q. Mr. Kientz, I understood you to testify that you were a builder? A. Yes, sir; builder and contractor, general contractor and builder.

30 Q. I understood you to testify that the space between the new road and the old road in front of Mr Morey's house was just about one foot below the level of both roads; is that right? A. To fill it up and make it usable, as the grade was before, it would take about a foot to fill in there, yes, just about.

40 Q. Well, it has been filled in, has it not? A. Some; there has been some filling, but outside of that it would take a foot on the average all the way across to fill that in; outside of what has been put in it would average a foot. At any rate, I would figure to put it in for a hundred dollars.

William H. Kientz, redirect, recross.

Q. Do you know how many cubic yards it would take to fill that up? A. Well, it would take about 70 to 75 cubic yards, probably 50 to 60 loads.

Redirect examination by Mr. Jones:

Q. When you were up there with me the other Sunday Mr. Morey pointed out places where he has testified he has filled in. Did you see that? 10
A. Yes, sir.

Q. Where has he filled in himself? A. Well, he filled in in front of his house, between the two roads, and also some on the east side of the new road; there is a gateway left there and he has filled in there in front of that, so that he can drive down there without going down a steep bank.

Q. Could you judge how many loads there were? 20
A. Well, there might be a hundred loads on both sides of the property, in both places.

Recross examination by Mr. Taylor:

Q. Did you see Mr. Morey put in this dirt there that you have testified to? A. He did put some of it in, and I think—

Q. Did you see him? A. Oh, yes, I saw him put some in.

Q. When? A. I was working at the time they were building the road; I was working back and forth there every day, and he would be putting some in occasionally. Whenever he would get any he would put it in there. 20

Q. Do you mean the road was being built, that new road? A. When the new road was being built, yes. I was travelling over that every day, back and forth, doing some work in West Orange, just over the line.

Amos B. Pierce, direct.

Q. Who put this dirt in? A. He hired two or three different men, I guess; I don't know anything about that, but I saw him putting some in himself, filling it in with a wheel-barrow.

10 Q. How long ago is that? A. Shortly after the road was built. They didn't do anything to protect him there regarding the grade, so that he gradually filled in a little to get across, and when he got a chance to buy the dirt, I guess it was a year ago.

Q. Do you know where he got the dirt from? A. Yes, he took some off the side there, some off his lot, and some down off Hillside Avenue; it washed down from Hillside Avenue; and then he had some hauled from a house that we were building in
20 West Orange. I didn't see them drop the dirt there, but I saw it after it was there.

Plaintiff rests.

The Court: Is it admitted that the road on the exhibit on the blackboard which has been called the new road is a county road?

Mr. Taylor: Oh, yes.

Mr. Jones: It is what is known popularly as a state road, is it not?

30 Mr. Taylor: No, it is a county road, it is under the control of the county.

AMOS B. PIERCE, sworn in behalf of the defendant.

Direct examination by Mr. Taylor:

Q. Mr. Pierce, you are employed by the County of Essex? A. I am.

40 Q. And what is your position? A. Clerk to the Road Board.

Amos B. Pierce, direct.

Q. And you have charge of the minutes of the Road Board of the Board of Freeholders? A. Yes, sir.

Q. I hand you a book and ask you if that is a book of the minutes of the Road Committee (book handed to witness)? A. Yes, sir.

10

Q. Will you turn to page 270, Book 10, and read that part of the minutes relating to the improvement of Pleasant Valley Way? A. (Referring to book) "The following is a copy of a resolution passed by the Town Council of the Town of West Orange, in the County of Essex. Be it resolved that the Board of Chosen Freeholders of the County of Essex be and are hereby—"

Mr. Jones: I object to that. West Orange cannot bind Verona. The resolution on its face purports to be a resolution of the Town Council of West Orange. I know there is such a resolution, but that cannot possibly affect Verona or anybody living there.

20

The Court: If that is a recitation of a resolution of another municipality, of course, that is not the best evidence of the resolution.

Mr. Taylor: It covers this entire road from Bloomfield Avenue.

30

Mr. Jones: There is another objection. It is a recitation of the action of some other municipality.

The Court: May I look at that, Mr. Pierce, please?

The Witness: Yes, sir (handing book to the Court).

The Court: I sustain your objection.

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Amos B. Pierce, direct.

Q. Turn to page 313. A. (Referring to book)
"In the Board of Chosen Freeholders of the County
of Essex. Resolved: That the Board of Chosen
Freeholders of the County of Essex does consider
and determine that that portion of Pleasant Valley
10 Way in the Borough of Verona and the Town of
West Orange from Bloomfield Avenue, Verona, to
the Northfield Road, the distances being about as
follows: Verona, 3,100 feet; West Orange, 22,000
feet; total, 25,100 feet, is of sufficient importance to
warrant the expenditure of state and county
money, and should be improved by grading and
paving with telford pavement, under the provis-
ions of an act entitled 'An Act to provide for the
20 permanent improvement of the public roads of
this state,' approved March 27, 1905, and the sup-
plements and amendments thereto. Resolved:
That the County Engineer be authorized and in-
structed to make a survey of said road and to pre-
pare plans, cross sections and specifications of the
work to be done on the same, as above described;
and be it further resolved: That before making
said survey or preparing said plans, cross sections
and specifications the consent of the State Com-
missioner of Public Roads to the improvement of
30 the road above described, in the manner above
mentioned, shall first be obtained, and the clerk
of the board be instructed to send a certified copy
of this resolution to the said State Commissioner
of Public Roads, and that the County Engineer be
instructed to communicate with him, and obtain,
if possible, his consent to the said proposed im-
provement."

Q. What is the date of that resolution? A. (Re-
ferring to book) "It is hereby certified that at a
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Amos B. Pierce, direct.

regular meeting of the Board of Chosen Freeholders of the County of Essex, held on the 11th day of March, A. D., 1909, the foregoing resolution was duly adopted, thirty members voting in the affirmative and none in the negative. Driver and Nathan absent."

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By Mr. Jones:

Q. It was passed March 11, 1909? A. Yes, that is the date.

By Mr. Taylor:

Q. Now turn to page 366.

The Court: That was what page that you were reading from?

The Witness: I was reading on page 314; it commences on page 313.

20

Mr. Taylor: Never mind page 336; that is West Orange. Page 499.

Witness: (Referring to book) "The County Engineer reported that the State Commissioner has approved the plans of Pleasant Valley Way from Bloomfield Avenue, Verona, to Mountain Avenue, West Orange, and that the Director be authorized to advertise for proposals."

30

Q. And what date was that? A. That is the meeting of June 6, 1910. (Referring to book) "Dr. Peck moved and Mr. Howe seconded a motion that the report be adopted. Carried."

Q. That is enough. Now turn to page 523. A. (Referring to book) "Whereas the State Commissioner has expressed a desire to amend the specifications for grading and paving Pleasant Valley Way, in the Borough of Verona and Township of

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Amos B. Pierce, direct.

West Orange, be it resolved that all the proposals received for this work be rejected and the checks and bonds returned. Whereas the Committee on Roads and Assessments has decided it is expedient to pave the gutters"—

10

Q. Now page 534?

Mr. Jones: Will you read the first part of that resolution, the preamble.

Witness: (Referring to book) "Whereas the State Commissioner has expressed a desire to amend the specifications for grading and paving Pleasant Valley Way, in the Borough of Verona and Township of West Orange."

20

Mr. Jones: That is enough.

Q. What is the date of that meeting? A. July 14, 1910.

Q. Page 534. A. (Referring to book.) "A resolution was read providing for the improvement of Pleasant Valley Way, change of specifications. Mr. Harrison moved and Dr. Peck seconded a motion"—

Q. Never mind. And the date of that? A. That is August 5, 1910.

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Q. Page 544. A. (Referring to book.) "Mr. Evans moved and Mr. Howe seconded a motion that a resolution be prepared recommending to the Board the award of the contract for the improvement of Pleasant Valley Way to Robert Doriety, he being the lowest bidder, and that checks deposited with bids be returned to the unsuccessful bidders. Adopted for the sum of \$36,780.65."

Q. And what is the date of that? A. September 8th, 1910.

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Q. I hand you book No. 11, and ask you to turn

Amos B. Pierce, direct.

to page 142 (handing book to witness). A. (Referring to book.) I do not see anything there about Pleasant Valley Way.

Q. Page 142? A. 142. Yes, it says here, "A letter was received from Robert Doriety"—

Mr. Jones: I object to that, if your Honor please. The attempt is to read into the minutes of the meeting a letter written by another man about some subject, and I object to that. That is not the best evidence. The man is the best evidence. They cannot read it into the minutes of a public meeting, unless it is our man. It is not our man.

Mr. Taylor: It is the record of a public body.

The Court: I shall admit it, if it is what I expect it is. I will hear it first.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q. Read it. A. (Referring to book.) "A letter was read from Robert Doriety asking that grade stakes be placed so he could proceed with his contract on Pleasant Valley Way."

Q. Go ahead. A. "Mr. Roemmelle, Jr., moved and Mr. Lacombe seconded a motion that letter be received and filed and that the County Engineer be empowered to employ such help in his department as is necessary. Adopted."

Q. And the date of that? A. March 25th, 1912.

Q. I hand you the book marked "A," and ask you to turn to page 1 (handing book to witness). Read that. A. (Referring to book.) "Mr. Mau, Mayor of Verona, representing some of the property owners, spoke to the committee in reference

Amos B. Pierce, direct.

10 to Lakeside Avenue, or Pleasant Valley Way, which he, and also the property owners in the vicinity, thought should be laid out further east, as in the present layout, according to stakes, it would cut off some of the lawns. Mr. Owen advised the committee that about a year and a half ago he had applications from property owners in the section near Pleasant Valley Way asking the same as Mr. Mau; he had put stakes in and they had then expressed their entire satisfaction. This matter was left to the County Engineer, to look into the matter with Mr. Mau."

Mr. Jones: I ask that that be stricken out, your Honor.

20 The Court: On what ground?

Mr. Jones: On the ground, in the first place, that it is hearsay, and, in the second place, it does not fix the property.

The Court: This is a public record. It is different from your other objection as to the West Orange resolution.

30 Mr. Jones: Yes, I appreciate that, but the second part of my objection is valid, because it refers to an altogether different part of the road; it refers to lawns away down the street, where they are cutting off the lawns of houses.

The Court: How do you know that? If you know that to be a fact, I shall be glad to hear you. I do not know it.

Mr. Jones: I happen to know it to be the fact—

40 The Court: If it is admitted that that is the fact, all right; but you are the only one in the room that has the knowledge.

Amos B. Pierce, direct.

Mr. Jones: No, it is in the testimony, in Mrs. Hornfeck's testimony and Mrs. Barter's testimony, which was read to the jury by deposition, which said that the objection was raised because they were cutting off their lawns, and they went out and stopped them. That is away down the road. 10

The Court: I do not think this has anything to do with your case, as a matter of fact. Do you want to urge your objection? I do not think it makes any difference.

Mr. Jones: No, I do not think so.

The Court: All right, we will let it stand.

Q. What is the date of that? A. The date of that meeting is July 8, 1912.

Q. I hand you book B, and ask you to turn to page 166 (handing book to witness). Read that portion relating to Pleasant Valley Way in Verona and West Orange. (Referring to book.) "Acceptance of roads. To the Committee on Roads, etc., William Cardwell, Chairman. Gentlemen: I have secured from the Commissioner of Public Roads letters of acceptance of the following contracts: Contract for the improvement of Pleasant Valley Way, in Verona and West Orange, date of acceptance being July 22, 1914." 20 30

Q. What page is that? A. That page is 166.

Q. What is the date of that? A. December 9, 1914.

Q. Now, turning to page 167. A. (Referring to book.) "I have turned over these letters to Director Evans, as they are addressed"—

Q. No, the first part, "To the Committee on Roads." A. (Referring to book.) "I would further recommend that the contractors of the work on Pleasant Valley Way and on Clinton Avenue be 40

Frederick A. Reimer, direct.

given their final payments, less five per cent. required to be retained for a period of one year under the terms of the contracts."

Q. What date is that? A. That is the same date.

10 Q. Well, what is it? A. December 9, 1914, the same as the other, the same letter.

Mr. Taylor: I offer all these books in evidence.

The Court: Why do you not leave the record as it is, and not offer them, because your record is clean as it is?

Mr. Taylor: All right.

Cross examination waived.

20 FREDERICK A. REIMER, sworn in behalf of defendant.

Direct examination by Mr. Taylor:

Q. Mr. Reimer, you are employed by the County of Essex? A. Yes, sir.

Q. In what capacity? A. County Engineer.

Q. And you have been for how long? A. Six years.

30 Q. Were you County Engineer at the time Pleasant Valley Way, Verona, was repaired and straightened out? A. I was the Assistant County Engineer.

Q. Did you have charge of that work? A. I did.

Q. Will you tell the Court and jury when that work began and what you did as County Engineer? A. You refer to the particular portion in question?

Q. In front of Mr. Morey's property, yes. A. In April, 1912.

40

Frederick A. Reimer, direct.

Q. And what did you do? A. I ran the line of survey and took the necessary levels and set the stakes for the grading of the road and gave instructions to the contractor to proceed along the line which I set for him.

Q. This road was laid under an Act of the Legislature of 1905, was it? A. Yes, sir. 10

Q. Do you know what the provisions of that Act were as to the pavement?

Mr. Jones: Won't the Act speak for itself?

The Court: Well, while it does, I think we will let this in.

A. The Act requires that the consent for survey should first be received from the State Commission of Public Roads, after which the surveys were made and the plans and specifications prepared, and submitted them to the State for its approval, and upon being so approved the advertisements for the work were proceeded with and the contracts were let and approved by the State also, and for that the State would contribute forty per cent., or, I believe, at that time $33\frac{1}{3}$ per cent. I am not quite sure of the percentage of cost that they bore —of the total cost. 20 30

Q. And the Borough of Verona how much? A. Ten per cent.

Q. And the balance paid by the county? A. And the balance paid by the county and State together; yes, sir.

Q. Now, will you describe what you did in laying out that road? A. At the time of the letting of the contract I proceeded with the contract. Mr. Doriety, who was the contractor, called upon me 40

Frederick A. Reimer, direct.

10 for stakes in this immediate vicinity, and I gave him a line, represented here on the map, running through what I considered at that time and what was a swampy piece of land, so that when I cut through the high brush for a portion of the distance I had to lay the brush down and walk on it to keep dry. I remember that distinctly, because this was one of the first pieces of work that I was on for the county. The line was laid down along the line as showed here on the map, connecting the straight portion of the road to the south, in the Town of West Orange, which was already laid out by West Orange 50 feet wide, with the straight portion of the road to the north of the irregular route shown on the map, running down to Bloomfield Avenue, 50 feet wide.

20 Q. Can you fix the date when you placed those stakes? A. The finished grade stakes I can fix exactly. The preliminary work was done without grade, except for a general line, because there was a great deal of fill put in there and stakes would be required, and so I instructed the contractor to continue until he got nearly to grade, and then I set the final stakes, which was July 16, 1912.

30 Q. I am now referring to the road directly in front of Mr. Morey's. A. Yes.

Q. Did you have any way of determining the line of the road by which to fix your stakes? A. The line of the road was that which was established upon the map which was approved by the county and also by the State, which I have here, showing their approval of the line as laid down, which was this line (indicating). That is the map which I worked from and proceeded with the surveys accordingly. There was nothing on the ground to indicate that the line was other than

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Frederick A. Reimer, direct.

this, except the old carriage-way which ran around the edge of this swamp. I took particular note of the condition of the old road. The old road was never repaired by the county, and there was nothing of physical evidence there immediately in front of Mr. Morey's property, except along the westerly side, where there were a few old posts, but I could find no evidence along the easterly side to indicate that there ever had been any fence there. I therefore made a survey of the old road as it existed, as nearly as we could, judging from the carriage-way as it was worked around the edge of the higher ground, and that is the line indicated in the dotted line, the irregular line on the map.

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Q. Will you indicate that on the map? A. (Indicating.) The old carriage-way was this dotted line coming back into the center of the road on the south side in West Orange, and before striking the line of the road bearing to the north slightly and then to the south of the low land, coming back into the straight piece of road in Verona Township about 1,000 feet north of the West Orange line; that was the old carriage-way that was used at that time. The lower part where the new road is represented was, the greater portion of it, wet, and for a considerable distance there I had to cut out brush and lay it down and walk on it while I was getting my stakes in, and in that portion I drove stakes four or five feet long.

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Q. Can you state when the road was finished?

A. The road was finished in 1913 down to Bloomfield Avenue.

Q. Can you state when the road was finished, referring to the property immediately in front of Mr. Morey's? A. That was in the Fall of 1912.

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Frederick A. Reimer, direct.

10 Q. Will you describe the condition of the Morey property between the old road and the new road after the completion of the new road? A. At the time of laying out the new road Mr. Morey requested that the piece of land which was low be filled in and the contractor had surplus material, and I directed that that be filled in, which it was, and the space between—the triangular piece between the old carriage-way and the present constructed road is practically level at the present time.

20 Q. Did you do anything else? A. We also constructed drains, extended the drains at Mr. Morey's request across his property under the new road and terminated it on the east side of the new road at two different points to take off the water from this low land.

Q. There has been some testimony here to the effect that the new road was higher than the old road. What have you to say about that? A. The two roads are practically level, from levels which I have taken for this very purpose.

Q. And your maps show that they are level? A. Yes. I can give you the various elevations, if you wish them.

30 Q. (By the Court.) How much of a variance is there? A. I will give you the extreme variance (referring to map). Just south of Mr. Morey's property the old road, the center of it, is lower than the new road by .2 feet; that is about 2½ inches; at a point almost immediately in front of Mr. Morey's property the ground is practically level; in fact, the road in front of Mr. Morey's house is .2 feet higher than the new road; 50 feet north the road in front of Mr. Morey's

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Frederick A. Reimer, direct.

property is .1 foot—it is 1.7 feet higher than the new road; immediately in front of Mr. Morey's property the road is practically level, and as you come north the old road is higher than the new road, immediately north of Mr. Morey's property.

Q. (By Mr. Taylor.) There has been some testimony given here about a fence on the easterly side of the new road. Will you describe that fence and state its purpose? A. Yes, sir. The county is required by law to construct and maintain guard rails at all dangerous points in the county, depending on my direction and recommendation. The roads where they are considerably above the level of the adjacent ground have been protected by putting in these guard rails, and we built this guard rail along the easterly side, which is in front of Mr. Morey's property, for that very purpose, to prevent accidents, machines and other vehicles from running off into the lower land, and the procedure always has been that at whatever time the property owner desires entrance into the property, that the county, at its own expense, removes the obstruction.

Q. You were on the work frequently as it progressed, were you not? A. I was, pretty nearly every day, or every other day; yes, sir.

Q. And at that time did you see Mr. Morey there at any time? A. I did, several times.

Q. What did he say to you, if anything, in connection with the new road while it was being built? A. There was never any objection made by Mr. Morey or others concerning the line of the new road until after work was entirely completed, with the exception of Mrs. Hornfeck, who at the time I was setting the line for the road to the north, thought that the road was going to come into her

Frederick A. Reimer, cross.

10 terrace, but the line never was intended to come into her terrace. The testimony shows that she requested that it be removed further east, which is true. At the same time the stakes never changed, and the road was put on that line without change, but they were afraid the road was coming into their terrace and destroy it, but the line was not changed.

Q. Did you ever determine the width of the old road? A. There was nothing of evidence to determine what the width of the old road was; there were no records and I had nothing to go by at all.

Cross examination by Mr. Jones:

20 Q. Did not Mr. Owen make this survey for this road, Mr. Reimer? A. Mr. Owen made the map and I made the survey.

Q. Then what actually happened is that you went to the West Orange line, where they had a fifty-foot street coming up, and from that point, not finding any stakes, you jumped up to a point up north to where you thought it ought to run, and ran a line there? A. I ran the line according to the map, as nearly as could be determined from the map.

30 Q. What map is that? A. The map which was approved by the State and which I have here.

Q. Was that supplied from your office to the State first? A. Yes, sir.

Q. For approval? A. Yes, sir; and that map shows the line running between the West Orange stretch and the road to this line (indicating).

Q. And the State gets it from you, does it not? A. Yes, sir.

40 Q. You make it first and send it to the State for approval? A. Yes, sir.

Frederick A. Reimer, cross.

Q. And then it comes back? A. Yes, sir.

Q. When you made the required survey for the approval of the State you got to a point where you thought the road was straight and where you could find some evidences of stakes or boundaries, and then, not finding any evidences of boundaries for the curved part, you arrived at another part that looked straight, and you drew something in between, did you not? A. I think probably my statement was misunderstood. The original survey was made by Mr. Owen. I made the survey for the actual laying of the road on the ground. That was taken from Mr. Owen's survey, and what data he had I have no knowledge of.

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Q. So that how Mr. Owen arrived at that line you do not know, do you? A. Not as far as the individual work was concerned; no, sir.

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Q. So that your map was really based on Owen's survey, was it not? A. It was to this extent: that at the time I was to do the work in the field, and Mr. Owen directed me to connect these two points with the curved line.

Q. What points? A. The point here in West Orange to the point here in Verona (indicating); in other words, not to follow the old road, which was simply a carriage-way, and it was the intent, perhaps, that the road should run through this straight line and connecting—

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Q. You received a survey from Mr. Owen and were instructed to run a road from a certain point to another certain point in Verona? A. Yes.

Q. And you, as an engineer, made a road as straight as you could? A. Followed the map; yes, sir.

Q. But in making the road you had no boundaries that you could find on the land itself? A. Ex-

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Frederick A. Reimer, cross.

cept the physical evidence, which would be the natural thing for an engineer to follow, and not follow the edge of the swamp; I took that line, and that was the line that Mr. Owen made on the map.

10 Q. But those two ends that you speak of, one was at the north side of the map and the other at the south side of the map? A. Yes, sir.

Q. So that in between those two points and where the curve is you found no actual old boundaries? A. Not any other road; no, sir.

Q. Have you ever been able to find any record of this Corby Lane? A. No, sir.

Q. And you have hunted for it, the same as we have? A. I have.

20 Q. And outside of this Owen survey, which was made, I assume, seven or eight years ago, there is no survey of that road, is there? A. Not that I know of.

Q. Now, when a road is laid out under the law, ordinarily the county surveyor or the surveyors of the highway make a survey and file that in the County Clerk's office and with the clerk of the road board, do they not, so that it makes a public record? A. Yes.

30 Q. There is no such thing of either of these roads, is there? A. No, sir.

Q. Now, on the west side of the Corby Lane, the curved road that we are speaking about, there are some evidences of possession, are there? A. There were at that time.

40 Q. So that if you were surveying up there for a private individual before this new road was put there you would have located him on Corby Lane, would you not? A. That is a question which would probably be determined more or less by

Frederick A. Reimer, cross.

the conditions I found in West Orange. The West Orange line did not strike Corby Lane.

Q. If I remember, before you came into the county employ you were a local surveyor in East Orange? A. No, I was in public life in East Orange; my father was interested there. 10

Q. And when you come into a new locality to survey don't you usually go to the local surveyor and get some data from him? A. I always get it if I can.

Q. So that the local surveyor is more apt to know the boundaries and the various beginning points than an outsider is, is he not? A. They are very apt to, but we don't always follow them.

Q. So that if you came up to Verona and Mr. Crane was the borough engineer, you would probably go to Mr. Crane and get some data from him? A. I would probably go to Mr. Crane for a good deal. 20

Q. And a surveyor going outside of his locality is somewhat at a disadvantage over a local man, is he not? A. No, I don't think so exactly.

Q. Well, he must obtain his data from him— A. Well, assuming that we get the data that we generally get, there is no difficulty in following the line. 30

Q. You have had some experience with roads. You do not mean to tell this jury that the only way a road is formed in this county is by an actual survey, do you? A. I don't quite get that.

Q. A road can be a road, and yet there be no public record of it, can it not? A. Yes, sir.

Q. If a line was laid and it was abandoned for a number of years, there would be no road there, would there? A. There certainly would; yes, sir. That has been decided a good many times. 40

Frederick A. Reimer, cross.

Q. After a road has been used, as testified in this case, for almost a century, that becomes and is established as a public road, is it not? A. Not necessarily.

10 Q. Now, you said that the county has improved that road. Why should they improve it? A. They shouldn't have improved it; we shouldn't improve it; we don't believe it is the line of the road.

Q. But they had no business to improve it prior to taking it over; is that it? A. No, sir.

Q. So that until you made this new road through here you had nothing to do with that old road? A. What?

20 Q. That was a borough road, was it not? A. So far as we know.

Q. And Lakeside Avenue along here was a borough road (indicating)? A. So far as we know.

Q. And the county took it over at the time of the improvement? A. Not the old road.

Q. No, but the whole situation there? A. Yes.

30 Q. Now, you have told us something about the act. Won't you tell us a little more about it—the act of 1905, under which you did that? That act also provides that when you take a piece of land you shall pay for it, does it not? A. I don't recall—there is a provision in that by which land may be taken, yes, by gift or otherwise.

Q. You have to agree with the owner to pay or else you take it by condemnation? A. If we agree to take any we would have done that.

Q. You never attempted to condemn this land here, did you? A. We believed we were on the road, sir.

40 Q. The question was, did you ever attempt to condemn? A. No, sir.

Frederick A. Reimer, cross.

Q. And you never purchased it? A. No, sir.

Q. And you never paid anything for it? A. No, sir.

Q. And you never paid any damages for what Mr. Morey might conceive were his damages? A. None whatever.

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Q. Mr. Morey appeared before the Board of Freeholders, you say, and he did not make objection. He appeared before the Board of Freeholders before the road was completed and made objection in your presence, did he not? A. Not before the road was completed; no, sir.

Q. Well, it appears in the minutes of the Freeholders, does it not? A. Not to my recollection. Mr. Morey appeared and requested that the low land be filled in, which we did, and then he would be perfectly satisfied if the county would give him \$500, he would be perfectly satisfied with the whole thing, and we closed out and gave him \$500.

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Q. As a matter of fact, don't you remember that Mr. Morey came down to the Committee of the Road Board several times and also had several talks with you down here? A. That was after the road was completed; yes, sir; not prior to the completion of the road.

Q. Now, when you say you ran the line through what you call the straight road, which was the original line, according to your idea, you found it thick with high brush there? A. There was a portion of it very high brush; yes, sir.

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Q. That was the portion right here, was it not (indicating)? A. Not all this, no; there were two or three stretches there.

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Frederick A. Reimer, cross.

Q. A stretch on the east side of Morey's? A. It was a little bit south of the Morey property.

Q. So that there is no evidence of that, even if there was a line, of its ever being used? A. No, sir.

10 Q. And it is your opinion that it was never used as a road? A. Not as far as I could see, I don't believe ever a carriage went through it.

By the Court:

Q. What makes you say you believe it is the right line? A. From evidence. The physical evidence was that a road laid down as Corby Lane would connect north and south—

20 Q. You mean that you believe it was good engineering to lay it out as you laid it? A. There is no question about that. It worked around the edge of the swamp, and the old carriage-way generally worked that way, and Mr. Owen and myself took the best evidence that we could find that it was intended to run that way.

Q. There were no old maps, however? A. None whatever; no, sir.

Q. It was just good engineering to take the shortest line between the two points; isn't that so? A. Yes, sir; I think it was good.

30 Q. Well, isn't that so? A. Yes, sir.

By Mr. Jones:

Q. You say there was no survey, so far as you know, of the old road from Verona all the way through there, so far as you know? A. I didn't quite get that.

Q. There was never any survey of that old road, that you knew of? A. None that I ever knew of; no, sir.

Frederick A. Reimer, cross.

Q. Then why do you seem to think that there ever was a survey or there ever was any old line?

A. For this reason. I hunted for a monument near the southerly end, or the intersection of the old and new road, which one of the natives there told me existed, and was still further east than we have got the present road laid out. He stated to me that there was a monument there, and I have never been able to locate it.

10

Q. Now, is it not a fact that in the old days in laying out a road the matter of cost came in a good deal more than it does nowadays? A. Oh, certainly.

Q. The same as in railroading? A. Certainly.

Q. So that if they found either a wet condition or a rocky condition they would go around it rather than through it, as they do nowadays? A. Well, that all depends on the engineer.

20

Q. Well, engineering from a hundred years ago to the present time has changed considerably, has it not? A. In some ways.

Q. Well, you know as a matter of more or less common knowledge that the old roads curved, where modern roads that are built by engineers are fairly straight, are they not? A. Built by engineers, yes; but the old roads were not built by engineers; they were laid out by commissioners of highways, and so forth, and they didn't take the engineer's advice.

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Q. So that it was largely a matter of economy? A. Yes.

Q. And it would certainly be more economical to lay the road out on the high land rather than in the water or in the swamp? A. Oh, yes.

Q. Now, you know that this road was not finally

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Robert A. Meeker, direct.

accepted until July 22, 1914, do you not? A. Yes, I believe so.

10 Q. When you were running along there did you not see any evidences of an old stone wall on the east side of the road? A. I could find nothing of that kind, and I walked all over there.

Q. But you saw those monuments that Mr. Crane spoke of on the west side of the old road? A. Yes, I saw those.

ROBERT A. MEEKER, sworn in behalf of defendant.

Direct examination by Mr. Taylor:

20 Q. Mr. Meeker, what is your business? A. Civil engineer.

Q. Did you hold a state position in the year 1912? A. State Highway Engineer.

Q. Are you acquainted with the laying out of Pleasant Valley Way, Verona, in this county? A. I am.

30 Q. How did you become acquainted with it? A. First by travelling over it. It was the most convenient and nearest way from my home, in Plainfield, to the work which was being carried on in that part of Essex, and also in Passaic, and I travelled the road very frequently and was very familiar with it.

Q. And you supervised that road construction in Essex County where state aid has been given, have you not? A. During this time; yes, sir.

40 Q. Did you receive a map, or a survey, showing the lines of the proposed widening and straightening and paving of Pleasant Valley Way from the County Engineer of the County of Essex? A. I did, in 1909.

Robert A. Meeker, direct.

Q. What did you do with reference to that? A. I told him that I would never recommend the line as shown on that plan to the State Commissioner of Public Roads for approval.

Q. And in order to get state aid for these roads it was necessary at that time to have the approval of the State Highway Commissioners? A. Yes, sir; it was—Commissioner at that time.

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Q. What were the objections if you remember, to the survey sent to your office? A. It covers the section in dispute at present. The road was crooked and narrow, and alleged macadam, probably two or three inches of crushed stone spread to a width of about eight feet; in fact, it was so crooked and narrow that whenever I approached it I always looked ahead to see if anyone was coming, in order that I might get over that stretch before I met them, and I said to Mr. Owen at the time—

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Mr. Jones: You had better not tell us that.

Q. Never mind that. Well, since the advent of automobiles it has been the policy of the State Highway Commission to take all dangerous curves out of roads, has it not? A. It has.

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Mr. Jones: I think this testimony is immaterial, your Honor, to bind the plaintiff, anyway. I will admit that he probably approved the survey. How is it material, anyway?

The Court: I will admit the last question. You might object to other questions, if you wish to.

Q. But you finally approved the line as mapped out? A. I recommended it for approval.

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Robert A. Meeker, cross.

Q. And it was finally approved? A. By the commissioner.

Cross examination by Mr. Jones:

10 Q. You said you received a survey in 1909, did you not? A. I did.

Q. Whose survey was that? A. Mr. Owen's.

Q. You said that was so crooked that you would not approve it? A. I did.

Q. And that was the old line, was it not? A. Yes.

Q. That was the line of the old road? A. It was.

Q. Where is that survey? A. I don't know.

Q. So that, then, there was a survey of the old road, showing that old road, was there not? A. Yes.

20 Q. What? A. There was.

Q. So that some surveyor must have found some stakes on that old road? A. No, he took the easiest way.

Q. And then after you interfered they suddenly saw the light and put this straight road through, did they not? A. They did.

Defendant rests.

30 Mr. Taylor: Now, your Honor, please, I want to move for a direction of a verdict for the defendant upon the ground that this is an action in tort for damages, and that the action accrued more than six years prior to the beginning of this action.

The Court: When do you argue that the right of action accrued, as of what date?

Mr. Taylor: On July 10, 1912. And that the road was actually completed more than six years prior to the time of the beginning of this suit.

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Robert A. Meeker, cross.

The Court: Where do you get that date?

Mr. Taylor: From the testimony of Mr. Reimer, the county engineer.

The Court: He set the final grade stakes. July 16, 1912. Is that what you refer to?

Mr. Taylor: That is what I refer to. I understood him to say— 10

The former witness Frederick A. Reimer says: "July 10th is correct."

The Court: Then I am in error. This action was commenced in August, 1918, was it not?

Mr. Taylor: The 9th of December, 1918.

The Court: Yes, December 9th, 1918. What have you to say about that, Mr. Jones?

Mr. Jones: I have to say three things, your Honor. In the first place, there is testimony that the road was accepted July 22, 1914. In the second place, this action was for the taking and proximate damages. I do not care if it was anything short of twenty years. The statute would not intervene. In the third place, the statute of limitations has not been pleaded. 20

Mr. Taylor: I thought I pleaded it.

Mr. Jones: He pleaded it one month out of time.

The Court: (After argument) If you were not going to trial on this pleading, why did you not move before the Chief Justice to strike this particular paragraph of the answer out? 30

Mr. Jones: Because this is the proper place to do it.

The Court: I cannot strike it out; I have not the authority; a Circuit Court Judge sitting in the Supreme Court Circuit has no authority to strike out any pleading. 40

Case.

Mr. Jones: But the trial judge can tell from the record itself; he is bound by the record, and the record itself shows that it is out of time.

(Counsel argue further.)

10 At 12.35 o'clock P. M., the Court takes a recess until 2 o'clock P. M.

AFTER RECESS.

The Court: Mr. Taylor, have you any cases that will indicate when the statute of limitations commenced to run?

20 Mr. Taylor: Not in this particular case, but generally whenever the cause of action accrues. For instance, on a promissory note payable on demand, from the date of the note; in an action for damages by reason of a false survey, from the time the survey is made. This particular action, it seems to me, is an action clearing in tort for damages, not for the recovery of property, and—

The Court: You rely on the first section of the Statute of Limitations, as referring to the six years limitation against the trespass?

30 Mr. Taylor: Yes, and I think that is clearly established in the case of *Starr v. Camden & Atlantic Railroad Co.*, 24 N. J. L., 592, that this is an action in trespass *quare clausum fregit*, and if that is so, then the first section of the Statute of Limitations applies to this case; and also another case, *Hetfield v. Central Railroad Co.*, 29 N. J. L., 571.

The Court: This answer does not do anything but define the situation, the legal status. There is nothing about the Statute of Limitations, is there?

40 Mr. Taylor: No, nothing at all about the Statute of Limitations, except that it defines the action as one of *quare clausum fregit*, and that being so,

Case.

my contention is that that comes within the first section of the Statute of Limitations.

The Court: I do not know whether my view of this case is in accord with the view of counsel or not, but it is that when the county put the road across this man's property, in the absence of proof that it was done under the statute, they at once became trespassers, and continued trespassers up until the time the action was brought; in other words, that there was a continuous trespass. I have not been able to find a case that would refute that idea. I may be wrong. If that is so, the Statute of Limitations would not be a defense. As far as permitting you to plead it, and considering it, I shall say that I shall not strike it out, of course, and I am considering it, and this decision is directed toward your motion that I consider the statute as a bar to this action; but I am of the opinion that this trespass has been a trespass from the beginning, the owner apparently not having parted with the fee, but the fee being still in the plaintiff, subject to this easement which the county has arbitrarily created, and that the trespass from the time that it was first made up until the time of the commencement of the action was a continuous trespass. I deny your motion.

Mr. Jones: I would like your Honor to read section 17. It seems to me it would come under Section 17. That applies to all actions touching real estate.

Mr. Taylor: If your Honor please, this is not an action for the recovery of real property; it is an action in tort for damages.

The Court: Yes, that is just what it is.

Mr. Taylor: Then, applying your Honor's argu-

Case.

ment to the statute in reference to trespassers why would not the same argument apply to the twenty year period, on the theory that it continued from day to day after the twenty years had expired? In an action, for instance, in ejectment, there is no question but what an undisturbed possession for a period of twenty years would create that interest provided to be protected by the statute. Now, it seems to me that situation is exactly the same in this case. It has continued for more than six years. Now, if the statute is good for anything, it is good to protect a situation like this. Otherwise, why have the statute? Why fix a period of six years? Why fix any period?

The Court: My thought is this. The action of *quare clausum fregit*, the ordinary action, is a trespass which is not always continuous, and the damages that accrue for that trespass accrue from the time the trespass was commenced; but, if at all, you have a trespass that has continued from the time this road was staked up to the present time. If it was ever a trespass it is still a trespass. The situation has not changed. Now, if the trespass had ceased, and then no action had been commenced in six years, I would say that the statute would bar it. That is only my thought.

Mr. Taylor: I was going to suggest this: that under that view of the case it never could cease.

Mr. Jones: Mr. Taylor is not quite right about that last statement, because there is a statute that after the road is laid and one year after its acceptance no ejectment proceedings can be brought, so that we are barred forever from possession.

The Court: I will deny your motion.

Defendant's counsel prays an exception to this

Charge.

ruling of the Court.

Exception noted as ground of appeal.

Mr. Taylor sums up for defendant.

Mr. Jones sums up for plaintiffs.

Charge.

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The Court charges the jury as follows:

MOUNTAIN, J.:

Gentlemen of the Jury: The plaintiffs in this case, William C. Morey and his wife, have brought suit against the County of Essex to recover such damages as they claim they are entitled to by reason of the county having taken part of their land for a road, and, as they allege, thereby diminishing the value of their property.

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It appears from the testimony that the plaintiffs' house was built on this old road, known as Corby Lane, that had been there for so many years that nobody recollects when it had not been as it is to-day, and that that was used as a highway. The testimony of Mr. Meeker was to the effect that he drove over that road, and he rather gives the idea that it was a pleasant country lane, about eight feet wide, so far as the improvement went.

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There is a method of progress in the statute by which the county can take land that it desires from a landowner when it wants to take the land for the purpose of building a road; but no such method was apparently employed in this case, and the county went ahead and put this road across the land of the plaintiffs, and the plaintiffs testified that they have never had any notice of any condemnation proceedings, if any had been begun, nor have they received any compensation. They al-

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Charge.

lege that by reason of this road having been placed there there has been a sort of abandonment of the old road, leaving their dwelling house up on the lane, where it had been since it was erected, with the water and gas pipes under it, and with the new road a number of feet to the easterly; and they allege that not only is the value of the westerly piece of property diminished, but that there is a triangle which has been formed by the creation of the new road, which is of no value or of very little value, and that the land to the east of the county road is not as valuable as it was before.

Any substantial interference with private property which destroys or lessens its value, or by which the owner's right to its use and enjoyment is in any substantial degree abridged or destroyed, is in fact and in law a taking in the constitutional sense to the extent of the damages suffered, even though the title and the possession of the owner remain undisturbed. As a matter of law, the owners of this property are still the owners of the property; they have never conveyed the property to the county; they have never deeded it to the county or given it to the county. The property is there, used by the county, and the plaintiffs have the same right that you and I have to use it. On the other hand, that particular piece of property which the county appropriated for its uses belongs to them, but is subject to the public easement.

If you find that the plaintiffs are damaged, as they say they are, the question is as to how you are going to measure whatever damages or whatever scale of damages you apply.

The case is a little unusual. It is usually held

Charge.

in cases somewhat similar to this that the measure of damages is the value of the property before the trespass took place and the value afterwards; that is, what was the value of this property before the county ran a line across it and what was the value after the county constructed this road? That value is the measure of damages. This action is an action in trespass. It has been held that the measure of damages is the diminution in value by reason of the act of the trespasser. In order to ascertain that there have been a number of witnesses who have directed your attention to certain elements which will assist you in determining what the diminution in value has been. I should go a little further than to say that it is the diminution in value. I should say that it is, in addition to that, a reasonable amount of money which these plaintiffs might have expended to put their property in the same condition as it was before. The plaintiffs had access to what appears to have been a dedicated highway. They still have access to it, but it is to the west of the now main thoroughfare.

Witnesses have testified as to values on the west-erly side of the old road, upon which this house is located, one witness, as I recollect it, saying that there was from \$600 to \$700 deterioration in the value of that property by reason of this road having been put through where it was, and another witness, if I recollect correctly, that the deterioration amounted to about \$1,000. The values which have been placed on the east side of the road seem generally to indicate that it was worth about \$10 a foot, or about \$750, representing the value before this road was put across there, and, as one witness

Charge.

10 said, \$500 now representing the value of the land. Mr. Smith said \$500 was the value of the land on the east side of the road. The little triangular piece seems to have been regarded as having doubtful value. In addition to that, the plaintiffs, in an effort to restore themselves to the situation which they formerly occupied, have done some filling and have put down some sewer pipes, and they testify, I think, that the sewer pipes cost \$125, and that to fill in this dirt they paid \$150. That, I think, should properly enter into your consideration as an angle of the assessment of the damages.

20 I must tell you that in coming to your conclusion you are not to take my recollection of any of the facts that I have mentioned, but that you must take your own recollection of what the witnesses have said, and, if you find for the plaintiffs, you must, so far as possible, strike a fair amount.

30 The westerly road has not been vacated; that is, legally vacated. It is apparently there yet in the situation in which it has been. The plaintiffs in this case have not lost their fee to the present road, but their possessory right has been abridged by this public easement which has been created over that part of their land. At times a public road like that brings benefit. There has been no proof of any direct benefit from this road, and yet you may consider that a high road is there as a matter of ingress and egress, and probably will be there in the same condition for many years to come. In short, the plaintiffs, as I say, are entitled to what you find is the diminution in value of their property between what it was before this trespass took place and what it was after this road was constructed; and the plaintiffs, moreover, are entitled to interest at six per cent., from the date upon

40

Charge.

which you find that this trespass took place to the present time, on any amount which you may find, if you find for the plaintiffs.

The burden of proof is upon the plaintiffs to prove their case by the greater weight of evidence.

I am asked by the plaintiffs to charge three propositions.

The first request I refuse to charge.

The second request I charge: "A public road can become a road either through an actual survey and dedication, as provided by the statute, or it may be dedicated just as effectually by long use."

The third request I charge: "If you find that the plaintiff is entitled to damages, then you will calculate interest on such damages from the time of the taking of his property to date." That, perhaps, is a better way of expressing it than the way I expressed it—"from the time of the taking of his property to date."

(The jury retires.)

Mr. Jones: I except to that part of your Honor's charge in which you said that the plaintiffs have not lost their right to said street.

Exception noted as ground of appeal.

10

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40

Plaintiffs' Requests and Exception.

Plaintiffs' counsel requests the Court to charge the jury as follows:

10 (1) If you find that the county took some of the land of the plaintiffs, then the plaintiffs are entitled to compensation under the constitution and statute of this State, and compensation means in this case not only the value of the land actually taken, but all those consequential damages flowing from the taking of part of the land, such as injury to the remainder of the tract, the cost of connecting sidewalks, sewers or water mains, and putting the remainder of the premises in approximately the same condition as before the taking.

(Denied.)

20 Plaintiffs' counsel prays an exception to the refusal of the Court to charge as requested.

(Exception noted as ground of appeal.)

(2) A public road can become a road either through an actual survey and dedication, as provided by the statute, or it may be dedicated just as effectually by long use.

(Charged.)

30 (3) If you find that the plaintiff is entitled to damages, then you will calculate interest on such damages from the time of the taking of his property to date.

(Charged.)

Postea.

(Filed June 13, 1919.)

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

WILLIAM C. MOREY and MARY A.

MOREY, his wife,

Plaintiffs,

v.

COUNTY OF ESSEX,

Defendant.

Action
at Law.

10

This case was tried before Judge Worrall F. Mountain, with a jury, at the Essex Circuit, to whom the same was referred for trial by the Chief Justice, on May 22 and 23, 1919.

20

The jury rendered a general verdict against the defendant and in favor of the plaintiff for eight hundred and eighty-four (\$884.00) dollars.

WORRALL F. MOUNTAIN,

Circuit Court Judge.

30

40

(Filed June 13, 1919.)

WILLIAM C. MOREY and MARY A.

V.

Action
at Law.
On Postea.

20

On motion of

JONES & GLEESON,
Attorneys.

30

40

(Filed January 14, 1920.)

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

WILLIAM C. MOREY and MARY A.
MOREY,

Plaintiffs-Appellee, Action
v. at Law.

COUNTY OF ESSEX,
Defendant-Appellant.

10

Notice of Appeal and Grounds.

To Jones & Gleeson, Attorneys of Appellees:

Take Notice, that the appellant, County of Essex, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds:

20

First.—Because the Supreme Court refused to direct a verdict for the defendant at the close of the case.

Second.—Because the Supreme Court refused to rule that the cause of action had been outlawed, under the Statute of Limitations of this State.

30

Third.—Because the Supreme Court held as a matter of law that the Statute of Limitations had not run against this action.

Fourth.—Because the Court refused to hold that the trespass was a completed trespass more than six years before this action was brought.

Fifth.—Because the Court held that the trespass complained of was a continuous trespass.

40

Sixth.—Because the verdict was contrary to the weight of evidence.

Dated January 12, 1920.

HERBERT W. TAYLOR,
Attorney for Defendant.

10 CHARLES C. PILGRIM,
 Of Counsel.

20

30

40

Exhibit P-1.

WARRANTY DEED.

GEORGE F. SIMPSON, JR., and	}	Dated December 9,	
MINNETTE MARGUERITE		1910.	
SIMPSON, his wife,		Ack'd December 9,	10
		1910.	
TO	}	Rec'd Essex County	
		Register's Office	
		Dec. 12, 1910.	
WILLIAM C. MOREY and		Book D-48, pages	
MARY A. MOREY, his		542-545.	
wife.		Con. \$1. &c.	

Conveys property in the Borough of Verona,
Essex County, New Jersey. 20

FIRST TRACT.

Beginning at a point in the Westerly side of
Lakeside Avenue distant along the said Westerly
side one hundred and fifty-six feet and two hun-
dredths of a foot from the Northerly side of Hill-
side Avenue, said beginning point being the inter-
section of the Northerly side of land of the party 20
of the first part and the said Westerly side of Lake-
side Avenue; thence along the said Westerly side
of Lakeside Avenue South twenty-seven degrees
two minutes West fifty-five feet and twenty hun-
dredths of a foot to the Northerly side of lot No.
142 on map hereinafter mentioned; thence along
the said Northerly side of lot No. 142 North fifty-
seven degrees twenty minutes West one hundred
and fifty-four feet and thirty-eight hundredths of a 40

10 foot to the Easterly side of lot No. 140 on said map; thence North thirty-two degrees forty minutes East fifty-three feet to the Northerly line of land of the party of the first part; thence South fifty seven degrees fifty-three minutes East one hundred and fifty feet and eleven hundredths of a foot to the Westerly side of Lakeside Avenue and the point or place of beginning. Being lot No. 143 on "Amended Map showing property of Geo. F. Simpson, Jr., at Verona, N. J., surveyed and drawn by F. W. Crane, Town-Surveyor of Montclair, N. J., Sept. 21st, 1906," and filed in the Register's Office of Essex County, N. J., on the 26th day of September, 1906, under case 402. Be the said distances and area more or less.

Subject, however, to the following restrictions:

20

First. That there shall not be erected upon any portion of said premises, any house or dwelling less than two-story in height, not costing less than \$3,000. Said house or dwelling to be a detached house or dwelling.

Second. That there shall not be erected more than one house or dwelling on any one lot. (Width of said lot to be at least 50 ft. front.)

30

Third. That there shall not be erected any store for the sale of merchandise upon the above described premises.

40 Fourth. That all houses or dwellings shall stand at least 25 ft. back from the front line of the lot, for the purpose of forming courtyards, but this covenant shall not apply to piazzas covered or uncovered, stoops or bay windows, and that there

shall not be erected any stable or out-buildings within 80 ft. of the front line of the lot.

Fifth. That the party of the second part, his heirs and assigns, shall not nor will not, at any time or times hereafter, erect, permit, suffer or allow to be erected or carried on upon the above described premises, or any part thereof by any brewery, distillery, slaughter house, smith shop, 10
forge, furnace, steam engine, brass foundry, nail and iron factory, sugar bakery, or hog pen, or any soap, candle, oil, starch, varnish, vitriol, glue, ink, turpentine, lamp-black factory or factories or establishments for the tanning, dressing or preparing of skins, hides or leather, or the boiling of bones, nor the keeping, storing or maintaining of any fire engines, hose carriages or trucks, nor any dangerous, noxious, unwholesome or offensive establishment, trade, calling or business whatsoever. 20
Nor at any time or times, permit, suffer, or allow to be sold on the above described premises, or any part thereof, any intoxicating liquor, ale, wine or beer.

Sixth. It is further understood and agreed that the above covenants and restrictions shall have no further force or effect after the 1st day of January, 1912.

30

SECOND TRACT.

Beginning at a point in the Easterly side of Lakeside Avenue where the same is intersected by the Northerly boundary of lands of the party of the first part; thence South twenty-seven degrees two minutes West along the said Easterly side of Lakeside Avenue seventy-five feet; thence South fifty-seven degrees fifty-three minutes East parallel 40

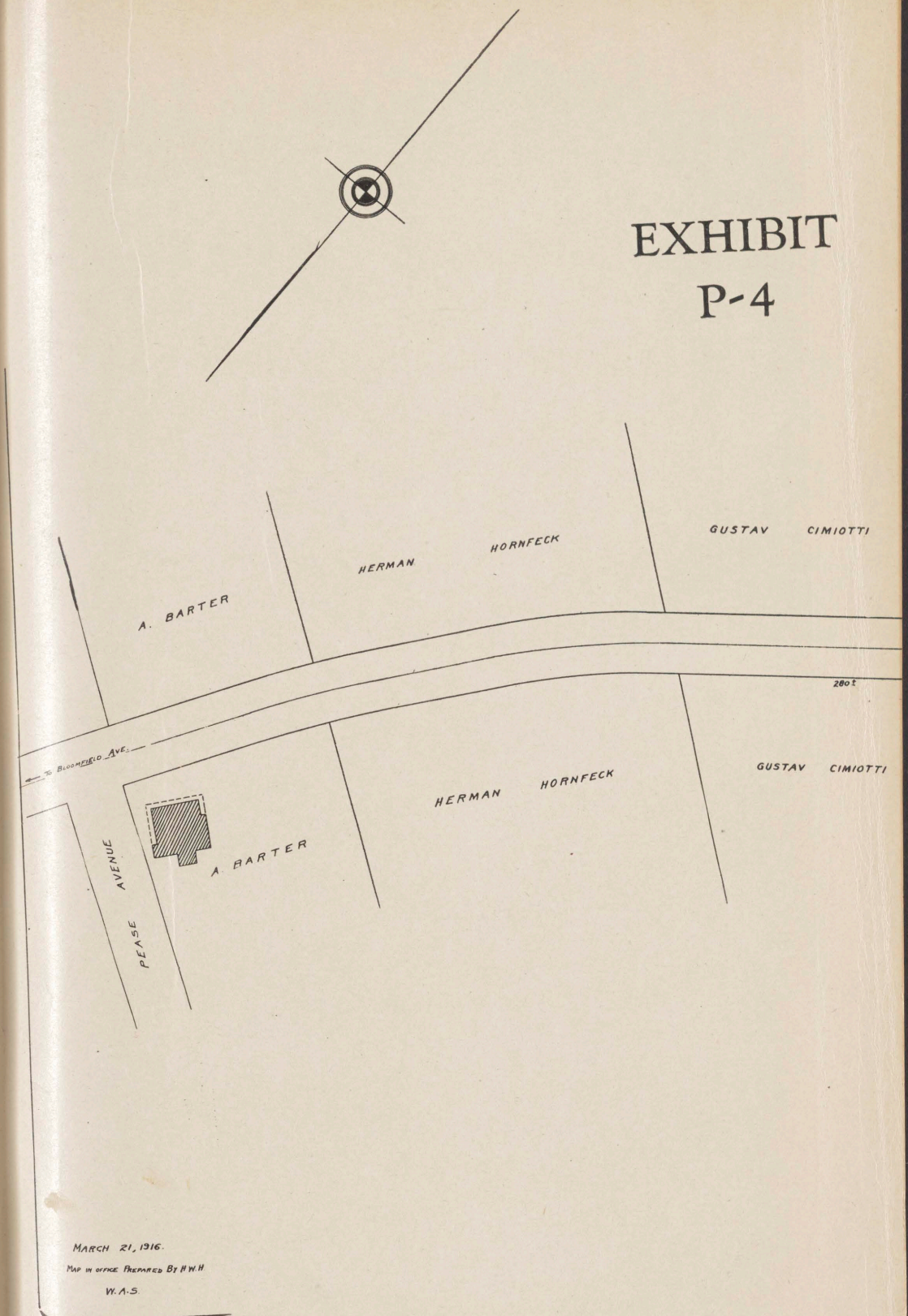
10 with the Northerly line of lands of the party of the first part six hundred and twenty-six feet more or less to the Easterly boundary of the lands of the party of the first part, the same being located in Verona Lake; thence North twenty-five degrees fifty minutes East along the said Easterly boundary of lands of the party of the first part to the Northerly boundary of said lands; thence North fifty-seven degrees fifty-three minutes West six hundred and twenty-six feet more or less to the Easterly side of Lakeside Avenue and the point or place of beginning.

20 Subject, however, to the occupation of the New York Telephone Company and their rights to erect poles and string wires if any such rights there be, and also subject to the same restrictions as the First Tract with the exception that the dwelling house which may be erected on the Second Tract shall cost not less than Three Thousand Dollars.

30

40

EXHIBIT P-4



MARCH 21, 1916.

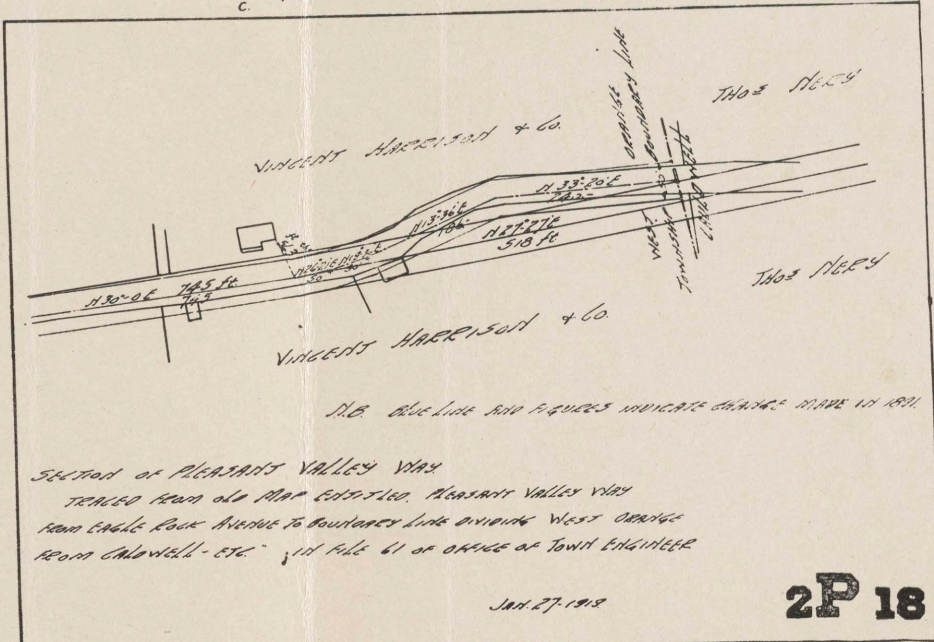
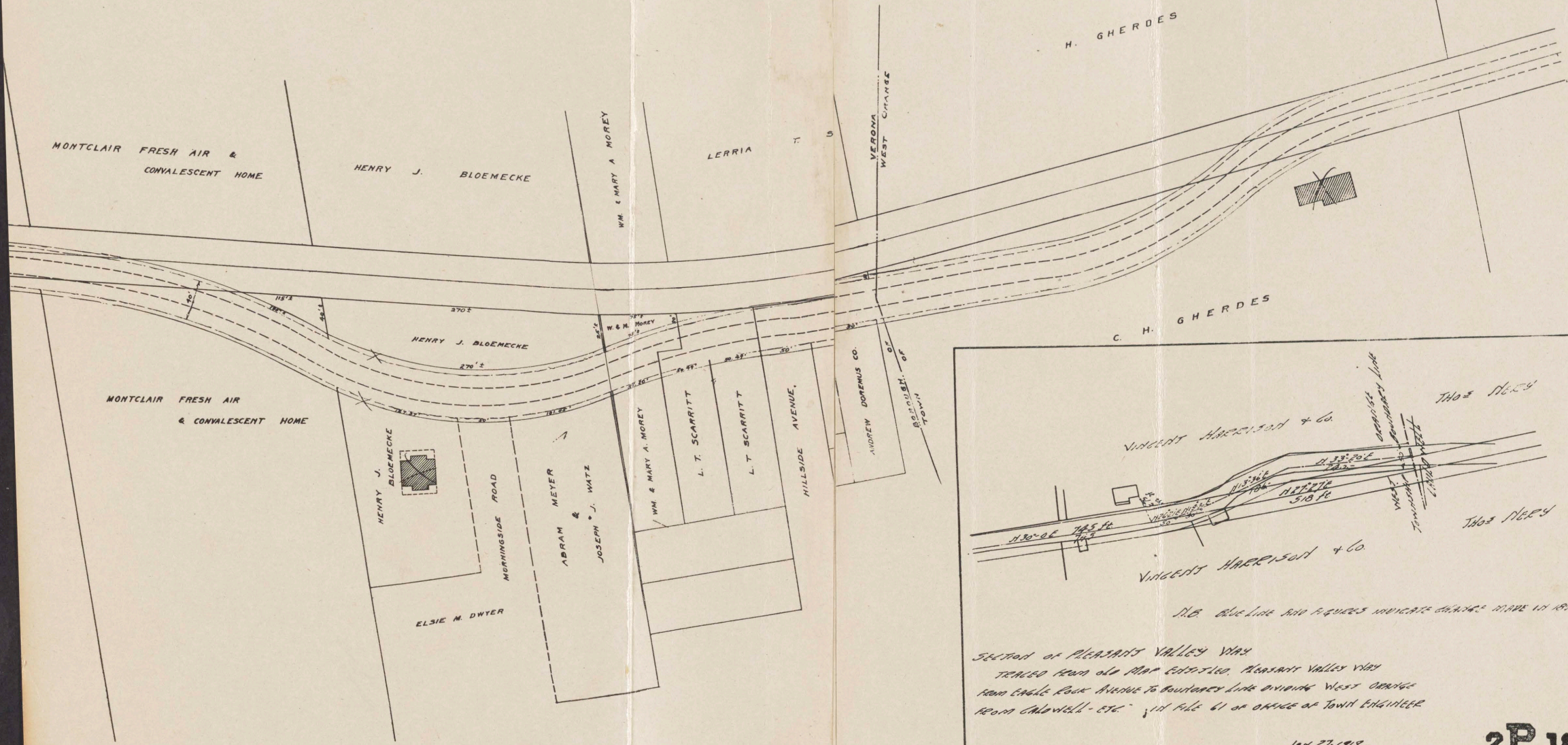
MAP IN OFFICE PREPARED BY H.W.H.

W.A.S.

(11)

150

MAP OF SECTION OF
Pleasant Valley Way
 IN THE
 BOROUGH OF VERONA
 TOWN OF WEST ORANGE
 ESSEX COUNTY N.J.
 SCALE 1 INCH = 50 FEET



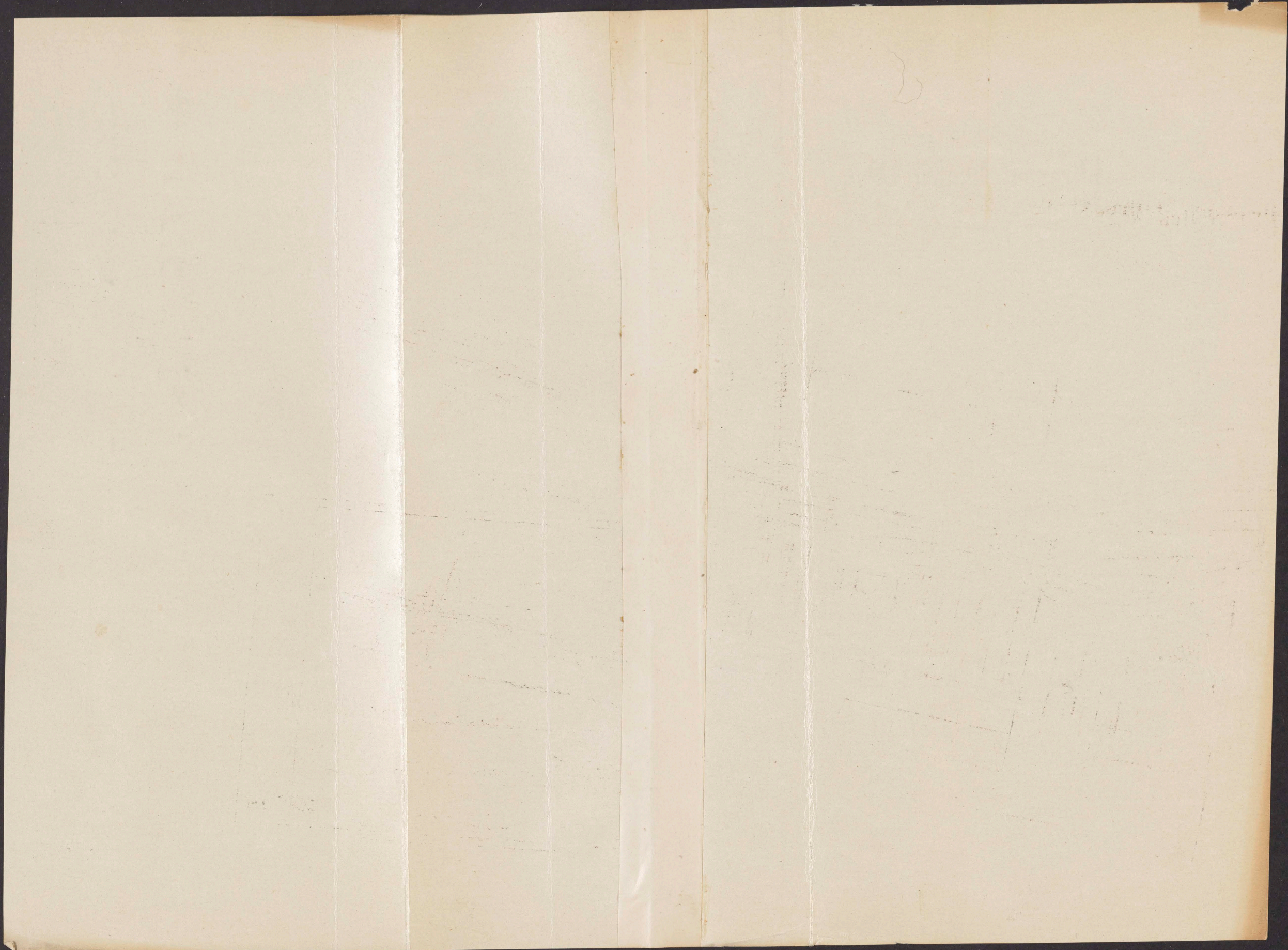
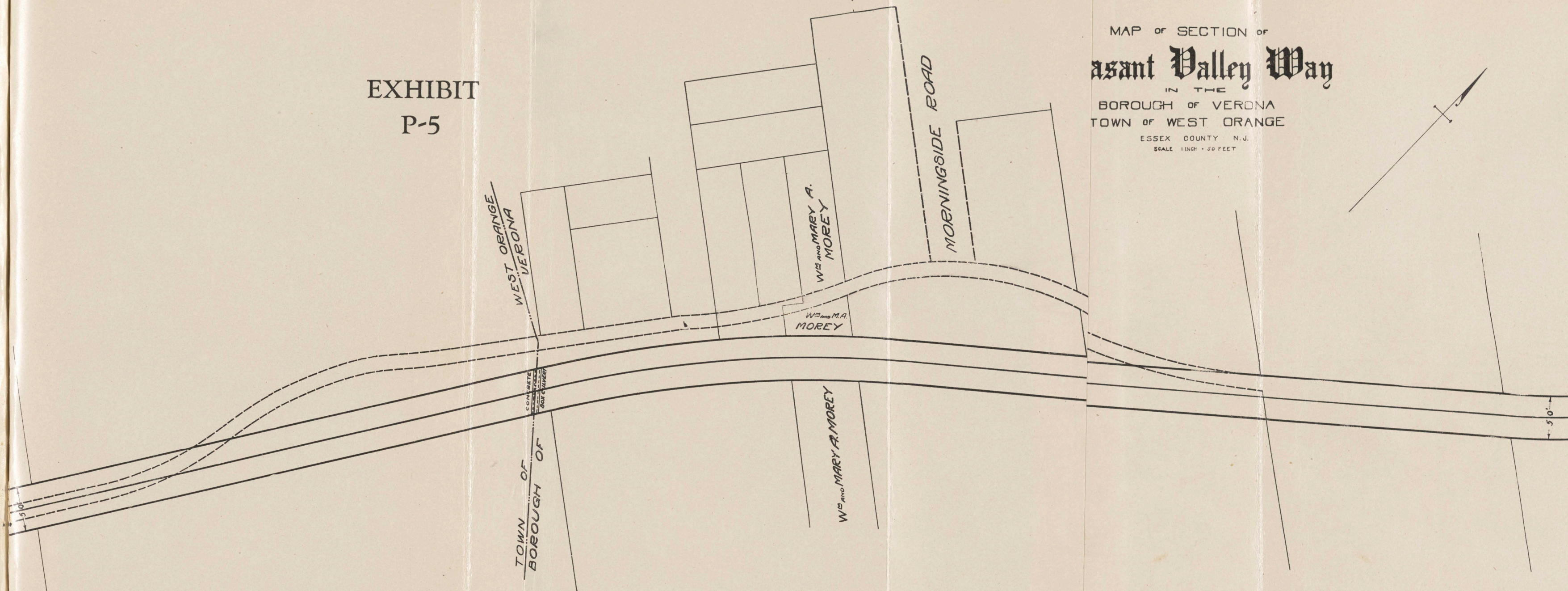
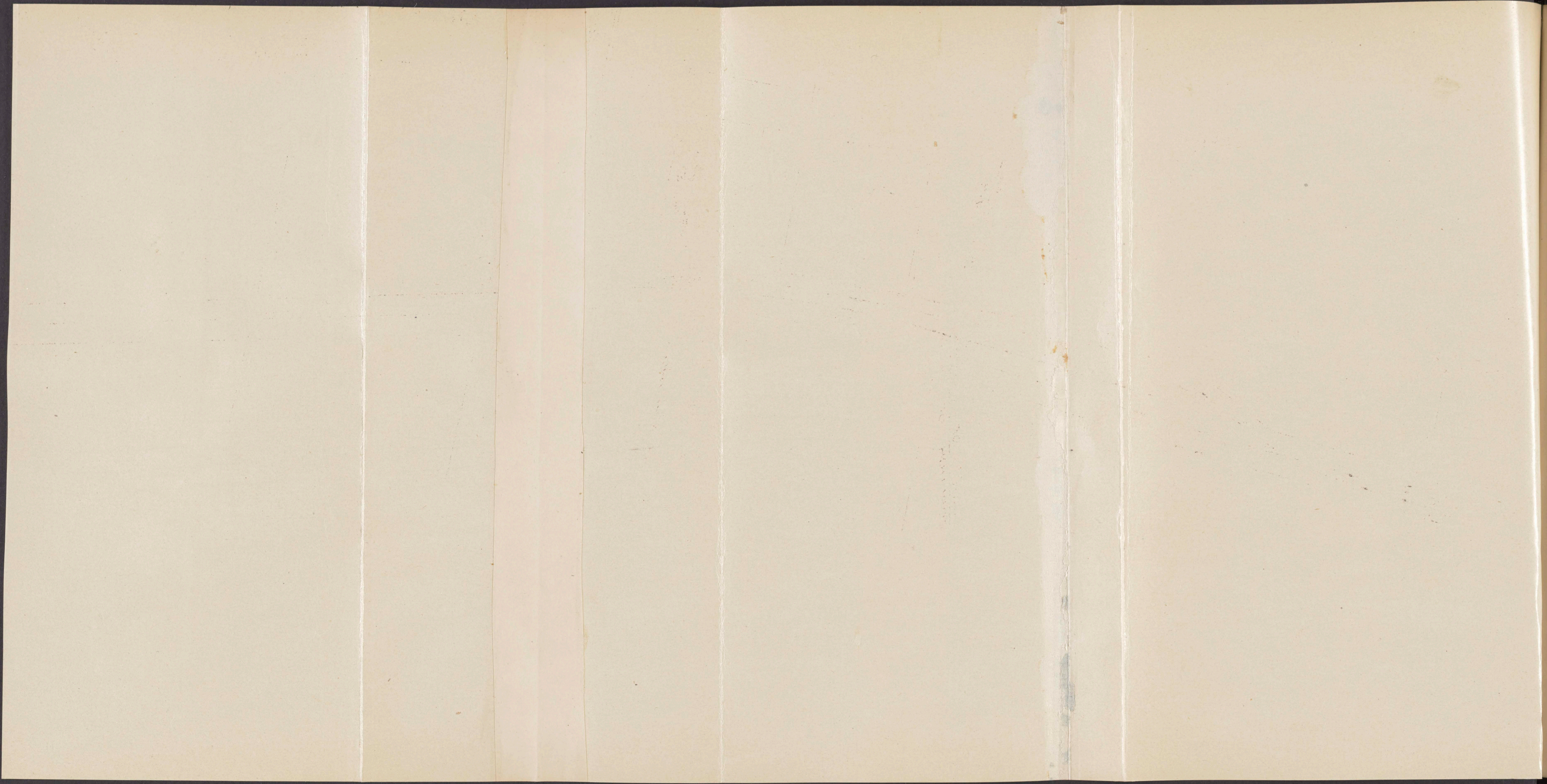


EXHIBIT
P-5

MAP OF SECTION OF
asant Valley Way
IN THE
BOROUGH OF VERONA
TOWN OF WEST ORANGE
ESSEX COUNTY N.J.
SCALE 1 INCH = 50 FEET





New Jersey Court of Errors and Appeals

WILLIAM C. MOREY and MARY A. MOREY,
Plaintiffs,

vs.

COUNTY OF ESSEX,

Defendant.

Action at Law.

On Appeal.

BRIEF FOR PLAINTIFFS.

Facts.

Plaintiffs, ever since December 9, 1910, had been owners of a tract of land on both sides of Lakeside avenue (formerly Pleasant Valley Way), Verona—the plot on the west side had a frontage of 55 feet on the street, and on this plot the plaintiff, Morey (a carpenter) erected for himself a house and garage. The plot on the east side had a frontage of 75 feet on Lakeside avenue, and runs east to Verona Lake. The old road on which defendant's house faced curved abruptly to the west about 515 feet north of the northerly line, and returned to the original line about 900 feet south of this house, thus forming an irregular arc (see Exhibit P. 5). Just prior to July, 1914, the defendant, so as to eliminate this curve, caused a straight road about 50 feet wide to be run through plaintiffs' land; this strip covered a plot of plaintiffs' land 75 feet long by 50 feet wide; much filling in had to be done, leaving an abrupt bank on each side, along which the county has placed a substantial fence. It is conceded that no consent was obtained from the owners, no legal proceedings were taken, and no compensation ever made.

The date when the road was put through is in dispute. The minutes of the defendant's road committee, however, show it was accepted July 22, 1914 (see case, p. 79, ll. 25 and 30). Final payment was ordered December 9, 1914 (see case, 79, pp. 39-40).

POINT 1.

The date when the road was completed being in dispute, the decision of the matter should be left to the jury.

The following are extracts of some of the testimony as to the time when the road was put through.

William C. Morey, testifying (see case, p. 13, ll. 29-30), says it was put through "about six years ago, five and one-half or six years, something like that." Keeping in mind he was testifying on May 22, 1919, that would make it May, 1913, when the road was put through.

On p. 23, ll. 25 to 35, Morey testifies as follows:

"Q Do you know when you began to build it? A I think it was about March.

Q What year? A 1911; and I was two years building it.

Q And it took you about two years to build the house? A Yes, sir.

Q So that would bring it up to about 1913, would it not? A I guess it would.

Q In the meantime had they begun work on this new road? A I think I had it about done when they came through; I don't know."

(It appears from previous testimony that plaintiff was a carpenter and was building the house for himself.)

Next comes the testimony of Mrs. Hornfek, an intelligent witness, who lives about five or six hundred feet north of Morey and has lived there for fifty years and had reason to remember when the road was changed (see case, p. 31, ll. 3 to 4).

"Q How long ago was it when they finished it? A Five years ago."

Again, on the same page, l. 25:

"Q About five years ago, you say the county changed this road and straightened it? A Yes."

Again, we have the testimony of Mrs. Barter, who it appears from the evidence lived closed to the Morey property, and had lived there ever since 1844; and also had reason for observing when the road was put through (see p. 35, ll. 23 to 26).

"Q When did you first know of the straight road? A When the county put it here.

Q And when was that? A Five or six years ago."

Frank Crane, the Borough Engineer, of the Borough of Verona, where this property is located, and certainly a trained observer, says (case, p. 40, l. 34, and p. 41, ll. 1 to 4).

"Q And when did you first know about this new road?

A I knew that they were building a road across there, I

think, in about 1914. I was called upon by Mr. Simpson after the road was finished—I knew they were doing it before that, but after the road was finished I was called upon by Mr. Simpson to make a survey and show the line of the new road with reference to the line of the old road.”

Again, we have the testimony of Carl Mau, Mayor of the Borough of Verona, at the time this road was straightened, says (p. 40, l. 30) that the new road was not there previous to five or six years ago. He was, of course, testifying May 22, 1919.

(Case, p. 79, ll. 20 to 30), and case, p. 79, ll. 39 to 41.) We have the record of the minutes of the Essex County Road Board which were produced by the defendant, and they indicate that this road was accepted July 22, 1914, and on December 9, 1914, the contractor was recommended to receive his final payment.

As against all of this, we have the testimony of Mr. Reimer, the County Engineer—certainly, a very interested party—head of the department, who, it is contended, blundered. On p. 82, l. 28, he testified that he set the final stakes July 16, 1912, and that the road in front of plaintiffs’ house was finished in the “fall of 1912” (see case, p. 83, ll. 38 to 40). Mr. Reimer produced no records or field notes, but testified from memory, the same as the other witnesses. Moreover, the fall of 1912 would extend to *December 20, 1912*. Summons in this case was issued *December 9, 1918*, well within six years.

As against this person’s word, we have the record of the minutes that the road was actually accepted July 4, 1914, and the contractors ordered paid December 9, 1914. Is it possible that it was over two years after the completion that they paid the contractors or accepted the road? Isn’t it barely possible that when six witnesses, five of whom are wholly disinterested, and all in a position to know and likely to observe, testified that the road was put through at latest “six years ago” (that is May, 1913), that the jury might have the right to pass on this question of fact and to determine whose memory was dependable.

It is not true, as defendant’s counsel contends in his brief, that the county exercised absolute dominion over the road not later than July 16, 1912. Even if that date were correct, the setting of the stakes did not complete the work, or damage or taking. Equally misleading is the statement in counsel’s brief (p. 5, ll. 20 to 26), that it was agreed that final grade stakes were set July 16, 1912. A reading of the case (case, p. 97) will show that none agreed to it but defendant’s counsel.

POINT 2.

The Statute of Limitations was not pleaded within the time limited by law.

The Trial Court had before it the records showing when the answer was due, and when it was filed, and showing that it was filed almost a month out of time. This the defendant admits, but contends that the plaintiffs cannot take advantage of it because he went to trial without striking out that defense.

In the case of *West Hoboken v. Syms*, 20 Vroom, p. 546— (a case where the statute of limitations had not been pleaded within the time allowed by law, and it was sought to amend for the purpose of setting it up), the Court said that, "The Statute of Limitations is a strict defense, and if the party lets it slip, the Court ought not to relieve him." In that case the Court put the Statute of Limitations on a par with pleading usury. Because it puts it in a class with usury the following cases are applicable:

Collard v. Smith, 2 Beasley, p. 43, states, that the Court will not extend the time for answering, for the purpose of admitting the defense of usury, and even if counsel extended the time for answering, this extension would not permit setting up usury.

See *Young v. Clarkville Manufacturing Co.*, 12 C. E. Green, p. 67, at the middle of p. 69; it appears that the defendants in this case answered out of time, and one of the defenses set up was usury. The usury plea was stricken out and the rest allowed to remain.

In the case at bar the answer setting up the Statute of Limitations was filed a month out of time, and no consent was given or order of the Court obtained.

POINT 3.

This was a continuous trespass, and there is no limitation to an action based upon a continuous trespass, short of the prescriptive period of twenty years, when a grant will be presumed.

The placing of the stakes, as defendant's counsel seems to contend, did not complete the trespass, the original entering upon the property being unlawful; there was a continuous trespass on his property and has been ever since they entered it up to the present day. The county will continue to be a trespasser until by

the lapse of twenty years it obtains a prescriptive right to the easement over plaintiffs' land.

This principal is well set forth in 36 L. R. A. (N. S.), (p. 835), quoting the case of *Knox v. Metropolitan Elevated Railroad Co.*, 58 Hun., p. 57. Affirmed in 128 N. Y., p. 625.

In *Hamilton v. Manhattan Railroad Co.*, 9 N. Y., Supplement, p. 313, it was said that the cause of action in a continuing tort accrued fresh from day to day, so that the Statute of Limitations begins to run each day against that day's damage.

POINT 4.

The present action is founded on a statute requiring payment of damages to land owners and the first section of the Statute of Limitations is inapplicable.

The county, so it is contended, straightened and widened this road by virtue of Chapter 94 of the Laws of 1905 (see case, p. 81, ll. 10 to 11). That act provides for compensation for land taken from the abutting owners.

In the case of *Mayor, etc., of Jersey City v. George H. Sackett, et al.*, 44 N. J. L., p. 429, Chief Justice Beasley, speaking for the Court of Errors, said:

"The first defense set up to this claim is that it accrued more than six years before the inception of the suit and was, therefore, barred by the Statute of Limitations. The view upon which the case at the Circuit was decided adversely to this position was that the action was not founded on a contract, express or implied, but on the statute requiring payment for damages done to the landowner in the appropriation of his property to the public use, and that, consequently, the provision of the statute which was invoked was inapplicable. This interpretation coincides in all respects with the decision of the Supreme Court, promulgated at its last term in the case of *Cowenhoven v. Freeholders* (ante, p. 232), and in that interpretation this court concurs."

(See also *Cowenhoven v. Freeholders*, 44 Law, p. 232.) In *Lehigh Valley Railroad v. McFarlan*, 43 N. J. L., p. 606. This was a case of the owner of a mill on Rockaway River injured by the dam of the defendant causing the water to back up—ordinarily a trespass.

In the statute allowing the Canal Co. to take possession of land necessary for its uses, a provision is made for compensation (just as a provision is made in the case bar for public streets). It was contended that the plaintiff was barred by the first section of the Statute of Limitations. Justice Depue, speaking for the Court of Errors, says, at p. 614:

“For the property being taken when it is appropriated by the company to its use, the extent of the injury will not depend upon the method adopted to determine the compensation due the owner of it. It will also follow from the substitution of an action by the owner for proceedings to appraise by commissioners, that the owner’s action for compensation will not be barred by the Statute of Limitations, as ordinary actions of trespass or for debts are barred. He may proceed to have his damages appraised by action at any time before a right or title to the property has been acquired by adverse user or possession. Nor will his claim for damages be subject to a presumption of payment, such as is sometimes applied to debts, for until his damages are ascertained by action or by the award of commissioners, there is no debt to which a presumption of payment can apply.”

The first section of the Statute of Limitations was again set up in *McFarlan v. Morris Canal & Banking Co.*, 44 Law, p. 472, and the above case follows.

POINT 5.

The verdict, however, should be sustained on the broader ground that this was an actual taking of property.

A verdict will not be upset, if within the pleadings, if it is supportable upon any theory.

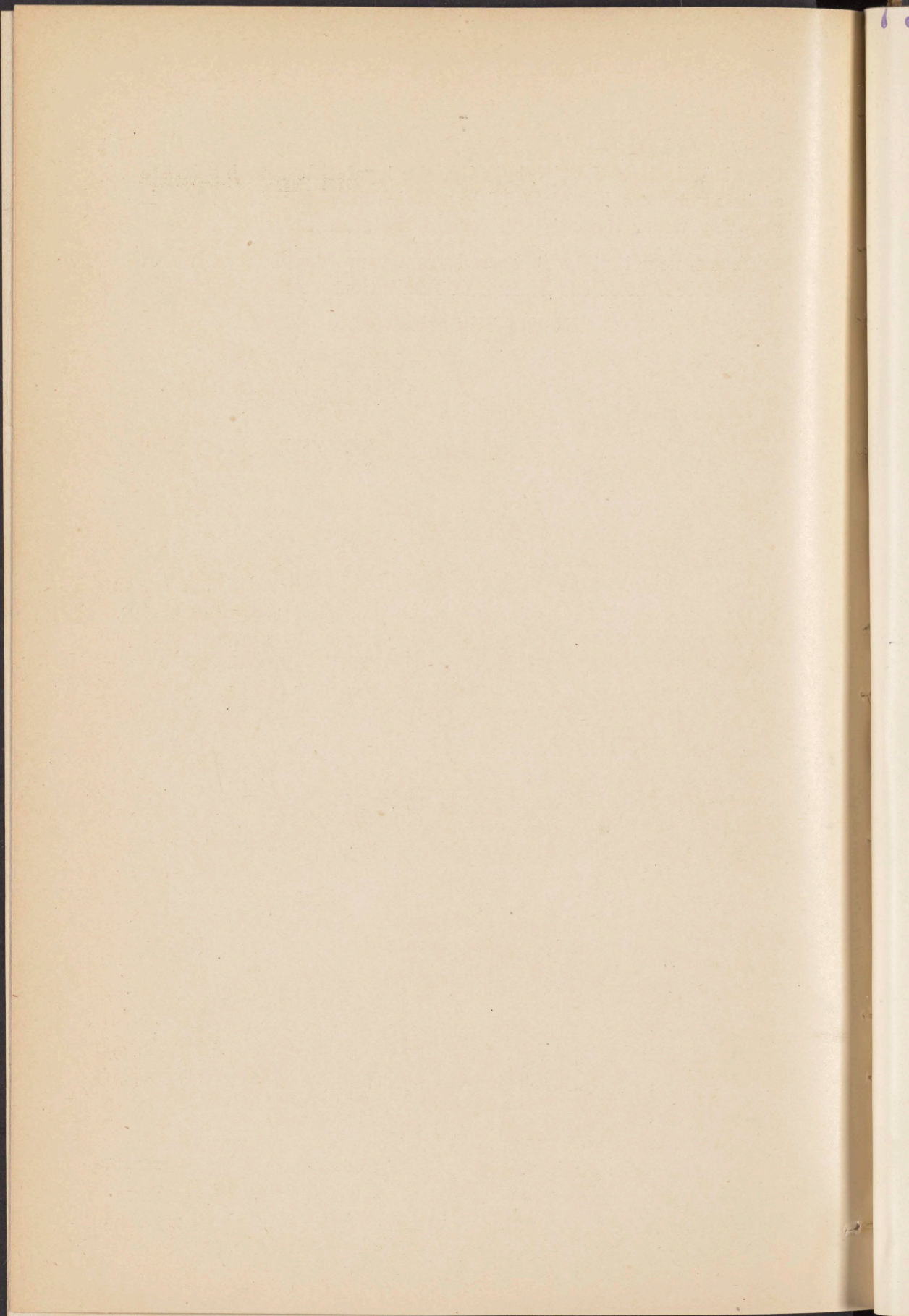
Plaintiffs’ counsel feels that the verdict should be sustained on broader grounds, and the complaint was drawn on broader grounds. Here is the position of plaintiffs: They are the owners in fee simple of a large plot of ground well located on a street; defendant, without even an attempt to comply with the law, comes along and takes away a plot 75 feet long and 50 feet wide, and leaves an unused but unvacated street between his house and the new road; and an unsightly hollow on each side. This plot is *actually taken* for public use without compensation; al-

though it is true that, technically, the legal title remains in the adjacent owners his *right to possession* is gone; that right is *property* under the constitution and the statutes.

To say now that he is barred from compensation because of the first section of the Statute of Limitations seems absurd.

Respectfully submitted,

CHARLES JONES,
Of Counsel for Plaintiffs.



New Jersey Court of Errors and Appeals

WILLIAM C. MOREY and MARY

A. MOREY,

Plaintiffs, Appellees,

vs.

COUNTY OF ESSEX,

Defendant, Appellant.

Action at Law.

On Appeal.

10

BRIEF FOR DEFENDANT.

A summary of the facts leading up to the argument in this case is as follows:

20

On March 11, 1909, the Essex Board of Freeholders determined that Lakeside Avenue (otherwise known as Pleasant Valley Way), in the Borough of Verona, should be paved (see printed case, pp. 74-75).

Such proceedings were had that at a meeting of the Board on September 8, 1910, the contract was awarded for the work (p. 76, LL. 30-39).

30

The plaintiffs were the owners of two tracts of land lying on the westerly and easterly sides of the road in question. The tract on the west side had a frontage of about fifty-five feet and a depth of about one hundred and fifty feet; the tracts on the easterly side had a frontage of seventy-five feet and a depth of about six hundred feet.

40

Lakeside Avenue (or Pleasant Valley Way), according to the complaint, about five hundred and fifty feet north of the plaintiffs' northerly line, curved to the west, returning to what would be a direct line about nine hundred feet south of the plaintiffs' northerly line (p. 4, L. 10, *et seq.*).

- 10 The plaintiffs' house was located on the westerly tract, and was built about 1911-1912. (See pp. 10-11.)

The plaintiffs' claim that the house on the westerly side was located along the curve of Lakeside Avenue, which has just been mentioned. (See p. 11, L. 33.)

- 20 When the new pavement was being prepared the engineers eliminated the curve or curves made by the westerly sweep of the avenue and constructed a new highway a little to the east thereof, so that the new road, when laid in front of the plaintiffs' property, was a little to the east. (See p. 82, L. 13; p. 95, L. 13.)

- 30 The plaintiffs claim that the old curve to the west was an established road, and that by shifting the road to the east a substantial amount of their property was taken by trespass. There is some dispute in the case as to the exact location of the old curved road, but with that we are hardly concerned in this argument, as the application for the rule to show cause is based upon a theory which for the purpose of argument, may ignore this disputed fact.

- 40 It is undisputed that either an old or new road was paved in front of the plaintiffs' premises. It becomes important for this motion to ascertain when the trespass, if any there was, took place

William C. Morey, plaintiff, testified to a "change in front of or near" his property "about six years or five and a half or six, something like that," before. He was then testifying on May 22, 1919. (See p. 13, L. 29.) At another place he speaks of beginning his house in March, 1911, consuming two years in the work, bringing him to about 1913, and that he had his house about done when the new road came through. (See page 23, LL. 25-35.) 10

The deposition of Anna Hornfeck was read into the case at the trial on May 22, 1919. She testified that the new road was finished "five years ago." (See page 31, LL. 3-4.) She testifies to the same effect, on the same page, at line 25.

The deposition of Mrs. Barter was likewise read into the case, and she testified that the "straight road" was first put in "five or six years ago." She is speaking, certainly on May 22, 1919. (See p. 35, LL. 22-24.) 20

When we come to the defendant's case we have the first definite evidence of the beginning of the work of building the road, in other words, the trespass. Mr. Frederick A. Reimer, whose testimony begins (at p. 80), was Assistant County Engineer for Essex in 1912. He is asked (p. 80, L. 34): 30

"Q. Will you tell the Court and jury when that work began and what you did as County Engineer?

"A. You refer to the particular portion in question?

"Q. In front of Mr. Morey's property, yes.

"A. In April, 1912." 40

(At p. 81):

"Q. And what did you do?

"A. I ran the line of survey and took the necessary levels and set the stakes for the grading of the road and gave instructions to the contractor to

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proceed along the line which I set for him."

(Same page, L. 36):

"Q. Now, will you describe what you did in laying out that road?

"A. At the time of the letting of the contract I proceeded with the contract. Mr. Doriety, who was the contractor, called upon me for
20 stakes in this immediate vicinity, and I gave him a line, represented here on the map, running through what I considered at that time and what was a swampy piece of land. . . . The line was laid down along the line as showed here on the map, connecting the straight portion of the road to the south, in the Town of West Orange, which was already laid out by West Orange 50 feet wide, with the straight portion of the road to the north of the irregular route shown on the map, running
30 down to Bloomfield Avenue, 50 feet wide.

"Q. Can you fix the date when you placed these stakes?

"A. The finished grade stakes I can fix exactly. The preliminary work was done without grade, except for a general line, because there was a great deal of fill put in there and stakes would be required,
40 and so I instructed the contractor to continue until

be got nearly to grade, and then I set the final stakes, which was July 16, 1912.

"Q. I am now referring to the road directly in front of Mr. Morey's.

"A. Yes."

It thus appears that the County, taking the plaintiffs' story of a trespass upon their land, entered upon the land, staked it out, filled it in, and exercised absolute dominion over it not later than July 16, 1912.

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Mr. Reimer also states at the bottom of page 83 that the road immediately in front of Mr. Morey's property was finished "in the Fall of 1912."

When the defendant made its application for the direction of a verdict in its favor, the date when the County took possession came up for question between counsel and the Court at page 97, and it was agreed then that the final grade stakes were set on July 16, 1912.

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The plaintiffs' complaint was filed December 18, 1918.

The defendant, on February 7, 1919, filed its answer setting up the statute of limitations. Although the plaintiffs' attorney, at page 97, undertook to eliminate this pleading, the Court refused to listen to him, and quite properly, because he had gone to trial with the pleading on file setting up this defence, and had taken no move against it.

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Our statute of limitations provides "that all actions of trespass, quare clausum fregit," etc., "shall 40

be commenced and sued within six years next after the cause of such actions shall have accrued, and not after." (See Comp. Stat. Vol. 3, p. 3162.)

I.

10 The first question is, What is the exact form of the plaintiffs' action?

"Every unwarrantable entry on another's soil the law entitles a trespass *by breaking his close*: the words of the writ of trespass commanding the defendant to show cause *quare clausum querentis fregit*." Bl. Com. Bk. III, p. *209.

20 "TRESPASS QUARE CLAUSUM FREGIT (Lat. *quare clausum fregit*), because he had broken the close. The form of action which lies to recover damages for injuries to the realty consequent upon the entry without right upon the plaintiff's land." 2 Bouv. L. Dict. (Rawle Ed. 1897), p. 1139.

This was the form of action in the case of Starr v. Camden & Atlantic Railroad Co., 24 N. J. L. p. 592.

The same form of action was used in Hetfield v. Central Railroad Company, 29 N. J. L. p. 571.

30 It is important to understand the real character of the plaintiffs' action in this case, because their counsel evidently misconceived it from what he said at the trial (page 97) and also from what the trial Court said about it (at page 99) during the argument, and in its charge to the jury beginning at page 101.

40 If the action was *quare clausum fregit*, then it clearly may be subject to the first section of our

Statute of Limitations. The question of when the trespass sued on took place had become important in the trial, and should have figured not only in the decision on the application for a direction of a verdict, but in the charge of the Court to the jury; but the Court misconceived the character of the trespass, as will be hereinafter discussed.

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II.

The trial court erred in holding that the trespass was continuous.

(At pp. 96-101) will be found a discussion between the Court and counsel on the motion to direct a verdict upon the ground that the action had not been commenced within six years after the trespass had occurred. (At p. 99) the controlling idea of the Court is expressed, and it is to the effect that the trespass was continuous, and had been a trespass from the very beginning down to the commencement of the suit. The motion was therefore denied and exception was taken.

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The trespass was not what is known as continuous.

"In trespass of a permanent nature, where the injury is continually renewed, (as by spoiling or consuming the herbage with the defendant's cattle), the declaration may allege the injury to have been committed by *continuation* from one given day to another (which is called laying the action with a *continuando*: by continuation), and the plaintiff shall not be compelled to bring separate actions for every day's separate offence. But where the trespass is by one or several acts, each of which terminates in itself, and being once done can not be done

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again, it can not be laid with a *continuando*; yet if there be repeated acts of trespass committed, (as cutting down a certain number of trees), they may be laid to be done, not continually, but at divers days and times within a given period."

Bl. Com. Book III., p. *212.

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Before further discussing the law upon this subject it should be stated that no decision by the Courts of New Jersey has been found which decides the particular point in question here, namely: what constitutes a complete trespass, as in a case like this?

The following cases, however, will indicate what constitutes a continuous trespass:

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The first case is Delaware & Raritan Canal Co. v. Wright (1848) 21 N. J. L. p. 469. The report of this case is rather meagre, but from it may be gleaned the following facts: the defendant had erected a culvert, which so narrowed the flow of water in times of freshet as to overflow the lands of the plaintiff. The culvert was erected in 1833. The suit was commenced in 1845. The defendant sought to interpose the Statute of Limitations. The decision in the Supreme Court correctly decided that in that case the damage was continuous or periodic; that is to say, the trespass was not completed when the culvert was erected; there were consequent separate and distinct offences or trespasses to the injury of the plaintiff, that sued on having occurred within six years before December, 1845.

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The Court says (at p. 470) "the act being lawful, and the action being sustained only in consequence of special damage, it has been held, that in

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such cases, the statute only begins to run from the time when the consequential injury occurred, and not from the time of doing the act which gave occasion to the consequential injury."

The next case is Delaware & Raritan Canal Company v. Lee (1849), 22 N. J. L. p. 243.

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Here, as in the last-cited case, the injuries resulted from a nuisance, namely: the defective construction of a culvert by the defendant, the capacity of which was not sufficient to let the water through without causing a backing-up upon plaintiff's land.

(At page 251) the Court says: "The Statute of Limitations is no bar. The erection was made in 1833. The action was commenced in 1848. . . . The action is not brought for the erection of the culvert, but for the injury resulting from the overflow of water. It is a continuing nuisance, for which it is well settled that a plaintiff may receive damages for a period not exceeding six years, though the obstruction which occasioned the injury is of much longer continuance."

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Another case is Church of Holy Communion v. Paterson, etc., R. R. Co. (1901), 66 N. J. L. p. 218.

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From the head-note the facts amply appear: the Railroad Company had established its road near the church in 1881, and had been obliged to make an excavation, which left a side of the church foundation exposed. Between 1881 and 1891, the latter date being the time when the last suit was started, there had been several distinct and separate occasions of damage to the church, most of which had been settled for by the railroad. In 1887 the south wall of the church had settled considerably, and

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there was other damage. It was for this condition which arose in 1887 that the suit was started in 1891.

10 It will be seen that in this case, as in the other New Jersey cases cited, the original act had been lawful. The damages sued for had not occurred, nor were they anticipated, until long after the original erection was made.

And so the Court (at p. 226) very properly says:

20 "No action could have been maintained by the plaintiff to recover damages by reason of its (the wall's) defective construction until damage actually occurred. For neither negligence, nor fraud, nor other wrong or immoral conduct or intent, will give rise to a cause of action unless it has resulted in illegal damage. I. Encycl. L. & Pro. 667. It is a fundamental principle of law, applicable alike to breaches of contract and to torts, that, in order to found a right of action, there must be a wrongful act done and a loss resulting from that wrongful act. Warwick v. Hutchinson, 16 Vroom, p. 61. The injuries sustained by reason of the defective construction of the wall, as it was located, was a continuing injury. It is quite clear that if a suit had
30 been brought in 1882, the plaintiffs could not have recovered in such a suit for the damages which would be sustained in 1887. It would have been impossible at that time to have anticipated the future deterioration in the wall and the damages arising therefrom, and to have made an estimate of the amount thereof as the basis of computation. Compensation in such a suit must be sought after the damages are sustained. Brewster v. Sussex Railroad Company, 11 Id. 57. In such cases the cause
40 of action depends upon the actual damage and the

statute of limitations begins to run from the time when such damage is sustained."

These cases are illustrative of what constitutes continuous trespass; or periodic damage arising out of an original legal or illegal act.

There are many decisions in the books from other jurisdictions on this question as to what constitutes a completed trespass; that is a trespass which, when committed, constitutes a complete cause of action in which all conceivable damages may be estimated. 10

"Damages for all the injury to the land which result from a single act of trespass to realty are recoverable in a single action."

38 Cyc. (Trespass) p. 1127. 20

"But if the act of which the injury is the natural sequence is in itself a legal injury to plaintiff, a completed wrong, the cause of action accrues and the statute begins to run from the time the act is committed, be the actual damage however slight, and the statute will operate to bar a recovery not only for the present damages but for damages developing subsequently and not ascertainable at the time of the wrong done." 30

25 Cyc. (Lim. of Act.) p. 1136.

"It is well settled, however, that where the case is such that all damages, both past and future, can be presently estimated and recovered in one action, successive actions can not be brought for recurring or continuing damages, and that the statute runs from the time the original cause of action accrues, which may be the time the act causing the damage 40

is committed or the time when consequential damage is sustained, according to whether the act is or is not an invasion of plaintiff's legal rights." 25 Cyc. (Lim. of Act.) p. 1139.

Many cases are cited in support of the foregoing text.

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The case of *Gulf, Colorado & Santa Fe Railway Company v. Nannie T. Moseley* (1908) 20 L. R. A. (N. S.) p. 885; 161 Fed. p. 72, contains a decision with copious notes bearing upon the point in question.

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The main point that is here pressed, and which may be found in the last cited case, and notes, is this: When the trespass is of such a nature that all damage, present and future, can be estimated in one suit, the Statute of Limitations begins to run.

"The Statute of Limitations begins to run from the time when a complete cause of action accrues, that is, when a suit may be maintained, and not until that time." 25 Cyc. (Lim. of Act.) p. 1065.

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"The accrual of the cause of action' means the right to institute and maintain a suit; and whenever one person may sue another a cause of action has accrued and the statute begins to run." 25 Cyc. (Lim. of Act.) p. 1066.

"The true test, therefore, to determine when a cause of action has accrued is to ascertain the time when the plaintiff could first have maintained his action to a successful result." 25 Cyc. (Lim. of Act.) p. 1067.

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Citing *Frenc v. Higgins*, 66 N. J. L. p. 579.

Larason v. Lambert, 12 N. J. L. p. 247.

Culver v. Culver, 31 N. J. L. p. 448.

The Court in this case should, therefore, have directed a verdict for the defendant for the following reasons:

(1) The original trespass had occurred and become complete in the Fall of 1912, the suit not having been started until December, 1918.

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(2) The trespass, consisting of entry upon the plaintiffs' land, appropriating it to the use of the defendant, commenced by staking out and completing a new road in the Summer and Fall of 1912, constituted a trespass that was complete, could not be continuous, for which every item of damage could be completely estimated at that time, and from that time, that is certainly the Fall of 1912, if not July of the same year, our Statute of Limitations began to run against the plaintiffs, and in December, 1918, it had become a bar to their action.

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The case was presented to the jury upon a mistaken view of the law. This mistake destroyed the vital part of the defense, namely, the right under the Statute of Limitations.

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Under these circumstances the judgment was illegal.

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