

Court of Errors and Appeals

OCEAN CITY LAND COMPANY, <i>Prosecutor,</i> <i>Defendant-in-error,</i>	}	On Certiorari, Brief.	
<i>vs.</i>		CHAS. C. BABCOCK, BOURGEOIS & SOOY,	10
OCEAN CITY, <i>et. al.,</i> <i>Defendant,</i> <i>Plaintiff-in-error.</i>	}	<i>Attorneys of Defendants-in-error.</i>	

The writ in this case brings up a judgment in certiorari prosecuted to frustrate an attempt upon the part of the Ocean City Association to devote a tract of land in Ocean City between Fifth and Sixth streets and extending from the bay to the ocean, to private use, after said Association had dedicated the same by mapping, public announcement and sales, and thus reaped the profit, of said dedication. A similar attempt on the part of the defendant, Ocean City Association, was made in the case of Lennig vs. Ocean City Association, reported in 15 Stew., p. 606, in 1886, and later, in Bridgewater vs. Ocean City Railway Co., reported in 17 Dick., 276, in 1901. Prosecutors, defendants-in-error, are the owners of real estate adjoining the park, binding upon the easterly line of Fifth street, southerly from Atlantic avenue to the ocean, and extending northerly a distance of five squares to North street, excepting one plot of ground one hundred feet square, occupied by the United States Government as a life saving station, and half a block of ground at Third street, owned by one Hayday. The present attempt to free this land from the dedication, differs from the two preceding attempts only in that the defendant association

procured the passage of two acts of the Legislature in its interest in this behalf in the year nineteen hundred and four, one found at page 366 and the other at page 368, of the Pamphlet Laws of that year, both approved on the thirtieth day of March, nineteen hundred and four. The first act provides that any municipality, with the consent of the owner of the fee, may vacate or extinguish the public right in any land, wholly or partially dedicated to public use, excepting in streets, lanes, roads or highways. The second presumes
 10 to provide a method of extinguishing the private right in dedicated lands.

The writ of certiorari attacked the validity of the two resolutions and ordinance passed by the Common Council of Ocean City pertaining to the vacating or extinguishment of the public rights in the park or camp ground before mentioned. The first reason on which the prosecutor relied for the setting aside of said ordinance and proceedings was:

I.

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Because no consent to the proposed vacation of the public rights aforesaid was obtained from the owner of the fee.

The resolution and ordinance in question contain the following exceptions and provisions, which were not incorporated in the original proposal of the Ocean City Association, and as to which no consent has ever been given.

1. "That all that tract of square included between Wesley and Asbury avenues and Fifth and Sixth streets," should
 30 be excepted from the proceedings to vacate.

2. "That the Ocean City Association should erect *houses or other buildings* upon the land vacated, amounting to at least ten thousand dollars."

3. That Ocean City Association should grant and convey the right to build a plank or boardwalk across any of the property of the Ocean City Association.

Defendant-in-error contends that the consent of the owner to the release of the dedication mentioned in the act of March 30th, must be such a consent as would be effective in a real estate transaction, to wit: a consent in writing, it being contended by prosecutor that this consent affects an interest in land. 2 Rev. St., p. 1602-52. And if it be contended that the consent of the owner of the fee is an act necessary to confer jurisdiction on Common Council to pass the ordinance and submit the question to vote of the people, then it is insisted that such consent must be in writing and express such consent in definite form and in manner satisfying the Statute of Frauds aforesaid. The Supreme Court assumed that the consent might be given at any time. Defendant-in-error contends that a reading of the statute will show that such consent must be prior to or co-incident with the passing of the ordinance. The act authorizes "Council" to vacate not the "land owner." The act says Council may vacate with consent of the "Land Owner," without this consent Council has no jurisdiction. 10 20

II.

Consent of the owner of the fee is a pre-requisite to the passage of an ordinance and submitting the question to a vote.

It is further contended by the defendant-in-error that the consent of the owner contemplated in the act of March 30th, must not only be in writing, but must be delivered to the municipality by the owner of the fee. In the case at hand the testimony of the secretary, on page 8 of the supplementary testimony of Mr. Lake, on page 57, shows conclusively 30

that there was no written consent delivered to the Common Council of Ocean City excepting the proposal included in the return to this writ. While it may or may not be true that the minutes of the Ocean City Association might form the basis for the specifically performing of the verbal agreement which is alleged to have been made, it is submitted that the ~~said~~^{said} statute does not contemplate an equitable consent; but a legal consent executed and delivered with the legal formalities of a conveyance of an interest in land, so that the same may become permanent municipal record; and not such a consent as may be destroyed by a private corporation by destruction of its minute book.

It is further contended on the part of the defendant-in-error, that the only valid consent on the part of the Ocean City Association is contained in the proposal to the Common Council found on page 5, of the printed book. By this proposal the territory, in which the public rights are to be vacated or extinguished, comprises the entire premises between Fifth and Sixth streets and extending from the bay to the ocean, and does not except therefrom the block of land excepted by the resolution and ordinance, page 9 and 10.

The proposal is that Ocean City Association will expend in improvements on the camp meeting plot, ten thousand dollars, and not that it will expend the ten thousand dollars *on the portion thereof which shall be vacated*. There is nothing in the proposal to show that the Ocean City Association contemplated expending this money on any portion of the premises other than on the block excepted by said ordinance. Further, the proposal of the Ocean City Association was to expend the money in permanent improvement. The ordinance was that the money should be expended in the erection of houses or buildings, page 14. There is testimony in the cause which would indicate that a portion of the land is below grade and there is nothing in the proposal

to indicate that Ocean City Association does not intend to expend this money in bringing the land to grade, so as to make it more salable.

The ordinance requires that Ocean City shall execute an easement or boardwalk deed. Nothing was contained in the proposal, relating thereto; and it is submitted that the execution and delivery of a boardwalk deed after the application and allowance of this writ of certiorari, will not cure the defect in this respect. The allowance of a writ of certiorari removed the proceedings into this court, and the status of the proceedings at that time should determine the validity of the acts of the Ocean City Council. 10

The act in question does not permit or authorize a municipality to enter into contract or exchange with the owner of the fee of dedicated lands; but only to vacate by consent of the owner of the fee. The proposition by Ocean City Association, and the conditional acceptance on the part of Ocean City, tend towards the making of a contract, and not to a consent by the Ocean City Association that the dedicated lands in question be vacated. *In other words, the prosecutor contends that under the first section of the act of 1904, the consent of the owner of the fee must be unqualified consent, whereas the consent in this case is qualified by the provision that Ocean City relinquish taxes assessed against the property of the Ocean City Association, amounting in all to the sum of ten thousand dollars, so that there shall be no financial difference between the Association and said city, therefore, there has been, in this case, no such consent of the owner of the fee as is contemplated by the act.* 20 30

It is further contended that the testimony shows conclusively that no modifications were contemplated or noticed by Ocean City Association at its meeting of November 11, 1904, excepting the execution and delivery of a boardwalk deed, page 8, line 20, and the Ocean City Association did

not have in mind the difference between the proposal and the ordinance relating to the tract between West and Asbury avenues, and Fifth and Sixth streets, and did not have in contemplation the difference between the proposal and ordinance of the nature of the improvements to be made on the land. The exact point urged is: That the acceptance did not meet the proposal at every point, and hence there was no acceptance or consent. Potts vs. Whitehead, 8 C. E. Gr., 512. Without this consent Council was without authority to act, hence any property owner can raise the objection and it is not dependent upon the objection of the Ocean City Association as the proposal is for Ocean City to waive collection of ten thousand dollars, past due taxes from Ocean City Association in which every taxpayer has an interest.

20 The third, sixth and seventh reasons of the prosecutor may be considered together. They are as follows:

III.

Because the dedication in question cannot be vacated by the Legislature without impairing the obligation of private contracts.

30 The proposed vacation provides for the building of permanent houses on the dedicated lands within one year from the vacating of said dedication. It is submitted that prosecutors have private rights which will be invaded by so building, hence any vacation which contemplates such building impairs the obligation of the contract made with prosecutor's grantees that said land should remain open except so far as tents may be temporarily erected on a part of the lands which were marked "Camp Ground."

The ordinance contemplates the violation of the obligation of contract made by Ocean City Association with prosecutor's predecessor in title, when it bases the ordinance on a conveyance of a part of the Camp Ground tract for purposes declared to be unlawful in the Lennig case.

VI.

Because the land in question has not been dedicated to public use.

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VII.

Because there is no public right to vacate, either by the Legislature or Common Council, or the people, in the lands in question.

The nature of the dedication in the present case is different from that ordinarily met with. As will be observed from the opinion of the Court of Errors in the case of Lennig vs. Ocean City Association, 14 Stew., page 609, the tract of land between Fifth and Sixth streets, and extending from the bay to the ocean, *was reserved as a camp meeting ground, for religious services and tenting purposes.* It was not dedicated to the public as a park. It was retained, and all control over it was retained, by its owner, the Ocean City Association, and the only dedication thereof was in the fact that in the plotting of the ground and filing of the maps and in the selling of the land therefrom, it was represented to the purchasers that the block of land in question was always to remain open for camp meeting and tenting purposes, with the incidental contractual right of the purchasers of lots to air, light, etc., because of said space forever remaining open. There is no testimony to show that Ocean City ever expended any money in improvement, or otherwise accepted this dedication. It was never devoted to

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public use. In fact, the proposal and the ordinance show clearly that Ocean City never accepted, never used and never exercised any control whatever over it.

The land in question comprises a Camp Meeting Ground or park in which the fee remained in the Ocean City Association. There was no dedication, except the plotting of the park and the filing of the map containing such plotting, and the selling of lands by the Association with reference to such map.

10 Ocean City never accepted this dedication. There is no evidence of any moneys accepted on it or other act done by Ocean City regarding it, which would amount to or could amount to an acceptance, and until Ocean City shall have accepted the dedication, the use to be made of the land lies entirely with the land owner, *Darling vs. Jersey City*, 67 Atl. Rep., 709, excepting insofar as the rights of purchasers attach because of the plotting of said map, and the selling of lots thereby.

20 *Seibert vs. Groff*, Atl. Rep.

That the purchasers of lots have acquired rights in such park or camp meeting ground is determined by the *Lennig* case aforesaid, but defendant-in-error understands that there is no public right which Council can vacate in the lands in question; and that inasmuch as said ordinance and proceedings attempt to waive taxes due to Ocean City to the amount of ten thousand dollars (\$10,000), any taxpayer has a stand-
30 ing to prosecute a writ of certiorari to set the same aside, as well as a right to prosecute such writ for the reason herein-after stated.

1. *It is submitted that where land is dedicated by conveyances to individual purchasers purchasing from a map.*

that the public acquires no rights until after it has accepted the dedication, so as to render itself liable for the cost of maintenance thereof.

New York and Long Branch Railroad vs. South Amboy,
28 Vr., 252.

2. *That a dedication may be conditional dedication, and when it is such, the public will gain no rights in the dedication except those consistent with the condition.* 10

Trustees vs. Hoboken, 4 Vr., 13.

The testimony on page 37 shows that the Ocean City Association conveyed the strip of land immediately adjoining the park on the northerly side lying oceanward from Atlantic avenue, to Ezra B. Lake on the twenty-third day of June, eighteen hundred and ninety, referring to the filed map, and Ezra B. Lake, on the thirty-first day of August in the same year, conveyed the same premises to Frank F. Corson, and Frank F. Corson conveyed the same premises to John G. Gandy and Ezekiel V. Corson. It appears, also, from the testimony taken, that Ocean City Association in 1882 and 1883 made public statements as to the use of this land and filed its map in the Clerk's office of Cape May County, and afterwards sold lots therein, by reference to said map. It is, therefore, contended that the extent of the dedication of the land in question was limited by the statements and map filed forming part of the contract made between the Ocean City Association and the various purchasers of real estate in Ocean City; that the only rights of purchasers of real estate purchased with reference to said map, or with reference to the statements made by Ocean City Association, were to *have the tract remain open for a Camp Meeting Ground, to be used for religious services and tenting pur-* 20 30

poses, Lennig vs. Ocean City Association, 14 Stew., 610; that by force of the conveyances from Ocean City Association to the various purchasers of real estate no purchaser gained any right to pass or repass over said premises, nor any right to have the same or any portion thereof, improved, nor any right therein, whatever, except to have the same devoted to the purposes for which Ocean City dedicated the same.

- 10 There has been no dedication of the lands to *public use*. There is no evidence of such a dedication and none in fact exists. Hence, the act of March 30, 1904, furnishes no basis or authority for the ordinance under review.

New York vs. Amboy, 28 Vr., 252.

- 20 It was stated in the case of Boorean vs. North Hudson Railroad, 13 Stew., 557, that the public rights sprung from the private rights. It is insisted by prosecutors that the public rights spring from private rights only where such private rights are of a *public nature*, and the burden of the dedication has been accepted and assumed by the public, and that in those limited dedications which are confined to the right of individuals wherein, they by way of estoppel, may restrain and prevent the dedicator from making other use of the lands dedicated than that forming a part of the contract of purchase, give rise to no public right and the public, as such, gains no right whatever, and therefore in the present case, there is no public right which can be
- 30 vacated or extinguished.

Lennig vs. Ocean City Association, 14 Stew., 609.

It is submitted that a person who pays a poll tax, only, in Ocean City, would have no standing to prevent the defendant Ocean City Association from erecting permanent

buildings or structures thereon or otherwise using said land inconsistent with said dedication, hence if the above contention be correct, then there was no public right capable of being vacated by Ocean City, in the land in question, and the ordinance and proceedings therein were void.

If the private right of the purchasers of lots in the dedicated lands becomes merged in the public right upon acceptance by the municipality as is queried in *Booream vs North Hudson*, 13 Stew., 554, and if there has been an acceptance then the act of March 30, 1904, and the resolutions and ordinance are all unconstitutional and void, because, in that case, they impair the obligation of the contract made by the purchase of the land aforesaid from the map and statements aforesaid; prosecutors contend that they are entitled to have said ordinance set aside, for the reason that it impairs the obligation of prosecutor's contract of purchase and renders the same less valuable in that no person can know, prior to the decision of a competent court, whether or not there is a public right in the lands in question, and whether or not the ordinance and proceedings taken by Ocean City in this cause have been effective in releasing this land from dedication, and thus throwing the large number of lots contained in the dedicated tract, in competition, for sale with prosecutors' adjoining land, and also, prosecutors are entitled to have the uncertainty which exists with relation to this tract of land between Fifth and Sixth streets determined, so that the purchasing public may definitely know whether or not said lands are to be subject of sale and exchange.

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It is admitted by the defendant-in-error that, as a general rule, the Legislature may provide for the vacating of the public rights in streets, etc. It is not denied but where the Legislature possesses the power to do so in the present instance. It is denied that the Legislature has the power to do so in the manner adopted in the present instance. It is

denied that the owner is the only person who can be heard to protest in view of the fact that this proposes to release ten thousand dollars of taxes due to the municipality, the defendant-in-error being the taxpayer.

10 It is insisted that the two acts of March 30, 1904, one found on page 366, by which this proposes to extinguish the public rights in the lands in question and the other by which it provides to extinguish the private rights of the land in question, must be read together and constitute but one act, the clear purpose of which is an effort on the part of the Legislature to impair the obligation of the contract entered into between the Ocean City Association and the various purchasers of land from them.

20 The plaintiffs-in-error urge that it is only the public rights that are to be vacated. The defendant reiterates that as part of this scheme to vacate the public rights, if such they are, the ordinance proposes to waive the collection of the ten thousand dollars of taxes due from Ocean City aforesaid and that the act does not contemplate the waiver of these taxes as a part of the scheme to vacate.

Admitting that the Legislative power is supreme with regard to the vacating of dedicated rights except when some special constitutional restriction prohibits and except where private rights are involved. It is contended that in the case at hand private rights are involved and, therefore, the vacation is not legal.

IV.

3 *Because the act of March 30, 1904, under which the above proceedings are had, is special and unconstitutional.*

This act, as will at once be observed, was passed as a general law, and not as a special law. It will be noticed that the act contains no provisions for condemnation of the owners' interest in the public dedication in the event that the owner refuses to consent.

It is contended on the part of the prosecutor that this act not law, is special; is not applicable to all of the citizens of this State alike, and, therefore, is unconstitutional.

It is unconstitutional, because whether or not it shall ever be effective, is left to the will of the owner of the land, who acts in his individual capacity, and in no manner as a part of the legislative machinery of the State. It is insisted that a mere private individual or corporation, who is not Governor, cannot call a law into effect. *An act of the Legislature approved by the Governor of our State, which depends for its existence or calling into effect on the will of a private individual, is not a law. It lacks that qualification which distinguishes law as a rule.* 10

In DeHart vs. Atlantic City, the question was whether an Act of the Legislature might be brought into effect by Common Council. The Court of Errors, 34 Vr., 223-225, said: "If the adoption of the act may be by a city council why not by a single official." Tested by the above case, and the case of State vs. Hammer, 13 Vr., 435, it is submitted that the act in question is special. 20

Of a rule Blackstone says, Vol. 1, star page 44: "It is distinguished from advice or counsel, which we are liberty to follow or not, as we see fit, and to judge upon the reasonableness or unreasonableness of the thing advised: Whereas our obedience to the law depends not upon our approbation; but upon the maker's will."

In the case at hand, it is at once apparent that as to the Ocean City Association, this Act of March 30th, 1904, is not a law. While it may be enforced against the people of Ocean City generally, its enforcement as against the Ocean City Association is not dependent upon the will of the maker, but dependent entirely upon the approbation of the Ocean City Association itself. 30

Again Blackstone says, Star page 45: "A law is a rule to distinguish it from a compact or agreement." The enforcement of the Act of March 30, 1904, is dependent

entirely upon compact or agreement between the municipality and Ocean City Association, for which reason it is contended that the act is not, in fact, a law. In other words, that it is unconstitutional.

It is contended that the validity of a referendum act is based on the fact that such act, when voted upon by the people of the State, or a designated portion thereof, shall become operative throughout the State, or every portion thereof to which it is applicable, if the majority of the people shall vote in favor thereof. In the case at hand
10 the legal voters of Ocean City may vote to vacate the public rights in Ocean City Camp Ground. The people of Vineland may vote to vacate the public rights in their park dedicated to public use. In the case of the Ocean City Association it may consent to such vacation, while the owner of the Vineland Park may refuse to consent, in which case the act, although called into effect by a majority of the voters of each municipality, fails to take effect in one for want of an individual's consent; but takes
20 effect in the other because that consent is given. It is submitted that such an act is not law, and in the case at hand is unconstitutional.

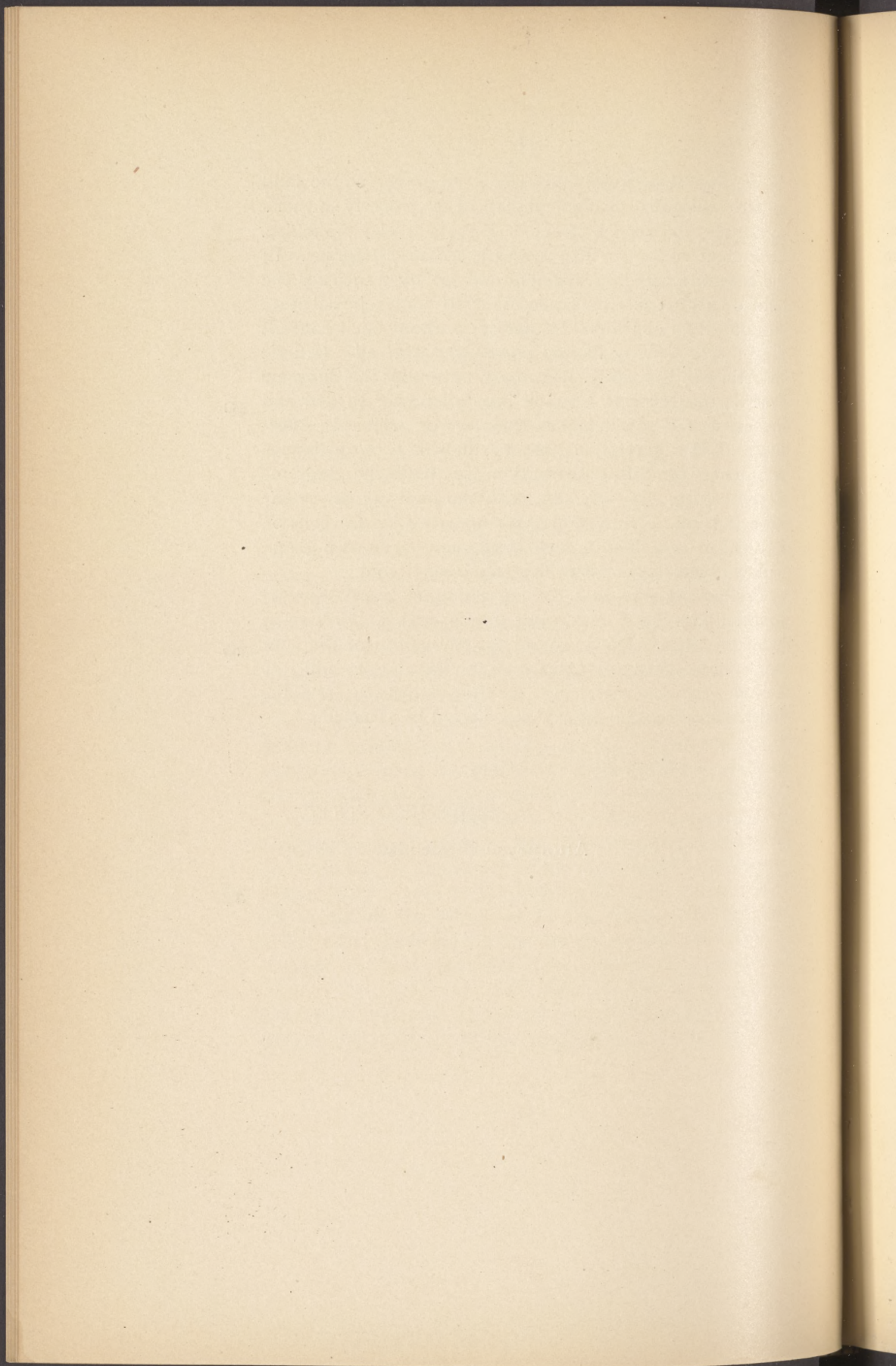
It is insisted by defendant in error that a general act must be binding when adopted by the Legislature, or if it be a referendum act, it must be binding on every citizen and corporation of that portion of the State whose vote calls it into effect, whether it met with the approval of a particular land owner or not. The power attempted to be conferred on the owner of the land in this act is even
30 greater with regard to the binding force of this act than the power of the Governor of the State. He has the power to consent to call the act into existence after its passage by the Legislature if he desires, if he does not consent the Legislature may enact it over his objection, but not so with the act in question, if the owners do not consent, then the act cannot possibly be put into effect.

The Supreme Court considered the power of the land owner analogous to the consent of a property owner's consent to improve a street or grant a trolley franchise. Defendant contends that they are not at all similar. In the case of street improvement and trolley franchises the land owner's consent is necessary to confer jurisdiction on council to consider the matter; without such consent the municipal body has no power to act at all. (*Currie vs. Atlantic City*, 66 N. J. L., 140), but under the Supreme Court's construction Council has full power to act, and the consent if given makes their act or ordinance effective; if not given, it renders their act or ordinance nugatory. In this construction we think the Supreme Court wrong. If the consent of the land owner, in the case at hand, is considered as conferring jurisdiction on Council to act, then it must have been previously given, and as it was not so given the ordinance is void. 10

Further, as was said by the Supreme Court, the act contemplates legal and lawful terms, and in the case at hand the terms clearly impair the obligation of the contract made between Ocean City Association and the various grantees, defendant in error being one, and the judgment of the Supreme Court should be affirmed. 20

Respectfully submitted,

BOURGEOIS & SOOY,
Attorneys of Defendant in Error.



New Jersey Court of Errors and Appeals.

OCEAN CITY LAND COMPANY,

Defendant in Error

-vs-

OCEAN CITY AND OCEAN CITY
ASSOCIATION

Plaintiffs in Error.

ON ERROR
TO SUPREME
COURT.

BRIEF FOR
PLAINTIFFS
IN ERROR.

STATEMENT OF FACTS.

The Ocean City Land Company, the prosecutor in the court below, sought to set aside a certain ordinance passed by city council of Ocean City, Cape May county, New Jersey, found on page 10 of the printed book. This ordinance was passed by said city council under and pursuant to chapter 205 of the laws of 1904, found on pages 366 &c., of the laws of 1904. By the ordinance in question the city of Ocean City endeavored to extinguish the **public** rights (i. e., the rights of said municipality) in a certain tract of land bounded by Fifth and Sixth streets, the Atlantic Ocean and Great Egg Harbor

Bay, excepting, however, the block bounded by Wesley and Asbury Avenues and Fifth and Sixth streets. It appears that about twenty-five years ago the Ocean City Association filed certain maps containing the words "park" and "camp ground," and that certain oral and written statements were claimed to have been made and published at that time, when lots were sold, by reason of which it has been claimed that said tract of land was dedicated to certain uses.

The dedication, if any, was a limited one, for specific purposes, and the fee to the land remained in said Ocean City Association. In *Lennig v. Ocean City Association*, 14 Stewart, 606, and *Bridge-water v. Ocean City Railroad*, 17 Dick. 276, which have been cited by the prosecutor, the courts of this state have held that by the filing of said maps, the issuance of certain publications and the making of certain statements, claimed to have been made by said Ocean City Association, an **implied covenant** was raised between said Association and the purchasers of lots from it according to said maps; that under said implied covenant a lot purchaser or his grantee might enjoin any use of said tract violative of said implied covenant.

Said tract, excepting that block known as the auditorium block, bounded by Asbury and Wesley Avenues and Fifth and Sixth streets, has **remained unimproved** from the foundation of the city. It is a **waste place** in the very midst of a thriving seaside resort. The ground has never been put to the use contemplated by the alleged dedication, for the very reason that people no longer dwell in tents. City

council of Ocean City, backed up by an almost unanimous vote of its citizens, (a vote of 486 to 28), **decreed that said tract could never be used for the purposes contemplated** by the alleged dedication; that it was a blot upon the city map and should by lawful means and without violating the rights of any individual, be turned to some useful purpose.

The act of 1904, chapter 205, provides that:

“Whenever within any city, town, township, borough or other municipality, any land dedicated or devoted, **wholly or partially**, to public use, shall be considered or deemed by the governing body of such municipality to be unsuited to or undesirable for such public use, or otherwise useless, burdensome or disadvantageous to the public or such municipality, said governing body shall have power and authority by ordinance and on such terms as it shall prescribe, **with the consent of the owner of the fee**, to vacate or extinguish the **public** rights in and to the said land and to restore the said land to the holder or holders of the legal fee thereof; freed and discharged from all **such public rights therein** as if such **public** rights therein had never existed.”

Said law then provides for referendum.

The prosecutor in the court below, sought to have said ordinance set aside, on the ground:

- a. That the owner of the fee did not consent thereto.

b. That the power to effect such dedication could not be delegated by the legislature.

c. That said ordinance impaired the obligation of private contracts.

d. That said act of 1904 is special and unconstitutional.

e. That said city council did not, before passing said ordinance, determine that said land was unsuited to or undesirable for said public uses.

f. That said land was never dedicated to public use.

g. That neither said legislature nor city council had any right to vacate said public rights.

PLAINTIFF'S CONTENTIONS.

The Plaintiff in error respectfully contends that the objections so raised are without force, and that the passage of said ordinance was a lawful exercise of power by said City Council, for the following reasons:

First. The rights created by the filing of said maps and the publication of said pamphlets, etc., are:

a. **In the dedicator.** It acquired the right to insist upon a use of the property in accordance with the terms of the dedication. One of the plaintiffs in

error, the Ocean City Association, was the dedicator, as well as the owner of the fee, at the time of the passage of said ordinance.

b. **In the public at large.** It acquired, if anything, an easement in said premises limited to the uses described in said dedication. If said municipal government has any interest therein, it would be as a trustee for the public at large in respect of this easement.

c. **In the purchasers of lots.** according to said filed maps. An implied covenant was raised in their favor to have said lot plot of ground used in accordance with the published statements and filed maps.

Second. Public Rights alone, are involved in this ordinance.

Neither the statute nor the ordinance passed by city council attempts in any way to destroy such **private** rights as lot purchasers may hold by virtue of said implied covenant. Said ordinance **extinguishes only that right of easement** in said plot which the **public at large** had acquired by reason of said maps and published statements. It in **nowise infringes any right**, contractual or otherwise, as between said Ocean City Association and any lot purchaser, his heirs or grantees.

Furthermore, said Ocean City Association, the original dedicator and the present **owner of the fee** to said property, **has consented** to the terms of said ordinance and is, in fact, a party to this suit. The

only effect of the passage of this ordinance is to extinguish whatever right the **public** at large may have to insist upon this tract of land being kept open and unimproved.

Third. Can such Public Rights, therefore, be extinguished? That is the sole question involved in this case. Plaintiffs in error insist that such public rights **can be extinguished** and were in fact extinguished by the ordinance in question, **because:**

1. As between the municipality and the public at large the **legislative power** respecting streets, public squares or commons, **is paramount** in the absence of:

- a. Any special; constitutional restriction, and
- b. Subject to the property rights of the abutting owner.

4th Ed. Dillon on Municipal Corporations,
Vol. 2, p. 776, paragraph 656.

2. While numerous cases will be found in the reports, and will no doubt be cited by the defendant in error, to show that under **certain conditions** a dedication once made cannot be avoided or changed, yet these cases, upon careful examination will resolve themselves into three classes, viz:

- a. Where an attempt is made to avoid a dedication **against the protest of the dedicator.** (In the present suit the dedicator and owner of the fee consents to said ordinance.)

b. Where lot purchasers according to a filed plan apply to a court of equity to enjoin the violation of an implied covenant raised by the filing of such maps and the purchase of lots in accordance therewith. (In the present suit such private rights are not touched: they must be eliminated by releases or otherwise.

c. Where public rights are sought to be vacated **without** first obtaining therefor proper legislative enactment. (In the present case, the municipal action is sanctioned by proper legislative enactment.)

3. In the present case:

a. Chapter 205, laws 1904, furnishes legislative sanction for municipal action.

b. There is no constitutional restriction forbidding such action.

c. The dedicator and the owner of the fee consents to such action.

d. The rights of lot purchasers under their implied covenants are not affected.

AUTHORITIES CITED.

Counsel may safely venture the assertion that no authority can be found under these circumstances to deny the right and power in the City of Ocean City to vacate or extinguish the rights of the Municipality in respect of said tract of land.

The case is somewhat analagous to the power of the legislature respecting streets and highways. If a street be dedicated, then not only does the public at large obtain an easement therein for travel, but **each individual and abutting owner** acquires a right therein peculiar to himself, by reason of which he can compel the authorities to keep said street open and give access to his property. The **state may abandon a public easement**, or right therein, or change the use; but cannot, except by the exercise of the power of eminent domain, close a street so as to deprive the owner of his easement of access. It will be noted that even this private right of the individual abutting owner may be condemned for public use under the state's power of eminent domain.

Dillon, 795, and note.

The legislature unquestionably has full power to vacate all public rights in the streets and highways of the various municipalities, or to invest the municipal corporations of the state with such authority.

Dillon, 4th. Ed., vol. 2, p. 794, par. 666.

• If the legislature has power to vacate the **public** easement in a street, it certainly has power to vacate the **public** easement in a plot of ground such as is claimed to have been dedicated in the present instance.

In *Kettle v. Fremont*, 1st. Neb., 329, a legislative act validating the action of the municipal authorities in vacating and changing the location of a public park was sustained.

See also *Hinchman v. Detroit*, 9th. Mich., 103.

The right to vacate the **public** easement need not be considered as vacating the **private** interests or estate of any citizen or lot holder. A city council may by ordinance, under legislative authority, vacate all **public** rights in a public highway but the **private** rights of abutting owners will not be extinguished by such ordinance.

The distinction between **public** easements and **private** rights is very clear.

“Public streets, squares and commons — — — — are for the public use, and the use is none the less for the public at large, as distinguished from the municipality, because they are situate within the limits of the latter, and because the legislature may have given the supervision, control and regulation of them to the local authorities. **The legislature of the state represents the public at large, and has, in the absence of special constitutional restraint, and subject to the property rights and easements of the abutting owner, full and paramount authority over all public ways and public places.** ..

See *Dillon*, 4th. Ed. vol. II. p. 776. par. 656.

So it is clear that the **public** rights in streets and parks and squares are one thing, and the **private** rights of **abutting owners** and other lot holders are quite another thing.

“Authority to discharge the **public** servitude in a street or public place must come from the legis-

lature; it does not of course adhere in a municipality."

Hoboken Land and Imp. Co., v. Hoboken, 36 N. J. Law, 540.

How this power may be conferred is stated in the case of the **State v. Elizabeth**, 37 N. J. Law, 432; and its scope in **Quinn v. Paterson**, 27 N. J. Law, 35.

The power of the legislature over public uses is discussed in **Newark v. Stockton**, 44 N. J. Equity 179.

It is true there is some distinction between a park purchased by condemnation or otherwise by the municipal authorities and a park which is dedicated by a private property holder. **But this distinction inheres to the benefit of the dedicator.**

"If the municipal corporation holds the full title to the ground for public uses, without restriction, the legislature may doubtless direct and regulate the purposes for which the public may use it. But if a grant be made by a proprietor of a town in laying it out for a specific and limited purpose, as, for example, a 'public square,' the municipality or public acquiring it upon a trust for the uses and purposes set forth on the plot or in the conveyance, it has been decided by the Supreme Court of Iowa that the grantor in such a case retains an interest therein of such a nature that it is not, **as against him**, within the power of the legislature to authorize its sale by the municipality, since such sale is a violation of the specific trust upon which the property was dedicated or acquired."

Dillon, 4th. Ed. vol. II., p. 770. par. 651.
 Citing Warren v. Lyons City, 22 Iowa, 351 and
 Clement v. Milwaukee, 55 Wis., 328.

In the **present** case doubtless the **owner of the fee** might object, but there is no attempt to make the present vacation without the consent of the owner of the fee.

In Warren v. Lyons City, 22 Iowa, 355-358, the court uses this language: "Whether the corporation might not be given the power to **part with whatever interest** is possessed in property thus dedicated, and what title would thus pass is a question not before us. The **city**, in this instance, **claims under the act the absolute right to control and sell this property**, insisting that the plaintiff could not be heard either as an original proprietor or owner of the lots fronting on the square, to deny such a right. This position is untenable."

In that case it will be noted that there was an attempt to vacate **all rights, public** as well as private, in the land in question.

The act in question there only gave the right to sell the **city's title**, and yet the city authorities under that act claimed that the proprietor, that is, the owner of the fee, or any lot holder, could not be heard to dispute such claim.

In the case now before the court there is no attempt to vacate **private** rights. **Public** rights alone are extinguished.

It would seem, therefore, that the power of the legislature to pass this act cannot be questioned, because if any right or title is impaired by this act it is the right and title of the state alone.

WHERE SUPREME COURT ERRED.

Fourth. While the Supreme Court by its judgment set aside said ordinance, plaintiffs in error submit that the error in said judgment is not one of law, but results from an apparent misconception of the facts. The learned Justice who filed the opinion of the Supreme Court waives aside all of the objections raised by the prosecutor in the court below, and holds:

1. That the owner of the fee did properly consent.
2. That the powers conferred upon municipalities under said act of the legislature were lawfully delegated by the legislature.
3. That said act of the legislature, (chapter 205 of the laws of 1904), is not special legislation.
4. That said act of 1904 is constitutional.
5. That said city council did determine, as required by law, that said lands were unsuited to and undesirable for the public use to which they were dedicated, etc.
6. That it was not necessary to decide whether there had been any dedication to public use in order

to sustain said ordinance.

But the learned Justice unquestionably misconceived the true meaning and effect of said ordinance, because he assumed that the passage of said ordinance called for an extinguishment of private rights. The learned Justice says, in his opinion, (bottom of page 74 of paper book): "The public rights in question are vacated by the ordinance upon these terms, viz: that the Association conveys to the city eighteen lots upon which the public right existed and that the Association is to make improvements upon the land vacated, etc. These terms assume that when the ordinance is passed and the public right vacated, that the Association will have a right to deal with the land vacated in such a way as it shall choose."

The learned Justice then holds that: "The manner in which the power conferred upon the municipality by the legislature has been exercised renders their action void." (Page 74 of Printed book.)

We respectfully submit that such an assumption is unwarranted under a careful reading of the ordinance.

Section 3 of this ordinance page 13, line 31, of the printed book provides "and on the proper and lawful removal of the said alleged dedications and restrictions, the Ocean City Association shall convey, etc."—Note particularly the word "and" in the ordinance which was apparently overlooked by the court below; note also the distinction between the

vacation and extinguishment of all **public** rights and the proper and lawful removal of the alleged dedications and restrictions (the **private** rights) now affecting this land.

There is to be no conveyance **except** the board-walk deed until these **private** dedications are properly and **lawfully** removed. Page 14, line 13 of the book.

We find the same preliminary requisites necessary on the same page, lines 22 and 23, before any improvements are to be made on the land vacated.

This conveyance and these improvements **are not to be made** merely on the vacation of the **public** rights, **but** on the proper and lawful removal of the dedications and restrictions. So that **all private** rights **are fully and amply protected**. Until these **private** rights (obtained by these alleged dedications) are taken care of and lawfully and properly removed no improvements are to be made.

The ordinance clearly distinguishes between the **public** rights to be vacated thereby and the other dedications(**private** rights and easements) which must be removed by releases or otherwise before any use is made of the land in question. Page 14 of printed book lines 22, 23, 24.

So, while the Supreme Court sustained the Legislative enactment as a proper delegation of power to the Municipality and the right of the Municipality to act thereunder, it overlooked the fact that the Stat-

ute and the Ordinance passed under it in express terms are limited in their effect to Public Rights Alone. It was never contemplated by City Council, that any Private rights should be effected by said ordinance. Said private rights were to be otherwise removed. As a matter of fact large numbers of lot owners in Ocean City have already signed deeds of release releasing such rights, if any, as they may have in said tract.

PROSECUTOR'S REASONS IN COURT BELOW.

Fifth. The reasons filed by the prosecutor in the court below for setting aside said ordinance will be briefly referred to.

1. The owner of the fee has already consented to such extinguishment and the passage of said ordinance; but even if such consent had not been given, defendant in error cannot object, because the said owner of the fee alone would be injured by such failure to consent, and defendant in error could not take advantage thereof.

a. Said statute does not fix the time when such consent must be given. But it would seem from a reading of the act that it was intended that such consent should be given after the election was had.

b. But said Ocean City Association, the owner of the fee, acted on the matter at once, and executed

the easement deed for the boardwalk bearing date October 11. (Page 60 of printed book.) Said deed was made and executed prior to the application for the allowance of a writ of certorari in this case. In any event, the consent of the said Ocean City Association was given both to the original and the modified propositions, and that previous to the passage of said ordinance. (See minutes of said Association, pages 62, 63 and 64 of printed book.) The executive committee of said Association had power to act in the premises. (See page 61 of printed book.) Said executive committee agreed to said ordinance exactly as it was passed. It reported to the board, which unanimously approved of said ordinance. (Page 64.)

Mr. Lake, president of said Association, also reported to the authorities of Ocean City the fact that said ordinance was accepted and approved by said Association.

2. If by this reason it is contended that public rights cannot be extinguished, it is contrary to the authorities as above cited. If it is based on the assumption that private rights are to be destroyed, it has no application, because private rights are not touched, either by said statute or by said ordinance.

3. The answer to reason 2 applies equally to reason 3.

4. It is difficult to see on what theory said act of the legislature can be considered special. It applies to every city and municipality in the state.

The Supreme Court, in its opinion holds that it is general.

5. Common council, in the very ordinance passed, determined that said lands were unsuited to and undesirable for such public use, and that the maintenance of the same in its present condition was otherwise burdensome and disadvantageous to the public use, etc. (Page 12, bottom, printed book.) Even though this determination were not expressly stated in the ordinance, yet the mere fact that council passed such an ordinance would carry the inference that it had first determined that said tract was in its present condition a nuisance.

6. If in fact there was no dedication, then there is no reason for objection on the part of the Ocean City Land Company. If there has been a dedication, the passage of the act and the ordinance were legal and proper. Under the Lennig and Bridge-water cases, mentioned herein, the public apparently had some interest in said plot by reason of the filing of said maps. Whatever interest it had is extinguished by said ordinance.

7. As has already been shown, it is within the competency of the legislature to cut out the rights of the public at large in streets, etc. Its power over the same is supreme. Such power, it can delegate to a municipal corporation. If no rights existed in the public with respect to said tract, then the objection by the defendant in error is without force. In either event, the defendant in error is not harmed by the ordinance in question.

CONCLUSIONS.

The plaintiffs in error therefore respectfully submit that the objections raised by the defendant in error are without force and that the action on the part of the common council of Ocean City was a proper and legal exercise of its power. It would seem that the Supreme Court would have arrived at this conclusion had the facts stated in the ordinance not been misunderstood.

The people of Ocean City as shown by their votes, are strongly of the opinion that the interests of that city demand the improvement of the tract of ground in question. It is an eyesore to the community. It cannot be used, and never has been used as contemplated by the original dedicator. The municipality wishes to release whatever interest it may have in said tract. The citizens of Ocean City for their part as individuals are executing releases of their private rights in respect thereof. The rights of the public are to be eliminated by the passage of the ordinance and its acceptance by a vote of the people. The private rights are to be eliminated by the execution of releases by those in whom such private rights reside. The passage of the ordinance was simply one step in a scheme to accomplish the above mentioned purpose.

For the reasons above stated the judgment of the Supreme Court should be reversed.

Respectfully submitted,

BLEAKLY & STOCKWELL,

Counsel for plaintiffs in error.

The ordinance does not attempt to waive the collection of any taxes. The original proposal contained this proposition but the ordinance never did and it was this ordinance which the owner of the fee accepted. See pages 64 and 65 of book.

What the owner of the fee originally proposed was one thing. What Council passed and what the owner finally agreed to was another thing entirely.

CONCLUSIONS

The results of the experiments conducted in this laboratory have shown that the error in the measurement of the length of a rod is not due to the expansion of the rod, but to the expansion of the scale. This is because the scale is made of a material which expands more than the rod. The error is therefore a function of the temperature and the coefficient of expansion of the scale. It is found that the error is of the order of 0.001 mm per degree Celsius for a scale of steel. This error is negligible for most practical purposes, but it becomes important in high-precision work. The error can be eliminated by using a scale of a material which has the same coefficient of expansion as the rod. This is usually done by using a scale of invar, which has a very low coefficient of expansion. The error is then reduced to a negligible amount.

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THE HISTORY OF THE
CITY OF BOSTON

1780

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NEW JERSEY SUPREME COURT.

NEW JERSEY, to wit.

The State of New Jersey, to T. Lee Adams,
[SEAL] Clerk of the Common Council of the City of
Ocean City, and Ocean City Association,
Greeting:

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We being willing, for certain reasons, to be certified of a certain proposition made to the City of Ocean City by the Ocean City Association on or about the tenth day of October, nineteen hundred and four, and of certain resolution approved by said Common Council on the tenth day of October, nineteen hundred and four, and of a certain other resolution approved by said Common Council on the eleventh day of October, nineteen hundred and four; and of a certain ordinance entitled, "An ordinance relative to the vacation of certain lands situate, lying and being at Ocean City, Cape May County, New Jersey, between Fifth and Sixth streets and extending from the Atlantic Ocean to Beach Thoroughfare, dedicated to public use, and the extinguishment of all public rights therein," approved October eleventh, nineteen hundred and four; and of a certain notice to Ocean City voters by Ocean City.

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We do command you that the said proposition of the said Ocean City Association, the said two resolutions aforesaid and the said ordinance aforesaid, and the said notice to Ocean City voters aforesaid, with the records of the meetings of the said Common Council at which said resolutions and ordinance were introduced and passed, together with all things touching and concerning the

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passing, approving and enacting of same and each of them, as fully and entirely as before you they remain, to our Justices of the Supreme Court of Judicature, at Trenton, on the eighteenth day of November, nineteen hundred and four, you certify and send, together with this writ that therein may be done what of right and according to the laws of this State should be done.

Witness, William S. Gummere, Esquire, Chief Justice
 of our Supreme Court, at Trenton, this first day of
 10 November, 1904.

WM. RIKER, JR.,
 Clerk.

CHAS. C. BABCOCK,
 G. A. BOURGEOIS,
 Attorneys of Prosecutor.

In obedience to the command of this writ to me
 20 directed, I do hereby certify and send to the Honorable
 Justices of the Supreme Court of Judicature of New
 Jersey within named the record of the minutes of Council,
 the ordinance and resolution and notice within mentioned,
 together with all things touching and concerning the same,
 as fully and entirely as before me they remain.

T. LEE ADAMS,
 City Clerk.

NEW JERSEY SUPREME COURT.

OCEAN CITY LAND COMPANY,	}	Writ of	
Prosecutor,			
vs.	}	Certiorari.	10
OCEAN CITY, ET AL.,			
Defendant.	}		

Returnable November 18, 1904.

C. C. BABCOCK and G. A. BOURGEOIS,
Attorneys for Prosecutors. 20

This writ is allowed, but shall not act as a stay of the submission of the question provided for in said ordinance to the voters of Ocean City on November 8, 1904. Let it be sealed. In open court.

JONATHAN DIXON,
Justice Supreme Court.

NEW JERSEY SUPREME COURT.

<p>OCEAN CITY LAND COMPANY,</p> <p style="text-align: center;">Prosecutor,</p> <p style="text-align: center;">vs.</p> <p>10 OCEAN CITY, ET ALS.,</p> <p style="text-align: center;">Defendants.</p>	}	<p>On Certiorari</p> <p>Order.</p>
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A writ of certiorari having been allowed in the above stated cause, by this Court on the first day of November, nineteen hundred and four;

20 It is, on this twenty-first day of November, nineteen hundred and four, on motion of Charles C. Babcock and G. A. Bourgeois, attorneys of prosecutor, ordered that all the parties to said writ are hereby authorized to take testimony touching the matters mentioned in said writ, to be read upon the argument thereof before the Court, upon two days' notice given to the other parties mentioned therein.

F. J. SWAYZE,
Justice Supreme Court.

We consent to the making of the above order.

30 JOSEPH THOMPSON,
Attorney of Ocean City.

H. F. STOCKWELL,
E. G. C. BLEAKLEY,
Attorneys of Ocean City Association.

Extract from minutes of Common Council of Ocean City, adjourned regular meeting of October 10, '04.

Page 48.....A communication was received from the Ocean City Association and read by the Clerk, proposing terms on which the Council would co-operate with the Association in removing the restrictions on the Camp Ground.

PROPOSITION.

To the City Council of the City of Ocean City,

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Gentlemen:—

The Ocean City Association desires to call the attention of your honorable body to the unimproved tract of land in the heart of our city, owned by our Association lying between Fifth and Sixth streets and extending from the bay to the ocean.

It is unnecessary to more than mention to your honorable body the fact that this large tract of land in the very heart of our city has never been improved and remains to this day an eyesore to the community-at-large, owing to an alleged dedication to certain specific uses when Ocean City was laid out.

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Our citizens have been for some time impressed with the necessity of a proper use being made of this property. The square in the centre of this tract has been set apart for the Auditorium and such other buildings as may be necessary and proper for the promotion of the camp meetings and other religious and educational purposes.

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The public have come to the conclusion that the best interests of the city demand that the balance of this tract shall be put to some use which will be a benefit to the citizens of Ocean City and those who make this city their summer home.

We feel also that it should either be devoted by our Association to that use for which it was originally set apart, as determined by our courts or that steps should be taken to remove the alleged limitation upon its use and the property be improved as its location demands.

We have been asked by many of the most prominent business men of our community and by those who have the welfare of Ocean City at heart, if some arrangement could not be made whereby the latter course could be
 10 pursued, their thought being that the progress of Ocean City in the past has been materially hampered by this waste land in the heart of the city; that the surrounding property values have been kept down, and the taxable property of our community has not advanced as it should have done, owing to the unsightly character of this unimproved tract.

The matter has been given careful consideration by our Association with the result that we have deemed it our duty to submit to your honorable body for its con-
 20 sideration the proposition hereinafter named.

At the outstart, it should be clearly understood that the fee of this property is in our Association. The city has no interest therein saving as trustee for the public to see that this plot is used, while the limitation remains, as a camp meeting ground.

It lies within the power of our city, however, by co-operation with our Association, to remove this restriction placed upon the use of this property. We, therefore, make the following proposition:

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1. Remove from this camp meeting plot the alleged dedication or restriction now affecting the same, so that this tract may be improved by the erection of large and substantial buildings; and,

2. Give to our association a receipt for, or release in full from liens for taxes, assessments, or charges in the nature thereof, that may be claimed by the city to effect said plot, up to the date of settlement under this proposition, so that there shall remain outstanding no financial difference between our Association and the city, the Association will thereupon deed to the city five (5) lots on the southeasterly side of Ocean avenue, and five (5) lots on northwesterly side of Atlantic avenue, adjoining Fifth street; and eight (8) lots on the northwesterly side of West avenue adjoining either Fifth or Sixth streets, or if the city prefers, instead of the eighteen lots aforesaid, we will deed the following twenty-four lots, viz: eight (8) lots on the northwesterly side of Asbury avenue, and eight (8) lots on the southeasterly side of West avenue, adjoining either Fifth or Sixth street, and eight (8) lots on the northwesterly side of West adjoining either Fifth Sixth streets.

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It being understood that said lots so to be selected shall be used for city purposes and not for ball or athletic grounds.

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In addition to the above, and upon the accomplishment of the removal of the said restriction, if the city will build a high school building on a portion of the ground so selected by it, costing at least \$25,000, our Association will contribute \$10,000 in cash or its equivalent, toward the erection of said building; also if the city will secure the erection of a library building on one or more of the said lots so selected, by Mr. Carnegie, or otherwise, said building to cost not less than \$20,000, then our Association will present to the city, to be placed in said library building, \$2,000 worth of choice library books.

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Or if the city does not care to have the high school and library buildings as referred to above but prefers to use the present school building as a high school building,

and to erect two buildings for primary schools, one north of Sixth street, and the other south of Ninth street, we will contribute in cash or its equivalent toward the erection of said two school buildings \$10,000.

And we will also pay the sum of two thousand dollars, if necessary, toward the expenses of clearing the title to this property, provided that we may employ our own attorneys out of said sum of \$2,000, and whatever portion of said sum of \$2,000, is not used or expended in clearing said title and paying said attorneys we will add to the \$10,000 sum above mentioned, to be used in the erection of said school buildings.

Our Association will also, upon the removal of said restriction as above set forth, and within one year from the date thereof, make improvements on this camp ground plot aggregating at least \$10,000.

This proposition must be accepted by the city on or before December 1st, 1904, or it shall be considered as void.

This limitation is made because it is important that some move should be made at once, one way or the other.

We trust that your honorable body will see its way clear to bring about these many improvements for the benefit of Ocean City and her citizens:

A new high school.

A new public library.

Thousands of dollars of valuable property deeded to the city.

\$10,000 in cash in the city treasury.

\$2,000 worth of library books.

\$10,000 worth of improvements.

Thousands of dollars each year in taxes, where none are now received.

These, it seems to us, are considerations which should move your honorable body to speedy action in this mat-

ter and the Ocean City Association as owner of the legal fee in said land thereby consents to said vacation and extinguishment of said public rights on the terms herein set forth.

Respectfully submitted,
(Signed), S. WESLEY LAKE,
President of Ocean City Association.

Page 49.....Motion—Headly, sec. J. C. Steelman communication be received and filed by the clerk; so ordered.

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Motion—Headley, the following resolution be adopted, motion seconded by H. Steelman.

Resolved, that the proposition of the Ocean City Association just submitted in reference to the vacation of the public rights in and to certain lands at Ocean City between Fifth and Sixth streets and extending from the Atlantic Ocean to Great Egg Harbor Bay, excepting that block of land between Fifth and Sixth streets and Wesley and Asbury avenues and the removal of the present alleged dedication and restrictions therefrom, be accepted and that the city elect to take, under item two of said proposition the first eighteen (18) lots mentioned, instead of the last twenty-four (24) lots mentioned in said item, and that the city also elect to erect two school buildings instead of a high school and a library building, and that with these elections, the other propositions and agreements of the said Ocean City Association be accepted; provided, however, that the Ocean City Association shall also, in addition to the considerations named in said proposition, sign an agreement with the City of Ocean City, to permit the said City of Ocean City to build a plank or board walk of the uniform width of thirty-two (32) feet over and across such property as the Ocean City Association owns on the beach front in the City of Ocean City, New Jersey, be-

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tween Fifth street and Seventeenth street, according to the plan proposed with the other lot owners in Ocean City, subject, however, to the restrictions contained in the Ocean City Association deeds, as may be provided in the ordinance so passed vacating said public rights

Adopted at Council Chamber this 10th day of October, A. D. 1904.

(Signed),

GEORGE O. ADAMS,
President of Council.

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Certified to this 10th day of October, A. D. 1904.

(Signed),

T. LEE ADAMS,
City Clerk.

[SEAL]

Approved this 10th day of October, A. D. 1904.

(Signed),

JOSEPH G. CHAMPION,
Mayor.

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Page 50.....Geo. O. Adams, M. W. Adams, N. C. Godfrey, H. Steelman, W. S. Graham, J. C. Steelman, H. Headly, voting aye, the resolution was declared adopted.

Graham introduced an ordinance relative to the vacation of certain lands in Ocean City, between Fifth and Sixth streets and the Atlantic Ocean and Great Egg Harbor Bay, and the extinguishment of all public rights therein.

Ordinance then read by clerk.

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An ordinance relative to the vacation of certain lands situate, lying and being at Ocean City, Cape May County, New Jersey, between Fifth and Sixth streets, and extending from the Atlantic Ocean to Beach Thoroughfare (an arm of Great Egg Harbor Bay) dedicated to public use, and the extinguishment of all public rights therein.

Whereas, in laying out Section A at Ocean City, New

Jersey, on the plan of lots of the Ocean City Association, on or about the ninth day of June, 1880, the said Ocean City Association recorded a map called "Section A Ocean City," in the Cape May County Clerk's Office, which said map is dated May 22, 1880, and which said map shows an open space between Fifth and Sixth streets, marked "Camp Ground;" in the centre of the block;

And whereas, in 1881 the said Ocean City Association issued a pamphlet, called the "Ocean City Annual," which contained the first annual report of the president of said Association, and which referred to said camp ground, and which also referred to said map, "Section A," comprising 995 lots, besides the camp ground, tenting ground and parks; 10

And whereas, in the year 1882, the said Association again published a pamphlet called the "Ocean City Annual," and referred to the camp ground park as follows: "The camp ground park extending from Fifth to Sixth streets and from Asbury to Wesley avenues, has been fully graded and laid out into plots, etc.," in which last mentioned pamphlet was also contained a printed plan of a portion of the camp ground park referred to, and on which plan was printed the words "Park," "Auditorium," and "Grove," etc.; 20

And whereas, on or about the seventeenth day of April, 1883, the said Association filed another map in the Cape May County Clerk's Office, showing Sections A, B and C of said tract, on which map the space between Fifth and Sixth streets is indicated to be open from the bay to the ocean, making in all; seven blocks; 30

And whereas, two of said blocks within said open space are marked "Park," and one of them is marked "Grove," and the block between Wesley avenue and Asbury avenue and Fifth and Sixth streets is marked with the words "Auditorium," and "Camp Ground;"

And whereas, it is alleged and claimed that the whole of said lot of land between Fifth and Sixth streets and extending from the Atlantic Ocean to said Great Egg Harbor Bay, or an arm or part thereof, at Ocean City as aforesaid, has been wholly or partially dedicated or devoted to public use by virtue of the above maps, publications and other acts of the said Associations;

10 And whereas, all of said land, excepting the square or block bounded by Wesley and Asbury avenues and Fifth and Sixth streets is deemed by the governing body of the city to be unsuited to and undesirable for such public use, and the maintenance of the same in its present condition considered to be otherwise burdensome and disadvantageous to the public and the said municipality;

20 Now therefore, in pursuance of the provisions of an act of the legislature of the State of New Jersey, entitled "An act relative to the vacation by the governing body of any city, town, township, borough or other municipality of this State of any land situated in such municipality and wholly or partially dedicated or devoted to public use, and the extinguishment of all public rights therein." Approved March 30th, 1904;

30 Be it ordained by the Common Council of Ocean City: Section 1. That the said plots or blocks of ground at Ocean City, located between Fifth and Sixth streets and extending from Beach Thoroughfare (an arm or part of Great Egg Harbor Bay) to the Atlantic Ocean, with the exception of the square or block bounded by Wesley avenue and Asbury avenue and Fifth and Sixth streets, are, in their present condition, unsuited to and undesirable for public use, and the maintenance of the same in their present condition is considered to be otherwise burdensome and disadvantageous to the public and the said municipality.

Section 2. That with the consent of the Ocean City

Association, the owner of the legal fee of said ground, and in consideration of the said owner of the fee making certain payments, grants and conveyances hereinafter set forth, and the rights of the public and the municipality of the City of Ocean City and all other public rights, other than those of the holder of the fee be and they are hereby vacated and extinguished in and to all of the said tract of land located at Ocean City, Cape May County, New Jersey, aforesaid, bounded and described as follows, viz: On the east by the Atlantic Ocean, on the west by Beach Thoroughfare, which is a part or arm of Great Egg Harbor Bay; on the north by Fifth street, and on the south by Sixth street, excepting, however, all that block or square included between Wesley and Asbury avenues and Fifth and Sixth streets and that the said lot of land and premises aforesaid, with the exception aforesaid of said block or square above mentioned, be and the same are hereby restored to the Ocean City Association, the holder of the legal fee thereof, freed and discharged from all public rights thetsein as if such public rights therein had never existed, as provided in and by an act of the Legislature of the State of New Jersey, entitled, "An act relative to the vacation by the governing body of any city, town, township, borough or other municipality of this State of any land situated in such municipality and wholly or partially dedicated or devoted to public use, and the extinguishment of all public rights therein." Approved March 30th, 1904;

Section 3. That in consideration of such vacation and extinguishment and on the proper and lawful accomplishment thereof, and on the proper and lawful removal of the said alleged dedications and restrictions, now affecting the same, the said Ocean City Association shall convey by deed, in the usual form of the said Ocean City Association deeds, to the said City of Ocean City, five (5) lots

located on the southeasterly side of Ocean avenue, and five (5) lots located on the northwesterly side of Atlantic avenue, adjoining Fifth street, all of which said ten lots are fifty (50) feet in front by one hundred and thirty (130) feet in depth; and also eight (8) lots on the northwesterly side of West avenue, adjoining Sixth street, having a frontage of two hundred and fifty (250) feet on West avenue, by a depth on Sixth street of one hundred (100) feet; that the conveyance of said eighteen lots shall be
10 subject also to the restriction that none of them shall be leased or used for baseball, football or other athletic purposes; that as a further consideration for the vacation and extinguishment of said public rights and on the proper and lawful removal of said dedications and restrictions the said Ocean City Association is to contribute and pay the sum of ten thousand dollars (\$10,000) in cash to the City of Ocean City, to be used in the erection of two school buildings, one to be located north of Sixth street, and the other south of Ninth street; that as a further
20 consideration for the vacation and extinguishment of said public rights, the said Ocean City Association, within one year after the proper and lawful removal of said dedications and restrictions and the vacation and extinguishment of said public rights as above set forth, is to make improvements on the land so vacated, by the erection of houses or other buildings thereon to the amount of at least ten thousand dollars; and that as a further consideration and extinguishment of said public rights, and immediately after the passage of this ordinance, and the
30 adoption of a resolution directing the submission of the said proposition to so vacate and extinguish said rights, to the voters of Ocean City for their approval at the next November election, the said Ocean City Association is to grant and convey, subject to the Ocean City Association deed restrictions, the right to the said municipality

of "Ocean City" to erect a plank or boardwalk of a uniform width of thirty-two (32) feet, over and across any of the property of the Ocean City Association, at Ocean City aforesaid, on the beach front between Fifth and Seventeenth streets according to the proposed plan of said municipality.

Section 4. That the proposition contained in the three preceding sections of this ordinance shall not operate to effect said vacation and extinguishment of the public rights in the said lands above described until the same shall have been submitted to and approved by a majority of the qualified voters of the City of Ocean City voting at the general election for members of the Assembly, to be held on the 8th day of November, A. D. 1904, public notice of the submission of which proposition shall be given by advertisements, signed by the clerk of the said City of Ocean City and posted in at least ten (10) public places in the said city, and also published in at least two newspapers printed or circulating in said city, at least twenty (20) days before such election.

Section 5. That the proposition to be so submitted shall be worded and printed on the ballots used at the said election as follows: "For" or "Against" the vacation and extinguishment of the public rights in and to all the following described lot of land, situate in the City of Ocean City, County of Cape May, New Jersey, bounded on the east by the Atlantic Ocean, on the west by Beach Thoroughfare, which is part or arm of Great Egg Harbor Bay; on the north by Fifth street, and on the south by Sixth street, excepting, however, all that block or square included between Wesley and Asbury avenues, and Fifth and Sixth streets.

Section 6. That this ordinance shall take effect at once.

Adopted at Council Chamber this 11th day of October,
A. D. 1904.

(Signed),

GEORGE O. ADAMS,
President of Council.

Certified to this 11th day of October, A. D. 1904.

(Signed),

T. LEE ADAMS,
City Clerk.

[SEAL]

10 Approved this 11th day of October, A. D. 1904.

(Signed),

JOSEPH G. CHAMPION,
Mayor.

Minutes, page 50.....Motion—H. Headley, seconded
by H. Steelman, ordinance be accepted on first reading
and laid over. So ordered.

Extract from minutes of Council, special meeting of
October 11th, 1904.

The call being, to pass ordinances; to pass resolutions.

20 Page 51.....Motion by H. Headly, seconded by J. C.
Steelman, camp ground ordinance be taken up on second
reading. So ordered.

Ordinance then read.

Motion by H. Steelman, seconded by H. Headly, ordin-
ance be accepted on second reading and passed to third
and final reading. So ordered.

Ordinance then read.

30 Motion by H. Headly, seconded by H. Steelman, ordin-
ance be accepted as read, and take usual course of passed
ordinances. So ordered. G. O. Adams, M. W. Adams,
N. C. Godfrey, H. Steelman, J. C. Steelman and H.
Headly voting "aye." W. S. Graham, absent.

Motion of H. Headly, seconded by J. C. Steelman, the
following resolution be adopted:

Whereas, an ordinance entitled, "An ordinance relative
to the vacation of certain lands, situate, lying and being at

Ocean City, Cape May county, New Jersey, between Fifth and Sixth streets, and extending from the Atlantic Ocean to Beach Thoroughfare (an arm of Great Egg Harbor Bay), dedicated to public use, and the extinguishment of all public rights therein," has been adopted by the Common Council (being the governing body) of the City of Ocean City; Now, therefore, be it

Resolved, that the proposition contained in said ordinance shall be submitted to the qualified voters of the City of Ocean City at the general election for members of the Assembly, to be held on the 8th day of November, A. D. 1904, and the vote on said proposition shall be taken at such election according to the provisions of an act of the Legislature of the State, entitled, "An act relative to the vacation by the governing body of any city, town, township, borough or other municipality of this State of any land situated in such municipality and wholly or partially dedicated or devoted to public use, and the extinguishment of all public rights therein." Approved March 30th, 1904. 10

Adopted at Council Chamber this 11th day of October, A. D. 1904. 20

(Signed),

GEORGE O. ADAMS,
President of Council.

Certified to this 11th day of October, A. D. 1904.

(Signed),

T. LEE ADAMS,
City Clerk.

[SEAL]

Approved this 11th day of October, A. D. 1904. 30

(Signed),

JOSEPH G. CHAMPION,
Mayor.

Resolution declared adopted, G. O. Adams, M. W. Adams, N. C. Godfrey, H. Steelman, J. C. Steelman, H. Healdy voting "aye." Graham absent.

Minutes, page 52.....Motion by Headly, seconded by H. Steelman, that the following resolution be adopted:

Resolved, that the attached form of notice to the legal voters of Ocean City be posted in at least ten (10) conspicuous places in Ocean City for at least twenty (20) days before November 8th, and be published in two newspapers in Ocean City at least twenty (20) days before November 8th.

10

NOTICE TO OCEAN CITY VOTERS.

Take notice that pursuant to an act of the Legislature of this State, entitled, "An act relative to the vacation by the governing body of any city, town, township, borough or other municipality of this State of any land situated in such municipality and wholly or partially dedicated or devoted to public use, and the extinguishment of all public rights therein." Approved March 30th, A. D. 1904, an ordinance, entitled, "An ordinance relative to the vacation of certain lands situate, lying and being at Ocean City, Cape May County, New Jersey, between Fifth and Sixth streets, and extending from the Atlantic Ocean to Beach Thoroughfare (an arm of Great Egg Harbor Bay) dedicated to public use, and the extinguishment of all public rights therein," was on the 11th day of October, 1904, duly passed and adopted by the Common Council of Ocean City, and that under said ordinance it is proposed to vacate and extinguish all public rights in and to all that tract of land in Ocean City, New Jersey, located between Fifth and Sixth streets and extending from the Atlantic Ocean to Beach Thoroughfare (an arm of Great Egg Harbor Bay), as provided in said ordinance.

And take further notice that the proposition to so vacate and extinguish such public rights will be sub-

mitted to the qualified voters of Ocean City for their approval at the general election for members of Assembly to be held in Ocean City on November 8th, 1904, and that the proposition to be so submitted will be worded and printed on the ballots used at said election as follow:

“For”

or

“Against”

“The vacation and extinguishment of the public rights in and to all the following described lot of land, situate in the City of Ocean City, County of Cape May, New Jersey, bounded on the east by the Atlantic Ocean, on the west by Beach Thoroughfare, which is a part or arm of Great Egg Harbor Bay; on the north by Fifth street and on the south by Sixth street, excepting, however, all that block or square included between Wesley and Asbury avenues and Fifth and Sixth streets.”

Resolution declared adopted, G. O. Adams, M. W. Adams, N. C. Godfrey, H. Steelman, J. C. Steelman, H. Headly, voting “aye.”

20

Motion by Headly, seconded by H. Steelman, that clerk have resolutions and ordinance and notice printed, and notice posted in accordance with resolutions. So ordered.

I hereby certify that the above is a true abstract from the minutes of Council of all matters relating to the proposition of the Ocean City Association, together with a copy of the proposition submitted by the Ocean City Association, the resolution accepting the proposition, the ordinance, the resolution to submit the question to the voters of Ocean City, and the resolution defining the form of notice to the voters of Ocean City.

30

Dated, November 10th, 1904.

T. LEE ADAMS,
City Clerk.

[SEAL]

NEW JERSEY SUPREME COURT.

	OCEAN CITY LAND COMPANY,	}	On Certiorari.
	Prosecutor,		
	vs.		}
10	OCEAN CITY, ET ALS.,		
	Defendants.		

Prosecutor prays that ordinance of Common Council, entitled "An ordinance relative to the vacation of certain lands, situated, lying and being at Ocean City, Cape May County, New Jersey, between Fifth and Sixth streets, and extending from the Atlantic Ocean to Beach Thoroughfare (an arm of Great Egg Harbor Bay), dedicated to public use, and the extinguishment of all public rights therein," approved October 11th, 1894, together with the result of the election held on the 8th day of November, 1904, in so far as it affects the question aforesaid, and all acts and things touching and concerning the vacating and extinguishment of the public rights in the lands mentioned in said ordinance, be set aside and for nothing holden, for the following reasons:

1. Because no consent to the proposed vacation of the public rights aforesaid was obtained from the owner of the fee.
2. Because the power to vacate a dedication cannot be delegated by the Legislature.
3. Because the dedication in question cannot be

vacated by the Legislature without impairing the obligation of private contracts.

4. Because the act of March 30th, 1904, under which the proceedings are had, is special and unconstitutional.

5. Because the Common Council, at or before the passing of the ordinance aforesaid, did not determine that said lands were unsuited or undesirable for the public use to which they were dedicated, or that they were otherwise useless, burdensome or disadvantageous to the municipality. 10

6. Because the land in question has not been dedicated to public use.

7. Because there is no public right to vacate either by the Legislature or Common Council or the people, in the lands in question.

C. C. BABCOCK,
BOURGEOIS & SOOY, 20
Attorneys of Prosecutor.

NEW JERSEY SUPREME COURT.

	OCEAN CITY LAND COMPANY,	}	Depositions.
	Prosecutor,		
10	vs.		
	OCEAN CITY, ET ALS.,		
	Defendants.		

Depositions and examination of witnesses taken before Morgan Hand, a Supreme Court Commissioner, at his office in Cape May Court House, on Wednesday, the 24th day of May, 1905, at 11 o'clock in the forenoon, in the above stated cause, by virtue of a rule of said Court, made in the above stated cause, on the 21st day of November, 1904, in the presence of Charles C. Babcock and Bourgeois and Sooy, attorneys for prosecutors, and of Bleakley and Stockwell, attorneys for the defendants, pursuant to notice which is hereto attached.

WILLIAM BRIDGEWATER, a witness produced on the part of the prosecutor, being by me duly sworn, says:

- 30 Q. Mr. Bridgewater, you reside where?
 A. Ocean City.
 Q. How old are you?
 A. Seventy-five next birthday.
 Q. How long have you resided in Ocean City?
 A. Since 1880.

Q. And permanently from how long?

A. Eleven years.

Q. Are you acquainted with a land corporation known as the Ocean City Association?

A. Yes, sir.

Q. What connection if any did you ever have with them?

A. I was a stockholder.

Q. During what period were you a stockholder?

A. From, 1882, I mean from 1880; for a period of 10 fifteen years.

Q. While you were a stockholder did the Ocean City Association have any public sales of lots and if so when and where?

A. In 1880 they had a public sale, why two sales.

Q. Were you present at those two sales?

A. Yes, sir.

Q. Who was then president of the Ocean City Association?

A. William B. Wood. 20

Q. Who was then secretary of the Ocean City Association?

A. I was not positive who was secretary; Ezra B. Lake was superintendent, I think he acted as both.

Q. At each of those meetings was any statement made by Mr. Wood or by Ezra B. Lake with relation to the camp ground?

A. Yes, by both of them.

Q. When was the statement made in relation to the sale before or after the sale? 30

A. During the sale.

Q. What was the statement made?

A. That the camp ground five hundred feet wide from ocean to bay was to be unobstructed forever.

Q. Do you know whether or not any person purchased at any or both of those sales?

A. Yes, they did. They purchased \$1000 worth.

Q. Mr. Bridgewater, did you ever receive a map of Section A, of Ocean City, from the Ocean City Association?

A. Yes, sir.

Q. Mr. Bridgewater, I show you a map marked Section A, Ocean City, and ask you whether or not that
10 is the map you received?

A. Yes, sir.

Q. Does that map show the camp ground delineated on it?

A. Yes, sir.

Q. When did you receive the map from the Ocean City Association?

A. In 1880.

Q. From whom did you receive it, if you can recall?

A. It was sent to me by mail.

20

Mr Stockwell objects to this answer as being hearsay and not competent to prove the receipt from the Association, and moves to strike out the answer.

Q. How did you receive the map?

A. By mail.

Q. In whose envelope, that is whose card was on the envelope?

A. It was Ezra B. Lake's card and the Association.

30

By Mr. Stockwell:

Q. Do you mean that Ezra B. Lake's name was on the envelope?

A. No, the Association's name was on the envelope; Ezra B. Lake's was inside.

Q. Was there anything else in the envelope besides the map?

A. Yes, sir; Ocean City Journal.

Q. And did that contain any particular advertisement?

A. Yes, sir. The camp ground five hundred feet wide from ocean to bay was to be unobstructed forever.

Q. After the sale of the lots in 1880 did you receive a copy of the Ocean City Annual or second annual report of the president of the Ocean City Association? 10

A. Yes, sir.

Q. I show you such a report and ask you if that is a copy you received?

A. Yes, this is the copy I received.

Q. I call your attention to page 42 of the annual and ask you to read the clause there contained relative to the camp ground.

A. "The space allotted to the encampment is five hundred feet wide from the bay to the ocean with plenty of tenting ground." 20

Q. On page 11, read what is there contained in reference to it.

A. "The camp ground park extending from Fifth street to Sixth street from Asbury to Wesley avenues being more than five hundred feet square has been fully graded."

Q. For what year was the annual report from which you have just read?

A. 1882.

Q. I now show you an annual report called the first annual report of the president of the Ocean City Association and ask you when and where you received this report? 30

A. I received that report at the annual meeting in the year 1881.

Q. For what year is this report?

A. For the year 1880, but made in 1881.

Q. Look at the list of officers printed therein and tell me who was president?

A. William B. Wood.

Q. Tell me who was superintendent?

A. E. B. Lake.

Q. Look at page 17 of the report and read to me what is said there about the camp ground?

10 A. "The space allotted to the encampment is five hundred feet wide from the thorofare to the ocean with plenty of tenting ground."

Q. Look at the map about which you were testifying a few moments ago and tell what me portion of the island has been divided into streets, lots, etc., on that map?

A. From First street to Eleventh street and from West avenue to Atlantic avenue.

Q. Does it not extend beyond West avenue towards the bay?

20 A. Yes, now it does.

Q. Examine the map you have in your hands and tell me whether or not there were lots laid out on the bay side of West avenue and if so to what depth?

A. Ninety feet.

Q. Examine the map and tell me whether or not the camp ground is marked on the map?

A. Yes, sir.

Q. What are its boundaries as shown on that map?

A. From ocean to bay.

30 Q. What is there in the camp ground to indicate that it is a camp or park?

By Mr. Stockwell:

Q. By that question do you ask the witness what appears on the map or by his own recollection?

By Mr. Bourgeois:

I ask for what appears on the map only.

Mr. Stockwell enters a formal objection to this line of examination by which it is sought to prove the conditions as prevailed in 1880 or thereabouts from a map which has not been filed and which has not been formally proved to be a map of the Ocean City Association.

A. Trees and the auditorium.

10

Q. On the map?

A. On the map nothing but trees and the words camp ground.

Q. Extending between what streets?

A. Between Fifth and Sixth streets.

Q. In 1880 what was there in fact on that portion of the ground?

A. There was hills of sand on it from Asbury avenue to Wesley avenue and trees upon it.

Q. In 1880 the sand hills were levelled down between Asbury avenue and Wesley avenue?

20

Q. What was there beyond Wesley avenue oceanward?

A. Trees, and it was a little low there and they had to fill in that portion from Wesley avenue to Atlantic avenue.

Q. What was there on the northwestwardly side of Asbury avenue between Asbury and West avenues on the ground?

A. Trees.

30

Cross-examination.

By Mr. Stockwell:

Q. Did I understand you to say that the Ocean City

Association filled in that part of the space between Fifth and Sixth streets and Wesley and Ocean avenues?

A. It was a little low there and they filled it in.

Q. When did they fill it in?

A. This last three years that have been putting in.

Q. Had they filled in any portion of the tract between Fifth and Sixth streets and Wesley avenue and the ocean prior to about three years ago?

A. Yes, they did some five or six years ago.

10 Q. The tract between Wesley avenue and the ocean is still in an unimproved condition, is it not?

A. Yes, it has improved some.

Q. In what way has it improved?

A. They have planted a few trees there.

Q. Is not this tract just mentioned from Wesley avenue to the ocean still low, and in places swampy?

A. No, sir.

20 Q. Is the tract between Wesley avenue and the ocean graded as is the tract between Wesley avenue and Asbury avenue, containing the auditorium?

A. No.

Q. Has the tract between Wesley avenue and the Atlantic Ocean ever been put in condition to be used as a park?

A. Part of it has.

Q. What part?

A. From Wesley avenue to Ocean avenue is improved a great deal. From Ocean avenue out it is not filled in yet, that is made up ground.

30 Q. You stated that the Ocean City Journal in its issue of 1880 said that the camp ground from ocean to bay was to be unobstructed forever. Read the portion of the advertisement referring to the camp ground where those words are contained?

A. "The space allotted to the encampment is five

hundred feet wide, from the thoroughfare to the ocean, with plenty of tenting ground. It is contemplated to have all the appointments desirable to render the camp meeting a real feast to the thousands who may congregate there for Christian worship."

Q. That is the part to which you refer in the advertisement?

A. Yes.

Q. You were the plaintiff in the case of Bridgewater against the Ocean City Association, were you not? 10

A. Yes, sir.

Q. As complainant in that suit you were working in the interests of the Pennsylvania Railroad Company, were you not?

A. No, sir.

By Mr. Bourgeois:

Q. Was the camp ground in the suit in which you were complainant and the Ocean City Railroad Company was defendant the same camp ground as that now in question and about which you were or have been testifying? 20

A. Yes.

Q. Is it the same camp meeting ground or park that was involved in the litigation between George G. Lennig and the Ocean City Association, if you know?

A. Yes.

Q. You spoke of the ground oceanward from Ocean avenue being made up ground; do you mean that it was made up by the ocean or by men? 30

A. By the ocean.

Q. Were you in Ocean City on the 8th day of November in last year at a general election held on that day?

A. Yes.

Q. Was the acceptance or rejection of a certain proposition relative to the vacation of this camp ground submitted to the people at that election?

A. It was submitted to them.

WILLIAM BRIDGEWATER.

Sworn to and subscribed before me, this twenty-fourth day of May, A.D. nineteen hundred and five (1905).

MORGAN HAND,

Supreme Court Commission.

10

It is admitted that at an election held on November 8th, 1904, at large majority of the voters voting at said election voted to accept the proposition mentioned in the ordinance under review for the vacation of said camp ground.

20 T. LEE ADAMS, a witness being produced on the part of the prosecutor, being by me duly sworn deposes and saith:

Q. You are the City Clerk of Ocean City?

A. Yes.

30 Q. Examine the minutes of Council of Ocean City for the meetings immediately following November 8th, 1904, and state whether or not there is any record of the result of the election held on the 8th day of November, 1904, as regards the acceptance or rejection of the proposition mentioned in the ordinance under review to vacate the public rights in the Ocean City camp ground?

A. There is no entry in the minutes.

No cross-examination.

T. LEE ADAMS.

Sworn to and subscribed before me, this twenty-fourth day of May, A. D. nineteen hundred and five (1905).

MORGAN HAND,
Supreme Court Commissioner.

JULIUS WAY, a witness being produced on the part of the prosecutor, being by me duly sworn saith:

O. Doctor, you are the County Clerk of Cape May County?

A. Yes.

Q. And as such you have the custody of the records of deeds and maps?

A. Yes.

Q. Do you have in your office a map of Section A of Ocean City Association, filed on the 9th day of June, 1880?

A. Yes. 20

Q. Was it also recorded?

A. Yes, Book No. 46 of Deeds, pages 352.

Q. What is shown on that map between Fifth and Sixth streets extending from what is marked drain lying northwest from West avenue, thence extending south-easterly to the ocean?

A. There are five blocks the center one of which is marked camp ground.

Q. Are those blocks laid off into lots on that map?

A. No. 30

Q. The map covers what sections?

A. Section A.

Q. Are the other blocks on that map laid off into lots excepting the extreme northeasterly end?

A. Yes.

Q. From what numbers?

A. From number one (1) to nine hundred and ninety-five (995).

Q. State whether or not the Ocean City Association has made conveyances of land with reference to this map?

Mr. Stockwell objects to this question on the ground that this witness is not competent to prove such facts. It can be proved by records only.

10 A. It has.

Q. Is there another map on file in your office under date of April 17th, 1883, of the Ocean City Association? Is that map also recorded?

A. Yes, it is recorded.

Q. What sections does that map show?

A. Sections A, B and C.

Q. Will you look at the map and tell me whether or not there is a camp ground and park delineated on it?

A. There is.

20 Q. Will you look at page 281 of 17th Dickinson's Chancery Report, and tell me whether or not the map of the camp ground shown on that page is a copy of the map of the camp ground shown on this map?

A. I believe it is.

Q. State whether or not Ocean City Association has made conveyances of land with reference to this map.

(Same objection as before.)

30 A. It has.

Q. Mr. Way, will you turn to the record of a deed from the Ocean City Association to George L. Horn, bearing date the 20th day of January, 1885, in Book No. 72 of Deeds, page 357, and read to me what the description is?

A. "This deed conveys (inter alia) lots 761, 762, 763, 764 in Section C, on the plan of lots of the Ocean City Association."

JULIUS WAY.

Sworn to and subscribed before me, this twenty-fourth day of May, A. D. nineteen hundred and five (1905).

MORGAN HAND,
Supreme Court Commissioner.

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Prosecutor offers in evidence an original deed from Ocean City Association to Thomas Shaw, dated August 31st, 1880, recorded in Book 58 of Deeds, page 242, &c., at Cape May Court House, N. J., for lots numbered 542, 544, in Section A on the plan of lots of the said Ocean City Association; beginning on the southwesterly side of Central avenue at the distance of four hundred and ten feet southwesterly from the southwesterly side of Fourth street, containing, &c., &c., marked Exhibit 1, on part of prosecutor. 20

Prosecutor also offers in evidence an original deed bearing date the 28th day of December, 1880, between Ocean City Association of the first part and William Bridgewater of the second part, of record at Cape May Court House, in Book No. 49 of Deeds, page 63, &c., for lots Nos. 505, 507 in Section A, on the plan of lots of said Ocean City Association; beginning on the northwesterly side of Central avenue at the distance of one hundred and seventy feet southwesterly from the southwesterly side of Third street, &c., &c., marked Exhibit 2, on part of the prosecutor. 30

MORGAN HAND,
Supreme Court Commissioner.

Dated May 24th, 1905.

NEW JERSEY SUPREME COURT.

	OCEAN CITY LAND COMPANY,	}	On Certiorari.
	Prosecutor,		
	vs.		
10	OCEAN CITY, ET ALS.,	}	Notice.
	Defendants.		

SIR:—

Take notice that I shall take depositions in the above stated cause before Morgan Hand, Esq., Supreme Court Commissioner, at his office, Cape May Court House, Cape May County, New Jersey, on Wednesday the twenty-fourth day of May, at 11 o'clock in the forenoon.

Respectfully,

20

CHARLES C. BABCOCK,
BOURGEOIS & SOOY,
Attorneys of Prosecutor.

To

JOSEPH THOMPSON,
BLEAKLEY & STOCKWELL,
Attorneys of Defendants.

NEW JERSEY SUPREME COURT.

OCEAN CITY LAND COMPANY,	}	On Certiorari.		
Prosecutor,				
vs.			Notice.	10
OCEAN CITY, ET ALS.,				
Defendants.	}			

Take notice that we shall take further testimony in the above stated cause before Morgan Hand, Esq., Supreme Court Commissioner, at Cape May Court House, Cape May County, New Jersey, on Monday, the sixteenth day of October, instant, at 11 o'clock in the forenoon, at the office of the said Morgan Hand. Said testimony to be used upon the argument in the above stated cause 20 pursuant to an order of Court made therein.

Dated October 11th, 1905.

C. C. BABCOCK,
BOURGEOIS & SOOY,
Attorneys of Prosecutor.

To

JOSEPH THOMPSON, Esq.,
Attorney of Ocean City.

BLEAKLEY & STOCKWELL,
Attorneys of Ocean City Association. 30

Service acknowledged October 11th, 1905.

JOSEPH THOMPSON,
Attorney of Ocean City.

STATE OF NEW JERSEY, }
 COUNTY OF CAMDEN, } ss.

Albert A. Howell being duly sworn according to law, on his oath, says that he served a notice of which the within is a true copy, on Edwin G. C. Bleakley, a member of the firm of Bleakley & Stockwell, by handing the same to him on the twelfth day of October, one thousand nine hundred and five (1905).

ALBERT A. HOWELL.

10

Sworn and subscribed before me, this twelfth day of October, A. D. nineteen hundred and five (1905).

J. CHAS. WINTERS,
 M. C. C. of N. J.

NEW JERSEY SUPREME COURT.

20	OCEAN CITY LAND COMPANY, Prosecutor. vs. OCEAN CITY, ET ALS., Defendants.	}	Sur Certiorari. Depositions.
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30 Depositions and examinations of witnesses taken before Morgan Hand, a Supreme Court Commissioner, at Cape May County, New Jersey, on Monday, the sixteenth (16th) day of October, A. D. nineteen hundred and five (1905), at 11 o'clock in the forenoon, at the office of the said Morgan Hand, in the above stated cause, by virtue of a rule of the said Court made in the above stated

cause, in the presence of George A. Bourgeois, Esq., of the firm of Bourgeois & Sooy, attorneys of prosecutor, pursuant to notice, which is hereto attached.

JOHN SAYRE, a witness produced on the part of the prosecutor, being by me duly sworn, saith:

I am deputy clerk of the Common Pleas Court of Cape May County and as such under the clerk I have the custody of the records of deeds and conveyances in Cape May County. I have examined the records of deeds relating to the title to the lands of the Ocean City Land Company for property situate in Ocean City, New Jersey, from a date prior to August 11th, 1887, and find that on August 11th, 1887, the Ocean City Association conveyed to Gilbert E. Palen all its right, title and interest all the land located on Peck's Beach, bounded on the north and northeast by Great Egg Harbor Bay and Inlet, on the southeast by Atlantic Ocean, on the southwest by Corson's Inlet, on the west and northwest by the Beach Thoroughfare, Little Bay or Peck's Bay, by deed recorded in Deed Book No. 79, page 320, &c.; and that on the same day Gilbert E. Palen and wife conveyed the same property back to the Ocean City Association under and subject to certain reservations and restrictions by deed recorded in Deed Book No. 79, page 324, &c.; and afterwards on June 23, 1890, the Ocean City Association conveyed to Ezra B. Lake a strip of land on the southeast side of Atlantic avenue and northeast side of Fifth street of one hundred and seventy-five feet wide, extending from the southeast side of Atlantic avenue to within one yard of high water mark, by deed recorded in Deed Book No. 94, page 121, &c., that was

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also under and subject to said reservations and restrictions; and afterwards Ezra B. Lake and wife conveyed the said strip of land to Frank F. Corson by deed dated August 31, 1890, and recorded in Deed Book No. 94, page 125, &c.; and Frank F. Corson conveyed the same strip of land to John G. Gandy and Ezekiel V. Corson by deed dated May 1, 1900, and recorded in Deed Book No. 151, page 123, &c.; on the tenth day of January, nineteen hundred and one, the Ocean City Association conveyed

10 to Ezekiel V. Corson and John G. Gandy a tract of land on the southeast side of Atlantic avenue, Ocean City, New Jersey, extending from a point one hundred and seventy-five feet northeast of Fifth street to the southwest side of North street and southeastwardly to within three feet of high water mark on the Atlantic Ocean, excepting thereout Fourth, Third, Second and First streets and the United States Life Saving Station property, being a rectangular lot situate on the corner of Atlantic

20 avenue and Fourth street, being one hundred feet on Atlantic avenue by one hundred and thirty feet on Fourth street, also a strip of land three hundred feet wide adjoining Second street on the southwest side extending from Atlantic avenue to the Atlantic Ocean by deed recorded in Deed Book No. 158, page 85, &c.; and Ezekiel V. Corson and wife and John G. Gandy conveyed to Francis P. Quigley, Samuel D. Hoffman and Lee Land Company a three-fifths undivided interest in the aforesaid two tracts of land, excepting the tracts above mentioned, by deed dated January 17, 1901, and recorded in Deed Book No.

30 155, page 404, &c.; and Ezekiel V. Corson and wife, Francis P. Quigley and wife, Samuel D. Hoffman and John G. Gandy and Lee Land Company conveyed to Ocean City Land Company, the two tracts of land aforesaid, excepting the tracts above mentioned, by deed dated

April 18th, 1901, and recorded in Deed Book No. 160, page 140, &c., which said deed is offered in evidence and marked Exhibit A for the prosecutor.

JOHN SAYRE.

Sworn to and subscribed before me, October sixteenth, A. D. nineteen hundred and five (1905).

MORGAN HAND,
Supreme Court Commissioner.

NEW JERSEY SUPREME COURT.

10	OCEAN CITY LAND COMPANY, Prosecutor.	}	Sur Certiorari. Etc.
	vs.		
20	OCEAN CITY, ET ALS., Defendants.		

Exhibit A for prosecutor.

Oct. 16, 1905.

MORGAN HAND,
Supreme Court Commissioner.

CORPORATION DEED.

EZEKIEL V. CORSON, ET UX, ET ALS.,

TO

OCEAN CITY LAND COMPANY.

30 Dated April 18th, 1901. Received May 27th, 1901,
and recorded in the clerk's office of Cape May County at
Cape May Court House, in Book 160 of Deeds, folio 140,
etc.

JULIUS WAY,
Clerk.

This Indenture, made the eighteenth day of April, in the year of our Lord one thousand nine hundred and one,

Between Ezekiel V. Corson and Amarantha B. Corson, his wife, Francis P. Quigley and Mary R. Quigley, his wife, and Samuel D. Hoffinan (single person) all of Atlantic City, County of Atlantic and State of New Jersey, John G. Gandy (single person) of Ocean City, County of Cape May and State aforesaid, and "Lee Land Company," a corporation under and by virtue of the laws of the State of New Jersey, party of the first part, and Ocean City Land Company, a corporation under and by virtue of the laws 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 seventy-five thousand dollars, subject to the mortgages hereinafter mentioned, 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 ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the party of the second part, its successors and assigns, all those certain lots, tracts or pieces of ground, situate, lying and being in the City of Ocean City, on Peck's Beach, Upper Township, in the County of Cape May and State of New Jersey, bounded and described as follows:

Tract No. 1.—Beginning at a point in the southeasterly line of Atlantic avenue, one hundred and seventy-five feet northeastwardly from the intersection of the north-

easterly line of Fifth street with the said southeasterly line of Atlantic avenue, thence northeastwardly along the said southeasterly line of Atlantic avenue, three hundred and twenty-five feet to a point in the southwesterly line of Fourth street; thence of that width extending southeasterly, between parallel lines at right angles to the said southeasterly line of Atlantic avenue, nine hundred feet more or less to a line three feet northwestwardly from high water line of the Atlantic Ocean.

10

Tract No. 2.—Beginning at a point at the intersection of the said southeasterly line of Atlantic avenue with the northeasterly line of Fourth street; thence northeastwardly, along the said southeasterly line of Atlantic avenue, five hundred feet to a point in the southwesterly line of Third street; thence of that width extending southeastwardly, between parallel lines at right angles to the said southeasterly line of Atlantic avenue, nine hundred feet more or less to a line three feet northwestwardly

20

from high water line of the Atlantic Ocean.
Always excepting and reserving thereout and therefrom a lot of land and premises occupied as the Life Saving Station of the United States, being a rectangular lot situate on the easterly corner of Atlantic avenue and Fourth street, having a frontage of one hundred feet on Atlantic avenue, one hundred and thirty feet on Fourth street.

30

Tract No. 3.—Beginning at a point at the intersection of the said southeasterly line of Atlantic avenue with the northeasterly line of Third street; thence northeastwardly, along the said southeasterly line of Atlantic avenue, two hundred feet to a point which is also a corner to Hayday's land; thence of that width extending southeastwardly between parallel lines at right angles to the said

southeasterly line of Atlantic avenue, nine hundred feet more or less to a line three feet northwestwardly from high water line of Atlantic Ocean.

Tract No. 4.—Beginning at a point at the intersection of the said southeasterly line of Atlantic avenue with the northeasterly line of Second street; thence northeastwardly, along the said southeasterly line of Atlantic avenue, five hundred feet to a point in the southwesterly line of First street; thence of that width extending southeastwardly between parallel lines at right angles to the said southeasterly line of Atlantic avenue, nine hundred feet more or less to a line three feet northwestwardly from the high water line of Atlantic Ocean. 10

Tract No. 5.—Beginning at a point at the intersection of the said southeastwardly line of Atlantic avenue with the northeasterly line of First street; thence northeastwardly, along the said southeasterly line of Atlantic avenue, five hundred feet to a point in the southwesterly line of North street; thence of that width extending southeasterly between parallel lines at right angles to the said southeasterly line of Atlantic avenue, nine hundred feet more or less to a line three feet northwestwardly from high water line of Atlantic Ocean. 20

Being the same premises, which the said Ocean City Association conveyed in fee to said Ezekiel V. Corson and John G. Gandy by deed dated the tenth day of January, A. D. nineteen hundred and one, and recorded in the clerk's office of the County of Cape May in Book 151 of Deeds, page 85, etc. 30

Subject, however, to the operation of two certain indentures of mortgage—the one in the sum of twenty-

five thousand dollars, dated January 10th, 1901; the other in the sum of fifty thousand dollars, dated January 10th, 1901, both of which were made and executed by Ezekiel V. Corson and wife and John G. Gandy to the Ocean City Association, and intended to be forthwith recorded, reference thereunto had will more fully appear.

Under and subject, however, to the payment of such tax or taxes as may from time to time be assessed or
10 levied on the above mentioned premises by the said Ocean City Association to enable them to carry out such sanitary and municipal laws or regulations as may hereinafter from time to time be made or enacted by them. And also under and subject to the express conditions and restrictions that no building, of any description
20 whatever, shall at any time be erected within ten feet of the front line of said avenue, nor within four feet of the side lines of said lot excepting where a party may own two or more contiguous lots, then a building may be erected on any part of the lot or lots the owner thereof may desire, without regard to the intervening line or lines, provided the same is not built within four feet of the outside lines of said lots, nor within ten feet of the front lines thereof, and also, that no building, or any part thereof, erected upon the said lot or lots, shall be used or occupied as a livery or sales stable, dyehouse, bone-boiling or skin-dressing establishment, soap, candle, glue, lamp-black, pudrette or fish-guano manufactory, slaughterhouse, piggery, or tannery. Nor shall any building be
30 used or occupied as a drug store, without the written consent of the said Ocean City Association. Also under and subject to the express condition and restriction that no spirituous, malt, intoxicating or vinous liquors, preparations, or substances in the nature thereof, shall be manufactured, bought, sold or kept for sale as a beverage,

on the above described premises. It being expressly understood and agreed that the said "Ocean City Land Company," party of the second part hereto, its successors or assigns, shall not at any time hereafter use said premises, or erect or set up, or cause to be erected or set up, on said premises, any building to be used as a house of prostitution, bawdy-house or house of ill-fame, or dance or gambling house, or other establishment in the nature thereof. And that no business of any kind whatever shall at any time hereafter be carried on upon the said premises upon the Lord's day (commonly called the Sabbath or Sunday), nor shall any act, matter or thing be done thereon, that is a desecration of said Lord's day. And also under the subject to the express condition and restriction that all private stables, privates, etc., must be erected on the rear line of said lots and conform in every particular to the laws and regulations now made, or that may hereafter from time to time be made, by the Ocean City Association. And also under and subject to the conditions, restrictions and regulations, which may be hereafter from time to time be made, by the said Ocean City Association, for carrying out and enforcing the above restrictions and the rules and regulations necessary to insure the original intention and purposes of the Ocean City Association in securing the whole island as a Christian seaside resort.

Also all that certain tract or piece of ground, situate lying and being in the City of Ocean City, County of Cape May and State of New Jersey, in Section A on the plan of lots of Ocean City Association; beginning at a point on the southeasterly side of Atlantic avenue, at the distance of three hundred and twenty-five feet southwesterly from the southwesterly line of Fourth street; containing in front or breadth on the said Atlantic avenue,

one hundred and seventy-five feet to the northeasterly line of Fifth street and of that width extending in length or depth southeasterly between lines parallel with said Fourth street, to a point one yard from the line of high water mark of the Atlantic Ocean.

Being the same premises which Frank F. Corson conveyed in fee to said Ezekiel V. Corson and John G. Gandy, by deed dated the first day of May, A. D. nineteen hundred, and duly recorded in the clerk's office aforesaid in
10 Book 151 of Deeds, folio 123, etc.

Subject, however, to the operation of a certain indenture of mortgage in sum of fourteen thousand five hundred dollars dated May 1, 1900, which has been reduced to twelve thousand dollars, made and executed by Ezekiel V. Corson and John G. Gandy to Frank F. Corson, duly recorded in the clerk's office aforesaid in Book No. 50 of mortgages, page 358, etc.

Subject, however, to the conditions and restrictions of
20 the Ocean City Association.

All of the said above described lands being the same premises in which the said Ezekiel V. Corson, et ux, et als., conveyed in undivided three-fifths interest unto the said Francis P. Quigley, Samuel D. Hoffman and "Lee Land Company" by deed dated the seventeenth day of January, nineteen hundred and one and duly recorded in the clerk's office aforesaid in Book 155 of Deeds, folio 404, etc.

30 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 premises, with the appurtenances.

To have and to hold the said premises, with all and singular the appurtenances, unto the party of the second part, its successors and assigns, to the only proper use, benefit and behalf of the said party of the second part, its successors and assigns, forever:

10

And the said party of the first part, their heirs, successors or assigns do by these presents covenant, grant and agree to and with the said party of the second part, its successors and assigns, that they the said party of the first part, their heirs, successors or assigns all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be so, with the appurtenances unto the said party of the second part its successors and assigns, against them the said party of the first part, their heirs, successors or assigns, and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof by, from, through or under him, them or any of them shall and will subject as aforesaid warrant and forever defend.

20

In witness whereof, the said Ezekiel V. Corson and Amarantha B. Corson his wife, Francis P. Quigley and Mary R. Quigley his wife, Samuel D. Hoffinan (single person), John G. Gandy (single person) have hereunto set their hands and seals and the said "Lee Land Company" hath hereunto caused its corporate seal to be affixed, attested by its secretary and these presents to be signed by its president, the day and year first above written.

30

Signed, sealed and delivered in the presence of R. H. Ingersoll.

EZEKIEL V. CORSON,	[SEAL]
AMARANTHA B. CORSON,	[SEAL]
FRANCIS P. QUIGLEY,	[SEAL]
MARY R. QUIGLEY,	[SEAL]
SAMUEL D. HOFFMAN,	[SEAL]
JOHN G. GANDY,	[SEAL]
LEE LAND CO.,	[SEAL]

EDWARD S. LEE, Pres.

10

Attest:—CHARLES C. BABCOCK, Sec'y.

STATE OF NEW JERSEY, }
ATLANTIC COUNTY, } ss.

Be it known that on this eighteenth day of April, one thousand nine hundred and one, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Charles C. Babcock who, being by me duly sworn according to law, did on his oath say that he is the secretary of the "Lee Land Company" the grantor mentioned in the foregoing indenture; that he knows the seal of said corporation; that the seal affixed to the said indenture is the common seal of the said corporation; that Edward S. Lee is the president of said corporation and did by its order sign, seal, and deliver the said indenture as its voluntary act and deed in the presence of said deponent; and that the said deponent did, at the execution thereof, subscribe his name as a witness thereto.

30

CHAS. C. BABCOCK.

Sworn and subscribed before me, the day and year aforesaid.

ROBERT H. INGERSOLL,
M. C. C. of N. J.

STATE OF NEW JERSEY, }
 ATLANTIC COUNTY, } ss.

Be it remembered that on this eighteenth day of April, in the year of our Lord, one thousand nine hundred and one, before me, the subscriber, a Master in Chancery, of New Jersey, personally appeared Ezekiel V. Corson, and Amarantha B. Corson, his wife, Francis P. Quigley, Mary R. Quigley, his wife, Samuel D. Hoffinan and John G. Gandy, who, I am satisfied are the grantors mentioned in the above deed or conveyance, and I having first made known to them the contents thereof, they acknowledge that they signed, sealed and delivered the same as their voluntary act and deed; and the said Amarantha B. Corson, Mary R. Quigley being of full age, on a private examination, apart from their said husbands, before me acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, freely, without any fear, threats or compulsion of their said husbands, all of which is hereby certified.

10

20

ROBERT H. INGERSOLL,
 M. C. C. of N. J.

NEW JERSEY SUPREME COURT.

	OCEAN CITY LAND COMPANY,	}	On Certiorari.
	Prosecutor,		
	vs.		
10	OCEAN CITY, ET ALS.,	}	Notice.
	Defendants.		

To Messrs. Bourgeois and Sooy, Attorneys of Prosecutor:

GENTLEMEN:—

20 Please take notice, that we shall take testimony in the above cause before Philip S. Scovell, Esquire, a Supreme Court Commissioner, at No. 317 Market street, in the City and County of Camden, New Jersey, on Tuesday, the twenty-fourth day of October, A. D. 1905, at the hour of 10 o'clock in the forenoon of said day. Said testimony is to be used on the argument in the above stated cause, pursuant to an order of the Court made therein.

Dated October 17th, A D. 1905.

BLEAKLEY & STOCKWELL,
Attorneys of Ocean City Association.

[ENDORSED]

NEW JERSEY SUPREME COURT.

OCEAN CITY LAND COMPANY,
Prosecutor,

vs.

OCEAN CITY, ET ALS.,
Defendants. 10

ON CERTIORARI. NOTICE.

BLEAKLEY & STOCKWELL,
Attorneys of Ocean City Association,
317 Market Street, Camden, N. J. 20

Service of a copy of the within notice is hereby acknowledged.

Dated October 18th, 1905.

BOURGEOIS & SOOY,
Attorneys of Prosecutor.

NEW JERSEY SUPREME COURT.

	OCEAN CITY LAND COMPANY,	}	On Certiorari.
	Prosecutor,		
	vs.		
10	OCEAN CITY, ET ALS.,	}	Depositions.
	Defendants.		

The following annexed depositions in the above stated cause were taken before me, a Supreme Court Commissioner of the State of New Jersey, at No. 317 Market street, in the City and County of Camden and State of New Jersey, on Tuesday, the 24th day of October, A. D. 1905, commencing at the hour of 10 o'clock in the forenoon of said day, in pursuance of an order of said Court, bearing date November 21st, 1904, and upon due notice given, as per service acknowledged by Messrs. Bourgeois and Sooy, attorneys of the prosecutor. Messrs. Bleakley and Stockwell appeared as attorneys for the Ocean City Association, and Messrs. C. C. Babcock and George A. Bourgeois as attorneys for the prosecutor.

PHILIP S. SCOVEL,
Supreme Court Commissioner of New Jersey.

30

(Notice of taking testimony, with service acknowledged by Bourgeois & Sooy, offered in evidence and marked Exhibit No. A. for the defendant Association.)

T. LEE ADAMS, sworn.

By Mr. Bleakley:

Q. You are the City Clerk of Ocean City?

A. Yes, sir.

Q. How long have you been City Clerk?

A. It will be two years the first of January since I took office.

Q. You were City Clerk on the 10th of October, 1904? 10

A. Yes, sir.

Q. Have you an ordinance with you which was presented to Council at that time?

(Witness produces ordinance.)

(Said ordinance marked Exhibit B for the defendant.)

Q. Was this ordinance—when was that ordinance introduced, Mr. Adams? 20

A. October 10, 1904.

Q. And it was passed when?

A. And passed October 11th, 1904.

Q. Now, Mr. Adams, there was a proposition submitted to the voters, was there, of Ocean City?

A. There was.

Q. In accordance with that ordinance?

A. Yes.

Q. Do you know whether or not that ordinance was accepted by the Ocean City Association? 30

A. I should say it was.

Q. You were present at that meeting, were you?

A. Yes, sir.

Q. That is the meeting of October 11th, 1904?

A. Yes, sir.

Q. Do you remember the president of the Associa-

tion, that is, the Ocean City Association, Mr. S. Wesley Lake, being there?

A. Don't know that I can exactly recall it; in all probability there is mention of it in the minutes.

Q. Look at the minutes and see?

A. I presume he was.

Q. Now, you have looked at the minutes, have you?

A. Yes, sir.

Q. Now, I ask you whether you recollect Mr. Lake,
10 the president of the Ocean City Association, being there?

A. I remember of them being present that night.

Q. Who else was there representing the Ocean City Association besides Mr. Lake, the president?

A. Mr. Lake, Mr. Hahn; that is all that I recollect taking any part in it or being actively present; might have been other members of the Association present.

Q. And they discussed the matter back and forward, did they, or did they not, with the members of Council?

A. I am under the impression they did, although I
20 made no note of it in the minutes.

Q. There were some modifications made by Judge Thompson, were there not, on behalf of the City of Ocean City in the proposition as originally presented by the Association?

A. I think there were, although I was not present at the executive session where it was discussed.

Q. Well, did you hear Mr. Lake agree to these modifications?

A. All the agreeing that I heard was the agreeing in
30 the open sessions of Council.

Q. Well, did he agree to them there that you remember?

A. Yes, sir.

Q. Now, when this proposition was submitted to the voters was it adopted? If so, by what vote?

A. The vote, according to the official returns, is 426 votes for the adoption of the ordinance, or the proposition, and 28 against.

Q. Have you a notice which was posted in Ocean City and in ten conspicuous places twenty days prior to the election day, November 8th, and published in two newspapers in Ocean City twenty days prior to November 8th, 1904?

(Witness produces notice.)

10

Q. I notice attached to this notice a resolution dated October 11th, 1904. Was that resolution adopted by the City Council?

A. It was; yes, sir.

Q. Of Ocean City on the 11th day of October, 1904?

A. It was.

(Resolution and notice attached marked Exhibit C for defendant.)

Q. Did you post this notice yourself?

20

A. I did.

Q. As directed in that resolution?

A. As directed in the resolution.

A. And did you attend to the advertising in the papers?

A. I did.

Q. And saw that the notice was properly advertised, did you?

A. I did.

T. LEE ADAMS. 30

Sworn and subscribed before me, on this 24th day of October, 1905.

PHILIP S. SCOVELL,
Supreme Court Commissioner of New Jersey.

W. ELWELL LAKE, SWORN:

By Mr. Bleakley:

Q. You are secretary of the Ocean City Association?

A. I am.

Q. Have been secretary how long?

A. Since 1900.

Q. There have been some matters in dispute between the City of Ocean City and the Ocean City Association in reference to the camp ground site, have there not?

10

A. Yes, sir.

Q. Where is that camp ground site located?

A. Between Fifth and Sixth streets, and the bay and the ocean, Ocean City, New Jersey.

Q. Now, was there any action taken by the Board of Directors of the Ocean City Association on or about July 5th, 1904, in reference to this camp ground site?

A. Yes.

Q. Now, refer to your minutes, will you not, and just read from the minutes what action was taken?

20

A. "On motion it was voted that settlement of the camp ground affairs with the city be left with the executive committee, with power to act."

Q. Who were the members of the executive committee in 1904?

A. President, S. Wesley Lake; Vice President, Geo. L. Dobbins; Secretary, W. Elwell Lake; Treasurer, Charles P. Lake; Directors, James E. Lake and George B. Langley. They are all of the members of the executive committee.

30

Q. When next was any action taken by the Ocean City Association; that is, irrespective of any action by the executive committee?

A. At the next regular meeting, October 11th, 1904, when the executive committee, through the president, made its report.

Q. Just read from the minutes of that meeting what took place in reference to this camp ground site?

A. "The president reported for the executive committee what had been done regarding the camp ground matter. He stated that after considerable negotiations and the submission of several preliminary propositions and interviews with the members of the City Council and other citizens in reference to the proposed vacation of the camp ground site, he, representing the executive committee, had made a proposition on October 10th, 1904, to the City Council of the City of Ocean City. This proposition was read to the board and ordered filed. The president further stated that an ordinance was then before Council accepting the proposition which we had offered, but with some slight modifications. This ordinance containing the modified proposition was read by the president to the board and ordered filed. He also stated that the form of the ordinance containing the modified proposition had been approved by our attorneys and also by Judge Thompson, counsel for the city. He recommended that the officers be instructed at once to execute a deed for the right of way for the boardwalk in accordance with the above ordinance, which was done by motion. On motion, duly made and unanimously carried, the proposition of the executive committee, as modified in the city ordinance, and all other actions of the president and the executive committee in the camp ground matter up to this date were approved, and the city ordinance was accepted by this Association."

Q. That is an extract from the minutes of October 11th, 1904?

A. That is an exact reading of the minutes.

Q. What page is that in the minutes?

A. Page 392.

Q. Who were present at that meeting?

A. S. W. Lake, J. E. Lake, George B. Langley, C. P. Lake, J. Morgan Read, W. E. Lake.

Q. These minutes are all in your handwriting, are they?

A. Yes, sir.

Q. The other extract that you read, too, of July 5th?

A. Yes, sir.

Q. Is that in your handwriting?

A. Yes, sir.

Q. Of course you were present at this meeting?

10 A. Yes, sir.

Q. October 11th, 1904?

A. Yes, sir.

Q. Now, you are secretary, also, of the executive committee, are you?

A. Yes, sir.

Q. Do they keep minutes or not?

A. No.

Q. How is their action communicated, ordinarily, to the board?

20 A. By the report of the president.

Q. And that was what was done in this case, was it?

A. Yes, sir.

Q. Now, as a member of the executive committee, do you remember taking up this proposition in reference to the camp ground site after the authority was given to you by the Board of Directors, on July 5th, 1904?

A. The matter was taken up by the executive committee.

30 Q. With what result?

A. With the submission of a proposition to Council, which was accepted, with modifications, ordering an election.

Q. There were some modifications after your proposition was submitted?

A. Yes.

Q. Then were those modifications brought to the attention of the executive committee and then finally to the Board of Directors?

A. Yes.

Q. And this ordinance, Exhibit B, was read to the Board of Directors, was it?

A. The ordinance was read pertaining to this matter; yes.

Q. With the modifications?

A. Yes. 10

Q. Were you there on October 11th when the matter was discussed with the Councilmen?

A. I was not. I was present at this meeting held during the day, but had to return before the evening session of Council. The Council meeting was held subsequent to this.

Q. That is, the meeting of the Board of Directors?

A. Yes.

Q. And it was held at what hour?

A. The Board of Directors held their meeting at 1.30 P. M. 20

Q. On October 11th?

A. October 11th.

Q. 1904?

A. 1904. The Council meeting was held in the evening of the same day.

Q. What was the purpose of holding this meeting of October 11th, 1904?

A. The regular quarterly board meeting of the Association's managers, according to call. 30

Q. As a member of the executive committee, had you agreed to these modifications in the proposition, as contained in this ordinance, Exhibit B?

A. I didn't know of the modifications until that meeting, but as a member I agreed to them there.

Q. The modifications had only been talked of the night before, as I understand?

A. Yes; very recently.

Q. That is, the night before October 11th, is that right?

A. Yes; I think that is right; it would have been impossible for me to be present.

Q. That is, you mean on Monday night, October 10th?

10 A. Yes; Monday night, October 10th.

Q. I show you deed dated October 11th, 1904, made by the Ocean City Association to the City of Ocean City, which is signed and sealed, on behalf of the Association, by S. Wesley Lake, president; attest, W. Elwell Lake, secretary, and ask you if that is your signature?

A. It is.

Q. And is that the boardwalk deed that is mentioned in the minutes of October 11th, 1904?

A. Yes.

20 Q. And this was the deed executed by the Association pursuant to the resolution contained in the minutes of October 11th, 1904, which you read a few moments ago?

A. Pursuant to the motion; yes, sir.

W. ELWELL LAKE.

Sworn and subscribed this 24th day of October, A. D. 1905.

30 PHILIP S. SCOVEL,
Supreme Court Commissioner of New Jersey.

(Said deed referred to in foregoing testimony offered in evidence and marked Exhibit D for defendant.)

S. WESLEY LAKE, sworn:

By Mr. Bleakley.

Q. You are president of the Ocean City Association, are you, Mr. Lake?

A. I am.

Q. Do you remember there being some negotiations between the Association and the City of Ocean City in reference to the camp ground site?

A. I do. 10

Q. Where is that camp ground site located?

A. Between Fifth and Sixth streets, and between the bay and the ocean, Ocean City, New Jersey.

Q. Do you remember authority being given to the executive committee of the Ocean City Association to settle these differences and adjust the matter between the Association and the city?

A. I do.

Q. Do you know when that authority was given?

A. I don't remember. 20

Q. About when?

A. I think it was done at the July, 1904, meeting of the Board.

Q. Well, after that authority, what did the executive committee do?

A. Well, we had a number of interviews with the city officials and among ourselves, and talked the matter over, and finally made them a proposition.

Q. Now, after you made that proposition, did they ask for some modifications or not on behalf of the city? 30

A. Yes; we had a conference with them and they liked some parts, some parts they did not, so we talked it over back and forth until we got together.

Q. Now, do you remember the date when you got together?

A. No, I don't.

Q. Do you remember being at the session of the Ocean City Council on or about October 10th, 1904, when an ordinance was introduced?

A. Yes, sir.

Q. I show you the ordinance, Exhibit B, for the defendant in this case, and ask you to look it over and see if that is the ordinance that was introduced that night, October 10th, 1904, in the City Council of Ocean City?

10 A. I believe that to be the ordinance.

Q. You gave the city officials your proposition on behalf of the Association on October 10th, did you?

A. Previous to that we gave them a proposition.

Q. Do you remember how long previous to that meeting that proposition was delivered to the officers, about?

A. About a week, I should think.

Q. Then when you came together with the officials on Monday night, on October 10th, 1904, what happened?

20 A. Well, the proposition was presented then with the changes that they desired.

Q. Did they have this ordinance, Exhibit B, ready at that meeting to introduce?

A. Yes, sir.

Q. That ordinance contained these changes, did it?

A. Yes, sir.

Q. Do you remember whether they gave you a copy of the ordinance or the original ordinance itself?

A. I had a copy of the ordinance.

30 Q. They gave it to you, did they?

A. Well, they were prepared, two copies.

Q. Well, you had one copy?

A. We had one copy.

Q. Did you take up that copy of the ordinance and present it to the executive committee?

A. No; I presented it to the Board.

Q. Well, had you first presented it to the executive committee and talked it over with them?

A. Yes; that was the night before.

Q. Oh, the night before?

A. Yes.

Q. You mean the night before? That was Sunday night?

A. Well, we had a conference on Monday, the 10th, 1904, when we adjusted all differences.

10

Q. Now, who had this conference; who, on behalf of the Association, and who, on behalf of the city?

A. I represented the Association and the city officials were the Councilmen, and our attorney, and Judge Thompson, were all there.

Q. The Mayor was there, was he?

A. Yes, sir.

Q. Then do you remember the meeting of the Board on October 11th, the Board of Managers of the Ocean City Association?

20

A. I do.

Q. You were present, were you?

A. I was.

Q. Did you make a report on behalf of the executive committee to the Board at that time?

A. I did.

Q. Do you remember what you reported in reference to this camp ground business?

A. Well, I might not accurately, in keeping with the minutes, but I know the substance of it.

30

Q. Well, what did you report?

A. The executive committee, we had a number of meetings during the quarter and talked this matter over, and had a number of meetings with the City Council and officials; sometimes it would be two or three of the mem-

bers of the executive committee, and sometimes I would be with them by myself, and we also had a conference with the leading citizens of the town.

Q. Well, now, tell what you reported to the Board of Directors on October 11th?

A. We reported that we finally came to an agreement, to the proposition which the Association was willing to make to the city, and we made that proposition, but it was not altogether in keeping with the wishes of the city officials.

10

Q. Did you have at this meeting a copy of this ordinance, Exhibit B?

A. Yes.

Q. Do you know whether that was read to the Board of Directors?

A. Yes, sir.

Q. Who read it?

A. I did.

20

Q. Is that the ordinance that was passed?

A. That is the ordinance that was introduced the night before and passed that night.

Q. And containing all the modifications?

A. Yes, sir.

Q. Well, now, state whether or not the Board assented to that ordinance in the form as you read it?

A. They did, and unanimously approved of our work?

30

Q. That is, the work done by the executive committee?

A. The executive committee?

Q. In this matter?

A. Yes, sir.

Q. Now, after you had this meeting of the Board of

Directors on October 11th, 1904, did you attend the meeting of Council that night?

A. I did.

Q. Do you remember meeting the Councilmen and the city officials.

A. Yes, sir.

Q. What, if anything, did you tell them about your Board meeting?

A. Well, I told them that the Board had ratified our consideration and our plans, and this proposition as amended, and the ordinance as introduced the night before. 10

Q. Then what did the City Council do?

A. They continued the work and passed it to a finish?

Q. The ordinance, you mean?

A. Yes; two other readings; and it was signed that night.

Q. Now, the officials of the Association were directed to execute a deed, were they not, at the meeting held October 11th, 1904? 20

A. Yes, sir.

Q. What is that deed known as?

A. They call it an agreement, boardwalk agreement.

Q. It is known as the boardwalk deed, is it not?

A. Yes, sir; it is executed as a deed; yes.

Q. Now, I show you a deed between the Ocean City Association and Ocean City, dated October 11th, 1904, and ask you if that is your signature as president on behalf of the Association? 30

A. That is my signature.

Q. Found on page 6 of the deed?

A. Yes; my signature, sure.

Q. Now, then, is that the deed that you executed pursuant to the ordinance in question and in carrying out that agreement?

A. Yes, sir.

S. WESLEY LAKE.

Sworn and subscribed this 24th day of October, A. D. 1905.

PHILIP S. SCOVEL,
Supreme Court Commissioner of New Jersey.

NEW JERSEY SUPREME COURT.

NOVEMBER TERM, 1905.

No. 11 Branch.

OCEAN CITY LAND COMPANY,	}	
Prosecutor,		
vs.		10
OCEAN CITY AND	}	
OCEAN CITY ASSOCIATION.		

SUBMITTED NOVEMBER TERM, 1905. DECIDED
FEBRUARY 26, 1906.

An ordinance of a municipality passed under the provisions of an act of the Legislature (P. L. 1904 p. 366) relative to the vacation of land dedicated or devoted to public use which contains terms that can only be made effective by infringing upon private rights will be set aside. 20

ON CERTIORARI.

Before JUSTICES FORT, REED and GARRETSON.

For the Prosecutor, CHARLES C. BABCOCK,
BOURGEOIS & SOOY.

For the defendant, Ocean City, JOSEPH THOMPSON.
For the defendant, Ocean City Association, 30
BLEALKEY & STOCKWELL.

The opinion of the Court delivered by GARRETSON, J.:

The Ocean City City Association, the owner of a large tract of land in Ocean City dedicated to certain uses by

filing maps and by oral and written statements certain of those lands which it is now sought to free from the public right in them.

The prosecutors own lands, part of the original tract of the Ocean City Association, which they claim are entitled to have such dedication maintained.

10 This dedication has been before the Courts in the cases of Lennig vs. Ocean City Association, 14 Stew. 606, and in Bridgewater vs. Ocean City Railway Co., 17 Dick., 276, and the right of the purchasers of lots from the Ocean City Association to prevent that Association from devoting the dedicated lands to any other use than that for which they were dedicated has been sustained.

20 It is sought to vacate the public rights under the provisions of an act of the Legislature entitled "An Act relative to the vacation by the governing body of any city, town, township, borough or other municipality of this State of any land situated in such municipality and wholly or partially dedicated or devoted to public use and the extinguishment of all public rights therein." Approved March 30, 1904, P. L. 366.

30 This act authorizes the governing body of any of the municipalities mentioned, whenever any land devoted wholly or partially to public use shall be considered or deemed by the governing body of such municipality to be unsuited to or undesirable for such public use or otherwise useless, burdensome or disadvantageous to the public or such municipality, by ordinance and on such terms as it shall prescribe with the consent of the owner in fee to vacate or extinguish the public rights in and to any land dedicated or devoted wholly or partially to public use and to restore the said land to the holder of the legal fee thereof freed and discharged from all such public rights therein as if such public rights therein had never existed. Other provisions in the act require the propo-

position to vacate to be submitted to the qualified voters of the municipality and that the ordinance shall become effective only when approved by a majority of the qualified voters voting at the election.

On the 10th of October, 1904, the Ocean City Association presented a proposition to the City Council of Ocean City, proposing terms on which the Council would co-operate with the Association in removing the restrictions on the camp ground.

On the same day the Council passed a resolution to accept certain parts of the proposition of the Association. 10

On the same day an ordinance was introduced, entitled "An Ordinance relative to the vacation of certain lands, situate, lying and being at Ocean City, Cape May County, New Jersey, between Fifth and Sixth streets and extending from the Atlantic Ocean to Beach Thoroughfare (an arm of Great Egg Harbor Bay), dedicated to public use and the extinguishment of all public rights therein."

This ordinance was adopted at a special meeting held October 11th, 1904, and approved the same day. 20

It contains recitals that the Ocean City Association recorded a map in June, 1880, which shows an open space between Fifth and Sixth streets, marked "Camp Ground" in the centre of the block; that in 1881, the Association issued a pamphlet which referred to said camp ground and also referred to the map comprising 995 lots besides the camp ground, tenting ground and parks; that in 1882 the Association published a pamphlet and referred to the camp ground park as follows: "The camp ground park, extending from Fifth to Sixth streets and from Asbury to Wesley avenues has been fully graded and laid out into plots, &c.," and in the last mentioned pamphlet was contained a printed plan of a portion of the camp ground park referred to and on which plan was printed the words "Park," "Auditorium" and "Grove," &c.; that 30

in 1883 the Association filed another map on which the space between Fifth and Sixth streets is indicated to be open from the bay to the ocean, making in all seven blocks; that two of the blocks in said open space are marked "Park" and one of them is marked "Grove" and the block between Wesley avenue and Asbury avenue and Fifth and Sixth streets is marked with the words "Auditorium" and "Camp Ground"; that it is alleged and claimed that the whole of said lot of land between

10 Fifth and Sixth streets and extending from the Atlantic Ocean to said Great Egg Harbor Bay, or arm or part thereof has been wholly or partially dedicated or devoted to public use by virtue of said maps, publications and other acts of said Association; that all of said land excepting the square or block bounded by Wesley and Asbury avenues and Fifth and Sixth streets is deemed by the governing body of the city to be unsuited to and undesirable for such public use and the maintenance of the same in its present condition considered to be otherwise burdensome, and disadvantageous to the public and

20 the said municipality and in pursuance of the act of 1904, supra, ordains in Section 1 that the plots or lots of ground at Ocean City, located between Fifth and Sixth streets and extending from Beach Thoroughfare to the Atlantic Ocean, with the exception of the square or block bounded by Wesley avenue and Asbury avenue and Fifth and Sixth streets are in their present condition unsuited to and undesirable for public use, &c., as in the recital.

30 In Section 2 it is ordained that with the consent of the Association, the owner of the legal fee of said ground, and in consideration of the said owner of the fee making certain grants and conveyances in the ordinance afterwards set forth, the rights of the public and the municipality of Ocean City and all other public rights other than those of the holder of the fee be and they were

thereby vacated and extinguished in the tract described and were thereby restored to the Association the holder of the legal fees thereof, freed and discharged from all public rights therein as if such public rights therein had never existed, as provided by the Act of 1904, supra.

In Section 3 it is ordained that in consideration of such vacation and extinguishment and on the proper and lawful removal of the said alleged dedications and restrictions now affecting the same, the Association shall convey by deed in the usual form to Ocean City, eighteen 10 lots, describing them, subject to a restriction that none of them shall be leased or used for baseball, football or other athletic purposes; further, that the Association shall pay \$10,000 in cash to Ocean City to be used in the erection of two school buildings; further that the Association within one year is to make improvements on the land so vacated by the erection of houses or other buildings thereon to the amount of at least \$10,000; and 20 further, that immediately after the passage of the ordinance, the Association is to grant and convey to Ocean City the right to Ocean City to erect a plank or boardwalk of a width of 32 feet over and across any of the property of the Association at Ocean City on the beach front, between Fifth and Seventeenth streets, according to the plan of the municipality.

Section 4 provides that the ordinance shall not be effective until submitted to and approved by the voters of Ocean City.

Section 5 provides the form of ballot to be used at the election. 30

On the same 11th of October, 1904, two resolutions were adopted one submitting the proposition to a vote of the voters and the other prescribing the notice of election to be given.

An election was held; a majority of the voters was in favor of the proposed vacation.

Among the reasons assigned for setting aside the action of the Common Council is that no consent to the proposed vacation of the public rights was obtained from the owner of the fee.

We think that this reason is not sustained.

10 No form of consent is required by the Act; the ordinance itself provides that it shall not be effective unless by the consent of the owner. The owner of the fee is not objecting to the ordinance.

20 The Association presented the proposition in the first instance to the Common Council. Modifications in the proposition were made by the Common Council. It appears that the President of the Association agreed to these modifications in the meeting of the Council where they were discussed. It appears from the minutes of the Board of Directors of the Association that the ordinance was accepted by the Association and the officers were instructed to execute a deed for the right of way for the boardwalk in accordance with the ordinance, and this deed was executed. We think the consent of the owner of the fee to the vacation mentioned in the ordinance sufficiently appears.

30 Another reason assigned for setting aside the proceedings of the Common Council, is that the Act of March 30th, 1904, is unconstitutional, in that it is special. It is claimed that it is special in that it applies only to such owners of the fee in lands dedicated to a public use as shall consent to the vacation of the dedication and that the proceeding to vacate must be initiated by the land owner. We think this is an entire misconception of the purpose of the Act. The Act is general in form, applies to all the classes of municipalities mentioned in it and

confers a power of municipal government upon them which some of them did not before possess. It is not an Act of conferring power upon individual land owners.

The same argument would make unconstitutional powers conferred upon many municipalities incorporated under general laws to vacate streets, or to make street improvements upon the application of land owners or the power to lay trolley railroad tracks in streets and roads upon obtaining the consent of a certain proportion of the land owners. This act seems to be constitutional.

10

Neither do we think the proceedings void because of the failure of the Common Council to determine beforehand that said lands were unsuited or undesirable for the public use to which they were dedicated or that they were useless, burdensome or disadvantageous to the municipality; they so declared in the ordinance itself.

It is also urged against the alleged vacation that the land in question has not been dedicated to public use and that there is no public right to vacate.

When we examine what are claimed to be dedicatory acts we find the filing of two maps in one of which the lands in question are marked "Camp Ground" and on the other the space between Fifth and Sixth streets is indicated to be open and that two of the blocks in the open space are marked "Park" and one of them marked "Grove" and one block is marked with the words "Auditorium" and "Camp Ground"; on the other map the space is indicated to be open. In the statements issued there in reference to camp ground, tenting ground and parks, also in one of the statements it is said "the camp ground park, extending from Fifth to Sixth streets and from Asbury to Wesley avenues has been fully graded, &c.," and contained a printed plan of a portion of the camp ground park referred to and on which plan was printed the words "Park", "Auditorium", and "Grove".

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30

It may be very doubtful whether these acts were dedications of the properties indicated, to the use of the public, represented by the municipality or were any more than notices to the purchasers of lots in the same tract that the Association itself devoted the lands to those purposes.

There is nothing in the case to indicate that there was ever any acceptance by the municipality of any dedication made by the Association of the property in question.

10 We do not deem it necessary to decide whether the lands in question had been dedicated to any public use or whether there was any public right for the municipality to vacate.

The manner in which the power conferred upon the municipality by the Legislature has been exercised renders their action void. The Act authorizes the vacation of the public right "upon such terms as" the governing body of the municipality shall prescribe. These terms must be legal and lawful. They must not be terms

20 which shall violate private rights or which may lead to such violation. The public rights in question are vacated and extinguished by the ordinance upon these terms and others, viz: That the Association convey to the city eighteen lots upon which the public right existed; that the Association pay the city \$10,000 to be used in erecting school houses in other parts of the city, and that the Association is to make improvements upon the land vacated by the erection of buildings thereon to the amount of at least \$10,000. These terms assume that

30 when the ordinance is passed and the public right vacated, that the Association will have a right to deal with the lands vacated in such a way as it shall choose. It is to convey eighteen lots to the city for any purpose it chooses to put them to with the single limitation in

the ordinance. It is to improve certain of the same lands by buildings to be used by the Association for its own purposes. This conveyance and this use will clearly violate the rights of the owners of other lots in the same tract to have the lands in question devoted to the uses as indicated to the purchasers when they bought their lots.

The terms of the vacation are illegal and the ordinance is therefore invalid.

The proceedings removed are set aside with costs.

NEW JERSEY SUPREME COURT.

JUNE TERM, 1906.

10	OCEAN CITY LAND COMPANY, Prosecutor.	}	On Certiorari.
	vs.		Order Setting Aside
	OCEAN CITY AND OCEAN CITY ASSOCIATION, Defendants.		Proceedings.

20 The Court having inspected the transcript and proceedings of the City Council of the City of Ocean City and the resolution and ordinance returned with the certiorari in this cause, the reasons for setting aside said proceedings, the testimony taken and having heard argument of counsel therein and having duly considered the same—

30 Do order that the ordinance of the said City of Ocean City, entitled, "An ordinance relative to the vacation of certain lands, situated, lying and being at Ocean City, Cape May County, New Jersey, between Fifth and Sixth streets, and extending from the Atlantic Ocean to Beach Thoroughfare (an arm of Great Egg Harbor Bay) dedicated to public use, and the extinguishment of all public rights therein," approved October 11, 1894, together with the result of the election held on the eighth day of November, nineteen hundred and four, and all acts and things and proceedings touching and concerning the vacat-

ing and extinguishment of the public rights in the lands mentioned in said ordinance, be and the same are hereby set aside with costs.

Dated August 15, 1906.

On motion of

BOURGEOIS & SOOY,
CHAS. C. BABCOCK,
Attorneys for Proseantor.

Entered August 20, 1906.

10

NEW JERSEY, SS.



The State of New Jersey to our Justices of our Supreme Court, Greeting:

10 Because in the record and proceedings, and also in the giving of the judgment in a plaint, which was in our said Supreme Court before you, between Ocean City Land Company, plaintiff, and Ocean City and Ocean City Association, defendants, on a certiorari issued out of our said Supreme Court, to the said Ocean City and Ocean City Association, defendants, as is said manifest error hath
 20 intervened, to the great damage of the said Ocean City and Ocean City Association, defendants as aforesaid, as by their complaint we are informed, we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice be done to the parties aforesaid, in this behalf, do command you that if judgment be thereupon given, then you send distinctly and openly, under your seal, the record and proceedings and
 30 plaint aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals, before the Judges thereof, on the fifteenth day of September, A. D. 1906, and this writ, and that the records and proceedings aforesaid being inspected, we may cause to be further done thereupon what of right and according to law ought to be done.

Witness, William J. Magie, Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this 30th day of August, A. D. 1906.

30

S. D. DICKINSON,
 Clerk.

RETURN.

The answer of the Justices of the Supreme Court of the State of New Jersey within named.

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

WM. S. GUMMERE, [SEAL.]

C. J.

10

NEW JERSEY COURT OF ERRORS AND
APPEALS.

<p style="text-align: center;">OCEAN CITY LAND COMPANY, Defendant in Error, vs. 10 OCEAN CITY AND OCEAN CITY ASSOCIATION, Plaintiffs in Error.</p>	}	<p style="text-align: center;">In Error. Assignment of Errors.</p>
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And now at this day, the plaintiffs in error assign the following causes of error:

20 First.—Because the Supreme Court decided that “The manner in which the power conferred upon the municipality by the Legislature has been exercised renders their action void. The Act authorizes the vacation of the public right ‘upon such terms as’ the governing body of the municipality shall prescribe. These terms must be legal and lawful. They must not be terms which shall violate private rights or which may lead to such violation. The public rights in question are vacated and extinguished by the ordinance upon these terms and others, viz: that the Association convey to the city eighteen lots upon which the public right existed; that
30 the Association pay the city \$10,000 to be used in erecting school houses in other parts of the city, and that the Association is to make improvements upon the land vacated by the erection of buildings thereon to the amount of at least \$10,000. These terms assume that when the ordinance is passed and the public right vacated,

that the Association will have a right to deal with the lands vacated in such a way as it shall choose. It is to convey eighteen lots to the city for any purpose it chooses to put them to with the single limitation in the ordinance. It is to improve certain of the same lands by buildings to be used by the Association for its own purposes. This conveyance and this use will clearly violate the rights of the owners of other lots in the same tract to have the lands in question devoted to the uses as indicated to the purchasers when they bought their lots." 10

"The terms of the vacation are illegal and the ordinance is therefore invalid."

"The proceedings removed are set aside with costs."

Second.—Because the said Supreme Court decided that the terms of the vacation in the ordinance under review were not legal and lawful.

Third.—Because the said Supreme Court decided that the terms of the said ordinance under review violated any private rights, or would lead to such violation. 20

Fourth.—Because the said Supreme Court decided that the terms of the said ordinance under review assumed that when said ordinance was passed and the public right vacated, the Ocean City Association would have a right to deal with the lands vacated in such a way as it should choose.

Fifth.—Because said Supreme Court decided that the conveyance authorized by the ordinance under review would violate the rights of the owners of other lots. 30

Sixth.—Because the said Supreme Court decided that the terms of said vacation were illegal and the aforesaid ordinance invalid.

Seventh.—Because the said Supreme Court decided that under the terms of the ordinance in question the Ocean City Association was to convey to the City of Ocean City for any purpose it choose to put them to, with the single limination mentioned in said ordinance, eighteen lots.

IO Eighth.—Because the said Supreme Court wholly misconstrued the ordinance under review, and the terms of vacation therein provided for.

Ninth.—Because the said Supreme Court gave judgment in form aforesaid for the said Ocean City Land Company, against the said plaintiffs in error, whereas by the law the land judgment ought to have been given for the plaintiffs in error, against the said Ocean City Land Company.

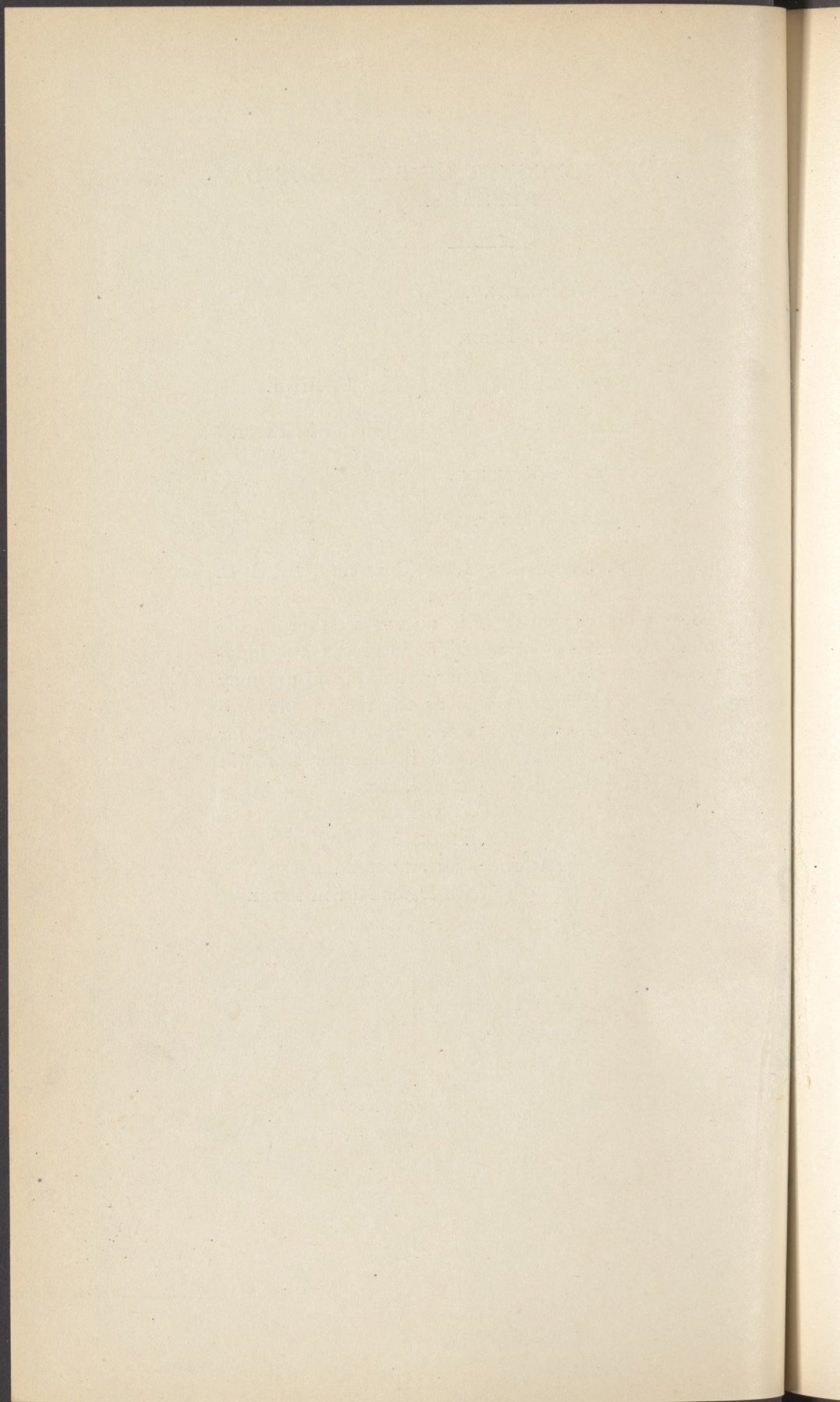
BLEAKLEY & STOCKWELL,
Attorneys for and of Counsel
with Plaintiffs in Error.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

<p>OCEAN CITY LAND COMPANY, Defendant in Error, vs. OCEAN CITY AND OCEAN CITY ASSOCIATION. Plaintiffs in Error.</p>	}	<p>In Error. 10 Joinder in Error.</p>
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And the said Ocean City Land Company, by C. C. Babcock and Bourgeois & Sooy, its attorneys, comes into Court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and it prays here that the Court may here proceed to examine as well as the record and proceedings aforesaid as the matters assigned aforesaid for error, and the judgment aforesaid in manner aforesaid given, may, in all things, be affirmed, etc. 20

C. C. BABCOCK,
BOURGEOIS & SOOY,
Attorneys for and of Counsel
with Defendant in Error.



NEW JERSEY COURT OF ERRORS AND
APPEALS.

OCEAN CITY LAND COMPANY,	}	
Defendant in Error,		
vs.		
OCEAN CITY AND OCEAN CITY	}	19
ASSOCIATION,		
Plaintiff in Error.		

Afterwards, that is to say, on the nineteenth day of June, nineteen hundred and seven, before the Judges of the Court of Errors and Appeals in the last resort in all causes, at Trenton, comes the said Ocean City and Ocean City Association, by Bleakly & Stockwell, its attorneys, and alleges that the writ of certiorari, judgment, order and other papers from the Supreme Court in relation to the judgment and record aforesaid are not certified and returned with the writ of error depending in this Court, and that the said Ocean City and Ocean City Association prays that the writ of the State of New Jersey be directed to the Justices of the said Supreme Court to certify to the said Court of Errors and Appeals the truth of same, and it is granted to it.

BLEAKLY & STOCKWELL,
Attorneys and of Counsel with Plaintiff in Error.

Filed June 20, 1907.

S. D. DICKINSON,
Clerk.

STATE OF NEW JERSEY, ss:

State of New Jersey to the Justices of our
[SEAL.] Supreme Court, Greeting:

Whereas, on the return of the writ of error to you directed in certain cause wherein Ocean City Land Company is defendant in error and Ocean City and Ocean City Association are plaintiffs in error, diminution of record is alleged on the part of the plaintiff in error;

10 Now, therefore, we being willing, for certain reasons, to be certified of a certain judgment by you lately made and rendered on a writ of certiorari issued out of our Supreme Court to review a judgment in an action wherein Ocean City Land Company was plaintiff and Ocean City Association and Ocean City were defendants, do hereby command you that you send under your seals to our Judges of our Court of Errors and Appeals, at Trenton, on Thursday, the twentieth day of June, nineteen hundred and seven, the original writ of certiorari, judgment, order and proceedings made and given by the Justices of
20 the Supreme Court.

All as a return in obedience to said writ of certiorari, with all things touching and concerning the same, as fully and entirely as they remain in our said Supreme Court, by whatsoever names the parties may be called therein, together with this, our writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

30 Witness, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the nineteenth day of June, in the year of our Lord one thousand nine hundred and seven.

S. D. DICKINSON,
Clerk.

BLEAKLY & STOCKWELL,
Attorneys.

Filed June 20, 1907.

S. D. DICKINSON,
Clerk.

I do herewith send to the Court of Errors and Appeals of the State of New Jersey the proceedings as within commanded under the seal of the Supreme Court and my hand.

Dated June 20, 1907.

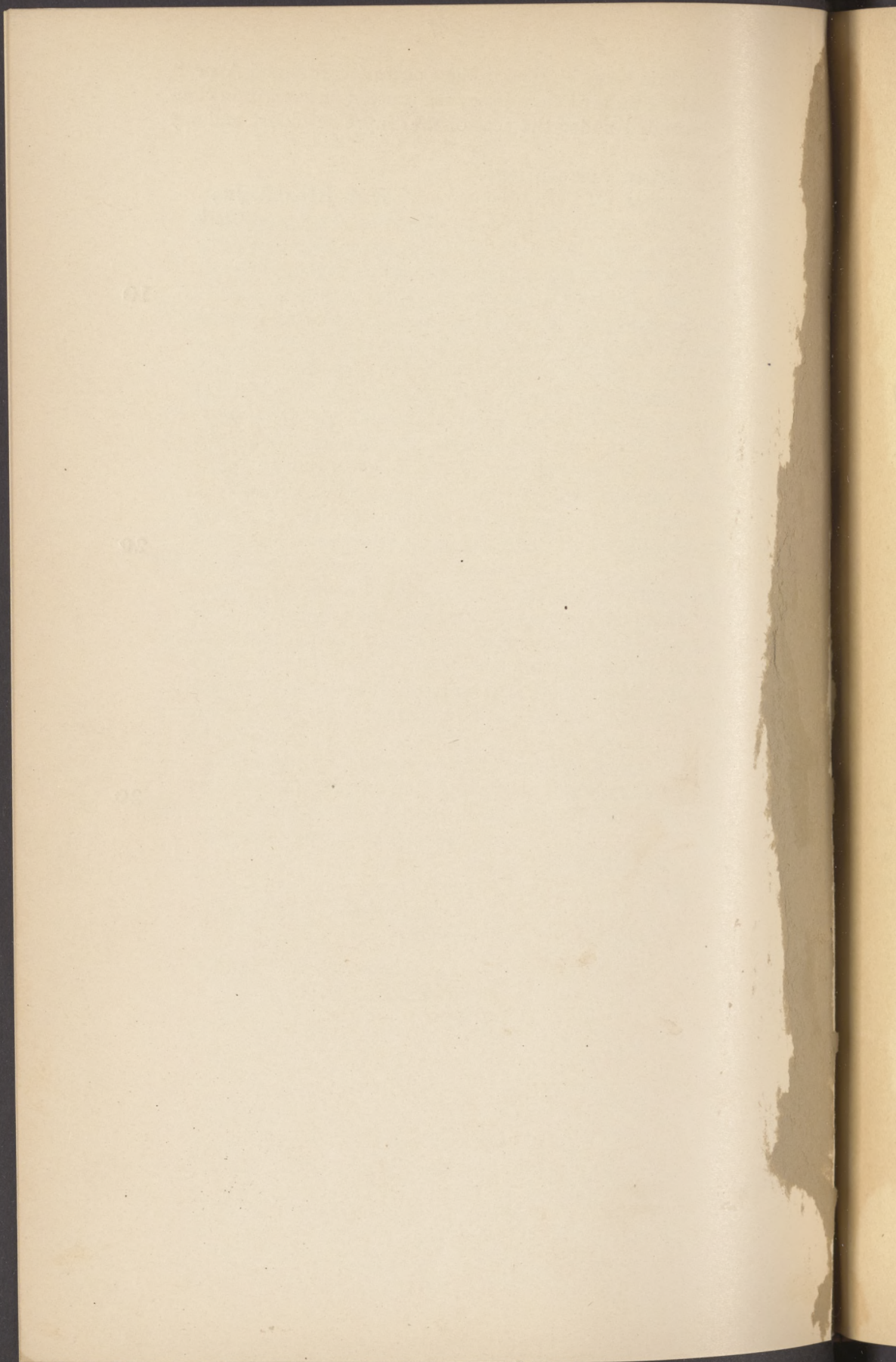
[SEAL.]

WM. RIKER, JR.,
Clerk.

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NEW JERSEY

Court of Errors and Appeals

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