J. J. Griffiths, Law Printer, 38 Montgomery St., Jersey City.

New Jersey Supreme Court.

The State, Archibald Gracie King, for himself, and as trustee for Mary K., wife of Edgar H. Richards, and Frederica G., wife of J. C. Bancroft Davis, and Fanny L. McLane, wife of James L. McLane, Pros., vs. Abraham W. Duryee, John Reid, George P. Schinzel, Commissioners, James H. Symes, Clerk, et al.	Writ of Certiorari.

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Ret'ble, Nov. Term, 1881.

SCUDDER & VREDENBURGH,
Attys.

I allow this writ. Let it be sealed.

M. M. KNAPP,
J. S. C.

New Jersey, ss:

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The State of New Jersey to Abraham W. Duryee, John Reid and George P. Schinzel, commis-
[seal.] sioners to improve the Bulls Ferry Road, in the County of Hudson, James H. Symes, clerk of said commissioners, William Sayles, township treasurer of the inhabitants of the Township of Weehawken, in the County of Hudson, and Henry K. Van Horn, county clerk of the County of Hudson, greeting:—

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We being willing for certain reasons to be certified of the authority of you, said Abraham W. Duryee, John Reid and George P. Schinzel, as commissioners as aforesaid, and of your proceedings and those of your predecessors as such, and of a certain assessment map and report made by you, said commissioners, and filed in the office of the clerk of the County of Hudson, which proceedings are pretended to have been taken, and which map and report are pretended to have been made, under the authority of an act entitled "An act to improve Bulls Ferry Road in Hudson county, from the northerly line of the Township of Weehawken to the Hackensack Plank Road, and also the branch road leading from Bulls Ferry Road opposite Weehawken street, in the Town of Union, to Nineteenth street, in the Township of Weehawken," approved April 4th, 1872, and the supplements thereto, and which assessment is now in the hands of you, William Sayles, township treasurer of the inhabitants of the Township of Weehawken, in the County of Hudson, for collection.

We command you that the said authority, proceedings, assessment map and report, by whatsoever the same may be designated or known and whensoever the same may have been made, and whensoever or wheresoever the same may have been filed or recorded, together with all things touching and concerning the same, to our Supreme Court, at Trenton, on the first Tuesday of November next, you certify and send together with this writ, that therein may be done what of right and according to the laws and constitution of this State ought to be done.

Witness, Mercer Beasley, Esquire, our Chief Justice, at Trenton, the 25th day of June, in the year eighteen hundred and eighty-one.

BENJ. F. LEE,
Clerk.

SCUDDER & VREDENBURGH,
Attys.

NEW JERSEY SUPREME COURT

THE STATE,
ARCHIBALD GRACIE KING, for himself, and as Trustee for Mary K. wife of Edgar H. Richards, and Frederica G. wife of J. C. Bancroft Davis, and Fanny L. McLane wife of James L. McLane,
Prosecutors,
vs.
ABRAHAM W. DURYEE, JOHN REID, GEORGE P. SCHINZEL, Commissioners, JAMES H. SYMES, clerk, et al.

Writ of Certiarari
Writ returnable
November Term,
1881.

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THE STATE,
AMY H. DUER, SARAH G. DUER, JAMES G. K. DUER and EDWARD A. DUER,
Prosecutors,
vs.
ABRAHAM W. DURYEE, JOHN REID, GEORGE P. SCHINZEL, Commissioners, JAMES H. SYMES, clerk, et al.

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Writ of Certiorari
Writ returnable
November Term,
1881.

30

THE STATE,
EDWARD A. DUER, DENNING DUER, DENNING DUER, JR.,
Prosecutors,
vs.
ABRAHAM W. DURYEE, JOHN REID, GEORGE P. SCHINZEL, Commissioners, JAMES H. SYMES, clerk, et al.

Writ of Certiorari
Writ returnable
November Term,
1881.

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THE STATE, EDWARD KING and CAROLINE KING, Prosecutors, vs. ABRAHAM W. DURYEE, JOHN REID, GEORGE P. SCHINZEL, Commissioners, JAMES H. SYMES, clerk, et al.	Writ of Certiorari Writ returnable November Term. 1881.

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SCUDDER & VREDENBURGH,
Attorney for Prosecutors.

RETURN.

We, the said Abraham W. Duryee, John Reid and George Schinzel, commissioners to improve the Bulls Ferry Road, in the County of Hudson, James H. Symes, clerk of said commissioners, William Sayles, 20 township treasurer of the inhabitants of the Township of Weehawken, in the County of Hudson, and Henry K. Van Horn, county clerk of the County of Hudson, in obedience to the annexed writs that have been issued and directed to us, certify and send to the said Supreme Court in a schedule hereto annexed, the said authority of said Abraham W. Duryee, John Reid and George P. Schinzel as said commissioners, and their report and assessment against said prosecutors in the said several writs of certiorari mentioned, which 30 schedule consists of

1. Petition to supply vacancies in commission.

2. Order of Judge Knapp filling vacancies in Bulls Ferry Road Commission.

3. Oath of John Reid and George P. Schinzel, as Bulls Ferry Road Commissioners.

4. Commissioners' report, and so much of the schedule of assessment as relates to the property of 40 said prosecutors in said writ.

5. Affidavit of Hudson County Democrat of publication of assessment notice.

6. Affidavit of Hoboken Advertiser of publication of assessment notice.

7. Affidavit of North Hudson County Ledger of publication of assessment notice.

8. Affidavit of James H. Symes as to posting notices of assessment on Bulls Ferry Road. 10

9. Affidavit of James H. Symes as to sending assessment notices to non-resident owners in Weehawken.

10. Affidavit of James H. Symes as to sending assessment notices to non-resident owners in the Town of Union.

11. Objections of A. G. King et al. to the Bulls Ferry Road assessment. 20

12. Receipt from H. K. Van Horn, county clerk, for assessment map, schedule and report.

13. Receipt of J. B. Cleveland, register of Hudson county, for assessment map, schedule and report.

14. Affidavit of Hudson County Democrat of publication of notice of filing assessment map, schedule and report.

15. Affidavit of Hoboken Advertiser of publication of notice of filing assessment map, schedule and report. 30

16. Copy of assessment map, Bulls Ferry Road improvement.

ABM. W. DURYEE,
JOHN REID,
GEO. P. SCHINZEL,
Commissioners.

Attest:
JAS. H. SYMES, Clerk. 40

HUDSON CIRCUIT COURT.

PETITION.

Bulls Ferry Road Commission, to supply vacancies in commission, January 18, 1881.

R. GILCHRIST, Att'y.

10 To the Honorable MANNING M. KNAPP, Judge of the Circuit Court of the County of Hudson:

The undersigned Abram W. Duryee, who with John H. Bonn and Henry J. Rottman, hereinafter named, were appointed commissioners by an act approved April 4th, 1872, entitled "An act to improve Bulls Ferry Road, in Hudson county, from the northerly line of the Township of Weehawken to the Hackensack Plank Road, and also the branch road leading from the Bulls Ferry Road opposite Weehawken
20 street, in the Town of Union, to Nineteenth street, in the Township of Weehawken."

Respectfully shows that by section eleven (11) of said act the commissioners thereby appointed are required to make the assessment of the costs of said improvement thereby authorized on the lands benefited, and otherwise as in said act and its supplements is directed.

That John H. Bonn, who is a resident and owner of real estate in the Township of Weehawken, was
30 appointed one of said commissioners by said act; and as such resident and owner of real estate in said township is liable to be rated and assessed to pay some portion of whatever share of said cost is to be paid by said township, and said act provides for the payment by said township of so much of the cost as shall not be assessed on lands benefited; and by reason of interest in the assessment on said township, the said Bonn labors under a disability to make the assessments provided for by said act and its supple-
40 ments.

That Henry J. Rottman, who is a resident and owner of real estate in the Town of Union, was appointed one of said commissioners by said act; and as such resident and owner of real estate in said town is liable to be rated and assessed to pay some portion of whatever share of said cost is to be paid by said town, and said act provides that said town shall pay some of such costs, and a supplement to said act provides for the payment by said town of so much of the cost as shall not be assessed on lands benefited; and by reason of interest in the assessments on said town, the said Rottman labors under a disability to make the assessments provided for by said act and its supplements.

That by the seventh (7) section of said act it is provided that in case of any vacancy in said board of commissioners from death, absence or any disability, such vacancy shall be filled by the judge of the circuit court of the County of Hudson on a petition for that purpose by the remaining commissioners who shall hold their office.

Your petitioner therefore prays your honor to appoint some persons to take the place of commissioners under said act and its supplements, for which said Bonn and said Rottman are in manner aforesaid disqualified.

Dated. ABM. W. DURYEE.

NEW JERSEY, }
HUDSON COUNTY. } ss.

Abraham W. Duryee, above named, being duly sworn according to law, on his oath saith, that the facts stated in the foregoing petition are true.

ABM. W. DURYEE.

Sworn to and subscribed before me, at the City of Hoboken, this 17th day of January, A. D. 1881.

JAMES H. SYMES,
Notary Public.

State of New Jersey, }
Hudson County. } ss.

I, Henry K. Van Horn, clerk of the County of Hudson, do hereby certify the foregoing to be a true copy of a petition, &c., on file in my office.

Witness my hand and the seal of said county, this 20th day of January, A. D. 1881.

H. K. Van Horn,
[L. S.] Clerk.

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HUDSON CIRCUIT COURT.

Order

of judge filling vacancies in Bulls Ferry Road Commission. With acknowledgement of notice and assent of the old commissioners.

R. Gilchrist,
Attorney.

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By the Honorable Manning M. Knapp, Judge of the Circuit Court of the County of Hudson, in the State of New Jersey.

Whereas, Abraham W. Duryee, one of three commissioners appointed by the legislature of this State by an act entitled "An act to improve Bulls Ferry Road in Hudson county, from the northerly line of the Township of Weehawken, to the Hackensack Plank Road, and also the branch road leading from
30 Bulls Ferry Road opposite Weehawken street, in the Town of Union, to Nineteenth street in the Township of Weehawken, which was approved April 4, 1872, has by petition to me for that purpose prayed me to fill two vacancies in the said board of commissioners appointed by said act occasioned by the disability of interest setting forth such disability, and it appearing to me by due proof that John H. Bonn was appointed by said act to be one of said board of
40 commissioners, and that said commissioners by

said act and its supplements are required to make certain assessments of the cost of the works in the said acts mentioned, on land benefited, and on the Township of Weehawken and the Town of Union, and that said John H. Bonn is a resident of and owner of real estate in the Township of Weehawken, and as such is liable to be rated and assessed to pay some portion of whatever share of said cost is to be paid by said township, and said acts provide for the payment by said township of so 10 much of the cost as shall not be assessed on lands benefited, and by reason of interest in the assessment on said township, labors under a disability to make the assessment provided for in said acts. I do hereby adjudge that there is a vacancy in said board of commissioners from disability, and do fill such vacancy by the appointment of, and I do hereby appoint John Reid of Hoboken to be one of said board of commissioners in the place and stead of the said John H. Bonn, 20

And it also appearing to me by due proof that Henry J. Rottman was appointed by said act to be one of said board of commissioners, and that said Commissioners by said act and its supplements are required to make certain assessments of the costs of the works in said acts mentioned on land benefitted, and on the township of Weehawken and the town of Union, and that said Henry J. Rottman is a resident of and owner of real estate in the town of Union, and as such is liable to be rated and assessed 30 to pay some portion of whatever share of said cost is to be paid by said town, and saidacts provide for the payment by said town of so much of the cost as shall not be assessed on lands benefitted, and by reason of interest in the assessment on said township, labors under a disability to make the assessments provided for in said acts. I do hereby judge that there is a vacancy in said Board of Commissioners from disability, and do fill such vacancy by the appointment of, and I do hereby appoint George 40

P. Schinzel of Hoboken to be one of said Board of Commissioners in the place and stead of the said Henry J. Rottman.

Given under my hand this 18th day of January, A. D. 1881.

M. M. KNAPP,
Judge, Hudson Circuit Court.

We acknowledge notice of the application to fill our vacancy, and assent to the appointment of other commissioners in our places.

J. H. BONN,
HENRY J. ROTTMAN.

Witness: JAS. H. SYMES.

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

I, Henry K. Van Horn, Clerk of the County of Hudson, do hereby certify that the foregoing is a true copy of an order of M. M. Knapp, Judge, as the same is on file in my office.

Witness my hand and seal of said county this 20th day of January, A. D. 1881.

H. K. VAN HORN,
[L. S.] Clerk.

OATH

of John Reid and Geo. P. Schinzel, Bulls Ferry Road Commissioners, appointed to fill vacancies of John H. Bonn and Henry J. Rottmann.

Filed January 18, 1881.

(Signed) H. K. VAN HORN,
Clerk.

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

John Reid and George P. Schinzel, being by me, the subscriber, each duly and severally sworn according to law, on his oath says, that he is a commis-

sioner appointed by the Honorable Manning M. Knapp, Judge of the Circuit Court of the County of Hudson, by order dated January 18th, 1881, the said John Reid to fill vacancy created by the disability of John H. Bonn and the said George P. Schinzel appointed in manner aforesaid to fill the vacancy created by the disability of Henry J. Rottmann, the said Bonn and Rottmann being two of the commissioners named in the act entitled "An act to improve Bulls Ferry Road, in Hudson county, from the northerly line of the Township of Weehawken to the Hackensack Plank Road, and also the branch road leading from the Bulls Ferry Road, opposite Weehawken street, in the Town of Union, to Nineteenth street, in the Township of Weehawken," approved April 4th, 1872. That they will examine into the whole matter impartially and to the best of their judgment, skill and ability, and will exercise the duties of their office of commissioner faithfully.

JOHN REID,
GEO. P. SCHINZEL.

Sworn and subscribed before me this twenty-first day of January, A. D. eighteen hundred and eighty-one,

SAMUEL WEBB,
Justice of the Peace,
County of Hudson,
State of New Jersey.

A true copy:
H. K. VAN HORN, Clerk.

REPORT OF COMMISSIONERS.

To the Town Council of the Town of Union, and the Township Committee of the Township of Weehawken, and the property owners assessed for the improvement of Bulls Ferry Road in Hudson county, from the northerly line of the Township of Weehawken, to the Hackensack Plank Road, and also the branch road leading from the Bulls

Ferry Road opposite Weehawken street, in the Town of Union to Nineteenth street in the Township of Weehawken.

We, the undersigned, Abraham W. Duryee, John Reid, and George P. Schinzel, were appointed commissioners, by virtue of an act entitled "An Act to improve Bulls Ferry Road, in Hudson County, from the northerly line of the Township of Weehawken, to the Hackensack Plank Road and also the branch road leading from Bulls Ferry Road, opposite Weehawken street, in the Town of Union, to Nineteenth street, in the Township of Weehawken," approved April 4th, 1872, as follows: The said Abraham W. Duryee was appointed by section 1 of said act, and the said John Reid and George P. Schinzel were appointed under the provisions of section 7 of said act, by the Honorable Manning M. Knapp, the Judge of the Circuit Court of the County of Hudson, on a petition for that purpose, as required by law to fill the vacancies caused by the disability and resignation of John H. Bonn and Henry J. Rottmann, two of the original commissioners appointed under said section 1.

The said Abraham W. Duryee together with said John H. Bonn and Henry J. Rottmann were appointed in and by said act commissioners, with powers, among others, to make a map of said Bull's Ferry Road and branch roads, and to widen and straighten the same, and thereafter to curb, gutter, and regulate the same, or such parts as they might deem most for the public advantage.

Before any proceedings were taken by them under said act, they took and subscribed an oath before James H. Symes, a Justice of the Peace of the County of Hudson, to examine into the whole matter impartially, and to the best of their judgment, skill and ability, and to exercise the duties of their office faithfully, and thereupon filed the same in the office of the Clerk of the County of Hudson, reference being thereunto had will fully appear.

They, the said original commissioners then proceeded to exercise the powers and duties required of them by said act, and to that end among other things, made a map and filed and gave notice thereof as required by said act, and no written remonstrance having been filed the said map was thereafter accepted, as showing the lines and boundaries of said highways as provided in said act, and the lines and boundaries of the sections of said road as provided in section 9 of said act, which sections are coincident with the 10 sections provided for by section 9 of a supplementary act approved April 3d, 1873, said sections being as follows:

Section 1, extending from Nineteenth street, Weehawken, to the southerly line of the estate of James G. King, deceased.

Section 3, extending from the centre line of Fulton street to the northern boundary of Weehawken, and

Section 2, consisting of all said Bulls Ferry Road and said branch road, between said sections 1 and 3. 20

The said original commissioners then proceeded in accordance with the requirements of said act to declare vacated certain parts of highways then existing, to view the lands to be taken, and hear the parties interested, after giving notice as required by law, and thereafter to award compensation for the lands taken and damages, to assess the money to pay therefor together with the expenses, and to pay and tender the same, all of which reference being had to the proceedings of said original commissioners in said widen- 30 ing and straightening, and the maps and the reports thereof will fully appear, and to which for greater certainty we refer; and their said duties having been fully performed as provided in said act, the lands so taken as in said map of said roads designated became public highway, subject to be improved as therein declared.

After said streets or roads had been widened and straightened as aforesaid, and such parts of the same vacated as was necessary, the said original 40

commissioners advertised their intention to make such improvements, stating the kind of improvement and naming the roads or road and sections, within which they proposed to make such improvements, by advertisements, as provided by said act, and the owners of three-quarters of the lands along such roads or road, and in such sections, not having remonstrated as provided by said act, the said original commissioners proceeded to curb, gutter, regulate, fix, and establish the grade of said roads and streets and grade the same, to flag for such width as they deemed advisable, and provide for the surface drainage by suitable culverts and receiving basins, to establish monuments, to curb, to flag, to cross-bridge, macadamize, pave, re-grade intersecting streets or avenues, and to provide the necessary material, and to perform all other, the duties required of them, all in the manner, and as provided for in said act and the several supplements thereto, some of which were enacted by the Legislature during the progress of said work, and which are as follows:

First. A supplement to said original act, approved April 3d, A. D. 1873.

Second. A further supplement, approved March 27, A. D. 1874.

Third. A further supplement, approved March 27, A. D. 1874.

Fourth. A further supplement, approved March 18, A. D. 1875.

Fifth. A further supplement, approved April 8, A. D. 1875.

The owners of the land and real estate along the lines of said roads described in section 9 of said supplementary act of 1873, and known and designated as sections 1 and 3 on the said commissioners' map being allowed, under the supervision of said commissioners, to perform all the labor and furnish all the materials on such sections, all of which reference being had to said act and the proceedings of said

commissioners will fully appear, and to which for greater certainty we refer.

The said work and improvements were carried on by said original commissioners and under their direction during the period extending from November 7th, A. D. 1874, to December 7th, A. D. 1877, at which time the said roads were completed and accepted by said commissioners, the delay in completing said improvements and making this assessment at an earlier date having been occasioned by the failure of the contractors, and consequent lawsuits arising therefrom.

After the completion and acceptance of said improvements the said John H. Bonn and Henry J. Rottmann, resigned their positions as said commissioners, and their offices became vacant by reason of disabilities. The Honorable Manning M. Knapp, the Judge of the Circuit Court of the County of Hudson, did, by his order, bearing date the 18th of January, A. D. 1881, appoint the undersigned, John Reid, to fill the vacancy of said John H. Bonn, and the undersigned, George P. Schinzel, to fill the vacancy of said Henry J. Rottman. We, the said John Ried and George P. Schinzel, before taking any proceedings under our said appointment, first took and subscribed an oath before Samuel Webb, a Justice of the Peace of the County of Hudson, as required in section 12 of said original act, to examine into the whole matter impartially and to the best of our judgment, skill and ability, and to exercise the duties of our office faithfully, and filed the same in the office of the Clerk of the County of Hudson.

We, the said Commissioners, Abraham W. Duryee, John Ried and George P. Schinzel, then diligently applied ourselves to the performance of our duties. Among other things we examined all the maps, reports, recommendations, and acts and proceedings of the original commissioners having charge of said improvement, and found and find that the Bulls Ferry Road from the northerly line of the Township of

Weehawken to the Hackensack Plank Road, and also the branch road leading from Bulls Ferry Road, opposite Weehawken street, in the Town of Union, to Nineteenth street, in the Township of Weehawken, have been made, graded, regulated, improved and completed according to the plans and specifications therefor, and as in said original act and said supplements required. We have examined into and considered the whole matter committed to us, and have all acted together in the performance of our duties. We were at the time of our appointment and ever since have been non-residents of the Town of Union, and the Township of Weehawken, and hold no property in either of them, and held none at the time of our appointment, or since, and were not interested in said improvements, and are not interested in this assessment.

We then proceeded to ascertain and do hereby ascertain, the whole cost of the regulating and completing said roads, consisting among other things of the whole cost of the fixing and establishing the grade, the grading, provision for surface drainage, establishment of monuments, curbing, flagging and cross-bridging, macadamizing or other paving, regrading of intersecting streets or avenues, relaying the curbs, gutters, pavement, flags, and providing all necessary materials and all incidental costs of such improvement, including (up to July 1st, A. D. 1881,) interest payable on all moneys to be $217,691.36.

Cost of the first section, extending from Nineteenth street, Weehawken, to the southerly line of the lands of James G. King, deceased, - - - -	$43,180 90
Cost of the second section, extending from the southerly line of the lands of James G. King, deceased, to Weehawken street, and the portion of the Bulls Ferry Road extending from the Hackensack Plank Road to centre line of Fulton street - - - -	151,119 75

Cost of the third section, extending from the centre line of Fulton street to the northerly line of Weehawken -	23,390 71
Making a total of - - -	$217,691 36

We then proceeded to ascertain the amount of the twenty per centum of the whole cost of said improvements, and we do hereby ascertain the same to be $43,538.28.

We then proceeded to ascertain the amount of the ten per centum of the whole costs of said improvements, and we ascertained and do hereby ascertain the same to be $21,769.14. And we do report that under and by virtue of the provisions of said original act and supplement, the Town of Union shall pay said ten per centum, amounting to said sum of $21,769.14. And the inhabitants of the Township of Weehawken shall pay the said remaining ten per centum, making in all said twenty per centum.

We then proceeded to ascertain the eighty per centum of the said whole costs of said improvements, and we have ascertained and do hereby ascertain that the eighty per centum of the whole cost of the fixing and establishing the grades, the grading, provision for surface drainage, the establishment of monuments, the curbing, flagging and cross-bridging, the macadamizing or other paving, the regrading of intersecting streets or avenues, the relaying the curbs, gutters, pavement and flags, and providing all necessary materials and all incidental costs of such improvement, amounted and amounts to the sum of $174,153.09.

We then proceeded to assess the said sum of $174,153.09, being said eighty per centum so as aforesaid ascertained, less the excess hereinafter mentioned, that is to say, of $22,640.47, upon the lands and real estate benefitted by such improvement in proportion to the benefits received, in such a manner and to such extent, that no lands or real estate should be assesssed any more than the benefit received, and in making said assessment we do re-

port, first, that we carefully examined into the whole matter; second, that we viewed and examined all the lands benefitted by such improvement, and ascertained, determined, and took into consideration all the lands benefitted, and included the same in our assessment; third, that we viewed and examined each and every lot, tract and parcel of land benefitted; fourth, that we have made an assessment of said last mentioned sum of $174,153.09, less the said excess hereinafter mentioned of $22,640.47, and do hereby make an assessment thereof upon all the lands and real estate benefitted by said improvements and the expenditures aforesaid therefor, and upon each lot, tract and parcel of land benefitted thereby, in proportion to the benefit actually received by each of said lots, tracts or parcels of land, to such extent that no lot, tract or parcel of land is assessed any more than the benefit actually received. And said assessment is set forth, contained and shown on the map hereto annexed, and the schedule thereto annexed, and forming a part of said map. Said map and schedule forming a part hereof. Which said map and schedule to said map annexed and forming a part thereof, show by a careful delineation all the lands and real estate in our judgment benefitted by said improvements, and therefore included in our assessment, and each separate lot, tract or parcel of land assessed, and the amount assessed against each, and the names of the owner or owners of the land against which such assessments are made, so far as they could be ascertained.

And we do further report that the total of said assessments upon lands and real estate benefitted, amounted and amounts in the aggregate to the sum of $151,512.61, which left and leaves an excess of said eighty per centum of the cost of said improvement over the benefit received by the lands and real estate benefitted, and made liable to such assessment of $22,640.47, that is to say, the 80 per centum of the total cost is $174,153.09; the sum of all the amounts

assessed upon lands benefited is $151,512.61. Balance of excess of said 80 per centum of costs over benefits is $22,640,47. And we have ascertained, and do ascertain, that the total of assessments of benefit on owners of land in the Town of Union, amounted and amounts to the sum of $46,845.16, and the Township of Weehawken amounted and amounts to the sum of $101,477.62. And in both said town and township amounted and amounts to the sum of $148,- 10 322.78. And we have ascertained, and do hereby ascertain, that of the said sum of $22,640.47, the sum of $7,150.60 bears the same proportion to said sum of $22,640.47 that the total of the assessments on owners of lands of benefits in the Town of Union, $46,845.16, bears to the sum of the total assessments of benefits on lands in the town and township aforesaid, $148,322.78. And said sum, $7,150.60, shall be paid by the town of Union, and we assess the said sum of $7,150.60 upon the Town of Union. And we have ascertained and do hereby ascertain that of the 20 said sum of $22,640.47, the sum of $15,489.87 bears the same proportion to said sum of $22,640.47 that the total of the assessments on owners of land of benefits in the Township of Weehawken, $101,477.62, bears to the sum of the total assessments of benefits on lands in the Town and Township aforesaid $148,322.78.

And said sum, $15,489.87, shall be paid by the inhabitants of the Township of Weehawken, and we assess the said sum of $15,489.87 upon the said, the 30 inhabitants of Weehawken.

Explanatory Note.

The direction in the tenth section of the Supplement of April 3d, 1873, as to allowing and applying the amounts assessed on the Town and Township, in relief of, certain portions of the land liable to assessment and substantially complied with by our following as we have, the directions of the supplement of 40

March 18th, 1875. This is manifest, when it is considered that the original act of April 4th, 1872, in its eleventh section, contemplated an assessment according to frontage, and the direction in said act of April 3d, 1873, was in view of an assessment according to frontage. The cost of the improvement in front of the favored portions liable to assessment, was the sum of $86,616.75. The assessment, however, as above shown, amounts only to $35,036.00, from which it is apparent that the said direction was substantially complied with, in assessing the land benefited, according to law.

Dated, April 22, A. D. 1881.

And we, the said Commissioners, do further report that we caused our report hereunto annexed, marked "A," for the purpose of identification, and our assessment map and schedule to be kept open for the inspection of property owners and all persons interested, at the office of Messrs. Speilmann & Brush, surveyors and engineers, in charge of said improvement, at No. 13 Newark street, Hoboken, New Jersey, on and from the twenty-third day of April, A. D. 1881, to the sixteenth day of May, A. D. 1881, and gave the following notice thereof:

Which we caused to be published in the Hudson County Democrat and the Hoboken Advertiser, two newspapers published in Hoboken, Hudson county, New Jersey, for four weeks successively, at least once in each week, commencing the twenty-third day of April, 1881, and did also cause the same to be published in the North Hudson County Ledger and the Palisade News, two other newspapers published in said County of Hudson, for at least three (3) weeks, commencing thirtieth day of April, A. D. 1881; and did also cause the same to be posted in thirty-two conspicuous places along the line of said improvement, and did also cause a copy of the same to be mailed to each of the non-resident property owners in the Town of Union, and the Township of Wee-

hawken, who are assessed for said improvement, so far as the same could be ascertained, reference being had to the affidavits in reference thereto on file with the Clerk of the Commissioners will fully appear, and to which for greater certainty we refer.

We do further report that we did also cause to be served upon the Township Committee of the Township of Weehawken and the Town Council of the Town of Union, by service upon the Clerk of Township and Town respectively, on the second day of May, A. D. 1881, a notice of which the following is a true copy: 10

And further notice is hereby given to the township committee of the Township of Weehawken, that the ten per centum of the whole cost of said improvement, to be paid according to law by the said township, amounts to $21,769.14, and that the amount of excess of eighty per centum of the cost over the benefit received by the land and real estate made liable to such assessment is $22,640.47, and that the proportion thereof to be paid by and assessed upon the said township amounts to $15,489.87. 20

And further notice is hereby given to the town counsel of the Town of Union that the ten per centum of the whole cost of said improvement, to be paid according to law, by the said town, amounts to $21,769.14. And that the amount of excess of eighty per centum of the cost over the benefit received by the land and real estate made liable to such assessment is $22,640.47, and that the proportion thereof to be paid by and assessed upon the said Town of Union amounts to $7,150.60. 30

Reference being had to the affidavit in reference thereto, on file with the clerk of these commissioners, will fully appear, and to which for greater certainty we refer.

And we do further report that in pursuance of said notice we met at said Vehring's Hotel, on the southwest corner of Bulls Ferry Road and Union street, Town of Union, Hudson county, New Jersey, 40

on Tuesday, the 17th of May, A. D. 1881, at 10 o'clock in the forenoon, to receive, hear and consider any and all objections to said assessment presented to us, and remained in session until 6 o'clock in the afternoon.

The objections were presented by the following named persons, viz.: John Carter, Mrs. Patrick Hart, Daniel Sturm, Mrs. James Wiggins, Miflin Paul, Charles F. Ruh, John H. Bonn, J. Schweitzer, Theo. Vogt, and Scudder & Vredenburgh, attorneys for A. Gracie King, trustee for the estate of C. Duer, Mary K. Richards, Frederica G. Davis and Edward King. All said objections being verbal excepting those of Miflin Paul, John H. Bonn, Jacob Schweitzer and Scudder & Vredenburgh, attorneys, which were in writing.

And we do further report that at said hour of six o'clock in the afternoon we adjourned to meet at the office of Spielmann & Brush, on Saturday, the 21st day of May, A. D. 1881, at nine o'clock in the forenoon, to consider the said objections. That we met at said time and place, and after considering the said objections adjourned to meet at the same place on Monday, the 23d day of May, 1881, at 4.30 o'clock in the afternoon. That we met at the said time and place, and after further considering said objections, adjourned to meet at the same place on Thursday, the 26th day of May, at four o'clock in the afternoon. That we met at said time and place, and on account of inability of Mr. John Reid to attend by reason of sickness, we adjourned to meet on Friday, the 27th day of May, A. D. 1881, at four o'clock in the afternoon, at the office of the said John Reid, No. 28 Newark street, Hoboken, New Jersey. That we met at said time and place and finally considered all the said objections, and thereupon reviewed the said assessment and corrected the same and said map and schedule where necessary and proper, and finally approved the said assessment, map, schedule and report, and adopted the following resolution:

Whereas, Abraham W. Duryee, John Reid and George P. Schinzel, commissioners, etc., met at Viehring's Hotel, on the southwest corner of Bulls Ferry Road and Union street, Hudson county, New Jersey, on Tuesday, the 17th day of May, A. D. 1881, at ten o'clock in the forenoon, to receive, hear and consider any and all objections of said assessment; and

Whereas, Due notice that said assessment map and schedule and report would be open for the inspection of property owners and all persons interested, at the office of Spielmann & Brush, surveyors, at No. 13 Newark street, Hoboken, New Jersey, on and from the 23d day of April, A. D. 1881, until the 16th day of May, A. D. 1881, and that the said commissioners would meet at said Viehring's Hotel on said 17th day of May, A. D. 1881, at ten o'clock in the forenoon, to receive, hear and consider any and all objections to said assessment presented to said commissioners, has been published and posted and notice thereof given as directed by said commissioners, and that said report, assessment, map and schedule have been open for the inspection of property owners at said office of Spielmann & Brush, during said time in said notice mentioned; and

Whereas, Objections were presented on said 17th day of May by the following named persons: John Carter, Mrs. Patrick Hart, Daniel Sturm, Mrs. James Wiggins, Miflin Paul, Charles F. Ruh, John H. Bonn, J. Schweitzer, Theodore Vogt and Messrs. Scudder & Vredenburgh, attorneys for A. Gracie King, trustee for the estates of C. Duer, Mary K. Richards and Frederica G. Davis and Edward King; and

Whereas, All said objections to said assessment have been fully considered by said commissioners, and said assessment map and schedule have been reviewed and corrected by said commissioners in such particulars as said commissioners deemed necessary and proper; therefore be it

Resolved, That the said assessment map, schedule

and report as reviewed and corrected be and the same are hereby approved and confirmed; and further

Resolved, That the said maps and reports be filed in the clerk's and register's offices of the County of Hudson, and that notice of such filing be given within ten days thereafter by advertisements, as required by law, the same to be published in the Hudson County Democrat, a newspaper published in Hoboken.

10 Dated May 27th, A. D. 1881.

ABM. W. DURYEE,
JOHN REID,
GEO. P. SCHINZEL,
Commissioners.

Attest:

JAS. H. SYMES, Clerk.

NOTE.—The commissioners deem it proper to say in relation to the fifth objection of Messrs. Scudder & Vredenburgh, attorneys for A. Gracie King et als. 20 estate, that that portion of the interest that has been collected by means of taxes in the Township of Weehawken and the Town of Union respectively on the bonds issued by said township and town is much less than the proportion of excess over the benefits received by the land and real estate assessed upon said town and township at large, and amounting in Weehawken to the sum of $15,489.87, and in Union to the sum of $7,150.60. This excess therefore to the extent of the amounts already collected by taxes for 30 interest has been raised, and it will only be necessary for said town and township to raise the difference between said amounts already collected by taxes and the proportionate amount of said excess, assessed upon said town and township at large respectively.

This can and no doubt will be properly adjusted between said town and township and the inhabitants thereof.

We do hereby certify that this is our assessment map of the lands assessed by us for regulating, 40 grading and improving Bulls Ferry Road, in Hudson

county, from the northerly line of the Township of Weehawken to the Hackensack Plank Road, and also the branch road leading from the Bulls Ferry Road, opposite Weehawken street, in the Town of Union, to Nineteenth street, in the Township of Weehawken, and the cost thereof, and shows all lands and each lot, tract or plot of land assessed by us, and in our judgment benefited thereby, and constitutes with our report in writing and schedule our assessment.

Dated April 22, A. D. 1881. 10

ABRAHAM W. DURYEE,
JOHN REID,
GEO. P. SCHINZEL,
Commissioners.

Attest:

JAS. H. SYMES, Clerk.

So much of the schedule of assessment as relates to the property of said prosecutors in said writs.

Bill No.	Block No.	Lot No.	Owner's Name.	Assessments for Benefits.
821	41	37	Jas. G. King	$187
822	"	38	do.	187
823	"	39	A. Gracie King	187
824	"	40	do.	187
875	46	15	do.	187
876	"	16	do.	187
187	"	17	do.	187
878	"	18	do.	187
1138			Mrs. Jas. King	1000
1139			Edward King	6000
1140			A. Gracie King	200
1141			C. Duer	5500
1142			do.	4000
1143			Mrs. Richards	3600
1144			Mrs. J. C. B. Davis	4900
1144a			Mrs. Jas. King	1200
1145			Mrs. Jas. King, Jr.	50
1146			Mrs. McLane	50
				$27,996

20 30 40

NEW JERSEY SUPREME COURT.

THE STATE, ARCHIBALD GRACIE KING, et als. Prosecutors, and 10 ABRAHAM W. DURYEE, et als. Defendants.	On Certiorari. Reasons.

The prosecutors by James B. Vredenburgh, their attorney, come and assign the following reasons why the said proceedings and assessment should be set aside and for nothing holden:

1. Because the said assessment was not made by John H. Bonn, Henry J. Rottman and Abraham W. Duryee.

20 2. Because said assessment was made by Abraham W. Duryee, John Reid and George P. Schinzel, without any authority in law.

3. Because the appointment by the Judge of the Circuit Court of Hudson County of John Reid and George P. Schinzel was without notice to any one, either the owner of land to be assessed or the town and township authorities.

4. Because the said assessment is not made in accordance with the act and supplement under 30 which said improvement was made in this respect to wit:——That by the eleventh section of the act of 1872, P. L. p. 1384——twenty per cent. of the whole cost of the improvement was to be assessed against the Town of Union and the Township of Weehawken; and, that by the tenth section of the supplement approved April 3d, 1873, P. L. p. 626, the Commissioners "were authorized and directed——to allow and "apply the amount of money which should——be as-"sessed against the Town of Union and the Township 40 "of Weehawken——upon such portion of the Bulls

" Ferry Road lying——between Union street and
" Weehawken street, and the Branch Road lying be-
" tween Weehawken street and the southerly line
" of the lands formerly of James G. King, deceased,
" ——as said commissioners might determine to the
" end that the lands which should be assessed for
" the work, labor and materials, lands taken and
" damages, where such allowance should be made on
" such last named portion of said road——should be
" relieved to the extent of such allowance and such 10
" allowance should be credited on the assessment
" therefor."

That the prosecutors owned all the lands on the east side of said Bulls Ferry Road lying between Weehawken street and Union Street and the branch road between Weehawken Street and the southerly line of lands, late of James G. King, deceased.

That the commissioners have assessed the land of the prosecutors the full amount of the benefit, the said lands so assessed, received by reason of the said 20 improvement.

And the said commissioners have never determined upon what portion of that part of the Bulls Ferry Road lying between Union street and Weehawken street, and the branch road lying between Weehawken street and the southerly line of the lands formerly of James G. King, the amount of money which should be assessed against the Town of Union and the Township of Weehawken,——should be allowed and applied, and have never——allowed and applied said 30 amount of money upon any portion of said part of said road in such way that the lands or any portion thereof which should be assessed for the work, labor and materials, lands taken and damages, were relieved to the extent of such allowance,——so that the amounts of money so assessed against the Town of Union and the Township of Weehawken, have never been credited upon the assessment upon the said lands of prosecutors.

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5. Because the cost of said improvement has not been assessed upon all the lands specially benefited by said improvement.

6. Because the cost of the improvement is increased by the interest on the cost, and is proposed to be assessed against the lands in the Town and Township where a large part of said interest has already been collected by means of taxes.

7. Because the alleged cost is increased by expenses not authorized by the act.

8. Because the method of assessment on the lands of prosecutors was changed without their consent after their consent to said improvement was obtained.

9. Because the property of The North Hudson County Railway Company, whose railroad was and is laid on said road, was specially benefited by said improvement. That said Bulls Ferry Road and branch was widened and the costs of improving the same, thereby and in other ways greatly increased entirely for the benefit of said railroad. Yet said commissioners laid no assessment upon the property of said railroad company so benefited, but the assessment against the prosecutors' lands by reason of such increased width was increased.

10. Because the lands of the prosecutors, not on the line of the improvement, were assessed for special benefits, and their lands on the line of the improvement were assessed in excess of special benefits received.

11. Because said assessment is without warrant of law, and is unjust, illegal and partial.

JAMES B. VREDENBURGH,
Attorney of Prosecutors.

NEW JERSEY SUPREME COURT.

THE STATE,

ARCHIBALD GRACIE KING, for himself, and as Trustee for Mary K., wife of Edgar H. Richards, and Frederica C., wife of J. C. Bancroft Davis, and Fanny L. McLane, wife of James L. McLane,

Prosecutors,

vs.

ABRAHAM W. DURYEE, JOHN REID, GEORGE P. SCHINZEL, Commissioners, JAMES H. SYMES, Clerk, et al.

10

Examination of witnesses, &c., in the above entitled cause on part of the prosecutors, taken before me, ISAAC ROMAINE, a Supreme Court Commissioner, at my office, No. 245 Washington street, Jersey City, on Friday, October 27th, 1882, at ten o'clock in the forenoon, in presence of JAMES B. VREDENBURGH, counsel for prosecutors, and ABEL I. SMITH, counsel for defendants.

20

John Reid, a witness produced on part of the prosecutors, being duly sworn, on his oath says:

30

I live in Hoboken, Hudson county, N. J. I am one of the commissioners whose name is signed to the map annexed to the return in this cause, which map is entitled "Assessment Map of the Bulls Ferry and Branch Road Improvement, Hudson Co., N. J. Scale, 1 inch to 150 feet."

I was subpœnaed last night to appear here this morning.

The engineer in charge of the improvement was Mr. Brush. I heard Mr. Brush say he was sub-

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pœnaed to be here this morning. He asked me to say to Mr. Vredenburgh that he was engaged on particular work which no one could attend to, about introducing water in Hoboken, and that he had to attend to business in connection therewith, which no person but himself could readily attend to, but that he would take the first opportunity to respond and that he could attend on the 1st or 2nd of November next.

10 Q. Is there any horse railroad in any part of the Bulls Ferry road; if so, what part?

(Question objected to as immaterial.)

A. There is a horse railroad commencing at the lower end of the branch road, and continuing northerly to the point where Lewis street cuts into the Bulls Ferry Road.

Q. Then the railroad is in the Bulls Ferry Road from Lewis street to Weehawken street?

20 A. Yes, sir.

Q. And at Weehawken street it turns into the branch road and runs to 19th street?

A. Yes, sir. The railroad is a double track.

Q. How long has it been there?

A. Well, they have run it practically on the same route, but whether in all its parts on the same ground or not I can't say, as I was not a commissioner on 30 the condemnation of lands or the widening of the road. The railroad has been there, I think, since I came to Hoboken, about sixteen years ago.

Q. What railroad is that?

A. I think the popular name of it is the North Hudson County Street Railroad Company.

Q. Has the grade of the branch road been improved by this improvement?

A. I think it has, but cannot say how, except in a general way, as I was not a commissioner at the time the grades were regulated.

Q. Before the branch road was graded, was this 40 railroad a double or a single track?

A. I think a single track, but that I am not very sure of.

Q. Was the branch road widened, and if so, how much?

A. It was widened, but I can't say how much, and without reference to the widening map I can't say how wide it is now.

I don't know whether the Bull Ferry Road was ever widened or not, as I was not a commissioner at that time. 10

Q. Was not the improvement of the grade and the widening of the road a benefit to the company owning the railroad?

A. I consider it was a benefit to all who had occasion to travel over the road as well as to them—them included.

Q. What do you understand by special benefit?

A. I understand that when an improvement like that is made it confers a special benefit on the property in the vicinity. 20

Q. About how often does this North Hudson County Railroad Company run cars on this road?

A. That is hard for me to answer. I should say that during the day they maintain an average of about every fifteen minutes; through the night I cannot say. It may be that sometimes during the day they run more frequently. They run two horse cars through the Bulls Ferry Road and branch road; the grade is very steep in some places, and one horse couldn't make out; at some places they put three 30 horses on.

Q. The public who ride in these cars live principally where?

A. The largest number live in the Town of Union; quite a number live in the Township of Weehawken, and quite a number live in the City of Hoboken, and quite a number in the Township of Union.

Q. Why did you not assess the property of this street railway company for the benefits which they received from this improvement? 40

A. The assessment is confined to real estate. If they owned any real estate in the area of the assessment it is assessed according to the benefit conferred.

Q. Why did you not assess the rails and road-bed of this company in the branch road and the Bulls Ferry Road and Lewis street for the benefits conferred?

A. Because we didn't consider they classed as real estate. The company, as I understand it, has merely
10 an easement over the road; the tracks, rails, ties, &c., in connection with the railroad I considered to be chattels and not assessable for a street improvement.

Q. You know where the Company's stables are?

A. I do, where they are in West Hoboken.

Q. Where are they?

A. In West Hoboken; they are on the easterly line of Bergen Line road or avenue.

Q. How near the Hackensack turnpike?

20 A. About six hundred feet; and they continue about two hundred feet more from the point of commencement.

Q. And how near to Palisade avenue about?

A. That I couldn't say: I think about seven hundred and twenty-five feet.

Q. Why did you not assess that property for the benefits which the company received?

A. For the same reason we did not assess the City of Hoboken. We did not consider that real estate
30 benefited in such a manner as to justify an assessment.

Q. Was that the only reason you did not assess land in Hoboken?

A. Yes; the reason was Hoboken had nothing to do with it except as people traveled over it occasionally.

I have known John H. Bonn about since I came to Hoboken; I came there in 1866.

I presume he is still living; he was living last
40 week.

I know Henry J. Rottman; I saw him about two weeks ago; I presume he is still alive.

Q. Do you know, Mr. Reid, whether the Bulls Ferry Road bed, to the north of Lewis street, is narrower than it is south of Lewis street?

A. I presume the width is about the same throughout, except that from Weehawken street to the Hackensack turnpike it is narrower. What the width is at that particular part I am unable to say, but it is a good wide road; it has a wide roadway 10 and a good wide sidewalk.

Q. Is not the road bed of this road north of Lewis street where the cars turn, narrower than south of that point?

A. I think that the boundaries of that road include about the same width of roadway including sidewalks.

Q. Question repeated.

A. I think not.

Q. Do you understand the roadbed to be the distance between the curbs? 20

A. No, sir. I understand the roadbed to be the whole width of the road from one boundary to the other. I understand the roadway to be made up of sidewalks and carriageway.

Q. Is not the carriageway of this road north of Lewis street, where the cars turn narrower than south of that point.

A. I think yes, as a general thing.

(All the foregoing testimony, from the former ob- 30 jection is objected to by counsel for defendants. And such objection was made at the time the testimony was given, for the reason that it is not directed or applicable to any reason filed by prosecutors to said assessment on May 17th, 1881, and as immaterial.

Q. Why was the carriageway narrower north of Lewis street?

A. I cannot say except from my own presumption. 40

(Counsel for defendants says, "Never mind that if he can't state the fact.")

Witness answers, "I don't know."

Q. Mr. Reid, did you buy any portion of the land which you assessed for this improvement?

A. I did.

Q. Which portion on the map?

A. Plot No. 1144, in blue figures, on the map annexed to the return; that is the bill number also. I
10 bought the plot from Mr. Crevier, a real estate agent in Hoboken. I understood that Mr. Crevier was acting for the owners, J. C. Bancroft Davis and wife.

Q. What did you offer him for that lot?

(Question objected to as immaterial.)

A. I went to him first and asked him the price.

Q. What did you offer him for it?

A. I told him I would take it at the price named; he named that price conditionally. The condition
20 was that the price he stated had to be approved by the owners.

Q. What price did you give?

A. The ultimate price was $16,000.

Q. Was it to be free and clear for that price?

A. It was to be free and clear.

Q. What assessments were on it when you bought it?

A. I am not certain whether the sewer assessment was then paid, but according to information obtained
30 the road assessment was not paid.

Q. What was the road assessment?

A. $4900.

Q. And the sewer assessment was how much?

A. That I can't tell you now for want of the data to show it.

Q. You made the sewer assessment also?

A. I was one of the commissioners who made it.

Q. That sewer assessment made by you was attacked in the courts by owners of property in Wee-
40 hawken, was it not?

A. I understood so—yes.

Q. One of your reasons was your intimacy and partiality with and to John H. Bonn, was it not?

(Question objected to, as the record will show what the reasons were, and as immaterial.)

I am not aware that that was one of the reasons, and if any one should allege that reason as a matter of fact, I should say no. I never had any favors from Mr. Bonn, not even a free ticket on his railroad. 10

Q. The fight against the assessment made by you was long and bitter, was it not?

(Question objected to for same reason as before.)

I don't know as law goes, whether a man would be justified in saying it was either long or bitter.

Q. Bill No. 1150 on this map—I see you assessed it at $2572.98; what does that mean? 20

(Question objected to on the ground that the assessment in the question is not in dispute in this cause, and as immaterial.)

A. That means that in the opinion of the commissioners who made the assessment, that particular plot was benefited to that extent by the making and grading the Bulls Ferry Road.

Q. Do you mean benefited, or specially benefited?

A. I mean that that amount relates to special benefits. 30

Q. Do you mean then that property is specially benefited to that extent?

A. I do.

Q. What do you mean by specially benefited?

A. The answer I gave to a former question would also be an answer to this—that special benefit is a benefit conferred in the vicinity of the improvement.

Q. This plot which you assessed $2572.98, being plot bill No. 1150, is what size? 40

A. 417 50-100 feet frontage; the depth I don't know, as the figures do not appear on this map.

Q. When you assessed that sum did you take into consideration the depth, or did you know the depth?

A. The area of all the plots was taken into consideration, including frontage and depth.

Q. Question repeated.

A. Yes.

Q. And after taking into consideration the area of
10 this plot, including frontage and depth, you as commissioners determined that this plot, bill No. 1150, was specially benefited to the extent of $2572.98 and no more?

A. Yes, as far as area is concerned, but there might be other considerations entering into it as well as area.

Q. What other considerations did?

(Question objected to as witness can only testify to
20 what considerations entered in his mind.)

Question withdrawn.

Q. What other considerations that you now remember entered into it, in the fixing the assessment on this particular plot?

(Objected to for same reason as before.)

A. I might not at this distance of time be able to state all the reasons canvassed by the commission-
30 ers, but I remember that such things as adjacency and the convenience with which the road could be used were elements in that consideration.

Q. If this plot, 1150, is specially benefited, $2,-572.98 is not the plot immediately contiguous on the north fronting on this same road specially benefited at all.

(Question objected to, as the report of the commissioners shows their determination as to that.)
40

A. I think not.

Q. Why not?

(Objected to for same.)

A. Because it hasn't got in front of it a part of the Bulls Ferry Road made, graded, regulated and flagged as the plot south of it has. I want to answer further: it has merely the use of the Bulls Ferry Road in the same manner as a plot a mile further north, which is all regulated by the general reciprocity in the use of roads. 10

Q. The plot immediately north of plot 1150 is adjacent to this road, and it is as convenient, very nearly, as plot 1150?

A. It is adjacent, but the road does not do it as much good.

Q. It is convenient of access to this road very nearly, is it not, as plot 1150?

A. Not quite. It don't abut against the made part of the road. 20

Q. I call your attention to plot 1146. Is that adjacent to the Bulls Ferry Road?

A. Yes, sir.

Q. How far is it from the Bulls Ferry Road?

A. About 390 feet.

Q. Is there any means of getting from plot 1146 to the Bulls Ferry Road without going over some one else's land and going up a hill?

A. I can't say.

Q. Do you know of any? 30

A. I don't know of any.

Q. Are you sure you took into consideration the area of plot 1150 when you assessed it?

A. I certainly did.

Q. Did you not assess it at so much a foot front?

A. Not alone that.

Q. I call your attention to plot 1149. Did you assess that in accordance with frontage or in accordance with special benefits received by that plot?

40

(Question objected to on the ground that the report shows how it was assessed, and is the best evidence as to that.)

A. We considered the element of frontage in connection with other elements which went to make up the amount of the assessment assessed against it.

Q. Was the amount assessed against it the amount of special benefit that plot received?

10 A. We so considered it.

Q. Was it not specially benefited more than the amount you assessed it, $4895.34?

A. We thought not.

Q. Nor less?

A. We thought not.

Q. That was the amount of special benefit to that plot?

A. That was our conclusion.

Q. On the opposite side of the road plot bill No. 20 1152, how far north does that plot extend?

A. To where the made road ends. There is no line on this map showing that.

Q. The frontage of this plot, bill No. 1152, assessed $7501.24, is 1224 44-100 feet long?

A. Yes.

Q. Did you consider that plot specially benefited to the amount of $7501.24 and no more?

A. That was our conclusion.

Q. Did you know the depth of it?

30 A. Sometimes the assessment does not extend to the rear line of the lot, if it is too far from the improvement. I presume we did know the depth of the lot, and I presume we took it into consideration.

Q. Plot bill No. 1151, assessed $4154.25, was that specially benefited to that extent, and no more?

A. That was the conclusion of the commissioners.

Q. The plot bill No. 1148, assessed $4266.40, extends how far south?

A. 699 77-100 feet southerly along the easterly 40 side of Bulls Ferry Road from plot 1149.

Q. I call your attention to plot bill No. 1444, assessed $4900, and ask you whether that plot was specially benefited to the extent of $4900 and no more?

A. That was the conclusion of the commissioners.

Q. I call your attention to plot bill No. 1139, assessed $6000, and ask you whether that plot was specially benefited to the extent of $6000 and no more?

A. That was the conclusion of the commissioners. I will further say that that amount will be found less as regards area and frontage than some other plots 10 abutting on the road; the reason of this was that the ground lies very low below the grade of the road, and consequently the road could not be used to the same advantage as lots that were about the same grade as the road.

Q. I call your attention to plot bill No. 1142, assessed $4000. Was the special benefit that lot received $4000 and no more?

A, That was the conclusion of the commissioners.

Q. The grade of that plot is pretty near the grade 20 of the road, is it not?

A. It lies on or about the grade of the road.

Q. I call your attention to plot bill No. 6, assessed $280, and ask you if that plot is specially benefited $280, why it is that the lot directly opposite, on the southerly side of Nineteenth street, is not benefited at all?

(Question objected to on the ground that the opinion of the witness is not conclusive as the opinion of the commissioners.) 30

A. The reasoning in that case would be precisely similar to the reasoning in relation to the ground to the northerly of plot bill No. 1150. That plot bill No. 6 alluded to had a frontage on the new road, while the plot referred to south of it across Nineteenth street, fronted on a road already made and presumably paid for.

Q. What is the road called which is shown on this map as running along the river? 40

A. I don't know, I think it is called the River Road, and runs up to Fort Lee.

Q. If the plot on the southerly side of 19th street is not assessed for the special benefits received by this improvement, on what theory do you assess plot bill No. 316, on the corner formed by the Hackensack turnpike and Palisade avenue, $10?

(Question objected to on the ground that there is no evidence that the ground south of 19th street is
10 specially benefitted, and the question assumes that to be a fact, and the opinion of the witness is not evidence as against the conclusion of the commissioners.

A. Your question relates to theories. The Romans had a theory that all roads lead to Rome. The same reasoning applies to New York city. The people at the corner of Hackensack turnpike and Palisade avenue do the major part of their traveling
20 toward New York, consequently they use the Bulls Ferry Road quite largely. The people owning the lot mentioned before as opposite No. 6, in traveling to New York—which is a major part of their traveling—don't use the Bulls Ferry Road, and use it very seldom in comparison with the owners of the plot on the Hackensack turnpike referred to.

Q. Who is the owner of that plot on the Hackensack turnpike referred to.

A. I don't know.

30 Q. Then, so far as you know the owner may live in New York and never travel that road?

A. It makes no difference where the owner lives, the parties who use the lot will use the road as I have said.

Q. Does the Hackensack turnpike run into the Bulls Ferry Road or the branch road?

A. It runs past the southerly end of the Bulls Ferry road.

Q. Is this road more or less an artery to all the
40 travel in the north end of the county?

A. It is a thoroughfare to some extent.

Q. I notice plot bill No. 40 is assessed $37,838.34. Is that the special benefits which that lot received by this improvement and no more?

A. That was the conclusion of the commissioners.

Q. Did you take into consideration its frontage, its area, its depth, and conveniency of access?

A. All those were elements which went to lead us to our conclusion.

Q. Then every plot on this map was assessed for all the special benefits it received from the improvement and no more? 10

A. Yes, as near as the commissioners could judge.

Q. The lots west of Bulls Ferry road and north of the Hackensack turnpike, represent a portion of the Town of Union?

A. Yes, sir.

Q. What is the population of the Town of Union?

A. I don't know, but I should say about five thousand. 20

Q. The grade of the town is nearly on a level with the Bulls Ferry road?

A. It grades upward toward the west until it reaches the crown, and then downward; the grade is not great except in the neighborhood of Weehawken street, and on that street the grade is quite steep from Bulls Ferry road up.

Q. On the east side of Bulls Ferry road is the Township of Weehawken, from Weehawken to Fulton street, and about three hundred feet back, how is the grade? 30

A. About the same as the Town of Union, from opposite Weehawken street southerly on the east side of the branch road the surface of the ground is broken and more uneven. There is a ravine which runs nearly parallel with the branch road easterly from it on an average of three hundred feet therefrom. The ravine is about twenty-five feet deep and two hundred feet across between the points where it commences to slope abruptly. 40

Q. On the east side of the ravine what is there?

A. A high bluff, and east of that the Hudson river.

Q, The southerly end of the high bluff is about where on this map?

A. About the southern side of plot bill No. 1140.

Q. How many houses are there on the following plots, plots bill numbers 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146?

A. It wasn't necessary for the purposes of the as-
10 sessment to ascertain the number of the houses on any of the plots, and, therefore, we did not inquire, and I cannot tell how many houses are on the plots named.

Q. Question repeated.

A. I can't tell.

Q. Do you mean to swear you can't tell how many dwelling houses are on the plots I have mentioned?

A. I do, but I will tell you how many I think there are.

20 Q. How many do you think there are?

A. First, commencing at the south we have the southerly gate house, then we have Mr. Duer's house and the outhouses connected therewith, then there was a house on the reservoir plot, which was burned down about a year ago, then we have Mr. Gracie King's new residence and his barns, stables, &c. That, I presume, is on plot bill No. 1140.

Then we have the old family residence of the Kings, and the outhouses, barns, &c., connected there-
30 with. That is on plot bill No. 1138.

(Counsel for prosecutor objects to the witness asswering any further.)

A. To the best of my knowledge this includes all the houses on the lots.

When I speak of the reservoir lot I refer to plot bill No. 1144.

Whereupon the examination was adjourned to Wednesday, November 1st, 1882, at ten o'clock in the forenoon at the same place.

At which time and place the examination was resumed in presence of the counsel of the respective parties.

And being *cross-examined* he says :

Q. Did Mr. John H. Bonn own land within the area of the assessment that was specially benefited by the assessment ? 10

(Question objected to.)

A. He did. It is plot bill No. 127 on the map annexed to the actum.

Q. That lot was assessed as specially benefited by the improvement ?

A. It was.

Q. Did Henry J. Rottmann own any land within the area of the assessment that was specially benefited by the assessment ? 20

A. He did. He owned several lots at the southeast corner of Palisade avenue and Blum street.

Q. Did the commissioners examine all the lands in the neighborhood of this improvement for the purpose of determining what lands were benefited by this improvement ?

A. We examined not only the lands included in the area assessed but also all the lands surrounding the assessment as assessed. 30

Q. Were all the lands which the commissioners considered benefited included in the assessment made by them ?

(Objected to as leading.)

A. Oh, yes.

Q. Upon what principle were the assessments upon each lot or plot of land within the area of the assessment made? 40

A. Upon the principle of conferring benefit upon the land assessed.

Q. Was each lot, tract and parcel of land assessed to the extent of the benefit actually received and no more?

A. That is the way it was assessed.

Q. The North Hudson County Railroad Company own some land on the line of their road at Hoboken, don't they?

10 A. They do.

Q. What is on that property in the way of improvements?

A. They have extensive stables and car houses on Ferry street, north side, occupying the front of the block between Garden and Bloomfield streets.

Q. It is used by them in connection with their road, is it not?

A. Yes.

Q. You were asked on your direct examination in 20 regard to the purchase by you of plot bill No. 1144 on the return—for whom was that purchase made by you?

A. The Hackensack Water Company.

John C. Crevier represented the owners; he told me so. I represented the Water Company in the purchase. The property was built for a reservoir, and there is a reservoir built on it.

Q. What sum were you directed to pay for the property by the company?

30

(Question objected to as hearsay and immaterial.)

A. I was instructed to buy it as cheaply as I could without further instructions; I was at liberty to go as high as $20,000. If that would not purchase it, the company would go as high as $25,000, but I was to report and consult with them if it was to go above $20,000; finally, it was purchased for $16,000.

Q. Did you consider that cheap or not for the 40 property?

(Question objected to.)

A. I considered it was worth a good deal more than we had to pay for it.

Q. Did Mr. Crevier, at the time of the purchase of this property, as stated by you in your direct examination, say why it was sold?

(Question objected to as hearsay.)

A. Yes; he stated that since the old house on it had burned down, it was a bother to Mr. Davis to take care of it: that he lived in Washington, and it was very awkward for him to look after it. 10

Q. You deeded the property to the Water Company after you purchased it?

A. Yes; the property was deeded to me, and by me to the Water Company.

Q. You stated in your direct examination that in assessing plot bill No. 1150 for the special benefits received, the commisioners took into consideration front depth and area of the plot—do you mean to say that was all that the commissioners took into consideration, as you remember, in making the assessment on that plot? 20

A. They took every qualifying circumstance into consideration, those you have mentioned as well as other things, for instance such things as accessibility to the road improvement value of the property, which is an incident, as well as the additional value given to the plot by reason of the road improvement; these were some of the element which I remember. 30

Q. Has the property lying above the plot bill No. 1150 on this map any other outlet to New York than through the Bulls Ferry and branch roads?

A. Yes, sir, it has.

Q. By what?

A. The direct road to New York from there is over the Weehawken ferry, not very far from there. It lies to the northeast, at the foot of the hill. There is a pretty good road from there down to the ferry. 40

Q. Were the same elements as stated by you in relation to plot bill No. 1150, considered by the commissioners in assessing plots bill numbers 1139 to 1152, inclusive, or were there any other in relation to said plots or either of them that you now remember, if so state them?

A. Those elements were all considered in connection with other plots assessed, and, perhaps, additional elements which might happen to be incidental
10 to a particular plot considered. For instance. plot 1139 being badly situated as to the use of the road, was assessed at a lower rate than any of the plots along the easterly side of the Bulls Ferry Road, as the average as to frontage will show. The average as to frontage on that plot named is $4.21 per foot front, average being alone taken.

Now take plot 1142; the average as to percentage on that plot being alone considered would be $7.15 per foot; that plot lies uncommonly well as regards
20 grade of the road.

Now take the plot south of it, which is 1141: this plot is not quite so well situated as regards the use of the road, having a high, rocky front on part of it; therefore the average as regards front alone will show six dollars and one cent ($6.01) per foot frontage.

The plot along the road on the easterly side, which bears the highest rate per foot frontage, depth considered, is plot 1144. That plot was greatly improved by the road being made, and by a retaining
30 wall and a handsome double stoop going from right and left, which was built up to the residence which then stood upon it, the level of this piece being above the grade; formerly the face of the eminence was a ragged, gravelly slope. North of Fulton street a deep swamp runs up along the road and makes part of the road-bed, and the front of plots 1151, 1152 and the front of plots 1147 and 1148, is considerably disfigured by broken ground.

Q. How does the property lying west of the Bulls
40 Ferry road, assessed for this improvement, compare

in location and value with the property on the west of the road?

A. The value of the property, I should say was much about the same as a general thing, but the westerly side bears a much higher rate of assessment, because the Bulls Ferry road as made is much more available for its use on account of its being all opened by cross streets leading into the Bulls Ferry road. For instance, take block 24 and block 25, which, with the front of the block on Bulls Ferry 10 road and the street north of it, which is Union street and is forty-four feet wide, makes a total width of frontage on the Bulls Ferry road of 244 feet. These two blocks bear an assessment of $2696, being an average as to frontage alone of $11.05 per foot.

Q. What is the property east of the Bulls Ferry road, owned by the prosecutors in this suit and assessed for this improvement, used for?

A. Principally as gentlemen's residences and demesne. 20

Q. Are there any roads through this property?

A. Yes; such roads as gentlemen use in going to their houses—carriage roads.

Q. Leading into the Bulls Ferry and branch roads?

A. Yes; there is no other road for them to go out on.

Q. Just state on this map where those roads come out on the Bulls Ferry road, and from those points in which direction they run through the property in 30 question?

A. The main road commences at a point called Mr. King's southerly gate-house, at or about a point where the figures 22,668 appear on the map annexed to the return and the southerly end of plot bill No. 1138, and runs northerly in a serpentine manner by easy curves up through the Ravine and goes out upon the Bulls Ferry road, at King's northerly gate-house, or what is known as such, at about the point where the figures 16,803 in plot No. 1144, as on the 40 edge of the road appear on said map.

Spur roads lead from this general road with a curvature around the hill to the old residence of Mrs. King, and also to the new residence of Gracie King.

Q. This part of the property which you have designated in your direct examination as a ravine, what in fact is that, Mr. Reid; describe it?

A. It is a hollow which runs up through the land.

Q. Does the land on either side of it rise abruptly or by a gradual slope?

10 A. It is neither very abrupt nor very gradual. At some places it is steeper than at others.

Q. East of this ravine does the land rise or not?

A. East of it there is a handsome plateau through plots 1138 and 1140, narrower at the southerly part of plot 1140 and widening as it goes northerly about on a level with the Bulls Ferry road.

Q. The land in plots 1141, 1142, 1143 and 1144 lie on the other side of the ravine, do they not?

A. Yes, and front on the Bulls Ferry road.

20 Q. Is that property belonging to the prosecutors on the west side of the Bulls Ferry road adapted for cutting up into building lots or plots?

A. I should say it was adapted for gentlemen's villas rather than city lots; there is a fine view up the river, down the bay, and of New York city.

Q. Is the property in plots 1140, 1138 and 1145 and 1146 in its elevation on a level with the river road or above it?

A. No, sir, it is not on a level.

30 Q. How is it situated in regard to it?

A. About 150 feet above it. It goes down almost perpendicular. It makes your head dizzy to look down it.

Q. In what way do you or can you get from this elevated plateau and lots 1138 and 1140, and 1145 and 1146 to the River Road running along the easterly line of plot 1140 north?

A. You must go out at some one of the two gatehouses mentioned by me to the Bulls Ferry Road or

40 branch road, and thence turn southerly along the

Bulls Ferry and branch roads to a point marked bill No. 43, where you turn into the road which runs northeasterly from the branch road to the river road, or by going out at the upper gate and northerly down and around toward Weehawken Ferry.

And being again *examined in chief* says:

Plot bill No. 1139 is owned by Edward King; he lives, I believe, in New York city. He does not live on this property, nor has he any house on this property. 10

The next lot north of that, plot bill No. 1141, is understood to be part of the Duer property.

Plot bill No. 1142 is understood to be part of the Duer property.

Plot bill No. 1143 is said to belong to Mrs. Richards.

Plot bill No. 1144 was owned before I bought it by Mr. and Mrs. J. C. Bancroft Davis.

The plot north of that, bill No. 1144 A, is owned by Mrs. Caroline King, widow of James G. King, Jr. 20

Plot bill No. 1145—I don't know who owns it.

" " " 1146—I don't know who owns it.

" " " 1138—I understand belongs to Mrs. King.

Plot bill No. 1140—I take it to be Gracie King's.

Q. Section three commenced where and ended where?

A. Commenced at the northerly point of the road improvement and extended to Fulton street, I think. 30

Q. What was the cost of that section?

A. I can't tell at this time without referring to the return.

Q. The return is here; please refer to it and tell us?

A. Referring to the return I find it to be $23,390.71.

Q. What is the amount of assessment on lands on the third section?

A. I can't tell without adding them up; I would 40

say in our assessment we paid no attention to sections, where they began or ended, but I believe from a hasty calculation made at this time that the assessment on the section named was about $23,870.71.

Q. Do you mean to say that the assessment on 1138, 1152, 1149 and 1150, and 1151 amounts to $23,-870.71.

A. No ; I do not.

Q. What do they amount to?

10 A. $23,390.71.

Q. Was it merely an accident that the amouut of the assessment on those five pieces equalled exactly to a penny the cost of section three?

A. I presume it was ; I never heard the question raised until to-day.

Q. Plot 1150 has a house, the residence of the late Henry G. Schmidt, garden, gate-house and front yard handsomely laid out, has it not?

A. I believe it has.

20 Q. The plot on the opposite side of the road is meadow land, is it not, without any improvements on it?

A. It is meadow in front to the depth of about 200 feet, and then it is upland.

Q. What is the rate per foot front of No. 1150?

A, $6.10 per foot.

Q. What is the rate per foot front on the opposite side of the road?

A. $6.12 per foot frontage.

30 Q. Looking at plot 1148, where is the southerly line of that plot?

A. It is not marked on this map, but I think it is a few feet north of the centre line of Fulton street. Why it was not put on this map I can't tell, and in looking at the map I can't tell where it should come come on the map.

Q. Plots 1148 and 1147 both belong to Mr. Brown, do they not?

A. Yes, so I understand.

40 Q. Why were they divided into two plots?

A. That I don't remember.

Q. Was it not done because one plot was in section three and one plot in section two?

A. Not that I know of.

Q. Who does know?

A. I don't know who can tell unless it would be the surveyor—that was Mr. Spielman.

Q. What was the cost of section one?

A. $43,180.90, as appears by reference to the return. 10

Q. How much was assessed on the lands in section one?

A. $43,180.90.

Q. Was it an accident that the assessment on that section exactly equalled the cost to a penny?

A. I don't know of any design in it.

Q. You fixed the northerly line of section one at the northerly line of plot bill No. 41, did you?

A. I did; that was the southerly line of lands formerly of James G. King, deceased. 20

Whereupon the examination was adjourned to Friday, November 3d, 1882, at ten o'clock in the forenoon, at the same place.

At which time and place the examination was resumed in presence of the counsel of the respective parties.

Witness desired to make an explanation on his own behalf before resuming his testimony. 30

On the last day of the examination I had some doubt as to the proper location of the line dividing Mr. Brown's property, running from east to west—I mean plots bill number 1147 and 1148. Since that time I have deliberately scaled it off, and also had Mr. Brush, the engineer, to assist me in doing so, and found that said line, which is the southerly boundary of section three on the east side of the Bulls Ferry road, should be located directly oppo- 40

site the centre of Fulton street. I desire to say also that since the last examination I have referred to our minutes and have found—

(Counsel for prosecutors objects to this statement of the witness unless the minutes are produced.)

—that the cost of the various sections as reported in the return, and as testified to by me at the last examination, was made up of the contract price and
10 the incidentals.

I have also found, by carefully thinking the matter over, that the cost of the various sections was before the commissioners at the time the assessment was made, and that it must have been fresh in their minds at the time, and while the commissioners did not think that the amount of the cost of sections one and three was a reason why those amounts should be assessed against the lands adjoining, yet the conclusion of the commissioners was that the lands named
20 adjoining those sections were benefited the amount assessed and no more, and pursuing that examination the commissioners found that the cost of section two much exceeded the benefit conferred upon the land adjoining and assessed by the commissioners. Therefore they found that they must make provision to assess a large part of the cost of section two elsewhere and in a different manner, as shown by the report. It will be found on examining the assessment as made, that plot bill No. 40, lying to the easterly of the first
30 section, is assessed at a heavier rate than any other land comprised in the area of the assessment. Some of the reasons for this were its favorable laying in relation to the road, and its having a commercial value on account of its being a debouching point for the commerce and traffic that was likely to concentrate there at the immediate lower end of the Palisade ridge, and also because it was at the northerly point of existing improvements, opposite New York City.
40

(Counsel for prosecutors objects to the foregoing statement of the witness.)

Q. Who did the work on section one?

A. I have understood that the Hoboken Land and Improvement Company did it.

The Hoboken Land and Improvement Company own plot bill No 40.

Mr. Shippen is their managing man.

Q. You consulted with Mr. Shippen, did you not, 10 about the purchase of plot bill No. 1144?

A. No, sir; I did not.

Q. Is he not the principal man in the Hackensack Water Company?

A. I think he is.

Q. The assessment had been paid on plot 40 by doing the work before you made the assessment, had it not?

A. I can't tell.

I am not interested in or employed by the Hacken- 20 sack Water Company in any way.

I have an office at No. 28 Newark street, Hoboken.

Q. With whom?

A. Mr. William H. Harper.

Q. What business is it?

A. I am not connected with him in business.

I am deputy collector of internal revenue for part of the Fifth district, New Jersey. I rent my part of the office from Mr. Harper.

Q. From whom did you get the cost of the im- 30 provement of sections one, two and three?

A. It was certified to us by the original commissioners.

Q. How was the cost of section two increased from $144,359.01, as they were certified to you by the commissioners, as appears by Exhibit P. 1 for identification, and the amount as stated in your report of $151,119.75?

(Question objected to, as there is no evidence of 40

what was certified to the present commissioners by the old commissioners.)

A. Without being sure as to whether I am right or not, I would say that I presume it was for interest on the cost of the section, from the date to which the old commissioners figured up the interest on the various liabilities, until the time to which the commissioners calculated the interest at the time of making their assessment. That is the best answer I can give to that.

10

Q. Is that merely a guess?

A. That is my judgment at this time.

Q. You were present during Mr. Brush's examination?

A. I was.

I heard the same question asked him. I have made no examination on this point since.

And being again *cross-examined*, he says:

20

Q. Since your examination of the minutes to which you have referred in your statement made to-day can you state whether as a fact the cost of the sections as stated in the return included the cost of the construction and the incidental expenses?

(Question objected to because the minutes are not produced.)

A. That is what I consulted the minutes about.

30

Q. Do you know now if the incidentals are included in the cost as given?

(Objected to for same reason.)

A. They are included.

JOHN REID.

Taken, sworn to and subscribed this 3d day of November, A. D. 1882, at Jersey City,

ISAAC ROMAINE,

40

Sup. Ct. Com.

Charles B. Brush, a witness produced on part of the prosecutors, being duly sworn, on his oath says:

I am a civil engineer and surveyor, aud have my office in Hoboken.

Q. Have you had, as such engineer, the principal engineering control over the improvement mentioned in the return before you, and known as the Bulls Ferry and branch road improvement?

A. Yes, sir, during its construction from 1874 to 1878. After that time my partner, Mr. Speilman, did all the work for the commissioners. 10

Q. It was commenced when?

A. In 1874. The preliminary work, which was the widening and straightening, was commenced in 1872. I had charge of that also.

The construction of the improvement of the road itself commenced in 1874.

The branch road commences at Nineteenth street and runs northerly until it strike the Bulls Ferry road at or near Weehawken street. 20

The whole length of the branch road along its centre line, from Nineteenth street to the Bulls Ferry road at Weehawken street, is 3980 feet 8½ inches.

The length of the Bulls Ferry road along its centre line from Weehawken street, where the branch road intersects the Bulls Ferry road, to the most northerly line of the improvement, is 4751 feet and 3 inches.

The most northerly line of the improvement is the northerly line of the Township of Weehawken, and is shown on the map annexed to the return as the northerly line of plot bill No. 1150, by a broken line. 30

From the point where the branch road intersects the Bulls Ferry road, viz., at Weehawken street to the most southerly line of the improvement along the centre line of the Bulls Ferry road, is 1086 feet 2½ inches.

The point at which these respective centre lines meet is a little north of Weehawken street.

Bulls Ferry road itself has been in existence a num- 40

ber of years, and commences at the Hackensack turnpike and runs north past Guttenburg to the northern line of the county.

The portion of the Bulls Ferry road which we improved was from the Hackensack turnpike north to the north boundary of the Township of Weehawken. We also improved the branch road from Nineteenth street, Weehawken, to the Bulls Ferry road.

The distance along the centre line of the Bulls
10 Ferry road which we improved is 5837 feet 5½ inches.

The length of the branch road I have already given you.

The Bulls Ferry and branch roads were improved in three sections.

The first section was from Nineteenth street to the southerly line of lands formerly owned by James G. King, deceased, 1540 feet along the centre line of the branch road.

The second section was from the southerly line of
20 lands formerly of James G. King, northerly to Fulton street, and included that part of the Bulls Ferry road which is south of Weehawken street.

The distance along the centre line of the Bulls Ferry road and branch road of this section is 6358 feet 8½ inches.

The third section from Fulton street north to the northerly line of the township is 1919 feet 5½ inches.

Returning to the second section the distance from the southerly line of lands formerly of James G. King,
30 northerly to where the centre line of the branch road intersects the centre line of the Bulls Ferry road at about Weehawken street is 2440 feet 8½ inches.

The distance from this point of intersection northerly along the centre line of Bulls Ferry road to Union street is 837 feet and 7 inches.

From this point, viz., the centre line of Union street to the centre line of Fulton street is 1994 feet 2½ inches.

Q. I notice that by a statement produced by your-
40 self or your firm, the cost of section two was $144,-

359.01. By the report of the commissioners they state the cost to be $151,119.75. Will you explain how the difference $6760.74 is made up?

(Question objected to.)

Not until I see the statement you refer to of the cost. In the statement to which you refer the amount given is $144,359.01. This amount is composed of four items, as shown on the statement. 10

One, contract work, $101,733.93. This I know to be correct. The other items shown on the statement are contingent expenses and interest and discount on certificates. This I have had nothing to do with.

The cost of the second section as shown on the report of the commissioners as $151,119.75, includes not only the contract work, but the contingent expenses, &c., and therefore I cannot give you the information you request as to the difference between the two items. 20

Q. Who can?

A. I presume that comes under the department of of the clerk of the board.

The clerk of the board is Captain J. H. Symes.

Q. Do you mean to say that you do not know, and that you have no figures in your office, or under your control, from which you can tell of what the increase consists?

A. I have had nothing to do with the cost of the Bulls Ferry road improvements since I gave my final 30 estimate to the contractors in 1878. What notes Mr. Speilman may have made I do not know.

Q. Question repeated.

A. I do not know myself, and do not know that I have any figures in my office, or under my control, from which I can give you the information you ask.

Mr. Speilman is my partner and is now in Europe.

I was not commanded by the subpœna served upon me to bring with me the figures showing of what the increase consists. 40

I have not the subpœna with me.

Q. Have you made any effort to find the figures showing of what this increase consists?

A. I had no intimation that there was any increase such as you refer to. I do not know anything about this statement shown to me and do not remember of ever having made it out or seen it before.

The statement is produced and marked Exhibit P. 1 for identification.

10 I can give you no information of the contingent expenses or any of the items of cost, except the contract price. That I have stated is correct. It would be of no use to continue to question me about that.

Q. You spoke of the widening and straightening of the Bulls Ferry and branch roads prior to 1874. Was there an assessment made for the costs of that straightening and widening?

A. Yes, sir.

Q. Witness being shown a table entitled "Recapit-
20 ulation of Assessment," is asked, in whose handwriting is that?

A. I believe it to be in the handwriting of George E. Clay, former assistant in our office.

I cannot say if that was made by him while he was in our employ, there is no date to it. I presume it was.

Q. Do you recognize what that paper is?

A. It seems to be a copy of some data that appeared on the original assessment maps for the
30 widening of the Bulls Ferry and branch roads.

Q. Who made that assessment?

A. I think it was the original Bulls Ferry road commissioners, John H. Bonn, Henry J. Rottmann and Abram W. Duryee.

Q. Can you tell us what the costs of that widening was?

(Question objected to, as the report and assessment map will show.)

40 A. From this table the cost seems to have been

$35,947.59. From my recollection that was about the cost.

Said table or recapitulation is offered in evidence on part of the prosecutors and is marked Exhibit P. 2.

(Counsel for defendants objects to the exhibit.)

That assessment was made in about 1873, to the best of my recollection; I don't know just when it was made. 10

Q. After that assessment and prior to the passage of the supplements of March 27th, 1874, did you furnish some of the land owners who would be likely to be assessed for this improvement, an estimate of the cost of the improvement of all three of these sections, which estimate included the following work: Excavation, filling, grading, &c., building eighteen receiving basins, and necessary culverts; laying two rows of flagging four feet wide, one on each side of the road; running two rows of curb-stone, one on each 20 side of the road; macadamizing the roadway fifty-five feet wide and twelve inches deep, along the whole line; paving the gutters on the steep grades with Belgian block, three feet wide; changing grade, relaying flag and curb and gutter on intersection of streets in the Town of Union, at a cost of $150,294.70?

(Question objected to.)

A. I do not remember that particular estimate, but 30 I did furnish very many estimates of the cost of this improvement, on different plans, about this time to property owners and the commissioners, as they called on me from time to time.

Q. Have you no recollection of furnishing one of which you estimate the cost of the items which I have mentioned at $150,294.70?

(Question objected to.)

A. I do recollect giving an estimate of that kind 40

somewhere about that time; the date of it I don't recollect.

Q. By that estimate was the cost of section one $31,217.76; of section two, $98,404.96; of section three, $20,671.98?

(Question objected to.)

A. Yes; that is for the items mentioned. My impression is that that estimate was made after the supplements of 1874 were passed. It was probably made before the contract.

Q. What is the width of the carriage way of the Bulls Ferry and branch roads between the northerly line of the Township of Weehawken and 19th street, Weehawken?

A. On the branch road between 19th street and the Bulls Ferry road the width of the carriage way is fifty-five feet.

On the Bulls Ferry road, from Hackensack turnpike to the branch road, the carriage way is thirty-five feet wide. From the branch road to Union street it is fifty-five feet wide; from Union street to the northerly boundary of Weehawken it is forty feet wide, except between at Union street the width of the carriage way decreases by an easy curve from fifty-five to forty feet.

It reaches forty feet in width at a point, as I remember, from fifty to one hundred feet north of Union street.

The grade from the northerly line of the Township of Weehawken to Main street is pretty nearly level, rising and falling on a grade of about eight inches in 100 feet; then from Main street to Union street the grade rises about one foot and a half in 100 feet. From Union street to the branch road the grade falls about three feet in 100 feet. From the branch road to Kossuth street the grade rises about four feet and six inches in 100 feet, and from Kossuth street to the Hackensack turnpike the grade rises three feet in 100 feet.

On the branch road, from its intersection with the Bulls Ferry road for about 1100 feet, the grade falls about five and a half feet in 100 feet; thence going southerly for a distance of 800 feet, the grade falls about two feet in 100 feet; then for a distance of 1200 feet the grade falls three feet and eight inches in 100 feet; then for a distance of 800 feet, which brings us to 19th street, the grade falls one and a half feet in 100 feet.

Q. At 100 feet from Nineteenth street, was there a filling. If so, how much? 10

A. Yes, three feet and three inches. At 700 feet northerly from Nineteenth street there was an excavation of 7 feet;

At 800 feet	.....	excavation	7 ft. 5 in.
" 900 "	.....	"	6 ft. 3 in.
" 1000 "	.....	"	5 ft.
" 1100 "	.....	"	5 ft. 9 in.
" 1200 "	.....	"	7 ft. 2 in.
" 1300 "	.....	"	8 ft. 6 in. 20
" 1400 "	.....	"	10 ft. 5 in.
" 1500 "	.....	"	10 ft. 11 in.
" 1600 "	.....	"	8 ft. 9 in.
" 1700 "	.....	"	6 ft. 5 in.
" 1800 "	.....	"	3 ft. 11 in.
" 1900 "	.....	"	1 ft. 11 in.

At 2000 feet the grade and original surface were the same.

This point is 460 feet north of the southerly line of lands formerly of James G. King. 30

From there until it reaches Bulls Ferry road, the surface of the original road and the surface of the present road is nearly the same—the variation is only a foot or two.

Q. The cost of section three, as appears by the commissioners' report, was $23,390.71. The assessment on lands fronting on that portion of the Bulls Ferry road designated as section three is $23,390.71. Was that intentional or was that a coincidence? 40

(Question objected to.)

A. I know nothing about the assessment, as I had nothing to do with it.

Q. As an engineer, would you say that it would be possible, practically speaking, for that to have been a coincidence?

(Question objected to.)

A. I have not given the subject any consideration, and therefore am not prepared to give an opinion.

10

Q. Is it necessary to give a subject of that sort any consideration?

A. Yes, sir.

Q. The assessment on section one exactly equals the cost of section one. Was that intentional, or was it a coincidence?

(Question objected to.)

A. I answer the same as above to section three.

20

Q. Mr. Reid says that lot bill No. 316 is specially benefited, although it is not on Bulls Ferry or branch road, and although it is the Hackensack turnpike, which turnpike is on a more direct route to New York than the Bulls Ferry and branch roads, yet he says the plot north of plot bill No. 1150, which is on the Bulls Ferry road, and whose owner must use the Bulls Ferry road to get to New York, is not benefited by this improvement at all. Is that your judgment also?

30

(Question objected to.)

A. I form no judgment at all on any questions connected with the assessment.

Q. Was this map annexed to the return made in your office?

A. It was made in our office under the direction of Mr. Speilman.

Q. How far south does the plot marked bill No. 140 on this map run?

40

A. The southern boundary does not seem to be clearly indicated; I cannot, therefore, tell.

I do not see any figures or indications on the map which would definitely show.

Q. Is a portion of this assessment laid on lands in the Township of Union?

A. Looking at the map I should say it was. The map clearly shows that.

Q. Describe what portion of lands in the Township of Union are assessed for that improvement? 10

A. Looking at the map alone, I should say it was that portion of plot bill No. 1152, which I happen to know is Mr. Cossitt's property, and which has a frontage on the Bulls Ferry road of 1224 44-100 feet, and extending west to line of Palisade avenue—produced.

I presume the limits of the assessment are shown in the report of the commissioners and the schedule.

I find from examining the notice attached to the report of the commissioners, as shown by the return, 20 that the limit of the assessment is a line 750 feet westerly from the Bulls Ferry road, and the northerly limit is the northerly line of land of H. G. Schmidt, deceased [produced], which is the northerly line of plot bill No. 1150.

Q. Is any of the land in the Township of West Hoboken assessed for this improvement?

A. Plots bill numbers 2, 3 and 4, I should think, were in the Township of West Hoboken. I do not remember distinctly, as changes have been made in 30 that line in the last two or three years.

This map seems to indicate that a portion of the property in that township has been assessed.

And being *cross-examined*, he says:

Q. The land in West Hoboken, along and west of the Hackensack turnpike, between plot bill No. 135 and the northerly line of 19th street [produced], and assuming that that land is in the Township of West Hoboken, is situate how in relation to the elevation of the branch road? 40

A. That portion west of the Hackensack turnpike is about 150 feet above the elevation of the branch road, the plots bill numbers 2, 3 and 4 are about on a level with the branch road and lie east of the Hackensack turnpike.

Q. From the land situated on this elevation you have mentioned, how do you get to Hoboken?

A. You drive down either through the Hackensack plank road, or through Kossuth street, Cantello
10 street, Weehawken street, Franklin street, or Jefferson street, until you strike the Bulls Ferry road; you reach these streets by way of Palisade avenue; after you reach the Bulls Ferry road, you drive down the branch road to Hoboken.

Q. That is one way; is there any other?

A. The most direct way is not to go north at all, through Palisade avenue, but to go south through Palisade avenue to the Paterson plank road, or some of the other roads leading to the Hoboken ferry fur-
20 ther south.

Q. What portion of the Township of West Hoboken is situated at this elevation above the Bulls Ferry road?

A. Nearly the whole of the township is at least at this elevation, some parts of the township running as high as 250 feet above the road.

Q. Is there any way that you remember of getting from the Bulls Ferry branch road to West Hoboken for either foot passengers or wagons, between the
30 northerly line of Nineteenth street and plot bill No. 101, going directly west from Bulls Ferry branch road, and if so, how?

(Question objected to as not a cross-examination.)

A. There is no way for wagons and for foot passengers; there is a series of steps, I believe 200 about, rising from the Hackensack turnpike to the plateau, and another series rising from the branch road to the
40 Hackensack turnpike in the same vicinity.

Q. Is the slope from the top of the hill at West Hoboken to the branch road gradual or abrupt?

(Question objected to.)

A. It is almost perpendicular.

Q. Looking at the same printed notice already referred to, attached to the return, can you tell the southerly line of the assessment of plot bill No. 40?

A. Yes, sir, it is the northerly line of Nineteenth street. 10

Q. Is it the northerly line of Nineteenth street produced?

A. Yes, sir.

Q. To where?

A. Produced easterly to the line of the Hoboken Land and Improvement Company's railroad.

Q. Does that railroad appear on that map?

A. Yes, sir.

Q. How?

A. By two lines. Two black lines running a little east of being parallel with Park avenue, and being distant about 450 feet from Park avenue at Nineteenth street. 20

Q. What road is that shown on this return running north from about the southerly part of the plot marked bill No. 140 on this map?

A. It is the old River road on which the Hoboken Land and Improvement Company's and others' railroad lies.

Q. The width of the Bulls Ferry road throughout as a road is what? 30

A. From the Hackensack turnpike to the branch road it is sixty feet wide; from that point to the northerly boundary of the Township of Weehawken it is eighty feet wide.

The branch road throughout its entire width is eighty feet wide.

Q. You have stated in your direct examination that the width of the carriageway on the branch road 40

between Nineteenth street and the Bulls Ferry road is fifty-five feet, and from the branch road to Union street fifty-five feet, and from Union street to the northerly boundary of Weehawken forty feet. What is the reason of that difference in width?

(Question objected to because not a cross-examination, and because this witness is not a witness for the defendant, brought here by subpœna to answer certain questions of fact, because he has refused to testify to anything else but facts.)

A. Because the greatest amount of travel over these roads is over that portion where the carriageway has been made fifty-five feet wide, the travel coming from the west as well as the north at this portion of the road to a much greater extent than elsewhere.

My partner, Mr. Spielman, is absent in Europe, on account of sickness.

He went away in June. The time of his return is uncertain. He may not be back until the first of next year.

He had control of and supervised the work done under the direction of the commissioners, in making the assessment.

A. I had nothing whatever to do with that.

And being again *examined in chief* he says:

Q. You said some railroad was on the old river road; you mean it is partly on that?

A. Yes.

CHAS. B. BRUSH.

Taken, sworn to, and subscribed this 1st day of November, A. D. 1882, at Jersey City, before me.

ISAAC ROMAINE,
Sup. Ct. Com.

William Sayles, a witness produced on part of the prosecutors, being duly sworn, on his oath says :

I am the Treasurer of Weehawken Township.

Q. How much money has been collected by taxes from property owners for the improvement of the Bulls Ferry road?

A. Bonds were issued for $30,000 in 1874 and $30,000 in 1875 ; the interest at seven per cent. has been collected by direct tax for six full years ; the bank has advanced two years interest, which has yet to be collected, and will be collected this fall by direct taxes. 10

And being *cross-examined* he says :

I have been Treasurer, this is the second year.

There was a sewer constructed in this Bulls Ferry road. Bonds were also issued by the township for this sewer as well as for the road.

Q. From whence do you get the amount of bonds issued by the Township of Weehawken? 20

A. From the Township bonds and also from the coupons which have been paid, amounting to the interest on that amount.

Q. Was that the whole amount of bonds, that is, $60,000 issued by the Township of Weehawken on account of this improvement ?

A. That was the total amount issued for both road and sewer improvements.

Q. And the amount of money to pay interest on these bonds was raised uuder what designation or head ? 30

A. Interest on Bulls Ferry road and sewer bonds.

And being again *examined-in-chief*, says :

Q. How much of this $60,000 was road and how much sewer bonds ?

A. I don't know that I have any means of saying, except the report of the commissioners showing that $15,000 was appropriated for the sewer and the balance for the road. 40

Q. What commissioners?
A. The sewer commissioners.

And being again *cross-examined*, he says:

A. I have that report at my house. It accompanies the assessment roll. It also shows the date of the bonds.

The sewer bonds were issued first; $30,000 in bonds were issued in 1874; I think it may have been
10 only $15,000, and these I know were for the sewer; $15,000 of these were for the sewer and $15,000 for the road; John H. Bonn was treasurer in 1874.

I don't know what date in 1874 they were issued without reference to the books.

I don't know what time in 1875 the others were issued; I was not in the committee in 1875; I was in 1874.

The township books will show the time of issuing the bonds, and what for and what use was to be
20 made of them.

And being *examined-in-chief* a third time, he says:

This John H. Bonn is the same gentleman who is President of the North Hudson County Railway, and he was one of the Bulls Ferry road commissioners.

I have been acquainted with him for several years.

WM. SAYLES.

30 Taken, sworn to and subscribed this 1st day of November, A. D. 1882, at Jersey City, before me,

ISAAC ROMAINE,
Sup. Ct. Com.

Whereupon the further examination was adjourned to Monday, November 6th, 1882, at two o'clock in the afternoon, at the same place.

At which time and place the examination was resumed in presence of the counsel of the respective parties.

James G. K. Duer, a witness produced on part of the prosecutors, being duly sworn on his oath, says :

10

I live at Weehawken, on plot bill No. 1141 on the assessment map annexed to the return.

My sisters, Sarah G. Duer, Amy H. Duer, my brothers Edward A. Duer, William A. Duer and Denning Duer, Jr., and myself own that plot.

I have lived there about thirty-five years.

The front of that plot on the road and the plot next north, which is owned by and is in possession of the same owners, is between fourteen and fifteen hundred feet.

20

About seven or eight hundred feet of this is on the Bulls Ferry road and seven or eight hundred feet on the branch road.

About six hundred feet of this front is from one to ten feet above the level of the road ; about four hundred feet are from ten to twenty-five feet higher ; the balance is a little lower than the level of the road.

The portion that is from ten to twenty-five feet higher is entirely stone, the balance is earth, as near as one can judge.

30

Plot bill No. 1141 is used as a single residence.

Plot bill No. 1142 is used as a cow pasturage.

Plot bill No. 1139 is owned by Edward King. He lives at Staten Island ; there is no residence on that plot.

Mrs. Richards owns plot bill No. 1143. She lives in New York City.

Mrs. McLane owns plot bill No. 1146. She lives at Baltimore.

Mrs. James G. King owns plot bill No. 1145.

40

Plot 1144a is owned by Mrs. James G. King.

There is a gardener's or workman's house on plot bill No. 1145; there is no house on any other of these plots, and has not been in my memory.

Plot bill No. 1138 is owned by Mrs. James G. King. Her house and a gardener's house is on that plot.

Plot bill No. 1140 is owned by A. Gracie King, and he has a dwelling house on his plot.

There is a private road through this property.

10 It commences at the westerly line of plot bill No. 1144a, and runs down through that plot and plot 1138, and strikes the branch road at the point where plot bill No. 1141 is.

There is a gate at each end of the road; it is a private road.

The owner of plot bill No. 1136 has no right to the use of that road.

The owners of plot bill No. 1131 have no right to the use of that road.

20 Q. Has the owner of any plot except the owner of plot bill No. 1138 any right to use that road?

(Question objected to.)

A. None that I know of.

Q. How many residents in the Township of Weehawken have in use horses and vehicles?

(Question objected to.)

30 A. Fifteen or sixteen.

Q. Can you give their names?

A. Yes. There are two Kings, two Duers, Ridgeley, Tagg, Baldwin, and another man up there; I don't know his name. Neinnaber is another, Schemerhorn, Sloat, Walters, Noonan; a man I think his name is Roman, Mechler, Doremus; these are all I recollect—one more, Mr. Frost.

Mr. Ridgeley lives on the Hackensack turnpike, south of Bulls Ferry road; Mr. Tagg and Mr. Bald-
40 win live in the same neighborhood.

Mr. Schemerhorn lives at Nineteenth street and Willow street.

Mr. Sloat lives in the same neighborhood; Mr. Walter lives in Nineteenth street.

Mr. Doremus lives in the neighborhood of Nineteenth street; I don't know where his house is.

Mr. Noonan lives in the neighborhood of the oil docks, that is, at Nineteenth street.

Mr. Neinnaber lives on the west side of the branch road, just north of the southerly side of the King property, section 2. 10

Mr. Meckler lives at the junction of the branch road and Park avenue.

I have given the names of the owners of carts and wagons as well as carriages; these include all, as I recollect.

Q. How many of these require to use that portion of this Bulls Ferry and branch road known as section two? 20

(Question objected to.)

A. Going south only one, that is, towards Hoboken.

Q. Have you caused any one to count the number of carriages, and wagons and carts, passing up north and south, opposite the property on which you dwell, known as plot bill No. 1141.

(Question objected to.)

A. I have. 30

I employed Joshua Frost.

Q. What instructions did you give him?

(Question objected to.)

A. I told him to count all vehicles passing over that portion of the road between the hours of six A. M. and six P. M. on Wednesday, November 1st, and Saturday, November 4th, keeping a record of the destination of the vehicles. 40

Q. Is this improvement of the Bulls Ferry and branch roads any benefit to plot bill No. 1141, if so, what?

(Question objected to.)

A. It is decidedly not in my opinion.

Q. State why not, Mr. Duer, in your opinion?

(Question objected to.)

10

A. It is rather difficult to state why not. There has been no more demand for the property since the improvement than before. The road is no benefit to Weehawken; nobody there wanted it.

Q. Who did want it?

(Question objected to.)

A. The Town of Union, in my opinion.

20 Q. Has it been of any benefit to the North Hudson County Railway Company?

(Question objected to.)

A. It has enabled them to run a double line of tracks, which, before that, the township committee would not allow them to do, and it has lowered the grade.

Q. Has that portion of it known as the branch road been the portion of which you have been speaking?

30

A. Yes, sir.

Q. How has that branch road stood the wear and weather?

(Question objected to.)

A. Very badly.

Q. Will you state in what respect?

A. The recent storm washed away the west side of the branch road.

40

Q. To what extent; what will it cost to put it in ordinary repair?

(Question objected to.)

A. I could hardly form an estimate. I should think $3000 or $4000 at the least.

Q. The water that did the injury came from where?

A. From the junction of Weehawken street and the Bulls Ferry road principally.

The injured portion of the road is wholly within the Township of Weehawken. 10

Plot bill No. 1144 was put in the market for sale about two years ago next spring.

And being *cross-examined*, he says:

My residence is on plot bill No. 1141, about six hundred feet east from Bulls Ferry road, and just about where the red figures on the plot are on the map.

The plot is all high ground excepting a little portion down in the southwesterly corner, which is low. 20

Q. From the house how does the land slope to the Bulls Ferry road?

A. It slopes from the house towards the road, by a gradual slope, about half the distance, and then rises to the road.

There is a difference in the height of the portion on the Bulls Ferry road and the portion on the branch road; the portion on the branch road is the highest. 30

There is a small vegetable garden on the plot. It is all used as part of my private residence.

From the Bulls Ferry road I reach my residence by vehicle by a private road. It is a carriage road which comes out on Bulls Ferry road between Weehawken and Franklin streets.

The surface of the ground on plot 1142 is very nearly on a level.

That plot is also used by me in connection with my residence. 40

Plot bill No. 1143 is very nearly level.

Plot bill No. 1144 before it was sold, was high above the road. It was fifteen or twenty feet above the road.

There used to be a residence on that plot but it has burned down.

Q. Plots bill Nos. 1138 to 1146, inclusive, used to belong to whom?

A. James G. King, deceased.

10 My mother was one of his daughters. Her name was Caroline Duer.

The southerly portion of this property is about half a mile from the northerty line of the City of Hoboken, and on the east directly opposite is the City of New York.

I usually go to New York from my property by carriage to Hoboken, and then by boat across the river.

I usually go by Bulls Ferry branch road, and also

20 come the same way.

The most direct route from New York to plots 1139, 1141, 1142, 1143 and 1144 is by the Bulls Ferry bran h road; and to 1138 and 1140 is by the private road mentioned to Bulls Ferry road, and so through the branch road to New York.

Q. In what way does the owner of plot 1138 get the exclusive right to the use of that private road?

A. By inheritance and purchase from the estate.

I can't say that the names of the owners of horses

30 and wagons in the Township of Weehawken are only those I have given. I have given those I recollect.

Q. Which owner by name is the only one who is required to use section two going south?

A. Neinnaber.

I don't include ourselves in that. Mr. Ridgeley and Mr. Tagg can use the Hackensack turnpike.

The Hackensack turnpike has not been abandoned, and I don't know anything about its condition.

They usually use the Bulls Ferry and branch roads

40 instead of the Hackensack turnpike.

Q. Previous to widening and improving the Bulls Ferry and branch roads, the commissioners in charge of the improvement advertised their intention of so doing, and for remonstrances, if any, against making the same, did they not?

(Question objected to as not a cross-examination.)

A. I believe they did.

Q. In answer to that advertisement did you remonstrate in writing against such improvement so advertised. 10

A. I can't say without referring to my papers. I have remonstrated against so many things that I cannot recollect.

I am in the banking business, one of the firm of James G. Kings' Sons. I have been engaged in that business since I have been in business.

Plot bill No. 1144 was in the hands of Crevier Brothers, real estate agents in Hoboken, for sale.

None of the other plots, 1141, 1142 and 1143 have been in the hands of any agent for sale; neither have plots 1139 and 1140, nor 1145 or 1146. 20

I know of no reason why plot 1144 was sold. The owner's residence is Newburgh, New York. He temporarily resides in Washington.

Plots bill Nos. 1147 and 1148 probably belong to Mr. Brown; he owns north of what was formerly property of James G. King, north to Cossitt's property.

I don't know how many houses are on that property; there is the residence and one or two cottages for gardeners. 30

I don't know of any other house on the Cossitt property than the residence, and that is also the case with the Schmidt property.

The property on the west of the branch road, from the junction of the Bulls Ferry road southerly to the foot of the hill, is all above the grade of the branch road—I should say twenty-five or thirty feet above the grade. 40

From the junction of the Bulls Ferry road with the branch road, on the west side south, along the branch road for about four hundred feet, there are no houses.

Bancroft Davis and wife, owner of plot bill No. 1144 never lived on it.

The horse railroad runs as far north as Lewis street, and it turns up there as far as Union street; it is a double track; the cars goes up Lewis street
10 and down Union street.

JAMES G. K. DUER.

Taken, sworn to and subscribed this 6th day of November, A. D. 1882, at Jersey City, before me,

ISAAC ROMAINE,
Sup. Ct. Comr.

Joshua Frost, a witness produced on the part of the prosecutors, being duly sworn on his oath, says:
20 I live in the Township of Weehawken; I have lived there all my life; I was born there.

I have been keeping a record of the wagons going north and south, passing Mr. Duer's property on the Bulls Ferry and branch road; I kept such records on Wednesday, November 1st, and Saturday, Novemper 4th inst., from six in the morning to six in the evening.

I kept such record by Mr. Duer's instructions, which were to keep an account of all wagons or
30 vehicles passing his property between said hours, and their destination.

(Counsel for defendants objects to all the foregoing testimony as immaterial.)

I kept a record; I have it here and produce it.

Said record is offered in evidence on part of the prosecutors and is marked Exhibit P. 3.

40 (Counsel for defendant objects to the exhibit.)

Q. State what you did?

(Question objected to.)

A. When a wagon was coming by I marked on this record P. 3 where they were coming from, and whether going north or south.

On November 1st there were 117 vehicles came from Union Hill going south towards Hoboken.

I knew whether they came from Union Hill or not by the name on the wagon. If the wagon had no 10 name I asked the driver.

On the same day twenty came from Weehawken, going south. These numbers did not include the street cars; I kept no account of the street cars.

On November 4th, 134 vehicles came from Union Hill going south.

On November 4th, 15 vehicles came from Weehawken, going south.

Two of these were Mr. Duer's.

On November 1st, four of those south from Wee- 20 hawken were Mr. Duer's.

I counted all the vehicles which passed except the horse cars.

On November 1st, there were 247 vehicles south from other places than Weehawken and Union Hill which passed me.

On November 4th there were 196 vehicles south from other places than Weehawken and Union Hill.

On November 1st 144 vehicles went north to Union Hill, and on the same day 25 went north to Weehaw- 30 ken.

On November 4th, 157 vehicles went north to Union Hill and 22 vehicles went north to Weehawken on the same day, and from other places there were on November 1st 252 vehicles going north, and on November 4th 226 vehicles going north.

Q. If a wagon went south past you and came back north past you, how did you count?

A. I counted two vehicles.

40

And being *cross-examined*, he says:

I don't mean that all these vehicles passed by Mr. Duer's gate, they passed by his property.

Mr. Duer's gate is a little north of the junction of the branch road with the Bulls Ferry road.

I found out where these vehicles came from by the names on them and inquiring of the people driving them.

Q. Of those vehicles coming from other places than
10 Union Hill and the Township of Weehawken on those days and going south, from what direction or by what roads did the most of them come into the branch road at the junction with the Bulls Ferry road?

A. They came down the Bulls Ferry road south.

Q. What proportion?

A. About two-thirds.

The other one-third came from the Hackensack turnpike north along the Bulls Ferry road.

20 The Hackensack turnpike is not much used for wagons.

The most of the vehicles that went south from and came north to Union Hill were from the breweries at Union Hill—they were brewers' wagons. They were wagons of Wm. Peters, Lewis Linneworth and Daniel Bermes. I remember their wagons particularly.

The majority of the vehicles that went up and down were business vehicles; those that went from Mr. Duers were carriages and a business wagon.

30

And being again *examined-in-chief* says:

Block No. 25 on the map annexed to the return is pretty well built up.

There are two houses on the Bulls Ferry road, occupying the whole front except three lots. Those lots are vacant.

Between Union and Lewis streets the blank space on the map marked 719b is said to belong to Mr.
40 Schweitzer. There is but one house on it.

The horse cars run up Lewis street and down Union street. There is one track in each street.

JOSHUA B. FROST.

Taken, sworn to and subscribed this 6th day of November, A. D. 1882, at Jersey City, before me,

ISAAC ROMAINE,
Sup. Ct. Com.

Whereupon the examination was adjourned to Friday, November 10th, 1882, at ten o'clock in the forenoon, at the same place. 10

At which time and place the examination was resumed in presence of the counsel of the respective parties.

Edward King, a witness produced on part of the prosecutors, being duly sworn, on his oath says:

I reside in New York. I own lands in Weehawken. I own the plot bill No. 1139 on the map annexed to the return herein. I inherited it from my father. 20

Q. The assessment against your property for the improvement mentioned is $6000. Is your property specially benefited to that extent by this improvement. If not, why not?

(Question objected to.)

A. I do not think it is benefited to that extent. In the first place the grade of the road is so much above the grade of my land that I would have to put a ladder up to reach it in some places. Relatively there is a very small portion of the frontage from which easy access to the road can be had. I claim that to justify any such assessment as a special benefit to me the grade of the road should have been materially lower. 30

Q. Why was the grade of the road raised rather than lowered in front of your property?

A. I presume principally to benefit the horse railroad company, by giving them an easier gradient in ascending the hill. 40

Counsel for defendant gives notice that on the argument he will move to overrule the question and answer.

Q. Was the cost of the road materially increased by this raise in the grade in front of your property?

(Question objected to.)

A. In my judgment it was.

10 Q. Was the value of your property increased or decreased by this raise in the grade of the road in front of your property?

(Question objected to.)

A. In my estimation it was seriously impaired by leaving my property so far below the grade, as stated in my former answer.

Q. Was the assessment against your property as you claim to be reduced by any amount to be raised 20 by general tax on the town or township.

(Question objected to.)

A. As I understand the law I am entitled to a reduction of the amount assessed against me for benefit, by my proportionate share of twenty per cent. of the whole cost of the road between, I think, Union street and the southerly line of my father's property.

Q. Do you claim that reduction?

30 A. I do claim that reduction.

Q. Has that proportion of the twenty per cent. been credited on your assessment in any way?

A. I understand not. I understand that I am assessed to the last cent of the full amount of benefit that the assessors estimated my lands had derived.

Q. Is this property of your's level, or is it inclined, if so, which way, and at wh t inclination?

A. It is not level. For a relatively short distance along the front it falls off within a distance of one 40 hundred feet from the road materially, and beyond

that distance very rapidly toward the east, with the exception of a bluff on the northern portion.

And being *cross-examined*, he says:

I remember generally the grade of the old road there.

I don't know that I am able to say whether the grade of the new road was raised from the level of the grade of the old road.

I couldn't say whether or not it was raised from the level of the grade of the old road. 10

And being again *examined-in-chief*, says:

Q. If the grade of the road as now built was the same as the grade of the old road before the improvement, which I do not admit, because Mr. Brush has already testified in this cause to these respective grades, how do you explain that the grade of this road effects the assessment upon your property? 20

A. The whole theory of the assessment on my property must rest upon the basis of my deriving benefit from the new road as a public improvement as well as a special benefit. The whole property lying on an incline, and the original road much narrower than the new one, it is evident that if the grade of the original road was simply preserved, every additional foot of breadth given the road on the side towards my property would raise it so much higher above the level of my property, and consequently diminish 30 the value of the new road to me, and of course the benefit that I would derive from it. I am also of the opinion that the cost of the road by the adoption of such a grade would be materially increased over that necessitated by a lower grade, by reason of the extra amount of filling required. The more this road was lowered from the former grade the greater benefit I would derive, and vice versa.

Q. How much was the branch road widened in front of you? 40

A. I can answer only generally; very materially; I should say its width was doubled and it was widened on the side towards me.

And being again *cross-examined*, he says:

Where an improvement of that kind is made, in my judgment the land lying on a level with the improvement is benefitted more than that decidedly above, or decidedly below the level.

10 By "decidedly," I mean property more than three or four feet above or three or feet below.

I had knowledge only in a very general way if any, before this improvement was made of the amount the road was to be widened, and what the grade was to be. My brother then had charge of the property. It was undivided, and I had no special interest in this particular piece.

My interest was an undivided interest in the whole divisible property, but I left all matters of adminis-
20 tration to my brother A. Gracie King, executor.

He looked after and had charge of this property.

EDWD. KING.

Taken, sworn to and subscribed this 10th day of November, A. D. 1882, at Jersey City, before me,

ISAAC ROMAINE,
Sup. Ct. Com.

Louis C. Hauenstein, a witness produced on part of
30 the prosecutors, being duly sworn, on his oath says:

I live in the Town of Union. I was President of the Board of Councilmen of the Town of Union, at same time during the Bulls Ferry Road Improvement.

I know John H. Bonn, one of the commissioners for this improvement.

There is a street railway down what is known as the branch road, which meets the Bulls Ferry road
40 at about Weehawken street.

John H. Bonn is president of that railroad.

Q. Is he the owner by repute of most of the stock?

A. No, sir.

I don't know how much stock he does own.

Q. Is the road bonded?

A. I don't know.

Q. While you were chairman, did you apply to the commissioners to lower the grade of the Bulls Ferry road at Union and Lewis street?

A. I did. 10

Q. To what commissioners, all or one of them?

A. At their meeting. All the commissioners were present.

Q. Was that request granted at that time?

A. No, sir.

Q. Was it refused?

A. It was not exactly refused.

Q. At that time, how many tracks of street railway was there in the Bulls Ferry and branch roads?

A. I don't think there were any. 20

They weren't running any cars at that time because they were making the improvement.

Q. Up to that time had there been a single or double track?

A. Single.

Q. For how many years?

A. I think since 1863 or 1864.

Q. From what street to what street did this single track extend?

A. From Union to Weehawken street, then down 30 the branch road its whole length.

At Union street and Bulls Ferry road it turned up Union street westerly to Bergen Line avenue about 1000 or 1200 feet.

Q. After this request to the commissioners, was there any application to the council by the railroad company for permission to lay a double track up the Bulls Ferry road and a single track up Lewis street?

A. No, sir.

Q. What application did they send in? 40

(Counsel for the defendants objected to all the foregoing testimony at the time it was given, and also objects specially to the last question, as not the best evidence of the fact.)

A. It is so long ago that I can't recollect but the minutes of the town council will show it.

Q. State your best recollection?

(Objected to for same reason as before)

10

A. I think they sent in a communication for laying a double track in Union street; I am not positive.

Q. Did they lay a double track in Union street?

A. They did not. They laid a single track in Lewis street and a double track in Bulls Ferry road and down the branch road.

The railroad company use the Lewis street track going north and Union street track coming south.

Q. What length of time about was there between
20 the application to the commissioners to change the grade of Bulls Ferry road and the application of the railroad company as mentioned by you?

A. It might have been one or two months.

Q. Did the laying of the horse railroad track in Lewis street necessitate a change of grade in Bulls Ferry road?

A. Not exactly. They could lay their track where the original grade of the Bulls Ferry road improvement was.

30 The request or application spoken of by me was that they, the commissioners, ought to lower the grade on Bulls Ferry road at Union street four or five feet, as the grade on Bulls Ferry road coming north to Union street was increasing, and going from Union street still north the incline was the other way.

This grade was subsequently lowered at this point on request of the property owners in the neighborhood by petition to the commissioners. The grade was lowered between one and two months after.

40 Q. Was it lowered after permission was given to

the railroad company by the town to lay a single track in Lewis street?

A. Yes, sir.

(Counsel for the defendants objected to all the foregoing testimony at the time it was given, and such objection is here entered by consent.)

And being *cross-examined*, he says:

The request to the commissioners was verbally at the corner of Union street and the Bulls Ferry road. 10

Q. How did you come to be present at that time, and why did you make that request?

A. I was asked as a member of the board of council of the Town of Union to be present at the commissioners meeting. The motive of, or the point to be argued, why the commissioners were asked to be there, I don't know.

Q. Was this request made by you individually, or under direction of the council of the Town of Union? 20

A. Individually.

LOUIS C. HAUENSTEIN.

Taken, sworn to and subscribed this 10th day of November, A. D. 1882, at Jersey City, before me,

ISAAC ROMAINE,
Sup. Ct. Com.

It is agreed between counsel of the respective parties that Sarah G. Duer, Amy H. Duer, Edward A. Duer, James G. K. Duer, William A. Duer, and Denning Duer, Jr., are the children of Caroline Duer, and that the property belonging to them assessed for this improvement of the Bulls Ferry and branch roads descended to them from their mother. 30

Whereupon the examination was adjourned to Thursday, January 25th, 1883, at ten o'clock in the forenoon at the same place.

40

At which time and place the examination was resumed in the presence of the counsel of the respective parties.

John H. Bonn, a witness produced on part of the prosecutors, being duly sworn on his oath, saith :

I live in Weehawken Township, Hudson county.

Q. Are you the same gentleman named in the first
10 section of the act entitled "An act to improve the Bulls Ferry Road in Hudson County, from the northerly line, &c., approved April 4th, 1872?"

A. I think I am ; I acted under the act.

Q. By a supplement to said act approved April 3d, 1873, and by the 9th section, it is enacted, that the Bulls Ferry Road may be divided in sections, and by the 10th section of said supplement it is enacted, that the owners in substance shall at their own option, to be declared to said commissioners, be per-
20 mitted and allowed under the supervision of said commissioners, and subject to their direction, to perform all the labor and furnish all the material, and donate all the lands to be taken in straightening and widening said road in said sections, said owners releasing all damages which shall be done to the residue of the land not taken. Did any of the owners of the lands along either of the sections take advantage of this supplement?

A. They did.

30 Q. Which sections?

A. Section one by the Hoboken Land and Improvement Company, who owned on both sides ; section three by James Brown, F. H. Cossatt and Henry G. Schmidt.

Q. How did they declare to the commissioners their option?

A. I think they sent in a written communication to the commissioners.

Q. Did they execute any release of damages?

40 A. I don't remember whether they did or did not ;

they may or they may not; they made no claim for damages, to the best of my knowledge.

Q. Did all the owners of the lands on sections one and three join in performing all the labor and furnishing all the material to be used on said sections?

A. If there were any other owners I don't think they joined; the Hoboken Land and Improvemnnt Company did all the work on section one. I don't know if there were any other owners at that time.

Q. Was there any price fixed by the commissioners for which these owners were to furnish the labor and materials? 10

A. No, sir.

Q. Was there any land donated by the Hoboken Land and Improvement Company in straightening and widening said road?

A. They either donated it, or it was valued and assessed back on them. That will appear by the minutes or other papers of the commissioners.

Q. If any appraisement was made, did you and your fellow-commissioners make it? 20

A. I think we did.

Q. Under what authority did you appraise it, if you did appraise it?

(Question objected to, because there is no evidence that any appraisement was made.)

A. Under authority of the Bulls Ferry Road acts. I cannot at present point out the supplement or section. It may have been under the original act. 30

Q. If you made such appraisement, did you also make an assessment?

A. If we made an appraisement we must also have made the assessment. There was no one else to make it.

Q. If that appraisement was made, when was it made?

A. About 1873 or 1874.

Q. Did the commissioners expend any money in improving sections one or three? 40

A. They did not, except for incidentals, such as advertising, &c. The owners expended all the money. They made the contracts and expended all the money.

Q. Did you and your fellow-commissioners estimate at any time the value of the work so done and materials furnished by said land owners?

A. I don't know if we estimated it after the work was done, but we may have included it in our estimate of the entire improvement of the Bulls Ferry
10 Road and Branch Road before the work was commenced.

Q. Did you and your fellow-commissioners estimate the value of work so done and materials furnished by the land owners after the work was so done and materials furnished?

A. We did not estimate it, but we were informed of the cost of the work by our engineers, Spielman & Brush.

Q. Did you make any investigation—if so, what—
20 to ascertain if what Spielman & Brush told you was accurate as to the value of work so done and materials furnished?

A. They furnished certificates of work done by the contractors for the land owners.

Q. Where was the meeting held at which your engineers informed you of the value of the work so done and materials furnished?

A. I cannot tell at what place. The meetings were generally held at a public house corner of Union
30 street and Bulls Ferry Road. Some may have been held at the office of Spielman & Brush. I don't recollect when this meeting was held. I do not recollect what occurred at the particular meeting or meetings at which our engineers informed us of the cost of the work. By "cost of the work" I refer to the cost of the work on sections one and three.

Q. Did you and your fellow-commissioners ever make an estimate of the value of the work so done and the materials furnished, after the work was
40 done?

A. I do not recollect that we made an estimate of the value of the work so done and the materials furnished.

And being *cross-examined*, he says:

Q. The reports of the engineers to you as commissioners were made to you how, in writing?

A. They were made to us in writing.

Q. Always?

A. Always. 10

Q. And those writings are where?

A. On file in the office of the commissioners.

Q. Whatever then was actually done in relation to the estimate of the value of work done and materials furnished on sections one and three would then appear in the minutes and proceedings of the commissioners?

A. Yes, sir.

Q. The minutes and proceedings will also show, will they not, when and where the engineers inform- 20 ed the commissioners of the value of the work done on these sections, and materials furnished, and in what manner if any, such information was given by the engineers?

A. They will.

Q. If any appraisement of land taken or donated on sections one and three were made, such appraisement and the proceedings in relation to the same, will also appear in the proceedings of the commissioners, and what was actually done in relation to the same? 30

A. These will all appear in the proceedings and in the papers on file with the clerk of the commissioners.

If any appraisement of land taken or donated was made, it was included in the proceedings of the commissioners for the widening.

Q. Whatever was actually done by the commissioners in relation to the first and third sections, work done by property owners on said sections in the matter of the improvement of said road will appear in 40

the minutes, proceedings, and papers of the commissioners, will it not?

A. It will. It is too long ago to tell from memory. Those papers are on file with the commissioners.

What I have stated here to-day is from memory only I have not consulted any papers.

And being again *examined-in-chief*, says:

Q. What is the name of the clerk of the commis-
10 sioners with whom they are on file?

A. James H. Symes.

J. H. BONN.

Taken, sworn to and subscribed this 25th day of January, A. D. 1883, at Jersey City, before me,

ISAAC ROMAINE,
Sup. Ct. Com.

Counsel for the defendants gives notice that he
20 will move on the argument to overrule the testimony of the last witness as not the best evidence.

James H. Symes, a witness produced on part of the prosecutors, being duly sworn, on his oath says:

Being *examined-in-chief* by MR. VREDENBURGH:

Q. What position have you occupied with regard to the commissioners of the Bulls Ferry Road Improvement, and how long?

30 A. I was clerk, and have been since some time in 1874.

Q. What action did the property owners of sections 1 and 3 take with regard to the improvement of those sections?

A. They signified by written communications that they would do their own work.

Q. Have you the minutes here?

A. I have.

Q. Turn to the minutes in reference to that matter.

40 A. Under date of September 28, 1874, engineer

Brush reported that he had received communications of which the following is a copy, from James Brown, F. H. Cossatt and Henry G. Schmidt; they were all alike, and on motion were ordered to be filed; the originals are on file.

" *To the Commissioners in charge of the Bulls Ferry*
" *Road Improvements:*

" GENTLEMEN—
" In accordance with the provisions of an act to 10
" improve the Bulls Ferry Road in Hudson county,
" &c., approved April, 1883, section 10, I hereby de-
" clare my intention to construct that portion of the
" Bulls Ferry Road, running through my property,
" being a portion of section three, and laid down on
" your maps, and in accordance with your plans and
" specifications, and subject to your directions."
Signed by one from each one of those gentlemen.
Q. As to section one?
A. Under date of September 7, 1874, the following 20
communication were received, and on motion ordered to entered at large on the minutes:

" HOBOKEN LAND AND IMPROVEMENT COMPANY,
" PRESIDENT'S OFFICE,
" Hoboken, September 7, 1874.

" *To the Commissioners in charge of the Bulls Ferry*
" *Road Improvements:*

" GENTLEMEN— 30
" In accordance with the provisions of an act to
" improve the Bulls Ferry Road in Hudson county,
" approved April, 1873, this company hereby de-
" clares its intention to construct that portion of the
" road running through their property, except mac-
" adamizing, being section one as laid down on your
" map, in accordance with your plans and specifica-
" tions, and subject to your directions.
" Yours, very truly,
" (Signed) W. W. SHIPPEN." 40

Q. Do you read from the original paper signed by Shippen?

A. I don't.

Q. Will you turn to those minutes where the commissioners determined as to the value of the work done and materials furnished on section one?

A. I find as follows, under date of February 4, 1878, that Engineer Brush made a report of the total cost of the Bulls Ferry Road improvements, and the
10 sub-divisions of the same. On motion, the report was received.

Q. (Question repeated.)

A. I also read from the minutes of February 9, 1881:

"Clerk Symes presented a report of the committee "of the whole, showing the entire cost of the Bulls "Ferry Road improvements. Same was ordered "filed."

Q. Who was present at this meeting?

20 A. Commissioners Duryee, Reid and Schinzel. That was after Mr. Bonn and Mr. Rottman resigned.

Q. Is that all you find in the minutes?

A. It is not.

Q. What else on this subject?

A. Under date of February 4, 1878—I now refer to the report made by Engineer Brush as to the total cost of the Bulls Ferry Road improvements—

"The following resolution was then passed by the "following vote: ayes, Commissioners Bonn, Rott-
30 "man and Duryee. Nays, none.

"Resolved, That the members of this board re-"solve themselves into a committee of the whole, to "examine the report presented by the engineer in "charge, and at the same time to make examination "of all the certificates issued by the commissioners, "and all vouchers received therefor, comparing the "same with the minute book; also audit and ex-"amine all accounts of moneys received and paid by "the commissioners, and all certificates redeemed."

40 Q. Where is that report?

A. On file.

Q. With you?

A. Yes.

Q. Is that report which you presented on February 9th, 1881, signed—if so, by whom?

A. It is—by John H. Bonn, Henry J. Rottman and Abraham W. Duryee.

Q. Is that all you find at present in the minutes?

A. Yes, all I find at present in the minutes.

Minutes offered in evidence and marked Exhibit P. 10 4 on part of prosecutor.

Cross-examination by Mr. Smith:

Q. The resolution under date of February 4, 1878, that you have read from the minutes, appears in the minutes directly following the entry showing the report of Mr. Brush?

A. On that same day, yes, sir.

Q. Was that report of Mr. Brush in writing—do you remember? 20

A. I think it was.

Q. It is on file with you, isn't it?

A. Yes.

Q. The report of the committee of the whole referred to in the minutes of February 9, 1881, and already read by you, is on file, is it not, with you?

A. Yes.

Counsel for the prosecutors hereupon gave notice to the defendants counsel present, that in his reasons filed in this cause, he omitted to state, in definite 30 language, a reason why the said assessment should be set aside and for nothing holden, which is to the following effect: That the commissioners of assessment erred in assessing on the township of Wiehawken $15,489.87, as the proportion which the township of Wiehawken should pay of the $22,640.47, being the excess of the cost of the improvements, over the special benefits assessed, upon the lands, that is to say: The said commissioners should have assessed of said excess, a much larger proportion on the town of 40

Union, and a much smaller proportion on the township of Wiehawken of said $22,640.47, than they actually did assess; and that this reason he will now file with the Clerk of the Supreme Court, and as an additional reason to those already filed. He now declares the testimony closed on the part of the prosecutors.

JAMES H. SYMES.

10 Taken, sworn to and subscribed this 25th day of January, A. D. 1883, at Jersey City, before me,

ISAAC ROMAINE,
Sup. Ct. Com.

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NEW JERSEY SUPREME COURT.

THE STATE,
ARCHIBALD GRACIE KING, for himself, and as Trustee for MARY K., wife of EDGAR H. RICHARDS, and FREDERICA C., wife of J. C. BANCROFT DAVIS, and FANNY L. MCLANE, wife of JAMES L. MCLANE,
Pros.,
vs.
ABRAHAM W. DURYEE, JOHN REID, GEORGE P. SCHINZEL, Commissioners, JAMES H. SYMES, Clerk, et al.

10

Examination of witnesses, &c., in the above entitled cause on part of the defendants, taken before me, ISAAC ROMAINE, a Supreme Court Commissioner, at my office No. 245 Washington street, Jersey City, on Friday, February 2d, 1883, at ten o'clock in the forenoon, in presence of ABEL I. SMITH, counsel for defendants, and JAMES B. VREDENBURGH, counsel for prosecutors.

20

John H. Bonn, a witness produced on part of the prosecutors, being recalled for the defendants, says:

30

I am president of the North Hudson County Railway, and have been connected with that railway since its organization in 1859.

We have operated that road through the Bulls Ferry and Branch Roads since 1861.

This is a horse railroad.

That road runs from Hoboken through Weehawken township, into the Town of Union, and to our depot in West Hoboken.

40

Q. What portion of the rail road through the Bulls Ferry and Branch Road previous to the making this improvement by yourself and the other commissioners, was double tracked, and what part single tracked?

A. The double track extended from Nineteenth street to a point about 700 feet southerly from Mr. King's gate-house, which was located at about plot 41 on the map, and it extended again from a point
10 about one hundred feet north from that last mentioned point, King's gate-house, to a point opposite Weehawken street in the Town of Union, along the Branch Road as it then existed, and from that point to where the cars turn into Union street, it was a single track.

We use two horse cars on that portion of our road, and did at that time. We have done so since 1863 or 1864.

Q. How did the making this improvement of the
20 Bulls Ferry Road by yourself and the other commissioners named, effect the said railroad and your company?

A. The improvement of the road compelled us to take up our tracks from Nineteenth street to Union street, and to stop running cars north of Nineteenth street, from the 1st of February to the 1st of August, 1875, and to lay new tracks from Nineteenth street to Union street, on which we ran our cars again about the 1st of August, 1875.

30 Q. Did this occasion a large expenditure of money by the company or damage to them?

A. Yes, sir; a large expenditure of money. It must have cost us $20,000. and the loss in traffic.

Q. Was the amount so expended by the railroad company charged as part of the cost of the Bulls Ferry and Branch Road improvement?

A. No, sir; not a dollar of it.

Q. What benefit, if any, was said improvement of said Bulls Ferry and Branch Road to the North Hud-
40 son County Railway Company?

A. It did not receive any special benefit. We received a general benefit the same as the public in having a wider street and a better grade to travel on, but it saved us no expense in running our cars through that portion of our route.

Q. Before this improvement was made how many horses were used on the two horse cars in ascending from Nineteenth street to Union street?

A. There was one lead horse used below King's gate house, that made three horses; and there was a lead team used from a point about four hundred yards south of Weehawken street to Jefferson street. 10

Q. How many horses are used now?

A. It is the same now.

Q. This is on account of the grade on that portion of the road, is it not?

A. Yes, sir.

Q. You remember of the grade of the street being changed at Union street?

A. Yes, sir; this was after the road had been graded to the grade established by the commissioners. 20

Q. How did this change of grade at that point effect the railroad?

A. It put us to quite some expense by having to lower our tracks which had already been put down on the established grade. It compelled us to lower our track on Union street for some distance in order to conform to the altered grade.

Q. Did your company pay any portion of the expense of macadamizing the road? 30

A. Not of macadamizing the road. We paid the difference between the cost of paving and macadamizing a space in the centre of the road about seventeen feet in width, in which space a double track is laid, the paving extending eighteen or twenty-four inches outside of the outer rails, which difference in cost amounted to about twenty-five hundred dollars, which was paid by the railroad company.

Q. How far and to what extent was the North 40

Hudson County Railway Company in the running of their cars considered by the commissioners in fixing the grades, making the plans and improvements on the Bulls Ferry and Branch Roads?

A. To the best of my recollection, it was never taken into consideration. It may have been mentioned, but it never entered into the deliberation of the commissioners.

I would say there are curves in the road which
10 railroad people do not like or desire, and some of the curves are on the up grades; one is on the steep grade below Duer's gate. Our superintendent complained about the curves in the track to me, and I told him it couldn't be helped, the road had been so established by the commissioners, the object was to save money to the public by not being obliged to cut more into the rocks.

And being *cross-examined*, he says:

20 Q. How far are the car stables which you spoke of from the Town of Union?

A. They are about three hundred yards southerly from the southerly line of the Town of Union.

Q. In 1875 one of the termini of this road was at the Hoboken ferry, and the other at the car stables?

A. Yes, sir.

Q. How long have the car stables been at the place you mention?

A. Since 1865.

30 Q. In 1875 did the North Hudson County Railroad Company own any other line of road whose termini were one at the Hoboken ferry and the other at the car stables?

A. We did own or run another line called the West Hoboken line.

Q. Did that run through the Bulls Ferry and Branch Roads?

A. The cars of each road ran up one road and down another, and vice versa. One line of cars ran
40 from the ferry over the Bulls Ferry Road to Union

Hill, and down through West Hoboken to the ferry; the other line would run up through West Hoboken and down to the ferry through Union Hill and the Bulls Ferry Road. During the improvement of the Bulls Ferry and Branch Roads, from February to August, 1875, the cars did not run over the Bulls Ferry Road as stated before.

Q. Did they run during that time over the West Hoboken line?

A. They did up to the corner of Bulls Ferry Road 10 and Union street coming from the west.

Q. What business are you in, Mr. Bonn?

A. I am president of this railroad company and that is my principal business and has been my principal business for the last twenty years.

I am fifty-three years of age.

I can't tell how many passengers we carry on the Bulls Ferry Road, but I could make a fair estimate. I should say we carried last year about 2000 passengers up and 2000 down per day. 20

We have done that for several years; the traffic has increased of late years.

In 1880 we carried on that line perhaps not as many.

In 1878 we had dull times, there were fewer passengers carried. I can't tell how many without looking at the books.

In 1876 it was about the same as 1878. The traffic did not change much from 1874 to 1879.

Q. Do the majority of your passengers on the line 30 of your road which runs down the Bulls Ferry and Branch Roads live in the Town of Union?

A. They do.

(Counsel for defendants objects to the foregoing as not a cross-examination.)

Q. About how many inhabitants are there in the Town of Union?

A. About 5000. I don't know, but that is my impression. 40

Q. When was it your superintendent first asked you about the curves in the road?

A. I can't tell the dates or months, but it was during the construction of the work on the Bulls Ferry and Branch Roads.

Q. Did he speak about it more than once?

A. He did, several times.

The superintendent's name is Nicholas Goelz. He has been superintendent since the company was formed.

Q. What precisely did he say?

A. He asked me if those curves could be avoided. That is about all he said. He may have used more words. He said it was hard on the horses.

Q. Is there any other line of horse cars except such as are owned by you, running from Union Hill or West Hoboken to the Hudson river?

A. There is no other.

Q. Has there been any other since 1870?

A. There has not.

Q. How often do you run your cars on the Bulls Ferry road about six o'clock in the afternoon?

A. Every ten minutes up regularly, and a few extra cars, say two or three in all, between the hours of six and seven.

Q. How many did you run in 1874 between the same hours?

(Objected to as not a cross-examination.)

A. I do not remember whether at that time we ran on ten or fifteen minutes. I think we began to run on ten minutes time on that road in the fall of 1874.

Q. When your superintendent spoke to you about those curves, did he speak to you as president of the commission or president of this railroad.

A. I cannot say. I should suppose he spoke to me as president of the railroad company.

And being again *examined-in-chief*, says:

Q. The travel along the Bulls Ferry and Branch Roads was not so great for the seven years previous to 1882, was it?

A. No, sir.

Q. What was the occasion of the increase in travel during the last three years?

A. It was occasioned by the general prosperity and increase in the population of the Town of Union.

I own property in the Township of Weehawken, which was in the area assessed for this improvement and which was assessed. 10

J. H. BONN.

Taken, sworn to and subscribed this 2d day of February, A. D. 1883, at Jersey City, before me,

ISAAC ROMAINE,

Sup. Ct. Com.

20

Counsel for the defendants offers in evidence four affidavits of publication of the preliminary notice of the improvements on Bulls Ferry and Branch Roads, which are marked Exhibits D. 1, D. 2, D. 3, and D. 4 on part of defendants.

Also offers in evidence the petition of property owners for change of grade, resolution of the council of the Town of Union in regard to the same and communication of T. H. Niven for doing the regrading between Blum and Lewis street, and profile showing grade and change attached together and making one paper, which are marked Exhibit D. 5, on part of defendants. 30

Counsel for the defendants offers the following in the minutes in connection with the minutes referred to by the witness James H. Symes in his evidence, under date of January 17th, 1881.

"The reading of the report of the committee of the 40

" whole was then taken up and concluded, on motion
" the same was approved, signed by the commission-
" ers and ordered on file.

Counsel for defendants further offers in evidence pages 27, 64, 79, 105, 106, 107, 108, 110, 113, 218, 227, 320, 321, 322, 324, 417, 418, 419, 435, 436, 438, 439, 440, 441, 442, and all the minutes of the commission.

Whereupon the examination was adjourned to
10 Friday, February 9th, 1883, at two o'clock in the afternoon at the same place.

At which time and place the examination was resumed in the presence of the counsel of the respective parties.

Frederick C. Hansen, a witness produced on the part of the defendants, being duly sworn on his oath, says :

20

I am Town Clerk of the Town of Union.

Q. Have you brought with you in obedience to a subpœna served on you, a plan and profile and the grade maps of the improvement of the Bulls Ferry and Branch Roads, as the same are on file in your office ?

A. Yes, sir.

Witness being called upon to produce them, produces five maps, and says, these are the maps.

30 All of these maps are signed by John H. Bonn, Henry J. Rottman and Abram W. Duryee, commissioners, and endorsed "Filed August 6th, 1874, David A. Kephart, Town Clerk."

He was town clerk of the town at that time.

These maps have been on file in my office since that time, and I brought them from there to-day.

Said maps are offered in evidence on part of defendants, and are marked Exhibits D. 6, D. 7, D. 8, D. 9 and D. 10.

40 FREDK. C. HANSEN.

Taken, sworn to and subscribed this 9th day of February, A. D, 1883, at Jersey City, before me,

ISAAC ROMAINE,
Sup. Ct. Com.

Charles B. Brush, a witness produced for the prosecutors, being recalled for the defendants, says:

Previous to making the final assessment for the Bulls Ferry Road Improvement, I had charge of the work. 10

Witness shown Exhibits D. 6 to D. 10, says, these maps were made under my direction. They show the width of the roads, sidewalks, and roadway and grade, and original surface of the whole improvement of the Bulls Ferry and Branch Roads as finally adopted by the commissioners.

Q. How far and to what extent does the width of said roads and the grades as finally completed compare or agree with the width and grades as they appear upon Exhibits D. 6 to D. 10, as adopted by the commissioners? 20

A. The widths agree in all respects and the grades agree in all respects, except upon that portion of the Bulls Ferry Road between Blum and Lewis streets. At Union street, which is the summit of the Bulls Ferry Road, the crown was lowered about three feet running out to nothing at Lewis and Blum streets, and about half the block in Union street, so as to make these three blocks conform to the new grade which was adopted by the commissioners. 30

That new grade appears on the profile annexed to the petition of property owners asking for a change of grade at that point. The grade on these three blocks was made to conform to the grade shown on the profile.

Q. Did any of the property owners on the line of the Bulls Ferry and Branch Road—if so, whom—see and examine these plans and profiles before or at the 40

time of their adoption by the commissioners, and approve of the same?

A. These plans were personally submitted by me to all the larger property owners along the line of the improvement, including Mr. Shippen, the president of the Hoboken Land and Improvement Company, A. Gracie King, executor of the King estate, General Schultz, representing the Brown estate, F. H. Cossitt, Henry G. Schmidt, James McAndrews
10 and others.

All of these gentlemen examined the plans, not only those submitted here and marked Exhibits D. 6 to D. 10, but the preliminary plans that were made from time to time previous to the adoption of these plans. All of these gentlemen approved these plans as finally adopted, and after the discussion of the preliminary plans, at the request of Mr. King (A. Gracie King), I called on Mr. Grant, topographical engineer of Central Park, who at that time was en-
20 gaged in making surveys and preparing maps of the King estate in Weehawken for A. Gracie King, executor.

Mr. Grant approved of these plans, and told me to inform Mr. King that he did so approve them.

(Counsel for prosecutors objects to the answer as a conclusion of the witness.)

When I reported to Mr. King Mr. Grant's approval
30 of the plans he appeared satisfied.

After the notice for objections had been given, a copy of which is pasted on Exhibit D. 6, and before the time for receiving objections had elapsed, as called for on this notice, to wit, August 24th, 1874, Mr. A. Gracie King among others called at my office in Hoboken and saw these plans.

Q. And examined them, did he?

A. Saw them and examined them together with the notice.

40 Q. Mr. Edward King in his direct examination in

answer to the question "why was the grade of the road raised rather than lowered in front of your property" says, "I presume principally to benefit the horse railroad company by giving them an easier gradient in ascending the hill." Was that the reason why the grade was raised in front of the property in question and if not can you state what was the reason?

A. In fixing the grade no attention whatever was paid to the horse railroad company in any part of the improvement. 10

Mr. Edward King's frontage is about fourteen hundred and fifty feet. The grade was actually lowered along one thousand feet of this frontage to different extents ranging from nothing to five feet, and averaging along this whole distance of one thousand feet from one and a half to two feet.

Along the remainder of his frontage, four hundred and fifty feet, the grade was raised from nothing to two feet and a half and averaging about a foot and three-quarters. 20

These changes in grade were made to give a uniform grade to the new road and to improve its appearance, the old grade being more or less irregular.

Q. Would it have made any material difference in the cost of the improvement in your opinion if the grade along that portion of the road along Mr. Edward King's property had been lowered more than it was in fact lowered, and if so, to what extent?

A. It would have added enormously to the cost of the improvement, as the excavation would have been 30 almost entirely in trap rock which cost two dollars and a half per cubic yard to excavate, and it would necessarily have lowered the grade for a considerable distance either side of Mr. Edward King's property. Trap rock underlies nearly the whole of that road.

Q. The work on the first and third sections was done how, by contract?

(Question objected to.)

A. By contract. 40

Q. Between who ?

(Question objected to unless the contract is produced.)

A. The property owners on each section and the contractor who was to do the work.

Q. Witness being shown a paper is asked, is that your signature as subscribing witness ?

A. It is, as subscribing witness to Mr. White's
10 name. It was executed in my presence.

Said contract is offered in evidence on part of defendant and is marked Exhibit D. 11.

(Counsel for prosecutors objects to the exhibit, because the paper produced is not proved, and the contract itself is not produced.)

Q. For the work done on the first and third sections were improvement certificates issued ?

20 (Question objected to as not the best proof, and illegal, and immaterial.)

A. No improvement certificates were issued on section three.

Looking at my report filed in the office of the Bulls Ferry Road Commission, marked No 428, to refresh my recollection, I add—

Except for the incidental expenses on sections one and three, and for a few items on section one, princi-
30 pally repairs to the earlier work.

Q. Was the work on section two actually done on a cash basis, or not ?

A. Most of the work on section two was paid for with improvement certificates and therefore not on a cash basis.

Q. How did the cost of the work on sections one and three compare with the cost of the work on section two ?

40 (Question objected to as not the best evidence and as illegal and immaterial.)

A. It was lower on sections one and three than it was on section two.

Q. What is the total frontage on the Bulls Ferry and Branch Road along the improvement?

A. In round numbers 19,000 feet.

Q. How much of that frontage is in Weehawken Township?

A. About 13,000 feet.

Q. You are familiar with the lands along the line of the improvement, are you not? 10

A. Yes, sir.

Q. Can you tell in round numbers how many acres of land there are in the tracts of land comprising what is known as the King estate and including the tracts marked on the map 1138 to 1146, inclusive?

A. The total area of what is known as the King estate including these lots is about one hundred and twenty-two acres.

Q. Do those plots include the most of the King estate as you know it? 20

A. Yes, sir.

Q. What is the average depth of Edward King's property below the grade of the Bulls Ferry and Branch Roads?

A. From ten to twelve feet.

Q. Could that portion of said Edward King's property along the road be used advantageously in your judgment for building purposes, and if so, in what manner? 30

(Question objected to as illegal.)

A. Yes. The depth of the present surface below the surface of the road is only that necessary for cellars of houses which can be advantageously built along this road as they have already been built on the opposite side.

Q. Do you know about how many acres there are on plot No. 40, as appears on the map? 40

A. About forty acres.

Q. Mr. James G. K. Duer, in answer to a question as to how the Branch Road had stood the wear and weather, said "very badly," that the recent storm had washed away the west side of the Branch Road, that he estimated that it would cost $3000 or $4000 at the very least to put it in ordinary repair. Is that a fact or not?

A. I consider that the road has stood remarkably well, the storm to which he refers in September, 1882, 10 was unprecedented in this section of the country, nearly eight inches of rain having fallen in less than forty-eight hours—

(Answer objected to by counsel for prosecutors as not responsive.)

—and more or less damage was done to all the roads in the neighborhood.

The immediate cause of this particular damage however was not so much the amount of rain that fell 20 as it was that the culverts and water courses at the head of Cantello and Kossuth streets and Hackensack turnpike—

(Objected to as not responsive.)

—had become either clogged up or closed entirely in consequence of the negligence of the local authorities, and the water was therefore not conveyed into the sewer provided for it.

30

Whereupon the examination was adjourned to Monday, February 12th, 1883, at four o'clock in the afternoon at the same place.

At which time and place the examination was resumed in presence of the counsel of the respective parties.

I was engineer on the first and third sections dur- 40 ing the progress of the work.

Certificates were issued during the progress of the work on those sections. They were issued in favor of the contractors who did the work on those sections, then they were presented to the Bulls Ferry Road Commissioners by me. The commissioners examined them and endorsed their approval in writing on the back of the certificates and then delivered them to the property owners who were doing the work on those sections.

The amount mentioned in the certificates were paid 10 to the contractors by the property owners on these sections, one and three.

And being *cross-examined*, he says;

My partner Mr. Spielman is still in that condition of health that he cannot be examined as a witness.

The assessment against section one is $43,180.90.

The assessment against section three is $23,390.71.

Q. In making this improvement how much was the Branch Road widened in front of Edward King's? 20

A. From forty to fifty feet.

Q. How much was it widened in front of the Duer property.

A. To the same extent only a larger portion of it was taken from the west side.

Q. Edward King's property descended from the old Bulls Ferry Road at about what decline?

A. From two to five feet in a hundred.

Q. How much below the level of the Branch Road was Edward King's property before the improvement 30 was made?

A. The same depth below the level as at present minus the amount the grade was lowered, and plus the amount the grade was raised along his frontage.

Q. What was the height of the retaining wall in front of Edward King, before the improvement was commenced?

A. I should say generally from six to ten feet, except in the deep ravines for short distances at either end. I take that to be the average leaving out the ravines. 40

Q. This forty feet of the widening of the Branch Road was on Edward King's side?

A. Principally.

Q. Then in grading that portion of Edward King's land which you took to widen the Branch Road, you filled in a space from forty to fifty feet wide by from ten to fifteen feet deep, leaving out of view the ravines.

A. Yes, except that the depth I do not think would
10 average more than from ten to twelve feet.

Q. As you widened, the depth of the filling increased?

A. Yes, sir.

Q. This map, Exhibit D. 6, being marked "No. 1," was adopted by the Bulls Ferry Road Commissioners how long before it was filed?

A. Within a week before the date of this notice July 30th, 1874.

The notice I refer to is the notice pasted to Ex-
20 hibit D. 6.

This is a notice to the property owners to present remonstrances in writing against the same.

That portion of it reads as follows: "The com-
" missioners will meet on August 24th, 1874, at
" Keiser's Hotel, corner Union street and Bulls
" Ferry Road, in the Town of Union, to hear land
" owners interested in this improvement, and to re-
" ceive remonstrances in writing against the same.
" In case the owners of three-fourths of the frontage
30 " object to the improvement then the same cannot be
" made," &c.

Q. Are you positive, Mr. Brush, that you saw Mr. Grant at Mr. King's request in regard to the road, or was it in regard to the sewer?

A. It was in regard to the road and the sewer also.

Q. Did you see him in regard to the sewer and as to the grade of the road at the same time?

A. My recollection is, I saw Mr. Grant in relation to this subject more than once, and both the sewer
40 and the road were discussed at the same meeting.

Q. Was that before or after the grade was adopted?

A. Before the grade was finally adopted.

Q. Was your attention directed to any particular portion of the road?

A. Generally to the whole grade of the road, but particularly to that portion of the road from the ravine at the north end of Mr. Edward King's property to Union street.

Q. At the interview with Grant of which you speak did you not go to see him about the sewer and the grade of the road was only incidentally spoken of in relation to the sewer? 10

A. My recollection is they were discussed independently.

Q. Is the westerly line of Weehawken in the center of the Bulls Ferry Road or to the west of it?

A. In the center.

Q. Was not the discussion with Mr. Grant more particularly with regard to the grade of the road in connection with the extension of the sewer north of Gardner street? 20

A. It was on a later occasion.

Q. You spoke of seeing Mr. Gracie King with regard to the road, did he not say to you the grade was being fixed for the benefit of the horse railroad company or that the road was being improved for their benefit, or words to that effect?

(Question objected to.)

30

A. I remember that Mr. King has made remarks to that effect, but I do not recollect that they were made at the time this grade was under discussion.

Q. Do you recollect whether they were or not then said?

A. My impression is they were not then said.

Q. Were they said before or after that?

A. After that.

Q. And before also?

A. No, sir. 40

Q. Do you remember the condition of the Bulls Ferry and Branch Roads before this improvement was commenced?

A. I do.

Q. Was there a single or double track in them, or a single track and switches?

(Question objected to as not a cross-examination and as immaterial.)

10 A. For some distance on the road there was a double track, and the rest of the distance was a single track.

And being again *examined-in-chief*, says:

The subject of the grades on this road were under discussion for some time, practically about three years before they were finally fixed.

Q. Were any of those discussions with Mr. A.
20 Gracie King?

A. Yes, sir.

Q. What was the reason and object of those discussions?

A. To arrive at the most satisfactory and economical grade for the property owners.

Q. Were other grades besides those finally adopted submitted to property owners?

A. Informally, yes, sir.

Q. Mr. Gracie King among others?

30 A. Yes, sir.

Q. Have you any map showing any of the grades that were discussed prior to the final grade?

A. Yes, sir.

Q. Have you any of those maps here?

A. I have one of them.

Q. Did any of the property owners procure from you or did you make any copies for them of the maps Exhibits D. 6, to D. 10?

A. Yes, sir.

40 Q. Was A. Gracie King one of those parties?

A. Yes, sir.

Q. About when, if you remember, did he get these copies from you?

A. About the time of the giving of the notice pasted on Exhibit D. 6.

Q. And after giving those copies and prior to the adoption of the grade you had the conversation with Mr. King?

A. Yes, sir.

Q. The westerly line of the Township of Weehawken runs along the centre of Bulls Ferry Road southerly to what point? 10

A. To the Hackensack turnpike which is shown on the map annexed to the return by a broken line.

It runs thence westerly along the Hackensack turnpike to the easterly side of Palisade avenue.

Then it runs southerly along the easterly side of Palisade avenue which is blank on this map to a point about opposite the intersection of Park avenue with the Branch Road. 20

Then it runs easterly to a point about opposite said intersection, to one hundred feet west of the Hackensack turnpike, and then runs parallel with the Hackensack turnpike and one hundred feet westerly therefrom in a southerly direction.

On this map, the boundary line is shown as one hundred feet east of Hackensack turnpike by a broken line. This was the old boundary, but it has recently been changed by the legislature to the boundary I have given. 30

The boundary between Weehawken and West Hoboken continues southerly west of the Hackensack turnpike, and a street called, I think, Amelia street, to the northerly boundary of Hoboken; thence the boundary line between Hoboken and Weehawken runs easterly along the centre of an old ditch shown on this map, south of Eighteenth street, to the Hudson river.

Q. Are Palisade and Hudson avenues in the Town 40

of Union, north of the Hackensack turnpike improved streets?

A. Yes, sir.

Q. During the time these grades were under discussion, preliminary to the final adoption, did Mr. Gracie King make any suggestions relative to the change of grade?

A. Yes, sir.

Q. Were any changes made in the preliminary
10 grades as discussed, to conform to the suggestions of Mr. King?

A. Yes, sir.

The contract work on the second section was given out by advertisements to the lowest bidder.

And being again *cross-examined*, says:

There have been four houses built on the Branch Road since 1874, opposite Edward King's.

Some of the houses are on the level with the road,
20 and some four or five feet above it.

And being *examined-in-chief* a third time, says:

Q. Mr. A. Gracie King has built a new house on the King property since 1874, has he not?

(Question objected to.)

A. Yes, sir, on plot 1140 on this map.

Q. Does he reside there himself now?

A. I believe he does.

30 Q. Do you know if he resided on that property previous to his building this residence?

A. For several years previous to that he lived in New York City.

And being *cross-examined* a third time says:

Q. How much above the level of the Branch Road opposite Edward King's is Mr. A. Gracie King's house?

A. It is from six to seven hundred feet from the
40 road and about one hundred feet above it.

Q. To get from Mr. King's to the road, how far have you to go?

A. Using present roads, from two thousand to four thousand feet. I mean by present roads the private roads through Mr. King's and Mrs. Caroline King's and Mrs. Duer's property, from the private gate house through the ravine to the plateau on the river, where the residence is.

CHAS. B. BRUSH.

10

Taken, sworn to and subscribed this 12th day of February, A. D. 1883, at Jersey City, before me,

ISAAC ROMAINE,
Sup. Ct. Com.

Counsel for defendants offers in evidence engineer's final estimate of the cost of contract work, "Bulls Ferry Road Improvements, February 4th, 1878," which is marked Exhibit D. 12 on part of defendants.

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Objections of A. G. King et als. to Bulls Ferry road assessment, May 17, 1881:

We object to the proposed assessment—

1. Because the amounts proposed to be assessed upon the lands owned by the devisees of James G. King, deceased, are far in excess of the amount of benefits to said land from said improvement.

10

2d. Because the excess of cost over the benefits is not divided equally between the Town of Union and the Township of Weehawken.

3d. Because no part of the excess of cost over benefits is proposed to be assessed against the Township of Union.

4th. Because no part of said cost is assessed against the Township of West Hoboken.

20

5th. Because the cost of the improvement is increased by the interest on the cost, and is proposed to be assessed against the lands and on the township and towns where a large part of said interest has already been collected, by means of taxes.

6th. Because the costs are increased by adding the amounts alleged to have been expended by the private owners, who improved section one and three of said improvement, and the whole amount is proposed to be assessed upon the three sections without any division of the same.

30

7th. Because John Reid and George P. Schinzel were appointed as commissioners by the Judge of the Circuit Court of the County of Hudson to fill an alleged vacancy, when no such vacancy existed, and without legal authority to make such appointment.

40

8th. Because John Reid should not have been appointed as such commissioner, he having prejudged the matters involved in such assessment when appointed as commissioner by the Supreme Court to make an assessment for the sewer constructed under the authority of the supplements to an act under which the said improvement was made, and was otherwise not a disinterested person.

9th. Because the method of assessment was changed after the consent of the landowners to said improvement was obtained without their consent. 10

10th. Because the said appointment of Reid and Schinzel was made without notice to any one landowner or township.

11th. Because the alleged costs are greatly increased by expenses allowed to be incurred not allowed by the act.

12th. Because the proposed assessment on the lands in the Township of Weehawken is for future benefits which may never be realized. 20

13th. Because said proposed assessment is not made in accordance with the act or with the supplements under which said improvement was made.

14th. Because said proposed assessment is without warrant in law, is illegal, unjust and partial.

SCUDDER & VREDENBURGH, 30

Attorneys for A. Gracie King, Trustee for estate of C. Duer, Mary K. Richards and Frederica G. Richards and Edward King.

Dated May 17, 1881.

INDEX.

ANALYTICAL INDEX.

N. J. SUPREME COURT.

THE STATE, ARCHIBALD GRACIE KING, JR., for himself and as Trustee for MARY K., wife of EDGAR H. RICHARDS, and FREDERICA G., wife of J. C. BANCROFT DAVIS, and FANNY L. MCLANE, wife of JAMES L. MCLANE, Pros's, vs. ABRAHAM W. DURYEE, JOHN REID, GEORGE P. SCHINZEL, Commissioners, JAMES H. SYMES, Clerk, et al.	Writ of Certiorari. Returnable November Term 1881.

10

THE STATE, AMY H. DUER, SARAH G. DUER, JAMES G. K. DUER and EDWARD A. DUER, Pros's, vs. ABRAHAM W. DURYEE, JOHN REID, GEORGE P. SCHINZEL, Commissioners, JAMES H. SYMES, Clerk, et al.	Writ of Certiorari. Returnable November Term 1881.

20

THE STATE, EDWARD A. DUER, DENNING DUER, DENNING DUER, JR., Pros's, vs. ABRAHAM W. DURYEE, JOHN REID, GEORGE P. SCHINZEL, Commissioners, JAMES H. SYMES, Clerk, et al.	Writ of Certiorari. Returnable November Term 1881.

30

40

THE STATE, EDWARD KING and CAROLINE KING, Prosecutors, vs. ABRAHAM W. DURYEE, JOHN REID, GEORGE P. SCHINZEL, Commissioners, JAMES H. SYMES, Clerk, et al.	Writ of Certiorari. Returnable November Term 1881.

10 The hearing of the arguments in the matter of the above-mentioned writs of certiorari having come on to be heard at the February Term of this Court, in the presence of the attorneys and counsel of the respective parties, and the Court having inspected the Act of the Legislature, entitled "An Act to improve Bulls Ferry Road, in Hudson County, from the northerly line of the Township of Weehawken to the Hackensack Plank Road, and also the branch road leading from Bulls Ferry Road, opposite Weehawken 20 street, in the Town of Union, to Nineteenth street, in the Township of Weehawken," approved April 4, 1872, and the supplements thereto, and the assessments removed, and duly considered the same, with the testimony and reasons assigned for setting said assessments aside, and the Court being of opinion that there is no good reason for setting said assessments aside, but that the same are legal and should be affirmed:

It is the judgment of the Court, and ordered 30 accordingly, that the said assessments against said prosecutors in said writs be and the same are hereby affirmed, with costs to be taxed.

And it is further ordered that there be taxed in the costs, as part thereof, against said prosecutors, the defendants' costs of printing incurred by them in said causes, not including the printing of briefs.

Entered Nov. 20, 1883.

On motion of

ABEL I. SMITH,
Attorney for Deft's.

40 A true copy:

BENJ. F. LEE, Clerk.

OPINION.

STATE, A. GRACIE KING ET AL., PROSECUTORS, v. ABRAHAM A. DURYEA.

1. A construction of the acts to improve the Bulls Ferry road, in Hudson county, *(Pamph. L. 1872, p. 1379; Pamph. L. 1873, p. 623)*, and supplements, in regard to the method of levying assessments for benefits, and of that part of the statutes which provides for crediting upon the assessments for work done upon one part of the road the amount of the cost of work done upon another part of the road by landowners themselves in front of their lands. 10

2. The power conferred by the act of 1872 upon the judge of the Circuit Court to fill a vacancy in the board of commissioners to make assessments, resulting from death, absence, or other disability, can be exercised when a member of the board resigns, and no notice of such appointment is necessary in the absence of a statutory requirement to that effect. 20

3. The basis of the assessment is land-ownership, and a failure to assess a horse railroad company, the track of which runs over said improved road, because its franchise is more valuable by reason of the improvement, is erroneous in the absence of proof that the real estate of the company is peculiarly benefited. 30

This writ brings up assessments against the property of Mrs. James King, Edward King, C. Duer and Mrs. Richards, for work done under an act to improve Bulls Ferry road, in Hudson county, from the northerly line of the township of Weehawken to the Hackensack plank road, and also the branch road leading from Bulls Ferry road, opposite Weehawken 40

street, in the town of Union, to Nineteenth street, in the township of Weehawken.

The main contention of the prosecutors is, that their land is situated upon a part of the improved road; the lands within which part was, by the terms of the act, to be favored in making the assessment, and that the assessment as made, has not accorded to them the benefit to which they are entitled. To exhibit the nature of this contention, it is essential
10 that the clauses in the act upon which it is grounded should appear.

The fourth section of the act of 1872, *(Pamph. L. 1872, p. 1379,)* provides, first, that ten per cent. of the cost of the work shall be assessed upon the town of Union, and another ten per cent. upon the township of Weehawken. It then provided that the remaining eighty per cent. should be assessed upon the land and real estate along the line of the road, in proportion to the benefits received by the owners
20 thereby.

By the ninth section of this act, the commissioners were authorized to divide the road into sections. By the ninth section of the supplement of April 3d, 1873, it was provided that in dividing it into sections, one section should extend from Fulton street to the northern boundary of Weehawken. This is known in this case as section No. 3. And another section shall extend from the southerly line of James G. King to Nineteenth street, in Weehawken. This is
30 known in this case as section No. 1. All the rest of the road is known in this case as section No. 2.

By the tenth section of the supplement of April 3d, 1873, it was recited:

"And whereas it is contemplated that the owners of the lands and real estate along the line of said road, within the sections of said road described in section 9 of this act, may undertake, at their own expense, and under the supervision and subject to the direction of the said commissioners, to im-
40 prove said road in said sections, to perform all labor

and furnish all the materials and donate all the lands necessary to be taken in straightening and widening said road, and release all damages which will be done thereby to the residue of the lands not taken on said sections of said road last referred to; now therefore,

"*Be it enacted*, That the owners of the land and real estate along the lines of said road described in section 9 of this act, shall, at their own option, to be declared to the said commissioners, be permitted and allowed, under the supervision of the said commissioners and subject to their direction, to perform all the labor and furnish all the materials on such sections, and donate all the lands necessary to be taken in straightening and widening said road in said sections; said owners releasing all damages which shall be done to the residue of the lands not taken; said commissioners, in making their assessments, shall estimate the value of the work so done and the materials furnished by said land-owners, and the value of the land donated and the amount of the damages released, if any, and shall credit the same on any assessments which they shall make on the lands of such land-owners as last aforesaid, which shall be in full of any assessment to be made upon said land-owners for the improvements authorized by said original act and this act; excepting, however, the charges and assessment for the incidental cost and expenses, and their portion of the general amount assessed upon and paid by the town of Union and the township of Weehawken, notwithstanding such work shall be done, materials furnished and lands shall be donated and damages released as aforesaid.

"The said commissioners are hereby authorized and directed to allow and apply the amount of money which shall be assessed against the town of Union and the township of Weehawken upon such portion of the Bulls Ferry road lying between Union street and Weehawken street and the southerly line of the lands formerly of James G. King, deceased, as said

commissioners may determine, to the end that the lands which shall be assessed for the work, labor and materials, lands taken and damages, where such allowance shall be made on such last named portion of said road, shall be relieved to the extent of such allowance, and such allowance shall be credited on the assessment therefor; it being the intention that the assessments shall be made as provided in the original act and this supplement, and that the credits
10 shall be given and allowed as herein declared."

The facts upon which this question of construction of the foregoing acts arises will appear in the opinion.

Argued at February Term, 1883, before Justices Depue, Scudder and Reed.

For the prosecutors, A. Q. Garretson.

For the defendants, Abel I. Smith.

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The opinion of the court was delivered by

Reed, J. The plan provided by the legislation already set out at length is, I think, indisputably the following:

The municipalities within which this work was done were to be assessed an amount equal to one-fifth part of the expense of the work, and the land-owners were to be specially assessed the remaining eighty per cent.

30 Afterwards, upon a desire being expressed by the land-owners along certain portions of the road to be permitted to do the work themselves in front of their lands, this wish was recognized by the legislature.

The cost of the work so done by these land-owners was to be ascertained by the commissioners, in order to find the twenty per cent. of the cost of the entire work.

These land-owners, in consideration of their being permitted to do this work, lost the benefit of the
40 twenty per cent. general assessment. They were to

be assessed for benefits, but the cost of the work was to be credited upon and to be in full for such assessment. The twenty per cent. of the cost of the work in front of their lands was still to be imposed upon the public, but was to be credited to the assessments upon a part of the lands along another portion of the road arbitrarily selected by the legislature. The lands of the prosecutors were within the favored limits.

The commissioners found the entire cost of the 10 work to be $217,691.36. Twenty per cent. of that sum was assessed upon the town of Union and the township of Weehawken, leaving eighty per cent. or $174,153.09, to be assessed upon land-owners. Of this sum only $151,512.61 was assessed, leaving $22,640.47 in addition to the twenty per cent. to be assessed upon the public.

The cost of work in front of the favored land-owners was $86,616.75. The assessment upon these lands was the sum of $35.036. The difference be- 20 tween the cost of this work and the amount assessed is $51,580.75. The cost of the work done by the land-owners themselves is $66,571.61. Twenty per cent. of this, to be credited on the favored portion, is $13,314.34. It appears, therefore, that the lands in question have not been assessed eighty per cent. of the amount of the cost of the work, and that the difference is an amount much greater than the twenty per cent. which should be credited. The difference between the amount of the cost and the amount 30 assessed arises from the conclusion of the commissioners that the latter amount represented the maximum of actual benefits resulting from the work.

The contention of the counsel for the prosecutors is, that notwithstanding this discrepancy they are entitled to the credit of the twenty per cent. upon the assessment as actually made. The notion of the commissioners, as appears from the explanatory note accompanying their report, was that the reduction of the amount assessed below the cost of the work, al- 40

though that reduction was caused by the limitation of actual benefits, was a substantial credit of the twenty per cent.

The last clause of section 10 of the act of 1873 sets out: "It being the intention that the assessments shall be made as provided in the original act and this supplement, and the credits shall be given and allowed as herein declared."

The view of the commissioners was that the assessment contemplated by the act of 1872, the original act above mentioned, and the supplement of 1873, was a frontage assessment, and the credit of the twenty per cent. was to be made upon an assessment for the full cost of the work.

The answer of the prosecutors is that it was possible to make a constitutional assessment under the act of 1872, and the presumption is conclusive that the legislature meant an assessment limited to actual benefits as is here made. Conceding the possibility of such an assessment under these acts, yet it seems to me clear that section 10 was never enacted in the prospect of assessments made for benefits only, from some of which assessments a deduction was to be made and from others not.

The presumptive design of the legislature was to secure in this, as in all other cases, equality. It is highly probable that the whole scheme seemed to the draftsman of this legislation appropriate to this end. The reason why this special credit should be accorded to particular portions of land along the road must have existed in some peculiarity in the situation or condition of the land itself, or inequalities in the cost of the work. An analysis of the latter consideration shows that the result of the work proved that such an inequality actually existed. The cost of the work upon the non-favored part was $20.04 per foot; upon the favored portion $26.43 per foot. If the work conferred a uniform benefit, then those upon the favored portion, if assessed the amount of the cost, would pay a price in excess of that paid by

others. If the assessment was only eighty per cent. of the cost, the same inequality between these land-owners and others would exist.

Whether the fundamental limitation upon the ability of the legislature to empower the commission to levy an assessment exceeding an amount representing peculiar benefits was in the legislative mind, is not a question upon which, in my judgment, the validity of this assessment hangs. That the legislature intended to reach that result is probably true. 10 The legislature manifested that intention in two ways: First, by relieving the land-owner of twenty per cent. of the cost; and, second, by providing for a special credit of an unapplied fund, which resulted from the execution of certain of the work by land-owners themselves, to a portion of the work done by the town. That the latter provision was made with the understanding that the deduction was to be made from an assessment of the entire eighty per cent. is, in my judgment, clear. There is no provision for the 20 raising of a deficiency which might arise in case the amount of actual benefits should be less than the eighty per cent. This contingency is met for the first time in the act of 1875, *(Pamph. L., p. 302,)* which limits the assessment to the amount of the benefit received, and then provides that any excess of the cost over the benefits shall be paid by the town of Union and the township of Weehawken.

This supplement of 1875 which, by its terms, was engrafted upon the previous legislation, accomplished 30 that equality which the previous legislation was presumably designed to reach. By it each land-owner was to be assessed only the amount which, in the judgment of the commissioners, represented his benefit, although it fell short of the eighty per cent. of the cost upon the unfavored and of the eighty per cent. less the special credit upon the favored portion. It is not essential that the force of the act of 1875 should be held to be so broad as to supersede entirely the method provided by the acts of 1872 and 1873. 40

Had the assessment for benefits reached or closely approached the cost of the work upon the favored portion, then this view of the scope of the act of 1875 would have pressed for consideration. But our conclusion that the credit was to have been made from an assessment of the entire eighty per cent., and the fact existing that the assessment, as made, leaves an amount greater than the sum to be credited, relieves the case of the necessity of determining whether it was within the legislative intent, in any event, to permit an arbitrary credit it favor of one portion of land-owners when all had already been assessed by an equitable and uniform rule. I think the credit has, by the practical results of the present assessment, been made. Nor do I see that there is needed a specific determination of the commissioners as to the portions of the road within the favored limits to which the credit was applied. The credit is the result of the operation of the last assessment for benefits and the difference between said assessment and the cost of the work. The commissioners had the power to apply the credit to any land within the favored portion. They have certainly refused to make any credit upon the assessment of any land-owner in excess of the difference between his benefit and the cost of the work. They have, by the result of the present assessment, practically applied more than all, and that is all that any land-owner could require.

Again, it is contended that the excess of the eighty per cent. over the amount of benefits has not been apportioned between the town of Union and the township of Weehawken.

In dividing and assessing this excess the commissioners have proceeded under the provisions of the act of March 18th, 1875, *(Pamph. L. p. 302, § 2,)* which is as follows: "Any excess, (if any), of said eighty per centum of cost over the benefit received by the land and real estate hereby made liable to such assessment, shall be paid by the town of Union

and the township of Weehawken, in the proportion that the assessments on owners of lands of benefits in each town or township bears to the sum of the total assessments of benefits on owners of land in both town and township, and said excess shall be collected in the same manner provided in the former acts for collection of said twenty per centum, in the former acts mentioned."

Prosecutors insist that the anly amounts which should be taken into consideration in ascertaining the proper proportion of the excess to be paid by the town and township respectively, are those amounts which have been assessed upon lands to pay for the improvement of section No. 2.

I think the commissioners proceeded correctly in taking the relative benefits to land in each municipality for all the work done as the standard of their apportionment. This method is within the spirit and the letter of the act.

The reason directed at the exercise of the power of the Circuit judge to fill vacancies which should occur in the offices of commissioner, was not urged with much persistence upon the argument. The disability of two of the commissioners seems to have been undoubted; but whether disabled or competent, they, after the completion of the improvement, resigned, which left a vacancy. This fact alone conferred power upon the Circuit judge to appoint others in their respective places. *State v. City of Newark, 3 Dutcher 197.*

The act required no notice to the prosecutors of the time and place of filling tho vacancies, and unless required by the act they have no ground of complaint, unless interest or incapacity on the part of the appointees is shown. The disability of the two resigning commissioners was urged, however, as invalidating all the proceedings up to the time of the resignation of the two commissioners. These proceedings included all work up to the time of the completion and acceptance of the work. The assess-

ment was made by the present commissioners. It is too late to raise objections to the steps taken anterior to the execution of the work. The line of decision respecting this aspect of the case is too well defined for further remark.

It is objected that a horse railroad company, whose tracks lie upon this road, should have been and were not assessed. It is probable that the value of the franchise owned by this company was enchanced by
10 the grading of this road, although this is questioned. The assessment contemplated by these acts is not upon persons or personal property or franchises, but upon real estate. It appears that the company have stables in West Hoboken, but it does not appear what the character of the real estate is or that it is benefitted in any degree by this road.

As to the remaining objections that the cost of this improvement has not been assessed upon all lands specially benefitted, it is one which appeals so much
20 to the judgment of those who by observation have acquainted themselves with the topography of the ground and the present and future uses of the contiguous real estate, that the judgment of the commissioners should not be reversed unless clearly erroneous. The prosecutors could complain of this only as tax-payers at large, for in no event is it conceivable that any assessment could be laid upon property now unassessed which would relieve them from any special assessment. While it is possible to view the
30 question of tne assessability of property now unburdened in a light different from that taken by the commissioners, yet I am not at all clear that they were wrong in their views of the character of special benefits, or in their application to the properties which came under their consideration.

The result of the commissioners' work should not be disturbed by us without clearer convictions of erroneous jadgment by them than we possess in this case.

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As to the reason urging that the property of the prosecutors has been assessed for more than the amount of its special benefits, I think there is nothing in the case to show that the judgment of the commissioners was erroneous.

The assessment should be affirmed.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE, ARCHIBALD GRACIE KING, for himself and as Trustee for MARY K., wife of EDGAR N. RICHARDS and FREDERICA G. wife of J. C. BANCROFT DAVIS, and FANNY MCLANE, wife of JAMES L. MCLANE, Prosecutors, vs. ABRAHAM W. DURYEE, JOHN REID and GEORGE P. SCHINZEL, and JAMES H. SYMES, Clerk, et al., Defendants.	On certiorari. Assignment of Errors.

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Afterwards, that is to say, on the fourth Monday of December, eighteen hundred and eighty-three, before the Court of Errors and Appeals in the last resort in all causes, comes the said The State of New Jersey, Archibald Gracie King, for himself and as trustee for Mary K., wife of Edgar N. Richards, and Frederica G., wife of J. C. Bancroft Davis, and Fanny McLane, wife of James L. McLane, prosecutors, by Vredenburgh & Garretson, their attorneys, and say, that in the record and proceedings aforesaid there is manifest error in this, to wit: That the judgment aforesaid of the Supreme Court, by the record aforesaid, appears to have been given for the said defendants, Abraham W. Duryee, John Reid, George P. Schinzel and James H. Symes, Clerk, &c., against the prosecutors, Archibald Gracie King, for himself and as trustee for Mary K., wife of Edgar H. Richards; Frederica G., wife of J. C. Bancroft Davis, and Fanny L., wife of James L. McLane, whereas by the law of

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the land the said judgment ought to have been given for the said prosecutors and against the said defendants, therefore in that there is manifest error.

And also there is error in this, to wit: That the proceedings and assessments against the lands of the said prosecutors, brought up by the said writs of certiorari, were affirmed by the said Supreme Court, whereas by the law of the land the said proceedings and assessments should have been set aside and declared null and void, therefore in that there is manifest error. 10

And the said prosecutors pray that the judgment of the said Supreme Court, affirming the said proceedings and assessment for the errors aforesaid and for other error in the said record, proceeding and assessment being, be reversed, annulled and altogether holden for naught.

VREDENBURGH & GARRETSON,
Attorneys of and of Counsel
with the Prosecutors. 20

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NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE, EDWARD KING and CAROLINE KING, Pros. vs. ABRAHAM W. DURYEE, JOHN REID, and GEORGE P. SCHINZEL, Commrs. and JAMES H. SYMES, Clerk, et als. Defts.	Assignment of Errors.

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Afterwards, that is to say, on the fourth Monday of December, eighteen hundred and eighty-three, before the Court of Errors and Appeals in the last resort in all causes comes the said The State of New Jersey (Edward King and Caroline King, Prosecutors,) by Vredenburgh & Garretson, their attorneys, and say that in the record and proceedings aforesaid there is manifest error in this, to wit: That the judgment aforesaid of the Supreme Court by the record aforesaid appears to have been given for the said defendants, Abraham W. Duryee, John Reid, George P. Schinzel and James H. Symes, against the prosecutors, Edward King and Caroline King, whereas by the law of the land the said judgment ought to have been given for the said prosecutors against the said defendants, therefore in that there is manifest error.

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And also that there is error in this, to wit: That the proceedings and assessments against the lands of the said prosecutors, brought up by the said writs of certiorari, were affirmed by the said Supreme Court, whereas by the law of the land the said proceedings and assessments should have been set aside and declared null and void, therefore in that there is manifest error.

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And the said prosecutors pray that the judgment of the said Supreme Court affirming the said proceedings and assessment for the errors aforesaid, and for other errors in the said record, proceeding and assessment being, be reversed, annulled and altogether holden for naught.

VREDENBURGH & GARRETSON,
Attorneys for and of Counsel with Prosecutors.

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DAVISON & CO., Law Printers, 27 Montgomery st., Jersey City.

EXHIBIT D. 4.

STATE OF NEW JERSEY, } ss.:
Hudson County.

LEON H. KENDRICK, being duly sworn according to law, upon his oath saith: That he is the publisher of the "*Hudson County Democrat*," a newspaper printed and published in the City of Hoboken, County and State aforesaid, and that he caused the advertisement of which the following is a true copy, to be published in his said newspaper for four weeks successively, at least once in each week, commencing the first day of August, 1874.

L. H. KENDRICK.

Sworn and subscribed before me, this 9th day of November, A. D. 1874.

JOHN C. BESSON
M. C. C.

BULLS FERRY AND BRANCH ROADS IMPROVEMENT.

Notice is hereby given by the Commissioners in charge of the improvement of the Bulls Ferry and Branch Roads under the authority of an act of the Legislature of the State of New Jersey, approved April 4, 1872, and the subsequent supplements thereto, that they propose to make the following improvements on the Bulls Ferry Road between the Hackensack Turnpike and the northerly boundary of the Township of Weehawken, and on the branch road between Nineteenth street and the Bulls Ferry Road.

1. To regulate and grade the same to the grade shown on their plans for the improvement, filed in the Town Clerk's office of the Town of Union; also to re-

grade the intersecting streets where necessary, and relay the flag, curb, gutter, &c., on the same.

2. To make the roadway and sidewalks of the following width;

Between Nineteenth street and the Bulls Ferry Road, sidewalks 12.6 wide, roadway 55 wide.

Between the Hackensack Turnpike and Weehawken street, sidewalks, 12.6 wide, roadway 35 wide.

Between Weekawken street and Union street, sidewalks 12.6 wide, roadway 55 wide.

Between Union street and northerly boundary of the Township of Weehawken, sidewalks 20 wide, roadway 40 wide.

3. To set one row of 16 curb on each side of the roadway throughout the entire length of both roads.

4. To pave the gutters 2.6 wide with Belgiam blocks along the entire line of the curb and 5 wide across the intersecting streets where necessary.

5. To macadamize the whole width of the roadway 12. deep when finished, between the paved gutters throughout the entire length of both roads.

6. To lay one row of flagging 4. wide on each sidewalks throughout the entire length of both roads.

7. To build the necessary receiving basins and culverts to drain the surface water from the roads.

8. To set monuments locating the new lines of the roads.

The improvement will be divided into three sections as is required by law.

The first section to extend from Nineteenth street to the southerly line of the estate of James G. King, deceased (school-house).

The second section to extend from the southerly line of the estate of James G. King, deceased, to the centre of Fulton street.

The third section to extend from the centre of Fulton street to the northerly boundary of the township of Weehawken.

ESTIMATED COST.

Curb	$8,996 20
Flag	17,084 00
Gutter	12,744 18
Cross-bridging	940 50
Macadam	68,652 00
Earth work	26,557 50
Rock	7,400 00
Receiving basins and culverts	5,180 00
Contingencies, monuments and incidental expenses	12,082 05
	$159,636 43

Further details may be obtained by examining the plans for the improvement filed in the Town Clerk's office of the Town of Union, and on application at the office of Spielmann & Brush, the engineers in charge, No. 8 Newark street, Hoboken, N. J.

These estimates are calculated on a cash basis, and the Commissioners feel confident, from the care taken in ascertaining the same, that the actual cost will not exceed these estimates.

The Commissioners will meet on Monday, August 24, 1874, at 3 P. M., at Reiser's Hotel, corner of Union street and Bull's Ferry road, in the Town of Union, to hear land owners interested in this improvement, and to receive remonstrances in writing against the same. In case the owners of three-fourths of the frontage object to the improvement, then the same cannot be made; and in case the owners of a majority along any section shall propose any change in the grade or de-

tails of the improvement on that section, then such change must be made, all as provided by law.

The Commissioners reserve at that time the right to make any slight alteration in the details of the plans that they may deem necessary in the interest of the property owners.

Town of Union, July 30, 1874.

JOHN H. BONN,
HENRY J. ROTTMAN,
ABRAHAM W. DURYEE,
Commissioners.

Exhibit D 1.

Affidavit of publication of foregoing notice (in German) in the Hudson County *Volksblatt*, for 3 weeks.

Exhibit D 2.

Affidavit of publication of foregoing notice in the *Palisade News*, for 3 weeks, from August 8th, 1874.

Exhibit D 3.

Affidavit of publication of above notice in *Evening Palisades* for 25 times successively, commencing August 4th, 1874.

DAVISON & Co., Law Printers, 27 Montgomery st., Jersey City.

Exhibit D 5.

To the Honorable the Board of Commissioners, for the improvement on Bull's Ferry Road :

Gentlemen—The undersigned property owners on Bull's Ferry Road and Union street, would respectfully request your honorable body to lower the grade of the Bull's Ferry Road between Jefferson street and Gardner street, at least three feet at the highest point, and the other details to be left to the surveyors.

Charles Raw, Bull's Ferry Road.
L. Linnewerth, Bull's Ferry Road.
Dan. Sturm, Bull's Ferry Road.
Mich. Hofmann, Bull's Ferry Road.
Edward Yulke, Bull's Ferry Road.
P. and W. McCarty, Bull's Ferry Road.
J. Schweitzer, Bull's Ferry Road.
Peter Minck, Bull's Ferry Road.
Louis Canuto, Bull's Ferry Road.
Thomas McGrath, Bull's Ferry Road.
F. Weber, Bull's Ferry Road.
H. Meyer, Bull's Ferry Road.
D. Bermes, Bull's Ferry Road.
L. W. Wallace, Union street.
Carl Stegmann, Bull's Ferry Road.
James Wiggins, Bull's Ferry Road.
William H. Nash, Union street.
William Gulden, Union street.
Christopher Knoerz, Union street.
August Boemeke.
Duers Estate, by J. G. K. Duer, Bull's Ferry Road.
Mary King Richards, Weehawken, Bull's Ferry Road.
Frederica G. Davis, by H. A. Tailer, attorney, Weehawken, Bull's Ferry Road.
Edward King, Bull's Ferry Branch Road.

John Suhrbier, Bull's Ferry Road.
Pauline Rieser, wids.
Gottlieb Zurn, four lots on Bull's Ferry Road.

TOWN OF UNION, Oct. 22d, 1875.

Whereas a communication has been received from the Bull's Ferry Road Commissioners, stating that a petition had been handed to them by property owners on Bulls Ferry and Union street, requesting that the grade be changed at Union street. And therefore be it resolved, that said petition be endorsed by the board of council, and the Bull's Ferry Road Commissioners be requested to change the grade of the Bull's Ferry Road accordingly ; and be it further resolved, that a copy of these resolutions be sent to the Bull's Ferry Road Commissioners.

I hereby certify that the above preamble and resolution is a correct copy of the minutes of October 22d, A. D., 1875.

Given under my hand and the seal of the Town, this twenty-second day of October, A. D. 1875.

DAVID A. KEPHARDT, Town Clerk.
FRITZ A. MEYER.
LOUIS C. HAUENSTEIN.
[L. S.] CHARLES RAW.
ALBERT LITTLEFIELD.
GEORGE HOFFMANN.

HOBOKEN, NEW JERSEY, Oct. 20, 1875.

To John H. Bonn, Henry J. Rottmann, Abraham W. Duryee, Commissioners :

GENTLEMEN—I will do the regrading on the Bull's Ferry Road between Blum and Lewis street, for the following prices :

Earth excavation,	60 cts.	per	cubic	yd.
Rock "	$2.50	"	"	"
Resetting curb,	6 cts.	"	lin.	foot.
Relaying flag,	4 cts.	"	sq.	"

Relaying gutter, 5 cts. per lin. foot.

Respectfully,
T. H. NIVEN,
Pr. M. W. NIVEN, Atty.

The following are copies from the minutes of The Bull's Ferry Road Commissioners:

PAGE 27.

The question of the right of the Bull's Ferry Road Commissioners to proceed with the improvement of that part of Bull's Ferry road, included in the preliminary map filed by the Hudson County Avenue Commissioners then arose. Mr. Scudder as Counsel for Mr. King, suggested that the question was a very grave one, and while the proceedings of the commissioners thus far had met with general satisfaction, he thought under the existing circumstances it would be necessary for the commissioners to proceed with the utmost caution, so that there might be no conflict of authority between the Bull's Ferry Road Commissioners and the Hudson County Avenue Commissioners, and in order that no legal difficulty arise to interfere with the collection of the assessent.

PAGE 64.

Mr. Brush reported that Mr. King had personally requested the commissioners, through him, to adjourn the sale for unpaid assessments for at least two months in order to allow time to owners in the present crisis to collect the necessary moneys to pay their assessments. He (Mr. King) felt justified in making this request, being the party having the principal claim against the commissioners for the lands to be taken; and further, that the commissioners need fear no claims

that might be made from the King estate in consequence of the delay.

PAGE 79.

Grade maps for Bull's Ferry and Branch Roads were presented by the engineer, the first marked No. 1, showing the grade between Nineteenth street and the southerly line of James G. King's property. On motion the grade was adopted as shown on profile No. 1.

Grade map marked No. 2, fixing grade from the southerly line of J. G. King's property to the Bull's Ferry Road was on motion adopted.

Grade map marked No. 3 from Hackensack Plank Road to Union street, was then taken up and considered, and after much time spent in endeavors to fix an easier grade on some portion of the road between said points for the better interest of the property adjoining, and the relief of some of the streets running into said road, it was finally agreed that the grade as shown on said profile map could not be changed without seriously affecting the grades at the junction of the Bull's Ferry with the Branch Road, and was therefore on motion adopted. Profile No. 4, showing grade from Union to Fulton streets, was laid over for future consideration. Profile No. 5, showing grade from Fulton street to the northerly line of the township of Weehawken, was on motion adopted.

PAGE 105.

Minutes of meeting of Bull's Ferry Road Commissioners, held at the office of Spielmann & Brush, Hoboken, July 30, 1874, at 3 P. M.:

Present:—Chairman Bonn, Commissioners Duryee and Rottmann; engineer Brush and Clerk *pro tem* Symes.

Chairman Bonn reported that the assessment notices mentioned at last meeting had been printed and sent to the different collectors for distribution. Engineer Brush submitted to the commissioners the following plans, estimates for work to be done on the improvement, and the notice as required to be given according to law.

On motion the same was accepted and ordered to be entered at large upon the minutes.

(Here follows copy of notice as appears in Exhibits numbered D 1, D 2 and D 3.)

Engineer Brush reported that he had filed the plans and maps in the Town Clerk's Office of the Town of Union, as required by law.

On motion the report was accepted, and Mr. Brush requested to advertise the above notice in the Hudson County *Democrat*, *Palisade News*, *Evening Palisades* and Hudson County *Volksblatt*, and also to get posters printed and posted up along the line of the road.

PAGE 113.

Minutes of meeting of commissioners in charge of the Bull's Ferry Road improvement, held August 24, 1874.:

Present :—Chairman Bonn, Commissioners Duryee and Rottmann ; Engineer Brush and Clerk *Pro tem* Symes.

The following property owners were present:

Chas. Schmidt, James Wiggins, Daniel Sturm, Henry Meyer Peter Minck, Louis Linnewerth, G. Schlemm, Messrs. Romaine, McCarty and Schipper.

The chairman stated that the commissioners had met to receive objections, if any, to the proposed improvement of Bull's Ferry Road.

No objections were received to the improvement.

On motion of Commissioner Rottmann, the following resolution was adopted.

"*Resolved*, that notices be sent to the property owners on the First and Third sections, requesting them to inform the commissioners whether they propose to do the work on these sections themselves in accordance with the acts authorizing the same, and whether they wished to do the macadamizing themselves or whether they wished the commissioners to have it done, and that a written answer thereto be sent to the commissioners before 8 A. M., on Thursday, 27th inst., care of Spielmann & Brush, 8 Newark street, Hoboken."

PAGE 218.

Councilman Raw, presented a petition and a plan which he had obtained from engineers Spielmann & Brush, showing how the Bull's Ferry Road might be cut down 3 feet, and the necessary changes made in Union street.

After a general discussion and reference to the Bull's Ferry Road acts it, was agreed that a majority of the frontage on section 2, and in Union street between Hudson avenue and Bull's Ferry Road should sign before the council, or the commissioners should take any action.

PAGE 320.

Minutes of meeting held September 1, 1876.:

The commissioners then proceeded to inspect the work done on section 3 road. The contractor being desirous of having the work accepted. After examining the work the commissioners concluded to lay the matter over until next meeting.

PAGE 322.

Minutes of meeting held September 8th, 1876.:

Whereas this board have personally examined and are satisfied with the character of the work and can see no objection why the same should not be approved, Therefore be it resolved, That the work done on section three (3) by P. P. Dickinson under his contract with Messrs. Brown, Cassitt and Schmidt, dated June 25th, 1875, be and the same is hereby accepted, subject to the provision in the contract that the road shall be kept in repair by him for one year from this date.

PAGE 324.

Minutes of meeting of Commissioners in charge of the Bull's Ferry Road Improvement, held September 15, 1876:

Present—Comm'rs Bonn, Rottmann and Duryee and Eng. Brush.

General Schultze being present, the Board proceeded with him to examine the work on Section 3.

The General expressed himself as very much pleased with the work.

Engineer Brush reported that Mr. Cassitt had that day also expressed himself satisfied, and that Mr. Schmidt made no objections to the work done, but desired that the banking of his wall might be done by the commissioners.

The commissioners then returned to the hotel, where the engineers presented final certificate for the work done on Sect. 3.

The total amount of the certificate was...	$20,268 96
The amount due.....	4,654 29
The 5 per cent. retained, which with interest at 7 per cent. per annum would be due Sept. 17th, 1877, if the road was kept in repair, would be.....	1,013 45

(In this amount the interest is not included.)

A separate certificate was also presented of the 5 per cent. retained as above amount, $1,013.45.

These certificates were duly considered by the com-

missioners and approved, after which they were endorsed by them.

PAGE 182.

Minutes of meeting held May 10th, 1875:

Engineer Brush reported that he had granted certificates as follows:

1st. Contractors' certificate No. 1, second contract on Section 1, road improvement, in favor of Wm. C. Whyte for $570, and directed to Hokoken L. & I. Co.

On motion the same was received.

PAGE 189.

Minutes of meeting held June 3d, 1875:

Engineer Brush presented the following certificate:

I. Contractors' certificate No. 2, 2d contract, for $732 in favor of Wm. C. Whyte, and directed to the Hoboken Land and Improvement Company.

Report received.

PAGE 196.

Minutes of meeting held July 14, 1875:

Engineer Brush reported that he had granted contractor's certificate No. 3 in favor of Wm. C. Whyte for $2,373 on Section 1 road improvement, and directed to the Hoboken L. & I. Co.

On motion the report was received.

PAGE 214.

Minutes of meeting held August 6th, 1875:

Engineer Brush reported that he had granted con-

tractor's certificate No. 4 in favor of Wm. C. Whyte for $2,985 on Section 1 road improvement, and directed to the Hoboken Land and Improvement Company.

On motion the report was received.

PAGE 221.

Minutes of meeting held September 14, 1875.

Engineer Brush reported that he had granted contractors, certificate No. 5 on Section 1, Road Improvement in favor of Wm. C. Whyte for $2,311.43.

On motion the report was received.

PAGE 233.

Minutes of meeting held November 12th, 1875 :

Engineer Brush reported that he had granted certificate No. 7, favor Wm. C. Whyte, Section 1, Road Improvement, for $2,452.28, and dated November 3d, '75.

On motion the report was received.

PAGE 221.

Minutes of meeting held September 14, 1875 :

Engineer Brush presented contractor's certificate No. 1, Section 3, Road Improvement, in favor of P. P. Dickinson, for $586.

On motion the same was approved and endorsed by the commissioners.

PAGE 224.

Minutes of meeting held October 14th, 1875:

Engineer Brush presented contractor's certificate No.

2, Section 3, Road Improvement in favor P. P. Dickinson for $674.90.

On motion the certificate was approved and endorsed by the commissioners.

PAGE 233.

Minutes of meeting held November 12th, 1875:

Engineer Brush presented the following certificates: Contractor's certificate No. 3, road improvement, section 3, favor P. P. Dickinson for $1,533.74.

On motion the same were approved and endorsed by the commissioners.

PAGE 249.

Minutes of meeting held December 11th, 1875:

Engineer Brush presented contractor's certificates No. 4, road account, section 3, in favor of P. P. Dickinson for $1,424.46.

On motion the same were approved and endorsed by the commissioners.

PAGE 409.

Minutes of meeting held September 18th, 1877:

"They also inspected the work on section 3, and finding the road in complete order accepted that also."

PAGE 418.

Minutes of meeting held December 7th, 1877:

"Whereas this board has carefully examined the work done on the Bull's Ferry and Branch Roads by

T. H. Niven and his bondsmen, under the original contract dated November 7th, 1874, and the subsequent supplements thereto, during the progress of the work and since its completion;

And whereas, this board has been informed by the engineers in charge of the work and the inspector thereof, that the work should now be accepted;

And whereas, this board sees no good reason why the work should not now be accepted subject to such minor alterations pointed out this day, and which properly comes under the head of repairs, therefore be it

Resolved, That the work done by T. H. Niven and his bondsmen on the Bull's Ferry and Branch Roads, under the contract of November 7th, 1874, be and the same is hereby accepted, provided that the contractors keep the work done by them in repair for one year from this date, and further provided that Commissioner Duryee shall approve this resolution at the next regular meeting of the board at which he may be present.

PAGE 323.

Minutes of meeting held September 14th, 1876:

"The commissioners proceeded along the line of the road to inspect the work."

PAGE 435.

Minutes of meeting held December 9th, 1878:

"Whereas, Messrs. Spielmann & Brush, the engineers in charge of the Bull's Ferry Road improvement, have reported in writing to this board that the road work on section two (2) and the macadamizing on section one (1) of the Bull's Ferry Road improvement is now in good order and repairs, and

Whereas, the commissioners have gone over the whole work with the engineers and the contractor on two separate days, viz, December 5th and 9th, 1878, the former day being dry and the latter wet, and

Whereas, the work was found in good order and repair, except in some trifling repairs that might perhaps better be done to the flagging and paving, which Mr. Johnson as the representative of the bondsmen had promised to attend to, and

Whereas, one year has now expired since the date of the completion and acceptance of the work by this board,

Therefore be it resolved, That the Bull's Ferry Road improvement on section 2, and so much of section 1 as came under the contracts of Niven & Middleton, T. H. Niven and their bondsmen be, and the same are hereby accepted on condition that the aforesaid repairs are immediately made."

J. J. Griffiths, Printer, 38 Montgomery St., Jersey City.

N. J. Court of Errors and Appeals.

The State
A. Gracie King and others, Prosecutors,
Pltffs. in Error,

vs.

Abraham W. Duryee et. al., Commissioners, &c.,
Defts. in Error.

Brief for Plaintiffs in Error.

These writs bring up assessments for work done under a number of acts of the Legislature to improve the Bulls Ferry Road.

The following acts relate to the improvements of the Bulls Ferry Road.

LEGISLATION.

P. L., 1872, p. 1379, &c. "An act to improve Bulls Ferry Road in Hudson county from the northerly line of the Township of Weehawken to the Hackensack Plank Road, and also the branch road leading from Bulls Ferry Road opposite Weehawken street in the Town of Union to Nineteenth street in the Township of Weehawken.

Approved April 4, 1872.

P. L., 1873, p. 623, &c. A Supplement.

Approved April 3, 1873.

P. L., 1874, p. 726. A Supplement.
Approved March 27, 1874.
P. L., 1874, p. 736. A Supplement.
Approved, March 27, 1874.
P. L., 1875, p. 302. A Supplement.
Approved March 18, 1875.
P. L., 1875, p. 553. A Supplement.
Approved April 8, 1875.

The acts P. L., 1874, p. 736, and P. L., 1875, p. 302, apply only to the building of sewers and do not enter into the consideration of this case.

IMPROVEMENTS CONTEMPLATED.

The original act, P. L., 1872, p. 1397, contemplated two improvements.

1. By Sec. 1. The widening and straightening Bulls Ferry Road and the branch road.

2. Sec. 9. The curbing, guttering and regulating the same.

By the supplement P. L., 1873, p. 623, § 7, the commissioners were authorized to make a further improvement, viz: "To fix and establish the grade of said road or streets and to grade the same, and to flag the same for such width as is deemed advisable, and provide for the surface drainage of said roads or streets by suitable culverts and receiving basins, and to establish monuments locating the boundaries of said road or streets."

By the supplement P. L., 1874, p. 726, § 2, the commissioners were authorized to make a still further improvement, viz: "To macadamize the said roads or such portions thereof as may seem to them desirable."

By the supplement P. L., 1875, p. 302, § 1, it was provided, That it was the intention of the original act and the supplements thereto "to give to said commissioners and said commissioners shall have, and said acts shall be construed as having granted to said commissioners among other things, the power to fix and establish the grade of the said Bulls Ferry and branch roads, as they were after the same had been widened and straightened, and as they appear on the maps made by said commissioners, and the power to grade the same, and to provide for the surface drainage by culverts and receiving basins, and to establish monuments locating the boundaries of said roads, and to curb, flag and lay cross bridging on such portions thereof as they may deem suitable, and to macadamize or otherwise pave said roads, and to regrade for such distance as may be necessary or desirable any street, avenue or road which intersects said roads in any cases where any abrupt declivity may occur on account of the difference of the grade of the said roads, and where there is regrading to relay the curb, gutter and pavement and flagging, and to furnish and provide new materials therefor if necessary."

ASSESSMENTS PROVIDED FOR.

Section 11 of the act of 1872, P. L., p. 1379, provided that 80 per cent. of the cost of the improvement to be made under § 9 of that act, viz., curbing, guttering and regulating, should be assessed "on the lands and real estate along the line of the said road in proportion to the benefit such land and real estate shall receive from such improvement." The remaining 20 per cent. should be paid :

Ten per cent. by the Town of Union.

Ten per cent. by the Township of Weehawken.

Section 7 of the act of 1873, P. L., p. 623, provided that the cost of executing the work prescribed in that same section, viz., fixing and establishing grades of said roads or streets, and grading the same and flagging the same, for such width as was deemed advisable, and providing for the surface drainage of said roads or streets by suitable culverts and receiving basins, and establishing monuments and locating the boundaries of said roads or streets, should be assessed and paid as provided in the 11th section of the act of 1872, P. L. 1872, p. 1397.

Section 2 of the act of 1875, P. L., p. 302, provided "that the 80 per centum of the whole cost of the fixing and establishing the said grades, the grading, provision for surface drainage, the establishment of monuments, the curbing, flagging and cross-bridging, the macadamizing and other paving, the regrading intersecting streets or avenues, the relaying the curbs, gutter, pavement and flags, and providing all necessary materials and all incidental costs of such improvement," &c., "should be assessed upon and collected out of the lands and real estate benefited by such improvements in proportion to the benefit received," &c.

MODE OF ASSESSMENT.

By the 11th section of the original act, P. L., 1872, p. 1379, the 80 per centum was to be assessed "*on the lands and real estate along the line of the said road in proportion to the benefit such land and real estate shall receive from such improvement.*"

The 7th section of the act of 1873, P. L., p. 623, "*the cost of executing said works shall be assessed and paid as provided in the 11th section of said act,*" *i. e.*, the original act of 1872.

In the supplement approved March 18, 1875, P. L., p. 302, this preamble precedes the second section: "*And whereas the language of the provision in said act for the costs of the improvements thereby authorized may not be specific enough to conform to recent decisions of the Courts, but it was the intention of the said act that the costs should be equally assessed according to the benefits; but no more should be assessed on any property than the actual benefit received,*" and then enacts in § 2 "*that the 80 per centum of the whole cost*" of the fixing and establishing grades, grading, &c., "*shall be assessed upon and collected out of the lands and real estate benefited by such improvements in proportion to the benefit received; provided that no lands or real estate shall be assessed any more than the benefit received.*"

The provision in the original act was constitutional and the alteration of language in the latter act was not necessary to cure any defect in the first act.

The Agens case was decided at the March Term, 1874, of the Court of Errors, 8 Vroom, 415.

In the case of The State, D., L. & W. R. R. Co., Pros., v. The Village of Passaic, 8 Vroom, 137, in which the provision for assessment was "upon the lands fronting on the improvement in proportion to the benefit to be received by each lot or parcel of land," the Supreme Court held at the June Term, 1874, that under the authority of the Agens case this provision was unconstitutional, but the Court of Errors, at the March Term, 1875, in the same case, 8 Vroom, 538, held this provision to be constitutional. Evidently it was because of the ruling in the Passaic case in the Supreme Court, and before the opinion was delivered in the Court of Errors that the supplement of 1875 was passed.

The Passaic case was decided in the Supreme Court, June Term, 1874.

The Supplement of 1875 was approved March 18, 1875.

The Passaic case was decided in the Court of Errors, March Term, 1875.

FAVORED PORTIONS OF THE ROAD.

No steps were taken to carry out the improvement contemplated in section 7 of the supplement of 1873, and in section 2 of the supplement of 1874 until the 30th of July, 1874.

See Exhibit D. 4, date of notice, July 30, 1874. Testimony of Brush, p. 55, line 13.

By the supplement of 1873 special favors as to property along certain portions of the road were introduced:

1st. Two sections were created by § 9 of the act of 1873, one extending from Fulton street to the northern boundary of Weehawken, this is hereafter known as section 3 of the road.

Another extending from the southerly line of the estate of James G. King to Nineteenth street in Weehawken; this is hereafter known as section 1 of the road. The balance of the improvement is known in the case assection 2.

By section 10 of the supplement of 1873, the owners of the lands along these two sections were to be allowed under the supervision of the commissioners to improve these two sections and they were not to be liable for any assessment beyond the amount expended by them except for incidentals.

2d. By the same section 10 of the same supplement of 1873 it is provided: "The said commissioners are

hereby authorized and directed to allow and apply the amount of money which shall be assessed against the Town of Union and the Township of Weehawken upon such portion of the Bulls Ferry Road lying between Union street and Weehawken street, and the southerly line of the lands formerly of James G. King, deceased, as said commissioners may determine, to the end that the lands, which shall be assessed for the work, labor and material, lands taken and damages, where such allowances shall be made on such last-named portion of said road shall be relieved to the extent of such allowance, and such allowance shall be credited on the assessment therefor; it being the intention that the assessment shall be made as provided in the original act and this supplement, and that the credits shall be given and allowed as herein declared."

The supplement of 1874, p. 726, which provided that a *part* of the improvement might be undertaken, viz: The improvement of the branch road and so much of the Bulls Ferry Road as lay south of Union street recognized in section 1 of that supplement, the favor conferred on the part of the Bulls Ferry Road between Union street and Weehawken street and King's southerly line. It provides as follows, P. L., 1874, p. 726, in the latter part of section 1, "the amounts to be collected from the Town of Union and the Township of Weehawken shall be applied to the relief of property on the same portions of the Bulls Ferry and branch roads and in the same manner as is prescribed in section 10 of the supplement entitled 'a supplement to an act approved April fourth, one thousand eight hundred and seventy-two, the assessment however to be made as provided in said section ten, and the credits shall be given and allowed as therein provided.'"

The supplement of 1875, p. 304 having been passed after the publication of the notice to the property owners to make objections and after the time for

making objections had expired, and after the work had actually been commenced and had progressed for some time ought not to take away any benefits conferred by the previous acts unless clearly expressed to be so intended.

There was nothing in the act of 1875 to lead property owners to suppose that any different plan of assessment was provided for by that act from that in existence prior thereto, while it seemed to contemplate the possibility that 80 per cent. of the cost might exceed the benefits, still they had been led by the notice of the improvement to suppose that the cost would be $159,636.43. Exhibit D. 4.

The result showed the cost to be $217,691.36, a difference of $58,054.93.

If the original amount had not been exceeded there would have been no excess in the 80 per cent. of cost beyond benefit.

The town and township would have paid

20 per cent. of the	$159,636 43
which would have been	31,927 28
leaving a balance of	127,709 15

The benefits, the commissioners say, amounted to $151,512.61.

The whole road and branch road described in the original act of 1872, and referred to in the supplements of 1873 and 1874, were actually improved. The owners of the property along the two sections described in § 9 of the supplement of 1873 availed themselves of the privilege conferred by § 10 of that act, and improved those two sections themselves.

See Report of Commissioners, p. 14, line 33.

Testimony Reid, p. 53, line 3.

Testimony Bonn, p. 86, line 14-34, p. 87, line 39, to p. 88.

The prosecutors, whose lands lie along "that portion of the Bulls Ferry Road lying between Union street and Weehawken street, and the branch road lying between Weehawken street and the southerly line of the lands formerly of James G. King, deceased," claim that they are entitled to the special favors conferred by the latter part of § 10 of the supplement of 1873, and referred to in § 1 of the supplement of 1874, p. 726, but that such favors have not been allowed by the commissioners in their assessment.

That portion of the branch road from the southerly line of James G. King's land to Nineteenth street, and that portion of the Bulls Ferry Road from Fulton street to the northerly line of the Township of Weehawken had this special privilege, viz: The owners were to be allowed to improve it at their own expense and be exempt from any assessment; this privilege was accorded.

The property on that portion of the branch road from the southerly line of James G. King's land to Weehawken street, and on that portion of the Bulls Ferry Road between Weehawken street and Union street had this special privilege, viz: By the act of 1872 and the supplement of 1873 and 1874 the property was to be assessed in proportion to the benefit received, and upon the assessments certain credits should be allowed; we claim that this favor has not been extended.

An examination of the map in connection with the acts shows that the property on that portion of the Bulls Ferry Road, viz: Between the Hackensack Road and Weehawken street and between Union street and Fulton street in section 2, was not to receive any special favor; and yet this property so far as appears from the report of the commissioners is treated the same as the property along the favored portion.

The commissioners in their report treat the improvement as one without regard to sections.

See Report, p. 17, line 32, &c.
Testimony of Reid, p. 49, line 27, to p. 50, line 15.

They say that the cost of the whole improvement was $217,691.36 (p. 17, line 5); that they assessed each lot, tract or parcel of land benefited thereby in proportion to the benefit actually received (p. 18, line 15); that the aggregate of these assessments was less than the 80 per cent. of the whole cost by $22,640.67, which excess by the act of 1875 was to be paid by the Town of Union and Township of Weehawken in a certain proportion.

See also Testimony of Reid, p. 35, line 18, p. 39, line 5; as to plot bill No. 1139, one of the plots in question, p. 39, line 16; as to plot bill 1'142, one of the plots in question, p. 43, line 32, p. 44, line 47.

There nowhere appears in the report any credit upon the assessments upon the plots and lots along the favored portion.

The commissioners, in an explanatory note, say that "The costs of the improvement in front of the favored portions liable to assessment was the sum of $86,616.75. The assessment, however, as above shown" (as above shown where?) "amounts only to $35,036." This amount, as already appears from the report of the commissioners and from the testimony, is the whole amount of benefit conferred upon the property upon which it is laid by the improvement.

It is nowhere pretended that any credits have been allowed on any of the amounts going to make up this sum of $35,036, nor that this property fronting on the favored portion is in any better situation than any other property along the line of this improvement; each plot is assessed the full amount benefited, and each plot is called upon to pay the full amount of the assessment upon it.

The commissioners recognize the existence of the provision in section 10 of the supplement of 1872, and that they are called upon to give it effect.

In the explanatory note, p. 19, line 35, they say: "The direction in the 10th section of the supplement of April 3d, 1873, as to allowing and applying the amounts assessed in the town and the township in relief of certain portions of the land liable to assessment, and (is) substantially complied with by our following as we have the directions of the supplement of March 18th, 1875. This is manifest when it is considered that the original act of April 4, 1872, contemplated an assessment according to frontage, and the direction in said act of April 3, 1873, was in view of an assessment according to frontage." This is not true, and it is evident that the commissioners totally misunderstood the meaning and application of these acts.

The direction of the 10th section of the act of April 3, 1873, was in view of an assessment to be made in accordance with the original act of April 4, 1872, by which the assessment was to be made," on the lands and real estate along the line of the said road *in proportion to the benefit such land and real estate shall receive from such improvement*" not according to frontage.

By the act of April 4, 1872, no particular plot could be assessed for any more than it was benefited, no matter what the cost of the improvement was, and under the act of March 18, 1875, each particular plot can be assessed only for the same amount, viz., the amount benefited. The assessment under the act of April 4, 1872, would have been the same upon each plot along the line of the road as it is now, if the act of March 18, 1875, had never been passed.

How, then, is it manifest that the 10th section of the supplement of April 3, 1873, has been substantially complied with?

The commissioners, in the explanatory note, say further, p. 20, line 6 : "The cost of the improvement in front of the favored portions liable to assessment was the sum of $86,616.75. The assessment, however, as above shown, amounts only to $35,036, from which it is apparent that the said direction was substantially complied with in assessing the land benefited according to law."

The conclusion at the end of this part of the explanatory note shows that the commissioners believe that under the original act they would have been required to assess the amount of $86,616.75, the whole cost of the improvement in front of the favored portion upon the land fronting on that portion, although those same lands were only benefited to the amount of $35,036. This is not true. Under the original act they could have assessed upon those lands only the amount they were benefited, viz : $35,036.00. Even in an assessment according to frontage it would be manifestly unfair to say that the cost of the road in front of a particular piece of property was a criterion of the amount to be assessed on that property. The statement of the commissioners in substance is, that although these lands which were to receive especial relief have been assessed the whole amounts of benefits received, the same as all the other lands along the road, yet they have been especially favored because the improvement in front of them cost much more than they were benefited.

The other lands along that part of section 2 not included in the favored portion, are benefited in the same way as these lands along the favored portion. They were assessed for much less than the improvement in front of them cost.

What relief have these lands received? They are assessed all they are benefited and no credits are given upon the assessments.

How are they favored beyond any other lands along the line of the improvement? No other land along the line of improvement is assessed more than it is benefited.

The assessment upon these lands for this reason is defective.

The assessment is also defective for the reason that by the 10th section of the act of April 3, 1873, the commissioners were to determine a certain portion of that part of the Bulls Ferry Road between Union street and Weehawken street, and of the branch road between Weehawken street and the southerly line of lands formerly of James G. King, deceased, and the relief mentioned iu the 10th section of the act of April 3, 1873, should be applied to that portion.

The commissioners have made no determination upon that subject.

By the act the commissioners must relieve some part of the property along the portion of the road mentioned, and we insist that the part which it was intended should be relieved was the property of some of these prosecutors.

The prosecutors or some of them, owned all the land on one side of this portion of the roads. The provision for relief, we claim, was introduced into the act for the especial benefit of that land. The owners were not desirous for the improvement; their land was held in large tracts, and would be but little benefited by the improvement; and to lead them to believe that the assessment against them would be light; this provision was inserted so as to persuade them not to object to the improvement.

ASCERTAINMENT OF AMOUNT TO BE USED IN MAKING CREDITS ON ASSESSMENTS ON LANDS ALONG FAVORED PORTIONS.

By the original act of 1872, the Town of Union was to pay 10 per cent. and the Township of Weehawken 10 per cent. of the cost of the whole improvement, and the remaining 80 per cent. of the whole cost was to be assessed "on the lands and real estate along the line of said road in proportion to the benefit such land and real estate shall receive from such improvement."

Upon the passage of the act of April 3, 1873, defining two sections of the road and authorizing the improvement of these sections by the owners of the land along them, and that they should, upon payment of the costs thereof, be exempt from further assessment, a question arises whether the 20 per cent. to be paid by the Town of Union and Township of Weehawken should be calculated upon the costs of the whole improvement, including the sections to be improved by the owners of land along them, or upon the cost of the improvement of so much of the road as lay outside of these sections.

It is evident the legislature intended the 20 per cent. to be calculated on the cost of the whole improvement, including as well the cost of sections 1 and 3 as the part outside of those sections.

The original act of 1872 clearly states 20 per cent. of the entire cost.

The supplement of March 27, 1874, also indicates that this was still the intention of the legislature.

See laws of 1874, p. 726. as follows—

"Whereas, It may not be necessary or expedient

to construct that portion of the Bulls Ferry Road north of Union street in the Town of Union;

"And whereas, It is desirable for the convenience of public travel that the construction of the branch road and that portion of the Bulls Ferry Road lying south of Union street should not be delayed on that account;

"1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the commissioners may, if they deem it advisable, construct in the same manner and under the same limitations as are provided in the original act and the supplements thereto, the branch road, and that portion of the Bulls Ferry Road south of Union street, and on completion of the same they may make an estimate of what would have been the cost of the improvements north of Union street, as proposed in the original act and the supplements thereto, and this act, and add thereto the actual cost of the improvement of the branch road, and said portion of the Bulls Ferry Road south of Union street, and shall then assess 10 per centum of the sum of the said estimated and actual costs upon the Town of Union and 10 per centum of the same upon the Township of Weehawken; and the said town and township respectively shall pay the said sums respectively to said commissioners, and the same shall be raised by said town and township as the amount to be raised by said town and township was to be raised under the original act."

Under the original act the whole cost of the improvement was provided for in this way—80 per cent. to be paid by the property, 20 per cent. by the town and township.

By introducing section 10 into the supplement of April 3, 1873, allowing the owners to improve, the first difficulty arises.

We have seen that the town and township are to

pay 20 per cent. of the whole cost; now, if the lands along the 1st and 3d sections are to pay the entire costs of those sections, what is to be assessed on the 2d section. Certainly not 80 per cent. of the cost of the whole improvement, because then we will have more than sufficient to pay, nor yet 80 per cent. of the cost of the section, because we will then still have more than enough to pay the cost of the improvement.

By way of illustration we will use the round thousands of the cost of this improvement:

Say Section 1 cost	$43,000
Section 3	23,000
Section 2	151,000
Total cost	$217,000
Sections 1 and 3, to be paid for by the owners would be	$66,000
Twenty per cent. of whole cost ($217,000)	43,400
If we assessed section 2 80 per cent. of the whole cost ($217,000)	173,600
We will have	$283,000

Which is $66,000 more than is needed, and just the amount assessed on sections 1 and 3.

If we assess on section 2, 80 per cent, of the cost of that section we have this result:

Sections 1 and 3, to be paid for by the owners, would be as before	$66,000
Twenty per cent. of whole cost ($217,000)	43,400
Eighty per cent. of cost of section 2 ($151,000)	120,800
We have total	$230,200

Which is $13,200 more than is needed, and is just 20 per cent. of the cost of sections 1 and 3 ($66,000).

If no further provision was made it would be difficult to know what disposition should be made of this surplus, but in another part of the same section 10 of the act of April 3, 1873, which provides for the

improvement by the owners of lands on sections 1 and 3 of those parts of the road we find this provision :

"The said commissioners are hereby authorized and directed to allow and apply the amount of money which shall be assessed against the Town of Union and the Township of Weehawken upon such portion of the Bulls Ferry Road lying between Union street and Weehawken street, and the southerly line of the lands formerly of James G. King, deceased, as said commissioners may determine, to the end that the lands which shall be assessed for the work, labor and materials, lands taken and damages where such allowance shall be made on such last named portion of said road shall be relieved to the extent of such allowance, and such allowance shall be credited on the assessment therefore ; it being the intention that the assessments shall be made as provided in the original act and this supplement, and that the credits shall be given and allowed as herein declared."

Will not this furnish a solution to the difficulty and justify the application not of the whole cost of sections one and three, but of the 20 per cent. of their cost to the credit of the assessment upon that "portion of the Bulls Ferry Road lying between Union street and Weehawken street, and the branch road lying between Weehawken street and the southerly line of the lands formerly of James G. King, deceased."

If we are correct in this, the result would have been as follows:

Cost of section 1 to be paid by property owners	$43,180 90
Cost of section 3 to be paid by property owners	23,390 71
20 per cent. of total cost ($217,691 36) to be paid by Town of Union and Township of Weehawken equally	43,538 28
Cost of section 2 ..... $151,119.75	
80 per cent of cost of sec. 2 $120,895.80	
Total amount of benefits according to commissioners report, page 19, $151,512.61.	
Amount of benefits on sections 1 and 3 being the cost $66,571.61.	
The difference gives benefits on sec. 2	84,941 00
Deducting the last amount, viz., $84,941 from 80 per cent. of cost of section 2, would give the amount of cost beyond benefits to be assessed upon the town and township according to the proportion fixed by the 2d section of the act of March 18, 1875, laws of 1875, p. 302	35,954 80
Total	$231,005 69

The amount of $231,005.69 is, however, $13,314.33, more than the cost of the improvement; it is 20 per cent. of the cost of sections 1 and 3, and should be credited upon the favored portion of the road.

The assessment upon this portion, according to the report of the commissioners, p. 20, amounts to $35,036, and from this should be deducted, if that is the true amount, $13,314.33, leaving to be paid by that portion of the property $21,721.67.

The commissioners' report shows that they have assessed upon the favored portion $35,036; that that

is all that that property was benefited by the improvement, and they have credited nothing on that assessment as directed by the act.

That the amount to be credited was 20 per cent. of the cost of the end sections was the view adopted by the Court below. 16 Vroom, 262.

We have thus far argued as though the relief mentioned in section 10 of the supplement of April 3, 1873, was to be applied to all the lands upon the main and branch roads lying between Union street and Weehawken street, and between Weehawken street and the southerly line of James G. King's property, by the terms of the act the relief was to be applied to such portion of that part of the roads as the commissioners might determine. See act of April 3, 1873, section 10.

If it should be determined that a portion only of that part of the roads just described should receive the benefit of this credit, then the $13,314.33 should be deducted from the sum of the assessments of the tracts upon the part so determined upon.

MODE OF DIVISION OF EXCESS OF COST BEYOND BENEFIT.

The additional reason to be found on p. 93, is directed to the manner in which the commissioners have divided the excess of cost above benefits between the Township of Weehawken and the Town of Union. The interest of the prosecutors in this matter is that as taxpayers in the Township of Weehawken, they will be called upon to pay much more than they ought to pay, because the commissioners have assessed upon the Township of Weehawken to be raised by general tax a much larger proportion of the excess of costs beyond benefits than they ought to have done.

In dividing and assessing this excess the commissioners have proceeded under the provisions of the act of March 18, 1875, P. L. 1875, p. 302, § 2, which is as follows: "any excess (if any) of said eighty per centum of cost over the benefit received by the land and real estate hereby made liable to such assessment, shall be paid by the Town of Union and the Township of Weehawken, in the proportion that the assessments on owners of lands of benefits in each town or township bears to the sum of the total assessments of benefits on owners of land in both town and township, and said excess shall be collected in the same manner provided in the former acts for the collection of said twenty per centum, in the former acts mentioned."

We insist that the only amounts which should be taken into consideration in ascertaining the proper proportion of the excess to be paid by the town and township respectively are those amounts which have been assessed upon lands to pay for the improvement of section 2.

When the act of 1875 was passed, sections 1 and 3 of the road had then practically been taken out of the hands of the commissioners for all purposes of assessment.

The owners applied to make these improvements on sections 1 and 3 in September, 1874, and made the improvements.

Symes' testimony, p. 90, line 32, to p. 91, line 40.

Bonn's testimony, p. 86, line 14, to p. 89, line 3.

As a matter of fact the commissioners did not assess the lands along sections 1 and 3.

The amounts which the commissioners say they assessed upon lands to pay for sections 1 and 3 are

not assessed. The owners agreed to take care of sections 1 and 3, (see testimony of Symes, p. 91), and actually did improve the same and pay for the improvement, and the action of the commissioners in that respect was in no sense an assessment. It is true that Reid, in his testimony, p. 41, line 2, p. 49, line 27, and following, p. 51, line 8 and following, says that the assessment was made on the property on those sections in accordance with benefits, but it seems to us evident that these amounts were put upon these sections because the owners agreed to pay them, and the law authorized them so to agree.

Reid himself is forced to admit that what he calls the assessment on sections 1 and 3 is the exact cost of those sections.

See Reid's testimony, p. 49, line 27, to p. 50, line 15; also, p. 50, line 30, to p. 51, line 16; also, p. 51, line 30 to p. 52, line 1.

That the lands along sections 1 and 3 were not actually assessed is further evidenced by the fact that the commissioners assessed no amounts upon lands north of the north end of section 3 or south of the south end of section 1. Reid says in his testimony that there were no benefits to any of the property beyond the north and south ends of the property. We think an examination of his testimony will show that this is not the fact. His reasons are not good. Why should the property east and west of the road, not fronting on it, be especially benefitted, while that north and south of it was not benefited at all? See Reid's testimony, p. 35, line 18 and following, pp. 36-37, p. 39, line 23, and on page 40.

The true reason was that section 3 ended at the north end of the road and section 1 ended at the south end of the road, and the owners paid for those sections.

Parcels 1148 and 1149 on the assessment map constitute one plot belonging to one owner. Reid's tes-

timony, p. 50, line 37 ; undoubtedly the plot was divided because part was in section 3 and part in section 2. If this was a single improvement as the commissioners claim, why divide this lot into two parcels ?

The act of 1875 nowhere refers to the application of any credit to the favored portion, neither does it say anything about the permission awarded to the owners of land fronting on sections 1 and 3 to improve at their own expense.

The broad language of section 2 of that act is "that the eighty per cent. of the whole cost, &c." shall be assessed and collected out of the lands and real estate benefited by such improvement in proportion to the benefit received.

The commissioners as before stated have not followed the direction so far as sections 1 and 3 are concerned but have simply said that those sections were liable to pay what they actually cost as provided in section 10 of the act of 1873: they made no assessments according to benefits upon the lands upon these sections.

If by disregarding the 10th section of the act of 1875 so far as sections 1 and 3 of the road are concerned, in order to carry out the 10th section of the act of 1873 the commissioners having given effect to the intention of the legislature, the legislature must likewise have intended that the amounts which sections 1 and 3 cost should not enter into the calculation for determining what proportion of the excess of cost over benefits should be paid by the Town of Union and Township of Weehawken respectively.

This improvement is much more beneficial to the Township of Union at large than to the Township of Weehawken. Testimony Joshua Frost, p. 76, line 20, to p. 79, line 2.

Duer, p. 70, line 25, to p. 72, line 19.
Reid, p. 46, line 39.

There is nothing in the whole legislative scheme to indicate that the Township of Weehawken at large should pay a sum in excess of the Town of Union.

The twenty per cent. by all the early acts was to be equally divided between the two places, but if the commissioners are right in their method of computation the Town of Union is to pay $7150.60 of the excess of cost beyond benefits, and the Township of Weehawken $15,489.87: that is; the Township of Weehawken is to pay of this excess more than twice as much as the Town of Union.

We say then that in getting at the proportion of the excess which the town and township were to pay respectively, we should only take in those lands in each which were assessed to pay for section 2.

The commissioners in their report say that the whole amount assessed upon lands in the Town of Union was....	$46,845 16
On lands in Township of Weehawken..	101,477 62
Assessment map shows on lands in the Township of West Hoboken.....	785 00
The balance must have been assessed on lands in the Township of Union.....	2,404 83
	$151,512 61

This is the total amount the commissioners say was assessed on all lands.

From amount assessed on lands in Town of Union		$46,845 16
Deduct amount paid on plot 1151.....	$4,154 25	
Also amount paid on so much of plot 1152 as is in the Town of Union	5,096 91—	9,251 16
Balance,		$37,594 00

Because these plots paid their share of the whole

cost of section 3, and we have $37,594 as the amount assessed on lands in the Town of Union for the improvement of section 2.

From amount assessed on lands in the Township of Weehawken.....		$101,477 62
Deduct the whole cost of section 1 which has been assessed upon lands in the Township of Weehawken, less $785, which appears by the map to have been assessed upon lands in West Hokoken, that is $43,180.90 less $785.....	$42,395 90	
Also plot 1148.....	4,266 40	
Also plot 1149	4,895 34	
Also plot 1150.....	2,572 98—	54,130 62
Balance,		$47,347 00

Because these plots paid their share of the whole cost of section 3, and we have $47,347 as the amount assessed on lands in the Township of Weehawken for the improvement of section 2.

And the proportion in which the excess of cost above benefits $22,640.47 as given by the commissioners, p. 19, should be divided, would be as that of $37,594. for the Town of Union to $47,347 for the Township of Weehawken.

The result of the calculation would be that of the sum of $22,640.47, the sum of $10,020.44 bears the same proportion to the said sum of $22,640.47 that the total of the assessments for benefits for improvement of section 2 on owners of lands in the Town of Union $37,594. bears to the sum of the total assessments for benefits for improvement of section 2 on lands in the town and township aforesaid $84,941.

And that of the sum of $22,640.47, the sum of $12,620.03 bears the same proportion to the said sum of $22,640.47 that the total of the assessment for benefits for the improvement of section 2 on owners of lands in the Township of Weehawken $47,347 bears to the sum of the total assessments of benefits for improvement of section 2 on lands in the town and township aforesaid $84,941.

That is to say of the excess of..... ...	$22,640 47
The Town of Union should pay.....	10,020 44
Township of Weehawken	12,620 03

I have taken for granted that the figures of the commissions are correct, but a calculation from the map will show that in the amount which in their report they say is the total amount of benefits assessed on lands in Weehawken (p. 19) they have included $785 assessed on lands in West Hoboken.

THE COMMISSIONERS HAVE OMITTED TO ASSESS LANDS AND REAL ESTATE BENEFITTED BY THE IMPROVEMENTS.

The original act directed the assessment to be made "on the lands and real estate along the line of the road, in proportion to the benefits such land and real estate shall receive from such improvement." Laws of 1872, p. 1379, § 11; the supplement extended the area of the assessment to "the lands and real estate benefitted by such improvement in proportion to the benefit received." Laws of 1875, p. 302, sec. 2.

We claim that the land lying to the north and south of the whole improvement along the Bulls Ferry Road was benefited and should have been assessed, and that the property of the North Hudson

County Railroad Company on said road was real estate benefited by the improvement and should have been assessed.

First as to the lands lying along said road to the north and south of the improvement.

It must be evident from an examination of the assessment map that upon the theory of the commissioners they have either assessed property not benefited or else have omitted a large amount which was benefited. The map shows that the commissioners assessed many lots in the Town of Union which did not front upon the road at all, but upon streets running parallel and at right angles with the Bulls Ferry Road. They also assessed lots in the Township of Weehawken which did not front on the Bulls Ferry Road: that many of these lots were more convenient of access by the Hackensack Turnpike than by the Bulls Ferry Road.

See Testimony of Reid, p. 39, line 23, to p. 41, line 1; also p. 36, line 33, to p. 37, line 32.

The reasons given by this witness for not assessing lots fronting on the road, that is because they "hadn't got in front of them a part of the Bulls Ferry Road made, graded, regulated and flagged," and "because they had merely the use of the Bulls Ferry Road in the same manner as a plot a mile further north" would be equally applicable to all lands not fronting on the Bulls Ferry Road.

It must be perfectly manifest that no property not directly fronting upon the improved part of the roads was more benefited by their improvement than the properties immediately adjoining plots 1150 and 1152 on the north and plots on the southerly side of Nineteenth street on the south.

The Supreme Court in its opinion says: "It is objected that a horse railroad company whose tracks lie upon this road should have been and were not as-

sessed. It is probable that the value of the franchise owned by this company was enhanced by the grading of this road, although that is questioned."

"The assessment contemplated by these acts is not upon persons or personal property or franchises but upon real estate."

The easement of laying and maintaining the tracks on this road obtained by virtue of the franchise together with the tracks, &c., is what is claimed to be assessable, not the franchise.

The easement of the North Hudson County Railroad Company to lay and maintain its tracks in this road with its rails, ties, stringers, &c., is real estate.

This real estate was benefited by the improvement. See testimony of Reid, p. 30, line 10, to p. 31, line 37.

The testimony indicates that the improvement of the Bulls Ferry Road was made in such a way as to be greatly advantageous to the railroad.

Testimony of Reid, p. 33, line 3 to line 29.
Hauenstein, p. 82, line 38, to p. 85, line 20.
Bonn, p. 95, line 30, to p. 101, line 12.

The commissioners did not omit to assess this property of the railroad company because it was not benefited by the improvement, but because they considered it chattels, and not real estate.

Reid's testimony, p. 31, line 38, to p. 32, line 13.

Such property is "land and real estate" and consequently within the description of property to be assessed for this improvement under section 2 of the supplement of 1875, laws of 1875, p. 302.

Van Keuren v. Central R. R. Co. 9 Vroom 165.

Farmers' Loan & Trust Co. v. Hendrickson, 25 Barb. 484.
New Haven v. Railroad Co., 38 Conn. 422.
Providence Gas Co. v. Thurber, 2 R. I. 21.
City of Chicago v. Baer, 41 Ill. 306.
Appeal of North Beach & Missouri R. R. Co., 32 Cal. 499.
Providence & Worcester R. R. Co. v. Wright, 5 R. I. 459.
Northern I. R. R. Co. v. Connelly, 10 Ohio St. R. 160.
Parmelee v. Chicago, 60 Ill. 267.
Chicago City R. Co. v. City of Chicago, 90 Ill. 573.
Troy and Lansingburgh R. R. Co. vs. Kane, 9 Hun 506.
S. C. 72 N. Y. 614.
Burlington & M. R. R. Co. vs. Spearman, 12 Iowa 112.
Peru & I. R. R. Co. v. Hanna, 68 Ind. 562.
Appeal Tax Ct. vs. Western Maryland R. R. Co., 50 Md. 274.
Milharn v. Sharp, 27 N. Y. 611.
The People v. Cassidy, 46 N. Y. 46.
The People, ex rel. v. Commissioners of Taxes, 82 N. Y. 459.

INTEREST OF COMMISSIONERS AND APPOINTMENT OF NEW COMMISSIONERS.

As to the first, second and third reasons which may be considered together.

John H. Bonn, Henry J. Rottman and Abraham W. Duryee, were the commissioners named in the original act; no other persons were named as commissioners by any of the subsequent acts, and unless

other persons were appointed by some provision of law in place of those named, an assessment by any other persons must be invalid.

Section 7 of the original act (Laws of 1872, p. 1379) provided "That in case of any vacancy in said board of commissioners from death, absense, or any disability such vacancy can be filled by the Judge of the Circuit Court of the County of Hudson, on a petition for that purpose by the remaining commissioners who shall hold their office.

The petition sets out that Bonn by reason of being a resident and owner of real estate in Weehawken, was liable to pay whatever share of the cost above benefit was assessed against Weehawken, and a similar allegation is made as to Rottman who resides in the Town of Union—pp. 6 and 7.

It does not appear when these disabilities arose. For aught that we know the same disabitities may have existed for a long time.

I suppose there is no doubt that Bonn and Rottman lived in Weehawken and Union respectively from the time of the passage of the act of March 18, 1875. If so, they were under the same disabilities all that time. The construction of the work began in 1874 and was not completed till 1878, and these commissioners, Bonn and Rottman, carried on this work and during the greater part of that time labored under this disability. If the disability disqualified them for any service under this act, we claim that it disqualified them for every service. If they were disqualified to make the assessment, they were disqualified to carry on the work.

The disability mentioned in section 7 was such a disability as disqualified the commissioners from doing every act they were authorized to do by the original law and the supplements.

If they had no right to carry on the work, then no assessment can be laid upon property owners to pay for work done by unauthorized individuals.

If vacancies existed among the commissioners the property owners were entitled to notice of the application to fill these vacancies and to offer objections and be heard.

On the subject of notice see—

Vantilburgh v. Shannon, 4 Zab. 740.
State v. Jersey City, 4 Zab. 662.
Freeholders of Hudson v. State, 4 Zab. 718.
New Jersey Turnpike Co. v. Hall, 2 Har. 337.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

The State,
KING AND OTHERS,
Pros., } *On Error to Supreme Court.*
vs.
DURYEA AND OTHERS.

H. C. PITNEY FOR PLAINTIFF IN ERROR.

I.

As to the construction of the several acts of April 4, 1872, (Pamph. Laws, p. 1379,) of April 3, 1873, (Pamph. Laws 623,) and of March 27, 1874, (Pamph. Laws, p. 726.)

Upon what principle were the assessments therein provided for to be made?

I answer—According to *benefits* and not according to *frontage.*

By Sec. 4, act of 1872:—"The money to pay for such "land and damages and the expenses incurred * * for sur-"veys, &c., * * the Commissioners shall assess in manner "following * * Eighty per cent. shall be assessed upon "the lands and real estate along the line of the roads *in* "*proportion to the benefits received by the owner or owners* "*thereof.*"

Sec. 9 provides for curbing, guttering and regulating the street after it should be widened, and then Sec. 11 provides—that eighty per cent. of such improvement (guttering, curbing, &c.,) shall be assessed "on the lands and

" real estate along the line of the said road *in proportion* " *to the benefit such land and real estate shall receive from* " *such improvements.*"

Now it is well settled that this language, twice repeated, not only did not authorize an assessment according to frontage, but did not authorize an assessment beyond the amount of benefits actually received.

The language of the legislation under consideration in *Graham v. City of Paterson*, 8 Vroom 380, was precisely similar to that above quoted, and the Supreme Court held, p. 382, 383, that the use of the words " *in proportion to* " *benefits received* " does of itself limit the assessment to the amount of those benefits, and thereby the enactment was freed from the vice of that in question in the *Tidewater* case and the Agens case which had then been recently decided.

This Court expressly approved of this rule of construction in *Passaic vs. D., L. & W. R. R. Co.*, 8 Vroom 538, where, again, the language of the enactment under consideration was precisely similar to that in this case. The Chancellor in delivering judgment (at bottom of p. 539) says:—" It must therefore be held that they " (the legislators) " intended, by the language employed,—*in propor-* " *tion to the benefit to be received*—not only ratio of assess- " ment but limitation also, and by implication *to have lim-* " *ited the assessment to the amount of benefit.*"

This opinion was delivered at the end of the March Term 1875, (early in April,) one year later than that in the Agens case, and overruled the contrary ruling of the Supreme Court in the same case, 8 Vroom 137. It has ever since been properly considered as settling the rule of construction of these enactments in New Jersey.

Hudson vs. Road Commissioners, 12 Vroom, 87, bottom.

While it is, therefore, clear that the legislature, by the language above quoted used in the act of 1872, did not intend that the assessment should be according to *frontage*, but according to and not in excess of *benefits*, at the same time, inasmuch as no provision was made for the raising of any deficiency which might arise in case it should turn out that eighty per cent. of the cost should exceed the

sum of the benefits, it is equally clear that the legislature in this instance, as in scores of others, *supposed* and based the scheme of legislation upon the idea that there was no danger that any such deficiency would occur. Hence, no provision was made for it.

We come now to the act of 1873. Sec. 7 provides for additional work to be done—viz. to "fix a grade" and "grade the same;" "to flag the same for such width," &c.; and "to provide suitable culverts," &c.

Section 9 divided the roads virtually into three sections, but in so doing actually mentioned only two of them. The language is peculiar. It creates two sections by express descriptions, and so leaves a third section by implication only.

The two sections especially mentioned are situate on each end of the road and are known in the case as Sections 1 and 3, and the section not mentioned is known as Section 2.

These *end* sections, 1 and 3, comprised notoriously that part of the space to be improved which would be least expensive, while on the middle, No. 2, it was heavy and expensive work.

Section 10 then provides, in the first place, that the owners of land along either of the sections mentioned in section 9 (this language excludes the middle section No. 2) might do the work and furnish the materials required to make the proposed improvement on any one of those sections (Sections 1 and 3, being the end sections,) under the supervision of the Commissioners, and the doing of such work and furnishing such materials *should be in full of the assessments against said landowners* authorized either by the act of 1872 or that of 1873, except that for incidental costs and expenses. The result of this first clause was to enable the landowners on the end sections to escape assessment for any part of the cost of the middle section to which they would have been clearly liable under the provisions above quoted requiring the assessment to be according to benefits. In the absence of qualifying circumstances the benefits of each landowner would correspond with his frontage, and presumptively those fronting on the

end sections would be benefited full as much if not more than those on the middle section. At all events, they were in danger of being assessed far beyond the cost of the improvement on these end sections, and, therefore, this first part of section 10 of the act was a favor to them and there is quite as much reason for speaking of those end sections as "*favored*" sections as of the middle section.

In the second place the effect of this part of section 10 was to narrow the limits of assessible property, for if the landowners on the end sections took advantage of the provision—and it was well known that it was inserted at their request and that they would do so—then no money could be realized from any assessments on those sections.

Having thus granted a favor to the end sections, and thereby cast, presumptively, a heavier burthen on the middle section, the legislature naturally proceeded to deal with that, and in the same section (10) enacted as follows:—

"*The said Commissioners are hereby authorized and di-*
"*rected to allow and apply the amount of money which*
"*shall be assessed against the town of Union and the town-*
"*ship of Weehawken upon such portion of the Bulls Ferry*
"*Road lying between Union street and Weehawken street*
"*and the Branch Road lying between Weehawken street and*
"*southerly line of the lands formerly of James G. King, de-*
"*ceased, as said Commissioners may determine, to the end*
"*that the lands which shall be assessed for the work, labor*
"*and materials, lands taken and damages, where such allow-*
"*ance shall be made on such last named portion of said road,*
"*shall be relieved to the extent of such allowance, and such*
"*allowance shall be credited on the assessment therefor;* it
"being the intention that the assessments shall be made as
"provided in the original act and this supplement, and that
"the *credits shall be given* and allowed as herein declared."

The section of the roads therein referred to, it must be borne in mind, includes a portion only of the middle section, No. 2. Presumably it was that particular portion of it where the cost would be the heaviest.

Now there can be, in the light of the circumstances, no possible doubt as to the legislative intent in the language last above quoted.

Under the provisions of the act of 1872 all lands along the roads would in theory be assessed in proportion to and not in excess of benefits received, the result being theoretical equality. But, by the first part of the ~~act~~ section 10, that theoretical equality had been disturbed. Besides, common experience must have taught the legislators that *theoretical* equality was very frequently *practical* inequality, and that assessments in theory not exceeding benefits and which could not be proven judicially to exceed benefits, very frequently in practice did far exceed them. They probably were not wholly unaware of the disposition of assessors to assess the cost of a particular section of a road on the lands immediately in front of it. The consent of the landowners was necessary. Those on the two end sections were offered in the first part of the section (10) a handsome consideration not to object; and common justice required that something should be done for those on that part of the middle section where there was the greatest danger of injustice. To guard against the danger of injustice; to grant to the middle section a favor corresponding with that on the end sections; to hold out an inducement to the landowners to consent, they provided by the latter part of the section last above quoted that the "assessments should be made as provided in the original act"—that is, in proportion to and not in excess of benefits—and that on certain of those assessments, to be determined by the Commissioners, on a certain portion of the middle section, a certain credit should be given. The "*credit*" was to be made on the assessments *after* they were made. It is impossible to escape this result. The lands were *first* to be assessed in proportion and not in excess of benefits, and then, *and not until then*, upon those assessments so made the credit was to be given. *It was to be given not upon the amount to be assessed but on the amount actually assessed.* In no other way could the legislative injunction be obeyed, which was not to give the credit to the assessment upon the whole section which extended from Fulton street on the North to the southerly line of the estate of James E. King on the South, nor yet upon all the land within the specified portion of that section, which specified portion extended from

Union to Weehawken street on the main road, and from Weehawken street to the southerly line of J. G. King's land on the Branch road, but the credit was to be given upon such portions of the assessments upon the subdivision last named "as the said Commissioners may determine." Now—I ask with some confidence—how could the Commissioners make this award and determination within the limits prescribed and in the manner prescribed before the assessment was made? If they gave the credit upon the sum to be assessed and then proceeded as they must do to assess the remainder in proportion to benefits received, is it not mathematically certain that the benefit of the credit would be spread over the whole area to be assessed instead of being confined to a particular portion of it?

This plain reading of the act cannot be varied by "effects and consequences" arising out of circumstances thereafter to happen, but not foreseen or anticipated.

The fact that the act was framed upon the supposition that eighty per cent. of the cost of the improvement would not exceed or even equal the benefits, and so made no provision for a deficiency, cannot affect its construction when such deficiency actually arises.

In this respect it resembles many other acts on our statute books.

The construction above contended for—viz. that the credits provided for should be given upon certain assessments after they were made—is confirmed by the supplement of 1874 (pamphlet, p. 726).

The legislation being in this condition the work was commenced in the fall of 1874.

Brush, p. 55, l. 10–12;

Return, p. 15, l. 2–10.

The tacit consent of the landowners was obtained by publication in the summer of 1874.

Brush, p. 110, l. 20–30;

" p. 104, l. 30–40.

The existence of the Boulevard act prevented earlier action.

II.

Was this scheme of legislation altered or varied by the act of 1875? (Pamphlet, p. 302). Section 2 and its preamble is relied upon as working this change.

It is contended by the other side that the act of 1872 provided for an assessment according to *frontage unlimited by the amount of benefit*, and that the act of 1875 altered the whole principle of assessment in this respect, and at the same time leveled all assessments down or up, as the case might be, to the standard of benefits received.

I contend, on the contrary, that the later act—1875—did not in any manner alter or vary the original scheme.

The later act is professedly and avowedly a declaratory act—explanatory merely of the meaning of the previous acts. It disclaims any intention to alter or vary in any degree any of the previous legislation.

The occasion of its adoption is manifest when we consider the course of judicial decision on the subject.

The *Agens* case was decided early in April, 1874, at the end of the March Term, and shortly after the passage of the act of 1874. The decision of the *Passaic* case in the Supreme Court, (8 Vroom, 137,) was announced in June, 1874. These two decisions naturally alarmed the parties promoting this improvement, and their alarm was probably not allayed by the contrary doctrine of the *Paterson* case announced at February Term, 1875, (8 Vroom, 380). The overruling by this Court of the doctrine of the Supreme Court in the *Passaic* case was not announced until early in April, 1875, (8 Vroom, 538), and could not with certainty be anticipated, and therefore the promoters of the enterprise procured this declaratory legislation, the office and effect of which was merely and only to declare that the legislature did not by the previous enactments intend that any land should be assessed beyond the amount of its benefits. It proposed no new scheme and made no alteration in the old one, except to extend the area of assessment beyond the limits of the actual improvements and to provide for an assessment upon the towns for any deficiency that might arise after assessing up to the limit of benefits according to the provisions of the previous act.

It seems clear that in all this it neither disturbed the special favors granted to the owners along the two end sections, 1 and 3, nor that provided for those on a portion of the middle section.

It would have been the height of injustice to have withdrawn the favor granted to one section and left the others untouched. A construction leading to such injustice will not be adopted except under compulsion of the clearest language.

III

Has this provision of the legislature directing that certain "*credits should be given and allowed*" on these "*assessments*" for benefits been obeyed and carried out?

I answer—No, and ask the Commissioners and their counsel, who contend the contrary, to point out *when*, *where* and *how much*.

Confessedly *their lands have been assessed for the whole amount of the benefits received.*

This is undeniable because a deficiency is left and assessed and levied upon the townships at large, and no such deficiency could occur under the act—in the absence of credits and allowances—until after all lands liable to assessment had been assessed to their full extent of benefits received. The Commissioners avow this in substance in their report and return (p. 17, 18,) and one of them—*Reid*—so swears—

P. 36, l. 5—18;

P. 39, l. 1—19;

P. 41, l. 10—14.

These assessments stand and are sought to be enforced up to the full extent of the benefits without any "*credit*" or "*allowance*" made, or to be made upon them.

The landowners fronting on sections 1 and 3 took advantage of the privilege granted them by the tenth section of the act of 1873, and have enjoyed whatever of benefit it conferred; and those fronting on section 2 are equally entitled to the same treatment.

The Commissioners attempted to show, by their explana-

tory note (p. 19–20) annexed to their assessment, that the "*credit*" and "*allowance*" was *substantially* given.

They say in effect—We have indeed assessed the lands fronting on section 2 the full amount of their benefits, but we have *not* assessed them eighty per cent. of the full cost of that section, therefore we have, in substance, given them the credit required by the law by assessing them according to law.

This reasoning is wholly unsound. It is openly and avowedly based upon the notion that the legislature intended in the acts of 1872, 1873 and 1874, that the whole cost of each section should be assessed *according to frontage* upon the lands fronting on it, regardless of the amount of the benefits actually received by them. This notion I have already shown to be erroneous. Such was not the intention of the legislature in those acts. No doubt, as before shown, the legislature supposed—and so framed the enactment in question—that eighty per cent. of the cost of the improvement would not exceed the benefits. That is: it was supposed that the assessors would assess eighty per cent. of the whole cost upon the lands and certify that it was not in excess of benefits. But it cannot be presumed it supposed that eighty per cent. of the whole cost would be assessed on the lands "*according to frontage*" and irrespective of benefits. The language used forbids it.

It does not even permit the adoption of the theory—necessary to the contention of the other side—that eighty per cent. of the cost of each section should be assessed upon the lands fronting on that section. Such theory is not only not sustained by the language used, but is forbidden by the scheme of the tenth section of the act of 1873 which plainly anticipates that the lands fronting on the end sections may be assessed for more than the whole cost of those sections, and provides that the furnishing the cost of those sections shall be in full of the assessments on those lands.

The fact that the legislature in the enactments of 1873 and 1874 did not anticipate that eighty per cent. of the cost would not exceed benefits, and did not provide for that contingency, does not authorize the Commissioners or the Court to alter the plain language of the act. The legisla-

tion of 1875 *did* provide for this contingency, and did so without, as before shown, disturbing the provision for a "*credit*" and "*allowance*" on the assessments.

If the legislative intention in 1875 was to deprive us of this "*credit*" and "*allowance*" in case eighty per cent. of the cost exceeded benefits, why not say so in plain terms?

The promoters of this improvement had *carte blanche* in procuring this supplemental legislation, and if they had intended to deprive us of this "*credit*" they should have said so in plain terms and left nothing to inference. The truth is, they knew very well that the consent of the landowners having been obtained, and the work having been already, in part at least, done under the legislation of 1872, –3 and –4, the landowners had a very strong moral, if not a vested legal, right in the benefits of the provisions of that legislation, which certainly ought not, to even if it could lawfully, be taken away by subsequent legislation, and they did not attempt it.

Another suggestion. The explanatory note annexed to their assessment is not an official certificate of the facts therein stated. The Commissioners never acted under the latter part of section 10, Act of 1873. They never determined what particular lands within the prescribed limits should have the credit. They simply state in their note that the total cost of the work in that part of the section was $86,616.75, and that "the assessment as *above shown* "amounts to only $35,036.00." I find nowhere in the case anything to show that the assessment was only $35,036.00 on the favored portion of section 2, or that the cost of it was $86,616.75. The cost of the middle section, out of which what has been called the favored section was carved, was certified to be $151,119.75 (p. 16, bottom).

The amount assessed on the lands fronting on the middle section is not stated directly, but is arrived at as follows:

Total amount to be raised,		$217,691.36
Actually raised as follows:		
20 per ct. direct on towns,	$43,538.28	
Assessed on Secs. 1 and 3,	66,571.61	
Deficiency stated at	22,640.47	
Leaving assessed on middle section,	84,941.00	
		$217,691.36

How then does it appear officially or in evidence that what the Commissioners were pleased to call an allowance was ever made upon the lands fronting on the particular part of Sec. 2 of the road prescribed by the Act?

On the Commissioners' theory, the greatest amount to which the frontage of the whole middle section was liable to be assessed was eighty per cent. of $151,119.75, the cost of the work, which is $120,895 80

Amount actually assessed as above shown, 84,941.00

Total allowance upon the whole section, $ 35,954.80

But how much of this the favored portion of that section received does not sufficiently appear.

But it does appear that the landowners on that favored section are assessed to the full measure of the benefits they have received, without any "*credit*" or "*allowance*" thereon, contrary to the letter and spirit of the act, of the benefit of which they are thus deprived.

IV.

The next question that arises is—What is the measure of the "*credit*" which the act, upon our construction of it, directs shall be made upon the assessments in question?

Clearly not the whole amount of the twenty per cent. of the cost to be assessed against the two towns. A moment's consideration will show that such construction is inadmissible.

To illustrate—

Suppose the whole cost to be an even $100,000, of which $20,000 is assessed on the towns and $80,000 on the landowners, and then you credit $20,000 on the $80,000, leav-

ing $60,000 to be actually collected. You would have then $60,000 paid by landowners and $20,000 by the towns, making only $80,000, to be actually realized with which to pay $100,000. If the draughtsman of the act expected it could only be construed in that way, he must have intended to practice a fraud on the landowners abutting on that portion of the middle section in question by leading them into the belief that they would receive a benefit which he well knew would prove illusory. The true solution of the problem is found in the first part of the section (10), viz.—that which provides for the working out of the assessments on the end sections of the road. By the terms of that part of the section, as before pointed out, the landowners fronting on sections 1 and 3 were to have the privilege of themselves making the improvements, and, in consideration of their so doing, their assessments, *whether greater or less than the cost*, were to be considered as paid in full. This provision was doubtless inserted at the request of the landowners who were few in number—the *Hoboken Land and Improvement Company* being sole owner on the lower end, and *Brown*, *Cossitt* and *Schmidt* on the upper—and it was well known that if the improvement was carried through, these landowners would take care of those sections. The act, nevertheless, required the Commissioners to ascertain the cost of the work on those end sections and to assess the towns with twenty per cent. of its cost, precisely as if the money would be needed to make the improvement. Here there was a provision, which, if taken advantage of, would necessarily produce a surplus to be applied elsewhere, and it was just this surplus that the draughtsman of the act had in view in the latter part of the section. Neither the draughtsman nor the legislature can be presumed to have intended to have offered Dead Sea fruit to the landowners on the favored portion of the middle section, nor yet to have inserted a provision which must necessarily create a deficiency.

It is probable that a few words in the original draft of the act were omitted by accident, either in the copy presented to the legislature or in passing through the hands of the engrossing clerk.

The provision of the first section of the act of March 27, 1874, is significant in this connection. It authorizes the Commissioners to proceed with the improvements of the southerly and middle sections, letting the northerly section rest. This indicates that the landowners on the northerly section were hesitating about going on with their part of the work, while the Hoboken Land & Improvement Company were ready to do theirs. The act, nevertheless, provides that the Commissioners shall estimate the *probable* cost of the improvement on the northerly section and assess twenty per cent. thereof on the towns, and "the amount so "to be collected from the towns shall be applied to the re-"lief of the property on the same portion of the Bulls Fer-"ry and Branch roads and in the same manner as is pre-"scribed in section ten" of the act of 1873, "*the assess-"ment, however, to be made as provided in said section ten "and the credits shall be given and allowed as therein pro-"vided.*"

The legislature is here, again, careful to direct the surplus fund to be applied in relief of the favored portion of the middle section, and declare again in substance that the assessment was *first* to be made according to benefits and not exceeding them, and *then* that the credits were to be given and allowed on the assessments themselves, and not on the amount to be assessed before making the assessment.

On the strength of these acts the consents of the landowners were obtained and the work done.

The view that the fund directed to be credited was the twenty per cent. of the cost of the end sections, amounting to $13,314.34, was adopted by the Court below (Opinion p. 7, top), and that is the credit which we claim should be distributed over the assessments on the favored portion of the middle section.

V.

The effect of Sec. 2, Act of 1875, was to remove the limitation of the earlier acts by which the assessment was confined to the lands fronting on the road, and to extend the assessment to all lands benefited.

We contend that the Commissioners did not follow where the act directed them, and failed and refused to assess lands which were benefited quite as much as those assessed.

Take plot 1150 at the extreme northerly end of the improved part of the same as an example. It is assessed $2,572.98, while the adjoining lot to the north is not assessed at all. It is impossible to suppose this adjoining lot was not benefited nearly as much as the one assessed.

Reid, p. 35, l. 18, to p. 37, l. 20.

So with plot No. 6 on the northerly corner of Nineteenth street. That is assessed $280, while the lot on the southerly corner of the same street escapes assessment simply because it does not front on that part of the road which was improved.

Reid, p. 39, l. 23–38.

I submit that it is impossible to conceive how what is called special benefits to be derived from a road can be confined to the frontage on the road. If there be such a thing as a "special benefit" to arise from improving a portion of a public highway, it must necessarily extend beyond the limits of the particular improvement, and at least take in all persons living on the line of the road.

Mr. Reid appeals to the principle of "*general reciprocity in the use of roads*" (p. 37, l. 10).

But I submit that that principle does not extend so far. The inhabitants of one political district—say a township—have the right perhaps to say to those of another: We work and keep our roads in repair, and you do the same to yours, and the inhabitants of each have the free use of the roads of the other. This is an illustration of "*reciprocity in the use of roads.*"

But suppose two plateaus—whether in the same or a different political district, matters not—one at a higher elevation than the other and separated from it by a steep, rocky declivity or bluff; a road traverses the plateaus, passing up and down this bluff. The dwellers on the plateaus are naturally anxious to have the grade at that point reduced, and the work is done, covering, perhaps, but a small fraction of the whole length of the road. What justice would

there be in fastening the whole cost of the job on the owners of the lands fronting on the fraction improved, leaving those fronting on the other portions to escape, while it is palpable that those latter persons must use that part of the road quite as much as their neighbors at the bluff?

The doctrine of the *Agens* case is that the legislature has the constitutional right to fasten upon any particular political district, by *means of taxation*, the burthen of a public improvement within its limits, without regard to the measure of benefit received. But the injustice of so doing in an instance—quite supposable—where the improvement though lying in one political district accrues mainly or largely to the benefit of another political district, is manifest. Hence the lawmaking power may also assess the actual benefits, wherever they are felt, without regard to political limits.

This road is shown to be the main thoroughfare by which the inhabitants of that part of the hill lying to the north and west of it reach the water front and ferry.

Reid, p. 40;
Brush, p. 62, l. 20—30; p. 63, l. 35—65, l. 5.
Frost, p. 76 *et seq.*
Duer, p. 69 "
King, p. 79 "

VI.

The Horse Railroad Company should have been assessed on account of their railroad and roadbed.

It is palpable that the road was widened in its most expensive parts for its benefit. Its varying width proves it. *Bonn*, the President of the Railroad Company, was one of the Commissioners. The town of Union applied to the Commissioners to modify their plan already adopted. But the Commissioners did not make the proposed change in the plan until consent was obtained to lay an additional track on that part of the road.

That the change in the grade of the road is a great benefit to the R. R. Co. cannot be seriously disputed. That

the opportunity to lay a double track instead of a single one is also a great benefit cannot be disputed.

The Commissioners declined to assess the Company because their track &c. is not "*land.*"

The act directs the assessment to be made on all "*land and real estate.*"

I submit that the right to lay down and maintain a railroad track is an easement in land, and the track itself, when laid down with the right so to maintain it, is *real estate* in the strictest sense of that phrase.

This right is not a franchise. The franchise of the Company exists in the exercise of corporate powers, of the right of eminent domain and of taking tolls. These are parts of the prerogative of the sovereign. But the right of way acquired by the R. R. Co., whether by the exercise of eminent domain, by conventional purchase, or by grant from a municipal corporation, is no part of the franchise. It is a right acquired and held *by virtue of* the franchise, but it is a right in land which lies *in* and is acquired *by* grant, viz.—an *incorporeal hereditament.*

The rails and ties when laid down are clearly *real estate*, and pass with a conveyance of the land.

Van Keuren v. Railroad Co., 9 Vroom 165.

In *Farmers' Loan and Trust Co. v. Hendrickson*, 25 Barb. 484 at p. 493, the Court says: "The property of a "railway company consists mainly of the road bed, *the* "*rails upon it*, the depot erections, and the rolling "stock, and the franchise to hold and use them. The road "bed, *the rails fastened to it*, and the buildings at the de-"pots, are clearly *real property.*"

In *New Haven v. Railroad Co.*, 38 Conn. 422, the question was, as here, whether a horse railroad company was liable to an assessment for the cost of the improvement of the street through which its track was laid under an act which directed the assessment to be laid upon the owners of "*property*" especially benefited, and it was held that it was.

I quote from p. 430, 431.

"The next question in order is whether the defendant "was liable to assessment, in respect either to its property

"or its franchise. It is conceded that all the proceedings "in making the assessment were regular in form, and that "the improvement for which it was made was authorized "by the city charter. The objection is chiefly that the "charter does not authorize an assessment upon the de-"fendant's property. The principal act, after authorizing "the court of common council to order certain improve-"ments, including the one now under consideration, pro-"vides that said court 'may, upon the execution of any "'such order, assess upon the persons whose *property* is "'especially benefited thereby a proportional and reason-"'able part of the expense thereof, and may estimate the "'particular amount of such expense to be paid by any "'such person,' &c. The word '*property*' as used in this "act, is broad enough to embrace at least some of the prop-"erty owned by the defendant, so that perhaps it is unnec-"essary for us to consider whether the mere franchise is or "is not liable to assessments. The defendant's property "consists in part of rails, sleepers, ties and spikes, so laid "into and attached to the soil in the street where the im-"provement was made *as to become a part of the realty.* "*That property so situated is real estate has been repeated-"ly decided. Providence Gas Co. v. Thurber*, 2 R I., 21; "*City of Chicago v. Baer*, 41 Ill., 306; *Appeal of North "Beach & Mission R. R. Co.*, 32 Cal., 499; *Farmers' "Loan & Trust Co. v. Hendrickson*, 25 Barb., 494. We "entertain no doubt that this ought to be regarded *as real "estate*, and as such liable to assessment like any other "real estate especially benefited, unless there is something "in the charter showing that the legislature did not intend "that this species of property should be assessed."

In *Providence & Wooster R. R. Co. v. Wright*, 5 Rhode Island 459, it was held that "the rails, sleepers, bridges, "&c., of a railroad corporation, *together with their ease-"ment in the land*, are *real estate*, and, as such, liable to "taxation."

This case was approved and followed in *Northern I. R. R. Co. v. Connelly*, 10 Ohio State Reports 160, at p. 164.

In *Providence Gas Co. vs. Thurber*, 2 Rhode Island p.

15, it was held that "a grant to a corporation by charter, "repealable by the legislature, of a right to lay gas pipes "in public streets is not a mere revocable license, but an "*easement or incorporeal hereditament*, and the pipes laid "by virtue of it are fixtures, and the grantees of the right "cannot claim that the right is void because no compensa-"tion was allowed to the owners of the soil;" and further, in the same case, that "a personal chattel" (the gas pipes) "becomes a fixture so as to *form a part of the real estate* "when it is so affixed to the freehold as to be incapable of "severance without injury thereto."

In *The Appeal of the North Beach Railway Co.*, 32 Cal. 499, it was held that "the interest of a railroad com-"pany in a street in which it is authorized to lay down rails "and run cars over them for hire is an *easement in land*, "and the rails laid down and annexed to the soil become "a portion of the *real estate* of the company, and such es-"tate is capable of being enhanced in value by the im-"provements of the street, and is liable to be assessed up-"on the same principle as *land*."

The opinion in this case was prepared by Judge Sawyer, now Judge of the U. S. Court for that circuit, and contains an elaborate and exhaustive discussion of the whole subject and a complete review of all the cases, and I particularly request the Court to examine it. Two members of the Court dissented on the ground solely that the act did not provide for an assessment according to benefits.

To the same effect are

City of Chicago vs. Baer, 41 Ill. 306, cited in 38 Conn. *supra*;

Parmelee vs. Chicago, 60 Ill. 267.

Chicago City R. Co. vs. City of Chicago, 90 Ill. 573.

S. C. 32 Am. Rep., p. 54.

City of Chicago vs. Baer is a precedent in point in the respect that the assessment was set aside at the instance of other parties assessed because the Railway Company was not assessed. That is, the Court did just what we are asking the Court to do.

In *Troy & Lansingburgh R. R. Co. v. Kane*, 9 Hun., N. Y., 506, it was held "that under an act authorizing an

"assessment of the expense of making certain local "improvements upon the property benefited and providing "that such assessment shall be a lien upon the *real estate* "named and described in the report of the Commissioners, "and authorizing the sale of the *real estate* so assessed, the "expense of constructing a sewer in one of the streets of "the city may be assessed upon *the track, sleepers and* "*rails* of a railroad company which are laid in the street."

And this decision was affirmed unanimously by the Court of Appeals in

72 N. Y. 614

The same ruling has been made in Iowa.

Burlington & M. R. R. Co. vs. Spearman, 12 Iowa 112; also in 16 Iowa 348.

Also in Indiana.

Peru & I. R. R. Co. vs. Hanna, 68 Indiana, 562.

In *Philadelphia v. P. W. & B. R. R. Co.*, 33 Pa. St. 41, it was held that the track and land strip of the Company could not be sold to pay an assessment for a portion of the cost of paving a street adjoining and parallel to it, on the ground that the R. R. Co. could not possibly be benefited by the paving and was not within the spirit of the act authorizing the assessment.

And in *Junction R. R. Co. vs. Philadelphia*, 88 Pa. St. 424, the same ruling was made in the case of the paving of a street which crossed the railroad above grade by a bridge.

These cases are all I have found appearing to be in opposition to those above cited, and they are clearly distinguishable.

In *Appeal Tax Ct. vs. Western Maryland R. R. Co.*, 50 Md. 274, it was held that the easement enjoyed by a railroad in the bed of a public street may be assessed and taxed *as real estate.*

In *Milhau vs. Sharp*, 27 N. Y. 611, it was held, upon thorough consideration, that a grant by a municipal corporation to a R. R. corporation of the right to lay down rails for a street railroad (p. 620) "amounted to an imme-"diate grant of an interest, and, it would seem, of a *free-*"*hold interest* in the soil of the streets. The rails, when "laid, would become a part of the *real estate.*"

In *The People vs. Cassity*, 46 N. Y. 46, it was held (p. 49): "that the track of the relators, consisting of "stringers, ties, and rails, affixed to the land, is, for the "purposes of assessment and taxation, *land*, *real estate* and "*real property*."

And in *The People ex rel. v. Commissioners of Taxes*, 82 N. Y. 459, affirming same case 19 Hun, it was held that "the foundations, columns and superstructure of the "elevated railways" of New York are liable to taxation as *real estate*.

There seems, then, to be a great wealth and overwhelming weight of authority in favor of the position that a street railway, track, and right of way, are "*land and real estate*" in even the narrowest sense of those terms.

The case of *The State vs. The City of Newark*, 3 Dutcher 185, does not conflict with this line of decision, as a very slight examination will show.

The attempt was there made to assess the *N. J. R. & T. Co.* a round sum of money to help pay for widening the lower end of Market street, across which the tracks of the R. R. Co. were laid. The act did not direct that this assessment should be made, so far as it affected the railroad, according to benefits received, or upon any such basis. On the contrary, the Commissioners were authorized by the act to "assess *such portion* of the damages and ex-"penses" (of widening the street) "upon the corporation "owning or using said railroad track *as to them shall seem* "*equitable and just*."

The Court held this to be essentially a tax and not an assessment for benefits received, and therefore forbidden by the charter of the Company.

The distinction between a *tax* and an *assessment for benefits* was taken and pointed out, and the impossibility of considering the imposition in question to be the latter was shown, and incidentally that the railroad could not be peculiarly benefited over and above the public at large by the improvement there made. The question whether the rails, ties and right of way of the Company were real estate or not was not mooted, nor has the case, either in the

facts or principles involved, the least real resemblance to the case in hand.

The North Hudson County Railway Co. was originally incorporated as The Hoboken & Weehawken Horse Railroad Company by act of February 14, 1860, (Pamp. 63), and supplement of March 22, 1860, (Pamp. 630). Power of condemnation was given by this charter.

By supplement of March 15, 1861, (Pamp. 516), it was authorized to cross or *use* any road or highway, &c., upon making compensation, &c.

By Supplement of March 24, 1863, (Pamp. 470), it was authorized to use dummy engines with the consent of the municipalities through which its tracks were laid.

By the Act of March 29, 1865, (Pamp. 606), it was authorized to purchase two other horse railroads, and its name was changed to The North Hudson County Railway Company, but was forbidden to use dummy engines south of King's gate on the Bulls Ferry Branch Road.

The railroad has been built and is being operated by lawful authority, and has presumably acquired either by grant or condemnation the right to lay and maintain its track along and upon this public highway, and reason, justice and the law of the land unite in classing that track and the right to maintain it as "*land and real estate*," and, as such, to subject it to assessment for the cost of a work which, in substance, provided it with a graded road-bed.

VII.

Upon the whole case it is manifest that great injustice has been done to the Prosecutors. Twenty-eight thousand dollars has been assessed upon their lands directly, and an unfair proportion of the deficiency has been cast upon the township of Weehawken to be raised by general taxation upon its taxable property, of which the Prosecutors are large holders.

Had the property of the R. R. Co. been properly assessed, had the assessment been extended according to the letter and spirit of the supplement of 1875, as far as the benefits were felt, it is to be presumed that not only would the

assessment against the Prosecutors' lands have been reduced, but the total amount assessed on lands in Weehawken as compared with that in Union greatly reduced, and in this the Prosecutors are deeply interested. And, above all, they have not received the "*credit*" provided for by the act of 1873.

It is manifest that the so-called assessment upon the lands fronting on the two end sections was a mere farce. It amounted in each case to the exact amount to a cent of the cost of the improvement on those sections, viz.: $43,-180.90 on the southerly end, and $23,390.71 on the northerly end. It is impossible to believe that this coincidence was fortuitous; and yet Mr. Reid deliberately swears that it was.

Reid, p. 49, l. 26–p. 50, l. 15.

I quote—

"(Q). Section three commenced where and ended where?

"(A). Commenced at the northerly point of the road "improvement and extended to Fulton street, I think.

"(Q). What was the cost of that section?

"(A). I can't tell at this time without referring to the "return.

"(Q). The return is here; please refer to it and tell us.

"(A). Referring to the return I find it to be $23,-"390.71.

"(Q). What is the amount of assessment on lands on "the third section?

"(A). I can't tell without adding them up; *I would "say in our assessment we paid no attention to sections, "where they began or ended*, but I believe from a hasty "calculation made at this time that the assessment on the "section named was about $23,870.71.

"(Q). Do you mean to say that the assessment on "1138, 1152, 1149 and 1150 and 1151 amounts to $23,-"870.71?

"(A). No; I do not.

"(Q). What do they amount to?

"(A). $23,390.71.

"(Q). *Was it merely an accident that the amount of the*

"*assessment on those five pieces equalled exactly to a penny*
"*the cost of section three?*

"(A). *I presume it was; I never heard the question*
"*raised until to-day.*"

The statement of the witness that the Commissioners "*paid no attention to sections—where they began or*
"*ended,*" is peculiarly striking in the face of the fact that they actually divided a single plot of land belonging to one owner (Brown estate) by a line corresponding to the line of division between the road sections, and made two separate assessments upon it, throwing one part in one road section and the other part in the other section.

Reid, p. 50, l. 30—p. 51, l. 8; p. 51, l. 32—p. 52, l. 1.

I quote—

"(Q). Looking at plot 1148, where is the southerly line of that plot?

"(A). It is not marked on this map, but I think it is a
"few feet north of the centre line of Fulton street. Why
"it was not put on this map I can't tell, and in looking at
"the map I can't tell where it should come on the map.

"(Q). Plots 1148 and 1147 both belong to Mr. Brown,
"do they not?

"(A). Yes, so I understand.

"(Q). *Why were they divided into two plots?*

"(A) *That I don't remember.*

"(Q). *Was it not done because one plot was in section*
"*three and one plot in section two?*

"(A). Not that I know of.

"(Q). Who does know?

"(A). I don't know who can tell unless it would be the
"surveyor—that was Mr. Spielman."

* * * * * * *

"(Q). What was the cost of section one?

"(A). $43,180.90, as appears by reference to the return.

"(Q). How much was assessed on the lands in section one?

"(A). $43,180.90.

"(Q). *Was it an accident that the assessment on that* "*section exactly equalled the cost to a penny?*

"(A). *I don't know of any design in it.*"

* * * * * * *

"On the last day of the examination I had some doubt "as to the proper location of the line dividing Mr. Brown's "property, running from east to west—I mean plots bill "number 1147 and 1148. Since that time I have deliber-"ately scaled it off, and also had Mr. Brush, the engineer, "to assist me in doing so, and found that said line, which "is the southerly boundary of section three on the east side "of the Bulls Ferry road, should be located directly oppo-"site the centre of Fulton Street."

Now the centre of Fulton Street is the division between sections 2 and 3.

In the face of the evidence above quoted and the palpable truth of the case, I submit that no reliance can be placed either in the evidence of Mr. Reid or the fairness and justice of his assessment.

His attempt, on page 52, to explain this testimony and bolster up the assessment is a painful failure. It substantially admits that the Commissioners did not take into account the important consideration of relative or proportionate benefits, but assessed all upon the adjacent lands that they could without going beyond benefits. The cost of the southerly section was all assessed on The Hoboken Land & Improvement Company without sufficient regard to the benefits its improvement would confer upon lands to the North and West and lying outside of Weehawken, and thus an undue proportion in the final division of the deficiency is thrown on Weehawken.

I submit that there has been a plain and serious miscarriage, and that the assessment should be set aside.

J. J. Griffiths, Law Printer, 38 Montgomery St., Jersey City.

N. J. Court of Errors and Appeals.

The State,
A. Gracie King, et als.,
Pros.,
vs.
Abraham W. Duryee, et als.,
Commissioners.

DEFENDANTS' BRIEF AND POINTS.

Abel I. Smith, Atty.

Twelve reasons have been filed by the prosecutors against the assessment made in this case. Of these *eleven* are special *reasons*, and one general.

The first, second and third reasons are all based on the same ground, viz., that the appointment of the two commissioners, John Reid and George P. Schinzel, was illegal, and they can therefore be considered together.

Full authority for their appointment will be found in section 7 of original acts.

Both of these persons owned lands within the area of this assessment that were specially benefitted and assessed.

See testimony of John Reid, page 43, lines 10–25, also John Bonn p
and there could be no greater disability than this.

There was therefore a disability and a vacancy which was filled as directed by law. The proceedings relating thereto were in every respect regular.

See pages 6 to 11 of printed return to writ.

No notice was required by the statute, and would have been useless. The remaining commissioners were authorized by law to name the commissioners to fill the vacancy by petition, and no objection can be made on the ground of "want of notice," if the commissioners as appointed possess the necessary qualifications, and there was no interest or incapacity on their part.

The Legislature had the authority and power, to provide in such manner as it deemed best, for the filling of these vacancies, which was done in this case in a way usual in this State.

I refer to such cases as "An Act to establish The Long Branch Police Sanitary and Improvement Commissioners," Pam. Laws, 1877, page 976, and a large number of similar acts.

The appointment of commissioners of assessments in cities by the municipal authorities.

I refer also to case of State vs. City of Newark (3 Dutcher 197), where the following is laid down: "Secondly, it was insisted that the Common Council had no right to substitute other commissioners in the place of those who resigned. The sixth section of the supplementary acts of 1849, p. 206, provides that in case of the death or disability of one or more of said commissioners, it shall be lawful to supply the place so vacated. The word *disability*, as here used, is, in my opinion, extensive enough to cover, and was designed to cover *any cause which prevented the commissioners from acting.* No power could compel them to continue to act if they thought proper to decline. The right of resigning an office or employment is universally recognized in our practice, and seems indispensable. If accepted by a power which has a right to fill a vacancy, it becomes complete, and the officer is held to be no longer capable of acting. There is, in such a case, a disability which may be lawfully supplied."

If the prosecutors seek now to invalidate the proceedings of the two commissioners who resigned, I submit that they are too late, and the decision of the Supreme Court on that branch of the case is abundantly sustained by a whole line of decisions well known to this Court. The resigning commissioners had nothing whatever to do with the making of the assessment in question, their acts being confined to the actual construction and improvements of the road, and I do not understand that either of the reasons attack the preliminary work and proceedings.

As to the fourth reason—

It is true as stated in said reason, that the commissioners have assessed the land of prosecutors the full amount of the benefit the said lands so assessed received by reason of the said improvement. It is also true that the commissioners have not credited upon the specific amounts assessed against the lands of prosecutors, and other particular lands in that portion of the Bulls Ferry Road lying between Union street and Weehawken street and the Branch Road lying between Weehawken street and the southerly line of the lands formerly of James G. King, the twenty per cent. assessed against, and paid by, the Town of Union and the Township of Weehawken, or any part thereof, but the result of the assessment as made is, that there has in fact been allowed and applied to the portions of said road in question all the moneys assessed against the said town and township, and said amounts have in fact been credited on the cost of said favored portions of said road.

There has been a substantial compliance with the act, and at the same time a legal and valid assessment has been made.

The act approved March 18th, 1875, is the principal act under which the assessment was made and

governs it. The return and proceedings show a strict compliance with this act. Said return and the proceedings both of the old and new commissioners, and the evidence taken in this cause, show, among other things—

1st. That the road was finished and completed according to the requirements of the act, and the plans, specification and contract, on December 7th, 1877.

2d. That the commissioners then proceeded to ascertain, and did thereby ascertain, the whole cost and all the incidental costs of said improvements, including up to July 1st, A. D. 1881, interest payable on all moneys, to be $217,691.36.

Cost of 1st section	$43,180 90
" 2d "	151,119 75
" 3d "	23,390 71
	$217,691 36

3d. That this was arrived at as appears by reference to the proceedings of both the old and new commissioners, by the most careful and detailed examination of every item of cost, and of all work done and materials furnished in the matter of said improvement. I refer in this connection to the minutes of said commissioners, to the reports of the engineers in charge, to the report of the committee of the whole, to the report of the commissioners making said assessment.

4th. That 20 per cent. of the whole cost of said improvements was then ascertained.

5th. That 10 per cent. of the whole cost of said improvements was then ascertained, amounting to $21,769.14, which under the provisions of the acts governing said improvements, became chargeable and payable by the Town of Union and the remaning 10

per cent. by the Township of Weehawken, making together $43,538.29, said 20 per cent. of the whole cost of said improvements.

6th. That the 80 per centum of the whole cost of said improvements and all incidental costs was then ascertained, and amounted to the sum of $174,153.09, and that said sum, less $22,640.47, the excess of said 80 per cent., was assessed upon the lands and real estate benefitted by such improvement and in proportion to the benefits received and as required by law. Reference being had to said report will fully appear. And that said sum of $22,640.47 was duly assessed upon said town and township as provided in said act of 1875. Reference being had to said report will fully appear.

The result being as
1st 20 per ct.
The bal 80 pct assessed as
Assessed on Sect 1
" " " 3
" " " 2
Excess over costs
Total cost of Imprvt

7th. That the lands of prosecutors have been assessed to the extent of the special benefits received from said improvements and no more.

8th. That the cost of the improvement in front of the favored portions liable to assessment and being said portion of said road lying between Union street and Weehawken street and the Branch Road lying between Weehawken street and the southerly line of the lands formerly of James G. King, was the sum of $86,616.75, and that the assessment on lands fronting on said portion of said road and Branch Road amounts to $35,036.00. See explanatory note page 19 of return.

Taking therefor said sum of	$86,616 75
and deducting therefrom said sum of....	35,036 00
we have the sum of.....	$51,580 75

applied to the cost of said portions of said road and Branch Road and thereby giving said portions not only the benefit of the amount claimed by prosecutors, but a sum in excess even of 20 per cent. of the whole cost of the improvement which amounted to $43,538.28.

9th. That the first and third sections of said road were improved by the owners of the lands and real estate along the line of said road within said sections at their own expense, under the supervision and subject to the directions of the commissioners, and that the total of assessments on lands benefitted in said sections and according to benefits received amounts to the whole cost of said sections.

The whole assessment, outside of said 20 per cent., is based upon benefits actually received, and the result of such an assessment, as it appears in this case, is this :

1st. An amount representing the benefit actually received is assessed upon the prosecutors' lands, which, in law and justice, should be paid.

2d. The favored portions of said road receive, practically and substantially, the benefit of the 20 per cent.

3d. No part of the cost of sections 1 and 3 is imposed upon the lands outside of said sections, or is paid by the said Town and Township.

4th. An assessment is made in strict compliance with the act of 1875, and in substantial compliance with the former acts, and section 10 of the act of 1873 : and

5th. A legal and fair assessment is made, and no injustice is done to the Town and Township at large.

These seem to have been the conclusions of the Supreme Court on this branch of the case, as by reference to the opinion will be apparent.

No assessment except according to benefits received would have been legal, and no law or assessment that relieved the prosecutors from paying the benefits actually received by their lands from said improvement could be sustained.

Explanatory Note.

See pages 19 & note of 20.

The direction in the tenth section of the supplement of April 3d 1873, as to allowing and applying the amounts assessed on the town and township, in relief of certain portions of the land liable to assessment, and substantially complied with by our following as we have, the directions of the supplement of March 18th, 1875. This is manifest when it is considered that the original act of April 4th, 1872, in its eleventh section, contemplated an assessment according to frontage, and the direction in said act of April 3d, 1873, was in view of an assessment according to frontage. The cost of the improvement in front of the favored portions liable to assessment, was the sum of $86,616.75. The assessment, however, as above shown, amounts only to $35,036.00, from which it is apparent that the said direction was substantially complied with, in assessing the land benefitted, according to law.

The insistment of the prosecutors is, that in making their assessment, said commissioners should only have considered section 2; and that $13,314.32, being an amount equal to the 20 per cent. of the cost of sections 1 and 3, should be credited upon the assessment on the favored portion, amounting to $35,036.00 and that there should have been a specific determination by the commissioners of the portions of the road within the favored limits, to which said credit should have been applied, and that said credit should then have been made upon the assessments on the lands lying within such specified portions.

The objections to this are—

1st. That an assessment made in the way suggested by prosecutors would not have been in accordance with the supplemental act of 1875, section 2 of that act providing, among other things, "that the 80 "per centum of the whole cost of the fixing and es- "tablishing the said grades, &c., and all incidental "costs, *of such improvements, whether* heretofore done "under said acts, or said acts as hereby construed, "or hereafter to be done thereunder or hereunder, "shall be assessed upon and collected out of the lands "and real estate benefitted by such improvements in "proportion to the benefit received, &c."

2d. The result would be that $13,314.32 in excess of the actual cost of the improvement would have been raised and assessed upon and paid by the Town and Township; or, in other words, taking the act of 1875, there would be an excess of said 80 per centum of cost over benefits received, to the extent of the above sum; or, putting it in another way, there would have been a deficiency to the extent of said credit, which would have been added to the excess assessed upon the Town and Township at large, and which the inhabitants of those townships would have been compelled to pay, by tax, and to what

end? To relieve prosecutors and others from a just and beneficial burden.

3d. It would be unjust. No good reason can be shown why these prosecutors and all others on said favored portions in question should not pay an assessment on their lands to the extent of the benefit actually received, and why they should be relieved in the manner suggested at the expense of the Town and Township.

The amount as it appears assessed upon lands fronting on said favored portions amounts to $35,036. Said tenth section of said act approved April 3d, 1873, and the 11th section of the original act contemplated an assessment according to frontage.

If the 20 per cent. in question, $13,314.32, were credited according to said section 10 as insisted by prosecutors upon *all* the lands fronting on said portions in question, the result would be that said lands would pay less than two-thirds of the actual benefits received, and if applied to specific portions according to the uncertain judgment of the commissioners, some of the lands might have fared mnch better. And this would be at the expense of the taxpayers in the Town and Township—many of whom had paid in full their assessments for the same improvement.

4th. It would be illegal. It would compel the said Town and Township to pay, and the inhabitants thereof to be taxed to raise an amount to relieve the prosecutors and certain others from paying what in law and justice they ought to pay, viz., the amount to which their lands are justly and fairly benefitted.

The result would have been that the prosecutors would have had their lands benefitted, and the people of the Town and Township would have been compelled to pay for the same.

No such assessment could be sustained.

THE FOLLOWING FIGURES SHOW THE RESULT.

Total cost of Improvements			$217,691 36
MADE UP AS FOLLOWS.			
By Assessment on section 1	$43,180 90		
" " " " 3	23,390 71		
	$66,571 61		
" " " " 2	84,941 00		
Making amount of total assessment on lands benefitted	$151,512 61		
Twenty per cent. assessed on town and township	$43,538 28		
Excess over benefits paid by town and township	22,640 47		
Total	$217,691 36		
On the above amount of $84,941, there was assessed on the favored portion		$35,036 00	
If you take from the 20 per cent. $43,538.28, 20 per cent. on cost of sections 1 and 3, viz: $13,314.32 and credit it on the above assessment on favored part		13,314 32	
The favored portion would pay		$21,721 68	
And that would leave a deficiency in the amount realized from the 20 per cent., of just that amount, so that there would have to be added to the above excess assessed on town and township			$22,640 47
This deficiency			13,314 32
Making the total excess			$35,954 79

5th. It would have been impracticable. As stated already the 10th section of the Act of 1873, and the 11th section of the original Act contemplated an assessment according to frontage, The assessment as made under the Act of 1875 was upon all lands benefitted, and many tracts of land, not on the road, are assessed. While the credits might have been applied upon a frontage assessment, it would be impossible to designate where the assessments are upon all lands benefitted. Where would the line be drawn and what would be the area. This will be apparent by an examination of the assessment map. The prosecutors in this reason admit that their lands are assessed to the extent of benefits received, and that disposes of the whole reason.

As to the fifth reason—

The report of the commissioners shows affirmatively that they ascertained, determined and took into consideration, all the lands benefitted, and included the same in the assessment. See page 18 line " " 43 "

There is no evidence in the case sufficient to overcome this determination and conclusion of the commissioners who have been upon and examined the ground.

The prosecutors or their counsel might have arrived at a different conclusion if they had been assessors, but it don't follow therefore, that the commissioners erred. The determination of this matter was conferred by the legislature upon them, and their finding should not be set aside for slight reasons.

As to the sixth reason—

By the provisions of the act of March 18th, 1875, the whole cost of the improvements, and all incidental costs, were to be assessed as in said act di-

rected. By section 9 of the act of March 27, 1874, the town and township are empowered to issue bonds bearing interest at seven per cent., to raise money to pay the assessment levied against said town and township at large for the widening and improving of said roads.

By the 5th section of act of March 18th, 1875, this section was amended so as to allow the issue of said bonds at any time, without waiting for the ascertainment of the assessment.

It appears from the testimony of Mr. Sayles, that interest at seven per cent. has been collected by direct tax for six full years on $600,000 worth of bonds issued by the Township of Weehawken. He estimated that out of that, $15,000 were sewer bonds and the balance road. The evidence on this point is mere hearsay on the part of the witness and not very certain. The aggregate amount of interest raised on road bonds is not shown, except in a general way. See pages 67 & 68

But admitting for the sake of argument that bonds were issued under said acts to the extent of $45,000 or any other sum, on account of this road, and that the interest thereon has been raised by tax, no reason thereby is afforded for not including in the cost of the improvement all interest on said cost.

By section 6 of act of April 3d, 1873, all the money necessary was to be raised by certificates issued by the commissioners, which were to bear seven per cent. interest, and which were sold as required. The commissioners had nothing to do with the bonds issued by the town and township. If the town and township issued bonds and sold them and then advanced to the commissioners any sum of money realized from said bonds or otherwise, it was as between the town and township and the commissioners a loan or advance of so much money to be credited to the town and township, with interest from date of payment by said town and township.

The town and township did not give the commissioners $45,000 or any other sum to be used in these improvements, and intend, when the assessment came to be made, that said town and township were to be simply credited with the amount advanced, without interest. As between the township and the inhabitants thereof the interest on the bonds was to be raised by taxation. As between the township and the commissioners, the money advanced on account of these improvements, was to be credited to the township with interest.

This was the only fair and reasonable method that could have been adopted. Otherwise the township would have lost the interest on the money which it advanced, and which went into the improvement, and which the property owners had the benefit of and which would have been very material if the assessment for benefits had equalled the cost of the improvements.

But it makes no difference in this case, and is of no great importance. The note to report found on page 24, printed book, explains the whole matter.

By an examination of the report of the committee of the whole, Exhibit a balance sheet will be found on page 115, showing the exact condition of the account between the Township of Weehawken and the commissioners on January 1, 1881.

By this it will be seen that the Township of Wee-

hawken had on that date a credit with the commissioners of.....		$45,855 96
Add to this interest from January 1, 1881, to July 1, 1881, 6 months, on $31,788.89, taken as the amount of principal due from the commissioners to the township for money advanced, and it makes.....		1,112 61
A total credit of.....		46,968 57
After the assessment there was due to the commissioners and payable by the township the 10 per cent.....		21,769 14
Leaving a credit still of.....		25,199 43

The township has to pay the further sum of $15,489.87.

This and the further sum of $9,709.56 has already been raised, and the township will have to raise just that much less.

As to the seventh reason—

There is no evidence to show that the cost of the improvement is in any way increased by expenses not authorized by the act. But even if it were true that such were the case (which is not admitted), the unauthorized expenses would have to exceed the 20 per cent. paid by the town and township, $43, 538 28 and the excess assessed upon them, viz.,

In Weehawken.....	15,489 87	
" Union.....	7,150 60	
		22,640 47
Total		$66,178 65

Or it would not affect the prosecutors so far as this assessment is concerned, only as general tax payers in Weehawken when the share of Weehawken is raised by taxation on its inhabitants.

The illegal items of cost, if any exist, are included in the amounts assessed upon the town and town ship, and it is submitted that the prosecutors cannot object to the same in this suit. It cannot effect them unless the total of unauthorized and illegal expenses exceeded the amounts assessed upon and paid by the town and township at large. The township authorities have had notice of the amount assessed against the township and made no objection, and if any illegal item were included, which is not admitted, and has not been shown, it will be presumed to have been included in the assessment upon the Township and Town at large.

But it is submitted further that Weehawken could not object, unless the illegal and unauthorized expenses are shown to exceed the amount paid by the Town of Union, viz.:

Ten per cent	$21,769 14
Excess	7,150 60
	$28,919 74

The whole assessment should not be set aside in any event, for this reason; the assessments of prosecutors can and should be reduced to the extent that the illegal or unauthorized expense affected their assessments, if any such are shown to be included.

As to the eighth reason—

There was no irrepealable contract between the State and the prosecutors and others liable to assessments.

The act of 1872 provided for an assessment on the frontage, which it is well known would have been illegal under the decisions of our courts.

The act of 1873, section 10, was based on section 11 of the act of 1872, and provided, as already shown, for an unjust and illegal assessment, but even if it

were otherwise, and a valid assessment could have been made under said acts, it would make no difference in this case.

The Legislature had the power, and exercised it, of passing the supplementary act of 1875, providing for a legal assessment, and, as stated in the preamble of the act, to conform to the decision of the courts, it was a remedial act.

That such an act can be legally passed by the Legislature, cannot be questioned at this late day, after it has been well settled by numerous adjudications, both in our State and elsewhere.

Cooley on Taxation, page 191–192, star page.
State v. Brannin, 3 Zab. 485.
State v. Readington, 7 Vroom 66.
State v. Union, 2 Vroom 350.
State v. Apgar, 2 Vroom 358.
State v. Guttenberg, 9 Vroom 419.

As to the ninth reason:

This reason should not be considered by the court.

Due and legal notice was given by the commissioners of their assessment, map and report, and that they would meet May 17th, A. D. 1881, to receive, hear and consider any and all objections to said assessment presented to said commissioners. In obedience thereto the prosecutors presented objections, through their attorneys, Messrs. Scuddder & Vredenburgh. No objection of this kind was made then, and should not, therefore, be entertained now. Prosecutors should be held to their objections filed with commissioners. This affects the amount of property assessed, and could have been considered and corrected by the commissioners if objection had been made, and it were well founded.

Such an objection is too late after the assessment has been finally confirmed.

There is nothing in the objection on its merits.

There is no evidence produced that any of the real estate of the said company is specially benefitted by said improvement.

The reason uses the word "property," if by that is meant the tracks, road-bed, and capital stock and rolling stock of said company, then I submit that the same is not liable to assessment.

1st. It is not real estate or land, within the provisions of the acts authorizing the assessment. The act says, page 19, "shall be assessed upon and collected out of the lands and real estate benefitted by such improvements," &c.

The railroad does not own its road-bed in the street. It is but an incident to the street. State, Moran v. J. C., 5th Vroom 29.

A horse railroad is a mere use of a street, and this is but a new mode of its legitimate and ordinary use. 5th Vroom 205, citing 2 C. E. G., 76.

In Hinchman vs. Paterson Horse Railroad Co., 2 C. E. G., 80, Chancellor Green, in speaking of horse railroads, says.

"The railroad company acquire no estate or in-
"terest in the land itself, but the mere right to the
"use of the highway, or public easement," citing a large number of cases, &c., and then he adds, "I am
"nevertheless of opinion that the building and opera-
"tion of a horse railroad in the streets of a city,
"under the restrictions and limitations contained in
"the charter of the defendants, by authority of the
"legislature and of the city council, is a legitimate
"use of the highway, and an exercise of the public
"right of travel," &c. A different rule has been adopted in New York and some other States, as to the taxation and assessment of horse railroad companies, and the tracks, &c., of such companies. It will be found by examination that in all the cases where such property has been made liable for any part of the expense of a local improvement, it was under some special provision of law authorizing

the same, and was not an assessment properly but taxation.

In City of New Haven vs. Fair Haven and Westville R. Co., 38 Conn., 422, it was held that the rails, sleepers, ties and spikes of a horse railroad company so laid and attached to the soil of the street as to become part of the realty, were real estate, and as such liable to assessment for the expense of paving the street through which they were laid.

But the charter of the city under which the assessment was made, provided there should be assessed "*upon the persons* whose *property* is especially benefitted thereby a proportional and reasonable part of the expense thereof, and may estimate the particular amount of such expense to be paid by every person."

The opinion says:

"The defendant's property consists in part of rails, "sleepers, ties and spikes, so laid into and attached "to the soil in the street where the improvement "was made as to become a part of the realty. We "entertain no doubt that this ought to be regarded "as real estate, and as such liable to assessment like "any other real estate specially benefitted, unless "there is something in the charter showing that the "legislature did not intend that this species of pro-"perty should be assessed. We have carefully ex-"amined the charter and the various acts referred "to, and are not satisfied that the legislature had "any such intention. There is nothing in them lim-"iting in express terms the meaning of the word "*property*."

In Louisville City R. Co. vs. City of Louisville (4 Bush. Ky. 478), the act provided for an ad valorem tax on *property* in the city, and a tax under that on the horses, stables and blacksmith shops of the company was upheld.

In Providence vs. Worcester Railroad Co. (2 Rhode Island 459), a tax was upheld on the road, but it was a steam railroad, and owned the land where the road

was laid, and that case was decided expressly on the particular statue of the State.

The opinion says—

"Taxation is a subject on which each State has, "and is entitled to have, their own views of justice "and policy. We decide this cause, not upon the "English practice, or the practice of other States, "but upon the plain and unequivocal language of "our statute."

In Middlesex R. R. Co. vs. Charlestown (8 Allen, Mass. 330), a tax was levied upon the personal estate of the railroad company. The tax was not sustained.

The Court says—

"And we think it very clear, that the plaintiffs "were not taxable for any personal property in the "city of Charlestown. They are a corporation es-"tablished by law for the purpose of constructing "and working a horse railroad. The corporation "has no residence. Its stockholders are liable to "taxation upon their shares in the towns where they "dwell. The value of the personal property owned "by the corporation is included as a subject of tax-"ation in the value of the shares, as in the case of "banks, insurance companies, &c."

In appeal of North Beach R. Co., in the matter of widening Kearney street (32 Cal. 499). Held—

"That the interest in a street of a street railroad company authorized by statute to lay down a track in the streets of a city and run cars over it for the conveyance of passengers for hire, is an easement in the land, and the estate of such company in the street is real property." Also—

"The estate of such street railroad company in the streets of the city is property capable of being enhanced in value by the widening of the street, and by such widening a substantial benefit may accrue to the railroad company."

This decision is based entirely on the words of the law authorizing the assessment. The Court says, in giving opinion—

"In distinguishing it from State v. Newark, (3 "Dutch. 186). In the present case the statute re- "quires the expense to be assessed upon the owners "of houses and lands and railroad companies to be "benefitted."

The dissenting opinion in this case is worthy of notice.

By the provisions of the act, the board of supervisors were authorized to make the improvement, and assess the expenses of the work upon the owners and occupants of houses and lands, railroad corporations and companies that might be benefitted thereby.

Laws California, 1868, p. 347, secs. 1–2, 5 and 6.

The whole scope of the acts relating to these im-improvements of the Bulls Ferry and Branch Roads show conclusively that this species of property was not intended by the legislature to be included in "land and real estate," as used in said acts.

I refer to section 10, original act; section 8, act of April 3d, 1873; sections 2 and 3, act of March 18th, 1875.

This railroad would not have been assessable under similar acts, even in the States to which I have called attention.

There is no peculiar benefit shown that the railroad company has derived from this improvement over and above that of the public.

State, N. J. R. R. v. Elizabeth, 8th Vroom 330.

The railroad company and its property has not been specially benefitted in any way by this improvement. It is true that the railroad company has stables and lands in West Hoboken, but they are all outside of the area of this assessment. (See testimony of Mr. Brush, pages 113 and 114, and the assessment map, and maps of the several townships.) If

any amount had been imposed upon this company, it could only have been as a tax and not as an assessment.

State v. City of Newark, 3 Dutch. 186.
Cooley on Taxation, page 456–462.

It appears however that the railroad company instead of being benefitted, was put to large expense, and if they are chargeable with any part of the cost of the improvements, then the amounts paid by them should be added to the cost.

See page 96 lines
" " 97 "

It is not a fact, as stated in the reason, and there is no proof in the case, that the said roads were widened, and the costs of improving the same thereby and in other ways greatly increased entirely for the benefit of said railroad.

Some evidence was offered in the case, and attempt was made, to show that the width of the roads and the grades were fixed with reference to the railroad company, and that they now use two-horse cars instead of one-horse cars formerly.

See testimony of John Reid, pages 30, 31, 32.
See testimony of J. G. K. Duer, page 72.
See testimony of Edward King, page 79.
See testimony of Louis C. Hauenstein, pages 82, 83, 84.

The answer to all this is, that the plans and profiles showing the width and grade and character of the improvements, were duly submitted to the property owners before the improvements were made, as required in section 8 of act of April 3, 1873, and full and detailed notice thereof was given to all persons interested, inviting objections thereto, and no objections were made—see notice and minutes—and the improvement was completed according to said plans, except a portion of Union street, where the grade was changed in accordance with the request of property owners, some of the prosecutors included,

and this portion was completed accordingly. I refer to grade maps, minutes showing adoption of grades, application for change of grade, notice of filing plans, &c., and inviting objections, and posting and advertising same; minutes showing that no objections were presented, petition to change grade at Union street.

Testimony of Mr. Brush and report that road was finished according to said plans. Testimony of Mr. Brush that A. Gracie King, one of the prosecutors, and the person who at that time represented all the prosecutors, had copies of these grade maps, and was consulted about the same and made suggestions, and that changes were made to conform thereto, and that the engineer of the Kings was consulted at the request of Mr. King. Testimony of Mr. Brush and Mr. Bonn, that the railroad was never considered in the matter.

I submit, in the face of all this, that it does not lie in the mouth of these prosecutors to make any objection now on account of the grade, width, or character of said improvement. They had but to suggest a change and it would have been made, but they were silent and approved and this reason if it had any merits should not be considered now.

As to the tenth reason—

The act provides for an assessment upon *all lands and real estate benefitted by the improvement.*

The assessment is not limited to frontage, and would be invalid if such were the provision of the act, and an assessment made only upon lands fronting on the improvement would not be sustained.

The same rule that applies in the case of sewers does not hold good in assessments for roads. All lands benefitted must be assessed whether they front on the improvements or not. This is the settled rule in this State. The commissioners considered that the lands of prosecutors which they assessed

were benefitted, and assessed them accordingly, and the assessment would have been invalid if they had omitted them, because they did not front on the improvement. The evidence confirms the conclusions of the commissioners. The assessment in this respect was in accordance with the uniform and approved custom in this State.

As to the second part of the reason—

There is no evidence in this case sufficient to overcome the conclusions of the commissioners as to the special benefits conferred by these improvements upon the lands of prosecutors.

What have we to overcome the conclusions of the commissioners? Nothing but the evidence of two of the parties in interest, James G. K. Duer and Edward King, and it is only necessary to refer to their testimony to see upon what they base their opinions.

Mr. Edward King, on page 82, gives his ideas of an assessment according to benefits, and his theories agree with what was actually done by the commissioners in their assessment. I refer to lines five to twelve; also testimony of John Reid, p. 46-47.

The testimony of Mr. Reid shows that every question connected with the proper making of such an assessment was fully considered by the commissioners. The testimony of Mr. Reid, and the map and report, are so full and clear upon this subject that I need not take time to go over the assessment in detail.

It will take very clear and conclusive testimony that commissioners have erred before the Court will set aside an assessment for excess of benefits, and no such proof appears in this case.

I have had prepared a statement taken from the assessment map, showing the average assessment as to frontage alone on the various plots on the east

side of the road, and also on the west, and showing also the total assessment on the two sides of the road. By examining the same, it will appear at a glance that the assessment of prosecutors is just and fair, and very much less than many other plots on the road, and that prosecutors have no ground of complaint. It will show also that there were different conditions in each tract which were considered and acted upon by the commissioners.

Prosecutors own a tract of land unequalled in location and value in the County of Hudson. It is directly opposite the city of New York, and within thirty minutes of the city. Before this improvement was made this property was undesirable as a place of residence. It can be sold now in building plots and lots at a large sum. Why, since the improvement, some of the prosecutors who would not live there before have built fine residences on portions of it and now reside there, doing business in New York. They resided before in the city.

pa 107 line 12

There are 122 acres in the whole tract, and the assessments amounts in the aggregate to $27,966, or 221 per acre, or, calculating 16 lots to the acre, $13.81 per city lot—about $3.00 above the lowest assessment in the Town of Union. And all the King property is as well located, and more valuable, if anything, than the property on the west side of the road.

It is used principally for gentlemen's residences, with roads leading through the property to the Bulls Ferry and Branch Roads, pages 47 and 48, The only way from the whole of the property to New York city, which governs all property in its neighborhood, is by the Bull's Ferry and Branch Roads. There is a high rocky bluff along the river side overlooking New York city and the Hudson river, making it impossible to get to or from the King property on that side. See page 48, 74, line 12--25.

Some testimony was offered to show that the as-

sessment on plot No. 1139, Edward King, was excessive.

The reason given by Mr. King himself why his property is not benefitted to the extent of the assessment is that the grade of the road in front of his property is higher than Mr. King thinks it should be. Page 79, line 25, &c., pg. 80. But he admits on page 82 that it is benefitted to some extent, but less than land lying on a level with the improvement. See line 5.

The assessment in this respect is entirely in accord with Mr. King's views ; his place being assessed less than many others for the reason that it was below the grade of the road. See page 46, *lines 1 to 16.*

It would be impossible in an improvement like this to have every tract of land on the level of the road grade.

The fact of the property being below the grade does not affect its market value. Mr. Brush says that it does not affect it disadvantageously for the erection of buildings along the line of the road, this remains uncontradicted in the case ; the grade of the property being from 10 to 12 feet below the grade of the road—page 107.

But the same argument that has been urged previously as to the grades will apply here and with great force. The grade of the road in front of Mr. King's property was the grade submitted by the commissioners to the property owners before its adoption, and which Mr. King and all others approved. Mr. A. Gracie King, he says, looked after and had charge of this property when the widening and grade were established. See page 82.

Mr. Edward King or Mr. Gracie King made no objection to the grade at this point and requested no change. Objection was made to the grade at Union street, and commissioners were requested to lower it, and Mr. Edward King was one of the petitioners.

See Exhibit D 6. He must have known the grades at that time, and he thus acquiesced and approved the grades on the other parts of the said roads that he did not object to.

Some testimony was also offered to show, I presume, that the assessment plot bill *No. 1144* was excessive. See page 34.

It was sold, Mr. Reid says, and purchased by him for *$16,000* for the Hackensack Water Company, but this, he says further, on pages 44 and 45, was very much less than the property was actually worth, as he was instructed to bid as high as *$25,000* for it. It was sold at a low price for reasons peculiar to that tract. See page 45, line 10. This was the only tract sold, or in the market for sale. See page 75, testimony of J. G. K. Duer, lines 16 to 27. But taking the price, *$16,000*, there is nothing to show that the assessment of $4900 was excessive. Compare it with the assessment on property directly in front of it, no better situated and no more valuable. There are 698.70 feet front, or 27 lots and over. The lots directly opposite are assessed at the rate of *$187.50* for a lot 25 x 100. If the 27 lots similarly situated in plot 1144 were assessed at the same rate, it would amount to $5062. Add to this 27 lots back of the front lots at $25, and you add $675 more, making $5737, without counting the other lots remaining in said plot.

The same result will apply by comparing the other plots of prosecutors with the assessments on the lots on the west side of the road.

The property No. 1144 would not have been worth $16,000 or half of it, if this improvement had not been made, and it had remained in its former condition. There would have been no sale for it.

There is nothing to show that the properties assessed have not been benefitted to the extent of the assessments.

It is a fact worthy of notice, that out of this whole assessment, including some 1200 different lots, or plots, no objection is made by any one but these prosecutors, and their assessments are lower than almost all others.

Every element and question that could possibly enter into the making of an assessment were duly considered by the commissioners. See report of commissioners and testimony of John Reid. They were familiar with all the lands in that portion of the county, and with each tract and lot of land assessed. They examined into the matter confided to them with the greatest care and particularity, and an assessment made under such circumstances will not be set aside on the ground that it exceeds the benefit actually received, unless there is strong and conclusive proof of error or mistake.

As to the additional reason found on page 93 of printed book.

This reason was not offered and filed until the close of prosecutor's testimony, and should not, I submit, be considered at all; but having been passed upon in the opinion of the Supreme Court, it is proper that I should present my points thereon.

The insistment of prosecutors is, that in dividing the excess of costs above benefits between the Township of Weehawken and the Town of Union, the commissioners should have taken into consideration in ascertaining the proper proportion of the said excess to be paid by said town and township only the amounts which were assessed upon lands to pay for the improvement of section two.

This is the outcome of the position of prosecutors in regard to the manner in which the assessment should have been made.

It will be seen, by examining the report of the commissioners, that this division of said excess is made according to the provisions of the act of 1875, already mentioned, which governs this assessment. The act will be found in P. L. 1875, p. 302, and sec-

tion 2, or the part affecting this question is in these words :

" Any excess (if any) of said 80 per centum of cost
" over the benefit received by the land and real
" estate hereby made liable to such assessment, shall
" be paid by the Town of Union and the Township
" of Weehawken, in the proportion that the assess-
" ments on owners of lands of benefits in each town
" or township bears to the sum of the total assess-
" ment of benefits on owners of land in both town
" and township, and said excess shall be collected in
" the same manner provided in the former acts for
" the collection of said 20 per centnm in the former
" acts mentioned."

It seems to me that the requirements of the Act are quite plain. It says, any excess of said *80 per centum* of cost, &c.; it does not say of the cost of section two.

The act further says, in the proportion that the *assessment on owners of lands of benefits in each* Town or Township bears to the *sum* of the *total* assessments of *benefits* on *owners* of lands in *both* Town and Township. It does not say, the assessment of benefits for cost of section two, on owners of land in both Town and Township.

By the prosecutors method of computation a result somewhat different from that of the Commissioners is reached.

By the commissioners report based on	
Act of 1875, Union pays.....	$7,150 60
Weekawken pays.....	15,489 87
Total	$22,640 47
By prosecutors' method, Union pays...	$10,020 44
Weehawken pays.....	12,620 03
Total.....	$22,640 47

Or Union pays, $2,869.84 more.
Weehawken pays $2,869.84 less.

But there is no authority for this method of computation, and the result arrived at by prosecutors can only be got by a forced construction of the Legislative Acts, and is not within the meaning and spirit of the law.

Another fact worthy of consideration in connection with this reason is this. The Town and Township in question do not object to the amount assessed against them. They are really the interested parties, and they are not before the Court. The corporate authorities had ample notice of this assessment, before its confirmation, see page 21 of return, and could have objected at the proper time, if they desired, but they were then and are now satisfied with the apportionment. Will the Court, under these circumstances disturb an assessment against the Town and Township at the instance of a taxpayer of either. I submit not.

In this connection some testimony was offered, with the object, I presume, of showing that the Town of Union at large is benefitted to a greater extent than the Township of Weehawken. I refer to the testimony of Joshua Frost, pp. 76, 77 and 78, as to the number of wagons passing up and down the road, and the places to which and from which they were going. The testimony of Mr. Duer, pages 70, 71 and 74. The population of Union, and the number of persons riding in the horse cars to and from that place. The extent to which the Town and Township were benefitted, and the amount to be paid by each, were determined by the Legislature itself. This question was not left to the commissioners. The Legislature was the sole judge of this, and having exercised the power which it possessed of apportioning a certain part of the cost of these improvements between the town and township it cannot be questioned now.

It is very doubtful when you consider the whole matter upon its merits whether Union has not contributed more than it should towards these improvements.

Weehawken has within its territorial limits nearly the whole of these improvements, and would have been legally bound to have made them at its own expense without calling upon Union at all, and without any obligation on Union to contribute towards the payment of an improvent in another township. This will be apparent by an examination of the map and the testimony of Mr. Brush on page 107, line 3 to 10.

Notwithstanding this fact, Union pays toward this improvement: 1st. Ten per cent., an equal amount with Weehawken, and 2d, a proportionate part of the excess. Union might have objected, but Weehawken cannot.

Some testimony was offered to show that the amounts assessed on property in sections 1 and 2 equalled the cost of those section. See testimony of Mr. Reid, pages 49, 50, 51 and 52.

Mr. Reed says that the cost of these sections was before the commissioners, and while the commissioners did not think that the amount of the cost of sections 1 and 3 was a reason why those amounts should be assessed against the lands adjoining, yet the conclusion of the commissioners was that the lands named adjoining those sections were benefitted the amount assessed and no more. It appears that the amount assessed upon lands benefitted in these sections, according to benefits received, equalled the cost of those sections. What reason can the prosecutors have to object to such a result, and how does it effect them injuriously? No part of the cost of sections 1 and 3 is assessed upon them. If it had been they might, and no doubt would, have objected. These prosecutors cannot object to such a result now, because in their objections filed before the commissioners, when the assessment was under consideration, and before it was finally approved, they object because the cost of sections 1 and 3 is added to the whole cost, and proposed to be assessed upon the three sections without any division of the same. See

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6th reason, filed with commissioners. Prosecutors cannot ask that an assessment be made in a certain way, and then when the result of the asessment, as finally made, is substantially in accordance with such request, turn around and object because it is done.

No valid assessment can be made for the costs of these improvements unless made under the act of 1875. If you disregard this act and attempt to make an assessment in accordance with the insistment of prosecutors under the former acts, you will find yourself beset with difficulties that are insurmountable and incurable. The assessments should be sustained with costs.

If, however, this Court should be of the opinion that either of the insistments of prosecutors is correct, the irregularities could and should be corrected and adjusted, under existing laws by the Supreme Court, without setting the whole assessment aside, and thereby entailing a large expense upon the town and township in the making of a new assessment, with all the attending difficulties, legal complications and confusion. As for instance, if the credit should be made upon the assessments on the favored portion, or another apportionment between the town and township, or the assessments of prosecutors are deemed excessive, an adjustment could be easily made under the direction of the Court.