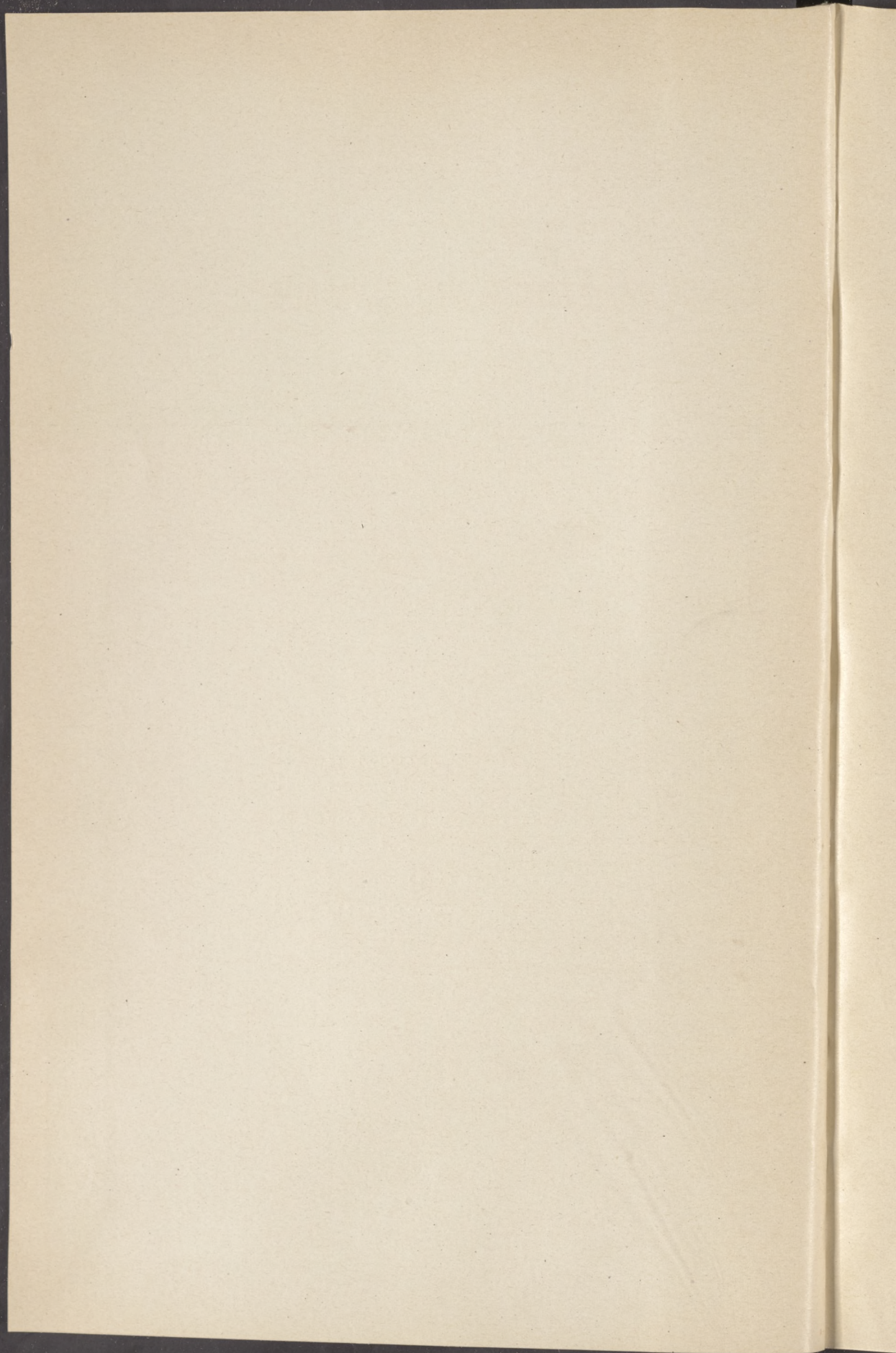


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NEW JERSEY  
Court of Errors and Appeals

NEW JERSEY SUPREME COURT,  
CAPE MAY COUNTY.

SEASHORE REALTY COMPANY, A  
CORPORATION OF THE STATE  
OF NEW JERSEY,

*Plaintiff,*

*vs.*

CITY OF OCEAN CITY, A MUNICIPAL  
CORPORATION OF THE STATE  
OF NEW JERSEY,

*Defendant.*

} Action at Law

} 10

**NOTICE AND GROUNDS OF APPEAL**

*(Filed July 6, 1931)*

To Joseph H. Carr, Attorney of the Plaintiff, or to whom it may concern:

Please take notice that the defendant in the above entitled cause appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey, from the whole of the judgment entered in this cause on the following grounds, to wit: 20

1. Because the Supreme Court erred in directing judgment against the defendant instead of directing judgment against the plaintiff.

2. Because the Supreme Court erred in directing judgment against the defendant instead of submitting the question of facts as to whether or not the ground subject of the ejectment suit was in fact dedicated.

3. Because the Supreme Court erred in refusing witnesses of the defendant to testify concerning oral acts or statements on the part of the plaintiff which the jury may have found constituted a dedication.

4. Because the Supreme Court erred in not finding as a fact that the deeds, mortgages and releases of the parts of land from under mortgages constituted a legal dedication of the land in dispute.

10

Respectfully submitted,  
 P. STANLEY KREPS,  
*Attorney for Defendant.*

Due legal service acknowledged this 25th day of June, 1931.

JOSEPH H. CARR,  
*Attorney for Plaintiff.*

20

NEW JERSEY SUPREME COURT.

SEASHORE REALTY COMPANY, A  
 CORPORATION OF THE STATE  
 OF NEW JERSEY,

*Plaintiff,*

*vs.*

CITY OF OCEAN CITY, A MUNICIPAL  
 CORPORATION OF THE STATE  
 OF NEW JERSEY,

*Defendant.*

} Action at Law  
 In Ejectment

30

### JUDGMENT FOR POSSESSION

Judgment Record—On Postea.

City of Ocean City, a municipal corporation of the State of New Jersey, the defendant in this cause, was summoned to answer unto Seashore Realty Company, a corporation of the State of New Jersey, the plaintiff therein in an action at law upon the following complaint:

(Summons issued September 19, 1930)

Plaintiff, Seashore Realty Company, a corporation of the State of New Jersey, says that:—

1. Plaintiff demands of the City of Ocean City the possession of a certain tract of land with the appurtenances situate in the City of Ocean City, County of Cape May and State of New Jersey, being described as follows:

Beginning at a point which is Two hundred eighty-five (285) feet southwestwardly from the southwesterly line 10  
of Sixth Street, when measured along a line at right angles with said Sixth Street, and when said point is also One thousand fifty-nine and twenty-four one-hundredths (1059.24) feet, more or less, southeastwardly from the Southeasterly line of Atlantic Avenue, when measured along a line parallel with said Sixth Street, being in the line of the northerly or northwesterly side of the Boardwalk formerly extending along the ocean front of Ocean City, New Jersey, and demolished in the spring of 1928, extending thence in a westwardly direction along a line 20  
making an angle of about thirty-four degrees forty-five minutes and fifty-seven seconds with said Atlantic Avenue and along the line of the northerly or northwesterly side of the said former Boardwalk (demolished in the spring of 1928) the distance of Sixty and Eighty-seven one-hundredths (60.87) feet, more or less, to a point which is Three Hundred Thirty-five (335) feet southwestwardly from the southwesterly line of Sixth Street, when measured along a line at right angles to said Sixth Street, 20  
and when said point is also One Thousand Twenty-four and Fifty-three one-hundredths (1024.54) feet, more or less, southeastwardly from the southeasterly line of Atlantic Avenue when measured along a line parallel with said Sixth Street, said point being in the line of the northerly or northwesterly side of the former Boardwalk extending along the Ocean front of Ocean City and demolished in the spring of 1928; thence from these two points extending Southeastwardly between lines parallel with said Sixth Street and Fifty (50) feet apart, when

measured at right angles to each other to the northerly or northwesterly line of the new Boardwalk established by the City of Ocean City and in course of construction in the City of Ocean City in April, 1928.

2. Plaintiff also demands the sum of \$10,000 for mesne profits and damages.

3. Plaintiff says that its right to the possession of the same accrued on March 5, 1928, and that the defendant  
10 wrongfully deprived it of the possession thereof to its damage of \$10,000.00.

JOSEPH H. CARR,  
*Attorney for Plaintiff.*

*(Filed September 30, 1930)*

The City of Ocean City, a municipal corporation of the State of New Jersey, answers the bill of complaint filed herein and says that:—

1. It denies the truth of the matters contained in the  
20 complaint and says that the land described therein was dedicated to the City of Ocean City, New Jersey.

F. STANLEY KREPS,  
*Attorney of Defendant.*

*(Filed October 9, 1930)*

Plaintiff joins issue on the answer of the defendant.

JOSEPH H. CARR,  
*Attorney for Plaintiff.*

30

*(Filed April 7, 1931)*

This case was tried before Honorable William F. Sooy, Circuit Court Judge, with a jury at the Cape May Circuit on Tuesday, April 21, 1931.

The said Judge directed the jury to return a general verdict against the defendant and in favor of the plaintiff, that the plaintiff is entitled to recover the possession of the whole of the premises described in the complaint, to

wit: All that certain tract of land with appurtenances, situate in the City of Ocean City, County of Cape May, State of New Jersey, bounded and described as follows:—

Beginning at a point which is two hundred eighty-five (285) feet southwestwardly from the southwesterly line of Sixth Street, when measured along a line at right angles with said Sixth Street, and when said point is also One thousand fifty-nine and twenty-four one-hundredths (1059.24) feet, more or less, southeastwardly from the  
southeasterly line of Atlantic Avenue, when measured  
along a line parallel with said Sixth Street, being in the  
line of the northerly or northwesterly side of the Board-  
walk formerly extending along the ocean front of Ocean  
City, New Jersey, and demolished in the spring of 1928,  
extending thence in a westwardly direction along a line  
making an angle of about thirty-four degrees forty-five  
minutes and fifty-seven seconds with said Atlantic Avenue  
and along the line of the northerly or northwesterly side  
of the said former Boardwalk (demolished in the spring  
of 1928) the distance of Sixty and eighty-seven one-hun-  
dredths (60.87) feet, more or less, to a point which is  
three hundred thirty-five (335) feet southwestwardly  
from the southwesterly line of Sixth Street, when meas-  
ured along a line at right angles to said Sixth Street, and  
when said point is also one thousand twenty-four and  
fifty-three one hundredths (1024.53) feet, more or less,  
southeastwardly from the southeasterly line of Atlantic  
Avenue when measured along a line parallel with said  
Sixth Street, said point being in the line of the northerly  
or northwesterly side of the former Boardwalk extending  
along the Ocean front of Ocean City and demolished in  
the spring of 1928; thence from these two points extend-  
ing southeastwardly between lines parallel with said Sixth  
Street and fifty (50) feet apart, when measured at right  
angles to each other to the northerly or northwesterly line  
of the new Boardwalk established by the City of Ocean  
City and in course of construction in the City of Ocean

City in April, 1928, and the jury did accordingly return a verdict against the defendant and in favor of the plaintiff in said manner and form.

Whereupon it is adjudged that the plaintiff, Seashore Realty Company, a corporation of the State of New Jersey, do recover of the said defendant, City of Ocean City, a municipal corporation of the State of New Jersey, the possession of the whole of the premises mentioned and described in the complaint together with the appurtenances, and also its costs, which have been taxed at the sum of sixty-seven dollars and twelve cents.

Costs, \$67.12.

Judgment signed and entered June 12, 1931.

WM. S. GUMMERE,

*C. J.*

I, Fred L. Bloodgood, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the notice of appeal and also a copy of the judgment entered in the above stated cause as the same remains on file and of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this second day of July, A.D., nineteen hundred and thirty-one.

FRED L. BLOODGOOD,

*Clerk.*

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### SUMMONS

THE STATE OF NEW JERSEY TO THE CITY OF OCEAN CITY:

You are summoned to answer the annexed complaint of Seashore Realty Company, a corporation of the State of New Jersey, in an action at law in the Supreme Court, wherein the said Seashore Realty Company demands

of you the possession of a certain tract of land with the appurtenances, situate in the City of Ocean, County of Cape May and State of New Jersey, particularly described in said complaint. And take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and of the annexed complaint, judgment will be entered against you and you will be turned out of possession of said land.

10

Witness, William S. Gummere, Chief Justice of the Supreme Court at Trenton, this nineteenth day of September, A. D., nineteen hundred and thirty.

FRED L. BLOODGOOD,  
Clerk.

JOSEPH H. CARR,  
Attorney.

20

NEW JERSEY SUPREME COURT,  
CAPE MAY COUNTY.

SEASHORE REALTY COMPANY, A  
CORPORATION OF THE STATE  
OF NEW JERSEY,

Plaintiff,

vs.

CITY OF OCEAN CITY, A MUNICIPAL  
CORPORATION OF THE STATE  
OF NEW JERSEY,

Defendant.

In Ejectment

30

**COMPLAINT**

(Filed September 30, 1930)

Plaintiff, Seashore Realty Company, a corporation of the State of New Jersey, says that:

1. Plaintiff demands of the City of Ocean City the possession of a certain tract of land with the appurtenances

situate in the City of Ocean City, County of Cape May and State of New Jersey, being described as follows:

Beginning at a point which is two hundred eighty-five (285) feet Southwestwardly from the Southwesterly line of Sixth Street, when measured along a line at right angles with said Sixth Street, and when said point is also One Thousand Fifty-nine and twenty-four one-hundredths (1059.24) feet, more or less, Southeastwardly from the  
10 Southeastly line of Atlantic Avenue, when measured along a line parallel with said Sixth Street, being in the line of the northerly or northwesterly side of the Boardwalk formerly extending along the ocean front of Ocean City, New Jersey, and demolished in the spring of 1928, extending thence in a Westwardly direction along a line making an angle of about Thirty-four degrees Forty-five minutes and Fifty-seven seconds with said Atlantic Avenue and along the line of the northerly or northwesterly side of the said former Boardwalk (demolished in the  
20 spring of 1928) the distance of Sixty and Eighty-seven one-hundredths (60.87) feet, more or less, to a point which is Three Hundred Thirty-five (335) feet Southwestwardly from the Southwesterly line of Sixth Street, when measured along a line at right angles to said Sixth Street, and when said point is also One Thousand Twenty-four and Fifty-three one-hundredths (1024.54) feet, more or less, Southeastwardly from the Southeastly line of Atlantic Avenue when measured along a line parallel with said Sixth Street, said point being in the line of  
30 the northerly or northwesterly side of the former Boardwalk extending along the Ocean front of Ocean City and demolished in the spring of 1928; thence from these two points extending Southeastwardly between lines parallel with said Sixth Street and Fifty (50) feet apart, when measured at right angles to each other to the northerly or northwesterly line of the new Boardwalk established by the City of Ocean City and in course of construction in the City of Ocean City in April, 1928.

2. Plaintiff also demands the sum of \$10,000 for mesne profits and damages.

3. Plaintiff says that its right to the possession of the same accrued on March 5, 1928, and that the defendant wrongfully deprived it of the possession thereof to its damage of \$10,000.00.

JOSEPH H. CARR,  
*Attorney for Plaintiff.*

Service made September 26, 1930, upon the City of Ocean City, a municipal corporation of the State of New Jersey, by showing the original to Joseph G. Champion, Mayor of said City, and leaving with him a copy thereof at his office, City Hall, Ocean City, N. J.

Sheriff's fees, \$5.12.

By HOWARD H. ROSS,  
*Under Sheriff.*

FORREST M. RICH,  
*Sheriff.* 20

NEW JERSEY SUPREME COURT,  
CAPE MAY COUNTY.

SEASHORE REALTY COMPANY, A  
CORPORATION OF THE STATE  
OF NEW JERSEY,  
*Plaintiff,*  
*vs.*  
CITY OF OCEAN CITY, A MUNICIPAL  
CORPORATION OF THE STATE  
OF NEW JERSEY,  
*Defendant.*

In Ejectment 30

**BILL OF PARTICULARS**

(Filed May 11, 1931.)

To Joseph H. Carr, Esq., Attorney of Plaintiff:

The following is a bill of particulars of the claim or title of the defendant to the premises mentioned in the plain-

tiff's complaint, the same being an abstract of documentary evidence of title by dedication, and a statement of other acts of dedication, which the defendant intends to offer and introduce in evidence on the trial of the above stated cause; viz.,

10 1. Deed from Seashore Realty Company to Josephine H. Goetz, dated July 9, 1923, recorded in the Cape May County Clerk's office, in Deed Book 387, page 1; with particular reference to the dedication of the land described in the bill of complaint.

2. Deed from Seashore Realty Company to George F. Esslinger, dated September 15, 1922, and recorded in the Cape May County Clerk's office, in Deed Book 369, page 380, and with particular reference to the dedication of the land described in the complaint.

20 3. A resolution adopted by the City Commissioners of the City of Ocean City, on January 23, 1928, whereby the defendant formally accepted the dedication of the land described in the complaint; said resolution being a public record, and spread on the Resolution book in the City Clerk's office in the City of Ocean City.

4. Release from Richard R. Sooy to Seashore Realty Company, dated June 13, 1923, recorded July 10, 1923.

5. Purchase Money Mortgage given by Seashore Realty Company to Richard R. Sooy, dated May 1, 1922, recorded at Cape May Court House, N. J., in Mortgage Book , page , covering land in question and other lands.

30 6. The statements and representations made by the officers of the plaintiff company to the City Commissioners and officials of the City of Ocean City that the street known as Plaza Place would always extend to the boardwalk in the City of Ocean City, regardless of how far oceanward said boardwalk might be extended, all of which was relied upon by the city in accepting the map of Brighton Estates, which was filed by the plaintiff company. That said statements and representations con-

stituted a dedication of said land described in the complaint.

7. Acts of dedication in the nature of oral statements and representations made to purchasers of land along Plaza Place to the effect that said street would always be open and accessible to the boardwalk.

8. That there was a dedication of Plaza Place from Atlantic Avenue to the highwater mark of the Atlantic Ocean, wherever it may be, or to the Riparian Commissioners exterior line, whichever was oceanward. 10

9. Deed from Josephine H. Goetz, et vir, to Robert K. Bell, dated September 26, 1925, recorded in the Cape May County Clerk's office in Deed Book 409, page 457, with particular reference to the land described in the bill of complaint.

10. Deed from Simms Realty Company to O. K. Investment Company, dated March 30, 1925, and recorded in the Cape May County Clerk's office in Book 398 of Deeds, page 214, with particular reference to the land described in the bill of complaint. 20

11. Deed from O. K. Investment Company to Charles P. Esibill, dated August 6, 1925, recorded in the Cape May County Clerk's office in Book 417 of Deeds, at page 46, with particular reference to the land described in the bill of complaint.

12. Deed from Charles P. Esibill to Plaza Securities Company, dated June 9, 1926, recorded in the Cape May County Clerk's office in Book 434 of Deeds, page 237, with particular reference to the land described in the bill of complaint. 30

13. That the defendant, with the full and complete knowledge of the plaintiff, has erected over the land described in the complaint, a public street and sidewalks, and approaches to the boardwalk, and a portion of the sixty (60) feet wide boardwalk in the City of Ocean City, all of which was built and erected at great expense to the City of Ocean City. That said street and sidewalks,

boardwalk approach, and boardwalk have been used by the public generally without interference or restraint on the part of the plaintiff.

F. STANLEY KREPS,  
*Attorney for Defendant.*

Service of the within acknowledged April 14, 1931.

JOSEPH H. CARR,  
*Attorney for Plaintiff.*

10

NEW JERSEY SUPREME COURT,  
CAPE MAY COUNTY.

SEASHORE REALTY COMPANY, A  
CORPORATION OF THE STATE  
OF NEW JERSEY,  
*Plaintiff,*

*vs.*

20 CITY OF OCEAN CITY, A MUNICIPAL  
CORPORATION OF THE STATE  
OF NEW JERSEY,  
*Defendant.*

CAPE MAY COURT HOUSE, N. J.,  
TUESDAY, APRIL 21, 1931.

### TESTIMONY

30 Before: HONORABLE WILLIAM FRANK SOOY, Judge  
and a Jury.

Appearances:

Joseph H. Carr, Esq., for the Plaintiff.

F. Stanley Kreps, Esq., for the Defendant.

(A jury was drawn and sworn.)

Mr. Carr—With the permission of the Court, gentlemen of the jury: This is a suit brought by the Seashore Realty Company, a New Jersey corporation, against the City of Ocean City. This is what we call an ejectment suit and brought for the purpose of obtaining possession

of a piece of ground in Ocean City which is oceanward of Plaza Place. The map which is on the easel is not yet in evidence. It is produced by the City, but it will ~~show~~ **SERVE** In 1922 the Seashore Realty Company, that is the plaintiff in this case, bought the land between Sixth and Seventh Streets extending from Atlantic Avenue—that is Atlantic Avenue at the north of that map—extending from Atlantic Avenue at the north to the ocean to the south, or southeast, I guess it would be. They owned that entire tract from Seventh to Sixth Street and from Atlantic Avenue oceanward. They laid out a part of it in lots, and in 1922 filed a map by which they dedicated a portion of Plaza Place. That street did not exist prior to their purchase. There was a Seventh Street and there was a Sixth Street, and there was no street in between. The map which they filed dedicated Plaza Place from Atlantic Avenue, which you can't very well see, but it is the top of this map, down to the Boardwalk, which is marked on this plan as the former Boardwalk notation. In 1922 that was a Boardwalk. Afterwards they sold, or, rather, about that time, I think it was, they sold lots in here, laid out in here, and they owned a street in here which I think the City vacated. I don't know what has happened to that street. That is not important, anyhow. But we dedicated Plaza Place as far as this Boardwalk line, which you see there marked in color. In 1928, we never having dedicated oceanward of that line, and still being our land, the same as this land would have been—in 1928 the City moved the Boardwalk—you may remember, any of you from Ocean City, you will recall the Boardwalk was moved after the fire over there—they moved the Boardwalk to this line which is now marked on this plan "Boardwalk". So that the inside line of the Boardwalk, instead of being at this point, was at that point, The Seashore Realty Company never having dedicated any land oceanward of this prior Boardwalk line, thereupon, as we say, became the owner—was always the owner, but was entitled to the possession of this strip

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20

30

of land. The City, without regard to that claim upon our part, after the Boardwalk was moved, went on this land which we have never parted with by deed or other means—they went on that land and paved it as a street, which is the reason this suit was brought.

We will show you that we bought the land in 1922, that we ~~dedicated~~ <sup>NEVER</sup> it—and ~~by~~ dedication, as I think the Court will instruct you, is an equivalent in a sense to a deed. It is a means by which you can appropriate land to public use. You might make it by deed or filing a map. But we never did that with respect to the land oceanward of that former Boardwalk line.

Showing that, as I think we can, without any difficulty, we will ask for a verdict at your hands for possession of this strip of ground. That is the part that is marked in color.

There is a provision in the complaint in the case that we are asking for what we call mesne damages. As a matter of fact, I am waiving any claim for damages because the land is idle land, so that you don't have to consider that.

The Boardwalk was moved and the street put in some time between January and March of 1928. The exact date I am not certain of.

Thank you.

Mr. Kreps—Please the Court, and gentlemen of the jury: As Mr. Carr has told you, this is an ejectment suit brought by the Seashore Realty Company against the City of Ocean City, to recover, as they say, or to eject the City from the piece of ground which is marked here in orange.

Now the Seashore Realty Company—this is just to correct Mr. Carr—didn't buy all the land from Seventh to Sixth. They bought three hundred feet of land starting here, from Seventh Street and going over to what is marked on this map as Pelham Place, all the way out from Atlantic Avenue to the Commissioner's exterior line.

Mr. Carr—You are correct on that.

Mr. Kreps—After they bought this land they filled it in, that is, graveled it in, and developed it as a development known as the Brighton Estates. This part back in here was what they sold off as the Brighton Estates. Now on the map which was filed and which will later be shown to you, there were two strips of land in here, like that. This line came on down because they didn't own the land over there, and these strips in here were marked, "The Seashore Realty Company reserves the right to sell this land for hotel sites or purposes. Then a map was filed in which, as we contend, this street was dedicated. Before that map was filed, however, there was a map prepared on which Plaza Place was shown in the solid lines on the map from which they sold the land and on out—it was a dotted line, on out to the Boardwalk. 10

Now we will show you several acts which we consider to be acts of dedication. There are a number of deeds which will be offered in evidence and which will be read to you, in which the line of Plaza Place and Plaza Place extended goes out to the Atlantic Ocean. There are releases from mortgages in which the same thing exists. And, further than that, there were acts by the officers of the Seashore Realty Company which it is our contention were acts of dedication. The Seashore Realty Company, through its officers, went to the City officials for the purpose of having a map filed. They wished the line of Plaza Place to stop at the Boardwalk. As a matter of fact, the map already showed the lines extending out to the Atlantic Ocean. On all the other maps, as we will show you, tax maps of the City of Ocean City, the street ends stop on the land side of the Boardwalk, but, as a matter of fact, the City owns the street ends all the way out to the riparian commissioners' line. And we will show you that the City officials were induced, through acts and statements made by the officers of the Seashore Realty Company to not extend the street ends on this map that the Seashore Realty Company offered for filing any fur- 20 30

ther than the landward line of the old Boardwalk back in here, upon statements being made that the street, Plaza Place, in case the Boardwalk was ever moved, would always go out to the Atlantic Ocean, so that people who bought the properties back in here would have access to a Boardwalk. And if we show you these acts of dedication, we will ask that you return a verdict of no cause of action.

10 Mr. Carr—I think that map probably should be put out of the way somewhere.

The Court—I understand there was no controversy that the lands described in the complaint are lands that are now in the possession of the City?

Mr. Kreps—That is correct.

The Court—And the title, I mean the fee to those lands is in the plaintiff, but the right to possession the defendant claims is in it by virtue of dedication?

Mr. Kreps—That is correct.

20 The Court—And what is the use of plaintiff proving anything.

Mr. Carr—I though I should prove my deed. I have a deed, map.

The Court—Well, I only thought to simplify it. It seems to me they have admitted the prima facie case when they have admitted the title is in you and that they have possession and that they claim by dedication. Of course, the burden of proving a dedication is on them.

30 Mr. Carr—I offer in evidence the certified copy of a deed, Richard R. Sooy to Seashore Realty Company.

Mr. Kreps—No objection.

Mr. Carr—Also certified copy of a map filed in the Cape May County Clerk's office on the ~~13~~<sup>43</sup>th day of June, 1922.

The Court—In your opening, Mr. Carr, you said the plaintiff became seized in 1923 and you filed the map in 1922.

Mr. Carr—I should have said 1922.

The Court—1922.

(Certified copy of deed offered is received in evidence and marked Exhibit P-1.)

(Certified copy of map offered is received in evidence and marked Exhibit P-2.)

Mr. Carr—I also want to submit a bill of particulars that was served upon the plaintiff by the defendant—I don't think it is proper to offer that in evidence, but I think I should file it so that the records will show.

10

The Court—Yes. All right; mark it filed as of today.

Mr. Carr—Yes, sir.

The Court—Then you rest, do you?

Mr. Carr—Yes, sir, I will rest.

Plaintiff rests.

WILLIAM H. COLLISSON, JR., called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

*Direct Examination*—By Mr. Kreps.

20

Q. Mr. Collisson, you are City Engineer of the City of Ocean City? A. I am.

Q. How long have you been the City Engineer for the City? A. Since 1917.

Q. And how long have you been in the business of making surveys? A. Since 1907.

Q. Did you prepare a map which has been offered and marked P-2, which I show you? A. I did.

Q. Now, Mr. Collisson, on this map—hold it here so the jury can see—there is a street designated as Plaza Place. Is this that street. A. That is Plaza Place.

30

Q. Now, who requested you to prepare this map?

A. The Seashore Realty Company.

Q. For what purpose? A. For the purpose of—

Mr. Carr—I object to this. I don't know what the purpose of the testimony is, but the contents of the map can't be changed by this witness. The map speaks for itself.

Mr. Kreps—I am not attempting to change the contents.

The Court—What is the purpose?

Mr. Kreps—The purpose is to show what was previously on the map and how the map was changed to be in the condition in which it is at the present time.

10 Mr. Carr—That is immaterial. This is the filed map.

The Court—Yes; this is the filed map.

Mr. Kreps—The purpose to show what I showed in my opening concerning certain statements made to the City officials by officers of the Realty Company concerning this very map that was filed, and how they were induced to file it in its present form.

Mr. Carr—That is something else.

Mr. Kreps—I certainly have to lead up to it.

20 The Court—What was on another map that was not filed would be immaterial, under any circumstances. That is what your question now relates to, what was on some other map.

Mr. Kreps—I asked him—this map was always in the form in which at the present time—

The Court—What difference does it make? It is admitted it was filed in its present form and always been in its present form in so far as the filing is concerned.

Mr. Kreps—That is true.

30 The Court—What may have been prior to the time of its filing would be immaterial.

Mr. Kreps—It wouldn't be immaterial, if your Honor, please, at least, I submit it would not be immaterial if, as a matter of fact, this map were different—this very map, and were changed at the request of the Seashore Realty Company under statements made to the City concerning dedication of this very street. That is what I am talking about; I am talking about the extension of the line of the street.

The Court—I think maybe you may be able to show that, but your present question—let me have the present question.

(The question was read by the stenographer as follows: “For what purpose?”)

The Court—Well, the answer is obvious: for the purpose of filing.

Mr. Kreps—Yes. Yes; that is the question objected to.

The Court—Well, he says for the purpose of filing. 10

Mr. Kreps—Go on?

The Court—Yes.

Q. Now, who in the Seashore Realty Company approached you? A. Its president, Dr. Corson.

Q. Dr. Allen Corson? A. Yes.

Q. Was there any conversation between you and Dr. Allen Corson concerning Plaza Place? A. There was.

Mr. Carr—I object to that, if the Court please.

The Court—I will permit the answer to stand: 20  
“There was.”

Q. And was there any question as to——

Mr. Carr—I object, the witness—first, that is a leading question.

The Court—This question, I don’t know yet. He hasn’t got it out, Mr. Carr.

Mr. Carr—All right.

Q. Was there any conversation concerning where the oceanward line of Plaza Place would stand—— 30

Mr. Carr—I object; that is a leading question.

Mr. Kreps—I only asked if there was any conversation.

A. There was.

Q. What was that conversation?

Mr. Carr—I object to that, if the Court please.

The Court—On what ground, Mr. Carr?

Mr. Carr—First, it is the filed map that controls. This man made this map as the engineer of the Sea-

shore Realty Company, and it is so marked. I question very much whether it would be evidential in any case without a showing of authority on the part of anyone. Mr. Kreps in his opening claimed he would show the statement to City Officials as a result of which this map was accepted. It is not approaching that.

10 The Court—No; you have before the witness a map which he says he prepared at request of the plaintiff. That map delineates Plaza Place as terminating at the Old Boardwalk, and no matter what the conversation may have been, that was the map that the plaintiff filed, and the map prepared by this man in pursuance to their instructions, and the conversation with the President, even if authorized, could not change this map.

Mr. Kreps—<sup>Sam</sup>not attempting to change this map.  
 Mr. Collisson testifies <sup>he was</sup> City Engineer of Ocean City, and <sup>the was</sup> map brought to him for the purpose of filing as a  
 20 city map.

The Court—He didn't testify to that. As I heard it, I understood him to say he was asked by the plaintiff to prepare the map for them for filing.

Mr. Carr—He signed the map. The map has his signature on it.

The Court—Yes.

Mr. Kreps—I withdraw that question.

30 Q. Was this map prepared for the—by you for the purpose of filing as a part of the City map? A. It was.

Q. And did you prepare it—cross that out, please. When Dr. Corson came to see you on this particular day concerning this map, did he ask you anything concerning the filing of the map by the City Commissioners and approving the map by the City Commissioners.

Mr. Carr—I object, that is immaterial.

The Court—I can't see how it is material.

Mr. Kreps—Certainly no harm can be done by these questions, and I have to couple them up with what happened later.

The Court—I don't think the conversation prior to the time of filing that map are competent to bind the company.

Mr. Kreps—Statement made by the President.

The Court—No, I don't think so; I don't think so. Certainly if the President made a statement contrary to the map you couldn't claim dedication as against the company by the mere statement, contrary statement of the President, which would vary the map itself. 10

Mr. Kreps—That may be true. If that was all there was to the case and that was all I am attempting to prove by these questions, that would be one thing, but I certainly feel I have a right to show any statements that were made to any City official who was acting in an official capacity, and certainly the City Engineer who is preparing maps for filing purposes is a person in that capacity. Any statement which may be made to a City official which would lead that official to prepare a map such as we have here, a statement which would of itself be an inducement to prepare it in that form. 20

The Court—No, I don't think so. A statement made by the President of that company to the City officials to have him prepare a map certainly couldn't as against the company constitute a dedication of something else than the land appearing on the map. That would seem to be self-evident.

Mr. Kreps—It certainly would be evidential of an intention. 30

The Court—If, after that map was filed delineating a certain street which would be dedicated by reason of its filing, the company did something else with reference to that map that shows an intention to dedicate more than the map shows, then that is competent testimony.

Mr. Kreps—I still—

The Court—I will sustain the objection and allow you an exception.

Mr. Kreps—All right. What was the question?

(The question was read by the stenographer as follows: “When Dr. Corson came to see you on this particular day concerning this map, did he ask you anything concerning the filing of the map by the City Commissioners and approving the map by the City Commissioners?”)

10 Q. Mr. Collisson, was this the form of the map which was first presented for filing?

Mr. Carr—I object.

The Court—I sustain the objection. It seems to me, Mr. Kreps, that that would make no difference; that what happened evidently was this map was prepared and approved by the City Commissioners and filed.

Mr. Kreps—That is true.

20 The Court—If that is so, what may have been on another map or what conversation may have been had would make no difference at all. The City and all would be bound by this map.

Mr. Kreps—I ask for an exception.

The Court—Yes.

Q. Mr. Collisson, was there any conversation between—cross that out, please.

Mr. Kreps—I withdraw Mr. Collisson for a minute and call Dr. Corson. Just sit here for a second.

30 DR. ALLEN CORSON, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

*Direct Examination*—By Mr. Kreps.

Q. Dr. Corson, are you an officer of the Seashore Realty Company? A. I am.

Q. And how long has that company been in existence?

A. About 1922 or 1923. When this land was purchased the company was formed to carry it.

Q. And what office did you hold in the company in May of 1922? A. President.

Q. And how many stockholders were there in the company? A. Five.

Q. And who was the secretary and treasurer?

A. I was president. Charles H. Shoemaker was vice-president; Ralph Chester, secretary; and Howard Stainton, treasurer; and E. M. *Sulton* was a member, not an officer.

Q. Were you ever authorized by the Board of Directors of this company to have a map prepared and filed for property known as Brighton Estates? 10

A. Yes, we had to have a map and was authorized to have the engineer prepare one.

Q. And were you authorized to tell the engineer what to put on the map?

Mr. Carr—I object.

The Court—Was your authorization in writing?

The Witness—It was not, no sir. Close corporation; we were all together; we had a meeting of the Board of Directors when the members were there. 20

The Court—I will permit it.

Mr. Kreps—Repeat the question.

(The question was read by the stenographer as follows: "Q. And were you authorized to tell the engineer what to put on the map?")

Q. By the engineer, I mean Mr. Collisson.

A. He was our engineer and naturally he was the one that prepared the map. 30

Q. And did you authorize him what to put on a map?

A. In this conference.

Q. And you told him how to prepare it, did you not?

Mr. Carr—I object.

A. No, I didn't tell him how to prepare it. We had an engineer for that purpose.

Mr. Carr—Wait a minute. I object to a conversation between this man and the engineer.

The Court—As long as the answer is as it is, I will let it stand.

Mr. Carr—My objection is before the answer.

The Court—But the answer is something that is—

Mr. Carr—I was trying to get myself in. I didn't hear the answer.

The Court—Will you repeat the answer?

Mr. Carr—Please don't volunteer, Doctor, or testify over objection.

10

(The answer was read by the stenographer as follows: "No, I didn't tell him how to prepare it. We had an engineer for that purpose.")

Q. Did you ever make any objection to lines shown on a map delineating or designating a street known as Plaza Place extending beyond what was known as the landward line of the 1922 Boardwalk?

Mr. Carr—I object to that question.

The Court—Sustain the objection.

20

Mr. Kreps—Exception. I don't think I have any further question.

The Court—That is all, Doctor.

Mr. Carr—That, is all, Doctor.

WILLIAM H. COLLISSON, JR., recalled.

*Direct Examination (continued)*—By Mr. Kreps.

Q. Mr. Collisson, Dr. Corson did come to you and ask you to prepare a map, did he? A. He did.

30 Q. And did he tell you for whom he was acting?

A. He did.

Q. Who?

A. The Seashore Realty Company and the Brighton Estates.

The Court—Let me ask you something, Mr. Collisson: Were you present at a—at any meeting of the stockholders and board of directors, or board of directors, or both, of the company when they discussed the filing of this map?

The Witness—No, sir.

The Court—Dr. Corson came to you personally?

The Witness—Yes, sir.

The Court—I see. All right.

Q. Where did he come to see you?

A. In my office in the City Hall.

Q. And at that time—by the way, do you remember when that was? A. That was the 22nd of May, 1922.

Q. That was the day this map was approved by the City Commission? A. It was not.

Q. When was it? A. A week prior to that.

Q. A week prior to that. Well, at that time was there any conversation between you and Dr. Corson—

Mr. Carr—I object. Well, all right.

The Court—Permit yes or no.

Q. —concerning the land on the outside of what is marked on this map as the new Boardwalk? A. Yes.

Q. Was there anything discussed concerning the placing or removing of a street to be designated as Plaza Place running to the Atlantic Ocean?

Mr. Carr—I object to that question.

The Court—I didn't quite follow that question.

Mr. Carr—In the first place leading, and, secondly, it goes into the substance of the conversation.

The Court—I didn't quite follow that question. Read the question.

(The question was read by the stenographer as follows: "Was there anything discussed concerning the placing or removing of a street to be designated as Plaza Place running to the Atlantic Ocean?")

Mr. Carr—I am objecting to that because the question is leading, in the first place, and, second place, comes within the scope of the other ruling.

The Court—I don't mind the question from the standpoint of its being leading, and I assume the purpose of the question is to, by that conversation, attempt to show the difference between the land as dedicated and the land as talked about. Is that right?

In other words, I presume you attempt to show by that conversation a dedication other than the land as dedicated on the map.

Mr. Kreps—Yes, because, if your Honor please, there is plenty of law to the effect that dedication made by oral statements or any act purely as a matter of intention—

10 The Court—Yes, but you have a map now and that map is—can't be changed by any conversation you may add.

Mr. Kreps—I am not attempting to change the map. I am attempting to show an oral dedication.

The Court—Oh. To the extent that you expect to show an oral dedication now, you expect to show by this conversation that Dr. Corson bound the company by a conversation in which—the effect of which you claim was to dedicate more land than the map.

20 Mr. Kreps—Yes.

The Court—Dedicated.

Mr. Kreps—Yes.

The Court—Now what authority have you produced here in Dr. Corson to bind the company to a dedication other than that on the map?

Mr. Kreps—Dr. Corson testifies that there were five people in this company.

The Court—Yes, sir.

30 Mr. Kreps—That he was the President.

The Court—Yes, sir.

Mr. Kreps—That he was authorized to act on behalf of the company.

The Court—No. That he was authorized to have this map—this map, drawn by the engineer for the purpose of filing.

Mr. Kreps—That he was also authorized, as I remember, to have the map filed.

The Court—Yes.

Mr. Kreps—And to do whatever was necessary to have the map filed.

The Court—Have the map filed. You are trying to go further than that and say his authority was not only to have the map filed, which dedicated the land up to the Boardwalk, but his authority extended so that he was authorized to verbally bind the company by a dedication of land beyond that which is described on the map.

10

Mr. Kreps—I don't think, and I submit it was not necessary for Dr. Corson to have specific authorization from the board of directors of this company to orally dedicate the land which is in question. I think that if he, acting as president of that company, being instructed to do what was necessary to have this map filed, made statements which constitute an oral dedication, which was relied upon by the City officials, those statements would bind the company, which company was acting through its president.

20

The Court—They would if you showed by the testimony that the company held him out as having authority to do the act which you claim he did do—

Mr. Kreps—I don't think he had authority—

The Court— —or that the person dealing with him in the ordinary course of business would have a right to assume that he had such authority. But all you have produced is testimony on the part of Mr. Collisson that he came to him and asked him to draw a map, and the map was drawn. Now surely Mr. Collisson dealt with him in those conversations as president of the company, and the result of the conversations was written on paper, that is, written on the map.

30

Mr. Kreps—Yes. That is true.

The Court—And the result of that conversation was taken back to the company in the writing on a map. And the only ratification of anything that Dr.

Corson could have bound the company to, the only ratification they could have made would be a ratification of what they saw in the paper. And all the conversations, whatever they may have been, culminated in the making of this map.

10 Mr. Kreps—Yes, that is true, the conversations—  
it is true to a certain extent that the conversations  
culminated in the making of this map, but I say again  
that if statements were made by the representative  
of this company to the City officials which induced  
them to accept and approve the map which is in the  
form which has been presented, and those statements  
were relied upon by the City as an inducement for the  
purpose of approving the map in that form, then I  
think that the company is bound by the act which was  
—or the statements which were made by the presi-  
dent of the company. For if I can show that this  
20 map would not have been approved if these state-  
ments were not made by the president of the com-  
pany, who was acting as a representative for the  
company, if those statements were not made, the  
map would not have been filed, certainly the company  
must be bound by any statements, which must have  
been, because they have accepted the map in its pres-  
ent form.

The Court—The company—it only dedicates up  
to the Boardwalk.

30 Mr. Kreps—That is true, but nevertheless, the  
whole thing is filed for taxing purposes. This map  
was not only for the street; it is for the whole new  
development.

The Court—Yes. But as I understand it, your  
purpose is to show that the conversation between  
Dr. Corson and Mr. Collisson extended the line down  
to the ocean.

Mr. Kreps—I didn't ask him that.

Mr. Carr—You haven't gone that far.

Mr. Kreps—That is the point.

Mr. Carr—That is where you are tending.

Mr. Kreps—My purpose, if you want a side bar conference—

The Court—Yes; of course, I want to know what your purpose is.

(Counsel and Court confer at the bench.)

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(IN CHAMBERS)

10

The Court—Make your stipulation on the record.

Mr. Kreps—You want me to insert into the record what I—

The Court—“My intention to prove—”

Mr. Kreps—My intention to prove by this witness among other things is that the statement was made to the City officials—

The Court—That is, to this witness.

Mr. Carr—Whom do you mean?

20

Mr. Kreps—To this witness, and also to the Mayor, Joseph D. Champion—

Mr. Carr—By whom?

Mr. Kreps—I said by Dr. Corson, did I not?

The Court—No.

Mr. Kreps—By Dr. Allen Corson, the president of the Seashore Realty Company, that he did not wish the map which was being filed (P-2) to designate Plaza Place as extending beyond the landward line of the Boardwalk.

30

The Court—Of the old Boardwalk, that is, the Boardwalk as at that time.

Mr. Kreps—1922 Boardwalk; but that the street would extend to any new Boardwalk which may be built oceanward, his reason for not wanting the map to show the street known as Plaza Place extending beyond the Boardwalk line being that none of the City tax maps showed any other streets extending

beyond the Boardwalk; that the City Commissioners, relying upon the statements made by—

Mr. Carr—Wait a minute. You don't intend to prove that by this conversation, do you?

The Court—Not by this conversation. This is what you are attempting to prove. Now you are going on and saying that the effect of that would be so and so.

10 Mr. Kreps—All right; cross that out.

The Court—This is what you are attempting to prove, and I will overrule the offer on the ground that, first, there is no showing of authority on the part of Dr. Corson to bind the company to a dedication other than that delineated on the map which was filed; and on the further ground that even assuming that Mr. Collisson would testify that the Doctor told him and other members of the Commission that if the Boardwalk was moved, Plaza Place would be extended to the new location of the Boardwalk, would not constitute the dedication of the extension, if made, but would be a mere promise to dedicate.

20

And allow you an exception to the ruling.

Now, if there is any other conversation that you have—well, suppose that is the only conversation at that time. I was going to say you might get any other objection on that line, but that is the only conversation there was at that time, so—

30

Mr. Kreps—Just one thing further. Of course, this is going to make it rather complicated to ask Mr. Collisson further questions on the same line. What I intended asking was whether or not he knows of his own knowledge whether the City officials relied upon statements made by him, namely, Collisson.

The Court—No, the only thing he can testify to is that he told the City Commissioners of this conversation, and then I suppose you would have to call each City Commissioner and ask them whether they

relied on it or not. But assuming that he did tell them and assuming that they relied on it, they had no right to rely on his statement unless he was authorized to make the statement, or unless they held him out as having the authority, and they had no right to rely on the statement to the extent of claiming a dedication under that statement, because the most that the Doctor said is, or was, that when the City moved the Boardwalk, if it did, the Company would extend the street lines of Plaza Place. 10

Mr. Kreps—That is not what I said.

Mr. Carr—Yes, that is what you said.

Mr. Kreps—I think you will find I said that when the Boardwalk was moved, if the Boardwalk was ever moved, that the street would extend to the line of the new Boardwalk.

The Court—Yes.

Mr. Kreps—Not that I meant that it might extend, but that it would extend. 20

The Court—All right.

Mr. Kreps—In other words, that the extension would exist as soon as the Boardwalk was moved out.

Mr. Carr—That is something worse.

The Court—That would be simply a matter of law, that they had no right to rely on, if it was not the law, and couldn't bind the company under any circumstances if it was not the law. It was a legal proposition. 30

Mr. Kreps—I don't mean as a legal proposition. I mean they gave the right to the City.

The Court—I am bound by your conversation; and I overrule your offer.

Mr. Kreps—Mr. Collisson, is that the correct conversation, as I stated it?

Mr. Collisson—Generally.

Mr. Kreps—Because I want to be sure this conversation is correct. Would you mind reading that [to the stenographer]?

(Discussion off the record.)

Mr. Collisson—May I tell you just what he said?

The Court—Yes.

10 Mr. Collisson—Dr. Corson requested if I would remove the lines of Plaza Place oceanward of the 1922 Boardwalk, which was a new Boardwalk, just completed, and would probably last for twenty years, that should the Boardwalk be moved, they, being reputable men, in fact, the most reputable men in the city at that time, that the City would have no trouble with the extension of the street to the new Boardwalk from them.

The Court—All right. And on the same grounds I overrule it and allow you an exception.

(In open court.)

Mr. Kreps—That is all.

20 Mr. Carr—That is all.

Mr. Kreps—Now, if it please your Honor, I wish to offer certified copy of a mortgage from the Seashore Realty Company to Richard R. Sooy, dated May 1, 1922, recorded in the Clerk's office of the County of Cape May, Mortgage Book 184, page 487.

Mr. Carr—No objection.

(Same received in evidence and marked Exhibit D-1.)

30 Mr. Kreps—I wish to offer release of mortgage from Richard R. Sooy to Seashore Realty Company, dated May 1, 1922, recorded in the Clerk's Office of the County of Cape May—

Mr. Carr—Just a minute—which one?

Mr. Kreps—Release.

Mr. Carr—May 1, 1922?

Mr. Kreps—Yes. No, pardon me; June 13, 1922. Recorded in the Clerk's office of the County of Cape May, Book 121 of Releases of Mortgages, page 7.

Mr. Carr—That is number 4 on your bill of particulars.

The Court—That is what you are reading, but I don't see any mortgage in the bill of particulars.

Mr. Carr—It is number 5. No objection.

(Paper offered is received in evidence and marked Exhibit D-2.)

Mr. Kreps—I wish to offer deed from the Seashore Realty Company to Josephine H. Goetz, certified copy of a deed, rather, dated July 9, 1923, recorded in the Clerk's office of the County of Cape May in Book 387, page 1. 10

Mr. Carr—No objection.

(Paper offered is received in evidence and marked Exhibit D-3.)

Mr. Kreps—I wish to offer certified copy of a deed from the Seashore Realty Company to George F. Esslinger, dated September 15, 1922, recorded in the Clerk's office of the County of Cape May in Book 369, page 380. 20

Mr. Carr—No objection.

(The paper offered is received in evidence and marked Exhibit D-4.)

Mr. Kreps—Do you want formal proof of those papers?

Mr. Carr—I don't object to the resolution. I do object to the map. The resolution is all right. The map is not in your bill of particulars, anyway. 30

Mr. Kreps—The map is made part of the resolution. I don't think it is necessary to state the map in the bill of particulars. It is attached to it and made a part of it.

Mr. Carr—The paper we are discussing is a resolution in which the City undertook to accept this. Attached to the map. The map is not referred to in the particulars, and is not an act of the City at all. It is a map. I don't think it is admissible.

The Court—Is the map different than the map that was filed?

Mr. Carr—Oh, yes. This map is attached in 1928, after the trouble began.

The Court—Oh.

Mr. Carr—Is a different map entirely.

The Court—Let's see the resolution. I don't know what the resolution is about.

10 Mr. Carr—It is number 3 of the bill of particulars.

The Court—I see. There is no map mentioned there, but there is a resolution. The map, I suppose, is simply a map of the description—

Mr. Kreps—In the resolution.

The Court— —in the resolution.

Mr. Kreps—That is it. I don't think it makes any difference one way or the other.

20 The Court—I don't, either. Under the statute, this resolution under the statute—the City tried to accept dedication as set forth in those deeds. If there wasn't any dedication, it makes no difference whether the map is there or isn't here.

Mr. Carr—Just I don't like to cumber the record with a map that is not accurate.

Mr. Kreps—Certainly accurate so far as this resolution is concerned.

Mr. Carr—It is not part of the resolution.

30 The Court—It is not part of the resolution. I will overrule the offer because it is not part of the resolution. You have got your description, anyway, and that is all you could have.

Mr. Kreps—That is all I want. I don't care about the map, only I don't want to tear it apart.

Mr. Carr—It is easy to tear apart.

The Court—I will overrule the offer.

Mr. Kreps—I offer the resolution. I don't care about the map, anyway.

The Court—Yes.

(Paper offered is received in evidence and marked Exhibit D-5.)

GEORGE F. ESSLINGER, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

*Direct Examination*—By Mr. Kreps.

Q. Mr. Esslinger, are you the George F. Esslinger who purchased the property described in the exhibit marked D-4, which is a deed from the Seashore Realty Company to George F. Esslinger? A. I am. 10

Q. And can you show me, and the Court and jury, rather, on this map, or, rather, on the map which is marked Exhibit P-2, which land you purchased? Here is the Boardwalk. Here is Seventh Street, and here is Plaza Place. A. Is this the old Boardwalk line?

Q. This, 1922 Boardwalk. A. I purchased this 85 feet. The Court—What number is that? 20

The Witness—In width. I have about, I don't recall the exact depth.

Q. Did it go to the new—

A. Up to the new Boardwalk, with riparian rights.

Q. In other words, you purchased this strip of land all the way out to the riparian commissioners' line?

A. I have other—

Mr. Carr—The deed speaks for itself.

The Court—Up to the line of the Boardwalk as it then existed. 30

Mr. Kreps—Up to the riparian commissioners' line.

Mr. Carr—He purchased on one corner down here and then on out.

The Court—Out to the riparian commissioners' line?

Mr. Carr—Riparian commissioners' exterior line.

Q. You took title to that land from the Seashore Realty Company? A. I did.

Q. And any statements made to you by any officers of the Seashore Realty Company concerning whether or not this land was a corner?

Mr. Carr—I object to that, if the Court please.

The Court—Whether or not this land was a corner?

Mr. Kreps—Was a corner property, yes.

10 The Court—I don't understand how that could be possibly construed as a dedication.

Mr. Kreps—I don't of itself expect it to be a dedication, but the proof now is or the attempt now is to make Plaza Place a dead end street. I think I have a right to show any representation made by the owners of this land—

Mr. Carr—The description shows what the property was.

The Court—Yes.

20 Mr. Kreps—That may be true, but that is a technical description, and the technicality which Mr. Carr is relying upon—and, after all, it is a technicality—is whether Plaza Place and Plaza Place extended in the deed creates a dedication, which is certainly known to no layman, and I think an owner of land would have a right to come to this court and testify as to whether or not statements were made that this street was to go to the Boardwalk or any Boardwalk which might be built.

30 The Court—I overrule the question in its present form, it being immaterial and not tending to prove any issue.

Mr. Kreps—May I ask for an exception?

The Court—Yes.

Q. Mr. Esslinger, was any statement ever made to you prior to the time that you agreed to purchase this land by an officer of the Seashore Realty Company to the effect that if—

Mr. Carr—Now, if the Court please, the vice of these questions is that the answer yes or no might

inject themselves before I could get my objections. They ought not to be in a leading form that would be susceptible to a yes or no answer, ~~or~~ I should have time to object.

The Court—Yes, you want time to object. On the other hand, counsel objects to this witness having an opportunity to give a full conversation.

Mr. Kreps—I am perfectly willing for him to give the conversation.

10

The Court—I will caution the witness not to answer any of these questions until we have had a chance to argue out the legal questions, because you might answer yes or no, and afterward be overruled.

What is the question?

(The question was read by the stenographer as follows: "Mr. Esslinger, was any statement ever made to you prior to the time that you agreed to purchase this land by an officer of the Seashore Realty Company to the effect that if——")

20

Mr. Kreps—I will reframe the question.

Q. Mr. Esslinger, was any statement ever made to you by an officer of the Seashore Realty Company prior to the time that you purchased this land that if the Boardwalk was ever moved, that the street designated as Plaza Place would be extended to the Boardwalk line?

Mr. Carr—I object to that.

The Court—I sustain the objection.

Mr. Kreps—I ask for an exception.

The Court—Yes.

30

Mr. Kreps—That is all.

Mr. Carr—No questions.

FLOYD C. SIMMS, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

*Direct Examination*—By Mr. Kreps.

Q. Mr. Simms, where do you live?

A. 873 Plaza Place, Ocean City.

Q. What are the type of homes that are located on Plaza Place.

Mr. Carr—I object. That material?

The Court—I will permit it. Preliminary to something, I don't know what.

A. Why, they are high class type of homes.

Q. Is the street built up solid, do you know?

A. Practically so.

10 Q. Do you know the officers—by the way, Mr. Simms, I show you this map marked Exhibit P-1, and show the jury where your home is, the lot, property on which your home is built.

Mr. Carr—I will admit it is a nice neighborhood.

Mr. Kreps lives there himself.

A. My home is just here.

Mr. Kreps—It is also the name of the street on which the Judge lives, but it is in another town.

20 Q. Now, Mr. Simms, do you know any of the officers of the Seashore Realty Company? A. I do.

Q. Do you know all of them? A. Yes.

Q. Prior to the—by the way, did you purchase any land other than the land on which your home is built?

A. I did.

Q. Which land did you purchase on this—as shown on this map (P-2)?

A. I purchased the 85 feet of ground here extending out to the riparian rights.

30 Q. Now, were any statements ever made to you by any officer of the Seashore Realty Company concerning Plaza Place or to where Plaza Place would be extended in case the Boardwalk was moved?

Mr. Carr—I object to that.

The Court—Sustain the objection.

Mr. Kreps—I ask for an exception, if your Honor please.

Q. Now, was any statement ever made to you by any officer of the Seashore Realty Company as an inducement—cross that out, please.

Q. You remember when this land was developed, do you not? A. Yes.

Q. You lived in Ocean City at the time? A. I did.

Q. Was any statement ever made to you by an officer of the Seashore Realty Company that Plaza Place would always go to the Boardwalk?

Mr. Carr—I object to that.

The Court—Sustain the objection.

Mr. Kreps—I ask for an exception.

10

The Court—Yes.

Mr. Kreps—That is all.

Mr. Carr—That is all.

Mr. Kreps—Recall Mr. Collisson, if there is no objection.

The Court—Yes.

WILLIAM H. COLLISSON, recalled.

*Direct Examination*—By Mr. Kreps.

20

Q. Mr. Collisson, prior to the time that the present Boardwalk was built, how far down was the street known as Plaza Place filled in and actually built?

A. When the Seashore Realty Company and the Brighton Estate first developed—

Mr. Carr—I object to that. That is not responsive. You are asked how far from Atlantic Avenue it was built; that is all.

A. 700 feet.

Q. And show me on this map where that would be. 30

A. 700 feet would be about here.

Q. And that was at what time? A. 1922.

Q. Now, was the—by whom was the 700 feet of street built? A. By that company.

Q. By that company? A. Private contract.

Q. Now, was Plaza Place built any further oceanward at a later date? A. It was.

Q. How far oceanward?

A. To the Boardwalk, by the former company.

Q. The company built it all the way out?

A. By the company or owners.

The Court—That is, to the old Boardwalk?

Mr. Kreps—To the landward line of the old Boardwalk.

A. Near the landward line of the Boardwalk.

Q. Where does it extend today?

A. To the new Boardwalk, constructed in 1928.

10 Q. Was the part designated here in orange all filled in and built as a street?

A. It was extended with curbs and sidewalks and gutters and graveling, extended from a point back of the old Boardwalk of 1920 to up to the inside of the new Boardwalk of 1928.

Q. Are approaches to the Boardwalk here?

A. There are.

Q. Just—are there two or one, do you remember?

A. There is one.

20 The Court—In other words, after the relocation of the Boardwalk, the City went in and extended Plaza Place by pavement and curbs out to the new location?

The Witness—Yes, sir.

Mr. Carr—And that is the portion.

The Court—That is the portion.

Mr. Kreps—Which is in orange. In other words, this portion designated on this map in orange is now a completed street, is it not?

80 The Witness—It is.

Q. And used by the public? A. It is.

Mr. Kreps—That is all.

*Cross-Examination*—By Mr. Carr.

Q. You said—just one question—I think you said this street was completed down to near to the line of the former Boardwalk; not quite to the line, but a little bit short, wasn't it? A. I think so; yes.

Mr. Carr—That is all.

*Re-Direct Examination*—By Mr. Kreps.

Q. Do you know when the work was commenced by the City in extending Plaza Place to the present Boardwalk line? A. I do.

Q. When was that? A. On Monday, March 5, 1928.

Q. Was that work done by the City or by—was the contract made by the City?

A. All of that work was covered by city contracts given after public bids were received.

Q. Not by City employees under City supervision? 10

A. Oh, no.

Q. Were you the engineer in charge of the work?

A. I was.

Q. As the representative of the City? A. Yes.

Mr. Kreps—That is all.

Mr. Carr—That is all.

HERBERT R. SMITH, called as a witness on behalf of the defendant, being sworn, was examined and testified 20 as follows:

*Direct Examination*—By Mr. Kreps.

Q. Mr. Smith, what is your position?

A. City Clerk, Ocean City.

Q. As City Clerk, do you have charge of the records?

A. I do.

Q. Do you have them with you in court?

A. I have the minutes of '27 and '28.

Q. Do you have with you an ordinance by which the 30 City ordained to construct a street end known as Plaza Place to the line of the new Boardwalk?

A. If it comes in the period of '27 and '28.

Mr. Carr—I don't think there is any dispute.

Mr. Kreps—I know there is no dispute, we did it and by ordinance.

Mr. Carr—You did it deliberately.

Mr. Kreps—What I want to show is we did it with their knowledge and consent—not with consent, but

we did it with their knowledge, without any objection, the City went in and the street was built.

Mr. Carr—That is not a statement of fact. We had a bill to quiet title in the Court of Chancery.

The Court—If there was a bill to quiet title in the Court of Chancery at the time, no matter what this witness—it was done without their consent.

10 Mr. Kreps—It was not a bill to quiet title. I think Mr. Carr will agree with me that is why we are here and not in Chancery, because the City had taken possession of the land prior to the time any bill to quiet title was filed, and it is part of the evidence in that case that the ordinances were introduced and passed and published and mailed and finally adopted. The contracts were awarded, the City obligated it-  
20 self to spend money, and nothing was done whatever on behalf of the Seashore Realty Company, all of which I consider as being further evidence, coupled with the deed, as intention on their part of a dedication.

The Court—Supposing you come on my land and start building a fence today.

Mr. Kreps—I don't say that standing by itself alone would be dedication.

30 The Court—Mr. Carr admits that you went in possession of this piece of property and that you by ordinance provided for its improvement by curbs, pavements, etc., and that by ordinance you provided for its extension from the old Boardwalk line out to the new Boardwalk line. You say they did nothing during the time that you were improving this street, but sat idly by. They say that that is not true in its entirety because they had pending a bill in the Court of Chancery to quiet title. Now, if that is the truth of the situation, why can't that be stipulated?

Mr. Kreps—That is perfectly all right if you wish to stipulate it, although I think it should be specified in the stipulation that the bill to quiet title was not filed——

Mr. Carr—I have the deed here.

Mr. Kreps— —until after the——

Mr. Carr—Filed April 7th.

Mr. Kreps—And the work was commenced in March.

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The Court—All right. Work was commenced in March. Date of commencement was March 5th. Bill filed when?

Mr. Carr—April 7th.

The Court—Bill filed April 7th.

Mr. Carr—And the work was finished when?

Mr. Collisson—All the work? You see there were various contracts.

Mr. Carr—You have told us, Mr. Collisson, some time in June, wasn't it?

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Mr. Collisson—I would say May, offhand.

The Court—May. All right.

Mr. Collisson—On that particular street, May, as near as I can guess at it. There was many streets included.

The Court—All right.

Mr. Kreps—If we stipulate to that, I will withdraw the witness.

Mr. Carr—That is on the record.

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The Court—Yes. So stipulated.

Mr. Carr—If the defendant rests, I have no further proof.

The Court—This jury is excused until half past one, and I will hear the motion.

## (IN CHAMBERS)

Mr. Carr—I wish to move for a directed verdict in favor of the plaintiff on the ground that there are no questions of fact here left for the jury to determine. The evidence is entirely documentary, and that being the case—I think it is 85 Law, I am looking for it to see if that is the citation—a case in 85 Law, 260, the construction of the papers is for the Court, and under the McAnd~~es~~<sup>ews</sup> and Forbes case, in 87 Law, and other similar cases, under the map as filed and the deeds, which are in of record, there is no evidence whatever of any dedication beyond the line, inside line of the former 1922 Boardwalk.

(Cites McAnd~~es~~<sup>ews</sup> and Forbes case in 87 Law.)\*

Very similar language to what we have at present here.

The Court—Now, your descriptions here don't include any of the Plaza Place, do they?

Mr. Carr—The descriptions, the land, the deeds, I think that Mr. Kreps has in evidence here, that he relies on, refer to a point which is located on the street as we admit it to be, and runs out to the line of the street and the extended line, which brings it entirely within the McAnd~~es~~<sup>ews</sup> and Forbes case.

The Court—What I mean is this. We will take the fellow that owns this northeast section—I will call it northeast. The witness Esslinger, now he bought to the old line.

Mr. Kreps—Bought all the way out to the riparian commissioners' line.

The Court—Bought all the way out to the riparian commissioners' line.

Mr. Kreps—Yes.

The Court—Does his description include part of Plaza Place if extended?

Mr. Carr—No.

The Court—Does it include any of it?

Mr. Carr—No.

Mr. Kreps—But describes Plaza Place extended.

Mr. Carr—(Reads Esslinger deed.)

Now the other deed, also Mr. Kreps' exhibit begins in the northeasterly side of Seventh Street. (Reads D-3.) Those are the only references in these cases which refers to "and said line extended", which is the exact language passed on by the Court of Errors in that case, which they held presented a court question upon evidence of dedication.

The Court—How do you get away from that, Mr. Kreps? 10

Mr. Kreps—Well, now, if your Honor please, the case of Atlantic City against Groff; that is that New York Avenue case. I think you are familiar with that.

Mr. Carr—That said intended line.

Mr. Kreps—I know what it said. That case held specifically and it is cited in this case also that questions of this kind were questions for the jury, if there were any evidence to submit the case to the jury on.

The Court—Now, wait a second. Wasn't there any evidence in their case other than the evidence in the deeds? 20

Mr. Kreps—No.

The Court—No evidence at all?

Mr. Kreps—No, not in the Groff case. Question of intention.

The Court—I understand it is always a question of intention.

Mr. Kreps—From the deed. Taken from the deed.

The Court—Yes. Wherein does the Groff case differ from this? There must be some difference somewhere. 30

Mr. Kreps—I think in the Groff case there was a house built of some kind in the bed of the street.

The Court—Here, you see, Mr. Kreps, as I view the testimony you have nothing that would go before the jury.

Mr. Kreps—Of course you have denied my admission concerning testimony; therefore I have to rely upon any question—jury questions that could be raised concerning intention that might be taken from the deeds or the releases.

The Court—That is the idea.

Mr. Kreps—The point I want to put across was that this Atlantic City-Groff case says the intention is a question to go to the jury, if there is anything in the case that can indicate an intention——

The Court—I agree; that is true.

10 Mr. Kreps—This release. First of all, there is a mortgage from the Seashore Realty Company to Richard R. Sooy. The mortgage is for \$115,000, and has a release clause in it. “It is further agreed that the portion of the property hereinbefore described situated at the easterly——” (Reads D-1.)

The Court—In other words all of this was subject to release.

Mr. Kreps—The whole thing was subject to release but this particular portion was subject to release for \$40,000, or \$800 per lot, fifty-one lots, or \$20 a foot. (Continues reading D-1.)

20 In other words, the original mortgage contemplated certain release clauses, and among other things contemplated the release of a street to be known as Plaza Place for the sum of one dollar.

The Court—Yes.

Mr. Kreps—Now they came down to the point where they got their release, which is Exhibit D-2.

The Court—And, stopping right there, it would seem to me that the idea of both of the parties of that mortgage was that there hadn’t been the dedication of Plaza Place.

30 Mr. Kreps—Well, there hadn’t up to that time, except for the fact that Plaza Place was mentioned in the deed. As a matter of fact, there hadn’t been anything laid out at all then.

The Court—They figured it hadn’t been dedicated.

Mr. Kreps—And this was just one piece of land and that was the purchase money mortgage, and hadn’t been anything done.

The Court—I see.

Mr. Kreps—Exhibit D-2, which is the release from Richard Sooy to Seashore Realty Company, releases a number of lots in the Brighton Estates.

Mr. Carr—If you don't mind, here is the original; may be a little easier for the Judge to follow it. This is the part you have in mind.

Mr. Kreps—Yes. (Reads D-2.) They release Plaza Place all the way out to the exterior line.

The Court—It goes all the way out; I understand.

Mr. Kreps—Now, down at the bottom of the description: (Continues reading D-2.)

The Court—In other words, they release by this all of the streets as shown on the map as filed.

Mr. Kreps—Right. Now it is my contention that is evidential of the intention of this company to actually have the streets released from under the lien of this mortgage, Plaza Place being released all the way out to the Atlantic Ocean; that that is evidence of the intention on the part of this company to dedicate Plaza Place as a public street by virtue of the fact that from under the lien of this mortgage they obtained what was designated as a street—not only the street which was built, but the street which was to be extended, and was released all the way out to the riparian commissioners' exterior line; and I think that of itself is sufficient to allow this case to go to the jury.

The Court—What was the original mortgage description, what the description covered?

Mr. Kreps—Covered everything.

Mr. Carr—Three hundred feet to high water.

Mr. Kreps—No reference to Plaza Place.

The Court—In other words, the original mortgage covered all the way out to the exterior line.

Mr. Kreps—That is right.

The Court—And of course the release, in order to be effectual at all would have to release all the way out to—

Mr. Kreps—No; that is just the point. If they were releasing for the street purpose they would have released

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all the way out to the exterior line. Now if this land was intended to be retained, in other words, there was to be no dedication of this as a street, then the release under which they obtained the release for the street should have stopped there (indicating), because this land out here is valuable, if it is retained by the Seashore Realty Company, that land is very valuable.

Mr. Carr—We paid thousands of dollars for that release.

10 Mr. Kreps—No, you didn't. You paid for the release—you had lots—but you had thirteen thousand dollars worth of lots, of real estate.

The Court—In that original mortgage you describe your land in a blanket, that is, including everything from Atlantic Avenue in between the east and west lines down to the exterior line of the Atlantic Ocean.

Mr. Kreps—That is right.

20 The Court—Then you provided in your mortgage that you could release a certain portion of the land upon payment of certain moneys, and that you could release Plaza Place at any time that it was dedicated to the City upon the payment of a dollar. There was never any time when Plaza Place was released by reason of the dedication at all. There came a time when you wanted to—they wanted to procure a release of all of the lands comprehended in the first mortgage, the original mortgage—with the exception of what?

30 Mr. Carr—One piece which is expressly recited subject to so much money; everything was released except this one lot, and that much due.

The Court—Where is that?

Mr. Carr—One of these corners. Northeast. That is this piece here. That is expressly stated to be the only thing left under the mortgage, upon which there is expressly due \$58,000. That is what it says.

The Court—Where is that description as it says here?

Mr. Carr—That is still remaining, under the mortgage?

The Court—Yes.

Mr. Carr—Corner of Seventh Street.

Mr. Kreps—The point is, nevertheless, they had this piece of land released as a street all the way out, and certainly it is a question of fact for the jury to determine whether or not it was the intention of these men when they had that released to have that released as a street out to the high water line.

Mr. Carr—It would not be for the jury, in any event. It would be for the Court.

Mr. Kreps—I think it would be for the jury, under the Groff case.

Mr. Carr—McAndrews<sup>news</sup> and Forbes case, 85 Law, covers that.

The Court—You see, they said if the City ever takes that, we will release it for a dollar. The City never did take it. Then they come along and for the consideration of eight thousand and some odd dollars, they procure a release of everything excepting this particular block here; everything excepting this block right here, as I understand it.

Mr. Kreps—Well, I don't quite agree with you that the City did not take it. The City approved this map in 1922, and this release was executed in 1923.

The Court—I know. When I said "take it," I didn't mean that. I meant the City didn't take it by dedication, that is.

Mr. Kreps—Formal dedication, you mean.

The Court—But the parties to this mortgage never considered that whatever the City had done constituted an acceptance of the dedication, because if they had—

Mr. Kreps—There is the City official signature.

The Court—I know, but I don't care about what that may say, but if they had accepted the—considered—the two parties considered it as an acceptance of the dedication—of a dedication, then all the plaintiffs in this case would have had to have done would be to pay a dollar and it would release out to the riparian commissioners' line.

They evidently didn't so construe it, because they paid for the release eight thousand some odd dollars.

Mr. Kreps—Eight thousand.

The Court—Eight thousand dollars, which included the street, together with other land that had then not been released. And by that it seems to me, in so far as they could on paper say there has not been a dedication, they said it.

Mr. Kreps—I don't agree with your Honor at all, as a  
10 matter of fact.

The Court—Of course you don't.

Mr. Kreps—For this reason. This release—go back to the mortgage, where it says about Plaza Place.

The Court—It says will be released by the payment of a dollar if and when it is dedicated to the City.

Mr. Kreps—No.

Mr. Carr—Now, that is what you read.

Mr. Kreps—It is further agreed that the portion of the property hereinbefore described lying between the  
20 lines of Plaza Place—[reads D-1]—may be extended to within 200 feet of the present Boardwalk.

The Court—May be extended.

Mr. Kreps—That is up to there. Will be released upon the dedication of Plaza Place or any portion thereof to the City of Ocean City. It is accepted by the City as a public street, together with the consideration of one dollar.

The Court—That was up to 200 feet of the Boardwalk.

Mr. Kreps—That is true.

The Court—That was down to there.  
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Mr. Kreps—Yes.

The Court—But this portion couldn't be released for a dollar, eh?

Mr. Carr—No.

Mr. Kreps—That portion, nevertheless, was released, and was released as a street.

The Court—Yes, true; released as a street.

Mr. Kreps—And, therefore, being released as a street, it certainly becomes a dedication.

The Court—I don't think so.

Mr. Carr—It says Plaza Place and Plaza Place extended.

The Court—Now, Plaza Place on here, on this map, at the time this release was executed, Plaza Place went out to the Boardwalk line.

Mr. Carr—That wasn't because dedicated by the release. That is because dedicated by this map.

Mr. Kreps—Dedicated by this map, unquestionably, to the landward line of the old Boardwalk. 10

The Court—After the filing of the mortgage they filed the map, which continued the Plaza Place beyond the 200 foot line mentioned on down to the Boardwalk.

Mr. Kreps—That is true.

The Court—So that there was a dedication there then. It would have been ridiculous to have paid a dollar for the release for it if the City accepted that dedication up here.

When they came to release the mortgage they released the extended lines of Plaza Place in—together with the other ~~lines~~ <sup>lands</sup> then released for the consideration of eight thousand dollars. 20

I don't know how you are going to construe that as a dedication of Plaza Place or as a retroactive signification of the intention to dedicate.

Mr. Kreps—For this reason, that this very release itself does two things. I think if you will read it carefully you will find it does two things. It releases lots.

The Court—Yes. 30

Mr. Kreps—For the price of \$8,260.

The Court—Well, that is the whole thing, isn't it?

Mr. Kreps—Oh, no.

Mr. Carr—That is the consideration for the whole release.

Mr. Kreps—That is the consideration for the whole release.

The Court—That is what I mean.

Mr. Kreps—But the basis for the release which was named in the mortgage was at \$800 a lot.

The Court—Yes.

Mr. Kreps—Now there were—the number of lots released on the basis which was set forth in the mortgage is more—would total more than \$8,260.

The Court—You mean—

10 Mr. Kreps—There has been nothing whatever paid for the release of Plaza Place or Plaza Place extended or the 20-foot strip of land which is in here.

Mr. Carr—But the release then goes on and says: (Reads release.)

20 Mr. Kreps—This particular release in which the bed of Plaza Place is released, the lands which were released, based upon the price fixed in the mortgage, total more than \$8,200, which is the consideration which is named, which I think is evidential of the fact that there was nothing whatever paid for the release of Plaza Place or the release of this 20-foot street. Now I think it is further evidence which could be considered, the fact that this street is described as a street and then also that tract of land comprising—now wait a minute; also the bed of the 20-foot street which is marked right here, in going from Plaza Place to Seventh Street.

30 That is my motion. And I think that the point is well taken that the fact that the street was released all the way out to the Atlantic Ocean, they could have very easily, if it had not been their intention to release out to the Atlantic Ocean as a street, they could have stopped there, which they should have done if it was not to go any further, and release this other land right in the same description. But no, they released it all the way out, Plaza Place and Plaza Place extended, all the way out to the Atlantic Ocean.

The Court—They didn't release it.

Mr. Kreps—They had to release it.

The Court—And they paid for the release. I don't find anything in the testimony in the case, of course, that

would require submission of the case to the jury; not a thing. Nor do I find anything in the deeds that would require the submission of the case to the jury. It seems to me that in so far as they are concerned, that I am bound by McAndrews and Forbes against the Camden National Bank.

Now, then, the only other evidence which you have which you say constitutes an indication of the intention of the parties plaintiff to dedicate is that—is the language of the mortgage and release. 10

Mr. Kreps—Just one step further. I want also to submit that that is the actual release, regardless of intention, that that is the actual release of the street.

The Court—Well, that might be a release of the street.

Mr. Kreps—I mean a dedication of the street.

The Court—What?

Mr. Kreps—That this release applies to Plaza Place and Plaza Place extended all the way out actually constitutes a dedication of the street. 20

The Court—I can't see any difference, Mr. Kreps, in the effect of the description in this—

Mr. Kreps—If the Court please, this case that Mr. Carr is relying upon can't be—you can't get that from just a casual reading of it; that case goes in to show what the intentions of the parties were.

The Court—That is the whole thing. The Court said in this particular case—the intention of the parties is the whole thing in this case, or any other case. Now, then, if there is no fact upon which the jury would be justified in finding there had been an express ~~intention~~ <sup>dedication</sup>, then I have no right to submit it to the jury. And the only thing that there is here is a construction of the language of the description of the deeds and language of the description of the release of mortgage. 30

Mr. Kreps—But each case must stand on its own merits.

The Court—That is exactly it.

Mr. Kreps—The intention in this case is different from the McAnders and Forbes case. It is an entirely different situation. Here is certainly an express intention on the part of these developers to release the street all the way out to the high water line, because they even put on the maps they reserve the right to sell both sides of the street for hotel purposes.

Mr. Carr—You might just as well say they were going to build it right straight across.

10 The Court—They don't reserve the right outside of the Boardwalk to do anything at all, the old Boardwalk, as it was.

Mr. Kreps—That is true, but they had gotten their street released; their street was released.

The Court—I can't see any case to submit to the jury at all, Mr. Kreps. I can't follow your reasoning that the release constituted in itself a dedication. You say it did.

20 Mr. Kreps—I say in the first place it constitutes a dedication, and, in the second place, I say it is evidential of the dedication.

The Court—I understand your argument, and I don't agree with you. And, therefore, it seems to me there is not anything to submit to the jury, that there is not a question that I could submit to the jury on the intention of the parties to dedicate. That is, there is no evidence showing intention to dedication beyond the dedication set forth in the map marked D-2. And that is my firm conviction. I will hold it until after lunch and read over these cases a little more carefully, and if I change my mind you will all know it.

30 Mr. Carr—I have other cases on some of these questions.

The Court—You might leave what you have got here.  
(Recess until 1:30 o'clock P. M.)

AFTER RECESS

1:30 o'clock P. M.

(In open court.)

The Court—Gentlemen of the jury, the theory upon which the defendant expected to get a verdict at your hands was that the plaintiff had dedicated the lands in question as a public street.

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Ordinarily the question of dedication is a question of fact for the jury to pass upon and not for the Court. But when the facts are not in dispute, or where there are no facts that would justify a jury in returning a verdict in favor of the defendant, it is the duty of the Court to direct a verdict.

I have carefully listened to the testimony, and find no testimony that would justify the jury in finding that there was an intention on the part of the plaintiff to dedicate these lands for street purposes.

20

In addition to that, there were offered in evidence certain deeds of conveyance and a mortgage and a release of mortgage.

It is contended by the defendant that the language of those various instruments would justify me in submitting the question to you for your decision as to whether or not there was in fact a dedication, and whether or not there was an intention to dedicate.

I can find nothing in those instruments that would justify me in submitting the case to you, and I therefore direct that you return a verdict in favor of the plaintiff.

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I might say that in so doing that the result of the trial is in no wise the fault of the attorney representing the defendant. He is confronted with the situation that arises on the face of the written instruments, and the Court and the attorney for the defendant do not agree in their construction, and that is not his fault.

And I therefore direct that your verdict be taken.

(The clerk takes the verdict.)

## Exhibit D-1

Cape May County Clerk's Office

Cape May Court House, N. J.

10-7-29—200

## Certified Copy of Mortgage

Seashore Realty Co. to Richard R. Sooy

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THIS INDENTURE, Made the first day of May in the year of our Lord one thousand nine hundred and twenty-two. Between "SEASHORE REALTY CO," a corporation of the State of New Jersey, party of the first part, and RICHARD R. SOOY, of the City of Ocean City, County of Cape May and State of New Jersey, party of the second part: WHEREAS, the said party of the first part, in and by its certain obligation or writing obligatory under its hand and seal duly executed and bearing even date herewith, stands bound unto the said party of the second part, in the sum of Two hundred thirty thousand (\$230,000.00) dollars, lawful money of the United States of America, conditioned for the payment in lawful money as aforesaid, of the just sum of One hundred fifteen thousand (\$115,000.00) dollars, in the following manner: Ten thousand dollars on or before the expiration of two years from the date hereof and the balance of One hundred five thousand dollars on or before the expiration of ten years from the date hereof, Provided, However, in the event of the failure of the said party of the first part, its successors or assigns, to completely fill in and grade that portion of the property herein after described, situate, at the Easterly corner of Atlantic Ave., and Seventh St. having a frontage of 300 feet on Atlantic Ave. and of 700 feet on Seventh Street on or before May 1, 1923, then and in that event, a further payment of Ten thousand dollars shall on May 1, 1923, become immediately due and payable together with interest thereon,

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payable semi-annually at the rate of six (6) per cent. per annum, without any fraud or further delay and for the production to said Obligee his heirs, executors, administrators or assigns, on or before the thirty-first day of December of each and every year, of receipts for all taxes for the current year assessed upon the premises hereinafter described: Provided, however, and it was thereby expressly agreed that no credit should be claimed or allowed on the interest above provided because of any taxes paid upon said premises and that if at any time default should be made in payment of interest as aforesaid and instalments for the space of thirty (30) days after any payment thereof should fall due, or in the payment of any tax or charge as aforesaid, for the space of ninety days after the same shall first become payable or in such production of tax receipts as aforesaid, on or before the day aforesaid, then and in either such case the whole principal debt as aforesaid should at the option of the obligee therein named, his executors, administrators or assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, should be enforced and recovered at once, anything therein contained to the contrary notwithstanding, as in and by the said recited obligation, and the condition thereof, relation to the same being had, may more fully and at large appear. NOW THIS INDENTURE WITNESSETH, that the said party of the first part, as well for and in consideration of the aforesaid debt or sum of One hundred fifteen thousand (\$115,000) dollars and for the better securing the payment thereof unto the said party of the second part, his executors, administrators and assigns, in discharge of the said obligation above recited, as for and in consideration of the further sum of one dollar, in specie well and truly paid to the said party of the first part, by the said party of the second part, at and before the ensealing and delivery hereof, the receipt of which one dollar is hereby acknowledged, has granted, bargained,

sold, released and confirmed and by these presents does grant, bargain, sell, release and confirm, unto the said party of the second part, his heirs and assigns, ALL that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Ocean City, in the County of Cape May, and State of New Jersey, more particularly described as follows: BEGINNING at the intersection of the Southeasterly line of Atlantic Avenue with the Northeasterly line of Seventh Street, containing Northeastwardly in said line of Atlantic Avenue three hundred (300) feet in front or breadth, and of that width extending Southeastwardly between parallel lines, one being the Northeasterly line of Seventh Street, and said line extended to the Exterior Line established by the Riparian Commissioners of the State of New Jersey in the Atlantic Ocean by grant dated August 31, 1897, recorded in deed book 144, page 167, or to the high water line of the said Atlantic Ocean, which  
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30  
ever is Oceanward. Being the same premises conveyed to "Seashore Realty Co." by deed from Richard R. Sooy, widower, bearing even date herewith and intended to be forthwith recorded, these presents being given to secure the payment of a portion of the consideration therein mentioned. It is further agreed that the portion of the property hereinbefore described situate at the Easterly corner of Atlantic Avenue and Seventh Street, having a frontage of 300 feet on Atlantic Avenue and of 700 feet on Seventh Street, may be released from the lien of this mortgage upon the payment of the sum of Forty thousand (\$40,000.00) dollars, said payment to be made in such sums and at such times, within the period of this mortgage, as the party of the first part, its successors or assigns, may desire on the basis of eight hundred (\$800.00) dollars per lot for each one of the fifty-one (51) lots appearing on a certain plan of "Brighton Estate" duly filed or twenty dollars per front foot. It is further agreed that the portion of the property hereinbefore described,

more particularly described as follows: BEGINNING  
at a point in the intersection of the Northerly line of the  
Boardwalk as now erected and a line parallel with and  
three hundred (300) feet distant from the Northeasterly  
line of Seventh Street, extending from thence (1) West-  
wardly along the Northerly line of said Boardwalk to the  
Northeasterly line of Seventh Street extended (2) North-  
westwardly along the line of Seventh Street extended two  
hundred (200) feet; thence (3) Eastwardly parallel with  
said Boardwalk to the line first mentioned; thence (4)  
Southeastwardly along said line two hundred (200) feet  
to place of beginning, may be released from the lien of  
this mortgage upon the payment of the following amounts,  
the one hundred (100) feet frontage on said Boardwalk  
immediately adjoining the Northeasterly line of Seventh  
Street to be released at the rate of four hundred (\$400.00)  
dollars per front foot measured on said Boardwalk, and  
the remainder of said tract at the rate of two hundred  
fifty (\$250.00) dollars per front foot measured along said  
Boardwalk. It is further agreed that the portion of the  
property hereinbefore described lying between the tract  
described in the first release clause and the tract described  
in the second release clause may be released from the lien  
of this mortgage upon the payment at the rate of thirty  
(\$30.00) dollars per front foot measured along Seventh  
Street or Seventh Street extended to a depth of eighty  
(80) feet or either side of Plaza Place as delineated on  
Map of Brighton Estate duly filed and Plaza Place ex-  
tended to a depth of eighty-five (85) feet, it is further  
agreed that the portion of the property hereinbefore  
described lying between the lines of Plaza Place as de-  
lineated on said plan of Brighton Estate, and Plaza Place  
as may be extended to within two hundred (200) feet of  
the present Boardwalk (measured along a line parallel  
with Seventh Street) may be released, upon the dedica-  
tion of Plaza Place or any portion thereof to the City of  
Ocean City, its acceptance by said City as a Public Street

and the further consideration of One Dollar. TOGETHER with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; TO HAVE AND TO HOLD the said hereditaments and premises above granted, or intended so to be, with the

10 appurtenances, unto the said party of the second part, his heirs and assigns forever. Provided always, nevertheless, that if the said party of the first part, its successors or assigns, do and shall well and truly pay, or cause to be paid unto the said party of the second part, or to his certain attorney or attorneys, heirs, executors, administrators or assigns, the aforesaid, debt or sum of One hundred fifteen thousand (\$115,000.00) dollars on the days and

20 times hereinbefore mentioned and appointed for the payment thereof, together with interest for the same, in like money, and for all taxes and charges and production of tax receipts in way and manner hereinbefore specified therefor, without any fraud or further delay and without any deduction, defalcation or abatement to be made for or in respect of any taxes, charges or assessments whatsoever, that then and from thenceforth, as well this present indenture, and the estate hereby granted, as the said obligation above recited, shall cease, determine and become absolutely null and void, to all intents and purposes

30 anything hereinbefore contained to the contrary thereof in anywise notwithstanding, and the said party of the first part, for itself its successors, does covenant and grant to and with the said party of the second part, his heirs and assigns, that the said party of the first part, its successors and assigns, shall not nor will apply for, or claim any deduction by reason of this mortgage, from the taxable value of the said lands and premises and that the said party of the second part, his heirs and assigns, shall and may from time to time, and at all times after default

shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess, and enjoy all and singular the above granted and bargained premises with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part, its successors or assigns, or of any other person or persons whatsoever. IN WITNESS WHEREOF, the said party of the first part has hereunto set its corporate seal and caused these presents to be signed by its President and attested by its Secretary the day and year first above written. 10

Signed, Sealed and Delivered in the presence of

Printed words "and—assessment" and "semi-annual" lines 25, 26, 27, 28, 35, page 1, and "fire insurance clause" page 5, ruled out before execution. "Extended" line 34, page 2, written thru erasure before execution. "Eight" and "\$800" written over erasure and "eighty-five" crossed out line 25, and words "or Twenty dollars per front foot" added in line 27, page 2. 20

Stirling W. Cole.

"Seashore Realty Co."

(Corp. Seal)

By Allen Corson,  
President.

Attest:

Ralph L. Chester,  
Secretary.

State of New Jersey, Cape May County, ss. Be It 30  
Remembered, that on this first day of May in the year of our Lord one thousand nine hundred and twenty-two, before me, a Master in Chancery of New Jersey, personally appeared Ralph L. Chester, who being by me duly sworn, on his oath saith, that he is the Secretary of "Seashore Realty Co.," a corporation of the State of New Jersey, the grantor within named, and that Allen Corson is the President, that deponent knows the common or corporate seal of said grantor and that the seal annexed to

the within deed or conveyance is such common or corporate seal; that the said deed or conveyance was signed, by the said President and the seal of said grantor affixed thereto in the presence of deponent; that said deed or conveyance was signed, sealed and delivered as and for the voluntary act and deed of said grantor for the uses and purposes therein expressed, pursuant to a resolution of the Board of Directors of said grantor, and at the execution thereof this deponent subscribed his name thereto as witness.

Sworn and Subscribed before me the day and year aforesaid.

Ralph L. Chester.

Stirling W. Cole,

Master in Chancery of New Jersey.

Accompanying bond duly stamped with Documentary Stamps. Received and Recorded this Mortgage July 20, A. D., 1922, at 3 P. M.

20 A. C. Hildredth, Clerk.

Part released Book 20, page 60.

Part released Book 20, page 74.

See Agreement recorded Mtge. Bk. 305, pg. 43.

#### Releases

Lot	Book	Page	Lot	Book	Page
1	20	60	30 N.W.20'	20	60
2	"	"	35	"	"
30 3	"	"	36	"	"
4	"	"	37	"	"
5	"	"	38	"	"
6	"	"	39	"	"
7	"	"	40	"	"
8 N.W.30'	"	"	41	"	"
18	"	"	42	"	"
19 N.W.10'	"	"	43	"	"
24 S.E.30'	"	"	44	"	"
25	"	"	46 S.E.30'	"	"

Lot	Book	Page	Lot	Book	Page
26	20	60	47	20	60
27	"	"	48	"	"
28	"	"	49	"	"
29	"	"			

Lot	Book	Page	
Part			
Released	20	74	
Part			10
Released	20	76	
8 S.E.10'	21	7	
9	"	"	
10	"	"	
11	"	"	
12	"	"	
13	"	"	
14	"	"	
19 S.E.30'	"	"	
20	"	"	20
21	"	"	
22	"	"	
23	"	"	
24 N.W.10'	"	"	
30 S.E.20'	"	"	
31	"	"	
45	"	"	
46 N.W.10'	"	"	
50	"	"	
51	"	"	30
52	"	"	

Also part released, see description. " "

Part		
Released	26	428

## STATE OF NEW JERSEY

[SEAL]

## COUNTY OF CAPE MAY

I, A. C. HILDRETH, County Clerk, and Clerk of the Courts of Oyer and Terminer, Quarter Sessions, Common Pleas, and Circuit Court, in and for the County of Cape  
 10 May, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Mortgage "SEASHORE REALTY CO" to RICHARD R. SOOY, as recorded on the 20th day of July, A. D. 1922, in the Clerk's Office of the County of Cape May, in Book 184 of Mortgages at page 487.

IN WITNESS WHEREOF, I have here-  
 unto set my hand and affixed the seal of said  
 [SEAL] Court, at Cape May Court House, this ninth  
 20 day of April, A. D. nineteen hundred and thirty.

A. C. HILDRETH,  
*Clerk.*

---

 Exhibit D-2

April 21, 1931

Cape May County Clerk's Office  
 Cape May Court House, N. J.

30 10-7-29—200

Certified Copy of  
 Release

Richard R. Sooy to Seashore Realty Co.

THIS INDENTURE, Made the thirteenth day of June in the year of our Lord one thousand nine hundred and twenty-three. Between RICHARD R. SOOY, of the City of Ocean City, County of Cape May and State of New Jersey, party of the first part, and SEASHORE

REALTY COMPANY, a corporation of New Jersey, party of the second part, WHEREAS, Seashore Realty Company, by an indenture of mortgage, dated the first day of May in the year of our Lord one thousand nine hundred and twenty-two, for the consideration therein mentioned, and to secure the payment of the money therein specified, did convey certain lands and tenements, of which the lands hereinafter described are part, unto Richard R. Sooy, duly recorded July 20, 1922 in the Cape May County Clerk's Office in Mortgage Book 184, page 487, and Whereas, the said party of the first part at the request of the said party of the second part, has agreed to give up and surrender the lands hereinafter described, unto the said party of the second part, and to hold and retain the residue of said mortgaged lands as security for the money remaining due on said mortgage. NOW THIS INDENTURE WITNESSETH, that the said party of the first part, in pursuance of the said agreement and in consideration of Eighty-two hundred sixty (\$8,260.00) Dollars to him duly paid at the time of the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, conveyed, released, quit-claimed and set over, and by these presents does grant, release, quit-claim and set over, unto the said party of the second part, ALL that part of the said mortgaged lands hereinafter particularly described, situate, lying and being in the City of Ocean City, in the County of Cape May and State of New Jersey, ALL those certain lots, tracts or parcels of land more particularly described as follows: Being known as the Southeasterly ten (10) feet of Lot numbered eight (8) All of lots numbered nine, ten, eleven, twelve, thirteen, and fourteen (9, 10, 11, 12, 13, 14) the Southeasterly thirty (30) feet of Lot numbered nineteen (19) All of lots numbered twenty, twenty-one, twenty-two, and twenty-three (20, 21, 22, 23) the Northwesterly ten (10) feet of Lot numbered twenty-four (24) the Southeasterly twenty (20) feet of Lot numbered thirty (30) all of lots

numbered thirty-one and forty-five (31, 45) the Northwesterly ten (10) feet of lot numbered forty-six (46) and all of Lots numbered fifty, fifty-one and fifty-two (50, 51, 52), as delineated on "Map of lands of the Seashore Realty Co., Inc., showing the Brighton Estates, in Ocean City, N. J., Wm. H. Collisson, Jr. Engineer, 1922." as filed in Cape May County Clerk's Office June 18, 1922. ALSO ALL that tract of land comprising the

10 bed of Plaza Place and Plaza Place extended, continuing Southeastwardly from the land released by a certain release between the same parties hereto, dated September 15th, 1922 and recorded in the Cape May County Clerk's Office in release book 20, page 74, more particularly described as follows: BEGINNING at a point in the Southwesterly line of Plaza Place extended at the distance of eight hundred, twenty-seven (827) feet more or less Southeastwardly from the Southeasterly line of Atlantic Avenue, said point being two hundred (200) feet Northwestwardly from the Northerly line of the present Boardwalk, and said distance being measured along the extended

20 Southwesterly line of Plaza Place, extending thence (1) Southeastwardly along the Southwesterly line of Plaza Place extended to the exterior line established by the Riparian Commissioners of the State of New Jersey in the Atlantic Ocean by Grant dated August 31, 1897, recorded in deed book 144, page 167, or to the high water line of the Atlantic Ocean, which ever is oceanward, thence (2) Eastwardly along said Exterior Line or said

30 High water line, whichever is oceanward, to its intersection with the extended Northeasterly line of Plaza Place, thence (3) extending Northwestwardly along said extended Northeasterly line of Plaza Place to a point eight hundred sixty-three (863) feet more or less Southeastwardly from the Southeasterly line of Atlantic Avenue said point being also two hundred (200) feet Northwestwardly from the Northerly line of the present Boardwalk, said distance being measured along the extended Northeasterly line of of Plaza Place; thence

(4) Westwardly along a line parallel with the Northerly line of the present Boardwalk sixty-five (65) feet more or less to the point of beginning. Also the bed of the twenty (20) feet wide street delineated on said plan as connecting Seventh Street and Plaza Place and lying immediately Southeastwardly of Lots 14 and 31 on said Plan and more particularly described as follows: BEGINNING at a point in the Northeasterly line of Seventh Street at the distance of five hundred sixty (560) feet Southeastwardly from the Southeasterly line of Atlantic Avenue, containing Southeastwardly in and along said Northeasterly line of Seventh Street twenty (20) feet in breadth, and of that width extending Northeastwardly between lines parallel with Atlantic Avenue one hundred sixty-five (165)—to the Southwesterly line of Plaza Place. It is expressly understood and agreed between the parties hereto that this release shall and hereby does release, from the lien of the mortgage hereinbefore mentioned all lands covered thereby with the exception of the tract of land more particularly described as follows: BEGINNING at a point in the Northeasterly line of Seventh Street at the distance of Five hundred eighty (580) feet Southeastwardly from the Southeasterly line of Atlantic Avenue, Containing of that point Northeastwardly parallel with Atlantic Avenue one hundred sixty-five (165) feet to the Southwesterly line of Plaza Place, and of that width extending Southeastwardly between the lines and lines extended, of Seventh Street and Plaza Place, to the exterior line established by the Riparian Commissioners of the State of New Jersey, in the Atlantic Ocean by grant dated August 31, 1897 recorded in deed book 144, page 167, or to the high waterline of said Atlantic Ocean whichever is Oceanward. It is further understood and agreed between the parties hereto that the amount remaining due on this mortgage is the sum of Fifty-eight thousand (\$58,000.00) dollars with interest thereon from May 1, 1923. TOGETHER with the hereditaments and ap-

purtenances thereunto belonging, and all the rights, title and interest of the said party of the first part, of, in and to the same, to the intent that the lands hereby conveyed may be discharged from the said mortgage, and that the rest of the lands in the said mortgage specified, may remain to the said party of the first part, as heretofore. TO HAVE AND TO HOLD the lands and premises hereby released and conveyed, to the said party of the second part, its successors and assigns, to its and their  
 10 only proper use, benefit and behoof forever, free, clear and discharged of and from all lien and claim under and by virtue of the indenture of mortgage aforesaid. IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered in the presence of "heirs" line 6, page 5, ruled out before execution. Forty changed to sixty, line 9, page 3, & "parallel with Atlantic Avenue" interline, line 23, page 3, before execution.  
 20 Stirling W. Cole.

Richard R. Sooy (Seal)

State of New Jersey, Cape May County, ss. Be It Remembered, that on this fifteenth day of June in the year of our Lord one thousand nine hundred and twenty-three, before me, Master in Chancery of New Jersey, personally appeared Richard R. Sooy, who I am satisfied is the grantor in the within deed named, and I having first made known to him the contents thereof, he  
 30 acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed. All of which is hereby certified.

STIRLING W. COLE,

*Master in Chancery of New Jersey.*

Received and Recorded this Release July 10, A. D. 1923 at 9 A. M.

A. C. HILDRETH,  
*Clerk.*

STATE OF NEW JERSEY

[SEAL]

COUNTY OF CAPE MAY

I, A. C. HILDRETH, County Clerk, and Clerk of the Courts of Oyer and Terminer, Quarter Sessions, Common Pleas, and Circuit Court, in and for the County of Cape May, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Release RICHARD R. SOOY to SEASHORE REALTY CO. as recorded, on the 10th day of July A. D. 1923, in the Clerk's Office of the County of Cape May, in Book 21 of Releases of Mortgages at page 7. 10

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Cape May Court House, this ninth day of April A. D. nineteen hundred and thirty. 20

A. C. HILDRETH,  
Clerk.

Exhibit D-3

April 21, 1931

Cape May County Clerk's Office  
Cape May Court House, N. J.

4-13-27—200

Certified Copy of  
Deed

Seashore Realty Company to Josephine H. Goetz

THIS INDENTURE, Made the ninth day of July in the year of our Lord one thousand nine hundred and twenty-three. Between SEASHORE REALTY COMPANY, a corporation of the State of New Jersey, party of the first part, and JOSEPHINE H. GOETZ, wife 30

of B. Franklin Goetz, of the City of Ocean City, County of Cape May and State of New Jersey, party of the second part: WITNESSETH, that the said party of the first part, for and in consideration of the sum of One Hundred twenty-five thousand dollars (\$125,000.00) lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby  
10 acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, her heirs and assigns, ALL that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Ocean City, County of Cape May and State of New Jersey, more particularly described as follows: BEGINNING in the Northeasterly line of Seventh  
20 Street, five hundred eighty (580) feet Southeastwardly from the Southeasterly line of Atlantic Avenue, and in the Southeasterly line of a twenty (20) feet wide street, and extending from thence Northeastwardly parallel with Atlantic Avenue, and in the Southeasterly line of said twenty (20) feet wide street, one hundred sixty-five (165) feet to the Southwesterly line of Plaza Place; and of that width extending Southeastwardly between parallel lines, one being the Northeasterly line of Seventh Street, and said line extended, and the other being the South-  
30 westerly line of Plaza Place, and said line extended, to the exterior line established by the Riparian Commissioners of the State of New Jersey, in the Atlantic Ocean, by Riparian Grant, dated August 31, 1897, recorded in deed book 144, page 167, or to the high water line of said Atlantic Ocean, whichever is Oceanward. Being a part of the premises which Richard R. Sooy, by deed dated May 1st, 1922, and recorded in the Cape May County Clerk's Office in deed book No. 363, page 505, granted and conveyed unto the said Seashore Realty Company,

in fee. Under and Subject to the reservations and restrictions of the Ocean City Association and to the rights of the City of Ocean City for Boardwalk purposes across the premises hereinbefore described. Also under and subject to a mortgage given by the Seashore Realty Company to Richard R. Sooy, dated May 1st., 1922, in the sum of One hundred fifteen thousand dollars, (\$115,000.00) now reduced to the sum of Fifty-eight thousand dollars (\$58,000.00) for a term of ten years with interest at 6% payable semi-annually, and intended to be forthwith recorded at the Cape May County Clerk's Office; which mortgage the party of the second part assumes and agrees to pay as part of the consideration. TOGETHER with all and singular the improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof. And Also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the said premises, and every part thereof, with the appurtenances: TO HAVE AND TO HOLD the said premises above described, with all and singular the hereditaments and appurtenances unto the said party of the second part, her heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever. And the said party of the first part, for itself, its successors do by these presents covenant, grant and agree to and with the said party of the second part, her heirs and assigns, that it the said party of the first part, and its successors, all and singular the hereditaments and premises above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, her heirs and assigns, against it the said party of the first part, and its successors and against all

and every person or persons whomsoever lawfully claiming or to claim the same, or any part thereof, by, through, from, or under it, them or any of them, Shall and Will Warrant and forever Defend. IN WITNESS WHEREOF, the said party of the first part to these presents hath hereunto *set* caused its corporate seal to be hereto affixed and these presents to be signed by its President and attested by its Secretary, dated the day and year first above written.

10 Signed, Sealed and Delivered in the presence of Luther L. Wallace, Jr.

Seashore Realty Company (Corp. Seal)

By Allen Corson, President.

Attest: Ralph L. Chester, Secretary.

State of New Jersey, Cape May Count, ss. Be It Remembered, that on this ninth day of July in the year of our Lord one thousand nine hundred and 23, before me, a Notary Public in and for the State of New Jersey, personally appeared Ralph L. Chester, who, being  
 20 by me duly sworn, on his oath saith, that he is the Secretary of the Seashore Realty Company, a corporation of the State of New Jersey, the grantor within named, and that Allen Corson is the President; that deponent knows the common or corporate seal of said grantor and that the seal annexed to the within deed or conveyance is such common or corporate seal; that the said deed or conveyance was signed by the said President and the seal of said grantor affixed thereto in the presence of deponent;  
 30 that said deed or conveyance was signed, sealed and delivered as and for the voluntary act and deed of said grantor for the uses and purposes therein expressed, pursuant to a resolution of the Board of Directors of said grantor; and at the execution thereof this deponent subscribed his name thereto as witness.

RALPH L. CHESTER.

Sworn and Subscribed the day and year aforesaid.

LUTHER L. WALLACE, JR.,

*Notary Public of N. J.*

\$67.00 U. S. Int. Rev. Stamps.  
Received and Recorded this Deed August 20, A. D.  
1923 at 3 P. M.

A. C. HILDRETH,  
*Clerk.*

STATE OF NEW JERSEY

[SEAL]

COUNTY OF CAPE MAY

10

I, A. C. HILDRETH, County Clerk, and Clerk of the  
Courts of Oyer and Terminer, Quarter Sessions, Com-  
mon Pleas, and Circuit Court, in and for the County of  
Cape May, do DO HEREBY CERTIFY that the fore-  
going is a true and correct copy of Deed SEASHORE  
REALTY COMPANY to JOSEPHINE H. GOETZ  
as recorded, on the twentieth day of August, A. D. 1923,  
in the Clerk's Office of the County of Cape May, in Book  
387 of Deeds at page 1.

IN WITNESS WHEREOF, I have here- 20  
unto set my hand and affixed the seal of said  
[SEAL] Court, at Cape May Court House, this 19th  
day of January, A. D. nineteen hundred and  
twenty-eight.

A. C. HILDRETH,  
*Clerk.*

Exhibit D-4

30

April 4, 1931  
Cape May County Clerk's Office  
Cape May Court House, N. J.  
4-13-27—200  
Certified Copy of  
Deed

Seashore Realty Company to George F. Esslinger  
THIS INDENTURE, Made the fifteenth day of Sep-  
tember in the year of our Lord one thousand nine hun-

dred and twenty-two (1922) Between SEASHORE REALTY COMPANY, a corporation of the State of New Jersey, party of the first part, and GEORGE F. ESSLINGER, of the City and County of Philadelphia and State of Pennsylvania, party of the second part, WITNESSETH, that the said party of the first part, for and in consideration of the sum of One dollar (\$1.00) and other good and valuable consideration, lawful money of the United States of America, well and truly paid by the said party of the second part, to the said party of the first part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed and by these presents does grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, his heirs and assigns, ALL that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Ocean City, County of Cape May and State of New Jersey, more particularly described as follows: BEGINNING in the Northeasterly line of Plaza Place, seven hundred twenty (720) feet Southeastwardly from the Southeasterly line of Atlantic Avenue extending Northeastwardly parallel with Atlantic Avenue eighty-five (85) feet in length or depth; and of that width extending Southeastwardly between parallel lines at right angles to Atlantic Avenue, one being the Northeasterly line of Plaza Place and said line extended, to the Exterior line established by the Riparian Commissioners of the State of New Jersey in the Atlantic Ocean, by Riparian Grant dated August 31, 1897, recorded in deed book No. 144, page 167, or to the high water line of the Atlantic Ocean, whichever is Oceanward. Being a part of the premises conveyed to the Seashore Realty Company, by deed from Richard R. Sooy, widower, dated May 1, 1922, and recorded in the Cape May County Clerk's Office in deed book No. 363, page 505. Under and Subject to the conditions in the deed above recited.

Under and Subject to the reservations and restrictions of the Ocean City Association. TOGETHER with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; And Also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, 10  
both in law and equity, of the said party of the first part, of, in and to the said premises, with the appurtenances. TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. And the said party of the first part, for itself, its successors does by these presents covenant, grant and agree to 20  
and with the said party of the second part, his heirs and assigns, that it, the said party of the first part, its successors all and singular the hereditaments and premises hereinbefore described and granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, against it the said party of the first part, its successors and against all and every other person or persons whomsoever, lawfully claiming or to claim the same or any part thereof, 30  
by, through, from or under him, them, or any of them, Shall and Will Warrant and forever Defend. IN WITNESS WHEREOF, the said party of the first part has caused these presents to be executed by its President, attested by its Secretary and its corporate seal to be hereto affixed, the day and year first above written.

Signed, Sealed and Delivered in the presence of Luther L. Wallace, Jr.

Seashore Realty Company (Corp. Seal).

By Allen Corson, President.

Attest: Ralph L. Chester, Secretary.

State of New Jersey, Cape May County, ss. Be It Remembered, that on this fifteenth day of September in the year of our Lord one thousand nine hundred and twenty-two, before me, a Notary Public, in and for the State of New Jersey, personally appeared Allen Corson, President, and Ralph L. Chester, Secretary, who, I am satisfied, are the grantors mentioned in the above deed  
10 or conveyance, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

LUTHER L. WALLACE, JR.,  
*Notary Public of N. J.*

State of New Jersey, Cape May County, ss. Be It Remembered, that on this fifteenth day of September in the year of our Lord one thousand nine hundred and  
20 twenty-two (1922), before me, a Notary Public in and for the State of New Jersey, personally appeared Ralph L. Chester, who, by me being duly sworn, on his oath, saith, that he is the Secretary of Seashore Realty Company, the grantor within named, and that Allen Corson is the President; that deponent knows the common or corporate seal of said grantor and that the seal annexed to the within deed or conveyance is such common or corporate seal; that the said deed or conveyance was  
30 signed by the said President and the seal of said grantor affixed thereto in the presence of deponent; that said deed or conveyance was signed, sealed and delivered as and for the voluntary act and deed of said grantor for the uses and purposes therein expressed, pursuant to a resolution of the Board of Directors of said grantor and at the execution thereof this deponent subscribed his name there- to as witness

RALPH L. CHESTER.

Sworn and Subscribed the day and year aforesaid.

LUTHER L. WALLACE, JR.,  
*Notary Public.*

\$21.00 U. S. Int. Rev. Stamps.

Received and Recorded this Deed November 21, A. D.,  
1922, at 4 P. M.

A. C. HILDRETH,  
*Clerk.*

STATE OF NEW JERSEY

10

[SEAL]

COUNTY OF CAPE MAY

I, A. C. HILDRETH, County Clerk, and Clerk of the  
Courts of Oyer and Terminer, Quarter Sessions, Com-  
mon Pleas, and Circuit Court, in and for the County of  
Cape May, DO HEREBY CERTIFY that the fore-  
going is a true and correct copy of Deed, SEASHORE  
REALTY COMPANY to GEORGE F. ESSLINGER, 20  
as recorded on the 21st day of November, A. D., 1922,  
in the Clerk's Office of the County of Cape May, in Book  
369 of Deeds at page 380.

IN WITNESS WHEREOF, I have here-  
unto set my hand and affixed the seal of said  
[SEAL] Court, at Cape May Court House, this 19th  
day of January, A. D., nineteen hundred and  
twenty-eight.

30

A. C. HILDRETH,  
*Clerk.*

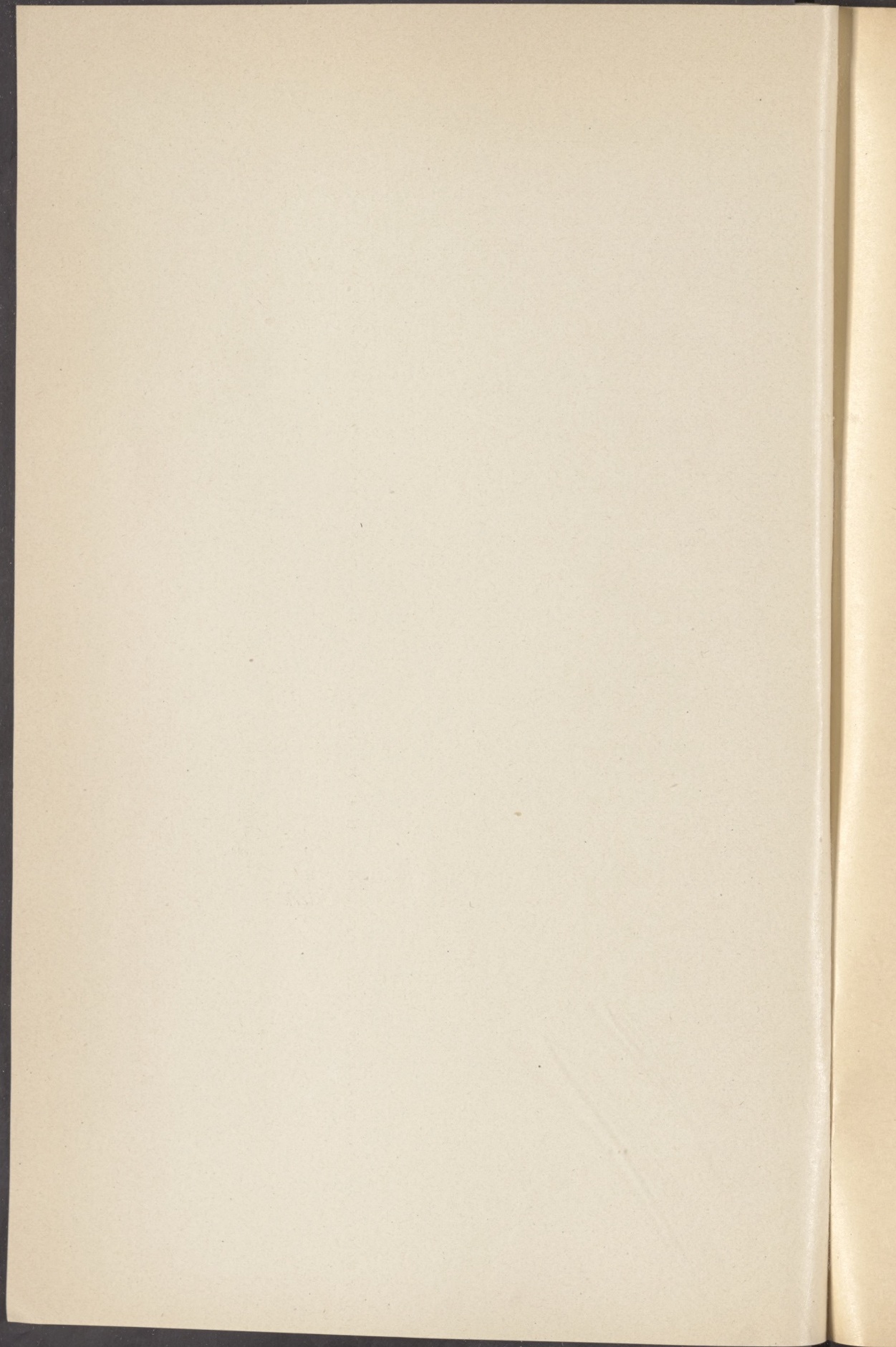


EXHIBIT P1.

Apr 21/31 M

THIS INDENTURE, Made the first day of May  
in the year of our Lord one thousand nine hundred 10  
and twenty-two. Between RICHARD R. SOOY,  
widower, of the City of Ocean City, County of Cape  
May and State of New Jersey, party of the first  
part, and "SEASHORE REALTY CO." a corpora-  
tion of the State of New Jersey, party of the second  
part, WITNESSETH, that the said party of the  
first part for and in consideration of the sum of  
One Hundred thirty-five thousand (\$135,000.00) Dol-  
lars, lawful money of the United States of America,  
well and truly paid by the said party of the second 20  
part, to the said party of the first part, at and  
before the ensealing and delivery of these presents,  
the receipt whereof is hereby acknowledged, has  
granted, bargained, sold, aliened, enfeoffed, released,  
conveyed and confirmed, and by these presents does  
grant, bargain, sell, alien, enfeoff, release, convey  
and confirm, unto the said party of the second part,  
its successors and assigns, ALL that certain lot,  
tract or parcel of land and premises situate, lying  
and being in the City of Ocean City, County of Cape 30  
May and State of New Jersey, more particularly  
described as follows: BEGINNING at the intersec-  
tion of the Southeasterly line of Atlantic Avenue  
with the Northeasterly line of Seventh Street; con-  
taining Northeastwardly in said line of Atlantic  
Avenue three hundred (300) feet in front or breadth;

and of that width extending Southeastwardly between parallel lines, one being the Northeasterly line of Seventh Street and said line extended, to the exterior line established by the Riparian Commissioners of the State of New Jersey, in the Atlantic Ocean by Grant dated August 31, 1897, recorded in deed book 144, page 167, or to the high water line of said Atlantic Ocean, whichever is oceanward. Being the same premises which George W. Sooy, et ux, granted and conveyed unto Richard R. Sooy by deed dated January 6, 1914, recorded in the Cape May County Clerk's Office in deed book 298, page 166. UNDER AND SUBJECT to the covenants, conditions, reservations and restrictions of the Ocean City Association, to the rights of the Ocean City Electric Railroad Company along Atlantic Avenue, to the rights of the City of Ocean City for Boardwalk purposes; and to the covenants, conditions and limitations contained in the riparian grant from the State of New Jersey to Richard R. Sooy, dated August 31, 1897, recorded in aforesaid Clerk's Office in Book 144 of deeds, page 167. TOGETHER with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, And of every part and parcel thereof: And Also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the said premises, with the appurtenances. TO HAVE AND TO HOLD the said premises, with all and singular the

appurtenances, unto the said party of the second part, its successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns forever. And the said party of the first part, for himself, his heirs, executors, and administrators does by these presents covenant, grant and agree to and with the said party of the second part, its successors and assigns, that he the said party of the first part, his heirs, all and singular the hereditaments and premises hereinbefore described and granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, its successors and assigns, against him the said party of the first part, his heirs and against all and every other person or persons, whomsoever, lawfully claiming or to claim the same or any part thereof, by, through, from or under him, them or any of them, Shall and Will Warrant and forever Defend. IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Richard R. Sooy (Seal)

Signed, Sealed and Delivered  
in the presence of  
John E. Iszard

State of New Jersey, Cape May County, ss. Be It Remembered, that on this first day of May in the year of our Lord one thousand nine hundred and twenty-two, before me, a Master in Chancery of the State of New Jersey, personally appeared Richard R. Sooy, widower, who, I am satisfied is the grantor mentioned in the above deed or conveyance, and I

having first made known to him the contents thereof he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

John E. Iszard, M. C. C. of N. J.

\$135.00 U. S. Int. Rev. Stamps.

10 Received and Recorded this deed July 20, A. D. 1922  
at 3 P. M.

A. C. Hildreth, Clerk.

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STATE OF NEW JERSEY

20

COUNTY OF CAPE MAY.

1, A. C. HILDRETH, County Clerk, and Clerk of the Courts of Oyer and Terminer, Quarter Sessions, Common Pleas, and Circuit Court, in and for the County of Cape May, do hereby certify that the foregoing is a true and correct copy of deed, Richard R. Sooy to Seashore Realty Co., as recorded on the twentieth day of July, A. D. 1922, in the clerk's office of the County of Cape May, in Book 30 363 of Deeds, at page 505.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Cape May Court House, this seventh day of May, A. D. nineteen hundred and twenty-nine.

(Seal)

A. C. HILDRETH,  
*Clerk.*

MAP OF LANDS OF  
THE SEASHORE REALTY CO. INC.  
SHOWING THE BRIGHTON ESTATES.

IN OCEAN CITY, N.J.

SCALE - 1" = 50' Wm. H. Collisson Jr.  
MAY 26" Engineer.

1922.

NOTE  
Brighton Estates includes numbered lots only

BE IT RESOLVED by The Board of Commissioners of Ocean City, N.J.,  
that the map showing delineated thereon certain lots & pieces of  
land & certain highways, which map is known as "MAP OF LANDS OF THE SEASHORE  
REALTY CO. INC., SHOWING THE BRIGHTON ESTATES IN OCEAN CITY, N.J., 1922 (which  
land on said map begins on the Southeastly side of Atlantic Ave, at the distance of 200ft.  
Southwesterly from the Southwesterly line of 6<sup>th</sup> St., thence in a Southwesterly direction  
along the Southeastly line of Atlantic Ave, 300ft and of this width of 300ft extending  
in length or depth Southeastly between lines parallel with 6<sup>th</sup> St. to the ordinary  
High Water Line of the Atlantic Ocean) is hereby accepted & approved by this  
Board of Commissioners, as lands plotted in the City of Ocean City, to be used  
in connection with the tax map.

Joe Chapman  
W. Campbell  
Commissioners.

The above resolution was adopted at a meeting of the Commissioners of Ocean City, N.J.  
held on the Twenty-ninth day of May 1922.

Harry A. Morris  
CITY CLERK.

SIXTH STREET.

STREET.

600.

PLAZA

PLACE.

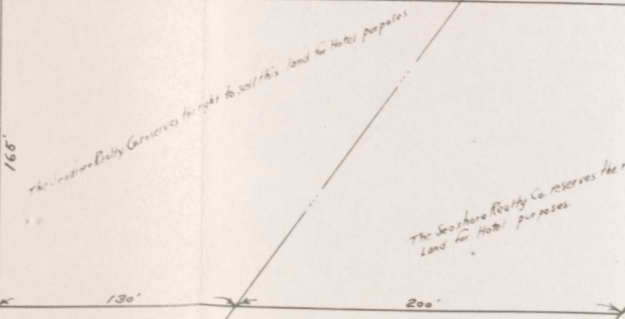
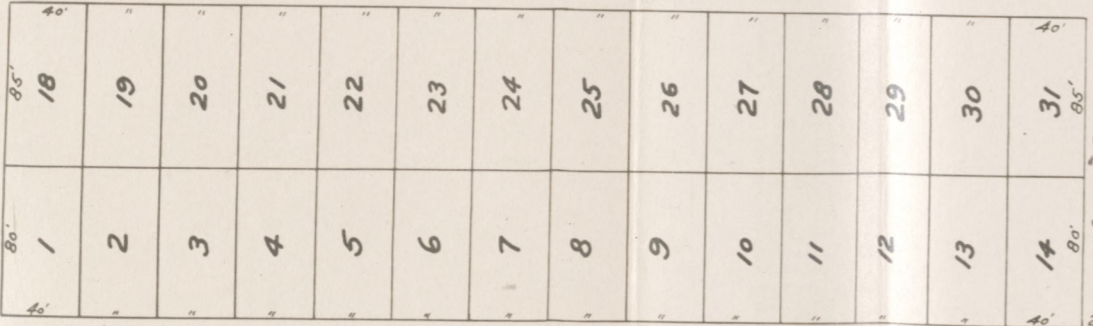
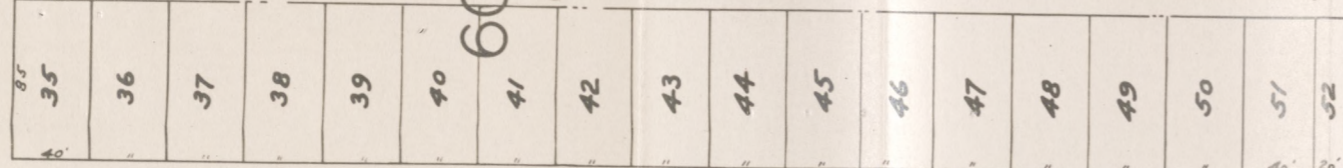
SEVENTH STREET.

STREET.

NEW BOARDWALK

ATLANTIC

OCEAN.



The Seashore Realty Company reserves the right to sell this land for hotel purposes.

The Seashore Realty Co. reserves the right to sell this land for hotel purposes.

FILED JUNE 18, 1922 AT 9 AM  
Attest: [Signature]

Cape May County Clerks Office

Cape May Court House, N. J.

State of New Jersey :ss  
County of Cape May :

I, A. C. Hildreth, County Clerk and  
Clerk of the Court of Common Pleas in and for said County,  
do hereby certify that the Map on the reverse side of this  
sheet is an exact copy of a Map filed in the County Clerk's  
Office, Cape May County on the 13th day of Jun. 1922 at 9  
A. M.

In Witness Whereof I have hereunto set my hand and affixed the  
seal of said Court this 8th day of May, A. D. 1929.

A. C. Hildreth  
County Clerk

SEAL  
NEW JERSEY 1827  
SEAL OF THE COURT OF  
COMMON PLEAS OF THE  
COUNTY OF CAPE MAY

*E. J. - 2.*

*Apr. 21, 1931*

# NEW JERSEY Court of Errors and Appeals

SEASHORE REALTY COMPANY, A  
CORPORATION OF THE STATE  
OF NEW JERSEY,

*Plaintiff-Appellee,*

*vs.*

CITY OF OCEAN CITY, A MUNICIPAL  
CORPORATION OF THE STATE  
OF NEW JERSEY,

*Defendant-Appellant.*

Action at Law  
On Appeal  
from the  
Supreme Court

## BRIEF FOR DEFENDANT- APPELLANT

By deed dated May 1, 1922, and recorded in the clerk's office of Cape May County, Richard R. Sooy conveyed to plaintiff certain land in Ocean City, 300 feet wide and extending between parallel lines from Atlantic Avenue to Riparian Commissioners' exterior line or the Atlantic Ocean, whichever was oceanward (Exhibit P-1).

A portion of the above described land was plotted by the plaintiff and the map thereof was accepted by the defendant May 29, 1922, and filed in the county clerk's office June 18, 1922. On the map was delineated Plaza Place from Atlantic Avenue to the Boardwalk (Exhibit P-2).

The Boardwalk was relocated in 1928 and the land which would be Plaza Place between the Boardwalk shown on the map and the Boardwalk relocated is the land in controversy.

The plaintiff by deed dated September 15, 1922, and recorded in county clerk's office, conveyed to George F. Esslinger a portion of its land (Exhibit D-4) as follows:

"Beginning in the northeasterly line of Plaza Place, seven hundred twenty (720) feet southeastwardly from the southeasterly line of Atlantic Avenue extending northeastwardly parallel with Atlantic Avenue eighty-five (85) feet in length or depth; and of that width extending southeastwardly between parallel lines at right angles to Atlantic Avenue, *one being the northeasterly line of Plaza Place and said line extended*, to the exterior line established by the Riparian Commissioners of the State of New Jersey in the Atlantic Ocean, by riparian grant dated August 31, 1897, recorded in deed book No. 144, page 167, or to the high water line of the Atlantic Ocean, whichever is oceanward."

The plaintiff by deed dated July 9, 1923, recorded in the county clerk's office, conveyed to Josephine H. Goetz another portion of its land (Exhibit D-3) as follows:

"Beginning in the northeasterly line of Seventh Street, five hundred eighty (580) feet southeastwardly from the southeasterly line of Atlantic Avenue, and in the southeasterly line of a twenty (20) feet wide street, and extending from thence northeastwardly parallel with Atlantic Avenue, and in the southeasterly line of said twenty (20) feet wide street, one hundred sixty-five (165) feet to the southwesterly line of Plaza Place; and of that width extending southeastwardly between parallel lines, one being the northeasterly line of Seventh Street, and said line extended, and the other being the *southwesterly line of Plaza Place, and said line extended*, to the exterior line established by the Riparian Commissioners of the State of New Jersey in the Atlantic Ocean, by riparian grant, dated August 31,

1897, recorded in deed book 144, page 167, or to the high water line of said Atlantic Ocean, whichever is oceanward."

The boundary lines in the deeds by plaintiff as to plotted Plaza Place side lines or these lines extended *have definite beginning and ending points in the lines.*

The deeds by plaintiff *do not reserve any right as to Plaza Place extended.*

The words "and said line extended" as used in plaintiff's deeds, is a positive declaration and recognition of Plaza Place extended, especially as the words *if extended* or *when extended* are not used.

By referring to map (Exhibit P-2) it will be observed that the southwesterly boundary line of the land conveyed to Esslinger (Exhibit D-4) begins in the northeasterly plotted line of Plaza Place and traverses it southeasterly and then beyond by the words "and said line extended," to the Riparian Commissioners' exterior line or to the high water mark of the Atlantic Ocean, whichever is oceanward.

The deed to Goetz (Exhibit D-3) the northeasterly boundary line begins in southwesterly plotted line of Plaza Place and traverses it southeasterly and then beyond, by the words, "and said line extended," to the Riparian Commissioners' exterior line or to the high water mark of the Atlantic Ocean, whichever is oceanward.

A recorded release of the mortgaged premises, the plaintiff being a party and accepting it (Exhibit D-2), reads:

"Also all that tract of land comprising the bed of Plaza Place and Plaza Place extended."

Said release located the premises released by describing the four boundaries, which description includes Plaza Place extended (printed case, page 66-67).

In the release (printed case, page 67) the plaintiff agreed concerning Plaza Place extended as follows:

"It is expressly understood and agreed between the parties hereto that this release shall and does hereby release, from the lien of the mortgage hereinbefore mentioned *all lands covered thereby* with the exception of the tract of land more particularly described as follows:

The land excepted in the above description, not released, is southwesterly of Plaza Place and excludes Plaza Place extended.

Defendant relies on the following cases as to dedication in deeds when they refer to street lines and streets:

As to Winslow Street in *Camden vs. McAndrews and Forbes Company*, 85 New Jersey Law 260, Errs. and Apps.;

As to Jefferson Street in *McAndrews and Forbes Company vs. Camden National Bank*, 78 New Jersey Law 231, Errs. and Apps.;

As to Fifth Street in *Tweddell et al. vs. South Orange*, 95 New Jersey Law 327, Sup. Ct.

The trial judge in the case at bar directed a verdict for the plaintiff, but the defendant contends there should have been a directed verdict for it, and if the language in the documentary evidence is not a positive dedication then the intention to dedicate should have been with the jury.

Respectfully submitted,

F. STANLEY KREPS,

*Attorney of Record for the Defendant.*

ANDREW C. BOSWELL,

*Attorney for Defendant.*

W. HOLT APGAR,

*of Counsel.*

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

---

SEASHORE REALTY COMPANY,  
*Plaintiff (Respondent),*

v.

CITY OF OCEAN CITY,  
*Defendant (Appellant).*

---

ACTION AT LAW IN EJECTMENT.

---

BRIEF FOR PLAINTIFF (RESPONDENT).

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ABSTRACT OF THE FACTS.

This is an action of ejectment against the City of Ocean City and relates to the title to a tract of land in that city fifty feet in width and extending southeastwardly of that width from the interior line of the Boardwalk existing in Ocean City in the year 1922 to the interior line of the Boardwalk now existing in that city, constructed in 1928.

The plaintiff acquired title in 1922 by deed (Exhibit P1) from one Sooy to a tract of land located

on the northeasterly side of Seventh Street, having a width of three hundred feet on Atlantic Avenue, extending northeastwardly from Seventh Street, and extending of the width of three hundred feet southeastwardly to the exterior line established by the Riparian Commissioners, or to the high water line of the Atlantic Ocean, whichever was oceanward.

After acquiring title, the plaintiff caused a map to be prepared (Exhibit P2), which showed lots laid out on Seventh Street for a part of the distance between Atlantic Avenue and the then Boardwalk, which was marked on this map "New Boardwalk." The map also showed a new street called "Plaza Place," fifty feet wide, extending from Atlantic Avenue to the interior line of the then existing Boardwalk called at that time the "New Boardwalk," and on both sides of this street for part of the distance between Atlantic Avenue and the interior line of the then existing Boardwalk lots were laid out. Between the lots and the Boardwalk the remaining ground was marked, "The Seashore Realty Company reserves the right to sell this land for Hotel purposes."

Plaza Place, as shown on this map, did not extend beyond the Boardwalk, and did not extend to high water. The high water line is shown on this map as some distance oceanward of the Boardwalk line.

This Map (Exhibit P2) was accepted by the City by resolution of the Board of Commissioners, adopted May 29, 1922, and a copy of the map, with a copy of the City's resolution of acceptance, written thereon and certified by the City Clerk, was filed in the office of the Clerk of Cape May County, June 13, 1922.

Some six years thereafter, in 1928, the Boardwalk

was moved by the City from the location shown on the filed map (Exhibit P2) to a location some distance oceanward, where a new Boardwalk was constructed, and the old Boardwalk site (shown on Exhibit P2) was abandoned. The City then entered on the land located oceanward of the interior line of the Boardwalk shown on the 1922 map and located landward of the 1928 Boardwalk, and without the consent of the plaintiff, extended the street (Plaza Place) into this area. The strip of land so occupied, fifty feet wide measured at right angles and located between the interior lines of the 1922 and the 1928 Boardwalk, is the land described in the complaint, and the title to which was involved in this ejection suit.

Ejection was brought for the land in question. The City answered denying the allegations of the complaint, and setting up that the lands in controversy were dedicated to the City. Upon demand, the defendant furnished a bill of particulars (Case, pp. 9 to 12).

At the trial, the defense sought to prove statements made by an officer of the plaintiff respecting the line of Plaza Place if the Boardwalk should be thereafter moved and also relied upon certain deeds, and upon a release of mortgage as containing language sufficient to constitute a dedication. A verdict was directed for the plaintiff.

The Court excluded the evidence offered to show oral statements and to these rulings exceptions were taken. Although the direction of a verdict is stated as one of the grounds of appeal, there seems to have been no exception taken to that action by the Court.

## ARGUMENT.

The exceptions may be classified as follows:

1. To the exclusion of testimony of the engineer who prepared the map (Exhibit P2) as to statements made to him by the president of the plaintiff respecting the filing and approving of the map on the part of the City, and as to the form in which the map was first presented for filing (Case, pp. 20, 21, 22, 29, 30, 31 and 32).

2. The exclusion of testimony of the president of the plaintiff as to a conversation with the engineer (p. 24).

3. The exclusion of testimony of purchasers of land from the plaintiff as to statements by officers of the plaintiff as to whether or not their land "was a corner" (pp. 36).

4. The exclusion of testimony by purchasers from the plaintiff as to statements of an officer of the plaintiff "that if the Boardwalk was ever moved, that the street designated as Plaza Place would be extended to the Boardwalk line" (Case, p. 37), and similar statements (Case, pp. 38 and 39).

5. And the exclusion of similar testimony on the part of the engineer (Case, pp. 29 to 32).

POINTS.

1. NONE OF THE PROFFERED TESTIMONY COULD HAVE BEEN PROPERLY ADMITTED, AS THERE WAS A TOTAL ABSENCE OF PROOF OF AUTHORITY OF ANYONE TO SPEAK FOR THE PLAINTIFF ON THE OCCASIONS REFERRED TO IN THE QUESTIONS EXCLUDED.

2. THE TESTIMONY OFFERED, IF NOT ENTIRELY IRRELEVANT, RELATED MERELY TO CONCLUSIONS OR OPINIONS AS TO THE LEGAL EFFECT OF THE MAP, OR WERE MERELY PROMISES OF WHAT WOULD BE DONE IN THE FUTURE.

3. THE DEEDS AND OTHER PAPERS PUT IN EVIDENCE DID NOT SHOW A DEDICATION.

4. THERE WAS NOTHING IN THE CASE FOR THE JURY TO DECIDE, ALL QUESTIONS AS TO THE CONSTRUCTION AND EFFECT OF THE WRITTEN INSTRUMENT BEING FOR THE COURT, AND AS THESE PAPERS FAILED TO SHOW A DEDICATION, THE VERDICT FOR THE PLAINTIFF WAS PROPERLY DIRECTED.

1. None of the proffered testimony could have been properly admitted, as there was a total absence of proof of authority of anyone to speak for the

plaintiff on the occasions referred to in the questions excluded.

There was no serious attempt by the defendant to show the authority of anyone to speak or act for the Seashore Realty Company respecting the matters covered by the exceptions to the testimony. The defendant called Allen Corson, the president of the plaintiff company, but did not prove any more than that the filed map was authorized (Case, pp. 23, 26, 27 and 28).

Dedication to public uses is not to be presumed against the owner of land, but must be shown by acts and declarations of the owner of such public and deliberate character as makes it generally known and not of doubtful intention.

*Beach Realty Co. v. Wildwood*, 105 N. J. L. 317, at 323.

The acts and declarations of the owner, in a case where the owner is a corporation, must also be shown to have been made by authority of corporate action, or to have been the act of an agent authorized by corporate action, or to have been adopted and ratified by the corporation.

*Aerial League of America v. Aircraft, etc., Corporation*, 97 Law 530;  
*Gennet v. Lehigh Valley Railroad Company*, 97 Law 486.

A corporation is bound by the act of an officer or agent only to the extent that the power to do the act has been conferred upon such officer or agent expressly by the charter, by-laws or corporate ac-

tion of its stockholders or board of directors, or can be implied from the powers expressly conferred, or which are incidental thereto, or where the act is within the apparent powers which the corporation has caused those with whom its officers or agents have dealt to believe it has conferred upon them.

*Aerial League of America v. Aircraft, etc., Corporation*, 97 Law 530.

In order that there may be a ratification of the acts of a corporate agent, a full knowledge of all the facts and circumstances attending the transaction is essential.

*Gulick v. Grover*, 33 N. J. L. 463 at 471.

The appointment of a real estate agent for the purpose of selling lands of an owner confers no authority upon the agent to make representations respecting the subject-matter of the sale and confers no authority upon the agent to dedicate or agree to dedicate other lands of the owner.

*Perrine v. Cooley*, 42 Law 623;

*Dowden v. Cryder*, 55 Law 329;

*Waldron v. Cutley*, 144 Atlantic Reporter 447, 105 N. J. E. 586; affirmed 148 Atlantic Reporter 916, 105 N. J. E. 736.

2. The testimony offered, if not entirely irrelevant, related merely to conclusions or opinions as to the legal effect of the map, or were merely promises of what would be done in the future.

Whether the land deeded to Mr. Esslinger was a "corner" or not, seems to be entirely irrelevant (p.

36). Whether an officer of the plaintiff states to Mr. Esslinger that if the Boardwalk was moved Plaza Place "would be extended to the Boardwalk line" (Case, p. 37), is clearly a statement as to future acts, and could not constitute a present dedication. If not so considered, then the statement is a mere opinion as to what the speaker believed would happen in the future. And the testimony sought to be elicited from Mr. Simms (pp. 38 and 39) that Plaza Place "would be extended" or "would always go to the Boardwalk" is subject to the same criticism.

The nature of this proffered testimony is made clear in the side bar offer of proof involving the engineer. Counsel stated (p. 29) that he wished to prove by the engineer that the president of plaintiff said the street "would extend to any new Boardwalk which may be built oceanward." The witness being present at side bar then stated what his testimony would be, to wit, that the president of the company stated to him that "the City would have no trouble with the extension of the street to the new Boardwalk from them." The first statement would be a mere opinion as to the law; the second, an opinion as to whether there would be trouble between the City and the plaintiff over the street extension, if the walk were moved.

A statement respecting dedication, which is but a promise or an agreement to dedicate in the future, is not evidence of a legal dedication.

*New York N. Y. S. & W. v. Public Utility Board*, 90 N. J. L. 432; affirmed 91 L. 701;

*Atlantic City v. Groff*, 68 N. J. L. 670.

Dedication to public uses is not to be presumed against the owner of land, but must be shown by acts and declarations of the owner of such public and deliberate character as makes it generally known and not of doubtful intention.

*Beach Realty Co. v. Wildwood*, 105 N. J. L. 317, at page 323.

3. The deeds and other papers put in evidence did not show a dedication.

The city relied upon four recorded instruments to show dedication. Exhibit D1, a mortgage of plaintiff to one Sooy; Exhibit D2, a release of this mortgage; Exhibit D3, a deed to Goetz and Exhibit D4, a deed to Esslinger.

The argument of the city as to the effect of this mortgage is somewhat complicated and rather difficult to follow. The discussion respecting the mortgage and release at the trial appears at pp. 46 to 53.

The mortgage provided for a release from the lien of the mortgage of Plaza Place and Plaza Place "as may be extended to within two hundred feet of the present (1922) Boardwalk \* \* \* upon the dedication of Plaza Place or any portion thereof to the City of Ocean City, its acceptance etc." (Case, p. 59, line 31 to end of page). The release recited a consideration of \$8,260.00, was made in 1923, and released several tracts of land, including a tract (Case, p. 66, line 9, and following) containing the land now in controversy, by description. This description in referring to Plaza Place throughout uses the language "Plaza Place and Plaza Place extended;"

“line of Plaza Place extended” and similar words. Nowhere is Plaza Place referred to as existing at the place where the *locus in quo* is situated.

The two deeds, one to Goetz, and the other to Esslinger, similarly refer to Plaza Place. Thus in Exhibit D3 (p. 70, line 30), the description carries the property conveyed to the high water line, along the line of Plaza Place, “and said line extended.” Exhibit D4 reads the same way (Case, p. 74, line 28).

The use of the word “extended” and the phrase “extended line” and similar phrases containing the word “extended” do not show a dedication of lands so bounded or so described. The appropriate definition of “extended” in this connection is “To stretch out; to prolong in space, etc.” So defined, the word “extended” service merely to locate the premises referred to, the location being based on a geometrical extension or production of the lines of the existing street.

*McAndrews & Forbes Co. v. Camden National Bank*, 87 Law 231;

*Morris and Essex Railroad Co. v. Jersey City*, 63 N. J. E. 45, at page 64.

The effect of this language cannot be said to be in doubt since the decision of this Court in the *McAndrews & Forbes* case.

4. There was nothing in the case for the jury to decide, all questions as to the construction and effect of the written instrument being for the Court, and as these papers failed to show a dedication, the verdict for the plaintiff was properly directed.

This point does not require a discussion, unless it be assumed that the propriety of the direction of a verdict for the plaintiff is properly before this Court. The fact that a verdict was directed is given as a ground of appeal, but as stated above, there seems to have been no exception to this action. Upon the assumption, however, that the ground of appeal will be considered, the following cases are authority for the action of the trial Court:

*Clarke v. Elizabeth*, 40 N. J. L. 172;

*Camden v. McAndrews & Forbes Co.*, 85 N. J. L. 260, at page 267;

*City of Camden v. Armstrong Cork Co.* (C. C. A. 3rd Circuit, 210 Federal 818).

As the only matters in evidence relied upon to take the case away from the jury were the two deeds, the mortgage and the release of mortgage above referred to, the construction and legal effect of these documents were clearly court questions.

This brief is written without having the benefit of a copy of the brief proposed to be filed by the appellant and for that reason the statement of facts may be fuller than would otherwise be necessary and some matters referred to in the brief of the appellant may not have been dealt with herein.

It is respectfully submitted that the judgment should be sustained.

Respectfully submitted,

JOSEPH H. CARR,

*Attorney for Plaintiff-  
Respondent.*

Faint, illegible text at the top of the page, possibly a header or introductory paragraph.

Second block of faint, illegible text in the upper middle section.

Third block of faint, illegible text in the middle section, appearing as several lines of a paragraph.

Fourth block of faint, illegible text in the lower middle section.

Fifth block of faint, illegible text at the bottom of the page, possibly a concluding paragraph or signature area.

