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24021

WRIT OF CERTIORARI.

NEW JERSEY, to wit:

THE STATE OF NEW JERSEY TO THE BOROUGH OF NEWFIELD, GREETING:

We being willing for certain reasons appearing by the affidavit of Philip F. (Seal) Holeton, filed in this cause to be certified of a certain ordinance passed by the Mayor and Council of the Borough of Newfield, in the County of Gloucester and State of New Jersey, on the 19th day of September, 1927, entitled, "An Ordinance for the vacation and relinquishing of the public rights in and to a portion of a certain street known as Helena Street, in the Borough of Newfield, County of Gloucester and State of New Jersey,"

We do command you that the aforesaid Ordinance passed by the Common Council of the Borough of Newfield on the 19th day of September aforesaid with the records of the meeting of the said council at which the said ordinance was introduced and passed, together with all things touching and concerning the passing, approving and enacting the said ordinance, as fully and entirely as before you they remain to our Justices of the Supreme Court of Judicature, at Trenton, on the 25th day of October next.

You certify and send, together with this writ, that therein may be done what of right and according to the laws and Constitution of this State ought to be done.

Witness, His Honor, WILLIAM S. GUMMERE, Chief Justice of the Supreme Court, at Trenton, New Jersey, this 7th day of October, A. D. 1927.

EDWARD J. KELLEHER,

HERBERT C. BARTLETT,  
*Attorney.*

*Clerk.*

[ENDORSED]

This writ allowed. Let it be sealed.  
 Frank Katzenbach, J.

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## RETURN TO WRIT.

10 NEW JERSEY SUPREME COURT.

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PHILIP F. HOLETON,	}	On Certiorari.
<i>Prosecutor,</i>		
v.		
BOROUGH OF NEWFIELD,	}	Return to Writ.
<i>Respondent.</i>		

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I, CHARLES R. KILLE, Borough Clerk of the Borough of Newfield, do herewith send to the Supreme Court of the State of New Jersey the ordinance with records of the meeting of the borough council at which said ordinance was introduced and passed, which said ordinance is entitled, "An ordinance for the vacation and relinquishing of the public rights in and to a portion of a certain street known as Helena Street, in the Borough of Newfield, County of Gloucester and State of New Jersey," together with all papers and things touching and concerning the same, as by the writ of certiorari sealed the seventh day of October, nineteen hundred and twenty-seven, before the Honorable William S. Gummere, Chief Justice of the Supreme

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Court, the said Borough of Newfield is commanded to do.

I certify that I am the borough clerk of the Borough of Newfield, in the County of Gloucester and State of New Jersey, and that annexed hereto are true copies of the ordinance above referred to, together with all things touching and concerning the passing, approving and enacting said ordinance, and that together they constitute the entire record of the proceedings in the introduction, consideration and passage of the ordinance aforesaid. 10

Signed this eighteenth day of October, A. D. 1927, and sealed with the seal of the Borough of Newfield, in the County of Gloucester.

CHARLES R. KILLE,  
*Borough Clerk.*

(Seal)

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AN ORDINANCE.

20

An Ordinance for the vacation and relinquishing of the public rights in and to a portion of a certain street known as Helena Street, in the Borough of Newfield, County of Gloucester and State of New Jersey.

BE IT ORDAINED, by the Mayor and Council of the Borough of Newfield, in the County of Gloucester, and State of New Jersey:

1. All that certain street, and the land lying within the bounds thereof, between the right of way of the West Jersey & Seashore Railroad Company, and a line extending at right angles to the sideline of said street, from the Westerly line of Church Street, to the Northeasterly line of Helena Street, is hereby vacated and the public rights in said portion of Helena Street, and the land con- 30

tained within the bounds thereof, as heretofore mentioned, are hereby relinquished.

2. This ordinance shall take effect upon its publication as provided by law.

Introduced at a regular meeting of the Borough Council of the Borough of Newfield, held September 6th, 1927, and finally passed at a regular meeting held September 19th, 1927.

C. R. KILLE,  
Borough Clerk.

10 Approved,  
GODFREY V. BAKER,  
Mayor.

The following is a Copy of Portion of Minutes of Meeting of Borough Council of the Borough of Newfield, held September 6, 1927.

“September 6th, 1927

The Regular Meeting of council was called to order by Mayor Baker at 8 o'clock, those being present were Stewart, Chew, Miller, Lowden and  
20 Davis. Minutes of the last meeting were read and approved. Communications were read and ordered filed. \* \* \* \* \*

An ordinance for the widening of Oakland Avenue and An ordinance for the vacation and relinquishing of the public rights in and to a portion of Helena Street were presented and read for first and second readings. After discussion, on motion by Miller and seconded by Chew, the ordinance re-  
30 widening of Oakland Avenue be accepted for first and second readings. Carried. Vote ‘Aye’ all councilmen present. On motion by Miller and seconded by Chew, the Ordinance vacating and relinquishing the public rights to Helena Street be accepted for first and second readings. Carried. Vote ‘Aye,’ Miller, Chew, Davis, Stewart and Lowden.”

The following is a Copy of Portion of Minutes

of Meeting of Borough Council of the Borough of Newfield, held September 19, 1927.

“September 19th, 1927

The regular meeting of council was called to order by Mayor Baker at 8 o'clock, those being present were Stewart, Chew, Miller, Lowden and Davis. Minutes of the last meeting were read and approved. Communications were read and ordered filed. The ordinance concerning the widening of Oakland Ave. and the vacation of Helena Street 10 were laid on the table for one hour, so anyone interested might be heard. \* \* \* \* \*

The ordinance vacating a part of Helena Street was presented for final passage. On Motion by Lowden and seconded by Chew the ordinance be adopted as read. Carried. Vote 'Aye,' Davis, Miller, Chew, Stewart and Lowden.”

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BE IT ORDAINED, by the Mayor and Council of the Borough of Newfield, in the County of Gloucester, and State of New Jersey:

1. All that certain street, and the land lying within the bounds thereof, between the right of way of the West Jersey & Seashore Railroad Company, and a line extending at right angles to the sideline of said street, from the westerly line of Church Street, to the Northeasterly line of Helena Street, is hereby vacated and the public rights in said por- 30

tion of Helena Street, and the land contained within the bounds thereof, as heretofore mentioned, are hereby relinquished.

2. This ordinance shall take effect upon its publication as provided by law.

Introduced at a regular meeting of the Borough Council of the Borough of Newfield, held September 6th, 1927, and finally passed at a regular meeting held September 19th, 1927

10 Approved, C. R. KILLE,  
GODFREY V. BAKER, Borough Clerk.  
Mayor.

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#### OATH OF PUBLICATION.

STATE OF NEW JERSEY, GLOUCESTER COUNTY, ss.

20 M. G. MAURADA, being duly sworn, on his oath says that he is one of the editors of "The Constitution," a newspaper printed and published at Woodbury, State of New Jersey, and County of Gloucester aforesaid, and that a notice of which the annexed is a true copy, was published in said newspaper for a period of one week, once in each week successively, to wit: September 21, 1927.

M. G. MAURADA.

Sworn and subscribed before me this 14th day of October, 1927.

30 GEORGIE K. FULMER,  
Notary Public of N. J.

REASONS.

NEW JERSEY SUPREME COURT.

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PHILIP F. HOLETON, <i>Prosecutor,</i> v. BOROUGH OF NEWFIELD, <i>Defendant.</i>	}	On Certiorari. Reasons.	10
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The said prosecutor, by Herbert C. Bartlett, comes and prays that an ordinance for the vacation and relinquishing of the public rights in and to a portion of a certain street known as "Helena Street," in the Borough of Newfield, County of Gloucester and State of New Jersey, finally passed at a regular meeting of the Council of the Borough of Newfield on September 19th, 1927, may be vacated, set aside and for nothing holden for the following reasons: 20

1. The said portion of Helena Street sought to be vacated and the public rights relinquished has been a public street used by the traveling public for over forty-five years continuously, and the public have acquired rights therein which cannot be taken away by ordinance of city council as above recited, and said ordinance for that reason is illegal. 30

2. The owners of property on the street known as Helena Street would be greatly injured by the passage of said ordinance.

3. Said ordinance proposes to take public property and give the same to private individual which is illegal.

10 4. Said ordinance proposes to take public property, deprive the public the right of using said street and give the land secured by such vacation to owner facings or owning property on a part of said street, depriving the public of its rights therein, all of which is illegal.

5. Said ordinance is in divers other respects illegal, unjust and oppressive and should be set aside and for nothing holden.

20

.....*Herbert C. Barth*.....  
*Attorney of Prosecutor.*

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AN ORDINANCE.

An Ordinance for the vacation and relinquishing of the public rights in and to a portion of a certain street known as Helena Street, in the Borough of Newfield, County of Gloucester and State of New Jersey.

30 BE IT ORDAINED by the Mayor and Council of the Borough of Newfield, in the County of Gloucester, and State of New Jersey:

1. All that certain street, and the land lying within the bounds thereof, between the right of way of the West Jersey & Seashore Railroad Company,

and a line extending at right angles to the sideline of said street, from the Westerly line of Church Street, to the Northeasterly line of Helena Street, is hereby vacated and the public rights in said portion of Helena Street, and the land contained within the bounds thereof, as heretofore mentioned, are hereby relinquished.

2. This ordinance shall take effect upon its publication as provided by law.

The above ordinance was introduced at a regular meeting of the Borough Council of the Borough of Newfield, held September 6th, 1927, and will be considered for final passage at a meeting of said Borough Council to be held at the Borough Hall in said Borough on the 19th day of September, 1927, at 7.30 o'clock in the evening at which time all persons interested in such ordinance will be given an opportunity to be heard. 10

C. R. KILLE,  
Borough Clerk. 20

OATH OF PUBLICATION.

STATE OF NEW JERSEY, GLOUCESTER COUNTY, ss.

M. G. MAURADA, being duly sworn, on his oath says that he is one of the editors of "The Constitution," a newspaper printed and published at Woodbury, State of New Jersey and County of Gloucester aforesaid and that a notice of which the annexed is a true copy, was published in said newspaper for a period of two weeks successively, to wit: September 7 and 14, 1927. 30

M. G. MAURADA.

Sworn and subscribed before me this 14th day of October, 1927.

GEORGIE K. FULMER,  
Notary Public of N. J.

## DEPOSITIONS.

## NEW JERSEY SUPREME COURT.

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10	PHILIP F. HOLETON, <i>Prosecutor,</i>	}	On Certiorari.
	v.		Depositions.
	BOROUGH OF NEWFIELD, <i>Defendant.</i>	}	

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Vineland, N. J., December 28, 1927.

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20 (Deposition of witnesses taken before CLAUDE W. MYROSE, Supreme Court Examiner, on December twenty-eighth, 1927, at two o'clock in the afternoon, in the office of HON. HERBERT C. BARTLETT, Vineland, New Jersey, in the presence of HON. HERBERT C. BARTLETT, attorney for the prosecutor, and JAMES B. AVIS, Esq., of MESSRS. AVIS & AVIS, attorneys for the defendant.)

30 (It is agreed between counsel for the respective parties that the depositions shall be taken stenographically, afterwards reduced to typewriting and the signatures of the witnesses waived.)

CHARLES R. KILLE, sworn in behalf of the prosecutor.

Direct examination.

By Mr. Bartlett:

Q. Mr. Kille, what official position do you hold in the Borough of Newfield?

A. Borough Clerk. 10

Q. Were you clerk last August?

A. I was.

Q. You were clerk when an ordinance for the vacation and relinquishing of the public rights in a portion of a certain street known as Helena Street was introduced and passed?

A. I was.

Q. Was that ordinance preceded by any petition signed by the owners of the abutting property on the section to be vacated? 20

A. No petition.

Q. At what meeting was the ordinance introduced?

A. At a regular meeting of council held September sixth, 1927.

Q. What notice, if any, was given before the introduction, or after the introduction to the public?

A. There was no notice preceding the introduction of the ordinance.

Q. Does the ordinance provide for a time for hearing objections? 30

A. The ordinance does provide, or the notice attached to the ordinance provides, that objections would be heard at the Borough Hall on the nineteenth day of September, that all persons interested in such ordinance will be given opportunity to be heard.

Q. Was that presented at the same time as the ordinance?

A. That was read and presented at the—it was considered at the same time, although it wasn't published until after that time.

Q. How was that published and posted?

A. It was published in the constitution, a paper printed in Woodbury, circulating in the County of Gloucester.

10 Q. On what dates was it published?

A. It was published twice. I believe it was published three times. It was published on the seventh and fourteenth of September and after it was passed, finally adopted, it was published on the twenty-first.

Q. At what meeting was the ordinance finally adopted?

A. September nineteenth.

20 Q. Have you a copy of the original ordinance there?

A. Yes.

Q. I will ask that you produce that.

A. There is the original.

(Ordinance produced, offered in evidence and marked Exhibit P1.)

Q. Have you also the resolution that you have just referred to in reference to the notice to be given?

30 A. The notice is on the bottom of the ordinance.

Q. And that is the only notice that was given, either preceding the ordinance or after the introduction of the ordinance, as to a hearing thereon?

A. That was the only notice regarding hearing.

(No cross-examination.)

H. LEE FISHER, sworn for the prosecutor.

Direct examination.

By Mr. Bartlett:

Q. Mr. Fisher, what is your profession?

A. Civil engineer and land surveyor.

Q. How many years have you been a civil engineer and land surveyor? 10

A. About thirty-three or four.

Q. You are engaged in the practice of that profession in Vineland and vicinity?

A. Yes, sir.

Q. For how many years?

A. Fifteen.

Q. Are you a regularly licensed surveyor?

A. Yes, sir.

Q. I show you a blue-print and ask you what is that? 20

A. That is a map of Helena Avenue or Street, and the streets and avenues that either cross or intersect with it.

Q. When did you make that?

A. I made that map yesterday.

Q. That shows the present situation of that street known as Helena Street in Newfield?

A. Yes, sir.

Q. What is the length of Helena Street from the west Jersey railroad to Madison Avenue? 30

A. The total distance?

Q. Yes.

A. I don't believe I have got the total distance on here.

Q. What is the distance from the West Jersey railroad to Church Street?

A. The distance there is 1045.72 feet to the east side of Church Street. Take fifty feet off would leave 995.72.

Q. Do you know what part of this street is sought to be vacated?

A. I understand west of Church Street to the railroad.

Q. What distance is that?

A. That would be 995.72.

10 Q. How would that number of feet compare with the street from the West Jersey railroad to Madison Avenue?

A. It would be about one-third of the way, I should think.

Q. In other words, it would be about one-third of the street to be vacated?

A. Yes.

Q. Does the street cross the West Jersey and Seashore railroad?

20 A. It does at a private crossing.

Q. What do you mean by a private crossing?

A. Why, I understand that the crossing just —

Q. One moment. Do you know, Mr. Fisher?

A. Only by what I have heard.

Q. There is a regular crossing there?

A. A regular crossing there, yes, sir.

Q. So that the street does cross the West Jersey and Seashore railroad?

A. Yes.

30 Q. How many houses are located on the street known as Helena Street from Madison Avenue to the West Jersey railroad?

A. There is two between Rosemont Avenue and Madison. There is three between Rosemont and Church, and there is two below that, Mr. Dyer and Mr. Baker's house.

Q. Who owns the property fronting on Helena Street from the West Jersey railroad to Church Street?

A. On which side?

Q. On the north side first.

A. Mr. Baker has 687.72 feet, and Mr. Dyer on the north side has 484.78 feet.

Q. And on the south side?

A. On the south side Mr. Dyer owns the complete frontage to Church Street. 10

Q. Can you give me the names of Mr. Dyer and Mr. Baker, their first names?

A. I have got it down there, G. V. Baker and R. W. Dyer. I think it is Richard W. Dyer.

Q. Do you know what official position Mr. Baker holds in the Borough of Newfield?

A. I understand he is the mayor.

Q. Then the land of G. V. Baker and Richard W. Dyer on the north and Richard W. Dyer on the south takes in all the land fronting on the section 20 sought to be vacated; is that correct?

A. Yes, sir.

Q. How wide is that street?

A. Fifty feet. A three-rod road.

Q. And it is a continuous, open roadway from Madison Avenue into Newfield across the West Jersey and Seashore railroad?

A. Yes, sir.

Q. An open street?

A. Yes, sir. 30

Q. Is it a traveled street?

A. Yes, sir, very well traveled.

Cross-examination.

By Mr. Avis:

Q. Mr. Fisher, isn't it true that Helena Street comes to the railroad and stops?

A. It comes to the railroad to a private or a reserved road that runs up along the railroad, which is sixteen and one-half feet wide, and goes to this  
10 crossing and then crosses there.

Q. You know that Helena Street itself stops at the railroad, do you not?

A. It stops, that is, the straight part stops, yes, but there is a turn there. It goes up the railroad and then crosses.

Q. When you made this survey did you take into consideration anything except the land as it was, as you saw it? Do you understand what I mean?

A. No, I don't believe I get your meaning.

20 Q. Did you look at any deeds or dedications?

A. Looked at a copy of Mr. Dyer's deed and a copy of Mr. Baker's deed.

Q. Didn't Mr. Baker's deed reserve a right-of-way along the railroad one rod wide?

A. That was reserved out of his deed. He didn't reserve it. It was reserved out of his deed.

Q. Reserved out of the deed to him?

A. Yes.

Q. So that isn't a part of Helena Street, is it?

30 A. No, it is not.

Q. So that Helena Street comes to the railroad and stops?

A. It seems to come there, yes.

Q. And the crossing over the railroad, the private crossing that you have mentioned, is some distance away from the edge or the northerly side of Helena Street, is it not?

A. Yes, sir.

Q. One hundred and seventeen feet; is that right?

A. Something like that.

Q. In other words, this private crossing you speak of is approximately one hundred and seventeen feet north of the north side of Helena Street?

A. Yes.

Q. So that when you said Helena Street crossed 10 over the railroad, you meant that a person using Helena Street could use the railroad if they used this private right-of-way and the private crossing?

A. Yes, sir.

Q. But they couldn't cross the railroad using Helena Street, because Helena Street doesn't cross the railroad?

A. No.

Q. How do you know how wide Helena Street is?

A. From physical conditions on the ground and 20 also being told by the old settlers what width it was laid out and accepted by the man that had it laid out.

Q. By looking at the road today or yesterday when you were there, how wide was the traveled part of the road that you could see?

A. I should imagine sixteen and one half.

Q. In other words, looking at the road, there is sixteen and one half feet which is used?

A. Yes.

30

Q. And the fact that you say it was fifty feet wide is from what some old settler told you there that lived in the neighborhood?

A. Well, it is from the landmarks that you find on the side of the road as being corners to properties.

Q. In other words, you found some marks, did you?

A. Yes, sir.

Q. What do you mean, stones?

A. Yes.

Q. Where did you find them?

A. At Mr. Baker's, up at the corner of Rosemont Avenue, and still further up at the easterly side of a division that I think one of the Smith boys laid out.

Q. But from the physical appearance of the road it is used to a width of about sixteen and a half feet, as you saw it?

A. It is used to about the same width as all roads around here. It is generally graded from sixteen and one half to twenty six feet.

Q. Do you know where West Boulevard is in Newfield?

A. Yes, sir.

20 Q. Was there any difference in the appearance of that street or boulevard than there was in Helena Street?

A. Considerable.

Q. What is the difference?

A. That has been graveled and widened out considerably wider than the ordinary street.

Q. Helena Street, as it appears, as I understand it, is an old country road, is it not?

A. No, I wouldn't call it a country road.

30 Q. What was the difference between that and the country road?

A. The most of it is in as good shape and as good a road as you will find most anywhere in Landis Township.

Q. Up to the point where it gets to the railroad?

A. Yes.

Q. How do you know whether or not it is traveled?

A. Why, the physical conditions there. The marks of automobiles are very plain there. Evidently considerable travel on it.

Q. Whether or not one machine goes there a day or fifty, you don't know, do you?

A. I do not, but I should say there was at least possibly fifteen or twenty machines across there a day, and maybe more.

Q. How long were you up there?

10

A. Three or four hours.

Q. How many cars went over Helena Street while you were there?

A. I wasn't on Helena Street all the time. I was around different places and wasn't watching cars. There was possibly six or eight cars that bothered us while we were measuring on Helena Street, though.

Q. Between Church Street and the railroad?

20

A. Yes. No, not there.

Q. I am talking about between Church Street and the railroad. In there how many machines did you see?

A. I think there was two or three went by.

Q. Are you sure of that?

A. Yes.

Q. When was that?

A. That was along in the morning.

Q. When? Yesterday?

A. The twenty-sixth day of this month.

30

Re-direct examination.

By Mr. Bartlett:

Q. How far below Helena Street is the next street crossing the railroad?

A. I think that is what they call Catawba Avenue. That is one of the main crossings north of the depot.

10 Q. How far would you say that was?

A. That is the only public one that I know of. Why, that is, I should think, half a mile, pretty near.

Q. And north of Helena Street what would you say the next cross road was?

A. The next cross road is Lake Road, I think.

Q. By Helena Street crossing the railroad it opens up what territory to travel on that road?

20 A. It opens up the territory that goes to the cemetery, and there are quite a number of bungalows and houses on Rosemont Avenue and also along Helena Street.

Q. Does it open up the west side of the railroad, the country west of the railroad?

A. Yes, it opens up the west so they can get through if they want to go to the cemetery without going clear down to the town.

Mr. Bartlett: I offer the map in evidence.

30 (Map marked Exhibit P2.)

Re-cross examination.

By Mr. Avis:

Q. Mr. Fisher, there is a private crossing, as I understand it, south of Helena Street before you come to Catawba Avenue, is there not?

A. There is one there from the old LeRoy property, yes.

Q. Isn't that crossing the same kind of a crossing as you have mentioned as being the crossing you can use coming down Helena Street and over this right-of-way? 10

A. Very similar.

Q. And that crossing south of Helena Street is how far from Helena Street, do you know?

A. No, I do not.

Q. Within five hundred feet?

A. Why, no. It would be over a thousand feet, because Dyer's property extends over five hundred feet. It must be pretty near a thousand feet, I should think, if not more. 20

Q. From the crossing above Helena Street?

A. Yes.

Q. Now, north of Helena Street there are no houses on the east side?

A. One house.

Q. And that is the house for whom this right-of-way was created, is it not, or don't you know?

A. I don't know anything about that.

Q. That is the only house there at the present time that would use that; isn't that so? 30

A. Looks like it.

Q. And on the other side of the railroad north of Helena Street, how many houses are there?

A. I don't know as I could say that. From rec-

ollection I should think there was two or three, possibly.

Q. And as I understand it, these two or three houses here would be benefitted if they could use Helena Street in going to the cemetery or somewhere outside of the town?

A. Yes.

Q. If they wanted to come down into the town, where most of the houses are, they could use the  
10 West Boulevard?

A. Yes.

By Mr. Bartlett:

Q. How much difference would that make if they had to go south of Helena Street to cross the Boulevard and go to the cemetery or the east part of Newfield?

A. Why, they would have to go down there, I  
20 should think, close to half a mile out of their way.

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HARRY F. BACH, sworn for the prosecutor.

Direct examination.

By Mr. Bartlett:

Q. Mr. Bach, what position do you hold in the  
30 Township of Franklin?

A. I am the township clerk.

Q. How many years have you been township clerk?

A. About four months short of ten years.

Q. You have the custody of their books and records and papers?

A. I have.

Q. Did Franklin Township originally embrace what is known as the Borough of Newfield?

A. It did.

Q. In other words, the Borough of Newfield was a part of Franklin Township?

A. Yes, sir.

Q. Do you know how long the Borough of Newfield has been carved out from Franklin Township?

A. Four years this April.

Q. Will you turn to the minutes of the meeting of the committee of August twenty-first, 1899? That is your regular minute book?

10

A. Yes, sir.

Mr. Bartlett: I offer it in evidence.

(Minute book marked Exhibit P3.)

Q. Will you read what it states on the minutes with reference to the street known as Helena Street?

20

A. "On motion ordered that Church Street and Helena Street at Newfield, New Jersey, be accepted as a public highway of three rods wide, extending straight from Catawba Avenue in a northerly direction to Helena Street, commencing at West Jersey and Seashore railroad and extending in an easterly direction to Madison Avenue."

Q. Any further reference made to the street in your minutes, either of that date or any other date?

30

A. I don't see anything.

Q. This is a correct copy, is it, taken from your minutes?

A. That is the copy that I made for a gentleman that called on me one evening, yes, sir. It is my signature.

(The copy of the minutes was marked to correspond with the minutes, Exhibit P3.)

Cross-examination.

By Mr. Avis:

Q. How long have you been township clerk, Mr. Bach?

10 A. A trifle over nine and a half years.

Q. During that time has the township committee improved Helena Street?

A. That I could not say. The work was not done in that way that it would be brought to the attention of the township clerk just what streets and roads are improved.

Q. Mr. Bach, you compared this with your minutes? That is a true copy, isn't it, as taken from your minutes?

20 A. Yes, sir, I copied that myself.

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PHILIP F. HOLETON, the prosecutor, sworn.

Direct examination.

By Mr. Bartlett:

30 Q. Mr. Holeton, how long have you lived in Newfield, New Jersey?

A. All my life.

Q. How many years is that?

A. Fifty-four years and six months.

Q. Formerly Newfield was a part of Franklin Township?

A. Yes, sir.

Q. How long has Newfield been carved out of Franklin Township?

A. Four years this coming February, I believe.

Q. It was then set up as a borough?

A. Yes, sir.

Q. Where do you live in Newfield?

A. I live one-half a mile on the North West Boulevard.

Q. How near to the street known as Helena 10 Street?

A. My line comes within about four feet of the crossing of Helena Street.

Q. Which side of the railroad do you live on?

A. On the west side.

Q. Do you use Helena Street?

A. I do.

Q. In crossing from the west side of the railroad to the east side of Newfield?

A. Yes, sir.

20

Q. How often do you use that?

Mr. Avis: I object to that on the ground that it is irrelevant and immaterial.

A. Well, sometimes I use it continually. Last winter for most of the entire winter I used it five days a week.

Q. How many years have you known this street?

A. Well, I can remember that street since I was seven years old. I traveled that street as a short cut to go to school. Go half-way up and make a cut and there was a path that came right out to the school house.

30

Q. Has it been an open and traveled street all those years?

A. Continuously, yes, sir.

Q. How does it cross the railroad? Just describe that, will you?

A. Well, it comes down—it is a straight road from Madison Avenue to the railroad, and then it makes a little turn up there to cross this crossing here for Helena Street, Helena Street crossing.

Q. Do you know whether that crossing was there before the railroad was put through?

10 A. By the pioneers, yes. I was told so by the man who put it there.

Mr. Avis: I object to that and ask that it be stricken out.

Q. Of course, that you can't testify to. Where does it extend to on the east?

A. It extends to Madison Avenue.

Q. How long a street would you say it was?

20 A. About half a mile.

Q. How many people use that street continuously?

A. Well, I couldn't say to the exact amount, but I see the baker and the milkman and the butcher and all the merchants using the street. I see touring cars, I see pedestrians, I see teams, I see all kinds of people crossing the street at all hours of the day and all hours of the night.

30 Q. In case that street is vacated, what effect will it have on the people living west of the railroad?

Mr. Avis: I object to that as irrelevant and immaterial and also I object to all testimony on the same line.

A. Well, it would have the effect if they wanted

to go to the cemetery it would take them one mile further to go, for one thing.

Q. How about those people living on the west of the West Jersey railroad wishing to cross the railroad in that vicinity?

A. They have got to come down to Catawba Avenue half a mile, then down into the town then up here half a mile.

Q. Has the road ever been closed up in your knowledge of it? 10

A. Never.

Q. And you have known it how many years?

A. Well, I can remember it very distinctly since I was seven years old, and I am now fifty-four years and six months old. I used it continuously myself.

Q. You used it yourself?

A. Yes, sir, for that length of time.

Cross-examination. 20

By Mr. Avis:

Q. Mr. Holeton, this crossing that you speak of, after you use that crossing you must turn to your right and go some little distance before you get on to Helena Street; that is so, isn't it?

A. Well, that is what they say, but it has always been known as Helena Street to the crossing. The crossing is known as Helena Street crossing by the railroad company. 30

Q. How do you know that?

A. Because the pioneers told me so.

Q. Who told you?

A. Mark Kears for one, and the section foreman.

Q. These people told you that was Helena Street crossing?

A. Yes, sir, known as Helena Street crossing by the railroad company.

Q. Did they tell you that was because Helena Street was close to the crossing?

10 A. As I understand from the pioneers, Helena Street crossed where the railroad is to the Boulevard before the railroad was put there, and when they put the railroad there they made a deep cut there and it wasn't practical to put the crossing there, so they made it lower down. That is what we get from the pioneers.

Q. Suppose you knew that in the deed to Mr. Baker in 1914 there was reserved a private right-of-way there from Helena Street for three hundred feet along the railroad one rod wide, then would you still say that was part of Helena Street?

20 A. I know from Captain Harris that there was a space reserved all the way along there for a Boulevard, all the way along the east side of the railroad to the edge of the borough.

Q. Captain Harris is dead?

A. Yes.

Mr. Avis: I move that be stricken out.

Q. But you do know that after you pass over this crossing there is a distance you must go along the railroad to your right?

30 A. Yes, sir, Captain Harris told me that was reserved in Mr. Baker's deed just a little while before he died.

Q. Isn't it so that sometimes when you use this crossing that you won't follow the railroad, that you will cut across through Mr. Baker's yard or some other way to get on to Helena Street?

A. Never seen anybody do it yet.

Q. How wide is this crossing?

A. Just an ordinary crossing. About twenty feet, I should judge.

Q. As I understand you, it would inconvenience you because if you wanted to go to the cemetery you would have to go around the town?

A. Sure. And in my business the same way.

Q. If you went down-town you would go to Catawba Avenue?

A. Yes, sir, one-half mile, and another half mile to Madison Avenue and a half mile back to the cemetery. 10

Q. How do you know those distances? That is a guess on your part, isn't it?

A. I know the distance from my house to Catawba Avenue, and it is the same distance from Catawba Avenue back to Helena Street.

Q. Doesn't Helena Street run closer to Catawba the farther it goes from the railroad?

A. I don't think so. It might be a trifle, yes. I would say it would run a little closer. 20

Q. There is another crossing south of this crossing that is called Helena Street, isn't there?

A. Half-way between, I should judge, between Helena Street and Catawba Avenue.

Q. It is a private crossing?

A. Yes, sir.

Q. Is there any difference between that crossing and the one near Helena Street?

A. In what way? 30

Q. In appearance?

A. Well, it is practically the same kind of a crossing, about the same size.

Q. You don't know whether this crossing at Helena Street is a public crossing or private crossing, do you?

A. Only by the way I told you a while ago.

Q. By the fact that you have used it?

A. The railroad employes have told me it is known as Helena Street crossing by the railroad.

Q. Did they tell you what this one below was known as?

A. No, sir, I wasn't interested in that.

Q. You don't know whether they called that Helena Street crossing or what they called that?

10 A. No. There is no entrance to Helena Street on that crossing.

Q. You live on the West Boulevard?

A. Yes, sir.

Q. Are there any houses in Newfield above you, north of you?

A. Are there any north of me? No, sir, not in the borough. I live in the last house.

Q. Outside of the borough, along the West Boulevard, are there houses close to you?

20 A. The next house is what is known as Pan-Mure Seed Gardens. That is the next above me on the north.

Q. That is a mile or more?

A. That is half a mile. I own from there to the other house.

Q. From that house on there are no houses, as I remember it, until you get almost to the corner, almost to Malaga Road?

30 A. There is another one just before you get to the seed farm.

Q. So that above you there are two houses before you get to Malaga Road or the Atlantic City Road, whatever it is called?

A. Well, there is half a dozen before you get to the Atlantic City Road. More than that.

Q. They are all there close together near the corner?

A. Yes, there is a bunch there.

Q. But the houses above you wouldn't be benefitted by this crossing at all, would they?

A. Sure, they would. There is another one that sets back here. It would communicate them with the other side of the town and they would save half a mile.

Q. Let us take the houses along Malaga Road or Mays Landing Road or whatever it is called, those six or seven houses near the corner. How would they be benefitted? 10

A. If they wanted to come on this side of the town they would cut off half a mile, or they could go down the other way. It wouldn't practically be a great sight of benefit to them. They could go down the State road and come in the other way. It would be a little further.

Q. It would be a better road and just a little bit further?

A. It wouldn't be no better road. 20

Q. Is Helena Street a good road?

A. It's a good road. Good-sized road.

Q. Ever get stuck going in there with your horse and wagon?

A. No, sir, I don't have that kind of a horse.

Q. Never had any trouble pulling after you crossed the crossing?

A. No, sir.

Q. It is sandy, isn't it?

A. That little strip there is sandy. 30

Q. After you cross over the crossing, before you get on to Helena Street, or before you make the turn, it is sandy there?

A. A little bunch of sand.

Q. And there is a difference in the appearance of the road after you make the turn?

A. A little difference, yes.

By Mr. Bartlett:

Q. How many acres do you own?

A. Fifty-two.

Q. And that faces along the West Jersey Boulevard?

A. One mile frontage on the West Jersey Boulevard.

Q. And you are practically at the head of Helena Street?

A. Yes, sir.

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IDA WOLFERT, sworn for the prosecutor.

Direct examination.

By Mr. Bartlett:

20 Q. How many years have you lived in Newfield, New Jersey?

A. I haven't figured it exactly, but I suppose it is about fifty-seven.

Q. Where do you live in Newfield?

A. On Salem Avenue.

Q. East or west of the railroad?

A. West of the railroad.

Q. Are you acquainted with the street known as Helena Street?

30 A. Yes, sir.

Q. Have you traveled that street?

A. Yes, sir.

Q. Do you know how long that street has been opened as a street or public highway?

Mr. Avis: I object to that line of testimony as irrelevant and immaterial.

A. Ever since I can remember.

Q. Would you say for at least thirty years it has been an open street there?

A. Oh, yes, sir.

Q. Have you used that street?

A. Yes, sir.

Q. Where does it cross the West Jersey railroad?

A. It follows the railroad east of the railroad going north and crossing a short distance from the street by Mr. Baker's. 10

Q. How long, to your knowledge, has that crossing been there over the West Jersey railroad?

A. Ever since I can remember the road. Ever since I have been in town.

Q. Ever since you have lived in Newfield?

A. Yes, sir.

Q. What difference would it make to you in case that street was closed?

A. Well, I have property up on the other side, on the east side of the borough, and I feel that it would be a benefit to have it open for my property up in that direction. 20

Cross-examination.

By Mr. Avis:

Q. Whereabouts do you live, Miss Wolfert?

A. Salem Avenue. 30

Q. On which side of the railroad is that?

A. On the west side.

Q. You personally have occasion now to use this street, Helena Street?

A. Well, it is like any other street, if I wanted to go I would go, and I have always done so.

Q. Yes, but how long has it been since you have gone over Helena Street between the railroad and Church Street?

A. Perhaps it might be about a year.

Q. It isn't a main street at all, like West Boulevard or Catawba Avenue?

A. Well, I really haven't had the occasion to go down that street, but I always considered it a main street if I wanted to go down it. I have always  
10 gone.

Q. You haven't had occasion within a year to go down that street at all?

A. No.

Q. It is on the outskirts of the town, is it not?

A. Well, I suppose it is.

Q. Do you know coming down Helena Street toward the railroad that the street stops at the railroad?

A. No, sir, I do not know.

20 Q. Do you know that after you turn to your right you are going on a private right-of-way to a private crossing over the railroad?

A. No, sir, I don't know that it is private.

Q. You do know, as I understand it, that as you get to the railroad, coming toward the railroad down Helena Street, that you turn abruptly to your right and then go a short distance along the railroad and take the crossing over?

A. Yes.

30

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JULIA SMITH, sworn for the prosecutor.

Direct examination.

By M. Bartlett:

Q. Mrs. Smith, how many years have you lived in Newfield, New Jersey?

A. It will be twenty-five years this coming spring.

Q. On what street do you live in Newfield?

A. West Boulevard.

Q. How near to the street known as Helena Street?

A. I suppose about—I can't judge the distance. It isn't a quarter of a mile, though.

Q. How long, to your knowledge, has Helena Street been an open, traveled, public highway?

A. We owned the property on both sides of Helena Street for thirty years, and it was a street then. 10

Q. Does it cross the West Jersey railroad?

A. Yes, at the crossing.

Q. Has it always crossed at that crossing since you have known the street?

A. Yes, always since we have known the street.

Q. What is the nature of the crossing? Is it a plank crossing?

A. It is just like any other crossing.

Q. Do you use Helena Street? 20

A. I do.

Q. In going from what place?

A. Well, I have friends over in that part of the town. I was on the street yesterday. I use it quite often.

Q. Would your own property be damaged by the closing of it?

A. It would.

Q. In what way?

A. It would decrease the value of it. 30

Cross-examination.

By Mr. Avis:

Q. Mrs. Smith, did you use to live near Helena Street?

A. We lived right where Mr. Baker lives. We built that house.

Q. Who lived in the house to the north of you?

A. There wasn't any house.

Q. There wasn't any house there at that time?

A. No.

Q. Wasn't this railroad crossing put in there for the use of you people living in this house?

A. It was not. The railroad crossing was there  
10 when we moved there.

Q. At that time didn't Helena Street stop at the railroad?

A. It did not, no, sir.

Q. And wasn't there a right-of-way down along the railroad for the benefit of you people and anybody living north of you?

A. Not that I know of. That was a road when we bought the property and we tried to fence it off and they said it couldn't be fenced off because  
20 it had been a public highway too long.

Q. Your husband's name was Julius Smith?

A. Yes, sir.

Q. And he owned also north of where Mr. Baker now lives, did he not?

A. Yes, sir.

Q. And Julius Smith, your husband, sold the land where Mr. Baker now lives to Wharton Smith, did he not?

A. Yes, sir.

30 Q. And at that time don't you know that in his deed he reserved a right-of-way one rod wide from the property he retained to Helena Street?

A. I didn't know it, no.

Q. You don't know that?

A. No.

Q. But you do know that coming down Helena

Street to the railroad, when you get to the railroad you turn to your right and go a short distance down to this crossing?

A. I do. That is what we wanted to fence off and they said it had been a public highway too long, it couldn't be fenced off.

Re-direct examination.

By Mr. Bartlett:

10

Q. There has been testimony here about a right-of-way along the railroad. Does Helena Street cross that right-of-way?

A. What do you mean?

Q. A right-of-way running north and south along the West Jersey railroad, as I understand it. Does Helena Street cross that right-of-way and cross the railroad?

A. It was always called Helena Street. The curve that you meant there was always called Helena Street. 20

Q. And it goes on over the railroad?

A. Goes on over the railroad.

Q. Never been closed in your knowledge?

A. It never has been closed.

Re-cross examination.

By Mr. Avis:

30

Q. There is no reason why Helena Street couldn't cross the railroad just where it comes to the railroad, is there? There is nothing there to keep it from being a crossing right there?

A. Well, there was at one time, because the road

was so high there that the town couldn't afford, or the township couldn't afford to cut the road down so they could make a crossing.

Q. You mean that has been within recent years?

A. No, that was a good many years ago when we first moved out there.

Q. Was there some talk then of making a crossing over the railroad?

A. Yes, sir, there was, an overhead crossing.

10 Q. It was never done?

A. Never done.

Q. You don't know whether that was an attempt to lengthen Helena Street to cross the railroad or not, do you?

A. Yes, it was, to cross the railroad.

Q. And you don't know whether that was done with the idea that Helena Street stopped at the railroad and they wanted to make it longer and cross the railroad or not, do you?

20 A. They intended to do it so we could cross Helena Street.

Q. Instead of taking this narrow road along the railroad and across this narrow crossing; is that so?

A. I suppose it is.

By Mr. Bartlett:

30 Q. And the reason that it didn't cross directly was on account of the fact that the railroad would have to bridge?

A. Yes, they would have to bridge it, an overhead bridge.

Q. And to save that they turned the street?

A. They turned the street.

CHRISTOPHER C. FIGGS, sworn for the prosecutor.

Direct examination.

By Mr. Bartlett:

Q. How many years have you lived in Newfield, Mr. Figgs?

A. Sixteen this coming March.

Q. And you live on what street in Newfield?

A. West Boulevard.

Q. How near to Helena Street?

A. Well, it is about three-quarters of a square, I guess, south of it.

Q. In crossing from your place to the east side of Newfield, what street do you use?

A. In crossing to the east side?

Q. From your property to the east side of Newfield.

A. If I want to go up to that part of the town, I cross Helena Street.

Q. How many years have you used that street?

Mr. Avis: I want the record to show that I object to any testimony tending to show a user of Helena Street or the fact that for a long number of years it has been established as a public street.

(Question repeated.)

A. Ever since I lived there. Sixteen, nearly.

Q. In reaching the cemetery in Newfield, what street do you use?

A. Helena Street.

Q. In case Helena Street was closed, what effect would it have on your property?

Mr. Avis: I object to that, also, as immaterial.

A. Why, I think it would decrease the value of it.

Q. Why?

A. Well, all property decreases when you close a street that is near it.

Q. How much of the territory would it affect if it was closed?

10 A. Well, it would affect all the people on that West Boulevard and it would affect all of the people east of the railroad in that part of the town, the north part of the town.

Q. In fact, that whole section would be affected by it?

A. It would affect that whole section.

Cross-examination.

20 By Mr. Avis:

Q. How do you know your property would decrease in value?

A. Well, I don't know it except if I was wanting to buy it myself I wouldn't buy it with the streets closed.

Q. You say you wouldn't buy a property in Newfield because of the fact that this narrow crossing which you might use to go to the cemetery would be closed?

30 A. I wouldn't buy a property in that section at all with that street closed.

Q. When did you last use Helena Street?

A. I used it about three weeks ago, I think.

Q. When before that? Do you remember?

A. Well, I suppose all summer I have used it just about a dozen times.

Q. And where did you go those times? What were the occasions that you used it?

A. To the cemetery or Atlantic City Road.

Q. How much longer would it take you to go to the Atlantic City Road by using Catawba Avenue rather than Helena Street?

A. Well, it depends on the speed you go. I would say five minutes.

Q. How much further —

A. Five or ten.

10

Q. In other words, it would take you five or ten minutes to go the extra distance to get on to Madison Avenue?

A. Well, I would judge about that.

Q. That is a distance off —

A. I never timed it.

Q. —less than a mile from your house, wouldn't it be?

A. I guess it is just about a mile, going around by the station.

20

Q. So that if you went around there at the rate of twelve miles an hour it would take you five minutes for you to get around there? Now, after you cross over this crossing in Helena Street, you turn abruptly to your right, do you not?

A. Yes.

Q. And go a short distance and then you turn to your left again?

A. Yes.

Q. That crossing there has no protection at all, has it? 30

A. No. You mean from the railroad?

Q. From the railroad trains.

A. No.

Q. Coming the other way, coming down Helena Street toward the railroad from the east side on the

left, there is an embankment, is there not, a high spot?

A. Slight embankment, yes.

Q. And looking south from that point there is a curve in the railroad tracks, is there not?

A. Very slight.

Q. As a matter of fact, it is almost impossible to see a train until you are right at the crossing; isn't that so?

10 A. Well, you can see a train all the time if you are looking, but there is nobody that looks until they get ready to cross that crossing, and then if they are not foolish, they will stop and look.

Q. Coming from Church Street down toward the railroad you mean to say that all the time down there you can see a train coming from Newfield station?

A. Oh, no, I don't mean that at all. I mean after you make this turn here.

20 Q. After you make the turn to go along the tracks, then if you look back you can see it?

A. Then you can see it.

Q. But up until the time you make the turn you couldn't see it on account of this embankment?

A. I don't think you could, no. You might see it, but I have never tried. I don't say you could or couldn't.

Q. So you think your property would be greatly depreciated in value if a road was closed that you used twelve times during a summer?

30

A. Well, it might not be greatly depreciated, but it would depreciate it to some extent.

LOUISE SMITH, sworn for the prosecutor.

Direct examination.

By Mr. Bartlett:

Q. You live in Newfield, Mrs. Smith?

A. Yes, sir.

Q. How many years have you lived in Newfield?

A. Well, I have been back and forth to Newfield. 10  
About sixty-one years ago my parents moved to Newfield.

Q. Are you a property owner in Newfield?

A. Yes, sir.

Q. And a taxpayer there?

A. Yes, sir.

Q. Where is your property located?

A. Our property is located on the east side, on Pearl Street.

Q. You have known, then, this street at least 20  
fifty years or more, have you not?

A. I have known that street sixty years to my own personal knowledge.

Q. Did you know it before the railroad went through Newfield?

A. No, because the railroad was in Newfield when we came from the northwestern part of Pennsylvania to Newfield. The railroad was there. I don't know whether the crossing was there at that time, but I do know this, that Mr. Pettingill 30  
bought the property that now our mayor owns, and he built a home there and he faced it on Helena Street, and the Pettingill family lived in the house with us and bought the property in 1867 and they built their home in 1868, and they faced their home on Helena Street, and the crossing was there then.

Q. That was an open, traveled, public street at that time?

A. Yes, sir.

Q. And has it continued so to this day?

A. It is so far as I know.

Q. To your knowledge, how many years has it crossed the railroad?

10 A. Well, it has crossed the railroad ever since I knew about Pettingills buying this property and building their home, because they crossed the railroad in order to take their lumber in.

Q. And that would be since 1867?

A. Yes, sir.

Q. Has it ever been closed during that time, or that crossing removed?

A. No, sir.

Q. Can you tell why the street didn't cross the railroad directly instead of making a turn and then crossing a short distance north?

20 A. Yes, I can tell you that.

Q. What was the reason for that?

A. To the best of my knowledge, there was too much bank. Opposite to Helena Street there was a large bank there and they took the crossing further down opposite to Mr. Holeton's, because it was easy to put their crossing there.

Q. They then could put the crossing at grade, could they?

30 A. Yes, they could put the crossing at grade so far as I remember as a little girl growing up, but they didn't have the street across, Helena Street didn't come across because there was a deep bank there.

Q. What would they have had to have done if they crossed at that point?

A. Well, I don't know anything about that. I

was a little girl and I don't know anything about those kind of things, but I do remember what I told you. I suppose they would have had to have bridged it or cut down the bank. You men understand that.

Cross-examination.

By Mr. Avis:

Q. Mrs. Smith, as I remember it, ever since you remember, since you were a little girl there, Helena Street has come to the railroad and then bent and went across on a crossing over the tracks? 10

A. Well, yes, Helena Street comes down this way and goes right around and over the crossing. That is all I can tell you about that.

Q. You don't know how it was before the railroad was there at all, of course?

A. There perhaps might not have been a street there then. In Newfield, D. C. Troop was the real estate man and the only one in Newfield, and he had a little daughter a little older than I was, and when this street was made—I don't know anything about previous to that or where the street came from, but when Helena Street was put through Mr. Troop named it Helena Street for his little daughter, and Mr. Harris told me that Helena Street was accepted by the township just as it was read from the book, and he told me that there was so much reserved—I don't remember what he said, but so much reserved in front of this property that now Mr. Baker, our mayor, owns, there was so much reserved in case they should put a boulevard on the east side. 20 30

Q. Did you know that the records of the town-

ship show that the road was accepted from the railroad in a straight line to Madison Avenue?

A. I don't know anything about that. The street has always gone through there since I was a child, Helena Street has, from the crossing there. Of course, that was the crossing for Helena Street—out to Madison Avenue. I know that, and I have always traveled it since I was a little girl, and after we moved away—when I came back I used to  
10 go up Helena Street because it was so home-like, out to the cemetery. Of course, we own a lot out there.

Q. Do you remember when the house was built that Mrs. Julia Smith used to live in?

A. I remember when it was built, but I wasn't living here. We came back and forth. We moved to Jersey City and I was never more than six months at a time out of Newfield since I was a little girl.

20 Q. Do you know whether the crossing was there before the house was built?

A. Whose house?

Q. Julia Smith's.

A. It has been there since I was a child.

Q. You don't know when Julia Smith's house was built?

A. I couldn't tell you the number of years it has been built, but I do know that when it was building I was down in Newfield and saw it there, because I  
30 said, "Oh, who is building this house?" and they said a man by the name of Smith is building that house.

Mr. Bartlett: Of course, this is hearsay.

A. People before that, their name was Knowles, that lived there, an old Quaker lady, and we called

her Granny Knowles, and of course I was interested in the building of the house, but I don't know how many years it was.

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FRANKLIN SHARP, sworn for the prosecutor.

Direct examination.

By Mr. Bartlett:

10

Q. Where do you live?

A. Newfield, Columbia Avenue.

Q. You are an owner of property there, a taxpayer?

A. Yes, sir.

Q. How many years have you lived in Newfield?

A. Since 1913.

Q. Previous to that where did you live?

20

A. The Lake.

Q. How near is the Lake to Newfield?

A. Three miles.

Q. How long have you known the street or road known as Helena Street?

A. Since Pettingills had their house there. That is about thirty-five years ago.

Q. Have you used the street?

A. Yes, sir.

Q. How long has it been open, to your knowledge, 30 an open, public highway, traveled by the public?

A. Ever since Pettingill's house was put there.

Q. That is, since 1867?

A. I suppose, yes.

Q. How is your property located in reference to Helena Street?

A. Well, it is quite a distance from Helena Street.

Q. On which side of the railroad?

A. West.

Q. Do you use Helena Street?

A. Yes, sir.

Q. In crossing to the cemetery or in crossing to the east side of Newfield in the northeast section, what street do you use?

10 A. Helena.

Q. And that street opens up both the northeast and the northwest sections of Newfield, does it not?

A. Yes, sir.

Cross-examination.

By Mr. Avis:

Q. Mr. Sharp, wouldn't it be just as easy for you  
20 to use Catawba Avenue crossing?

A. Why, quite as easy, yes, sir.

Q. And that is a better crossing, a bigger crossing?

A. Yes.

Q. And it is a protected crossing ——

A. Yes.

Q. ——so far as the trains are concerned?

A. Yes.

Q. And you live within practically one square of  
30 this crossing, don't you?

A. Yes, sir.

Q. So that if you were going over to the east side of the railroad, that would be the natural and easiest way for you to go, wouldn't it?

A. No.

Q. Why not?

A. Because it would be natural to go up Helena Street to go to the cemetery. That is the way we always go.

Q. You know that Helena Street runs in a southeasterly direction and is closer to Catawba Avenue, if Catawba Avenue ran straight at the Madison Street end, than it would be at the railroad, wouldn't it?

A. Why, it would be two blocks nearer to go Helena Street to the cemetery. 10

Q. The cemetery would be two blocks nearer?

A. Yes.

Q. I don't just understand. If you live within a square of the crossing at Catawba Avenue —

A. Well, that would be a block, wouldn't it?

Q. That would be one block?

A. Yes.

Q. Where is the next block?

A. The distance from Catawba up to the cemetery. 20

Q. You have never measured that, have you?

A. No, sir.

Q. You think there is about two squares difference?

A. Why, I should judge there was.

Q. One way you go over to Catawba Avenue, which is a good street, is it not?

A. Yes.

Q. And you have a protected railroad crossing, a wide crossing, too? 30

A. Yes.

Q. And with Helena Street you go over this crossing, turn right and go a little ways along the railroad and then turn to your left and go out Helena Street to the cemetery?

A. Yes. The way you have been using it this afternoon, that is the only way to go.

Q. Which way?

A. The crossing and up the railroad a little way.

Q. That is the only way you can go?

A. Yes, sure.

---

HOWARD BISHOP, sworn for the prosecutor.

10 Direct examination.

By Mr. Bartlett:

Q. You are a property owner in Newfield, Mr. Bishop?

A. Yes, sir.

Q. Taxpayer?

A. Yes, sir.

Q. How many years have you lived in Newfield?

20 A. About twenty-seven.

Q. Do you know the street known as Helena Street?

A. I do.

Q. Where is your property located in reference to that street?

A. Located on Rosemont and Helena, the corner.

Q. How many years have you lived on that corner?

A. Ten years, I think.

30 Q. Do you use Helena Street to travel on?

A. Yes, sir.

Q. How long, to your knowledge, has it been an open, public street?

A. Ever since I have known Newfield, and that has been about thirty years.

Q. Does that street cross the right-of-way and

the West Jersey railroad so that it leads into the west side of the railroad?

A. Yes, as it has been described.

Q. Ever since you have known the street?

A. Yes, sir.

Q. Would your property be affected by the vacation of a portion of this street?

Mr. Avis: That is objected to.

A. Yes, sir, I think so.

10

Q. In what way would it be affected?

A. Valuation.

Q. You mean by that what?

A. I don't think it would sell as well.

Q. How much of the street is proposed to be closed by this ordinance?

A. From Church Street to the railroad.

Q. And that is about what part of the entire length of the street?

A. Well, I should say about one-third, probably.

20

Cross-examination.

By Mr. Avis:

Q. How often do you use Helena Street from Church Street to the railroad?

A. Whenever I have occasion.

Q. How often is that as a rule? Do you know?

A. Sometimes I use it four or five times a week, and other times I won't use it for a month.

30

Q. Where would you be going when you would use Helena Street?

A. That is a queer question.

Q. You wouldn't be using it if you were going downtown in Newfield, would you?

A. No, certainly not.

Q. That is the reason I asked you. I just wondered what occasion would cause you to use Helena Street down here, when all of Newfield is the other way from you, practically, if you go down Rosemont Avenue to Catawba Avenue. If you were going to the railroad station you would use Rosemont and Catawba, wouldn't you?

A. If I wanted to go to the west side, to people  
10 that would be nearer, I would use Helena Street.

Q. In other words, if you wanted to go to see Mr. Holeton, for instance, you would use Helena Street?

A. Yes, sir.

Q. How many houses are there around where Mr. Holeton lives?

A. I don't know just how many there is. There is several along there.

Q. But most of the people live downtown further, down around Catawba Avenue and further  
20 down in a southerly direction along the West Boulevard?

A. Well, there are quite a few lives along there.

Q. If you were going to the railroad station, we will say, down to the Catawba Avenue crossing, the nearest way for you to go would be down Rosemont Avenue and Catawba Avenue, would it not?

A. Most naturally, yes.

Q. And if you were going to the cemetery from  
30 the corner of Columbia Avenue and West Boulevard, it would be nearer for you to go to Catawba Avenue and out Catawba Avenue to Madison and then to the cemetery, would it not?

A. No, sir.

Q. It wouldn't?

A. It would not.

Q. It would be closer for you to go down the West Boulevard to Helena Street and out Helena Street to the cemetery, would it?

A. Not to go to the Boulevard, no.

Q. I am talking about going from the corner of Columbia Avenue and West Boulevard.

A. From Columbia Avenue?

Q. From Columbia Avenue and West Boulevard, from the corner there, we will say, suppose you wanted to go to the cemetery; which would be the shortest way? 10

A. From Columbia Avenue I would go out Catawba.

Q. And it would be better roads and a better crossing, wouldn't it, over the railroad?

A. Yes.

---

WILLIAM ZELLER, sworn for the prosecutor. 20

Direct examination.

By Mr. Bartlett:

Q. You reside in Newfield, Mr. Zeller?

A. Yes, sir.

Q. On what street do you live?

A. Rosemont Avenue.

Q. How near to Helena Street is your property? 30

A. The second house.

Q. The second house north of Helena, is it?

A. South. About one hundred feet.

Q. How many years have you lived there?

A. Five years.

Q. Before that time did you live in Newfield?

A. No.

Q. Do you use Helena Street?

A. Well, I use it sometimes. Sometimes I may use it maybe two or three times a week and then again maybe I may not use it for quite a while. It just depends on where I am going.

Q. It has been an open, public, traveled street since you have been there?

A. Yes, as far as I know.

10 Q. It crosses the railroad?

A. Yes, it crosses the railroad.

Q. You have used it in crossing the railroad?

A. Yes.

Q. And it relates to the northeast section of Newfield and the northwest section, does it not?

A. Yes, northwest and northeast.

Q. In other words, it is the street that opens up those two sections?

A. Yes.

20

Cross-examination.

By Mr. Avis:

Q. As I understand it, you would use Helena Street down to the railroad in the event that you were going somewhere on the northwest part of Newfield?

A. Yes.

30 Q. In other words, if you were going downtown, as we call it, down around where the stores are or the station, you would go down Rosemont Avenue?

A. Yes.

Q. As you come down Helena Street towards the railroad, when you get down to the railroad you turn to your right and go a short distance along the railroad and then over this crossing?

A. Yes, sir.

Q. As you approach the railroad it is true, is it not, that on your left side, looking toward the railroad station, there is an embankment there?

A. Yes, sir.

Q. You couldn't see a train coming until you get around that bend, could you?

A. Why, I always, when I cross there—I always drive down and turn around to the right and then I make just a fraction of a turn to the left and stop. 10

Q. You stop and look?

A. You have to do that. That is the only place you can see. You have to drive right to the post and stop and look.

Mr. Bartlett: The prosecutor offers in evidence a book entitled, "A History of Newfield, Gloucester County, New Jersey, by J. B. Haydock," published in 1891, and on page 23 an extract reading as follows: "About 1874, Mr. John Fair, of Albany, New York, proposed to give a piece of land on Helena Street east of the railroad for the cemetery, to be under the control of the Episcopalians." Also on page 22, referring to Rose Hill Cemetery Association, "Committees were appointed to select a suitable site, who after some delay and difficulty finally reported that a piece of land at the corner of Madison Avenue and Helena Street, well adapted for burial purposes could be bought from S. B. Hathaway. This is recorded in the minutes of the Rose Hill Cemetery Association on September tenth, 1867." 20 30

(The book referred to was marked Exhibit P4.)

Mr. Bartlett: I offer in evidence certified copy of deed from Julius Smith and wife to D. C. Wharton Smith, dated June twenty-seventh, 1914, recorded in deed book 249, at page 614, in the office of the county clerk of Gloucester County at Woodbury, New Jersey.

(Paper marked Exhibit P5.)

10 Mr. Bartlett: I offer in evidence certified copy of deed from D. C. Wharton Smith to Godfrey Vaughan Baker, dated September twenty-ninth, 1919, recorded in the clerk's office in Gloucester County at Woodbury, N. J., in deed book 281, at page 327.

(Paper marked Exhibit P6.)

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20 I hereby certify that the foregoing is a full and accurate transcript of the depositions taken before me in the before-entitled cause.

CLAUDE W. MYROSE,  
*Supreme Court Examiner.*

DEPOSITIONS.

NEW JERSEY SUPREME COURT.

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PHILIP F. HOLETON, <i>Prosecutor,</i>	} On Certiorari. Depositions.	10
v. BOROUGH OF NEWFIELD, <i>Defendant.</i>		

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Vineland, N. J., December 28, 1927.

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(Depositions of witnesses taken before CLAUDE W. MYROSE, Supreme Court Examiner, at the office of HON. HERBERT C. BARTLETT, Vineland, New Jersey, on December twenty-eighth, 1927, at two o'clock in the afternoon, in the presence of HON. HERBERT C. BARTLETT, attorney for the prosecutor, and JAMES B. AVIS, Esq., of MESSRS. AVIS & AVIS, attorneys for the defendant.)

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(It is agreed between counsel for the respective parties that the depositions shall be taken stenographically, afterwards reduced to typewriting and the signatures of witnesses waived.)

GODFREY V. BAKER, sworn for the defendant.

Direct examination.

By Mr. Avis:

Q. Mr. Baker, as I understand it, you own a property lying to the northwest of Helena Street  
10 between the railroad and the land of Mr. Dyer?

A. I do. |

Q. From whom did you buy that property?

A. From a man named D. C. Wharton Smith.

Q. Do you remember when that was?

A. I think it was 1918 or 1919. I think it was  
1918 in the fall, in September.

Q. Do you know whether or not there was any  
reservation of any right-of-way in your deed?

A. There was.

20 Q. Do you know from whom Mr. Smith, D. C.  
Wharton Smith, purchased the property before he  
sold it to you?

A. Mr. Julius Smith, I believe.

30 Mr. Avis: Inasmuch as there has been testimony  
offered by the prosecutor relative to the amount of  
travel on that portion of Helena Street vacated by  
the borough council of the Borough of Newfield, I  
am offering some testimony to refute the testimony  
offered by the prosecutor, with the thought, how-  
ever, that any testimony relative to the use of Hel-  
ena Street is irrelevant and immaterial.

Q. Mr. Baker, is Helena Street between Church  
Street and the railroad a well-used street?

A. It is not.

Q. How often is it used? How much is it used?

A. Well, aside from the tradespeople who bring—come to Mr. Dyer's house and to my house and sometimes use that street, and Mr. Dyer's own truck and my trucks and so on, I should say at this time of the year by actual count I averaged three to four cars a day, and one of the three days that I kept count I only saw two cars aside from those belonging to Mr. Dyer or coming to Mr. Dyer's or my own place.

10

Q. Are there any houses between the railroad and Church Street on Helena Street besides your house and Mr. Dyer's house?

A. There are not, no, sir.

Q. Have you seen Mr. Holeyton, the prosecutor in this cause, using this road?

A. Very, very little.

Q. What sort of a crossing is there across the railroad near Helena Street?

A. Well, just to what do you refer, Mr. Avis? 20

Q. How wide is it, do you know?

A. I think it is probably a rod wide.

Q. This crossing, as I understand it, goes from West Boulevard on the west to a right-of-way on the east. Now, on the east side of this crossing, is there a road there?

A. Why, it is that—there was a cut there. It is partly washed and partly dug out. I don't know whether you would call it a road or not.

Q. But crossing from West Boulevard, using this crossing, there is a place if you turn sharp to your right, by which you can get on to Helena Street, as I understand? 30

A. Yes, sir.

Q. What is the appearance of Helena Street, Mr. Baker?

A. It is in very bad shape as far as being a street is concerned.

Q. Does it have the appearance of being a well-used street?

A. It does not.

Q. How wide does it appear?

A. Just the distance between two wheel tracks, with weeds in between.

10 Cross-examination.

By Mr. Bartlett:

Q. Mr. Baker, can you tell me the number of feet you have fronting on Helena Street?

A. Ten chain and some links. I don't know how much that is reduced to feet.

20 Q. Your property and the property of Richard W. Dyer is the entire property fronting on the north side of the street between the West Jersey and Seashore railroad and Church Street?

A. Yes, sir.

Q. And the property of Richard W. Dyer takes in the entire frontage on the south side?

A. Yes, sir.

Q. Then you and Mr. Dyer would be the two people benefitted by the vacation of the street?

A. Benefitted in what way?

Q. By throwing this street into your land?

30 A. Well, there never was any question or intention of doing anything but leaving the street as it is for the use of trucks and teams and so on coming to my house and coming to Mr. Dyer's house.

Q. But the general public would be shut out from using that street by reason of this ordinance which proposes to vacate it?

A. Yes, sir.

Q. So that the street would then virtually be owned or controlled by you and Mr. Dyer; is that correct?

A. Yes, sir.

Q. And would be added to your land or Mr. Dyer's?

A. Well, I don't know just how the law reads on that. As a matter of fact, it is more of a detriment to my property than a benefit that might accrue to me from receiving the land, because now I am a corner property and when that road is closed I will only have an exit across the railroad. It doesn't do me any good personally at all. Quite the opposite. 10

Q. How does it benefit Mr. Dyer?

A. Well, the ordinance was drawn to vacate the road so that Mr. Dyer will be enabled to extend his pigeon farm on the north side of the road.

Q. In other words, he would be enabled to take that street and use it for his pigeon yard; is that correct? 20

A. Why, there was to be left sufficient so that either Mr. Dyer or I, myself, could get through there, probably just as much of a street as is used at the present time.

Q. But the outside public were to be shut off from using the street?

A. Yes, sir.

Q. What position do you hold in Newfield, Mr. Baker? 30

A. I am the mayor.

Q. And were the mayor when the ordinance was passed?

A. I was.

Q. It is your name signed to the ordinance?

A. Yes, sir.

Q. Now, asking you about that right-of-way you speak of, reserved in your deed, that is on the east side of your property running along the West Jersey and Seashore railroad?

A. That is on the west side of my property.

Q. But on the east side of the West Jersey and Seashore railroad?

A. Yes, sir.

10 Q. Was the plan in reserving that to make that an East Boulevard?

A. No, sir, that is reserved—that is, to judge from the exception on my deed, it was to make it possible for any person owning land north of me, you see, to get to Helena Street or to the crossing, and it was reserved for that specific purpose, according to the deed.

20 Q. In other words, reserved out of your deed so that people living north of you could use that in getting into Helena Street or in passing along the West Jersey and Seashore railroad on the east?

A. To the crossing, yes, sir.

Q. No petition was presented, was it, to council to vacate this street?

A. No formal petition, no.

Q. Did you know it was an accepted street by Franklin Township when you passed your ordinance?

30 A. We did not know that it was an accepted street, although we presumed from what old-timers had said, that it was.

Q. The Borough of Newfield is carved out of Franklin Township?

A. Yes, sir.

Q. And has been established as a borough out of that township about how long?

A. Four or five years.

(It is stipulated between counsel that a certain map may be offered as an exhibit on the part of the defendant without proof as to the qualifications of the person who made it, and be admitted as an exhibit.)

(The map referred to was marked Exhibit D1.)

10

I hereby certify that the foregoing is a full and accurate transcript of the depositions taken before me in the before-entitled cause.

.....*Blanche M. Myers*.....  
Supreme Court Examiner.

EXHIBIT P1.

12/28/27. C. W. M.

20

An Ordinance for the vacation and relinquishing of the public rights in and to a portion of a certain street known as Helena Street, in the Borough of Newfield, County of Gloucester and State of New Jersey.

BE IT ORDAINED by the Mayor and Council of the Borough of Newfield, in the County of Gloucester, and State of New Jersey:

1. All that certain street, and the land lying within the bounds thereof, between the right of way of the West Jersey & Seashore Railroad Company, and a line extending at right angles to the sideline of said street, from the Westerly line of Church Street, to the Northeasterly line of Helena Street, is hereby vacated and the public rights in

said portion of Helena Street, and the land contained within the bounds thereof, as heretofore mentioned, are hereby relinquished.

2. This ordinance shall take effect upon its publication as provided by law.

The above ordinance was introduced at a regular meeting of the Borough Council of the Borough of Newfield, held September 6th, 1927, and will be considered for final passage at a meeting of  
 10 said Borough Council to be held at the Borough Hall in said Borough on the 19th day of Sept. 1927 at 7.30 o'clock in the evening at which time all persons interested in such ordinance will be given an opportunity to be heard.

C. R. Kille

Borough Clerk.

Passed finally at a regular meeting of Council held September 19th, 1927.

APPROVED: Godfrey V. Baker

20 Mayor

ATTEST: C. R. Kille

Borough Clerk.

(Seal)

(Cover of Exhibit P1.)

AN ORDINANCE for the vacation and relinquishing of the public rights in and to a portion of a certain street known as Helena Street, in the Borough of Newfield, County of Gloucester and State of New Jersey.

30

## EXHIBIT P5.

12/28/27. C. W. M.

THIS INDENTURE, Made the twenty seventh day of June in the year of our Lord one thousand nine hundred and fourteen, BETWEEN JULIUS SMITH, of the Township of Franklin, in the County of Gloucester and State of New Jersey, and Amanda, his wife, of the first part, and D. C. 10 WHARTON SMITH of the City and County of Philadelphia and State of Pennsylvania, of the second part: WITNESSETH That the said party of the first part for and in consideration of the sum of Six Thousand Dollars, lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, 20 aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said party of the second part, his heirs and assigns ALL that certain tract or parcel of land and premises situate in the Township of Franklin, in the County of Gloucester and State of New Jersey, bounded and described as follows: BEGINNING at the intersection of the centre of Helena Street with the east line of Cape May Railroad: 30 thence (1) along the east line of the railroad, north, twenty-two degrees and forty-seven minutes west, six chains and sixty links to a corner of Julius Smith's other land; thence (2) by the same, north seventy-two degrees east, six chains and forty links to a corner; thence (3) still by the same,

south eighty degrees east, nine chains and ten links to a corner in line of Harry Smith's land; thence (4) by the same, south fourteen degrees and fifty-two minutes west, nine chains and thirty-five links to the centre of Helena Street aforesaid; thence (5) along the centre of the same, north seventy-five degrees and fifty minutes west, ten chains and forty-two links to the place of beginning. EXCEPTING thereout and therefrom a right-of-way

10 one rod wide extending along the easterly line of the railroad from the northerly line of Helena Street northwestwardly to other lands of the aforesaid Julius Smith. BEING a part of the same land and premises which George A. Smith and wife, by deed dated April 18th, A. D. 1907, of record in the office of the Clerk of Gloucester County at Woodbury, N. J. in Book No. 210 of Deeds, folio 444 &c., granted and conveyed unto the said Julius Smith in fee. ALSO BEING a part of the same land and

20 premises which D. Harry Chandler and wife, by deed dated April 28th, A. D. 1897, of record in the office of the Clerk aforesaid, in Book No. 173 of Deeds, folio 530 &c., granted and conveyed unto the said Julius Smith, in fee. ALSO BEING a part of the same land and premises which D. Harry Chandler and wife, by deed dated April 28th, A. D. 1897, of record in the office of the Clerk aforesaid in Book No. 173 of Deeds, folio 531 &c. granted and conveyed unto the said Julius Smith in fee. ALSO

30 BEING a part of the same land and premises which Henry Whitfield and wife by deed dated May 12th A. D. 1898 of record in the office of the Clerk aforesaid, in Book No. 176 of Deeds, folio 580 &c., granted and conveyed unto the said Julius Smith in fee. TOGETHER with all and singular the buildings, improvements, woods, ways, rights, lib-

erties, privileges, hereditaments and appurtenances, to the same belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and of every part and parcel thereof: AND ALSO all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of in, and to the said premises and appurtenances: TO HAVE AND TO HOLD the said premises with all and singular the appurtenances, unto the said party of the second part his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. AND the said Julius Smith, for himself, his heirs, executors and administrators, doth by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that he the said Julius Smith, his heirs, all and singular the hereditaments and premises hereinabove described and granted or mentioned and intended to be so with the appurtenances, unto the said party of the second part, his heirs and assigns, against him the said Julius Smith, his heirs and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof, by, from, through or under him, them or any of them SHALL and WILL WARRANT and forever defend. IN WITNESS WHEREOF the said party of the first part to these presents have hereunto set their hands and seals. Dated the day and year first above written.

Julius Smith (Seal)

Amanda Smith (Seal)

SIGNED, SEALED AND DELIVERED )

IN THE PRESENCE OF )

Charles R. Stevenson

STATE OF NEW JERSEY )

: ss

CAMDEN COUNTY )

10 BE IT REMEMBERED, That on this twenty-seventh day of June in the year of our Lord one thousand nine hundred and fourteen before me, a Master in Chancery of New Jersey, personally appeared JULIUS SMITH and AMANDA, his wife, who I am satisfied are the grantors mentioned in the above Deed or Conveyance, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed; and the

20 said Amanda Smith, being of full age, on a private examination apart from her said husband before me acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband. All of which is hereby certified.

Charles R. Stevenson

Master in Chancery of New Jersey.

Recorded August 19th, 1914 12.15 o'clock P. M.

James Lafferty, Clerk  
S. T. M.

30 STATE OF NEW JERSEY }  
GLOUCESTER COUNTY } ss.

I, OLIVER J. WEST, Clerk of said County and of the various Courts of Record thereof, do hereby certify that the foregoing is a true and correct copy of the above Deed as the same is of record in my office in Book 249 of Deeds, page 614 &c.

(Seal) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said County and Courts at Woodbury, N. J., in said County, this Fourth day of January A. D., 1928.  
Oliver J. West

Clerk

R. Edward Klaisz

Deputy Clerk

10

EXHIBIT P6.

12/28/27. C. W. M.

D. C. WHARTON SMITH  
TO  
GODFREY V. BAKER  
(\$4.00 Revenue Stamp )

THIS INDENTURE  
made the twenty  
ninth day of September  
in the year of our  
Lord one thousand 20

nine hundred and nineteen (1919) BETWEEN  
D. C. Wharton Smith of Newfield, New Jersey,  
widower, of the first part, and Godfrey Vaughan  
Baker of the same place of the second part: WIT-  
NESSETH That the said party of the first part  
for and in consideration of the sum of ONE DOL-  
LAR lawful money of the United States of Amer-  
ica, well and truly paid by the said party of the  
second part to the said party of the first part, at  
and before the ensealing and delivery of these 30  
presents, the receipt whereof is hereby acknowl-  
edged, hath granted, bargained, sold, aliened, en-  
feoffed, released, conveyed and confirmed and by  
these presents doth grant, bargain, sell, alien, en-  
feoff, release, convey and confirm unto the said  
party of the second part, his heirs and assigns,

ALL that certain tract or parcel of land and premises situate in the Township of Franklin in the County of Gloucester, and State of New Jersey, bounded and described as follows: BEGINNING at the intersection of the centre of Helena Street with the East line of the Cape May Railroad; thence (1) along the East line of the Railroad North twenty two degrees forty seven minutes West six chains and sixty links to a corner of land  
10 now or late of Julius Smith; thence (2) by the same north seventy two degrees East six chains and forty links to a corner; thence (3) still by the same South eighty degrees East nine chains and ten links to a corner in line land now or late of Harry Smith; thence (4) by the same South fourteen degrees fifty two minutes West nine chains and thirty five links to the centre of Helena Street aforesaid; thence (5) along the centre of the same  
20 North seventy five degrees fifty minutes West, ten chains and forty two links to the place of beginning. Excepting thereout and therefrom a Right of Way one rod wide, extending along the Easterly line of the Railroad from the Northerly line of Helena Street Northwestwardly to lands now or late of the aforesaid Julius Smith. Being the same premises which Julius Smith and wife by Indenture bearing date the twenty seventh day of June A. D. 1914 and recorded in the Clerk's Office of the County of Gloucester in Book 249 of Deeds on page  
30 614 &c granted and conveyed unto the said D. C. Wharton Smith in fee. TOGETHER with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof and of every part and parcel thereof:

AND ALSO all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity of the said party of the first part of, in and to the said premises with the appurtenances. TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part his heirs and assigns forever. Subject to the payment of a certain mortgage debt of Four Thousand Dollars with interest. AND THE SAID party of the first part for himself his heirs, executors and administrators doth by these presents, covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that he the said party of the first part his heirs all and singular the hereditaments and premises herein above described and granted, or mentioned and intended so to be with the appurtenances, unto the said party of the second part, his heirs and assigns, against him the said party of the first part, his heirs and against all and every other person or persons whomsoever, lawfully claiming or to claim the same, or any part thereof, by from or under him them or any of them, shall and will subject as aforesaid, warrant and forever defend. IN WITNESS WHEREOF the said party of the first part to these presents hath hereunto set his hand and seal. Dated the day and year first above written.

D. C. WHARTON SMITH (SEAL)

Signed, sealed and delivered

in the presence of

JAMES S. ASHWORTH

STATE OF PENNA: PHILADELPHIA

COUNTY: ss Be it remembered that on this twenty ninth day of September in the year of our

Lord one thousand nine hundred and nineteen, before me, the subscriber, a notary public for the commonwealth of Pennsylvania, residing in the City of Philadelphia, personally appeared D. C. Wharton Smith, who I am satisfied is the grantor mentioned in the above deed or conveyance, and I having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. ALL  
 10 of which is hereby certified.

(Seal) JAS. S. ASHWORTH Notary Public  
 Commission expires Jan. 23, 1921

41182 IN THE COURTS OF COMMON PLEAS  
 OF PHILADELPHIA COUNTY:

STATE OF PENNSYLVANIA: COUNTY OF  
 PHILADELPHIA: ss. I, Henry F. Walton, Prothonotary of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws  
 20 of the State of Pennsylvania to make the following Certificate do certify, That James S. Ashworth Esquire, whose name is subscribed to the certificate of the acknowledgment of the annexed instrument and thereon written, was at the time of such acknowledgment a Notary Public for the Commonwealth of Pennsylvania, residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of Deeds or conveyances  
 30 for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts as such full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the hand writing of the said Notary Public and verily believe his signature thereto is genuine, and

I further certify that the said Instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania. IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said court this 2d day of October in the year of our Lord one thousand nine hundred and nineteen (1919).

HENRY F. WALTON. Prothonotary  
By Meredith Hanna. Dep. Prothonotary  
(Seal) Durante Absentia, Secundum Legem. 10  
OLIVER J. WEST. Clerk  
(RT)

Recorded October 3, 1919 at 8.15 A. M.

6/5

STATE OF NEW JERSEY }  
GLOUCESTER COUNTY } ss.

I, OLIVER J. WEST, Clerk of said County and of the various Courts of Record thereof, do hereby certify that the foregoing is a true and correct copy of the above Deed as the same is of record in my office in Book 281 of Deeds, page 327 &c. 20

(Seal) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said County and Courts at Woodbury, N. J., in said County, this Fourth day of January A. D., 1928.  
Oliver J. West

Clerk

R. Edward Klaisz

Deputy Clerk 30

## EXHIBITS.

- Ordinance vacating Helena Street. Exhibit P1  
Map of Street Exhibit P2  
Extract from minutes, Franklin Township Committee meeting accepting Helena Street Exhibit P3  
History of Newfield, see extracts page 53 Exhibit P4
- 10 Deed, Julius Smith and wife to D. C. Wharton Smith, dated June 27th, 1914 Exhibit P5  
Deed, D. C. Wharton Smith to Godfrey V. Baker, Sept. 29th, 1919 Exhibit P6

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CONCLUSION OF THE SUPREME COURT.

(Filed May 14, 1928.)

NEW JERSEY SUPREME COURT.

No. 201. May Term, 1928.

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PHILIP F. HOLETON,  
Prosecutor, }  
v. } On Certiorari.  
BOROUGH OF NEWFIELD, } Conclusion of Su-  
Defendants. } preme Court.

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Argued May 1st, 1928. Decided May 14th, 1928. 20

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Before JUSTICES MINTURN, BLACK and CAMPBELL.

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For the prosecutors, HERBERT C. BARTLETT, ESQ.  
For the defendant, MESSRS. AVIS AND AVIS.

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*Per Curiam:*

The certiorari in this case was allowed to review an ordinance of the Borough of Newfield in Gloucester County dated September 19th, 1927; providing, for the vacation of a portion of Helena Street.

The prosecutor writes down five reasons for setting aside the ordinance. First: Because, Helena Street has been a public street for over forty-five years and the rights of the public acquired therein cannot be taken away by the ordinance. Second: The owners of property on Helena Street will be injured by the passage of the ordinance. Third: The ordinance takes public property and gives the same to private individuals. Four: The ordinance deprives  
10 the public of its rights in the street. Fifth: In other respects the ordinance is illegal and unjust.

The portion of Helena Street vacated is between the right of way of the West Jersey and Seashore Railroad Co. and Church Street, some 995.72 feet. The ordinance was passed in accordance with Subdivision B, Section one, Art. 22, Chap. 155, P. L. 1925, pp. 393, 394.

Our reading of the record leads us to the conclusion, that the case is brought within the rule applied by this Court in the case of *Kean v. City of Elizabeth*, 54 N. J. L. 462. An extended discussion of the facts would serve no useful purpose. We can find nothing in the record that would justify the statement, that the ordinance takes public property and gives the same to private individuals.  
20

Our conclusion is, that the ordinance is sustained as valid. The certiorari is dismissed with costs.



## NOTICE AND GROUNDS OF APPEAL.

(Filed June 21, 1928.)

## NEW JERSEY SUPREME COURT.

10

PHILIP F. HOLETON,  
*Prosecutor-Appellant,*  
 v.  
 BOROUGH OF NEWFIELD,  
*Respondent.*

On Certiorari.  
 Notice and Grounds  
 of Appeal.

*To Avis & Avis, Attorneys of Respondent:*

20

Take notice that the prosecutor, Philip F. Holeton, appeals to the Court of Errors & Appeals from the whole of the judgment entered in this cause sustaining the ordinance in question as valid and dismissing the writ of certiorari with costs; on the following grounds:

The judgment of the Supreme Court affirming said ordinance and dismissing the writ of certiorari is erroneous for the following reasons:

30

1. That the said portion of Helena Street sought to be vacated and the public rights relinquished has been a public street used by the traveling public for over forty-five years continuously, and the public have acquired rights therein which cannot be taken away by ordinance of city council as above recited, and said ordinance for that reason is illegal.

2. The owners of property on the street known as Helena Street would be greatly injured by the passage of said ordinance.

3. Said ordinance proposes to take public property and give the same to private individual which is illegal.

4. Said ordinance proposes to take public property, deprive the public the right of using said street and give the land secured by such vacation to owners facing or owning property on a part of said street, depriving the public of its rights therein, all of which is illegal. 10

5. Said ordinance is in divers other respects illegal, unjust and oppressive and should be set aside and for nothing holden.

HERBERT C. BARTLETT,  
*Attorney of Prosecutor- Appellant.* 20

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[ENDORSED]

Service of a copy of within notice is acknowledged this 16th day of June, 1928. 30

Avis & Avis,  
Attorneys of Respondent.

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NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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PHILIP F. HOLETON,  
*Prosecutor-Appellant,*  
v.  
BOROUGH OF NEWFIELD,  
*Respondent-Respondent.*

---

ON CERTIORARI.

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BRIEF OF HERBERT C. BARTLETT, OF  
COUNSEL WITH APPELLANT,  
PHILIP F. HOLETON.

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FACTS.

Helena Street, running west from Madison Avenue, crossing Rosement Avenue, past the head of Church Street and on across the railroad tracks of the West Jersey & Seashore Railroad Company, in Newfield, New Jersey, with a fifty-foot roadway, has been an open, public and travelled road for the past 45 years. By ordinance passed by the borough council on September 19th, 1927, council proposes to vacate that portion of Helena Street between Church Street and the East Railroad Boulevard, a distance

of about 995 feet (see page 14, Case), or about one-third of the entire street. Two persons own all the land on each side of the proposed vacated street, R. W. Dyer and Godfrey V. Baker (pages 60-61, Case). Godfrey V. Baker is and was mayor of the Borough of Newfield (see page 61, Case) when the ordinance in question was passed, and, as mayor, is a component part of council. He is a beneficiary by the proposed vacation of Helena Street, as the vacation of the street throws the land of Dyer and Baker together.

On August 21st, 1899, Helena Street, at Newfield, was accepted as a public highway, of 3 rods width, by the township committee of Franklin Township (page 23 of Case). Newfield was then a part of Franklin Township, but was set up an independent borough about four years ago.

The street or roadway has been used by the travelling public for the past 45 years continuously.

To vacate this street is of great inconvenience to the travelling public, compelling those living on the west side of the West Jersey Railroad to go a long distance out of their way to reach that portion of Newfield east of the railroad and through which this street now runs.

There was no public request, or demand, nor any petition filed requesting the vacation of the street.

The only notice the public had of the contemplated passage of the ordinance was published in a newspaper printed at the county seat.

GROUND OF APPEAL.

The following are the grounds on which the appeal is based from the judgment of the Supreme Court dismissing the writ of certiorari and sustaining the ordinance in question:

1. The said portion of Helena Street sought to be vacated and the public rights relinquished has been a public street used by the travelling public for over forty-five years, continuously, and the public have acquired rights therein which cannot be taken away by ordinance of city council, as above recited, and said ordinance, for that reason, is illegal.

2. The owners of property on the street known as Helena Street would be greatly injured by the passage of said ordinance.

3. Said ordinance proposes to take public property and give the same to private individuals, which is illegal.

4. Said ordinance proposes to take public property, deprive the public the right of using said street and give the land secured by such vacation to owners facing or owning property on a part of said street, depriving the public of its rights therein, all of which is illegal.

5. Said ordinance is, in divers other respects, illegal, unjust and oppressive and should be set aside and for nothing holden.

## ARGUMENT.

## I.

The said portion of Helena Street sought to be vacated and the public rights relinquished has been a public street used by the travelling public for over 45 years, continuously, and the public have acquired rights therein which cannot be taken away by ordinance of city council, as above recited, and said ordinance, for that reason, is illegal.

“The power to vacate a street or public place is to be exercised in the public interest and not for sole purpose of benefiting private property.”

Dillion Municipal Corp., Vol. 3, 5th Ed., p. 1838 (see 1160).

## II.

The owners of property on the street known as Helena Street would be greatly injured by the passage of the ordinance.

All of the owners of property on Helena Street, outside of two, Dyer and Baker, will be damaged by the vacation of this portion of Helena Street by the depreciation of property values and inconvenience in travel.

The injury to property owners on this street is not, however, the paramount issue in this case, but the injury to the travelling public is the injury complained of.

There was no call made on behalf of the public that the street in question be closed. No petition was filed, asking for such vacation, but, as shown from a reading case, citizens residing near the proposed vacation street and using the road to travel on are all opposed to its closing.

The certiorari in this case is by a taxpayer, in the interest of the public rights, and now, by an abutting property owner who claims damage to his property by reason of the vacation of the street.

III.

Said ordinance proposes to take public property and to give it to private individuals, which is illegal.

The two persons to be benefitted by the vacation of Helena Street are Richard W. Dyer and Godfrey V. Baker. Baker was mayor of Newfield at the time of the passage of the ordinance and approved the same as mayor.

As mayor of Newfield he is a part of the council that passed the ordinance.

“The Mayor and Councilmen of every Borough shall constitute the Council thereon and shall meet, &c.”

General Act Relating to Boroughs, Sec. 23,  
p. 237, Vol. 1, Compiled Statutes of N. J.

As a part of council, he is a trustee for the public and cannot participate in the passage of an ordinance, and at the same time, as a private individual, benefit by the result of the passage of the ordinance. It benefits both Baker and Dyer, in that it throws their land together, as testified by Baker (page 61, Case), enabling Dyer to extend his chicken-yard into the street.

The present case differs from *Kean v. Elizabeth*, 54 N. J. Law 462, and which the Supreme Court claimed governed the present case, in that the mayor and no member of the council or commission were interested in any land adjacent to the street vacated, as in the present case.

In *Kraft v. Board of Education*, 67 N. J. Law, page 515:

“It is not shown by any direct evidence that the member of the board or any of them were governed in their actions by corrupt motives or were benefitted personally in any way by the award of the contract.”

In the present case, the mayor of the Borough of Newfield was benefitted personally by the addition to his land in vacating the street and the joining of his property with that of Dyer.

“When municipal corporations are acting within the power and discretion vested in them by the legislature, the Court cannot interfere unless fraud is shown, or the power or discretion is being manifestly abused, to the injury and oppression of the citizens.”

*Kraft v. Board of Education*, 67 N. J. Law 512, page 512.

This is exactly the claim of the prosecutor, that the power and discretion was abused in the passage of this ordinance, to the detriment of the citizens of Newfield.

“The power to vacate is discretionary on part of municipality and in absence of abuse Courts will not interfere.”

Vol. 3, Dillion Municipal Corporations, p. 1838, Sec. 1160, 5th Edition.

## IV.

Said ordinance proposes to take public property, deprive the public of the right of using said street and give the land by such vacation to the owners facing or owning property on the part of said street vacated, depriving the public of its rights, therein all of which is illegal.

If, as appellant maintains, Godfrey V. Baker, as mayor and part of the common council of Newfield, was disqualified from signing the ordinance in question, then we maintain the ordinance was invalid and of no effect.

The passage of the ordinance required the exercise of judicial judgment as to whether the street should be vacated and whether the rights of the public should be released therein. Baker, being the owner of property adjoining and abutting on the proposed vacated street, or that part to be vacated, or the public rights released, was not in a position to act for the public and also himself, individually.

“It is a rule of common law that judicial and discretionary officers are disqualified to act in a matter in which they are personally interested.”

Vol. 29, Cyc., page 1435.

“The interest which will disqualify is not, therefore, merely such an interest as the ordinary inhabitant of a district has in the settlement of a question affecting the public welfare of such district, but must be such an interest as peculiarly affects the officer personally.”

Vol. 29, Cyc., page 1436.

It is maintained that nothing appears in the evidence that Baker was benefitted personally. It does appear that his land fronting on Helena Street and the land of Dyer will be thrown together by the vacation of the street, and the use of land vacated pass to him and Dyer, thus gaining the use of additional land (Case, pp. 60-61).

“The power to vacate a street or public place is to be exercised in the public interest and not for the sole purpose of benefiting a private party.”

Vol. 3, Dillion's Municipal Corporations,  
5th Edition, p. 1838, Section 1160.

“A private owner may be protected by damages on vacation of a street but the public cannot.”

Vol. 3, Dillion's Municipal Corporations,  
5th Edition, p. 1838.

“This the legislative power does not extend to the discontinuance of public highways for the purpose of applying them to private uses. The public interests must alone be considered in all such propositions to vacate a highway.”

Tiedeman on Municipal Corporations, page  
609, Sec. 308.

In the present case, the rights of the public are being entirely subordinated and sacrificed for the benefit of private persons, owners of the land on that portion of the street to be vacated.

“Nor will it inquire into the motives of the Tribunal to which the matter is committed, where there is no allegation of fraud, or unless it is manifest that a flagrant wrong has been perpe-

trated upon the public, and valuable rights have been surrendered ostensibly for the public good, but really for the benefit of private individuals.”

Vol. 13, Ruling Case Law, p. 70, Sec. 33.

V.

Said ordinance is in divers other respects illegal, unjust and oppressive and should be set aside and for nothing holden.

Under the Act Concerning Municipalities Laws of 1917, Chapter 152, page 404, under Article 22, Sub. B, the following was prescribed as the method to vacate a street:

“Sec. b. To establish or change the grade of or vacate any street, avenue, highway, lane or alley. Any ordinance for this purpose shall only be passed after public notice of the intention of the governing body to consider the same has been published once at least ten days prior to the date of the introduction of such ordinance in a newspaper circulating in the municipality, which said notice shall designate the time and place when and where such governing body will consider the said ordinance. At the time and place so designated, or at any other time or place to which the meeting shall have been adjourned, all persons whose lands may be affected by such ordinance, or interested therein shall be given an opportunity to be heard concerning the same.”

THE ACT OF 1925 CHANGES THIS CLAUSE  
AGAIN.

Laws of New Jersey, 1925, Chapter 155, page 394, paragraph 3, Sub. (b) amends Sub. (b) of Section 1, Article 22, of the Act to which this is an amendment to read as follows:

“(b) To establish the grade of or vacate any street, avenue, highway, lane or alley, or portion thereof, and to vacate any square, place or park, or any portion thereof, dedicated to the public, *but which has not been accepted or opened by the municipality.* The word ‘vacate’ shall be construed to include the release in whole or in part of public rights resulting from any dedication of lands not accepted by the municipality.

Whenever in any municipality there has been heretofore or shall be hereafter a dedication of lands as a public street or highway, or as a public square or place, *and the same has not been accepted or opened by the municipality,* and it shall appear to the governing body that the public interest will be better served by releasing said lands or any part thereof from such dedication, said governing body shall have the power by ordinance to release and extinguish the public rights arising from said dedication as to the whole or any part of said lands and thereupon said lands or the part thereof so released shall be effectually discharged therefrom as though said dedication had not taken place; provided, however, that notice of the intention

of the governing body to consider any such ordinance and a hearing thereon shall be given as is herein provided concerning ordinances for the vacation of streets.”

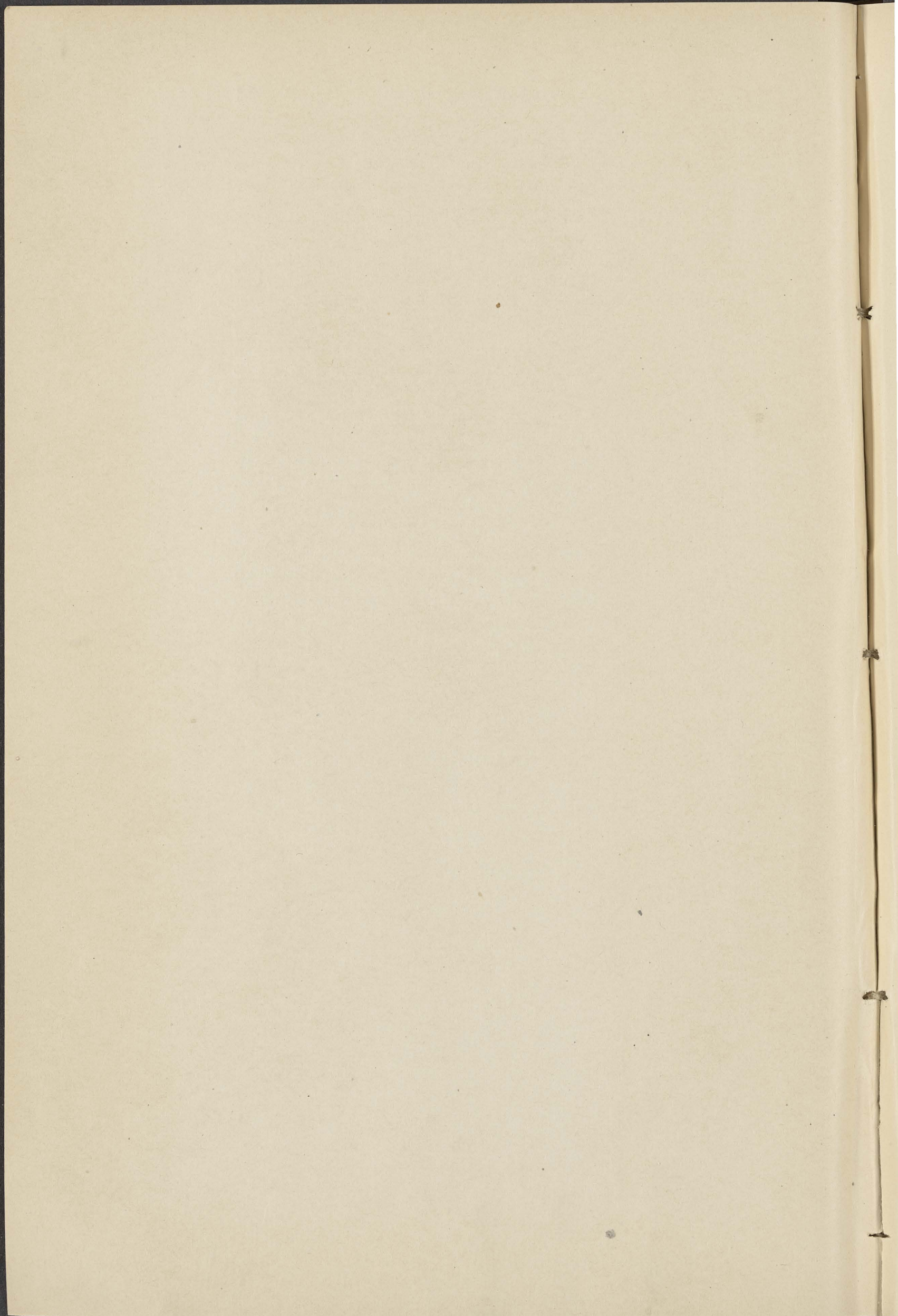
Under the amendment of 1925, permission was given to vacate any street or any portion thereof dedicated to the public, *but which has not been accepted or opened by the municipality.*

The acceptance of Helena Street by the Township committee of Franklin Township, August 21st, 1899 (see Case, p. 23), certainly bars the Borough of Newfield from vacating Helena Street or any portion of the same.

The whole ordinance is void for the reasons above set forth. It is a clear abuse of the right of the Borough Council to benefit private parties at the expense of the public. There is no call on the part of the public for the vacation of the street or any part of it. And the street having been accepted by the municipality out of which the Borough of Newfield is created cannot vacate the street by the ordinance in question, which should be set aside and declared void.

Respectfully submitted,

HERBERT C. BARTLETT,  
*Of Counsel with Appellant.*



NEW JERSEY COURT OF ERRORS  
AND APPEALS.

---

PHILIP F. HOLETON,  
*Prosecutor-Appellant,*  
v.  
BOROUGH OF NEWFIELD,  
*Respondent-Respondent.*

---

ON APPEAL FROM SUPREME COURT.

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RESPONDENT'S BRIEF.

---

In this cause, the appellant seeks to have the Court set aside an ordinance finally passed by the Borough Council of the Borough of Newfield, in the County of Gloucester, on September 19th, 1927, Case, p. 63.

This ordinance vacates Helena Street between the right of way of West Jersey & Seashore Railroad Company and Church Street, and not between Church Street and East Railroad Boulevard, as stated in appellant's brief. This ordinance was passed in accordance with Subdivision B of Section 1, Article 20 of Chapter 155, of the Pamphlet Laws of 1925.

There is no testimony to support the allegation

made in appellant's brief that Godfrey V. Baker, Mayor of the Borough of Newfield, was a large beneficiary by the proposed vacation of Helena Street.

The Borough Council, may determine whether the best interests of the Borough and the inhabitants, will be served by a vacation of any street or portion thereof, and the relinquishing of the public rights thereof, or therein, and this Court will not, as we understand the law, inquire into the motives or objects of such vacation. *Kean v. Vity of Elizabeth*, 54 N. J. L. 462. 13 R. C. L. Section 62, pp. 69 and 70.

The testimony taken in this cause shows that Helena Street is seldom used, and that by the use of other streets, safer and more improved, the only inconvenience suffered is the loss of a very few minutes, regardless of the destination of said user.

Although we do not believe that the values of properties would be depreciated by said vacation, as alleged by prosecutor, nor do we believe that the prosecutor has shown by competent proof such depreciation, the testimony consisting of mere statements of two witnesses, pages 40 and 51, yet if some properties are depreciated in value by said vacation, it does not thereby follow, that the ordinance should be set aside, as the rights of individuals are subservient to the public rights, and public good, as may be decided and determined by the governing body of the municipality.

Prosecutor, alleges that the ordinance in question proposes to take public property and give it to private individuals. Such is not the case. The ordinance merely vacates or relinquishes the public rights to use said street as a public highway, and does not attempt to dispose of any public property for the obvious reason that the municipality did not

own the lands within the bounds of Helena Street, sought to be vacated.

It is alleged by appellant in his brief that the ordinance in question is void because the passage thereof was a benefit to Godfrey V. Baker, Mayor of said Borough of Newfield.

It is to be remembered that the ordinance was unanimously passed and the Mayor did not vote thereon.

There is no testimony to show that the Mayor of Newfield would be benefited by the vacation of Helena Street. On the contrary, his testimony, which was undisputed, page 61, shows that he is damaged thereby. The appellant contends that the vacation of Helena Street throws the land of the said Mayor and one Richard Dyer together, and therefore the Mayor would be benefited thereby. We contend that this is not so, but that the property of the Mayor might slightly depreciate by reason of the vacation of a street bounding thereon.

If the Mayor was incidentally benefited by the passage of the ordinance, there seems to be no authority for appellant's contention that the entire ordinance is void and should be set aside, in the absence of any testimony that the members of Council in the exercise of their sound discretion, were influenced or controlled by any fraudulent, unjust or corrupt purpose.

In other words, if members of the Borough Council arrived at the conclusion that the best interests of the Borough of Newfield would be served by the vacation of Helena Street, the fact that the passage of said ordinance might incidentally benefit the Mayor, would not be cause to set said ordinance aside.

There was no testimony to show that the Mayor

of Newfield at any time took advantage of his official position for his own personal gain.

The testimony conclusively shows that Helena Street would be of no value or convenience to the public at large or the witnesses produced by prosecutor, except by reason of its connection with private right of way. This right of way is reserved in deeds marked Exhibits P5 and P6, pages 66 and 70.

The street commences at the easterly right of way of railroad property and extends easterly; there is no crossing at the railroad end of street. It appears that crossing was not made because of difficulties and expense. The only method of crossing to West Boulevard is over a private right of way, sixteen and one-half feet in width, northerly, along railroad to a private crossing.

All of the testimony discloses that the only inconvenience to be suffered by any of the witnesses, would be a loss of a few minutes time in the event that they were unable to use Helena Street in going to the cemetery, Atlantic City Road or to the west of the railroad tracks, in the neighborhood where the prosecutor resides.

The Borough Council, acting within their powers or discretion vested in them by the Legislature, have a right to decide whether the vacation of said street will be for the public good, and once they decide this question, it is immaterial whether a few of the inhabitants are inconvenienced, as a result of their determination. In the absence of fraud or corrupt motives, this Court will not inquire into the motives or reasons for the passage of said ordinance, whether to increase property ratables and thus increase the moneys to be raised by taxation, or to protect the public at large from the perils of a dangerous unprotected railroad crossing, or for what other motive or purpose.

It is often true that the action of a Borough Council or other municipal governing body, although for the good of the public at large, may result in inconvenience and damage to a small minority.

In the case of *Kean v. City of Elizabeth*, 54 N. J. L. pages 462, 466, Justice Reed, in the opinion in this case, stated:

“If the motive of a common council in exercising the power conferred upon it by the Legislature can ever be questioned is doubtful. If the Courts can enter into the motives of the municipal legislature in respect to acts of this kind in any case, it must be one in which the public interests have been glaringly sacrificed to subserve private ends.”

In the case last above cited, an effort was made, as in this case, to set aside an ordinance vacating a street; one of the grounds for setting aside said ordinance was that the vacation was made to subserve a private interest. It appears that the vacation proceedings were taken immediately after a petition for said vacation had been presented by the owner of the lands over which the street to be vacated had been laid. The Court decided that probably the principal inducement to the action was the fact that the owner of the premises, over which the street had been laid, had an opportunity to sell said lands to a company which would locate extensive works upon it, and increase the prosperity of that portion of the city, but refused to set the ordinance aside on said ground. *Sherwood v. City of Paterson*, 88 N. J. L. 456, affirmed in this Court 88 N. J. L. 738. See also Sec. 62, pp. 69 and 70, 13 R. C. L.

The prosecutor contends that the Borough Council was without power or authority to pass the ordi-

nance in question, being without power or authority to vacate streets or any portions thereof, because of the fact that Helena Street had been accepted by the municipality as a public street.

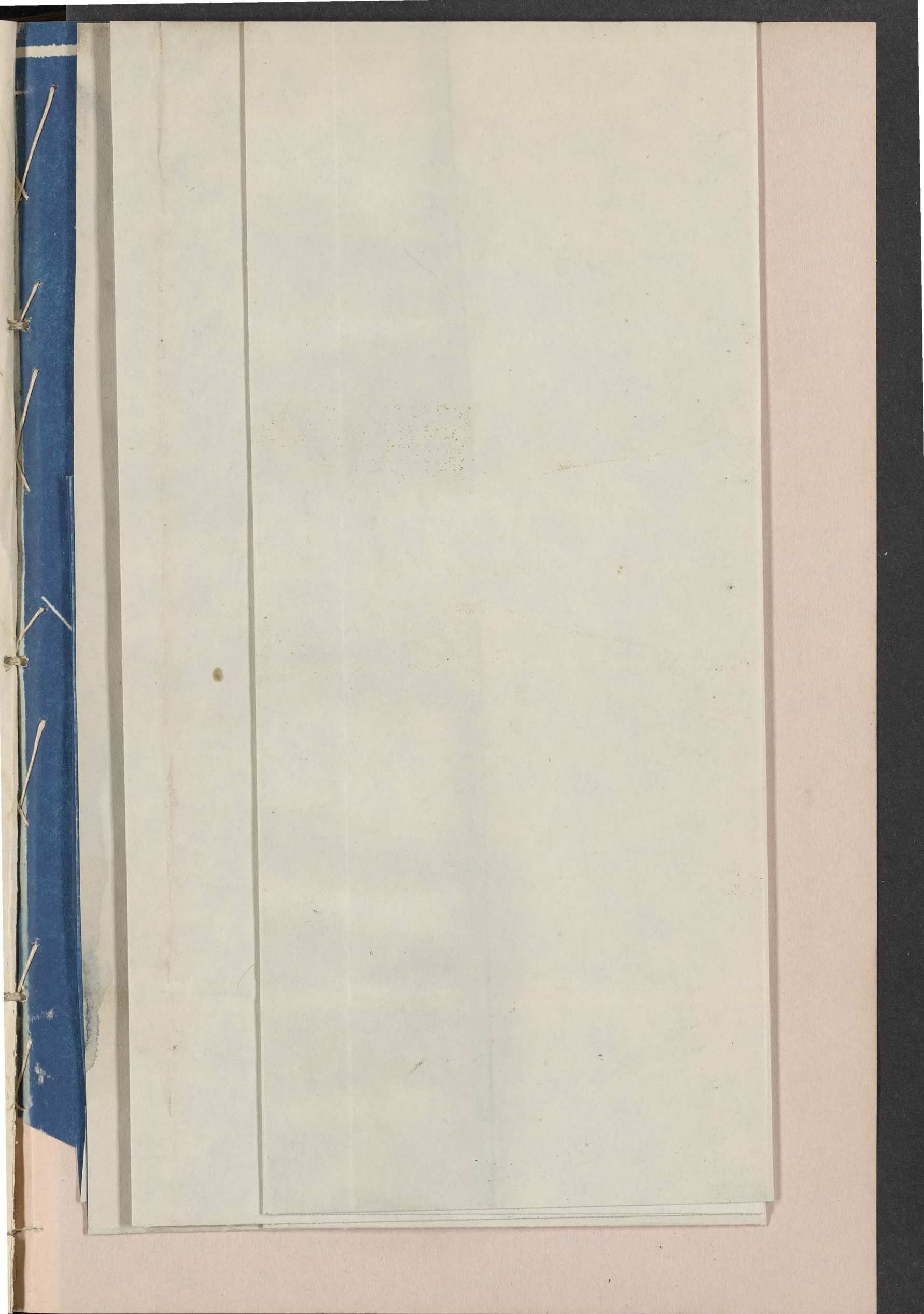
Counsel for appellant apparently has misconceived the effect of the statutes relating to this subject. The law provides two methods of extinguishing public rights in streets. The first: the vacation of a public highway; and the second: the release of public rights in streets, dedicated but not actually opened or accepted. The latter right in no way conflicts with the power of a municipality to vacate a public, accepted highway.

It is apparent from a study of the law on this subject, that the second method referred to, arose because of a doubt as to the right of a municipality to release public rights in unaccepted highways. The first separate legislation we can find on this subject is Chapter 286, P. L. 1911.

The ordinance attacked was introduced, advertised and adopted in all things in accordance with the Statute; the Council exercised a sound discretion, honestly and without fraud or corruption; the taking away of public right in this street does not seriously inconvenience any one; there is no evidence to show injury to owners of property on Helena Street; the ordinance does not take public property and give same to a private individual.

We respectfully submit that the ordinance should be sustained and the judgment of the Supreme Court affirmed.

AVIS & AVIS,  
*Attorneys for Respondent.*  
JOHN BOYD AVIS,  
*Of Counsel.*

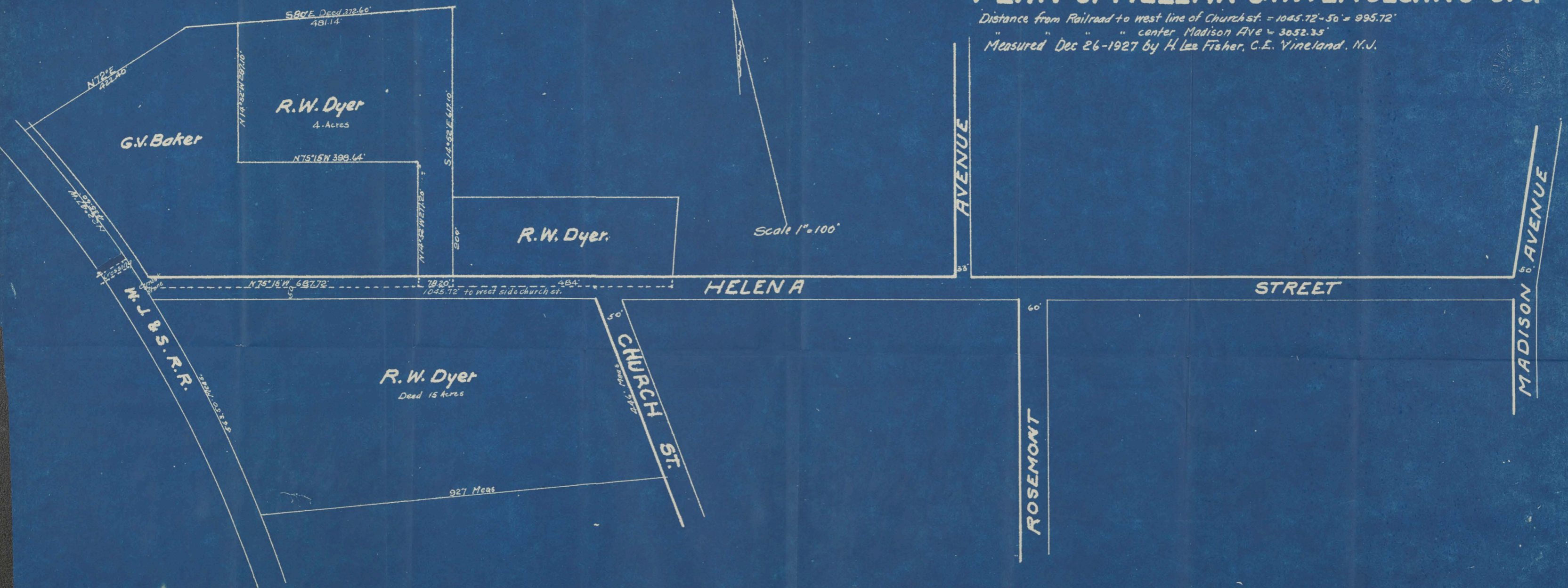


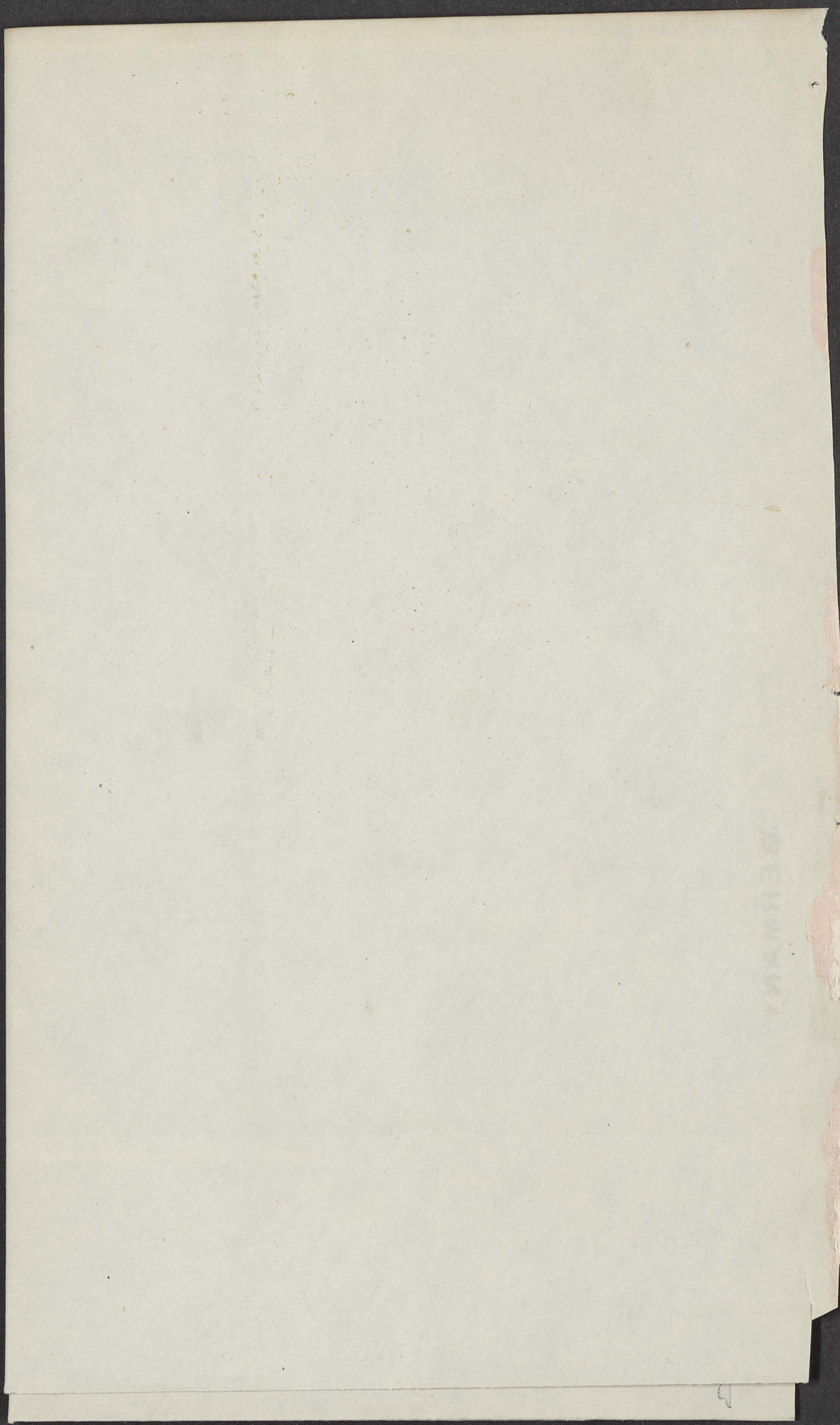
# PLAN OF HELENA & INTERSECTING STS.

Distance from Railroad to west line of Churchst. =  $1045.72 - 50 = 995.72'$   
 " " " center Madison Ave =  $3052.35'$   
 Measured Dec 26-1927 by H. Lee Fisher, C.E. Vineland, N.J.

NORTH

Scale 1" = 100'





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