

INDEX.

PLEADINGS, ETC.

| | Page |
|---------------------------------|------|
| Notice of Appeal | I |
| Writ of Certiorari | 1 |
| Allocatur | 2 |
| Acknowledgment of Service | 2 |
| Return | 3 |
| Petition | 4 |
| Report | 4 |
| Order | 12 |
| Argument | 67 |
| Reasons | 82 |
| Opinion of Supreme Court | 87 |
| Rule for Judgment | 90 |

TESTIMONY.

| | |
|------------------------------|----|
| H. J. Harder, direct | 14 |
| cross | 16 |
| James J. Maher, direct | 22 |
| cross | 24 |
| H. E. Mather, direct | 25 |

New Jersey State Library

| | |
|--------------------------------|----|
| R. L. Dyke, direct | 28 |
| Recalled, direct | 37 |
| Recalled, cross | 42 |
| Recalled, direct | 66 |
| Charles W. Evans, direct | 29 |
| cross | 34 |
| E. J. Dotter, direct | 48 |
| cross | 52 |
| John J. Keggan, direct | 53 |
| cross | 58 |
| James Maybury, direct | 61 |
| cross | 65 |

EXHIBITS.

(Figures in parentheses indicate the page on which the exhibit was offered in evidence.)

| | |
|--|----|
| P-1—Blue Print showing crossing of E. 24th Street, 17th Avenue and the Railroad (15) | 69 |
| (Copy of this exhibit in accompanying envelope) | |
| P-2, 3, 4—Photographs showing crossing and E. 24th Street (15) | 69 |
| R-1—For identification (20) | 77 |
| (Same as Exhibit R-3) | |
| R-1—Map showing land at 17th Avenue and E. 24th Street, Paterson, dated September 12, 1916, (26) | 69 |
| (Copy of this exhibit in accompanying envelope) | |
| R-2—Abstract of condemnation proceedings, N. J. Midland Ry. Co. v. Martha Morris and John J. Morris (27) | 69 |

- R-3—Map of property in the 3rd and 4th Wards of the City of Paterson, Passaic County, N. J., dated December 30, 1868—previously marked “Exhibit R-1 for identification” (27) 77
 (Copy of this map in accompanying envelope)
- R-4—Map entitled “Erie Railroad Co.” layout in vicinity of E. 24th Street and 17th Avenue, Paterson, dated December 8, 1916 (31) 77
 (Copy of this map in accompanying envelope)
- R-5—Photograph of plates 6 and 7 of Paterson City Atlas (33) 78
 (Copy of this map in accompanying envelope)
- R-6—Map of City of Paterson, 1916, Price & Lee, publishers (34) 78
 (Copy of this map in accompanying envelope)
- R-7—Record of traffic over crossing of 24th Street, August 23, 1916, 7 A. M. to 7 P. M. (49) 78
- R-8—Record of traffic over crossing of 24th Street, August 22, 1916, 7 A. M. to 7 P. M. (50) 79
- R-9—Record of vehicular traffic over crossing in E. 24th Street, between proposed crossing and Park Avenue, on northerly side, September 7, 7 A. M. to 7 P. M. (50) 80
- R-10—Record of vehicular traffic over crossing in E. 24th Street, between tracks and 18th Avenue, September 7, 7 A. M. to 7 P. M. (51) 81

New Jersey Supreme Court

| | | |
|---|---|---|
| NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY <i>Prosecutor,</i> | } | <i>On Certiorari.</i> |
| <i>vs.</i> | | |
| BOARD OF PUBLIC UTILITY COM- MISSIONERS AND CITY OF PAT- ERSON, <i>Defendants.</i> | } | <i>(Re Crossing at East 24th Street, Paterson.)</i> |

Notice of Appeal.

Service of within notice is hereby acknowledged
 this 20th day of October, 1917.

Collins & Corbin,

Attorneys for Prosecutor.

Sat below, Swayze, Minturn and Kalisch J. J.
 To Messrs. Collins & Corbin,

Attorneys of Prosecutor,

Take notice that the defendant appeals to the
 Court of Errors and Appeals from the judgment en-
 tered in this cause on the following grounds.

1. Certiorari does not lie to review the certificate
 granted by the Board of Public Utility Commis-
 sioners.

2. The finding of the Board of Public Utility
 Commissioners is final in this case and the Supreme
 Court cannot substitute its own judgment for that
 of the Board.

Randal B. Lewis,

Attorney of Defendant,

City of Paterson.

WRIT OF CERTIORARI.

Returnable January 12, 1917

NEW JERSEY, ss.

The State of New Jersey to Board of
Public Utility Commissioners, 10

(SEAL)

GREETING:

We being willing for certain reasons to be certified of a certain order made by you on the twenty-eighth day of November, Nineteen hundred and sixteen, granting permission for the construction of East Twenty-fourth Street, in the City of Paterson, at grade, over the tracks of the New York, Susquehanna and Western Railroad Company, do hereby command you that the said order, together with all things attached and concerning the same, to our Justices of the Supreme Court of Judicature in the State of New Jersey, at Trenton, on the twelfth day of January, Nineteen hundred and seventeen, you do certify and send, together with this writ, that therein may be done what of right and according to the laws and constitution of the State of New Jersey ought to be done. 20
30

WITNESS, William S. Gummere, Esquire,
Chief Justice of our Supreme Court, at
Trenton, this twenty-third day of December, A. D. Nineteen hundred and sixteen.

WM. C. GEBHARDT,
Clerk.

COLLINS & CORBIN,
Attorneys.

40

ALLOCATUR

ACKNOWLEDGMENT OF SERVICE

ALLOCATUR.

Allow this writ. Let it be sealed. The writ to
act as a stay.

JAMES F. MINTURN,
J. S. C.

Dated Dec. 23, 1916.

10

ACKNOWLEDGMENT OF SERVICE.

Service of a copy of the writ of certiorari in
this matter, of which this is a copy, acknowledged
this 30th day of January, 1917.

20

RANDAL B. LEWIS,
City Attorney of the City of Paterson.

30

40

RETURN.

(Filed January 10, 1917.)

NEW JERSEY SUPREME COURT

NEW YORK, SUSQUEHANNA &
WESTERN RAILROAD COM-
PANY,

*Prosecutor,**vs.*

BOARD OF PUBLIC UTILITY COM-
MISSIONERS OF THE STATE
OF NEW JERSEY, AND CITY
OF PATERSON,

Defendants.

10

*Return of Writ.**On Certiorari*

*To the Honorable the Justices of the Supreme
Court of Judicature of New Jersey:*

20

The Board of Public Utility Commissioners herewith sends to the Supreme Court of Judicature of the State of New Jersey a certain Report and Certificate made by said Board the twenty-eighth day of November, one thousand nine hundred and sixteen, together with the record and proceedings before said Board as fully and entirely as before said Board they remain as it is within commanded.

30

In Witness Whereof, the seal of said Board is hereto affixed and certified by the subscriber.

ALFRED N. BARBER,

Secretary of the Board of Public
Utility Commissioners.

(SEAL)

40

PETITION REPORT
PETITION.

(Filed July 19, 1916.)

BOARD OF PUBLIC UTILITY
 COMMISSIONERS

GENTLEMEN :

10

The City of Paterson by The Board of Public Works of said City of Paterson hereby requests of your body permission to lay out East Twenty-fourth Street in the City of Paterson across the tracks of the New York Susquehanna and Western Railroad according to the plan set forth on the accompanying sketch.

Board of Public Works of The City of Paterson,
 by (signed) FRANK MUZZY,

20

President.

(Copy of Exhibit P-1 attached to petition)

REPORT.

(Filed Nov. 28, 1916.)

STATE OF NEW JERSEY
 BOARD OF PUBLIC UTILITY
 COMMISSIONERS

30

IN THE MATTER OF THE APPLI-
 CATION OF THE CITY OF
 PATERSON FOR PERMISSION
 TO LAY OUT EAST TWEN-
 TY-FOURTH STREET, IN
 SAID CITY, ACROSS THE
 TRACKS OF THE NEW
 YORK, SUSQUEHANNA AND
 WESTERN RAILROAD.

Report.

40

RANDAL B. LEWIS, for City of Paterson.

REPORT

DUANE E. MINARD, for Railroad Company.

The City's petition requests "permission to lay out East Twenty-fourth Street in the City of Paterson, across the tracks of the New York, Susquehanna and Western Railroad" in accordance with a plan annexed to said petition.

10

The application is made under section 21 of Chapter 195, Laws of 1911, which provides:

"No highway shall be constructed across the tracks of any railroad company at grade,***so as to make a new crossing at grade,*** without first obtaining therefor permission from the board."

East Twenty-fourth Street and Seventeenth Avenue cross each other at right angles at the point where the right of way of the railroad company intersects same. The tracks diagonally cross both streets almost in the middle of the street intersection. For some years Seventeenth Avenue has been recognized as a crossing and has been planked its full width and protected by gates on both sides of the tracks East Twenty-fourth Street on the easterly side of the tracks has likewise been protected by gates. The planking of the crossing is so constructed that any person may use the street on the easterly side of the tracks. On the westerly side of the tracks, however, East Twenty-fourth Street is not guarded by gates and the crossing planking does not extend far enough to the southward to render use of the street safe and convenient to travel. The City desires the extension of the planking so that persons may with safety enter and leave East Twenty-fourth Street west of the tracks.

20

30

40

REPORT

The railroad company acquired its right of way at this point in 1871.

10 There was put in evidence a map showing a layout of this section of the City, showing Monmouth Street now East Twenty-fourth Street, at substantially its present location. This map was dated December 30, 1868, and was filed in the Passaic County Clerk's office January 4, 1869.

Whether this street was laid out and dedicated prior to the construction of the railroad tracks it is now not necessary to determine. It is admitted by both sides that East Twenty-fourth Street as presently existing has been an open highway for many years; that the public has used it as such; and conveyances have been made and building erected with reference to the lines of such highway.
20

It is not necessary, as urged by the respondent, that the highway be laid out as such by act of surveyors according to the statute. A public highway may be established by uninterrupted use and enjoyment by the public of the road as a highway for not less than twenty years or by dedication by the owner of the land for use as a highway.

30 We conclude, therefore, that East Twenty-fourth Street is a public highway in the City of Paterson.

If it has no legal existence as a highway over the tracks of the railroad company, should permission be granted for such crossing?

40 The testimony shows that there is considerable use of the street by both pedestrian and vehicular traffic. On the east side there is no undue interruption to such travel, but on the west there is a ditch. Further, the physical characteristics are

REPORT

such as to mislead a traveler into the belief that there is a continuation of the highway over the tracks which has resulted in several accidents to vehicles.

Mr. Maybury, one of the Board's Inspectors, testified:

10
"The portion of the city of Paterson involved in this situation with respect to the crossing is a purely residential part of the town, and the houses in the community are comparatively new, being part of a rapid development in that section during the past ten years to my knowledge. Seventeenth Avenue is an improved highway carrying considerable travel, especially automobile travel. 20
East Twenty-fourth Street, north of the track, is improved to the planking line of the right of way of the railroad. East Twenty-fourth Street is a dirt surface road with cinder surface immediately south of the right of way, and extending to a line of the southerly line of the present buildings used as a garage located on the southwest corner. At the intersection of East Twenty-fourth Street and 30
Seventeenth Avenue the crossing is fully planked and on the southerly line the planking is in line with the inside line of the sidewalk. West of East Twenty-fourth Street on Seventeenth Avenue the planking from about the center line of the tracks to the easterly line of East Twenty-fourth Street is not quite in line with the inside line 40

REPORT

of the sidewalk if the sidewalk was continued across East Twenty-fourth Street. While at the crossing investigating conditions, I noticed what I would term a fair amount of travel on East Twenty-fourth Street north of Seventeenth Avenue. Some of the travel turned into Seventeenth Avenue to the east, some to the west. There was no travel that I noticed from East Twenty-fourth Street going in either direction over the tracks. East Twenty-fourth Street on the southerly side is improved with respect to cement curbing and guttering, and sidewalks, cement sidewalks on the easterly side, the sidewalk extending to the right of way line of the railroad. The portion of East Twenty-fourth Street south of the tracks is planked and is used for travel along East Twenty-fourth Street. This I noted by wheelmarks by wheels, marks of wheels on the highway at the planking, on the planking. The portion, possibly about two-thirds of the approach of the railroad tracks on the southerly side is not open. In line with the portion of East Twenty-fourth Street south of the tracks, which can be used for vehicular travel, is a ditch, on the top of which is grass and weeds and to travel going in a northerly direction on East Twenty-fourth Street there is nothing there to indicate that the highway is not in practically the same condition as the other portion with the exception of the

REPORT

grass and weeds just mentioned. At the intersection of the two streets are gates. Seventeenth Street is protected both sides; East Twenty-fourth Street one side. Owing to this unusual condition at a railroad crossing where a street is partly used by travel and gates protecting three of the approaches and not the remaining approach, in my opinion, presents an extremely dangerous condition and one, that in my opinion, requires remedying, either by proper protection, namely, by gates, or the highway south of the tracks blocked to travel." 10

There is no opening over the tracks between Twenty-second Street and Twenty-seventh Street. The community affected is a growing one. There is apparent need for the crossing sought. 20

If the application is granted, it will not establish a wholly new street crossing, but will merely involve the extension of the present crossing to permit travel to safely leave and enter East Twenty-fourth Street to the west of the railroad tracks.

In view of all of the circumstances the Board concludes that the prayer of the petition should be granted, and a certificate of permission to lay out the highway over the railroad tracks will issue. 30

At the hearing, the question of the protection to be afforded at the crossing was the subject of examination and discussion. The respondent company insisted that to protect East Twenty-fourth Street on the westerly side of the tracks would require an additional man to operate gates 40

REPORT

for East Twenty-fourth street west of the tracks.
On this point Mr. Maybury testified:

10 "The situation presented here with respect
to the location of the highways is practically the same condition with respect
to directions of streets, angles, and so forth, as we find at Park Avenue and
Twenty-second Street; the gates at which point are operated and taken
care of by one man, who in addition must be extremely careful with respect
to travel at that point on account of the large number of trolley cars traveling
east and west of Park Avenue. If the situation is to be taken care of by
gates, instead of operating the gates from the ground as now existing, the
20 towerman, gates operated from a tower, would have a full view of all approaches,
and a full view of the vehicular and pedestrian travel coming in all directions,
in the four directions to the crossing. The situation, the similar situation at
Park Avenue, requiring gates to be operated from a tower and in my opinion the
gate situation could be taken care of in a similar manner. There are three tracks
30 running diagonally across the intersection of the two highways. Some of these
trains are express trains and run at a rapid rate of speed. The third track,
the one on the easterly side or northerly side, is a siding and used as such in
connection with movements in the Broadway yard. With respect to the views, the
40

REPORT

whole situation at all corners is of such a nature, and so deemed by the railroad company, requiring protection. The high board fence, to travel north on East Twenty-fourth Street, if that fence were continued there, would prohibit, or preclude views of westbound trains, and owing to the angle of vision you would have a fair view of eastbound trains. But taking the whole situation as one, and to me with respect to protecting crossings it is one crossing, all approaches should be properly protected." 10

The Board is of opinion that the crossing should be properly planked and protected by the installation of a gate or gates on the west side of the tracks to guard East Twenty-fourth Street, and that they can be operated by the towerman or gateman who now operates the gates on Seventeenth Avenue, thus entailing no additional outlay for labor. 20

Board of Public Utility Commissioners,

By (signed) RALPH W. E. DONGES,

President. 30

(SEAL)

ATTEST:

(Signed) ALFRED N. BARBER,
Secretary.

Dated November 28, 1916.

ORDER

(Dated November 28, 1916)

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITY
COMMISSIONERS

10

IN THE MATTER OF THE APPLI-
CATION OF THE CITY OF
PATERSON FOR PERMISSION
TO LAY OUT EAST TWEN-
TY-FOURTH STREET, IN
SAID CITY, ACROSS THE
TRACKS OF THE NEW
YORK, SUSQUEHANNA AND
WESTERN RAILROAD.

} *Certificate.*

20

This application having been duly heard, and the Board having on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, the Board of Public Utility Commissioners

30

HEREBY GRANTS permission for the construction of East Twenty-fourth Street, in the City of Paterson, at grade, over the tracks of the New York, Susquehanna and Western Railroad Company.

Board of Public Utility Commissioners,

By (Signed) RALPH W. E. DONGES,

President.

(SEAL)

ATTEST:

(Signed) ALFRED N. BARBER,
Secretary.

40

Dated, November 28, 1916.

TESTIMONY.

BOARD OF PUBLIC UTILITY
COMMISSIONERS

Jersey City, N. J., Wed., Sept. 13, 1916.

EXTENSION OF E. 24TH ST.
OVER N. Y., S. & W. R. R.

PATERSON.

10

BEFORE COMMISSIONERS DONGES & SLOCUM,
Esqs.For the City of Paterson appears RANDAL
LEWIS, Esq.For the N. Y., S. & W. R. R. appears D. E.
MINARD, Esq.

Mr. LEWIS—If the Board please, the petition on the part of the city of Paterson, prior to the passage of an ordinance condition opening 24th Street across the Susquehanna Railroad. East 24th Street is a thoroughfare running from the northerly part to the southerly part of the city about two and a half miles in length, it is graded its entire length with the exception of two blocks. At the place where we wish to cross East 24th Street the street is graded up to both sides of the track and at this juncture, 17th Avenue, another thoroughfare crosses. The condition as it now exists is, that there is a street entirely opened with the exception of about thirty-five feet, which leaves a sort of ditch on one side of the track. People have access to both sides and accidents are of common occurrence. I will call Mr. Harder, the city engineer.

20

30

40

H. J. HARDER—Direct

H. J. HARDER, sworn on behalf of Petitioner.

Direct examination by Mr. Lewis.

Q. You are city engineer of the city of Paterson? A. Yes.

10 Q. Have you prepared a map of the layout of East 24th Street in the vicinity of the Susquehanna Railroad? A. Yes, I have a print showing the conditions around there.

20 Q. Will you explain to the Board what the condition of the thoroughfare is at that point? A. The Susquehanna Railroad runs in a northerly and southerly direction in that section and is crossed by 17th Avenue. East 24th Street intersects 17th Avenue and the Railroad at the same point. There is a crossing on 17th Avenue and there are gates there.

Q. What change would have to be made in the existing conditions in order to open the street across the railroad? A. The planking to form the crossing would have to be extended southerly along the railroad tracks a distance of about thirty-five or thirty-six feet.

30 Q. How much additional protection would be needed in the way of gates to bring about this result? A. One extra gate would serve for that purpose?

Q. About how long? A. The distance between the curb lines at right angles is thirty-six feet. The gate would probably have to be placed on an angle and would probably be 45 feet in length.

Q. (*By Commissioner Donges*) On which side?

A. On the southwesterly side of the railroad across East 24th Street.

40 Mr. LEWIS—Perhaps at this point, gentlemen, if I introduce these photographs

H. J. HARDER—Direct

—I believe the other side will consent to them, they were taken in the presence of Mr. Harder.

Mr. MINARD—Yes.

COMMISSIONER DONGES—Let them be marked.

10

(Blue print showing crossing of East 24th Street, 17th Avenue and the Railroad received and marked Ex. P-1.)

(Three photographs received and marked Ex. P-2 to P-4 respectively.)

WITNESS—The photograph marked Ex. P-2 shows the crossing and East 24th Street north of the crossing. The photograph marked Ex. P-3 shows the crossing and it shows the end of the planking plainer than the photograph marked Ex. P-2. The photograph marked Ex. P-4 shows the crossing and 24th Street south of the crossing.

20

By Mr. Lewis.

Q. Mr. Harder, if this street crosses the railroad, would you say about how much area of railroad track, roughly, would be covered by the new crossing than is already open to traffic? A. There is a distance of about thirty-five feet by, I should say—roughly an area of about 500 square feet would cover the unplanked crossing.

30

Q. And traffic through 17th Avenue would cover the major portion of the traffic, of the space which would be covered by traffic through this new street opening? A. Yes; the 17th Avenue crossing covers most of it now.

Q. What would you say as to the importance to the city of the opening of this thoroughfare

40

as to traffic? A. I have not seen the report. Did you say report?

Q. No; importance. A. I thought you said report. It would be a convenience to have that street opened there and the residents in that neighborhood have asked to have it open. There is a crossing now at 22d Street and the next one is at 27th Street.

Q. 22d and the next 27th? A. The 22d Street crossing is one very similar to this, except it intersects the railroad at Park Avenue instead of 17th Avenue.

Q. No crossing for three blocks on either side? A. Two blocks on the west side and three on the east side.

Q. What do you know about the neighborhood there as to its being built up? A. It is a residential section and being built up.

Q. What is the extension of East 24th Street? A. About two and a half miles, extending from First Avenue to 23d Avenue.

Q. Would you call it the connecting street between the north and south crossing of the city?

A. Yes, it is.

Q. Is it a much traveled street? A. Parts of it are traveled a good deal, others not so much, other parts not so much.

Q. What would you say as to the danger existing with the crossing in its present condition?

A. The crossing as it exists is dangerous and accidents have happened there by vehicles running into a ditch that is shown on that photograph marked P-3.

Cross-examination by Mr. Minard.

Q. Do you know anything about the amount of traffic on East 24th Street at the point of this

H. J. HARDER—Cross

railroad crossing? A. I have never counted the vehicles that pass there.

Q. That is the portion of the street where there isn't any travel to speak of? A. No, there is travel there.

Q. You have been out there recently? A. I was out there yesterday. 10

Q. The road is a dirt road about wheel track width? A. The road south of 17th Avenue is a dirt road.

Q. About wheel track width? A. Part of it is wheel track width, one of the pictures shows it.

Q. And the weeds and grass are growing luxuriantly over the concrete sidewalk on both sides? A. There are weeds growing on the sidewalk. North of the railroad the street is macadamized and oiled. 20

Q. It is a different street north than it is south? A. It is the same street but has been improved.

Q. It is differently developed? A. It has been paved with macadam north; south it has not.

Q. When you say 24th Street is the connecting street between one section of town and another, that is true in a strictly literal sense, it is a connecting street as any street would connect? A. It is the street connecting the riverside section with the Peoples Park section. 30

Q. Isn't a street which anybody would naturally take to go from that location north to the heart of the city, with all the other streets very highly developed and improved? A. All of the street is not improved. Anyone going from one end to the other would probably take Madison Avenue as it stands now.

Q. There isn't any street across the railroad tracks there now, is there, never has been laid out? A. No, it never has been laid out. By the 40

way, an ordinance was passed, notice was given, and an ordinance passed, I think, in 1914, but the opening actually never took place.

Q. How much of East 24th Street has ever been laid out? A. Do you mean by some action of the city?

10 Q. Yes, officially laid out and adopted as a street? A. None, and that is true of 99 per cent. of the other streets in town.

Q. And that is true of the two and a half miles length of East 24th Street? A. Yes.

Q. It has never been laid out and opened as a street? A. They have been opened by dedication, most streets have been opened that way.

Q. Has 24th Street been opened by dedication? A. By no action of the city, but by action of the
20 property owners.

Q. Was 24th Street ever dedicated by the property owners? A. By the sale of lots, or something of that sort.

Q. Just from the sale of lots? A. Yes, the city never took any action I know of.

Q. You don't know of any map or property owners' consent filed for the use of their land for a street? A. A map was made by several property owners around the vicinity of Broadway and
30 Willis Street, as Park Avenue was called in those days; that was 24th Street.

Q. I show you a map here entitled, map of property in third and fourth wards of the city of Paterson, Passaic County, N. J., December 30, 1868, and you will see there a whole list of signatures.

40 Mr. LEWIS—If the Board please, is this a proper method of attack before this Board. Isn't this objection, if it ex-

H. J. HARDER—Cross

ists, a matter to be discussed in another court. I understand we are here now to discuss the propriety as to the safety of the public?

COMMISSIONER DONGES—We will permit the examination.

10

Q. Is that the map, or one of the maps you refer to? A. Yes, that is the map I referred to.

Q. That is the map you referred to? A. Yes.

Q. That is not a dedication of a street to public use, is it? A. It has been considered so.

Q. You consider that? A. No; I do not. It has been considered. I didn't say I considered it so.

Q. I wondered whether this was the authority upon which the street was considered open. A. In fact, the Board of Public Works are opening a street now, Madison Avenue, from Broadway to 14th Avenue.

20

Q. On the strength of this map? A. On this authority, yes.

Q. Just read that. It says: "We approve the location and width of streets as laid out on this map and agree when we open streets over our land to lay and open the same in conformity with this map as to location, width and name of streets."

30

A. Yes.

Q. That is the only action so far as you know that was ever taken by any of the property owners, isn't it? A. In that section, yes.

Q. And that map on its face shows it was not the intention to open streets at that time? A. That map does not cover the land where the crossing is located either. The railroad was not built when that map was made.

40

H. J. HARDER—Cross

Q. It embraced the land which the railroad acquired, Monmouth Street?

COMMISSIONER DONGES—What street?

Mr. MINARD—Monmouth Street.

10

COMMISSIONER DONGES—Is now 24th Street?

Mr. MINARD—Yes.

A. It does cover that section. I was mistaken about that. Ohio—

Q. About Ohio and Monmouth? A. Yes.

Mr. MINARD—May I have this map identified?

20

COMMISSIONER DONGES—Yes, it may be marked for identification.

(Map entitled, Map of property in the third and fourth wards of the City of Paterson, N. J. Dec. 30, 1868, received and marked Ex. R-1 for iden.)

Mr. MINARD—I will prove it later. It shows in the right hand corner here that it is on file in the county clerk's office of Passaic County. There is the file stamp there. I will make formal proof of it later.

30

Q. Have you made estimates of the cost of eliminating grade crossings on the Susquehanna in Paterson?

COMMISSIONER DONGES—Which?

Mr. MINARD—The grade crossings on the Susquehanna Railroad in Paterson.

A. I made an estimate but it was never made public.

40

H. J. HARDER—Cross

Q. There was an estimate published in the Paterson Call, wasn't there, recently, or some little time ago? A. I did not see it.

COMMISSIONER DONGES—The cost of eliminating?

Mr. MINARD—Yes, all the grade crossings on the Susquehanna the same as the petition for the Erie tracks. 10

WITNESS—It was made just after we finished the Erie work. The reason I did it was, because we had the men there to do it, and I thought we would have it done so we would have it.

Mr. MINARD—October 2, 1914, so that confirms your recollection.

Q. Has the city prepared a petition, or filed a petition with the Commission for the elimination of grade crossings on the Susquehanna Railroad? 20

A. Not to my knowledge.

Q. Such a petition is contemplated, isn't it? A. Some time in the future. I don't believe they have any immediate intention of doing it.

Q. Do you know whether in the question of elimination the additional street, East 24th Street, forming an "X" crossing exactly on the railroad track, would increase the cost of eliminating that crossing? A. I don't believe it would, it is simply a matter of planking. 30

Q. I mean, in the question of elimination, abolishing the grade crossings. (Question read.)

A. The East 24th Street crossing was provided for in those plans for eliminating the crossing.

Q. Did it add to the cost of eliminating that crossing? A. I think it did somewhat because retaining walls had to be built along the easterly 40

H. J. HARDER—Re-direct

JAMES J. MAHER—Direct

side of 24th Street, but I cannot tell you the amount. I haven't the figures with me. I didn't know you were going to raise that point or I could have brought them.

10 *Re-direct examination by Mr. Lewis.*

Q. Would you say, Mr. Harder, that any improvement there, any additional improvement there would have outlived its usefulness by the time the grade crossings are eliminated? A. If I knew when that was going to take place I could probably tell you.

Q. You have set up that this street is actually opened outside of the dedication, actually opened and traveled? A. Yes.

20 *By Mr. Minard.*

Q. Do you remember when the railroad company attempted to put a fence across there to prevent people from driving into the ditch? A. Yes, that was only two years, I think.

Q. And the street was not opened across at that time, was it? A. No.

Q. The police of Paterson stopped that? A. Yes.

30 Q. That protection was prevented by the police of Paterson? A. The legal condition at that time was the same as it is now, as I understand it.

Q. The practical matter is, that any protection attempted to be built there was stopped by the police? A. By the police, yes.

JAMES J. MAHER, sworn on behalf of Petitioner.

Direct examination by Mr. Lewis.

40 Q. Where do you live, Mr. Maher? A. 116 17th Avenue, Paterson, N. J.

JAMES J. MAHER—Direct

Q. How is that location with regard to the proposed opening of East 24th Street across the road of the Susquehanna? A. What is that question?

Q. Where is your residence as regards the proposed opening of East 24th Street across the Susquehanna Railroad? A. On the corner of 24th Street and 17th Avenue. 10

Q. What do you say as to travel on East 24th Street? A. What is the extent of travel?

Q. Yes. A. I have never kept a record, but there is quite a few wagons and cars pass through that way.

Q. Have you known any accidents occurring there due to the present condition of the street?

Mr. MINARD—Objected to. I object for the reason that, what materiality is it to the case if accidents occurred by people driving where there isn't any street? 20

COMMISSIONER DONGES—We will take the proof.

Mr. MINARD—They might just as well drive through the neighbor's pasture lot.

COMMISSIONER DONGES—You may answer the question. 30

A. Yes, I do, six or seven.

Q. Whereabouts would they occur as to these photographs; would they occur all about the same place? A. Yes.

Q. And where would that be? A. I will have to look these over, I am not familiar, I have not seen these before. If I see the blue print and the plan—

Q. Perhaps that will aid you better. A. Right 40

here (indicating) I suppose you call it the southwest corner, right here, there is planking there showing the road, driveway of about probably twelve feet. I don't know, I haven't measured it.

Q. The southwest corner of East 24th Street and the crossing? A. Yes.

10 Q. Could you locate it on that photograph, that is looking north, here is your garage, I believe, over here. A. That shows the corner right here.

Q. The southwest corner? A. Yes

Q. How is the travel on 17th Avenue, Mr. Maher? A. Very heavy travel on there.

Q. That practically opens the gates to 17th Avenue, practically opens the crossing to people coming along East 24th Street? A. Yes

20 Q. And people coming along East 24th Street now do travel across? A. Yes.

Cross examination by Mr. Minard.

Q. You have a garage on East 24th Street right around the corner from 17th Avenue? A. Yes.

Q. And you use this 17th Avenue crossing to get in and out of your garage? A. Use 24th Street, yes.

Q. You mean where 24th Street is proposed to be laid out? A. We call it 24th Street.

30 Q. You made the application for the opening of this street, didnt' you? A. No, sir.

Q. Had nothing to do with it? A. No, sir.

Q. When did these six or seven accidents occur that you speak of? A. In the last—

Q. Just give me the dates of them, I want more specific information. A. I can't give you the dates, never kept them, never kept any dates.

40 Q. Do you know there were six or seven? A. Yes, I personally helped to get two of them out, three of them.

H. E. MATHER—Direct

Q. What do you know about the rest, what somebody told you? A. Yes.

Q. So you personally know of two? A. Three.

Q. Three. So that instead of six or seven accidents which you stated awhile ago you can testify on your own knowledge of three? A. Yes.

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

10

Mr. MINARD—That is all.

Mr. LEWIS—If the Board please, that is all the witnesses I have. I believe your agent, Mr. Maybury—this matter has been pending practically two years—and I believe he has made a report and is perfectly familiar with the situation.

COMMISSIONER DONGES—We will take the proof of the railroad company.

20

H. E. MATHER, sworn on behalf of Respondent.

Direct examination by Mr. Minard.

Q. Where do you live? A. Hawthorne, N. J.

Q. What is your business? A. Draftsman.

Q. Where? A. General land and tax department, Erie Railroad.

Q. Have you examined the records of the title of the New York, Susquehanna & Western Railroad to land at 17th Avenue crossing, and where this proposed 24th Street is located? A. The only records I have examined is the abstract of condemnation proceedings.

30

Q. Have you examined the map of the property among your records? A. I have traced that original map which you put up for an exhibit.

Q. Did you make a map showing the property lines of the N. Y., S. & W. covering that point?

40

H. E. MATHER—Direct

A. I made this tracing of this blue print yesterday.

10 Q. What is the title of that blue print? A. New York, Susquehanna & Western Railroad, map showing lands at 17th Avenue and East 24th Street, Paterson, N. J., scale 100 feet to the inch, dated Sept. 12, 1916, General Land and Tax Agent, New York.

Q. Does the portion of that land enclosed in red show the property of the Susquehanna Railroad at that point? A. It shows the right of way acquired from Martha Morris.

20 Mr. MINARD—I offer that map in evidence. (Map showing land at 17th Avenue and East 24th Street, Paterson, dated Sept. 12, 1916, received and marked Ex. R-1.)

Q. How was the land acquired from Martha Morris? A. The only way I know is by that abstract, reading from that abstract of condemnation proceedings.

Q. Is this a true copy of the original abstract of condemnation proceedings? A. It is a copy of the abstract of condemnation proceedings we have on file in our office.

30 Q. As your record of title? A. Yes, sir.

Mr. MINARD—I offer this, realizing that the original is the best evidence, and I can produce it if necessary. These copies are true copies, and if satisfactory to Mr. Lewis—

Mr. LEWIS—You claim title through condemnation?

40 Mr. MINARD—Yes.

H. E. MATHER—Direct

COMMISSIONER DONGES—If there is no objection to the form of proof, that it is not the original, we will accept the copies.

Mr. LEWIS—We will accept them.

COMMISSIONER DONGES—They may be admitted. 10

(Abstract of condemnation proceedings, N. J. Midland Railway Company vs. Martha Morris and John J. Morris, received and marked Ex. R-2.)

Q. Did you examine the records at the Passaic County Court House and find this map (indicating)? A. I did.

Q. Did you make this copy of it? A. I made the tracing of this map. 20

Q. And it is a true copy of the map on file there with the record stamp of the County Clerk's office as of January 4, 1869? A. Yes, sir.

Mr. MINARD—That has been offered for identification, I offer it now in evidence.

COMMISSIONER DONGES—It may be admitted. 30

(Map of property in the third and fourth wards of the city of Paterson, Passaic County, N. J., dated Dec. 30, 1868, previously marked R-1 for identification, received and marked Ex. R-3.)

Q. Do I understand you found the title to this land in Martha Morris? A. Yes, sir.

Q. She was the wife, according to these papers, of John Morris? A. Yes, sir. 40

R. L. DYKE, Sworn

Q. Did you note on this map with the indication of the owners that when street were laid out they would be laid out according to this map was not signed by Martha Morris? A. Yes, sir.

Q. You noted that? A. Yes, sir.

10 *By Commissioner Donges.*

Q. What has been the history of the N. J. Midland Railroad since 1871, if you know? A. That I could not say.

20 Mr. MINARD—A succession of resurrections and failures until it became the New York, Susquehanna and Western Railroad, which is a consolidation of companies in Pennsylvania and New Jersey.

COMMISSIONER DONGES—Including the Midland?

30 Mr. MINARD—Yes, so the New York, Susquehanna and Western is the direct successor of the duties, obligations, rights and privileges of the Midland, which acquired that land.

R. L. DYKE, sworn on behalf of Respondent.

Mr. MINARD—I will withdraw Mr. Dyke with the consent of the Commission, so that I might make formal proof of this map before he discusses it.

40

CHARLES W. EVANS—Direct

CHARLES W. EVANS, sworn on behalf of Respondent.

Direct examination by Mr. Minard.

Q. Where are you employed? A. I am employed in the assistant engineer's office in Jersey City. 10

Q. Did you make a map of the New York, Susquehanna and Western Railroad in the vicinity of 17th Avenue and East 24th Street, Paterson? A. I did.

Q. What is the title of that map? A. Erie Railroad Company, N. Y., S. & W. R. R. layout in vicinity of East 24th Street and 17th Avenue, Paterson, N. J., office of assistant engineer, Jersey City, Sept. 8, 1916, scale one inch equals 20 feet. 20

Q. Does this map accurately show the condition from an actual survey? A. It does.

Q. With all of the objects and points located? A. It does.

Q. Have you made any observations of the opportunities for view if East 24th Street should be opened as proposed to persons traveling on East 24th Street in either direction? A. On the south side of East 24th Street traveling in a northerly direction across the tracks looking toward Jersey City there is a high bill board obstructs the view. 30

Q. And that bill board is indicated on the map? A. Yes.

Q. How high is that bill board? A. It is a double bill board, one sign above the other, twenty-four feet high.

Q. How long is it along 24th Street? A. 136 feet.

Q. So that for a distance of 136 feet before 40

CHARLES W. EVANS—Direct

approaching the right of way of the railroad there is absolutely no opportunity to see anything coming from the east? A. No.

10 Q. Now, on the other side, East 24th Street, looking toward the north, what is the view approaching the track from the south? A. There is an obstruction to the view there of a new building on 17th Avenue which is now being erected, and the gateman's shanty, and further back on East 24th Street the garage on East 24th Street obstructs the view.

Q. So when you get past the garage on East 24th Street your view is then again obstructed by the building on the corner of 17th Avenue? A. Yes.

20 Q. So an almost continuous obstruction occurs for about how many feet back from the railroad right of way? A. From the near rail of the east-bound track it is about thirty feet back, thirty feet back from the near rail there is an obstruction.

Q. All the way back; in other words there is an obstruction approaching from a point how far back up to the point thirty feet from the nearest rail? A. All the way back on East 24th Street.

30 Q. Then there is no view to the west back of thirty feet? A. Back of thirty feet.

Q. Now on the other side of the railroad going south on East 24th Street toward the railroad, what view have you of objects approaching on the railroad from the east? A. From the east there is a store on 17th Avenue which obstructs the view from East 24th Street 40 feet back from the near rail.

40 Q. Continuously after that or intermittently? A. Why, continuously.

CHARLES W. EVANS—Direct

Q. And the view of objects coming from the west on the railroad, what view? A. It is obstructed by a locust hedge.

Q. How high? A. Which is twelve feet high.

Q. And how near to the side of the street, East 24th Street does this hedge come? A. It is within a few feet of the sidewalk. 10

Q. And how far back does it continue? A. It continues down to the line of East 23rd Street.

Q. Is there any point along there where a person traveling toward the railroad southerly along East 24th Street could get a view of objects approaching from the west? A. No, not on East 24th Street going south it is practically entirely obstructed by this hedge and the siding on which they store cars.

Q. Do you know whether that siding is part of the yard of the Susquehanna or is merely a side track? A. That is part of the yard of the Susquehanna for storage. 20

Q. Part of the yard at what station, Broadway station? A. At Broadway.

Q. You don't know anything about the operation of the Susquehanna? A. No, I do not.

Mr. MINARD—I offer this map in evidence.

COMMISSIONER DONGES—It may be admitted, it may be marked. 30

(Map entitled, Erie Railroad Company, layout in vicinity of East 24th Street and 17th Avenue, Paterson, dated Sept. 8, 1916, received and marked Ex. R-4.)

Q. This map shows the gates which now protect 17th Street, doesn't it? A. It does.

Q. What is the general condition of East 24th Street, so-called, south of the railroad? A. South of the railroad it is a dirt street with concrete 40

CHARLES W. EVANS—Direct

sidewalks and weeds on either side of the sidewalk along the bill boards.

Q. Are the weeds growing on the sidewalk as well as alongside of it? A. Right along the edge of the concrete.

10 Q. Are there any houses, generally speaking, out in that community there? A. On the east side there isn't, there are lots used as dumps mostly.

Q. For what kind of dumps? A. Papers and cans.

Q. No houses in there? A. No.

Q. How many blocks are there no houses on the east side? A. It runs back several blocks before you strike any houses.

20 Q. Are you familiar with the atlas of the city of Paterson? A. I have plans of the city of Paterson.

Q. Do you recognize this as a portion, one of the plates of the city atlas of Paterson? A. I do.

Q. Looking along 24th Street as shown here, from the railroad, these lots show no houses on the east side until you come to Market Street, is that right? A. That is true.

30 Q. And it shows only three or four houses on the west side until you get to Market Street, is that correct? A. That is correct.

Q. Then this map as it appears now, as it shows here, correctly presents the situation for several blocks, in fact, for half a dozen blocks? A. Along 24th Street.

Q. As it is? A. As it is.

Q. These white spots in here indicate what? A. Dwellings and different buildings on these streets.

40 Mr. MINARD—I offer photographs from plates six and seven of the Paterson

CHARLES W. EVANS—Direct

City atlas of 1915. I offer that for the purpose of showing the buildings and other objects in there to indicate the development of that street and where it goes to and where it comes from.

COMMISSONER DONGES—No objection, it may be marked. 10

(Photograph of plates six and seven of Paterson City atlas received and marked Ex. R-5.)

Q. I show you map, Mr. Evans, entitled, map of the city of Paterson, N. J., scale 1,000 feet equals one inch, H. J. Harder, City Engineer, 1916, the Price & Lee Company, Publishers, and as you if you know anything about that map? A. I bought the original of that from a publisher in New York. 20

Q. Have you it with you? A. Yes, I have.

Q. Will you produce it, please? Does that map show the entire city of Paterson? A. Yes, it does.

Q. From it are you able to ascertain the avenues of travel from different portions of the city? A. Yes.

Q. These broken lines in the various streets indicate what? A. Indicate the streets.

Q. The broken lines in the streets? A. The railroad and trolley lines. 30

Q. What do you call in an engineering way these lines indicating the railroad? A. It is a dot and dash line.

Q. Then there is another series of lines here indicated by dashes. A. Those denote the trolley lines.

Q. And circles in the map indicate what? A. The radius from the city hall with the city hall as the center of the city. 40

CHARLES W. EVANS—Cross

Q. On the blue print have you marked East 24th Street so as to show its general location and importance with regard to the whole city? A. Yes, I marked it with lead pencil.

10 Q. This lead pencil line here shows East 24th Street on the outskirts of the city toward the right as not leading into the center of the city at all?

A. It does not lead into the business section of the city.

Q. At any point, it does not touch the business section of the city? A. No.

Mr. MINARD—I will offer this original if the Commission want it, or blue print, either one.

20 COMMISSIONER DONGES—No objection it will be admitted.

(Map of City of Paterson, 1916, Price & Lee, Publishers, received and marked Ex. R-6.)

Cross examination by Mr. Lewis.

Q. East 24th Street where you say you saw weeds, that is curbed and guttered? A. That has a curb and gutter.

30 Q. You say the bill board is how long? A. 136 feet.

Q. A person traveling along East 24th Street toward the north could see a train running on an acute angle with East 24th Street and he would only be shut off for a distance of thirty-five feet from sight of that train, would he not? A. No, there are bushes down in here which obstruct the view considerably.

40 Q. He could hear a train from here to here without any trouble? A. Hear, yes.

CHARLES W. EVANS—Cross

Mr. MINARD—That depends upon the perfection of his engine.

Q. You say there are bushes in here? A. Yes, there are scrub, small trees.

Q. Not enough to prevent a train from being seen? A. Yes, they are, too, down in there there is a hollow like and bushes and in back of the bushes is the dump. 10

By Commissioner Donges.

Q. That is on the west? A. On the south side of the railroad.

Q. And to the east? A. Looking east.

By Mr. Lewis.

Q. You say there are dumps here. As a matter of fact don't you know the dumps don't start until two blocks further up, East 26th Street, the dumps are between 26th and 27th Street? A. I noticed back in here as we cut across the lots here they were dumping. 20

Q. Dumping what? A. They were dumping papers, tin cans.

Q. And you are sure that was between East 25th and East 24th Street? A. As I walked across it looked as if it was all used as dumps at the time.

Q. How far from here did you walk, how many streets back from 24th Street? A. I cut across 27th Street— 30

Q. Isn't that where you noticed the dumps? A. —and cut across to the school. We walked through dumps until we came to the intersection of East 24th Street and 19th Avenue.

Q. You saw dumps all the way down to East 24th Street? A. Yes.

Q. A person traveling along East 24th Street, presuming a train were coming, could see the 40

CHARLES W. EVANS—Cross

gates down, the gates across 17th Avenue? A. On the northerly side of the railroad?

Q. 17th Avenue? A. Yes.

Q. See that plainly? A. Yes.

Q. There is nothing on the northerly side of the track on East 24th Street to prevent him hearing the train coming along? A. I know nothing to prevent him from hearing.

Q. And he could see also a gate down? A. He could see a gate down on East 24th Street.

Q. Either side he could see a gate down if a train were coming? A. On the near side he could.

Q. Either side; if you were walking up there you could see the gates there, if you were coming down the other side you could see the gates there? A. Yes.

Q. On your map you show a garage and two dwellings on the southerly side, 17th Avenue, and the westerly side of East 24th Street? A. Yes.

Q. Aren't there two houses over here where you have the concrete walk? A. Down further from the garage, down here.

Q. Why don't you show them? A. They are practically off the map.

Mr. MINARD—That map was only intended to show the railroad right of way.

Mr. LEWIS—You are showing a section of the street on which are houses and the houses do not show.

Mr. MINARD—The focal center of the map is the railroad right of way. The other map showed the houses.

Mr. LEWIS—That is all.

R. L. DYKE, recalled—Direct

R. L. DYKE, recalled on behalf of Respondent.

Direct examination by Mr. Minard.

Q. Mr. Dyke, where do you live? A. Jersey City.

Q. What is your business? A. Division Engineer on the N. Y., S. & W. 10

Q. How long have you been Division Engineer? A. Two years.

Q. How long have you worked for the Susquehanna? A. Two years.

Q. Are you familiar with this location of East 24th Street? A. Yes.

Q. Have you made any special examination of the situation with regard to this case? A. Yes, sir.

Q. What have you to say about the practicability of protecting East 24th Street if it is opened across the track? A. If East 24th Street is extended across the track it would require one additional set of gates and a gate shanty with a man night and day. 20

Q. Why would it require an additional set of gates instead of forty-five foot gate as Mr. Harder spoke of? A. The distance across there on the angle of the tracks is too great to properly operate one gate. 30

Q. Your gates would have to be parallel with the right of way line of the railroad and could not be at right angles to the street? A. Not and make a good job.

Q. How long a span of gates then would you have to have? A. I think it is about two thirty-five foot gates.

Q. About two thirty-five foot gates? A. Very near that.

Q. Why would you have to have a shanty and 40

R. L. DYKE, recalled—Direct

an extra man? A. Because the man operating the gates on 17th Avenue could not properly operate the gates on East 24th Street and 17th Avenue. When he is letting the gates down on one street a party could drive on to the track from the other street.

10 Q. Is it a practical proposition to have an arrangement whereby the gates on East 24th Street and 17th Avenue could be operated by one lever?

A. No, sir.

Q. Do you know what the cost of installing a gate there would be? A. It would cost about \$350.

Q. What would be the maintenance charge on it? A. The maintenance charge?

Q. Outside of the operation? A. On the gates would be about \$85 a year, that is the average charge.

20 Q. And what would it cost to operate such a gate? A. It costs about \$90 a month, possibly more; that depends on the local labor condition.

Q. I understand that conditions on the north side of the track are different, that the street there goes into 17th Avenue before it comes on the railroad track? A. Yes, sir.

Q. So that the present protection on that side covers both streets? A. Yes. You could not protect 17th Avenue without protecting East 24th Street. There is not sufficient room to put the gates in to reach 17th Avenue and not East 24th Street.

Q. But the situation is very different on the south side? A. Yes, sir.

Q. What have you to say about the feasibility of opening East 24th Street across the railroad?

A. Well, I don't think it is a very good proposition.

40

R. L. DYKE, recalled—Direct

Q. What do you think of it from the standpoint of safety? A. I think it is unsafe.

Q. Why? A. Because you have—every crossing you add on the railroad you are increasing your liability of danger, that one crossing more.

Q. You would consider this then, a distinct and separate crossing? A. Yes, sir. 10

Q. For what reason? A. For the reason you are leading another street on the railroad tracks.

Q. Would you say the danger at this particular crossing would be different from the danger at any other street where you lead an additional street on the tracks on account of the fact that the conflicting currents of traffic on the two streets would meet exactly on the railroad track? A. I would.

Q. And what would be the duty then of the traveler on the highway with regard to making observations, that would be different than in the ordinary case of a grade crossing? A. Yes, sir. 20

Q. What are the features which make it different there? A. Driving East 24th Street to 17th Avenue a vehicle would possibly want to turn up 17th Avenue, another party coming down 17th Avenue would meet on the track; a train approaching, the man cannot let his gates down, and if he does let his gates down he has the vehicles caught between the gates on the tracks. 30

Q. If this street crossing is opened then you will have a situation where in order to pass from 17th Avenue into 24th Street and vice versa, you have to use the railroad crossing? A. Yes, sir.

Q. Irrespective of whether they want to cross the railroad or not they have to cross the railroad crossing? A. Yes, sir.

Q. The fact is, they do that now? A. Yes. 40

R. L. DYKE, recalled--Direct

Q. Drive right in, to make the curve from one street to another? A. Yes.

Q. And could that be remedied and avoided? A. Yes, it could by constructing a road between 17th Avenue and East 24th Street off the railroad company's property.

10 Q. Is there room enough on the corner to cut a roadway across on the corner? A. Yes.

Q. Without interfering with any of the present buildings? A. Yes.

Q. That would bring the East 24th Street travel into 17th Avenue before they encountered the danger of the crossing? A. Yes, sir.

20 Q. And would give them the opportunity of locating themselves on 17th Avenue with regard to traffic there before they confronted the traffic on the railroad? A. Yes, sir.

Q. Would that in your judgment reduce the danger of the crossing? A. Yes, it would.

Q. What would be the effect of that so far as the 17th Street crossing is concerned, would that change the crossing any? A. It would not change the crossing any.

Q. In that event it would simply mean that much more travel on 17th Street? A. Yes, sir.

30 Q. What is your opinion from the standpoint of danger, as it is generally considered in regard to grade crossings, if this street is opened across, would you say it would be a dangerous crossing or not? A. It would be as dangerous as any other crossing in the city of Paterson on the Susquehanna Railroad.

Q. Have you made any observations as to views obtainable by persons traveling on East 24th Street on either side of the railroad? A. Yes.

R. L. DYKE, recalled—Direct

Q. You heard Mr. Evans' testimony about those views? A. Yes.

Q. Do they agree with your observations entirely? A. Yes, they do.

Q. Have you any suggestions or changes to make in that statement of views? A. No, sir.

Q. That is the correct situation? A. That is the correct situation. 10

Q. Are you familiar with the location south of the railroad along East 24th Street as shown on these maps? A. Yes, sir.

Q. Are there any houses on the east side of 24th Street? A. Not on the east side, no, sir; not for two or three blocks.

Q. Not at least until you get to Market Street? A. No.

Q. Market Street is considerable of a thoroughfare? A. Yes, sir. 20

COMMISSIONER DONGES—I understand, Mr. Minard, that this map is taken from the city's files, and it is correct, it truly represents the number of buildings on this street; I understand it is introduced for that purpose.

Mr. LEWIS—With the exception, I think, that there are two houses not located on the map. 30

Mr. Minard said the map stopped at that point.

Mr. MINARD—Mr. Lewis is referring to our railroad right of way map.

Mr. LEWIS—Yes.

Mr. MINARD—We did not intend to show the houses there, only intended to show the railroad. 4

R. L. DYKE, recalled—Cross

COMMISSIONER DONGES—This photograph of the city—

Mr. MINARD—Yes, that shows it.

Q. What is the land used there for, along East 24th Street? A. There is a garbage dump along
10 on 24th Street between the street and the railroad tracks.

Q. Between the street and the railroad tracks?

A. Yes, sir.

Q. How close to this crossing? A. I think it is within a block.

Q. And what other use is the land made of?

A. Not any.

Q. Isn't there a pasture lot in there with some cows? A. There is a pasture lot about a block
20 or so out.

Q. Excepting where it is used as a garbage, tin can, and paper dump, it is used for pasture for cattle? A. Yes, sir.

Q. What is the condition of East 24th Street itself, the travel part of it? A. The roadway is about half full of grass and weeds, the weeds are grown up on each side of the side walk on the easterly side of the street so they are about three or four feet, hang entirely over the sidewalk.

30 Q. Has the street ever been improved? A. No, sir; only the construction of concrete curb and gutters; an ordinary dirt road.

Q. How wide is the traveled portion of the highway? A. I believe about sixteen feet.

Cross examination by Mr. Lewis.

Q. You say there are dumps; where? A. I think between the first and second block after you cross the track.

R. L. DYKE, recalled—Cross

Q. You are familiar with the Susquehanna at this point? A. Yes, sir.

Q. How long have you been familiar there? A. About two years pretty near.

Q. Don't you know as a matter of fact those dumps have not been used for a year? A. I do not. 10

Q. You don't know whether they have or not? A. No, sir. I know there are tin cans in there now.

Q. You have not seen any dumping or evidences of dumping? A. I have not seen any dumping personally.

Q. As you come along East 24th Street, either way, north or south, you would have warning of a train, both by sight and by sound, would you not? A. Possibly. 20

Q. And you would have positive warning of a train by the fact the gates were down across 17th Avenue? A. Unless something happened to the man that operated the gates.

Q. That would be the fault of the railroad; if the railroad was doing its duty the gates would be down and would be visible on East 24th Street on either way you traveled? A. Only a portion on East 24th Street; the sidarm extends across the sidewalks. 30

Q. Either way you travel on East 24th Street, north or south, a person traveling would see a gate down when the gates were down across 17th Avenue, would they not; a person with normal eye sight? A. Yes, sir.

Q. You are familiar with the track generally up through that district? A. Yes, sir.

Q. I believe you said that one man could not operate the gates there? A. Yes, sir.

Q. Isn't the condition at Hamilton Avenue and 40

L. L. DYKE, recalled—Cross

18th Street precisely similar to this condition?

A. Very near.

Q. How many men operate there? A. One man.

Q. Why, if he operates there, can't he operate here? A. It is a very poor operation, we have trouble with it all the time.

10 Q. It is a poor operation but affords a complete safeguard? A. I would not say it did.

Q. It is workable and no accidents at that crossing reported? A. Sir?

Q. No accidents at that crossing reported? A. Not to my knowledge.

Q. Are you familiar with the gates at Governor Street and 12th Avenue? A. Not so well, no.

Q. They are about 200 apart, one on one street and one on the other? A. Yes.

20 Q. They are operated by one man, are they not? A. Yes, sir.

Q. If that is so why do you say that one man could not operate these gates? A. We have not room on the right of way to locate the gates.

Q. We have not what? A. The room on our right of way to locate the gates.

30 Q. I did not catch the answer. A. The railroad company has not the room on its land to locate the gates so it could protect the road and sidewalk.

Q. And the railroad company has to avoid its own land with these gates? A. No, sir.

Q. That is a matter, I suppose, for adjudication. How much of a gate would you have to put up? A. I think that the distance across there is in the vicinity of between sixty or seventy feet, with the gate located where the gate is between 17th Avenue and East 24th Street on the southerly side of the track to protect East 24th Street.

40 Q. What is your gate limit, 52 feet? A. It

R. L. DYKE, recalled—Cross

should not be any more than that on account of snow and ice in the winter time, wind, a high wind will break a gate.

Q. In normal ordinary weather the railroad company would have no trouble? A. In summer; no, in winter, yes.

Q. And you could operate with one man? A. 10
Not and have proper operation.

Q. Then you are not properly operating at Hamilton and East 18th Street? A. You would have a different operation there than at this point; you would have more room.

Q. Wouldn't we have the same operation at this point as at Hamilton Avenue and East 18th Street? A. I don't think so.

Q. Why not? A. We haven't the room, cannot 20
get back there with your gates.

Q. You mean to say there is not a place to put the standard? A. Yes, sir.

Q. Presuming there was a place afforded you for the standard, what then? A. It could be done, but there is a possibility of getting a man under the gate and letting the gate down.

Q. There is room enough, however, now to put a standard there behind the curb? A. Not on the railroad company's property and have it constructed properly. 30

Q. On the street? A. Yes.

Q. There is room on the street? A. Not for one gate.

Q. You mean to say there isn't room there to put a standard up for a gate? A. Not and protect the sidewalk and the crossing.

Q. Your general conclusion then is that if one man were to operate a gate there it could be done but it would be about the same amount of effi- 40

R. L. DYKE, recalled—Cross

ciency as you have at East 18th Street and Hamilton Avenue? A. No, sir.

Q. The deficiency arising from the fact of lack of room? A. Yes, sir, and from lack of view.

10 Q. And if that room were furnished that deficiency would be overcome? A. No, sir; the view of the man operating the gate would be obstructed.

Q. By what? A. By the house and the garage at the corner of 17th Avenue and 24th Street.

Q. You mean to say you would have to change the station of the man who operates the gate? A. Yes, sir.

20 Q. And his view of an incoming train would be obstructed. A. Yes, sir; it would not be obstructed by an oncoming train, but a person coming down East 24th Street toward the track could get under the gate after he had let it down and he would not be able to see them, operating the gates from the point where they are operated now.

Q. The gateman has nothing to do with that, to keep the man off the track after the gates are down.

Mr. MINARD—He has, too.

A. He has, too.

30 Q. It does not interfere with the sight of an approaching train? A. No, not with the train, but if he lets the gates down after the person has passed and then lets the gates down on the other side he has the people locked in on the tracks.

Q. That will occur on any crossings? A. No, sir.

Q. It has occurred? A. It has occurred, yes.

Q. And would not occur any more here than any other crossing? A. Yes, it would.

40 Q. Because he cannot see the people going across? A. Yes, sir.

R. L. DYKE, recalled—Cross

Q. When his gates are down does not his duty end as a gateman? A. No, sir.

Q. Why do you have him there? A. He is there to protect the crossing.

Q. His only protection is putting the gates down and raising them? A. Certainly, but if he lets the gates down after the person has passed the gate and he cannot see him how can you hold the man responsible if anything occurs? 10

Q. Wouldn't see the man on the track? A. He could see the man on the track, but that gate is about at right angles like at Hamilton Avenue, he could not see the gate when it was being let down.

By Commissioner Donges.

Q. At right angles to what? A. To East 24th Street, to cross with one gate instead of two gates. 20

Q. Suppose they paralleled the railroad tracks? A. Then you have to have two gates on account of the distance to protect the street, the street is quite an angle with the railroad at that point.

Q. It could be seen? A. That would be the proper manner to protect it.

By Mr. Minard.

Q. You don't recommend the practice of having gatemen located at a point where they cannot see the gates they are operating? A. I do not. 30

Q. It would be physically impossible under any circumstances for a man to operate gates on East 24th Street as well as 17th Avenue on the south side if his shanty is left where it is now? A. Yes.

Q. So he is at the extreme end of the second set of gates? A. Yes.

Q. You would have to be between them any way if he could operate that way? A. Yes, sir. 40

E. J. DOTTER—Direct

Q. Have you knowledge of the train movements over this crossing, Mr. Dyke? A. Yes.

Q. What are they? A. There are sixty-seven movements on our regular time table in twenty-four hours, that is east and west. I haven't got the exact number east and the exact number west.

10 Q. Do you know what proportion of those are operated there between seven in the morning and seven at night? A. About forty-three.

Q. Trains? A. Yes, sir.

Q. Are there any extra movements over there incident to the yards in that vicinity? A. Yes, switching movements.

Q. How many about? A. I would say about eight or ten a day.

20 E. J. DOTTER, sworn on behalf of Respondent.

Direct examination by Mr. Minard.

Q. What is your occupation? A. Crossing supervisor.

Q. What is your duty in that position? A. I hire the men for those crossings and see that the planking is in good shape, have it repaired, repair it.

30 Q. Do you supervise the operation of the gates generally by the gatemen? A. Yes, sir.

Q. Did you make observations at that crossing and note the amount of traffic on the railroad and on the street? A. Yes, sir.

Q. Is this your report? (handing witness report). A. Yes, sir.

Q. Signed by you? A. Yes, sir.

Q. Dated August 23, 1916? A. Yes, sir.

Q. Did you between 7 A. M. and 7 P. M. make the observations there that day? A. Yes, sir.

40

E. J. DOTTER—Direct

Q. This report appears to show the traffic on East 24th Street? A. Yes, sir.

Q. How many, totalling up—we filed the schedule by totals—totalling up, how many engines and trains? A. Forty-two engines from 7 A. M. to 7 P. M.

Q. How many pedestrians? A. There was thirty-eight. 10

Q. How many automobiles? A. Four.

Q. Do you know whether they came out of the garage right around the corner or not? A. Yes, sir; not all of them.

Q. Vehicles? A. Ten.

Q. Horses and riders? A. None.

Q. Bicycles and motorcycles? A. None.

Q. Total of all kinds? A. Ninety-four.

Mr. MINARD—I will offer that. 20

Q. This is a schedule you made out, has your original signature? A. Yes, sir.

COMMISSIONER DONGES—It will be admitted.

(Record of traffic over crossing at 24th Street, August 23, 1916, 7 A. M. to 7 P. M. received and marked Ex. R-7.)

Q. Did you make some observation the day before? A. The twenty-third? 30

Q. The twenty-second? A. Yes.

Q. Between the same hours and in the same way? A. Yes, sir.

Q. This is your original statement with your signature? A. Yes, sir.

Q. On that date, how many engines and trains? A. Forty-five.

Q. Pedestrians? A. Fifty-five.

Q. Automobiles? A. Six. 40

E. J. DOTTER—Direct

Q. Vehicles? A. Ten.

Q. Horses and riders? A. None.

Q. Motorcycles and bicycles? A. One.

Q. Total, 117 movements of all kinds? A. Yes, sir.

Q. Including trains? A. Yes.

10 *By Commissioner Donges.*

Q. These were persons and vehicles on what streets? A. East 24th Street.

COMMISSIONER DONGES—Traveling in both directions on East 24th Street at the crossing.

(Record of traffic over crossing at East 24th Street, Aug. 22d, 7 A. M. to 7 P. M. received and marked Ex. R-8.)

20 Q. Did you make any observations since then, namely on September 7th? A. Yes, sir.

Q. This paper shows a record of vehicular traffic over the crossing at East 24th Street between proposed crossing and Park Avenue on the north-erly side, is that right? A. Yes, sir.

Q. And that shows automobiles how many? A. Twenty-six.

Q. Vehicles? A. Fifty-four.

30 Q. And total? A. Eighty.

Mr. MINARD—I offer that.

(Record of vehicular traffic over crossing in East 24th Street between proposed crossing and Park Avenue on north-erly side, Sept. 7th, 7 A. M. to 7 P. M. received and marked Ex. R-9.)

40 Q. This one shows a record of vehicular traffic over crossing in East 24th Street between tracks and 18th Avenue? A. Yes, sir.

E. J. DOTTER—Direct

Q. That is a block south? A. Yes, sir.

Q. On September 7th? A. Yes, sir.

Q. That shows twelve automobiles? A. Fifteen vehicles, total twenty-seven.

Q. That was between 7 A. M. and 7 P. M.? A. Yes, sir.

(Record of vehicular traffic over crossing in East 24th Street between tracks and 18th Avenue Sept. 7th, 7 A. M. to 7 P. M. received and marked Ex. R-10.) 10

Q. Is it a part of your jurisdiction and authority to determine the manner of operating gates? A. Yes, sir.

Q. If there were gates located at East 24th Street on the south side, if that street were opened, could they be operated in connection with those on 17th Avenue by one man? A. No, sir. 20

Q. What is your reason for making that statement? A. Because they are too long and you would have two sets of gates inside the tower to handle it, it would be too long, he could not do it.

Q. He would have to operate two separate sets of levers? A. Yes, sir.

Q. And would have to close one gate and then close the other? A. Yes, sir. 30

Q. What would be the effect of that upon people traveling on the highway? A. The time it would take him to get from one set of handles to the other to get them down on the track—

Q. While the gates on 17th Avenue would be down the others would be still up or vice versa? A. Yes.

Q. Meanwhile the train, of course, would be bearing nearer to the crossing. If you had the responsibility of operating the gates there would 40

you permit them to be operated by one man? A. No, sir.

Cross examination by Mr. Lewis.

Q. One man operates at Hamilton Avenue and East 18th Street? A. Yes, sir.

10 Q. And one man operates at 12th Avenue and Governor Street? A. Yes, sir.

Q. 12th Avenue and Governor Street the crossing, the gates are two hundred feet apart? A. How far?

Q. Two hundred feet apart? A. About.

Q. Why do you say that a man can operate over that road, one man, why can't they at this crossing? A. Those are small gates, very small gates, about twelve foot gates, I believe, they are very
20 small gates and he can handle them. You handle a gate sixty-five or fifty-five feet long and it cannot be did.

Q. You don't have to put a fifty-foot gate in there at this crossing? A. No; you would have to have the one gate across 24th Street.

Q. Why can't you have two small gates? A. They haven't the ground there to put two small gates on.

Q. Presuming you have the ground? A. No,
30 you could not do it then, it would not be safe.

Q. Why not? A. Because the crossing would be too long and people would get in on to him when he would be going from one to the other.

Q. The same reason this gentleman before you expressed, people get on the track? A. Yes, sir.

By Mr. Minard.

Q. Speaking of other cases where the gates are
40 two hundred feet apart a man has a chance there to put one set of gates down in the direction in

JOHN J. KEGGAN—Direct

which the train is coming and then put the others down where there is two hundred feet difference?

A. Yes.

By Mr. Lewis.

Q. How about East 18th Street and Hamilton Avenue, the gates are right together there? A. Right together there. 10

Q. He would operate the same as at this crossing? A. He could not, could not connect them.

JOHN J. KEGGAN, sworn on behalf of Respondent.

Direct examination by Mr. Minard.

Q. Mr. Keggan, where do you live? A. 28 19th Avenue, Paterson.

Q. Will you please point on one of these maps, the copy of the atlas there, which house you live in? A. I live on the corner of 19th Avenue and 21st Street. 20

Q. There is a house right there, is that your house, 19th Avenue and 21st Street? A. Yes, that is the house.

Q. How long have you lived there? A. I have lived there about two years.

Q. How long have you been familiar with that community of Paterson? A. About six years. 30

Q. Do you know the general situation around East 24th Street where it would cross and go to the railroad, if it were laid out? A. Yes, sir.

Q. Are there any houses near the railroad on either side of East 24th Street? A. Yes, there is a house on the west side, I guess you would call it, on the south side of the railroad right on the corner.

Q. House on the corner of 17th Street? A. Yes, sir; 17th Avenue. 40

JOHN J. KEGGAN—Direct

Q. Any more on that side? A. On 24th Street on that side?

Q. Yes. A. I believe three more between that and Market Street.

Q. On the other side of East 24th Street are there any houses? A. None between there and
10 Market Street; very few on the other side.

Q. What use is the land in between put to on the east side of the street? A. Pasture lots I guess and one thing and another, it is all open.

Q. And no building lots laid out there or anything like that? A. No.

Q. What is the general character of the ground, is it high ground or low and swampy? A. It is medium ground.

Q. Are there any swamps along there? A. There
20 have been swamps along there but I guess they are pretty well filled in.

Q. Market Street is, or is not that, the natural line of travel from points beyond there on 24th Street? A. Yes, sir.

Q. To go to the heart of the city? A. Yes, sir.

Q. Market Street does lead into the heart of the city? A. Yes, sir.

Q. Does East 24th Street lead into the business section of the city in either direction? A. No,
30 sir.

Q. From the north of the railroad anyone along East 24th Street having to go to the business section of the city would go which way? A. Park Avenue, or else go around and go 17th Avenue.

Q. But there would be in either case people coming from the south on East 24th Street or from the north, in either case they would have no occasion to travel between Market Street and the
40 railroad? A. No.

JOHN J. KEGGAN—Direct

Q. What is the condition of the road there? A. It is a dirt road.

Q. How wide? A. You mean the driveway that is open there?

Q. Yes. A. I suppose twelve or fifteen feet; it is growed up with burdock and one thing or another. 10

Q. A wheeltrack road there? A. A wheeltrack road about big enough for one vehicle to pass through it.

Q. How long have you been familiar with the place where East 24th Street would cross if it were laid out across the tracks? A. I have been here on the Susquehanna Railroad six years and six months.

Q. How long? A. Six years and six months on the Susquehanna. 20

Q. Have you been familiar with that location there all that time? A. Yes, sir.

Q. What is your occupation, your official position with the company? A. Master carpenter.

Q. Do you have charge of building and repairing grade crossing planking, and so forth? A. Not so much the crossing; the supervisor of the track takes care of that. I have charge of erecting and repairing crossing gates.

Q. What have you to say as to the feasibility of putting gates on the south side of the tracks at East 24th Street if it were open and operating them by a man in his present location from Seventeenth Avenue. A. Well, it could be done, but I would not consider it a safe operation. 30

Q. You mean it is physically possible, but not feasible as a practical proposition? A. As a practical proposition I would not do it.

Q. As a practical proposition what would have 40

JOHN J. KEGGAN—Direct

to be done? A. We would have to install a set of two arm gates and have a crossing man to attend them.

Q. Separate from the 17th Street crossing? A. Yes, sir; to make a safe operation.

10 Q. You heard the testimony about the cost of erection, maintenance and operation of the gates? A. Yes, sir.

Q. Do you agree with those figures? A. Yes, sir.

Q. Do you know what it would cost to provide the necessary planking and maintain it if 24th Street were opened? A. I have not measured that up; approximately I think it would take about 4,000 feet.

20 Q. About how much? A. About 4,000 feet; probably cost \$150 or \$160.

Q. How much would that cost? A. Cost approximately \$150 or \$160.

Q. To put it in. A. After you got it in and the street opened what is your opinion about the safety of the crossing of East 24th Street? A. Well, it is not a very safe proposition there; of course, every time there is a new crossing opened it adds more to the danger.

30 Q. Do you think this crossing would be particularly affected from the standpoint of danger by the fact that the travel on the two streets would cross each other directly on the railroad tracks? A. Somewhat, yes.

Q. People traveling from East 24th Street toward the railroad intending to cross 17th Avenue there, could not enter 17th Avenue in either direction without doing it on the railroad track, could they? A. No.

JOHN J. KEGGAN—Direct

Q. It would be impossible? A. It would be impossible.

Q. To even get into 17th Avenue in either direction? A. Because he has to go out over 24th Street and go out on the railroad track in order to turn around and get on 17th Avenue.

Q. And that is true whether he intended to go across? A. Whether he intended to go across or the other way. 10

Q. The movements across the railroad tracks would consist not only of those who wanted to cross, but those who wanted to get in and out of 17th Avenue? A. Yes.

Q. That amounts then really to the use of the crossing for part of the highway to turn the corner? A. That is what they would have to do on the south side. 20

Q. Is there any occasion, so far as the location of schools or places of amusement, or public parks are concerned, for East 24th Street to be opened to permit people to travel between their homes and such places? A. I don't know of any.

Q. Where is the school located that serves the people on the south side in that vicinity? A. That is located two or three blocks—on the south side?

Q. Yes. A. I believe they have to go over on the north side of the track to get to school. 30

Q. They do have to? A. Yes, I understand all this side of Market Street.

Q. Looking at this map do any of the people living south of the railroad here have to go north of the railroad to school, children? A. That I could not say, but I believe they do.

Q. There is a public school at 19th and Market? A. Yes, that is a public school. There is another on the north side of the track. 40

JOHN J. KEGGAN—Cross

Q. But there are no houses in here north of Market Street for anybody to live in, to speak of, calling for children to go over to this side? A. Well, not in that location around 24th Street there isn't.

10 Q. So any of these people here who wanted to go to school would naturally go out to 17th Avenue and across? A. Yes.

Q. Is East 24th Street in the line of any extensive travel that goes on in the city? A. Well, only on the east side of the city, it is on the outskirts of the city, you might say, there is nothing in particular through there.

Q. If East 24th Street were open to the public would it ever be a more direct route between any two places between which there is much travel?
20 A. I don't think so.

Cross examination by Mr. Lewis.

Q. You live about 1800 feet from this crossing?
A. 1800?

Q. About that? A. Yes, I live more than that; I live three blocks one way and about three each way the way the city is laid out. I live on the corner of 19th Avenue and 21st Street.

30 Q. Don't you know in the last few years there has been a development of real estate in that neighborhood; the Rogers estate and the Morris estate selling lots, building houses? A. There has been some in some portions of that.

Q. You are in back of the lot of Public School 24, or a block away? A. Yes.

Q. A good deal of travel to that from the east side there? A. Quite some travel on 19th Avenue comes up connects on Market Street.

40 Q. To go over to 19th Avenue, the other side is

just as handy, people would go on 24th Street, wouldn't they? A. Where?

Q. To go to 19th Avenue people from the east side and people from the north side would go to 24th Street, wouldn't they? A. No, there is other better streets to go, there isn't anybody on 24th Street to go over that way. 10

Q. If they wanted to go to a better street they would have to make a detour to Madison Avenue? A. No, they could go down 21st Street or 22nd Street.

Q. Then wouldn't they strike the same conditions in crossing the track? A. They could not cross the track at 21st Street; at 21st Street they could not cross it, that runs out on Park Avenue.

Q. They have to cross the track on 21st or 23rd if they live on the east side of Park Avenue? A. 21st Street runs out on Park Avenue and 22nd Street crosses the railroad. 20

Q. That is the Normal School there, isn't it? A. Yes.

Q. Young women come from all over town there? A. They have normal teachers there.

Q. You yourself don't use East 24th Street very much? A. No.

Q. Have no occasion to? A. No; I don't use this much, I use 22d and 21st. 30

Q. You say in laying a plank here you would use about how many feet? A. About four thousand feet board measure.

Q. That is for the whole crossing? A. Oh, no.

Q. For this little strip? A. That little strip is more than it looks to be.

Q. When you said four thousand feet you meant the 17th Avenue crossing as well as 24th Street?

A. I mean the portion that would have to be cov- 40

JOHN J. KEGGAN—Cross

ered to cover 24th Street, it runs on an angle now and you would have to go down this way twenty-five, thirty feet, something like that, I guess; I haven't measured up, I could not tell.

10 Q. You mean that little triangular patch out at the end, to give the width of 24th Street you would use 4,000 feet of planking? A. I said approximately, I have not measured it up.

Q. What would you say the whole crossing would use? A. The whole crossing, about 8,000 feet.

Q. How much? A. 8,000 feet board measure, to plank the whole crossing.

20 Q. Then you figure this difference would be half as much as is already laid? A. Well, the planking that is there now would not be satisfactory if they were going to open that street across.

Q. Why? A. Part of that planking would have to be taken up that is already in there if they were going to make a new crossing in there.

Q. You figure then to make this change you would have to add half as much planking as is already on that crossing? A. Yes, a proportion in either case in there.

By Mr. Minard.

30 Q. When you were asked this vague question about a good deal of building having been done in that locality, where was the building done; on East 24th Street? A. No.

Q. Was it done anywhere where people who live in the houses that were built would use 24th Street? A. It was mostly done between 24th Street and Madison Avenue in that section.

Q. Reached by different avenues than East 24th Street? A. Yes.

JAMES MAYBURY—Direct

Q. Would that increase the use of 24th Street?

A. No, not to any great extent.

Mr. MINARD—We rest.

COMMISSIONER DONGES—Anything further,
Mr. Lewis.

Mr. LEWIS—Nothing further, no sir. If
there is a report of your agent I sup-
pose that will be considered by the
Board.

10

COMMISSIONER DONGES—Yes; Mr. Maybury
may take the stand.

JAMES MAYBURY, sworn on behalf of Commis-
sion.

COMMISSIONER DONGES—Tell what you
found there, the physical conditions,
and so on.

20

WITNESS—The portion of the city of Pater-
son involved in this situation with re-
spect to the crossing is a purely resi-
dential part of the town, and the
houses in the community are compara-
tively new, being part of a rapid devel-
opment in that section during the past
ten years to my knowledge. 17th Ave-
nue is an improved highway carrying
considerable travel, especially automo-
bile travel. East 24th Street north of
the track is improved to the planking
line of the right of way of the railroad.
East 24th Street is a dirt surface road
with cinder surface immediately south
of the right of way, and extending to a
line of the southerly line of the present

30

40

JAMES MAYBURY—Direct

10 buildings used as a garage located on the southwest corner. At the intersection of East 24th Street and 17th Avenue the crossing is fully planked, and on the southerly line the planking is in line with the inside line of the sidewalk. West of 24th Street on 17th Avenue the planking from about the center line of the tracks to the easterly line of East 24th Street is not quite in line with the inside line of the sidewalk, if the sidewalk was continued across East 24th Street. While at the crossing investigating conditions I noticed what I would term a fair amount of travel on East 24th Street north of 17th Avenue. Some of the travel turned into 17th Avenue to the east, some to the west. There was no travel that I noticed from East 24th Street going in either direction over the tracks. 24th Street on the southerly side is improved with respect to cement curbing, and guttering, and sidewalks, cement sidewalks, on the easterly side, the sidewalk extending to the right of way line of the railroad. The portion of East 24th Street south of the tracks is planked and is used for travel along East 24th Street. This I noted by wheelmarks by wheels, marks of wheels on the highway at the planking, on the planking. The portion, possibly about two-thirds of the approach to the railroad tracks on the southerly side is not open. In line

20

30

40

JAMES MAYBURY—Direct

with the portion of 24th Street south of the tracks, which can be used for vehicular travel, is a ditch, on the top of which is grass and weeds and to travel going in a northerly direction on East 24th Street there is nothing there to indicate that the highway is not in practically the same condition as the other portion with the exception of the grass and weeds just mentioned. At the intersection of the two streets are gates. 17th Street is protected both sides, East 24th Street one side. Owing to this unusual condition at a railroad crossing where a street is partly used by travel and gates protecting three of the approaches and not the remaining approach, in my opinion, presents an extremely dangerous condition and one, that in my opinion, requires remedying, either by proper protection, namely, by gates, or the highway south of the tracks blocked to travel. The situation presented here with respect to the location of the highways is practically the same condition with respect to directions of streets, angles, and so forth, as we find at Park Avenue and 22d Street; the gates at which point are operated and taken care of by one man, who in addition must be extremely careful with respect to travel at that point on account of the large number of trolley cars practically east and west on Park Avenue. If the situation is to be taken care of

10

20

30

40

JAMES MAYBURY—Direct

10 by gates, instead of operating the gates from the ground as now existing, the towerman, gates operated from a tower, would have a full view of all approaches, and a full view of the vehicle and pedestrian travel coming in all directions, in the four directions to the crossing. The situation, the similar situation at Park Avenue requiring gates to be operated from a tower, and in my opinion the gate situation could be taken care of in a similar manner. There are three tracks running diagonally across the intersection of the two highways. Some of these trains are express trains and run at a rapid rate of speed. The third track, the one on the easterly side or northerly side is a siding and used as such in connection with movements in the Broadway yard. With respect to the views, the whole situation at all corners is of such a nature, and so deemed by the railroad company, requiring protection. The high board fence, to travel north on East 24th Street, if that fence were continued there, would prohibit, or preclude views of westbound trains, and owing to the angle of vision you would have a fair view of eastbound trains. But taking the whole situation as one, and to me with respect to protecting crossings it is one crossing, all approaches should be properly protected.

40

Mr. LEWIS—I have no questions to ask.

Cross examination by Mr. Minard.

Q. Mr. Maybury, you say some of these trains operate at a high rate of speed, what do you mean by a high rate of speed? A. Forty or fifty miles an hour.

Q. Did you know these trains operate there under an ordinance limiting them to twenty-five miles an hour? A. No. 10

Q. You did not? A. No. If they were going ten miles an hour, it would make absolutely no difference with respect to the testimony on account of the views at that point.

Q. You don't consider twenty-five miles an hour a high rate of speed? A. No, but that is for traveling; but with respect to an accident it wouldn't make any difference if it were six.

Q. Of course not. I would just as leave be hit by a train at twenty-five or sixty, or vice versa. A. That is what we wanted to understand 20

Q. Did I understand you correctly to say that in your opinion the gates at 24th Street and 17th Avenue on the south side could be operated by one man safely? A. I don't see why.

Q. Without any danger of one being up while the other was down? A. Absolutely the same situation exists at Park Avenue all gates go down at the same time. 30

Q. You heard two witnesses say the situation was not the same at Park Avenue? A. I cannot help what they said.

Q. You say that they are identical, is that it? A. Yes.

Q. That they are identical? A. With respect to the intersections and the conditions there.

Q. So far as operation of the gate is concerned are they identical? A. I should say they would be. 40

R. L. DYKE, recalled—Direct

Q. Are they? A. I cannot tell.

Q. That is what I wanted to know. A. I am talking about the operation of gates at similar points where highways intersect.

10 Q. But you don't know whether the conditions, so far as operation of gates are concerned, are identical? A. I could not say that until I saw the situation in actual operation. But assuming that the geography of the situation is the same, and the same number of approaches, naturally you would come to the conclusion they would be similarly operated.

Q. I admit if all the elements in the equation were alike the result would be the same; I will agree to that. A. All right.

20 R. L. DYKE, recalled on behalf of Respondent.

Direct examination by Mr. Minard.

Q. Mr. Dyke, how much would it cost to build the kind of tower that Mr. Maybury talks about? A. I believe about \$600.

Q. And the cost of maintenance? A. About \$10 a year.

30 Q. Do you know whether there is an ordinance in the city of Paterson limiting the speed of your trains to 25 miles an hour? A. Always been my understanding since I have been on the Susquehanna that steam trains in Paterson are 25 miles an hour.

Q. Are trains operated in accordance with the ordinance? A. Yes; our time table instructions are, that trains passing through the city of Paterson shall not exceed a speed of twenty-five miles.

By Mr. Lewis.

40 Q. You don't know whether they obey the ordin-

ARGUMENT

ance or not? A. I have not know of any case where they did not.

Q. You are not continually traveling? A. I pass over the road nearly every day two or three times.

COMMISSIONER DONGES—We will take the matter into conference.

Mr. Lewis, I think I should like to have discussion on one point, particularly on one point. This application is made, as I take it, under that section of the statute which requires permission of this Board to extend a highway over the tracks of a steam railroad at grade and the question arises in my mind whether that section of the statute is applicable unless it appears there is a public highway. I understand no action has been taken by the municipality with respect to the opening of this street as a highway of the city of Paterson, and I should like to have you discuss the question of whether, in view of the situation here presented the application under that section would be proper.

Mr. LEWIS—I am not prepared, nor did I contemplate being prepared entering into a discussion whether it is an open street or not. Most of the streets in that territory are streets opened by dedication, and this street, of course, is opened by users, the street is being used and the question has not presented itself to me as to whether that is a public highway under that act or not.

10

20

30

40

ARGUMENT

10 COMMISSIONER DONGES—I understand the position of the Erie Railroad, in addition to the question of whether it is practical how the crossing may be protected in case it is opened, makes its main objection on the point that this is not a public highway.

Mr. LEWIS—That point I would not be able at this time to meet.

20 COMMISSIONER DONGES—I say I think you ought at the same time consider it, and I should prefer you to submit a brief, and if you will submit your brief and serve it on Mr. Minard—I think ten days would be sufficient for Mr. Minard's answer. That really is an important question in the case.

Mr. LEWIS—This Board will want to be convinced that this is really a public highway before passing on the subject.

30 COMMISSIONER DONGES—I want to know if this Board has power in view of the application which is for permission to carry that street, to carry that highway, because it is not any other question, but the application is for permission to carry that highway over these railroad tracks. It is not for the protection, understand, of existing dangerous conditions, but your application is for permission, and I take it it is under that statute which deals particularly with that question, for permission to carry the highway over the railroad tracks at grade and only incidentally

40

EXHIBITS P 1, 2, 3 and 4. R 1 and 2

is the question of protection, planking,
and so forth, involved.

Mr. MINARD—Is the privilege extended to a
brief summary of the evidence of the
case?

COMMISSIONER DONGES—I should prefer 10
that counsel discusses every question
which they desire to discuss, but I
wanted to point out particularly that
question.

(Case to go to conference, briefs to be filed.
Mr. Minard to have ten days in which
to answer Mr. Lewis' brief after filing
and serving.)

EXHIBIT P 1

Blue print showing crossing of East 24th Street,
17th Ave. and the Railroad. 20

EXHIBITS P 2, 3, 4.

Photographs of crossing and streets.

EXHIBIT R 1

Map showing land at 17th Ave. and East 24th
Street, Paterson, dated Sept. 12, 1916. 30

EXHIBIT R 2.

Abstract of Condemnation Proceedings

NEW JERSEY MIDLAND RAILWAY CO.

vs.

MARTHA MORRIS and JOHN J. MORRIS

Filed June 14th, 1871, in Passaic County
Clerk's Office, Paterson, N. J. 40

EXHIBIT R 2

- I. Petition of the N. J. Midland Railway Co. (Copied) dated January 25, 1871.
- 10 II. Court Order fixing date of hearing on Petition, February 20th, at ten o'clock in forenoon at the Passaic County Court House, requires twenty days notice in writing of above hearing to be served on Martha Morris and John J. Morris, signed J. O. Bedle, P. Judge.
- 20 III. Notice to Martha Morris and John J. Morris, her husband recites application filed for appointment of Commissioners and description of property required. Dated Jan. 30, 1871. Signed by C. A. Wortendyke, President of the N. J. M. Ry. Co. Affidavit of personal service upon Martha Morris and John J. Morris on Jan. 31, 1871, attached.
- 30 IV. Court Order appointing Commissioners, recites application, description of property required by the N. J. M. Ry. Co., service of notice of hearing and appoints Ralph S. Demarest, Samuel E. DeGroot and William Pennington, Commissioners, to appraise the lands required and assess the damages, requiring Comrs. to give 20 days notice in writing served personally upon Martha Morris and John J. Morris. Dated February 20, 1871. Signed J. O. Bedle, P. Judge.
- V. Affidavit of Commissioners dated May 13, 1871.
- 40 VI. Notice to Martha Morris and John J. Morris of meeting of Comrs. at Hamilton House of George Oates on June 12, 1871,

PETITION

- to perform the duties of their appointment.
Dated Feb. 20, 1871. Signed C. A. Wortendyke, Pres. of the Midland Ry. Co. Affidavit of personal service on John J. Morris for himself and for his wife Martha Morris on May 17, 1871, attached.
- VII. Award of Commissioners: (Copied) 10
Dated June 12, 1871.
- VIII. Petition of Appeal of the New Jersey Midland Railway Company from award of Comrs. recites former proceedings and dissatisfaction with award of Commissioners; prays that the Court will direct a proper issue for the trial of the controversy between petitioners and property owners. 20
Dated July 20, 1871.
Signed by C. A. WORTENDYKE,
President of the N. J. M. Ry. Co.
JOHN HOPPER & SON, Attys.
(No further proceedings filed)

 PETITION

NEW JERSEY MIDLAND RAILWAY CO.

vs.

MARTHA MORRIS and JOHN J. MORRIS 30

Dated Jan. 25, 1871. Filed June 14, 1871

Passaic County Clerk's Office.

*To the Honorable Joseph D. Bedle, President
Judge of the Inferior Court of Common
Pleas of the County of Passaic:*

The Petition of the New Jersey Midland Railway Company respectively showeth, that by agreement made between the New Jersey Hudson and 40

PETITION

Delaware Railroad Company, the New Jersey Western Railroad Company, and the Sussex Valley Railroad Company, in pursuance of an act of the Legislature of the State of New Jersey, approved March Seventeenth, Eighteen Hundred and Seventy, and entitled "an act to authorize the consolidation of the capital stock, property, powers, privileges and franchises of the New Jersey Hudson and Delaware Railroad Company, with those of the New Jersey Western Railroad Company, the Sussex Valley Railroad Company, and the Hoboken Ridgefield and Paterson Railroad Company, or any or either of them", the said New Jersey Hudson and Delaware Railroad Company, has merged and consolidated its capital stock, powers, privileges and franchises with the capital stock, powers, privileges and franchises of the New Jersey Western Railroad Company, and the Sussex Valley Railroad Company, and such consolidation having been made by and between the said three corporations last named, parties to the said agreement, under and according to the conditions and provisions in the said act mentioned and contained, the said three corporations have become merged in the new corporation, to be known as the New Jersey Midland Railway Company, as provided in said act; and your petitioners, the said new corporation so formed and consolidated, have hereby succeeded to the property, rights, powers, privileges, franchises, obligations and liabilities of the companies so consolidated; and all property, rights of way, and all and every other interest have become, and are, the property of the said New Jersey Midland Railway Company as effectually as they were of the said former corporations, parties to said agreement.

PETITION

And your petitions show that the following described lands owned by Martha Morris, wife of John J. Morris, of the City of Paterson, in the County of Passaic and occupied by them are required by your petitioners in the construction and use of their railroad upon the route determined upon, on and over said lands, and whereof a survey has been duly filed in the office of the Secretary of State, under and by virtue of the provisions of the charter or act of incorporation of the said New Jersey Western Railroad Company, approved March 21st, 1867, and of the supplements thereto, and particularly of the supplements thereto, approved March 16th, 1870, that is to say:

10

All that strip or tract and lot of land, situate, lying and being in the City of Paterson, in the County of Passaic, and State of New Jersey, BEGINNING at the point of intersection of the center line of the said Railroad as there located with the westerly boundary line of the lands of the said Martha Morris and running thence South twenty nine degrees East seven hundred and fifty four feet to the easterly boundary line of the lands of the said Morris, with the width of Sixty feet through the entire length of said strip thence is to say thirty-three feet wide on each side of the center line and containing (1 14/100) one and fourteen hundredths acres.

20

30

And your Petitioners cannot agree with the said Martha Morris and John J. Morris for the use or purchase of the said required lands by the said Company although they have in good faith attempted so to agree—

And therefore pray that your Honor will appoint three disinterested, impartial and judicious

40

PETITION

freeholders, residents of this State, Commissioners, to examine and appraise the said required lands and to assess the damages, according to the provisions of the charter of the said New Jersey Western Railroad Company and the supplements thereto and particularly of the said supplements, approved March 16th, 1870, and whatever the said
 10 Commissioners, so to be appointed, are by law authorized to assess; and appoint a time and place, at which your Honor will hear the application of your petitioners, and make the said appointment, and direct notice to be given to the said Martha Morris and John J. Morris of the said application and the time and place of hearing the same. Dated, January 25th, 1871.

20 C. A. WORTENDYKE,
 President of the New Jersey Midland Railway Company.

PASSAIC COUNTY }
 NEW JERSEY } ss.

30 JOSEPH L. RUSLING, of full age being duly sworn on his oath saith, that he is the Engineer of the New Jersey Midland Railway Company, above named; that the foregoing petition contains a particular description of the lands in the City of Paterson, in the County of Passaic and State of New Jersey, owned and occupied by Martha Morris and her husband John J. Morris of the said City and required by said Company in the construction and use of their railroad upon the route thereof, as located on and over the said lands, as set forth in said petition, and that the facts set forth in the said petition are true.

JOS. L. RUSLING.

AWARD OF COMMISSIONERS

Sworn and subscribed
 January 25, 1871, before me,
 JOHN HOPPER,
 Master in Chancery of N. J.

AWARD OF COMMISSIONERS

10

NEW JERSEY MIDLAND RAILWAY CO.

vs.

MARTHA MORRIS and JOHN J. MORRIS

Dated June 12, 1871. Filed June 14,
 1871 Passaic County Clerk's Office.

Know All Men by These Presents, That we,
 Ralph S. Demarest, Samuel E. De Groot and Will-
 iam Pennington—Commissioners, appointed by
 the Honorable Joseph D. Bedle, President Judge
 of the Inferior Court of Common Pleas in and
 for the County of Passaic, on the application of
 the New Jersey Midland Railway Company, made
 by petition in writing to the said Judge, to ex-
 amine and appraise the lands owned by Martha
 Morris wife of John J. Morris in the foregoing
 Commission, and hereinafter described, and which
 are required by the said Company in the construc-
 tion and use of their railroad, on and over said
 lands, and to assess the damages, and whatever
 we, as such Commissioners, are by law authorized
 or required to assess; which said lands are de-
 scribed as follows, to wit:

20

30

All that strip or tract and lot of land situate,
 lying and being in the City of Paterson, in the
 County of Passaic and State of New Jersey, Be-
 ginning at the point of intersection of the center
 line of the said Railroad as there located with
 the westerly boundary line of the lands of the
 said Martha Morris and running thence South

40

AWARD OF COMMISSIONERS

twenty-nine degrees East seven hundred and fifty four feet to the easterly boundary line of the lands of the said Morris with the width of sixty six feet through the entire length of said strip that is to say thirty-three feet wide on each side of the center line and containing (1 14/100) One
10 and fourteen hundredths acres.

Do certify and report, that having met at the Hamilton House Hotel of George Oates in the City of Paterson, in the County of Passaic, on the Twelfth day of June, one thousand eight hundred and seventy-one, upon at least twenty days previous notice in writing given to the said Martha Morris and John J. Morris, her husband, in conformity with the directions of the said Judge in the said Commission contained, a copy of which
20 notice and affidavit of the service thereof we have caused to be appended hereto; and having first taken and subscribed an oath (which is annexed to the said Commission) before John Hopper, a Master in Chancery of New Jersey a person duly authorized to administer the same, faithfully and impartially to examine the matter in question, and made a true report according to the best of our skill and understanding, we did proceed to view and examine the same required lands, and to make
30 a just and equitable appraisalment of the value of the same, and an assessment of the damage to be paid by the said Company; and having viewed and examined the said lands, and made such appraisalment and assessment, at the same time taking into consideration all the benefits to be derived from or in consequence of the said railroad to the said owner, and having heard the allegations of the parties, we do find, award and report the sum of eleven thousand and seven hundred and fifty dol-
40

EXHIBITS R 3 and 4

lars as a just and equitable appraisalment of the value of the said required lands and assess the said damages at the sum of seventeen hundred dollars—making together the sum of thirteen thousand four hundred and fifty dollars to be paid by the said New Jersey Midland Railway Company, for the lands and damages aforesaid.

10

Witness our hands and seals, the Twelfth day of June, in the year of our Lord one thousand eight hundred and seventy-one.

WILLIAM PENNINGTON, L. S.

RALPH S. DEMAREST, L. S.

SAMUEL E. DEGROOT, L. S.

(Endorsed)

Copy

AWARD etc.

THE NEW JERSEY MIDLAND
RAILWAY COMPANY

20

and

MARTHA MORRIS, wife of

JOHN J. MORRIS.

Passaic County

Filed June 14, 1871.

B. W. Hoxsey,

Clk.

EXHIBIT R 3

30

(Exhibit R-1 for Identification)

Map of property in the third and fourth wards of the city of Paterson, Passaic County, N. J., dated Dec. 30, 1868.

EXHIBIT R 4

Map entitled, Erie Railroad Company, layout in vicinity of East 24th Street and 17th Avenue, Paterson, dated Sept. 8, 1916.

40

EXHIBITS R 5, 6 and 7

EXHIBIT R 5

Photograph of plates six and seven of Paterson city atlas.

EXHIBIT R 6

- 10 Map of City of Paterson 1916, Price & Lee, Publishers.

EXHIBIT R 7

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY,

Wilkes-Barre and Eastern Railroad

RECORD OF TRAFFIC OVER CROSSING

At 24th St., Paterson, N. J.

From 7 A. M. to 7 P. M. August 23rd, 1916.

| | A. M. | Engines and Trains. | Pedes- trians. | Auto- mo- biles. | Vehi- cles. | Horses and Riders. | Bicycles and Motor- cycles. | Total. |
|----|---------|---------------------------|-------------------|------------------------|----------------|--------------------------|--------------------------------------|--------|
| 20 | 7 & 8 | 4 | 2 | 0 | 1 | 0 | 0 | 7 |
| | 8 & 9 | 4 | 3 | 0 | 0 | 0 | 0 | 7 |
| | 9 & 10 | 5 | 2 | 2 | 1 | 0 | 0 | 10 |
| | 10 & 11 | 1 | 1 | 0 | 0 | 0 | 0 | 2 |
| | 11 & 12 | 6 | 1 | 0 | 2 | 0 | 0 | 9 |
| | P. M. | | | | | | | |
| | 12 & 1 | 2 | 5 | 0 | 1 | 0 | 0 | 8 |
| | 1 & 2 | 2 | 4 | 0 | 1 | 0 | 0 | 7 |
| 30 | 2 & 3 | 4 | 3 | 0 | 1 | 0 | 0 | 8 |
| | 3 & 4 | 1 | 0 | 1 | 2 | 0 | 0 | 4 |
| | 4 & 5 | 3 | 2 | 0 | 1 | 0 | 0 | 6 |
| | 5 & 6 | 5 | 11 | 0 | 0 | 0 | 0 | 16 |
| | 6 & 7 | 5 | 4 | 1 | 0 | 0 | 0 | 10 |
| | Totals | 42 | 38 | 4 | 10 | 0 | 0 | 94 |

WATCHMAN

E. J. DOTTER,

Name

BWay Paterson, N. J.

Address.

EXHIBIT R 8

NEW YORK, SUSQUEHANNA AND WEST-
ERN RAILROAD COMPANY,Wilkes-Barre and Eastern Railroad
RECORD OF TRAFFIC OVER CROSSING

At 24th St., Paterson, N. J.

From 7 A. M. to 7 P. M. August 22, 1916.

10

| A. M. | Engines and Trains. | Pedes- trians. | Auto- mo- biles. | Vehi- cles. | Horses and Riders. | Bicycles and Motor- cycles. | Total. |
|---------|---------------------------|-------------------|------------------------|----------------|--------------------------|--------------------------------------|--------|
| 7 & 8 | 9 | 1 | 0 | 2 | 0 | 0 | 12 |
| 8 & 9 | 3 | 8 | 1 | 2 | 0 | 0 | 14 |
| 9 & 10 | 6 | 5 | 0 | 0 | 0 | 0 | 11 |
| 10 & 11 | 1 | 3 | 3 | 1 | 0 | 0 | 8 |
| 11 & 12 | 3 | 0 | 0 | 0 | 0 | 0 | 3 |
| P. M. | | | | | | | |
| 12 & 1 | 3 | 6 | 0 | 0 | 0 | 0 | 9 |
| 1 & 2 | 2 | 2 | 0 | 1 | 0 | 0 | 5 |
| 2 & 3 | 4 | 7 | 0 | 0 | 0 | 1 | 12 |
| 3 & 4 | 0 | 5 | 1 | 3 | 0 | 0 | 9 |
| 4 & 5 | 5 | 1 | 0 | 1 | 0 | 0 | 7 |
| 5 & 6 | 2 | 10 | 1 | 0 | 0 | 0 | 13 |
| 6 & 7 | 7 | 7 | 0 | 0 | 0 | 0 | 14 |
| Totals | 45 | 55 | 6 | 10 | 0 | 1 | 117 |

20

WATCHMAN

E. J. DOTTER,

Name

30

BWay Paterson, N. J.

Address.

40

EXHIBIT R 9
NEW YORK, SUSQUEHANNA AND WEST-
ERN RAILROAD COMPANY,
Wilkes-Barre and Eastern Railroad
RECORD OF VEHICULAR TRAFFIC OVER
CROSSING

10

In East 24th St. between proposed crossing and
 Park Ave. on northerly side

From 7 A. M. to 7 P. M. September 7th, 1916.

| A. M. | Engines and Trains. | Pedes- trians. | Auto- mo- biles. | Vehi- cles. | Horses and Riders. | Bicycles and Motor- cycles. | Total. |
|---------|---------------------------|-------------------|------------------------|----------------|--------------------------|--------------------------------------|--------|
| 7 & 8 | | | 0 | 7 | | | 7 |
| 8 & 9 | | | 0 | 6 | | | 6 |
| 9 & 10 | | | 3 | 2 | | | 5 |
| 10 & 11 | | | 2 | 4 | | | 6 |
| 11 & 12 | | | 0 | 6 | | | 6 |
| P. M. | | | | | | | |
| 12 & 1 | | | 0 | 0 | | | 0 |
| 1 & 2 | | | 1 | 5 | | | 6 |
| 2 & 3 | | | 3 | 2 | | | 5 |
| 3 & 4 | | | 5 | 3 | | | 8 |
| 4 & 5 | | | 4 | 10 | | | 14 |
| 5 & 6 | | | 5 | 8 | | | 13 |
| 6 & 7 | | | 3 | 1 | | | 4 |
| Totals | | | 26 | 54 | | | 80 |

20

WATCHMAN

E. J. DOTTER,

Name

BWay Paterson, N. J.

Address.

30

40

EXHIBIT R 10

NEW YORK, SUSQUEHANNA AND WEST-
ERN RAILROAD COMPANY,
Wilkes-Barre and Eastern Railroad
RECORD OF VEHICULAR TRAFFIC OVER
CROSSING

In East 24th St., between tracks and 18th Ave.,
Paterson, N. J. 10

From 7 A. M. to 7 P. M. September 7th, 1916.

| A. M. | Engines and Trains. | Pedes- trians. | Auto- mo- biles. | Vehi- cles. | Horses and Riders. | Bicycles and Motor- cycles. | Total. |
|---------|---------------------------|-------------------|------------------------|----------------|--------------------------|--------------------------------------|--------|
| 7 & 8 | | | 0 | 1 | | | 1 |
| 8 & 9 | | | 1 | 0 | | | 1 |
| 9 & 10 | | | 3 | 0 | | | 3 |
| 10 & 11 | | | 0 | 2 | | | 2 |
| 11 & 12 | | | 0 | 2 | | | 2 |
| P. M. | | | | | | | 20 |
| 12 & 1 | | | 0 | 1 | | | 1 |
| 1 & 2 | | | 2 | 1 | | | 3 |
| 2 & 3 | | | 0 | 2 | | | 2 |
| 3 & 4 | | | 2 | 1 | | | 3 |
| 4 & 5 | | | 2 | 3 | | | 5 |
| 5 & 6 | | | 1 | 2 | | | 3 |
| 6 & 7 | | | 1 | 0 | | | 1 |
| Totals | | | 12 | 15 | | | 27 |

WATCHMAN

E. J. DOTTER,

30

Name

BWay Paterson, N. J.

Address.

40

61

Reasons.

(Filed January 20, 1917.)

The prosecutor files the following reasons upon which it will rely for a reversal of the proceedings under review in this case:

1. The conclusions of the Board of Public Utility Commissioners that East Twenty-Fourth street is a public highway were not justified, nor reasonably supported, by the evidence taken before said board. 10

2. There was no evidence before said board to support reasonably its conclusions that East Twenty-fourth street is a public highway.

3. The evidence shows that the conclusions of said board that East Twenty-fourth street is a public highway are (a) purely arbitrary, or (b) without reasonable basis upon which to rest, or (c) unsupported by the facts laid before said board. 20

4. The conclusions of said board that the prayer of the defendant city of Paterson should be granted and that a certificate of permission to lay out East Twenty-fourth street as a highway over the railroad tracks of the prosecutor should issue, are not justified, nor reasonably supported, by the evidence taken before said board.

5. There was no evidence before said board to support reasonably its conclusions that the prayer of the petition of the defendant city of Paterson should be granted, and that a certificate of permission to lay out East Twenty-fourth street as a highway over the railroad tracks of the prosecutor should issue. 30

6. According to the whole of the evidence taken before said board, the conclusions of said board that the prayer of the petition of the defendant city of

Paterson should be granted, and that a certificate of permission to lay out East Twenty-fourth street as a highway over the tracks of the prosecutor should issue, are unreasonable.

10 7. The evidence shows that the conclusions of said board that the prayer of the petition of the defendant city of Paterson should be granted, and that a certificate of permission to lay out East Twenty-fourth street as a highway over the tracks of the prosecutor should issue are (a) purely arbitrary, or (b) without reasonable basis upon which to rest, or (c) unsupported by the facts laid before said board.

20 8. The conclusions of said board that the gate or gates to be installed on the west side of the tracks to guard East Twenty-fourth street could be operated by the towerman or gateman who now operates the gates on Seventeenth avenue, are not justified nor reasonably supported by the evidence taken before said board.

30 9. There was no evidence before said board to support reasonably its conclusions that the gate or gates to be installed on the west side of the tracks to guard East Twenty-fourth street could be operated by the towerman or gateman who now operates the gates on Seventeenth avenue.

10. According to the whole of the evidence taken before said board the conclusions of said board that the gate or gates, to be installed on the west side of the tracks to guard East Twenty-fourth street, could be operated by the towerman or gateman who now operates the gates on Seventeenth avenue are unreasonable.

11. The evidence shows that the conclusions of said board that the gate or gates, to be installed on

Reasons

the west side of the tracks to guard East Twenty-fourth street could be operated by the towerman or gateman who now operates the gates on Seventeenth avenue are (a) purely arbitrary, or (b) without reasonable basis upon which to rest, or (c) unsupported by the facts laid before said board.

12. The certificate of said board granting permission for the construction of East Twenty-fourth street in the city of Paterson at grade over the tracks of the prosecutor is not justified, nor reasonably supported by the evidence taken before said board. 10

13. There was no evidence before said board to support reasonably the certificate granting permission for the construction of East Twenty-fourth street in the city of Paterson at grade over the tracks of the prosecutor. 20

14. According to the whole of the evidence taken before said board, the certificate granting permission for the construction of East Twenty-fourth street in the city of Paterson at grade over the tracks of the prosecutor is unreasonable.

15. The evidence shows that the action of said board in making its certificate whereby it granted permission for the construction of East Twenty-fourth street in the city of Paterson at grade over the tracks of the prosecutor is (a) purely arbitrary, or (b) without reasonable basis upon which to rest, or (c) unsupported by the facts laid before said board. 30

16. There was no evidence before said board to show that any property has been dedicated as a public highway across the tracks of the prosecutor at the point where said board grants permission for the opening of a street.

17. There was no evidence before said board to show that East Twenty-fourth street had ever been opened as a public highway across the tracks of the prosecutor at the point where permission was granted for the opening of the street.

10 18. There was no evidence before said board to show that any public highway existed where East Twenty-fourth street would cross the tracks of the prosecutor if a crossing were constructed as permitted by the certificate of said board in the proceedings under review.

19. According to the whole of the evidence taken before said board, there was no development of property, or traffic, along or near East Twenty-fourth street that would justify said board in making its certificate granting permission for the construction of a crossing at grade over the tracks of the prosecutor.

20 20. According to the whole of the evidence, at the point where East Twenty-fourth street would cross the tracks of the prosecutor, if opened at the point where permission was given for the construction of a street, by the proceedings under review, the construction of a grade crossing would create an unusually dangerous condition, and the action of said board in granting said permission was therefore (a) purely arbitrary, or (b) without reasonable basis upon which to rest, or (c) unsupported by the facts laid before said board.

30 21. If any public necessity now exists for the development of East Twenty-fourth street, or for the accommodation of traffic thereon, it can be conveniently and adequately provided for by deflecting East Twenty-fourth street into Seventeenth avenue, west of the right of way of the prosecutor, and by

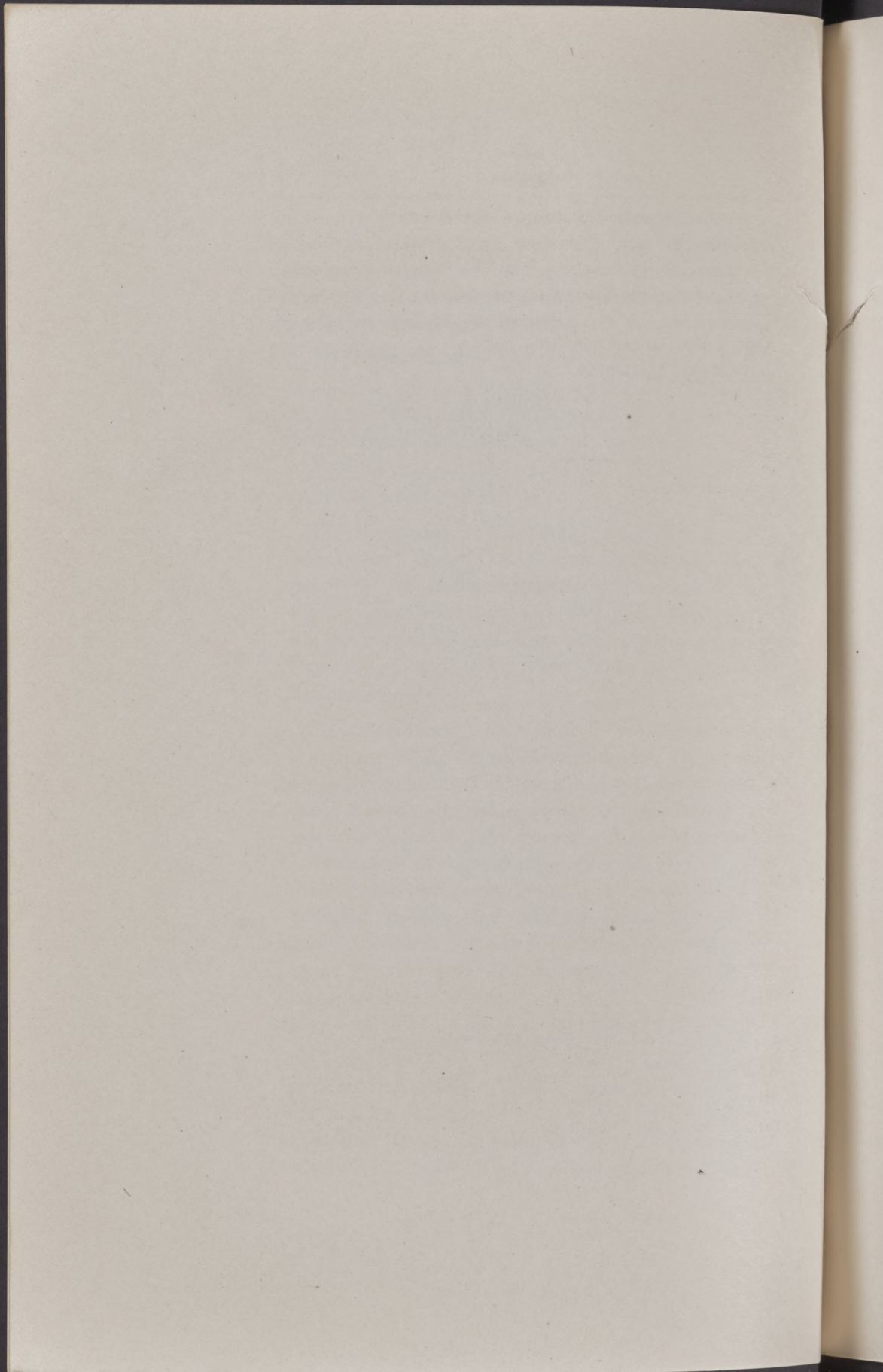
using the present crossing at Seventeenth avenue for such traffic; and therefore the action of the board in granting permission for the construction of a crossing at East Twenty-fourth street was (a) purely arbitrary, or (b) without reasonable basis upon which to rest, or (c) unsupported by the facts laid before said board.

Collins & Corbin,
Attorneys of Prosecutor.

10

20

30



(Filed June 6, 1917.)

NEW JERSEY SUPREME COURT.

February Term, 1917.

NEW YORK, SUSQUEHANNA AND
WESTERN RAILROAD COMPANY

*Prosecutor,**vs.*

BOARD OF PUBLIC UTILITY COM-
MISSIONERS AND CITY OF PAT-
ERSON,

*Respondents.***Opinion.**

Argued February Term, 1917. Decided June Term, 1917.

Collins & Corbin, for Prosecutor.

L. Edward Herman, for Commissioners.

Randal B. Lewis, for City of Paterson.

Certiorari removing order of Public Utility Commissioners relative to Grade Crossing at Seventeenth Avenue and Twenty-fourth Street, Paterson.

Argued before Justices Swayze, Minturn and Kalisch.

The opinion of the Court was delivered by Minturn, J.

The certiorari in this case removes an order made by the Board of Public Utility Commissioners, granting permission to the City of Paterson, to construct a crossing at grade, over the railroad right of way at Seventeenth Avenue and Twenty-fourth Street, where the two streets come together. A crossing is arranged for Seventeenth Avenue, but none is arranged for East Twenty-fourth Street, and the pro-

posals is to compel such construction by the railroad. The railroad contests the right of the City to require it on the ground that the street is not in fact a public highway. It was never laid out as such, and the City relies upon a map made in 1868 to evidence the dedication. We think the map does not show a dedication of the locus in quo. It contains a declaration
10 by the husband of the then owner that if he ever opened the streets, the opening would conform to the map. This lacks the essentials of a legal dedication, first because it is not made by the owner of the locus; and secondly because at most it is but a promise or agreement to dedicate in future.

The buildings along the lines of the street, as actually used, and the actual practical use of the street as a dirt or cinder road, seems to be shown, and that
20 fact would justify an inference that continued use has accorded to it the status of a public highway. That question, however, is not before us for decision, nor was it a subject for the determination of the Public Utility Commissioners, under the legislation prescribing their powers.

The fact is quite apparent that in opening up these two streets, as proposed, so that the railroad may cross them diagonally, a crossing involving serious danger to the public will be thereby created.

The Commissioners seem to have dealt with the
30 situation as though it presented a question of the construction of appurtenances to the railroad. The declared object of the statute is to protect the public from the danger incident to grade crossings, and the inquiry before the Commissioners was whether such a crossing as that in question would result in increasing the danger and hazards of the public in the use of it; and if it would increase the public dangers, then whether in view of the situation thus present-

ed, it was still necessary and desirable as a public crossing. For manifestly a public crossing at grade might be highly desirable as a public convenience, but if its existence and continued use might serve in actual practice as a standing menace to the lives of the community, it would not comport with a proper exercise of wisdom, nor accord with the declared legislative policy and intent to authorize or compel such construction.

10

These important considerations seem not to have been discussed or determined by the board; and as we have intimated, they present the distinctive and vital inquiry in the case. We think it was made quite clear by the railroad, that the difficulty presented here could be obviated by a slight change in the lines of the Streets, at the corner where Seventeenth Avenue and Twenty Fourth Street intersect, and if such a change in existing conditions can be made to practically serve the public use and convenience, the adoption of such a plan would seem to present a satisfactory substitute, and a reasonable solution of the situation rather than a proposed construction which is menaced with the very difficulties and dangers which it is the avowed purpose of this legislation to eliminate.

20

We think the testimony before the board, was not sufficient nor of a character to warrant or reasonably support the conclusion reached by the board, and for that reason we have concluded that the permission granted should be vacated.

30

Erie R. R. Co. v. Bd. of Utility Commissioners, 98 Atl. 13.

Potter v. Board of Public Utility Commrs. 98 Atl. 30.

NEW JERSEY SUPREME COURT.

| | | |
|---|---|--|
| NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY <i>Prosecutor,</i> | } | <i>On Certiorari to review order of November 28, 1916 of the Board of Public Utility Commissioners.</i> |
| <i>vs.</i> | | |
| BOARD OF PUBLIC UTILITY COM- MISSIONERS AND CITY OF PAT- ERSON, <i>Defendants.</i> | | |

Rule for Judgment.

The court having inspected the return to the writ of certiorari in this cause and considered the arguments of counsel for all parties, and being of opinion that the testimony before the Board of Public Utility Commissioners was not sufficient or of a character to warrant or reasonably support the conclusion reached by said Board:

It is ordered that the order of said Board brought up for review in this cause, made November 25, 1916, on petition of the defendant the City of Paterson, be and the same hereby is set aside, and that the permission attempted to be given by said order to lay out East Twenty-fourth street in the City of Paterson across the tracks of the prosecutor be vacated
 Entered June 19, 1917,

on motion of

Collins & Corbin,

Attorneys for prosecutor.

New Jersey Court of Errors and Appeals

NEW YORK SUSQUEHANNA &
WESTERN RAILROAD COMPANY,

Prosecutor-Respondent,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS AND CITY OF PAT-
ERSON,

Defendants-Appellants.

*On Appeal.
Re-Crossing at
East 24th Street,
Paterson.*

Brief for Defendant

City of Paterson

The Board of Public Utility Commissioners of New Jersey granted a certificate to the City of Paterson giving the city permission to construct East Twenty-fourth Street at grade, over the tracks of the New York, Susquehanna and Western Railroad Company. On certiorari, prosecuted by the Railroad Company, the New Jersey Supreme Court vacated the permission granted by the Utility Commission. This appeal is taken from the judgment of the Supreme Court.

This defendant submits:

I.

Certiorari does not lie to review the certificate granted by the Board of Public Utility Commissioners.

East 24th Street is a thoroughfare about two and one-half miles in length, running from the northerly to the southerly part of Paterson.

It is improved and used for traffic up to both sides of the tracks of the New York, Susquehanna and Western Railroad at 17th Avenue, at which point Paterson desires the street to cross said tracks.

To cross the tracks the city must take certain legal procedure, an incident of which is obtaining a permit from the Board of Public Utility Commissioners under Section 21 of the Public Utility Act (P. L. 1911, p. 383), which provides that "no highway shall be constructed across the tracks of any railroad company at grade..... without first obtaining therefor permission from the Board."

The granting of this permission vests no rights in the City and prejudices no rights of the railroad company. The railroad is divested of no defense which it would have against the illegal encroachment of the City, for the City has merely instituted procedure which it must complete in order to cross the tracks.

The permission of the Board of Public Utility Commissioners is a bare grant of leave to the City of Paterson to cross the railroad tracks if the City has the right so to do. It is a mere step in the procedure to make such crossing. The procedure is incomplete and hence certiorari does not lie to review the certificate of permission.

"The writ of certiorari does not lie until the proceedings sought to be reviewed are completed, and a final determination had" (9 L., p. 101; and other cases cited; Parker's Digest, N. J. L. P., 151 |a|).

"It is not a proper use of the writ to intercept and remove, for review, the steps in a procedure, preliminary to a decision or final resolution therein, except where the court issuing the writ can continue the

proceedings to completion" (Elder v. Medical Society, 6 Vroom, 202).

II.

The finding of the Board of Public Utility Commissioners is final in this case and the Supreme Court cannot substitute its own judgment for that of the Board.

To construct East Twenty-fourth Street across the tracks of the Railroad Company, the City of Paterson, before passing an ordinance or taking any step toward such crossing must first obtain permission of the Public Utility Commissioners for such construction.

The granting of this permission with the proper safeguarding of the crossing incident thereto is one of the discretionary powers vested in the Board of Public Utility Commissioners by the act of 1911.

In the case of "American Malt Corporation vs. Board of Public Utility Commissioners" (92 At. 362), the Court of Errors and Appeals suggest that an arbitrary and unreasonable exercise of its discretionary powers by the Board of Public Utility Commissioners is not reviewable by the Supreme Court.

How far the Supreme Court can regulate the use of this discretionary power by the Board is stated in the opinion of our Court of Errors in *West Jersey and Seashore R. Co. vs. Board of Public Utility Commissioners* (94 At. p. 57) which holds that the Supreme Court "can upon certiorari, or under the statutory procedure provided by section 38 of the act of 1911, review such actions for the purpose of ascertaining whether or not it is purely arbitrary.

whether or not it has a reasonable basis to rest upon, whether or not it is supported to any extent by the fact submitted to the board for its consideration; and if it shall be made to appear to the court that such action is purely arbitrary, or that it has no reasonable basis upon which to rest, or is unsupported by the facts laid before the board, the court may declare it null and void, and order it to be set aside. So, too, if the Board refuses to consider the matter at all, the court by mandamus can compel it to do so. But as the matter of granting or withholding its approval is one which is left by the Legislature to the sound discretion of the board, the Supreme Court cannot substitute its own judgment for that of this legislation agent and compel it to act upon the application for its approval in a specific way."

Therefor in order to vacate the certificate of the Board, the Supreme Court must find in this case that the act of the Board in granting the certificate was

1. Purely arbitrary.
2. That it had not a reasonable basis to rest upon.
3. That it was not supported to any extent by the facts submitted to the Board for its consideration.

If these conditions do not exist in the finding of the Board then this defendant submits that the finding of the Board is final in this case, which leads us to a consideration of the evidence.

1.

That the act of the Board was not "purely arbitrary" is plainly evidenced by the proceedings which

led to the granting of the certificate, which may be briefly summarized as follows:

The City of Paterson filed its petition on July 19, 1916 (case P. 4).

The matter was set down for hearing and heard on September 13, 1916 (case p. 13 etc.).

Two witnesses testified for Paterson, five testified for the Railroad Company and one testified for the Board (Case—Index to testimony).

Fourteen exhibits were offered (Case—Index).

At the conclusion of the hearing counsel on both sides were requested by the Board to submit briefs (p. 69) which they did.

The Board rendered its judgment on November 28, 1916 (case p. 4).

Even had the finding of the Board been erroneous it was manifestly not "purely arbitrary."

2.

The Act of the Board had a reasonable basis to rest upon.

These facts were testified to before the Board: East 24th Street is a connecting street between the north and south sides of Paterson, about two and a half miles long. It is a much traveled street and where it is crossed by the Railroad Company tracks, a dangerous condition exists (case p. 16).

The street is in a residential section rapidly developing, improved to north line of track, dirt and cinder surface to south line, curbed and guttered (pp. 61, 62, 63). There is no crossing over the tracks between East 22nd Street on one side and East 27th Street on the other side (p. 16).

The principal objection of the railroad Company to the granting of the permit appears to be, from the tenor of the testimony, the cost incident to the open-

ing of the street over the tracks, that is the cost of planking and maintaining a gate.

That the Board in granting its certificate considered the consequences as it affected the expense placed on the railroad by its acts is evidenced in the concluding paragraph of the Board's report (case p. 11).

While the consideration of expense incident to the permission granted by the Board, may not have been necessary, the fact that the Board did have such consideration is further evidence that the basis on which its conclusion was reached was reasonable.

3.

The act of the Board was supported by the facts submitted for its consideration.

In support of this, defendant respectfully submits the matters submitted to show that the act of the Board was not purely arbitrary and that the act of the Board had a reasonable basis to rest upon, as set forth in sections 1 and 2 next preceding.

In conclusion this defendant submits that whether or not East Twenty-fourth Street is a dedicated, or otherwise opened street, is immaterial in the determination of this issue.

The facts submitted are that it is an improved highway in the residential section of the City, traveled by pedestrians and vehicles.

It is intersected by the Railroad Company's tracks and before the City of Paterson can open the street across the tracks, it must have permission from the Board of Public Utility Commissioners.

Respectfully submitted,

RANDAL B. LEWIS,

*Attorney of Defendant-City
of Paterson.*

NEW JERSEY

Court of Errors and Appeals.

NEW YORK, SUSQUEHANNA AND
WESTERN RAILROAD COMPANY,
Prosecutor-Respondent,

On Appeal.

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS AND THE CITY OF
PATERSON,
Defendants-Appellants.

*Re Crossing at
East 24th
Street.*

**Brief for New York, Susquehanna and
Western Railroad Company.**

A writ of certiorari was allowed by the Supreme Court, to review an order of the Board of Public Utility Commissioners, dated November 28, 1916, which reads as follows:

“This application having been duly heard, and the Board having on the date hereof made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, the Board of Public Utility Commissioners

“Hereby grants permission for the construction of East Twenty-fourth Street, in the City of Paterson, at grade, over the tracks of the New York, Susquehanna and Western Railroad Company” (p. 12, ll. 21-31).

The application referred to in the order just quoted (p. 4, ll. 1-20), with a map of the proposed crossing (Exhibit P 1 in accompanying envelope), was filed by the City of Paterson on July 19, 1916, requesting "permission to lay out East 24th Street, in the City of Paterson, across the tracks of the New York, Susquehanna and Western Railroad Company according to the plan set forth on the accompanying sketch," under Section 21 of the Public Utility Act (P. L. 1911, p. 383), which provides:

"No highway shall be constructed across the tracks of any railroad company at grade * * * without first obtaining therefor permission from the Board."

The Board heard the matter on September 13, 1916, taking testimony offered on behalf of the City of Paterson, the petitioner, and itself.

The matter was decided on November 23, 1916, at which time the Board filed a report at length upon the situation (pp. 4-11) and made the order referred to. To review these proceedings the writ was allowed.

The argument on the writ took place in the Supreme Court at the February term, 1917, and the matter was decided at the June term, 1917, the opinion of the Court being found in the state of case at pages 87-89. After reviewing the situation, the Supreme Court concludes as follows:

"We think the testimony before the Board was not sufficient nor of a character to warrant or reasonably support the conclusion reached by the Board, and for that reason we have concluded that the permission granted should be vacated" (p. 89, ll. 28-33).

The City of Paterson then took the matter to this Court, the grounds of appeal relied upon being as follows:

1. Certiorari does not lie to review the certificate granted by the Board of Public Utility Commissioners.

2. The finding of the Board of Public Utility Commissioners is final in this case and the Supreme Court cannot substitute its own judgment for that of the Board.

I.

The proceeding before the Board of Public Utility Commissioners is complete in itself and a final determination of the matter under consideration before that body.

Counsel for appellant, City of Paterson, quotes from Parker's New Jersey Digest, Vol. 1, column 1551, paragraph 21, section A, to the effect that "the writ of certiorari does not lie until the proceedings sought to be reviewed are completed and a final determination had." He especially refers to the case of *Chandler v. Monmouth Bank*, 9 N. J. L., 101. That case involved a writ of certiorari which was sued out to remove to the Supreme Court *before trial*, a common law action "depending" in an inferior Court of Common Pleas. He also cites the well-known case of *Elder v. Medical Society*, 35 N. J. L., 202, which case arose out of an attempt to review proceedings instituted against the prosecutor under the medical society's act which were pending and not determined.

Neither of these cases, nor others cited in Parker's Digest, *supra*, apply to the case under consideration.

These cases are entirely different from the present. So far as the Board of Public Utility Commissioners is concerned the action taken is *final*; it has granted the permission which the city requested and there is no room for any further action on the part of the Board.

The appellant, on page 2 of its brief, in the second paragraph, refers to the proceeding in question as "an incident," the language being as follows:

"To cross the tracks the City must take certain legal procedure, *an incident of which is obtaining a permit from the Board of Public Utility Commissioners under Section 21 of the Public Utility Act,*" etc.

This proceeding, we contend, is not "an incident" in the opening of a street by certain "legal procedure," but is a proceeding complete in itself and has been carried to final determination. In this connection we desire to quote Section 21 in full:

"21. No highway shall be constructed across the tracks of any railroad company at grade, nor shall the tracks of any railroad company, street railway or traction company be laid across any highway, so as to make a new crossing at grade, nor shall the tracks of any railroad or street railway or traction company be laid across the tracks of any other railroad or street railway or traction company without first obtaining therefore permission from the board; provided, however, that this section shall not apply to the replacement of lawfully existing tracks."

It will be seen at once that the construction of a highway across a railroad track at grade is regarded in the same light as the crossing of one railroad by another or by a street railway or a traction company, matters of great importance and the subject of much litigation in the past.

We do not think that the appellant would have the temerity to insist that an order granting permission for one line of railroad to cross another line of railroad *at grade* could not be reviewed by the Courts on certiorari but was merely "an incident" in the laying out of the right of way of the second line of railroad.

Section 38, however, of the Public Utility Act (P. L. 1911, p. 388) provides that "any order made by the Board may be reviewed on the application of any person or public utility affected thereby, by certiorari in appropriate cases," etc., and, therefore, the certificate of the Board of Public Utility Commissioners is reviewable in any event if it can be held to be embraced in the term "order." An examination of the act shows that the Board of Public Utility Commissioners cannot take action except by orders. There is no provision in the act requiring generally that all actions of the Board shall be taken by written order, but Section 33 thereof, which imposes a penalty for the non compliance with the order of the Board, refers to an order only and makes no reference to any other terms taken by the Board. If then it be held that the certificate of the Board (p. 12) is not an order, it becomes unenforceable under the provisions of the act.

This is not a reasonable nor workable construction of the provisions of the Public Utility Act; the Board's directions of all kinds involving the rights of outside parties must be considered as

orders, for otherwise they would be unenforceable, and consequently such orders are reviewable. Appellant further in the third paragraph on page two of its brief says, that "the granting of this permission vests no rights in the City and prejudices no rights of the railroad company. The railroad is divested of no defense which it would have against the illegal encroachment of the City, for the City has merely instituted procedure which it must complete in order to cross the tracks."

We beg to differ decidedly from the conclusion there urged. By the Public Utility Act, the Board of Public Utility Commissioners is virtually made a judicial tribunal for the determination of the vexed question of grade crossings of various kinds, matters which decidedly affect the rights of the railroad companies involved therein. Such crossings are sources of great expense and danger and interference with the operation of the railroads and the power lodged in the hands of the Board of Public Utility Commissioners is one of great importance and should be exercised with the greatest care and surrounded by all the safeguards which the law provides.

The city in its procedure to open a street across the tracks of a railroad can proceed to lay out the street, pass the necessary ordinance and condemn the rights necessary for the opening thereof. But beyond this it cannot go, and actually construct the highway unless it obtains the permission of the Board of Public Utility Commissioners, allowing the same. The city, which is the body which is taking proceedings to open the highway and after going through the legal procedure, desires to construct the same, is then required by Section 21 of the Public Utility Act to go through a judicial proceeding in order to determine the difficult ques-

tion of the harmonizing of the rights of the railroad and of the municipality. The proceeding is clearly a special determination in itself, and not in any way part of the city's procedure in the opening of the street. It is a special procedure instituted in order to determine a special thing, viz., the harmonizing of the conflicting necessities of the case. It is a matter entirely apart from the city's procedure in opening the street.

We submit that the action of the Board in granting permission for the construction of the crossing in question is either an "order" within the meaning of Section 38 of the act concerning public utilities, or it is a "proceeding" of a special statutory tribunal within the meaning of Section 11 of the Certiorari Act. In either event it is reviewable by this Court on certiorari.

Erie Railroad Company vs. Board of Public Utility Commissioners, 85 N. J. L., 420.

II.

As to whether "the finding of the Board of Public Utility Commissioners is final in this case," as claimed by the appellant, is a matter of fact, and the finding of the Supreme Court is therefore final thereon.

Appellant bases its argument upon this point upon the case of *West Jersey & Seashore Railroad Company v. Board of Public Utility Commissioners*, 87 N. J. L., p. 170 (94 Atl., 57), where at page 178, this Court, by Chief Justice Gummere, defines the "supervisory power of the Supreme Court" over actions of this character by the Board of Public Utility Commissioners, the language of the decision

on this point being quoted in full in the appellant's brief.

In interpreting that decision, counsel for appellant falls into the error of arguing that in order to vacate the certificate of the Board of Public Utility Commissioners, the Supreme Court must find all three of the difficulties enumerated in that opinion as grounds for setting aside an order of the Board, viz., that it is "purely arbitrary" *and* has no "reasonable basis to rest upon" *and* is not "supported to any extent by the facts submitted to the Board for its consideration." He overlooks entirely the conclusion of the sentence referred to which is, "and if it shall be made to appear to the Court that such action is purely arbitrary, *or* that it has no reasonable basis upon which to rest, *or* is unsupported by the facts laid before the Board, the Court may declare it null and void and order it to be set aside." It is apparent that any one of the foregoing conclusions by the Supreme Court is sufficient ground to set aside the order of the Board, and inasmuch as the decision of the Supreme Court upon matters of fact is final, this Court will not review the evidence to determine whether the findings of the Supreme Court in these regards is supported by the facts. To determine this case as desired under Point II. of the appellant's brief, this Court must review the facts. It appears from the opinion that the Supreme Court has exercised its discretion only under the second alternative (and possibly the third). As we pointed out at the opening of this brief, that Court came to the conclusion that "the testimony before the Board was not sufficient nor of a character to warrant or reasonably support the conclusion reached by the Board, and for that reason concluded that the permission granted should be vacated."

The latest decision on this subject is found in the well-known Paterson Grade Crossing case in which the Supreme Court held as follows:

“The next ground of attack is that the evidence taken before the Board of Public Utility Commissioners does not justify, nor reasonably support the Board’s conclusion or findings. To that end, the insistence is, that this Court has power and should review the Board’s findings of fact. We understand such to be the power of this Court.”

Erie R.R. Co. v. Board of Public Utility Commsrs., 89 N.J. Law, p. 57, at p. 68; affirmed on opinion below, October, 1917.

Such being the law with reference to the power of the Supreme Court to review the decisions of the Board of Public Utility Commissioners involving matters of fact, it follows that the decision of that Court is final, and this Court will not review the finding of the Supreme Court upon this point.

We desire to touch upon one other matter before closing. Appellant infers that the action of the Supreme Court in reviewing a matter of this character amounts to the substitution of “its own judgment for that of the Board” and apparently endeavors to sustain this position by a quotation from the West Jersey & Seashore Railroad case, as follows (p. 178):

“So, too, if the Board refuses to consider the matter at all, the Court, by mandamus, can compel it to do so. But as the matter of granting or withholding its approval is one which is left by the Legislature to the sound discretion of the

Board, the Supreme Court cannot substitute its own judgment for that of this legislative agent, and compel it to act upon the application for its approval in a specific way."

It is apparent from a reading of the quotation that it refers specifically to mandamus and not certiorari, and further that the Supreme Court in this case has not endeavored to substitute its own judgment for that of the Board, but has merely determined that the Board's action is unreasonable under the facts.

III.

The decision of the Supreme Court should be affirmed with costs.

COLLINS & CORBIN,
Attorneys for Prosecutor.

GEORGE S. HOBART,
CLEMENT K. CORBIN,
Of Counsel.

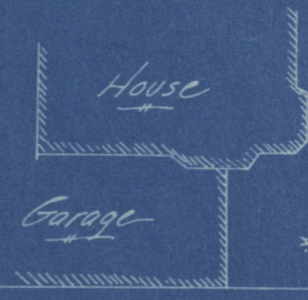
EAST 23^{RD.}

ST.

18^{TH.}

17^{TH.}

N. K.



EAST 24^{TH.}

ST.

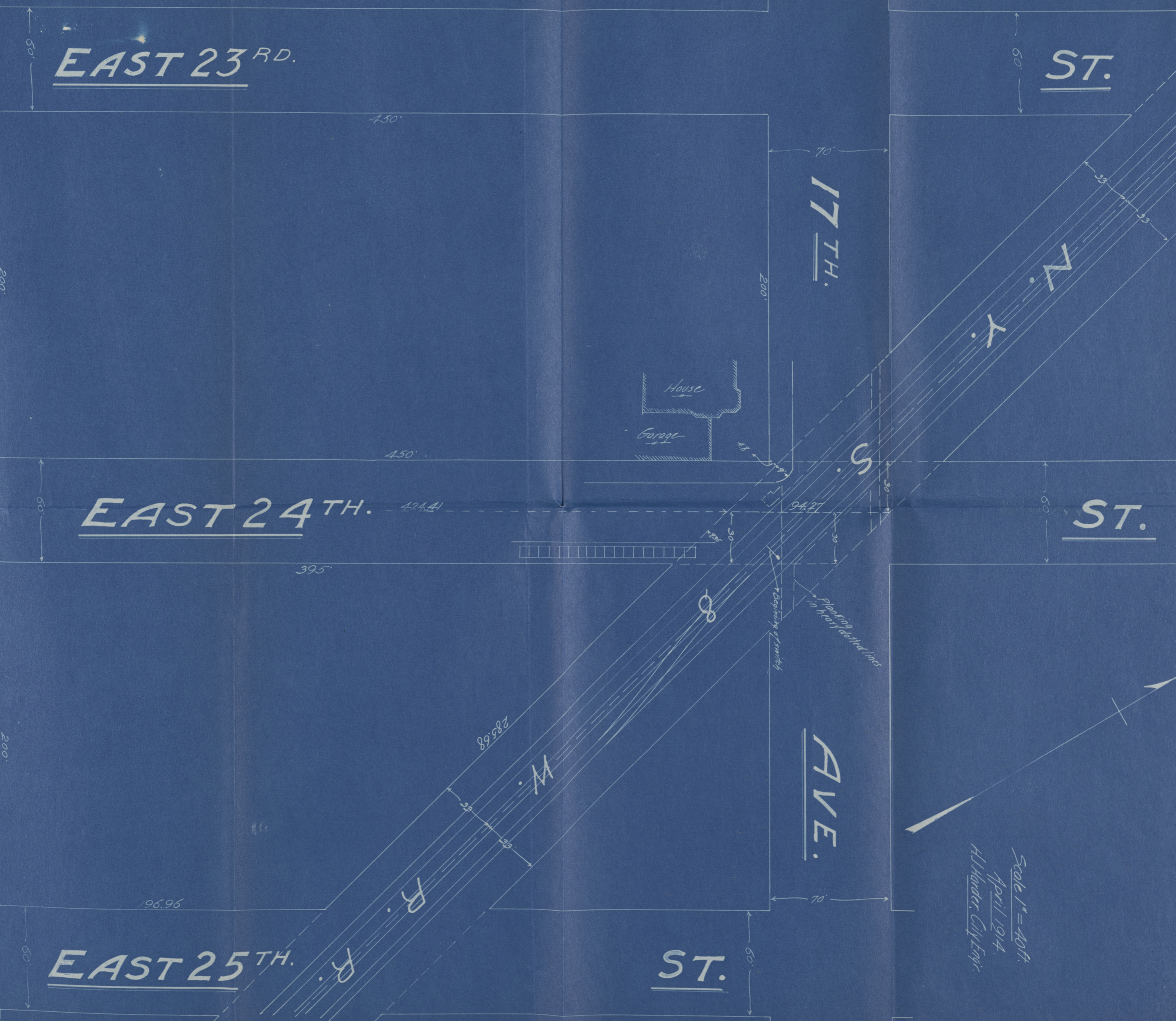
AVE.

AVE.

EAST 25^{TH.}

ST.

Scale 1" = 40 ft.
April 1914.
H. H. Hunter, City Engr.

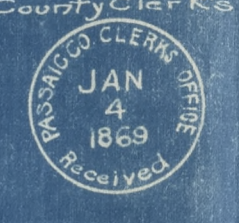


6481

Handwritten text on the right edge of the page, possibly a page number or reference.

BR 1

Note - Township Clerk's Office Feb. 1868.
by H.E. Weather Ass't. Com'rs. E.R. Started work
on tracing Feb. 26, 1868, at 10 o'clock, finished
tracing Feb. 28, 1868, at 3 o'clock, Com'rs. Clerk's
File #1234



MAP OF PROPERTY IN THE 3rd AND 4th WARDS OF THE CITY OF PATERSON Passaic County N.J.

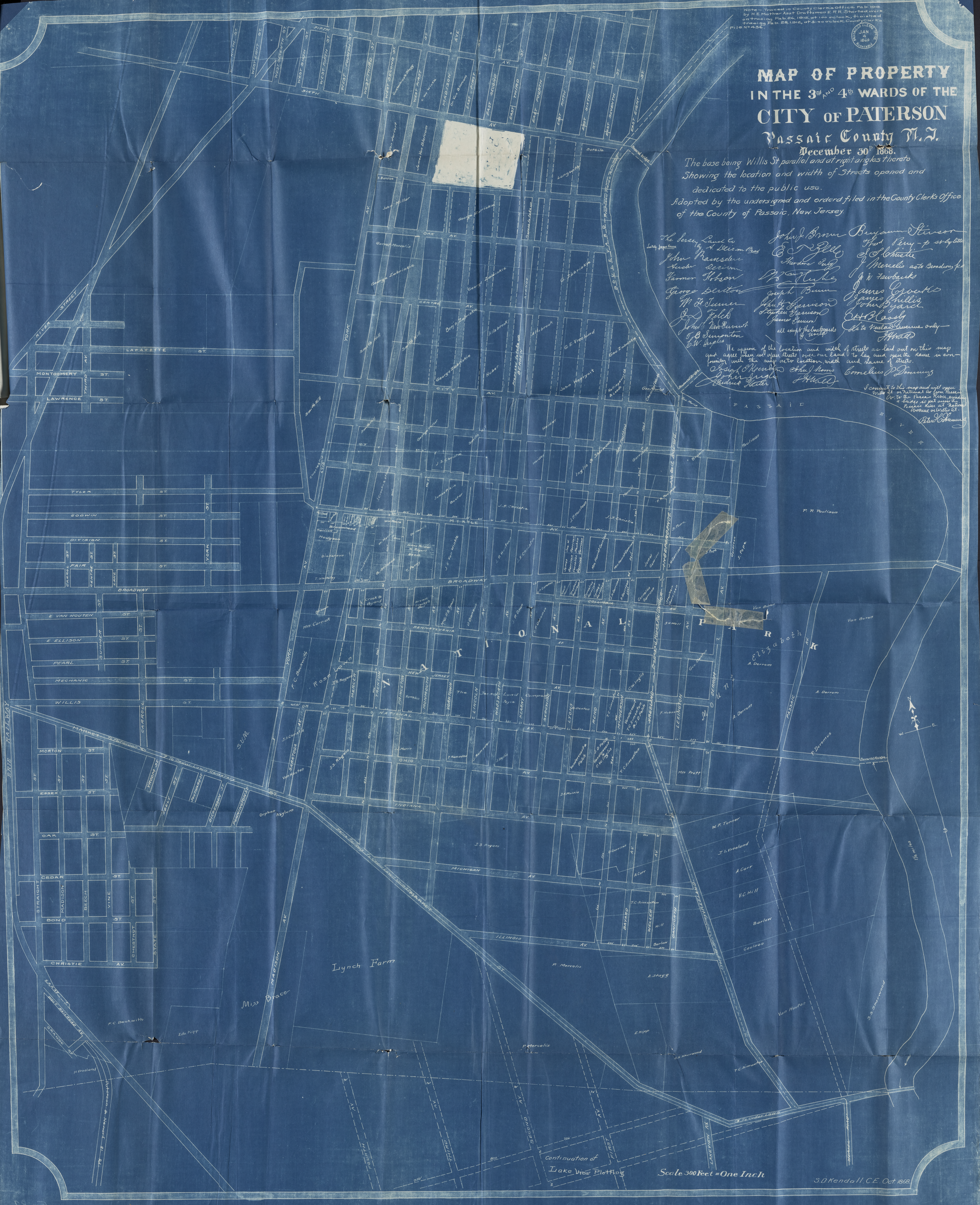
December 30th 1868.
The base being Willis St parallel and at right angles thereto
Showing the location and width of Streets opened and
dedicated to the public use.
Adopted by the undersigned and ordered filed in the County Clerk's office
of the County of Passaic, New Jersey.

The Green Land to
Lay out
John Ramadue
Andor Seaman
Farmer Johnson
George Scitton
W. J. Seaman
J. J. Felch
John Van Buren
J. B. Sumner
C. W. Duplex

John J. Brown
Benjamin Stinson
Fred Perry - p. s. by letter
J. S. Chittie
J. Merello etc. Com'rs. for
J. W. Fairbanks
James Crockett
James Phillips
John J. Gard
C. H. Casby
Ed. to Passaic Avenue only
A. Hall

We suppose the location and width of streets as laid out on this map
and agree there will open streets over our land to lay out upon the same in con-
formity with the map as to location, width and name of streets.
J. S. Chittie
John J. Brown
A. Hall
Cornelius P. Downing

I consent to the map and will open
with it in sections for the Passaic
Co. to the Passaic River, upon
a survey as per annexed
plans done at Paterson
Passaic N.J. 1868
A. Hall



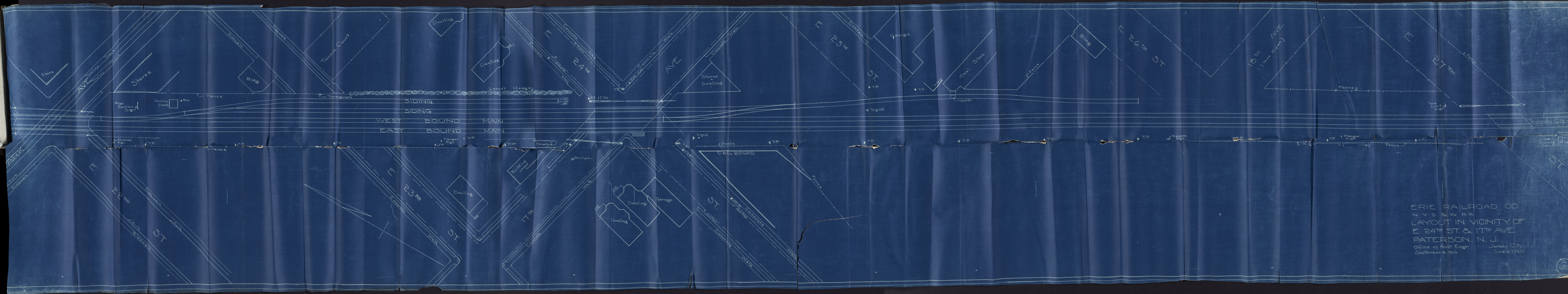
Scale 300 Feet = One Inch
S.D. Kendall, C.E. Oct. 1868.

1868
Map of Paterson
No. 1234



2

Ex 23



ERIE RAILROAD CO.
 N.Y.S. & W.R.R.
 LAYOUT IN VICINITY OF
 E. 24TH ST. & 17TH AVE.
 PATERSON, N. J.
 Office of Asst. Engr. Jersey City.
 September 8, 1916. Scale 1"=20'.

H

of R. 4

Ex R. 5.

Ex R. 6.

EXPLANATION

Scale 1000 feet to one inch.

----- Railroads.

--- Electric Railroads.

Large figures denote wards.

8 3/4 Square miles in the City.

5357 Acres in the City.

Latitude 40° 55' N.

Longitude 74° 11' W.

Elevation above mean tide, 84 ft.



MAP OF THE CITY OF PATERSON N. J.

SCALE 1000 FT. - IN. H. J. HARDER, CITY ENGR

1916

THE PRICE & LEE CO.

PUBLISHERS
Copyright 1916 by The Price & Lee Co.

ALBION
PLACE

1732-N-526



AMMERMAN