

NEW JERSEY COURT OF ERRORS AND APPEALS.

JAMES M. ALLGOR,

Plaintiff in Error,

vs.

THE MAYOR AND COUNCIL OF

THE BOROUGH OF SEA BRIGHT

Defendant in Error.

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In Error.

Points for Defendant in Error.

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Attorneys.

Beach Street, in the Borough of Sea Bright, was dedicated as a public street, together with other parallel streets, from Ocean Avenue to the waters of the Shrewsbury River³⁰ on July 9, 1892, by map filed by owners thereof and of the riparian lands. See Ex. 4 for plaintiff below.

I.

This Dedication Extended to the River.

The said map shows the then established "exterior line for solid filling." Beyond and adjacent to said solid filling line lies the Shrewsbury River, as shown on said map.⁴⁰

Nothing at all intervened between street and river, in fact, as shown upon said map. Therefore the dedication was in fact and in law made to the river beyond a doubt. *The map shows it*, and the formal filing of the map, on July 12, 1892, together with the subsequent sale of lots with reference thereto, is conclusive.

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II.

The Exterior Line for Solid Filling Was High Water Mark.

The high water mark and exterior line for solid filling are one and the same as declared by the dedicating map. They are essentially identical in law, whenever under a riparian grant the grantee has filled in as far as the exterior line for solid filling. For the tide must stop at solid land so
 20 made or reclaimed, and said exterior line for solid filling can never be located on upland, but only at or below high water mark *in the very nature of things*. And when by alluvion the high water line changes, then the established exterior line for solid filling follows and remains identical with the new high water mark. Therefore, the terms "high water mark" and "*exterior line for solid filling*" *after riparian lands are lawfully filled in thereto*, are convertible and inter-
 30 changeable terms. The lands in and about Beach Street at the locus in quo were riparian lands which had been filled in, as mapped before the said map was filed as aforesaid by the owners of the fee.

III.

Beach Street Dedicated and Opened After Grant by State.

Said filed map is certainly binding upon The Sea Bright
 40 Land and Improvement Company, its successors and

assigns, in its concessions and declarations in favor of the public. See *Hoboken Land Imp. Co. vs. Hoboken*, 7 Vroom 540. *Beyond Beach Street on said map lies only the public waters of the river.* Under those waters as far as the exterior line for piers, The Sea Bright Land and Improvement Company owned the soil, and until the said map was filed, *might have erected piers, but piers only*, at the River end ¹⁰ of Beach Street. *Knowing this and notwithstanding the same, the company filed said dedicatory map, declaring the said pier lands to be free of piers and to remain forever open to the public and flowed by the public waters of the Shrewsbury River, to which same waters Beach Street was declared and dedicated to extend.*

And the Company so dedicating the street further confirmed the dedication to the public by its deed releasing or ²⁰ quit-claiming to the borough the fee in Beach Street, not long after the dedicatory map was filed. The map was filed July 9, 1902; while the deed to Sea Bright of Beach Street and other streets was acknowledged July 23, 1902, and subsequently delivered and recorded in the County Clerk's office at Freehold, N. J. (See Ex. Nos. 3 and 4 of plaintiff below.) The borough consequently became owner to the river with right of access thereto via Beach Street ³⁰ secured by dedication by filed map forever. Independently then of Allgor's deed and Brennan's deed, both of a far subsequent date, the borough and public had indisputable rights of access to and from the river by way of Beach Street.

For the lands on each side of the street have been sold and houses erected thereon, pursuant to said map, and on faith of said dedication. The essence of the dedication ⁴⁰ was the right of access to the river.

See Hoboken Land Improvement Co. vs.
Mayor of Hoboken, 7 Vroom, 540.

This case, decided by unanimous vote of the Court of Errors and Appeals, holds as follows: "Dedication is
"distinguishable from a grant in that no special grantee
"need be in existence to accept the gift, and contrary
10 "to the rules of common law, an interest in lands may
"thereby be created without the intervention of the
"ordinary common law assurances. The intention of the
"donor may be gathered from his acts and declarations,
"resting only in parol. But when that intention is once
"ascertained, the character and scope of the dedication are
"as unalterably fixed as if the gift had been consummated
"by a formal instrument of grant. The same legal inci-
"dents and consequences attach, and the donor is
20 "equally concluded from any act which will impair the
"effects of the gifts. It was in this view of the nature
"and effect of a dedication, that the Supreme Court of the
"United States applied to the public right, acquired by
"dedication, the rule of construction of private grants,
"that a grant of land bounded on a stream which has grad-
"ually changed its course by alluvial formations, holds to
"the new boundary, including the accumulated soil. New
30 "Orleans vs. The United States, 10 Peters 717.

"On the same principle, this Court held that a dedicated
"street terminating at the waters of a navigable river, is
"continued to the new water front obtaining by filling in, in
"front of the shore, by the owner of the land over which a
"street was dedicated. Jersey City vs. Morris Canal, 1 Beas.
"548. The criticisms by counsel on the case just cited was,
"that the opinion of Mr. Justice Whelpley, on this point,
40 "not being necessary for the decision of the cause, was
"mere obiter dictum. It was not so understood by Chan-

"cellor Greene, in Newark Lime and Cement Co. vs. The
 "Mayor of Newark, 2 McCarter 64, in which it was
 "distinctly held that the survey of a highway to a navigable
 "river carried the highway to the river, wherever it is found,
 "and if the shore is extended by alluvial deposit, or
 "or by filling in by the proprietor, the public easment is, by
 "operation of the law, extended from its former terminus 10
 "over the new made land to the water. In both these
 "cases, The People vs. Lambier, 5 Denio 9, a case in many
 "respects similar to that now before the Court, was decided
 "with approbation. In barclay vs. Wowell's Lessees, the
 "dedicated street lay along the banks of the Monogahela,
 "which was a navigable river. In the plan of dedication,
 "the northerly line of the street only was marked, and on
 "the south of that line a space was left open to the river. 20
 "The width of the street is undefined, and nothing appeared
 "on the plan to limit its width short of the river. In con-
 "troversy between the right of the city and the owner of
 "the fee in relation to a strip of land along the river the
 "claim of the city was sustained. In the opinion of the
 "Court, Mr. Justice McLean declared that it was of no
 "importance, whether the dedication was to high or low
 "water mark; that with boundry of the street on a public
 "river, the public right in the street was limited only by 30
 "the public right in the navigable waters, and to contend
 "that between the boundry of the street and the public
 "right in the river, '*a private and hostile right could exist,*
 "*would not only be unreasonable, but against law.*' In my
 "judgment these cases declare the law correctly on
 "this subject. The essence of the gift is the means of
 "access to the public waters of the river, and advantage of
 "which induced the growth of a city, by reason of its ad- 40
 "jacency and connection to the important navigable

“waters of the Hudson, which gave a peculiar commercial
 “value to the lots put in the market by the dedication,
 “which can only be preserved by maintaining unbroken the
 “connection of the streets with the navigable river. Any
 “obstructions of that access would not only derogate from
 “the effect of the gift, but would also be a public nuisance.”

10 Again on page 549, same case, the Court said, “The legis-
 “lature alone has power to release the dedicated lands and
 “discharge the public servitude when it once has attached-

It was argued by counsel for the plaintiff in the case that
 permission granted by the legislature to fill in the lands in
 front of the dedicated street, such lands when filled, in to
 be owned by the riparian owner so reclaiming them, was
 such a legislative act as would extinguish the easement of
 20 the dedicated street to the water. But the Court said, “The
 “act incorporating the defendants contains no language
 “indicative of an intent to extinguish the public right of
 “access to the river, and the defendants hold the title
 “acquired by legislative permission, subject to the obliga-
 “tion that resulted from the original dedication of permit-
 “ting the connection of the street with the navigable
 “waters to remain unbroken.”

30 This case is conclusive upon Allgor. Only “the legis-
 “lature can release the dedicated lands and discharge the
 “public servitude.”

*But it cannot reasonably be pretended that this has been done
 at the river end of Beach Street. The State conveyed the
 riparian rights to Minugh many years before Allgor acquired
 title and before Beach Street was dedicated or laid out. The
 legislature did nothing before or after the dedication to stop
 public access to the river via Beach Street as laid and dedicated,
 40 or to except Beach Street from the general rules of law laid*

down in the Hoboken case just cited. Certainly nothing direct or indirect by law enables defendants to exclude the public from the river by way of Beach Street.

The doctrine of access to navigable waters by streets protects the public. The highest Court of New Jersey, after the Hoboken case in *7 Vroom* was decided, undoubtedly held the view that even the State could not vacate public servitudes and rights of access to navigable waters except by direct and special action to vacate the streets themselves. It exalted the public rights of way perhaps over the State's grants of riparian lands.

IV.

Pre-Existing Highways Vacated by State Grant.

But this question was carried to the United States Supreme Court by the *Penn. R. R. Co. vs. Hoboken*, 124 U. S. 656, which upheld the doctrine or at least authority of the New Jersey Court of Errors in the Hoboken case, *7 Vroom*. Yet it distinguished that case from others in that there was no *State's grant* of title in the *first* instance, but a *license only* to reclaim and fill in and thereupon to become owner of such reclaimed lands. *Here it was held that no previously dedicated street could be cut off from the water.* The Court distinguished this case from the one before it where an unrestricted grant of riparian lands from the State was made after the street in controversy was laid out and in use. The U. S. Supreme Court held in such cases :

"And construing these conveyances most strongly in favor of the public, and yet so as not to defeat the grants themselves, we also conclude that the rights conveyed exclude every right of use or occupancy on the part of the public."

The argument is the same as in the Hoboken case in 7 Vroom in principle ; that only the Legislature can extinguish the public easement in riparian lands. Of course the Legislature can vacate streets so far as the public rights go. The Supreme Court of the United States simply held that a riparian grant absolute and unlimited had the effect of
 10 vacating or extinguishing all public easements upon the granted lands, as it is a deed by the public itself without reservation. Such pre-existing easements must be expressly excepted or else be lost to the public forever. But this does not help or excuse J. M. Allgor in closing Beach Street in the case at bar. For Beach Street was dedicated *after* the State parted with its riparian rights, and was dedicated, too, by the owner of those rights by map showing that
 20 public rights in street and river were connected. Nothing in the United States case prevented the riparian grantee from the State from dedicating Beach Street to the navigable waters. Nothing nullified such dedication when made. And every such dedication conveyed actually to the public in the language of the highest Court of New Jersey above quoted, fully endorsing the highest Court of the United States, "the public right in the street limited only by the
 30 "public right in the navigable waters, and that to contend "that between the boundary of the street and the public "right in the river a private and hostile right could exist, "would not only be unreasonable, but against law."

The opinion of the U. S. Supreme Court in the Pennsylvania R. R. case, 124 U.S., declares distinctly that "under
 "these riparian grants the land is held by the grantees on
 "the same terms on which all other lands are held by
 "private persons under absolute titles. And every previous
 40 "right of the State of New Jersey therein whether proprietary or sovereign is extinguished."

Hence the State's grantee proceeded to dedicate Beach Street with the same force and effect that every dedication of highway to the water has always had, but free, however, from the possible bar from the water by a State grant.

The law from time immemorial had fixed the public rights of access to navigable waters by Beach Street when dedicated or laid thereto by the owner of the land deriving ¹⁰ title from the State. The highest courts of New Jersey and the United States have affirmed the doctrine of the Hoboken case in 7 Vroom and in the Penn. R. R. Co. case in 124 U. S. This easement of the public could, of course, be denied where it had not in fact been created, which cannot be shown in the case at bar, and also where the State has subsequently extinguished the servitude of and for the public by grant.

But, as we have seen, the legislature has done nothing. ²⁰ It will doubtless be conceded that accumulations to the land by alluvial deposit outside the 1882 line of solid filling, if any, at Beach Street belonged to the owner of the land adjacent. In front of Beach Street, therefore, Sea Bright would be the owner and the person entitled to own any such accretions; and not at all the dedicator and grantor of Beach Street to Sea Bright, or any grantee of said dedicator though being owner of lands under water in front of ³⁰ Beach Street.

In other words, the grantee of lands under navigable waters loses title and gains title by laws and under decisions governing dedication and alluvial deposits just the same as the State's own title would be gained or lost.

Nothing in the riparian acts forbids the application of well settled principles of law and decisions, which have been cited and which seem to justify our conclusions. ⁴⁰

Allgor is Estopped to Deny the Public Easement to
the River in Any Case.

The basis of the right of an easement in the public to the river from Beach Street is the doctrine of estoppel as it was laid down in the Penn. R. R. Co. case in 124
10 U. S. The private individual having by grant or dedica-
tion created a public easement extending to the public
waters of the State cannot set up any title existing in him-
self, or the dedicator, *at the time of the dedication*, to impair
the public right. But the Court, in the case just cited, held
that such dedicator or grantor, *subsequently acquiring the*
absolute grant of the State to exclude the public from the
lands under water, is not estopped to do so even to the
20 destruction of a public easement springing out of his own
prior dedication. The Court declared that if any estoppel
existed it was met and overcome by the more potent sub-
sequent estoppel of the deed of the State, the very public
itself, cutting off all public rights and servitudes by ripa-
rian grant. It is the case, said the learned judge, of an
estoppel, of an estoppel.

See Penn. R. R. Co. vs. Hoboken, 124, U. S. 656.

30 The New Jersey Court has followed the doctrine of the
Supreme Court of the United States in the Elizabeth case
and other cases holding that an ancient highway to the
navigable waters, like the Elizabethtown road, was *cut off*
from its previous access to tide waters by the State's recent
grant of the riparian lands at the end of it to a corpora-
tion *without reservation* of any public rights.

But nowhere and in no case has it been suggested, not
to say decided, that a street dedicated to tide water by the
40 owner of all the riparian rights in front of it who pre-

viously had title through the State's grantee, can be shut up by the dedicator, or his grantee subsequent to the dedication, at the solid filling line existing at the date of dedication. Not only is the proposition unsupported by precedents; it is utterly repugnant to reason and inconsistent with established principles and doctrine.

It is true that the Sea Bright Land and Construction Co. bought from W. W. Conover all the riparian rights possible to acquire, and *could then* have built piers on the pierlands as well as filled in to the exterior line for solid filling free of all easements; and also *could have laid* Beach Street to a monument and not to the river; but having filled in as far as it had a right to fill in, and not having built piers, but having made a map and filed it, and a deed also which was recorded, all showing unequivocal dedication with Beach Street extending to the river; and reserving no rights whatever to fill in, or build piers, or to close Beach Street from the river, the said Company and its grantees are bound forever thereby. The estoppel of the State's deed, if any existed, is met and overcome by the estoppel of the later or subsequent dedication made by the very beneficiary himself to the State's title.

See *New Orleans vs. U. S.*, 10 Peters, pgs. 722 to 724.

Angell *Tidewaters*, 2d Ed., pgs. 254, 255.

VI.

Construction of Allgor's Deed.

The State's grant of riparian lands including the locus in quo was made in 1885 to James R. Minugh. The grant provided thus, after conveying the usual rights to fill in and erect piers to the proper lines then fixed: "And if and 49

“when said exterior line or lines shall be fixed at any
 “points or places further out in said river, also any and all
 “lands under water lying between the present exterior line
 “above described and the new exterior line or lines that
 “may be hereafter fixed, the same to be used for solid
 “filling and for piers respectively agreeable to the terms
 10 “of such extension.”

Minugh conveyed the locus in quo with adjacent lands
 to W. W. Conover in 1891, who, in turn with his wife, con-
 veyed the same to the Sea Bright Land and Construction
 Company, each deed using the State's form including
 above proviso.

But defendant's deed and plaintiff's deed contained no
 such proviso whatever.

20 These grants of riparian lands are strictly construed.
 Nothing passes from the State's grantee by implication
 merely.

See Polhemus vs. Bacon 31 Vroom, page 166,
 (Court of Errors and Appeals decision.)

Said the Court: “The grant of the State must be strictly
 “construed, conceding that the grant may vest in the
 “grantee of lands under water all the rights of the State
 “in the lands granted and thereby exclude the public rights
 30 “which previously existed, it seems equally clear that a
 “conveyance need not necessarily be so comprehensive.
 “The State, as well as the individual, may limit the extent
 “of its grant. The language of the conveyance must
 “measure what passes by it, and the grantee can acquire
 “nothing in excess of that because of the *existence of a*
 “*power to enlarge the grant.*”

“This observation is made because it is insisted that
 40 “under the first section of the act of March 21st, 1871

"(Gen. Stat. p. 2790). 'All the rights of the State in said lands may be vested in the grantee.'

"The question in this case is not what might have been granted to Bateman, but what is the extent of the grant to him, applying the rule of strict construction in favor of the State."

The defendant Allgor, then, clearly cannot claim any right to lands beyond the 1882 exterior line for solid filling. Not even after the State changed the said exterior line in 1900, if it was in fact ever changed, for the reason that Allgor's grantor did not convey said additional rights or intend to convey them to Allgor or anybody else.

Furthermore, the deed itself to Allgor conveys the pier lands subject to public rights. These words, quoted from his deed, "to the center of Beach Street and extensions thereof" are conclusive. Even Allgor's deed is evidence against his claim, not for it.

The conclusion seems inevitable that the dedication of the street by the methods discussed, gave the public forever uninterrupted access to tide water at the locus in quo, no matter whether the line of high water had been changed by the accretions of nature or by the act of man.

N. J. Court of Errors and Appeals

THE BOROUGH OF SEABRIGHT,
Plaintiff, Defendant in Error,

v.

JAMES M. ALLGOR,
Defendant, Plaintiff in Error.

In Error.

BRIEF FOR PLAINTIFF IN ERROR.

This is an action of ejectment brought by the borough of Seabright to obtain possession of a strip of land bounded on the north by lands of Anna G. Brennan, on the east by Beach street in said borough, on the south by lands of James M. Allgor, the defendant, and on the west by the Shrewsbury river, the borough claiming that this strip is a continuation of and part of Beach street, laid out in that borough.

In 1885 James R. Minugh was the owner of a tract of land bordering on the Shrewsbury river within the present limits of the borough of Seabright and as such owner acquired the land under

water in said river adjacent to his property by grant from the state. Under this grant James R. Minugh reclaimed all that portion of the premises described in the grant out to the exterior line for solid filling, by filling in the same, and on this reclaimed land a portion of the borough of Seabright now stands. This property by subsequent conveyances became vested in the Seabright Land & Construction Company. The borough of Seabright was incorporated March, 1889, with territorial limits bounded by the Shrewsbury river. The Land Company by deed dedicated to the borough, a strip of land for a street, to be known as Beach street, extending from Ocean avenue, a fixed distance to and ending at a bulkhead erected at the line of solid filling and standing about two feet above the surface of Beach street.

The Land Company by deed dated October 25th, 1898, conveyed to the plaintiff in error, a lot of land adjoining Beach street, together with the lands lying under water in front of said lot and Beach street, between the exterior line for solid filling and the exterior line for piers. The plaintiff in error, after the delivery of his deed, filled in front of his lot and the end of Beach street, between the exterior line for solid filling out to the exterior line for piers and fenced in the same by erecting a fence at the foot of Beach street at the exterior line for solid filling.

The *locus in quo* in this suit is the thirty-five feet wide space extending from the exterior line for solid filling to the exterior line for piers, reclaimed by the plaintiff in error and said Brennan, in front of Beach street and what would be within the northern and southern boundary lines of Beach street if extended.

The position of the defendant in error is very forcefully asserted by their leading counsel on pages 12 and 13 of the printed case, in the following language: The trouble about the whole controversy is this: that after Brennan and Allgor had

thus acquired title to the last lot on either side of the street at this terminus and had acquired, as they insist, the right to use as their own, lands under water at the foot of the street, they filled in and put a permanent structure upon the lands thus re-deemed and in consequence the public was prevented from reaching the tide waters of the South Shrewsbury river at that point, and this suit is brought to recover possession of that land.

THE COURT : That is the fee in the land ?

MR. WILSON : The fee in the land. The insistence on the part of the plaintiff is that by the deed to the borough in 1892, and by the making of the map and the filing of it, there was an irrevocable dedication to the public use and that by reason of the circumstances, that, at the instant of dedication, the dedicator, namely the Seabright Land and Construction Company, was the owner of the fee in the street, and the proposed street, and was likewise the owner of all the land on either side of the street and was likewise the owner of all the riparian lands at the foot of the street, that they and those who claimed under them are stopped from ever saying that the route of that street shall not always be to the tide waters of the Shrewsbury, wherever they may be ; that Brennan and Allgor took with notice of dedication and that the lands which they took at the foot of the street were charged with that easement which the former owner had already imposed upon it.

The learned trial Justice in his opinion on pages 19, 20 and 21 of printed case, holds that the deed dedicating Beach street and the map upon which it is dedicated, both fix the public right to the river, and that all the right the Seabright Land Company had in the waters or lands under them lying in front of the street conveyed, passed to the municipality, and that defendant's deed would clearly de-

feat any right in him to retain the *locus in quo* against the municipality.

He says, "I think the Seabright Land Company confirmed and made clear the character of its intended grant to the municipality. The lands are conveyed to the defendants by specific description starting at a point (in the Allgor deed) on the north side of Beach street, at the northwest corner of lot No. 43 on the map. The land conveyed is expressly stated to run to the exterior line of solid filling, as now established by the riparian commissioners, and is defined as running along said exterior line of solid filling to the south side of Beach street—not to the center of Beach street, and from said point on the south side of Beach street at the exterior line of solid filling, the course is along the said south side of Beach street to the beginning."

And quoting the description of the Allgor deed concludes, "This is too clear for construction. The deed recognizes the existing street in terms and with equal clearness refers to the extension thereof; this clause in the deed conveys the title to the center of the street, subject to the existing public easement, and cannot affect the grant to the plaintiff by the defendant's grantor and under which the plaintiff claims. If it were abandoned as a street, defendants would then have rights, but this clause can receive no construction which can give it greater force.

"This case cannot be distinguished from Hoboken Land Company vs. Hoboken, 7 Vr., 540."

And so we have the learned trial Justice deciding in favor of the plaintiff upon the weakness of defendant's title rather than upon the strength of the plaintiff's.

And besides, we cannot clearly see how the description in the Allgor deed so plainly establishes the case against the defendant.

It is true that, as the trial Justice quotes, the de-

scription of one course is defined as running along said exterior line of solid filling to the south side of Beach street—not to the center of Beach street.

Why should it go to the center of Beach street? Beach street had been conveyed in fee simple to the Borough of Seabright.

The grantor in the Allgor deed remembered that he owned only to the south side of Beach street.

Neither was there anything adverse to plaintiff in error's claim in the fact that the lot (No. 45) was bounded by the exterior line for solid filling, and one corner of the lot by the contiguous corner of the street.

Lot No. 45 was bounded individually and the lands within the zone for piers conveyed together. Neither do we think the words "extension thereof" in said description import the meaning the trial Justice ascribed to them.

The sense seems clearer if we take "extension thereof" to mean a line that would correspond with the center line of Beach street if extended, and besides the language is not the extension of Beach street, but the extension of the center line of Beach street as a boundary line for the grant to Allgor.

The words taken literally "to the center line of Beach street and the extension thereof," that is of the center line of Beach street to the exterior line for piers, is made the boundary of the tract conveyed and not, it seems to us, a recognition and confirmation of the existence of Beach street through the tract described.

No dispute exists as to Beach street being in fact a public street so far as it extends, viz.: to the exterior line for solid filling, and it was neither prejudicial nor advantageous to either the plaintiff in error or the defendant in error, that said street was mentioned in the description in Allgor's deed. The fact that the lot was not bound by the middle of the street shows that the grantor recognized the fee of the street to be elsewhere than in him, and

by conveying the land under water in front of the street to Allgor without in any wise mentioning an easement or public right or making the conveyance subject thereto seems to leave the dedication of Beach street to the exterior line for solid filling undisturbed.

The plaintiff in error insists that the dedication of the street depends upon the deed and map alone.

That the dedication of Beach street by the deed and by the map is specific and certain, viz.: to the exterior line for solid filling. The deed even mentions the number of feet the street shall be in length, viz.: "about 480 feet to the line of solid filling of Shrewsbury river established by the Riparian Commissioners, and shown on aforesaid map."

That the map clearly and specifically shows the street to end at the exterior line for solid filling, and exhibits upon its face the exterior line for piers, and shows the Shrewsbury river beyond the exterior line for piers, thus exhibiting a space between the ending of Beach street and the river, viz.: the territory for piers, and giving notice by the map itself that between the ending of the street at the exterior line for solid filling and the Shrewsbury river there existed a tract of land and space extending to the exterior line for piers, over which the street did not extend and which in fact prevented said street from reaching to the waters of the river. The dedicatory deed expressly limits Beach street to the exterior line for solid filling and the map also clearly so limits said street. In both cases there is not the least ambiguity.

The plaintiff in error respectfully insists that this case comes within the rule of the *Hoboken v. Pennsylvania R. R. Co.*, 124 U. S., 656 (1887), and in *Elizabeth v. Railroad Company*, 24th Vroom, 491; and that the reasons submitted to the trial Justice upon the motion for non suit by plaintiff in error were well grounded and sufficient and should have prevailed for that purpose; and plaintiff in error

again submits the same reasons here for the purpose of this argument, viz.:

1. Because Beach street was dedicated to a certain fixed terminal line, the exterior line for solid filling of the South Shrewsbury river and not to the South Shrewsbury river or to a line at the river.

2. Because Beach street was dedicated by a terminal boundary defined as the exterior line for solid filling of the South Shrewsbury river 480 feet from Ocean avenue, a fixed point, and such dedication did not carry any right beyond that line.

3. Because at the time of the dedication of Beach street to the borough of Seabright, to the exterior line for solid filling of the South Shrewsbury river, the rights of the public in the waters flowing in that portion of the river between the exterior line for solid filling and the exterior line for piers, had been and were extinguished by the state's grant to Minugh and such dedication without express words could not revive any such right in the public.

4. Because the state's grant to Minugh covering Beach street and also the *locus in quo*, vested the lands described in the grant absolutely in him and extinguished all rights of the public therein; that the grant was with two separate and distinct privileges to reclaim by filling in to the exterior line for solid filling, and to reclaim by erecting piers between the line for solid filling and the exterior line for piers; that the former privilege was exercised and a part of the land so reclaimed by filling in, dedicated as Beach street; that the lands between the two lines were not yet reclaimed by the erection of piers and that such filling in or dedication did not affect the lands between the two lines or the additional privilege of the grantee of reclaiming the lands between the two lines and excluding the public therefrom by the erection of piers, or in the language of the grant, to appropriate the lands to his exclusive private uses.

5. Because the right of the public to extend a street

laid out to a public navigable river to the new water front obtained by filling in by the owner, is based either on accretions or the union with the easement of the public in the river and such rule does not obtain here for the reason that at the time of the dedication, the public had no rights in that portion of the river between the two lines of solid filling and exterior line for piers.

6. Because Beach street was not dedicated and laid out to the river.

7. Because the right to reclaim and erect piers and exclude the public from that portion of the river lying between the exterior line for solid filling and the exterior line for piers, existed when Beach street was dedicated, and the street was dedicated subject to that right.

8. Because the deed dedicating Beach street does not in express words or by implication by any possible construction vest any right in the borough beyond the exterior line for solid filling.

9. Because the conveyances to Allgor and Brennan, of the land in front of Beach street to the exterior line for piers, negatives any possible presumption of any intention of the grantor in the dedication to vest any right or interest in the borough beyond the exterior line for solid filling.

10. Because a grant from the State of land under navigable waters vests the absolute title to the same in the grantee, and such lands after such grant are subject to the ordinary rules which apply and govern real estate. The defendant in error insists that as the grantor of defendant in error, at the time of executing the deed for Beach street to the borough, owned the land under water between the exterior line for solid filling and the exterior line for piers, he was thereafter forever estopped from conveying the said land between said lines or his pier rights and privileges therein, except subject to the full and free use of such piers, when erected, by the public, as a continuation from Beach street to

the river. That when Beach street was thus dedicated the territory between the exterior line for solid filling and the exterior line for piers was thereby forever divested of exclusive rights and privileges appertaining to the object of which the original grant was specifically made, viz.: erection of piers, and that such result obtains not from any express words of conveyance by the grantor, but by operation of law.

The answer is that the grantor could not more plainly have reserved the land between the exterior line for solid filling and the exterior line for piers than he has done both by the deed and by the map.

The deed expressly limits the street to a certain established fixed line outside of the pier lands or territory, even to the exactness of actual measurement, and refers to a map that actually shows plainly by distinct lines and markings and words at length that the street should not extend over the pier lands, and plainly showing that the land between the exterior line for solid filling and the exterior line for piers was not subjected to the imposition of any servitude whatsoever by the dedicatory of the street.

The borough of Seabright insists that as Beach street was dedicated to the line for solid filling of the Shrewsbury river, that when the plaintiff in error filled in the lands under water in the river in front of Beach street conveyed to him by the land company, the street was extended over this filled land to the river.

The justice who heard the case held that it could not be distinguished from *Hoboken Land company v. Hoboken*, 7 Vroom, 540, and that the defendant's deed recognized the existing street and refers to the extension thereof. This is not the correct construction of the language used. The defendant's deed describes by a particular description a certain lot on the map of the property of the Seabright Land & Construction company. "Together

with all the right, title and interest of the party of the first part, of, in, or to the lands lying under water between the exterior line for solid filling and the exterior line for piers, immediately adjacent to the above described premises, on the westerly side thereof, and to the center line of Beach street, and the extension thereof, as laid by the Riparian Commissioners of the State of New Jersey and contained in a grant made by the state to James R. Minugh, dated February 21st, 1885, and recorded in the Monmouth County Clerk's Office in Book 387 of Deeds on page 481 &c., as by reference thereto will fully appear. This describes a piece of land lying under water, lying between the exterior line for solid filling and the exterior line for piers, lying immediately adjacent to said lot on the westerly side thereof and to the center line of Beach street and extension thereof as fixed by the Riparian Commissioners." This clearly covers all that piece of land flowed by tide water lying between the exterior line for solid filling and bounded by it on the east and the exterior line for piers and bounded by it on the west and bounded by the extension of the south line of said lot to the exterior line for piers on the south and bounded by the continuation of the center line of Beach street to the exterior line for piers on the north.

In the Hoboken case, *supra*, it was held that a street delineated on a dedicating map as extending to a public navigable river, will be continued to the new water front obtained by filling in by the owner under legislative permission. Justice Depue, in announcing this principle, cited *New Orleans v. The United States*, 10 Peters, p. 717, and *The People v. Lambier*, 5 Denio, p. 9. In the former case, the quay had been greatly enlarged by the alluvial formations of the Mississippi river and the court said: "The question is well settled at common law that the person whose land is bounded by a stream of

water which changes its course gradually by alluvial formations, shall still hold by the same boundary, including the accumulated soil. No other rule can be applied on just principles. This rule is no less just when applied to public, than to private rights. The case under consideration will illustrate the principle.

“If the dedication of this ground to public use be established by the principles of the common law, is it not of the highest importance that the accumulations of the vacant space by alluvial formations should partake of the same character and be subject to the same use as the soil to which it becomes united?

“If this were not the case, by the continual deposits of the Mississippi, the city of New Orleans, would, in the course of a few years, be cut off from the river, and its prosperity impaired. If the city can claim the original dedication to the river, it has all the rights and privileges of a riparian proprietor.”

In the latter case Lambier, the proprietor of lands lying on the East River, was by an Act of the Legislature authorized to construct a wharf and bulkhead in the river in front of his lands and there was at that time a public highway through said land, terminating at the river. He filled in between the shore line and the bulkhead and attempted to exclude the public from the land so filled in, and the court held that such land owner could not, by filling up the land between the shore and the bulkhead, obstruct the public right of passage from the land to the water but that the street was by operation of law, extended from the former terminus, over the newly-made land, to the water. The decision in this case was put upon the ground that the river was a public highway and the street terminating at the water another public highway and that if the proprietor of lands adjoining the

water could fill in at the end of the street and exclude the public, that it would break the connection between the two highways and the court said that in such a case a public street leading to navigable waters would keep even pace with the extension of the land, so as to preserve an unbroken union between the easement on land and that on such navigable waters. And if this consequence would follow from a change in the land by the action of natural causes, we think it must also be held to follow from one made by the immediate and voluntary act of the owner of the land on the shore in its original condition.

This principle has also been enunciated and sustained in several other cases decided in our courts, viz :

Jersey Co. v. Jersey City, 4th Halstead, 715.

Morris Canal v. Jersey City, 1st Beasley, 253 and 548.

Newark Lime Co. v. Newark, 2d McCarter, 64.

Morris Canal v. C. R. R. of New Jersey, 1st C. Green, 437.

The question in this case is whether this well established principle applies to the conditions existing here. The grant by the state to Minugh was a grant of a certain described tract of land in the bed of the Shrewsbury river with the right, privilege and franchise to exclude the tide water from so much of the lands as lay under tide water, by filling in or otherwise improving the same and to appropriate the said lands to his exclusive private uses. This vested in him the absolute ownership of the premises described in the grant and the right upon reclaiming and filling in to exclude all rights of the public, with the additional right and privilege and franchise of building piers upon the lands

lying between the exterior line for solid filling and the exterior line for piers.

It has been held repeatedly in this state, that the state is the absolute owner of the lands in all navigable waters within its territorial limits and such lands can be granted to any one either public or private without making compensation to the owner of the shore.

Stevens v. Patterson and Newark R. R. Co., 5th Vroom, 532.

P. R. R. Co. v. N. Y. & L. B. R. R. Co., 8 C. E. Gr. 157.

Am. Dock & Imp. Co. v. Trustees Public Schools, 12 Stan., 409, 445.

A case something similar to the one under consideration arose at Hoboken. Grants had been made by this state to the Pennsylvania railroad company and others, of lands under water adjoining the shore line of the city of Hoboken and in front of some of the streets of that city extending to the water's edge, and the city claimed that its streets extended over the land filled in and made by the state's grantees, under these grants, out to the river. This case was finally decided by the Supreme Court of the United States, which held :

"Under the riparian laws of New Jersey, the lands below high water mark, constituting the shores and submerged lands of the navigable waters of the state, were the property of the state as sovereign.

"The title and interest of the state in these shore lands, under the state laws, is a distinct and separate estate, to be dealt with and disposed of in accordance with the terms of the statutes, either by a sale and conveyance to the riparian owner himself or his assignees, or, in case of his or their neglect to take from the state its grants on the terms offered, then to a stranger, who, succeeding to the state's

title, would have no relation to the adjacent riparian owner, except that of a common boundary.

“The title under the New Jersey grants is not only of a new estate, but in a new subject divided from the upland or riparian property by a fixed and permanent boundary. Such grants are of the estate in the land and not of a mere franchise or incorporeal hereditament.

“Under these grants the land conveyed is held by the grantees on the same terms on which all other lands are held by private persons under absolute titles; and every previous right of the state of New Jersey therein, whether proprietary or sovereign, is transferred or extinguished, except such sovereign right as the state may lawfully exercise over all other private property.

“The grants from the state of New Jersey, under which the defendants claim, respectively, are a complete bar to the recovery sought against them in these suits.

“Under these grants they have and hold the rightful and exclusive possession of the premises in controversy against the adverse claim of the plaintiff to any easement or right of way upon and over them, by virtue of the original dedication of the streets to high water mark on the Loss map.”

Hoboken v. P. R. R., 124 U. S., 651.

Dillon in his work on municipal corporations, section 634, says on this question: “If land dedicated to a city for public use is bounded by a river, the city has all the rights and privileges of a riparian proprietor as respects alluvial formations or additions; these partake of the same character and are subject to the same use as the soil to which they become united. This proposition, it is believed, is affirmed by the decisions without exception. The ground of the right is that the stream is the boundary, and the riparian proprietor is entitled to the alluvial accretions made by natural changes

in a shifting stream which constitutes the boundary of his lands. Such accretions are his because they are within the description of his original grant on the stream as a boundary. Where the shore owner, through whose lands a street comes to the shore, fills in in front of his lands, and also in front of the terminus of the street, the public is entitled to the extension of the street the same as if the land filled in were an alluvion. But where the state is the owner of the lands under water below the shore line, a street or public use in such lands cannot be dedicated or created therein by the private riparian proprietor; and hence a dedication by such proprietor of streets terminating on the water does not have the effect to preclude the state from making a grant of such lands under water opposite the end of such street to others, with the right to reclaim the land; and the state in making a grant thereof by legislative act may exclude, and if such be its plain purpose the grant will be construed to exclude, any right of the public to insist that the lands when reclaimed by the grantee are subject to the uses of a street, or other public purpose, declared by the private riparian dedicator, inconsistent with such legislative grant by the state, which in such case is not only a conveyance of the land under water, but is also a law which repeals all inconsistent laws and extinguishes all inconsistent public easements, if any such exist in the lands under water thus granted by the state. Applying these principles under the legislation of New Jersey applicable to the case in hand, it was held by the Supreme Court of the United States, that the city of Hoboken could not recover of the state's grantees lands which they had filled in under such legislative grant and conveyance below high-water mark in front of such streets. Under such an act and conveyance, the court decided that the title of the grantee differed in every respect from that of a riparian owner to alluvial accretions made by the

changes in a shifting stream, which constituted the boundary of his lands."

And in the note to this section further says: "Hoboken v. Pennsylvania R. R. Co., 124 U. S., 656 (1887). The case was distinguished from that of The Hoboken Land & Imp. Co. v. Hoboken, 36 N. J. Law, 540, where the subject underwent very full examination; also from Jersey City v. Morris Canal & B. Co., 1 Beasley (12 N. J. Eq.), 547, and other cases.—holding that a dedicated street terminating at the waters of a navigable river is continued to the new water front obtained by filling in in front of the shore by the owner of the land over which the street was dedicated. Such cases rest on the principle that the essence of the gift or dedication is the means of access to the public waters of the river, which can only be preserved by maintaining unbroken the connection of the street with the navigable river; which principle was held not to apply under the facts and legislation appearing in Hoboken v. Penn. R. R. Co., supra. See Morris Canal & B. Co. v. Central R. R. Co., 16 N. J. Eq., 419, 431; Stevens v. Paterson & N. R. R. Co., 34 N. J. L., 532, 553; New York L. E. & W. R. R. Co. v. Yard, 43 N. J. L., 121; s. c. *Ib.* 632; Lockwood v. N. Y. & N. H. R. R. Co., 37 Conn., 391; Campbell v. Laclede Gasl. Co., 84 Mo., 352, 372; Benson v. Morrow, 61 Mo., 352; Seers v. Brooklyn, 101 N. Y., 51; Barney v. Keokuk, 94 U. S., 324; Potomac Steamboat Co. v. Up. Pot. Steamboat Co., 109 U. S., 672."

This decision of the United States Court in the Hoboken case was recognized and followed by the Supreme Court of our state in Elizabeth v. Railroad Company, 24th Vroom, 491, in which case that court said: "In Hoboken Land and Improvement Company v. The Mayor, &c., of Hoboken, 7 Vroom, 540, the Court of Errors and Appeals decided that legislative authority granted to individuals or corporations to fill up, occupy, possess and

enjoy all land covered with water fronting and adjoining lands owned by them, will not extinguish the public right of access to navigable waters by a street on the lands of such owners, which by dedication terminated at the high-water line, but such street will run to the water over the lands reclaimed under such authority. In *Hoboken v. Pennsylvania R. R. Co.*, 124 U. S., 656, the Supreme Court of the United States decided that grants made by the State of New Jersey, under her general riparian act of March 31st, 1869 (Rev. p. 982), secure to the grantees the whole beneficial interest and estate in the property described, for their exclusive use for the purposes expressed in the grants, and exclude every right of use or occupancy on the part of the public, transferring to the grantees or extinguishing every previous right of the state, whether proprietary or sovereign, except such sovereign rights as the state may lawfully exercise over all other private property; and that, in face of such grants, highways running to the original water line will not be continued to the water line newly formed by filling in the granted area.

“The distinction between the subjects on which these judgments were rendered is obvious. In the first case, the party claiming to have extinguished the public right of access to the water over the highway had a mere license to fill in and enjoy undefined land under water as a riparian owner (*New York, Lake Erie and Western R. R. Co. v. Yard*, 14 Vroom, 632), and the license was deemed subject to the implied limitation that the licensee should acquire against the state no greater rights in the land reclaimed than he had in the ripa in front of which the reclamation took place. But in the later case, the claimant was the grantee of all the rights of the state in specified lands under water, founding its title upon express words of conveyance, the reasonable force of which excluded the reservation implied against the licensee.”

See also *Morris & E. R. Co. v. Jersey City*, 51 At. Rep., 387.

This question was very fully considered in a very elaborate and learned opinion by Justice Gray in *Shirley v. Bowlby*, 152 U. S. Supreme Court, page 1.

It will be observed that in none of the cases where the court held that the street terminating at the river front would be extended over new made land still to the water was the land reclaimed or filled in under a grant such as we have in this case.

We have examined the cases with considerable care and we have not been able to discover any case in which such decision has been rendered where the riparian owner filling in had an absolute grant in fee of the soil under water from the state. It will be noticed upon turning to the language of the grant that the state by its grant vested in the grantee the absolute title in a certain definitely described tract of land under or flowed by tide water with two separate and distinct rights and privileges, both of which carried with them the right to absolutely exclude the public, and upon the exercise of such right extinguished absolutely any right the public had in the tract so granted; one was to reclaim by filling in by solid filling to the exterior line of solid filling fixed by the commissioners. This Minugh, the grantee, immediately proceeded to do and filled in and reclaimed it and built upon it and upon it was laid out the street called Beach street, extending to this exterior line of solid filling of the Shrewsbury river. The other right was the right to reclaim that portion of the tract lying between the exterior line for solid filling and the exterior line of piers, by the erection of piers. This was not done by Minugh or his grantee, Conover, or Conover's grantee, the Seabright Land and Construction Company, but has been done by Allgor, the grantee of the Seabright Land and Construction Company. Upon exercising this right all rights of

the public became extinguished and the defendant, Allgor, has reclaimed this portion of the tract lying between the exterior line for solid filling and the exterior line for piers, for his exclusive private uses.

It cannot be said that the borough of Seabright has the right to extend Beach street over this land so reclaimed by Allgor between the exterior line for solid filling and the exterior line for piers so as to preserve its union with the Shrewsbury river, for the reason that all rights of the public in the Shrewsbury river, so far as the tract described in the Minugh grant is concerned, were absolutely extinguished by the grant, and the public acquired no right by user over the *locus in quo*, as it had not been filled in or reclaimed until taken possession of by defendants.

The borough of Seabright upon receiving the dedication of Beach street stood in this position: that its inhabitants had the right to use the street to the exterior line of filling of the Shrewsbury river, which was a definite fixed boundary, and by that means to gain access to the river until such time as the grantee, under the Minugh grant, exercised the right to reclaim between the exterior line for solid filling and the exterior line for piers as permitted by the grant, when they would be excluded from such access.

In the case of *Polhemus v. Bateman*, 31 Vroom, 163, it was held that a grant of this kind gave the grantee the right to fill in and otherwise improve the land under water and to appropriate it to his own exclusive use, but that until the grantee reclaimed the land, he acquired no exclusive right to it except so far as might be necessary to make reclamation.

It is also to be remembered that the right to reclaim by erecting piers between the exterior line for solid filling and the exterior line for piers antedated the street known as Beach street and it cannot very well be claimed that the road extended beyond the

exterior line for solid filling where the pier line commenced.

See *Palon v. Ocean City*, 35th Vroom, 673.

It may be claimed by the plaintiff that the deed dedicating Beach street and bounding it on the exterior line for solid filling of the Shrewsbury river carried with it whatever right the Seabright Land and Construction Company had in the river in front of the terminus of the street, but upon turning to the deed for Beach street it will be seen that there is a conveyance by certain fixed boundaries and nothing to indicate or from which it may be implied any additional right is granted or property conveyed than that expressly described in the deed.

We know of no case in our state where the question at issue here has been directly passed upon, but we think that there are cases sufficiently approaching this to be decisive of it. In the case of the matter of city of Yonkers, 117 N. Y., 564, a street known as Wells avenue was opened in that city to the Hudson river line and was afterward extended by dedication over lands by Frazer and Stewart, who were grantees of the people of certain lands under water and had filled in and reclaimed a portion of the lands so granted. The description in the deed continued the street to a point in the lands of the Hudson river five feet westerly of the westerly line of an embankment. The water line by filling in was carried two hundred and forty-five feet west of the west line of such embankment and the court held that the street terminated at the defined point, five feet west of the west line of the embankment, and no one had the legal right to go beyond that line.

The case of *Mark v. village of West Troy*, 151 N. Y., 45 N. E. Rep., 842, seems to us to be in point. In that case the owners of land on a navigable river and of adjoining land under the waters

of such river by grant from the state filed a map of it on which a street was designated as running to the river, and before such dedication was accepted by the public, the owners partitioned the land among themselves but excepted from the conveyances a ferry owned by them in operation at the time, from the end of the street and the court held that the right of the public in the street does not include the land under the water but terminates at the water's edge. After the street was dedicated the soil under water at the end of the street was filled in for quite a distance and enclosed by a fence and used as an approach to the ferry, and Judge Gray said that the Lambier case and the New Jersey cases which established the general rule that a public street leading to navigable waters would keep even pace with the extension of the land so as to preserve the unbroken union between the easement on land and that on such navigable waters differed from the case then under consideration in that there was the right of ferry at the end of the street and it was the intention to preserve the ferry and to merely give the public the right to enjoy the street for the purpose apparently of reaching the ferry, and that the design of the street for that purpose is the more reasonable inference.

It may be urged by the plaintiff that the defendant has not exercised the privilege in the grant by the erection of piers but has filled in by solid filling between the two lines. This, however, would not help the plaintiff's case. It would be a violation of the privilege granted by the state but would not entitle the plaintiff to an action of ejectment.

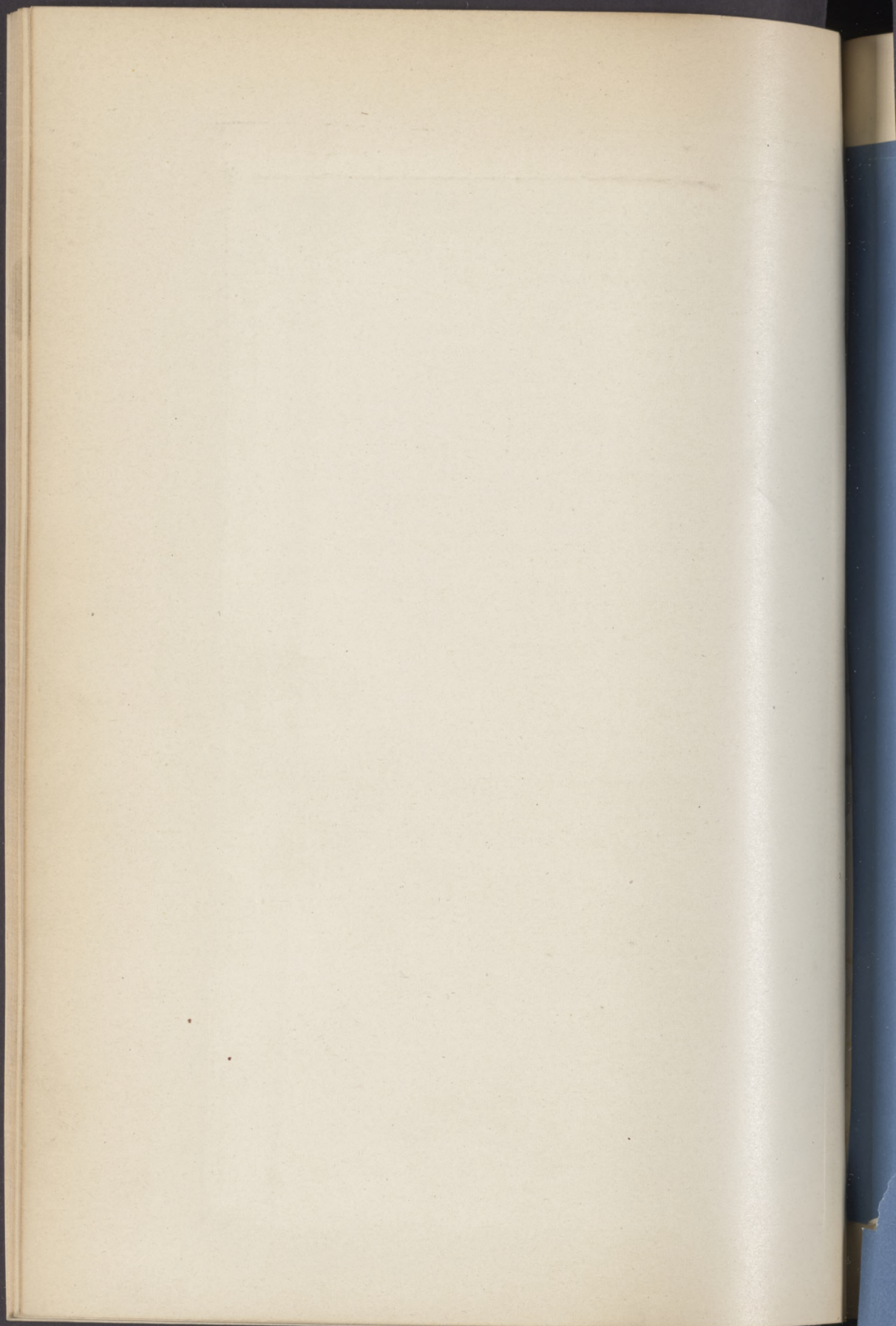
It is respectfully submitted for the defendant that the dedication of Beach street, bounding it by the exterior line for solid filling of the Shrewsbury river, four hundred and eighty feet from Ocean avenue, did not carry any right beyond that line; that the conveyance to the defendant Allgor conveyed the soil in the bed of the river in front of

Beach street between the exterior line for solid filling and the exterior line for piers with the privilege of erecting piers ; that such privilege carried with it the right to absolutely exclude the public from the territory within said boundaries, including the *locus in quo* ; that the dedication of Beach street to the Borough of Seabright did not carry with it the right to connect with the river and revive any right in the public in that part of the river between the exterior line for solid filling and the exterior line for piers which had been extinguished by the state's grant to Minugh ; that the rule recognized in the case of *Hoboken v. Hoboken Land Company*, in 7th Vroom, is not pertinent to this case, and that judgment should have been for the defendant.

CHARLES H. IVINS,
FRANK DURAND,
Counsel for Plaintiff in Error.

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Copies.
 State of New Jersey }
 Morris County } I, Joseph McDermott Clerk of said County do hereby certify that the annexed Map
 (West of Railroad) belonging to the S. B. Land and Construction Co. as it remains on file in
 my office as of the Ninth day of July, H. D. 1898. In witness whereof I have hereunto set my
 hand and affixed the Seal of said County this 19th day of August H. D. 1901.
 Joseph McDermott.
 Clerk.



MAP OF LOTS
 AT SEA BRIGHT N. J.
 (West of Rail Road)
 Belonging to the
 S. B. LAND & CONSTRUCTION CO.
 Scale 50 ft. to an inch.

W. H. D. & N. S. Surveyor, etc.
 Long Branch, N. J. 1891.

N. J.

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N. J. Court of Errors and Appeals. 10

JAMES M. ALLGOR,

Plaintiff in Error,

vs.

THE MAYOR AND COUNCIL OF THE
BOROUGH OF SEABRIGHT,

Defendant in Error.

In Error.

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WRIT OF ERROR.

NEW JERSEY, ss.:

The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature, greeting :

30

Forasmuch as in the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our said Supreme Court of Judicature, before you, between the Mayor and Council of the Borough of Seabright, plaintiff, and James M. Allgor, defendant, in an action of ejection, manifest error hath intervened, to the great damage of the said James M. Allgor, as it is said; we being willing that the error, if any there be, should, in due manner, be corrected, and full and 40

speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the third Tuesday of November instant, together with this writ, that the record and proceedings
 10 aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and, according to law and custom of the State of New Jersey, ought to be done.

WITNESS, our Chancellor and President, Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the fifth day of November, in the year of our Lord one thousand nine hundred and two.

S. D. DICKINSON,

Clerk.

20

CHARLES H. IVINS,
Attorney.

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

WILLIAM S. GUMMERE, C. J.

[L. S.]

New Jersey Supreme Court.

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THE MAYOR AND COUNCIL OF THE
BOROUGH OF SEABRIGHT

vs.

JAMES M. ALLGOR.

In Ejectment.
On Postea.

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WILLIAM J. LEONARD, Attorney.

As yet of the twelfth day of March, A. D. nine-
teen hundred and two.

WITNESS, WILLIAM S. GUMMERE, Esquire,

Chief Justice. 30

WILLIAM RIKER, JR.,

Clerk.

MONMOUTH COUNTY, ss:

The Mayor and Council of the Borough of Sea-
bright, the plaintiff in this action, by William J.
Leonard, its attorney, demands of James M. Allgor
the restitution and possession of a tract of land and
premises with the appurtenances, for a public high-
way, situated in the corporate limits of the Borough 40

of Seabright, in the County of Monmouth and State of New Jersey, containing about eight square rods, more or less, said tract of land and premises being particularly described as follows :

Beginning at a point in the south line of Beach street as laid out on a map entitled, "Map of lots at Seabright, N. J. (West of Railroad) belonging to S. B. Land and Construction Co." made by W. H. DeNyse, Surveyor, &c., in 1891, a copy of which is
 10 duly filed in the Monmouth County Clerk's office at Freehold, said point of beginning being distant four hundred and eighty-one feet and five inches westerly along the south line of said Beach street from the west side of Ocean avenue, as shown on said map. Thence (1) north three degrees and forty-one minutes east thirty-five feet two and three-quarter inches to the north line of said Beach street, as shown on said map. Thence (2) north seventy-nine degrees and forty minutes west, being a con-
 20 tinuation of the north line of said Beach street, as shown on said map, fifty-eight feet and five inches to the west side of the bulkhead along the South Shrewsbury river. Thence (3) along the west side of bulkhead, south twenty-nine minutes west thirty-five feet six and one-quarter inches to a point in the south line of said Beach street, as shown on said map, produced westerly. Thence (4) south seventy-nine degrees and forty minutes east fifty-six feet and five inches to the place of beginning. The
 30 said tract above described is bounded on the north by lands of Anna G. Brennan, on the east by Beach street aforesaid, on the south by lands of said James M. Allgor, and on the west by the Shrewsbury river.

And the plaintiff says that its right to the possession to the said tract accrued on the thirtieth day of March, nineteen hundred and one, and that the defendant wrongfully and unlawfully deprived the plaintiff of the possession thereof.

40 Also that about the ninth day of June, A. D.

eighteen hundred and ninety-two, the Seabright Land and Construction Company, which owned the land in question, now comprehended in the limits of Beach street, and who owned also land contiguous thereto, caused a map to be made, showing the course of said Beach street, and filed said map in the Clerk's office of Monmouth County, and elsewhere, and sold lots by reference to said map. That upwards for twenty years prior to this twelfth day of March, nineteen hundred and two, the public has used said Beach street throughout its whole extent for the purpose of passing and repassing on foot and with vehicles to and from the said Shrewsbury river at the westerly end thereof.

That in the year one thousand eight hundred and ninety-two, the said "The Seabright Land and Construction company (Body Corporate) made and delivered to the Borough Commission of Seabright, Body Corporate, a deed of the said tract of land known and designated as Beach street, on the said map filed as aforesaid, which said deed was duly delivered to the grantee and formally accepted in open council in the same year one thousand eight hundred and ninety-two, and was recorded in the Clerk's office of said Monmouth County at Freehold, in said year eighteen hundred and ninety-two, in book (503) five hundred and three of deeds for said County on page three hundred and forty (340) and that said tract of land so as aforesaid conveyed and mapped is in said deed bounded and particularly described as a public street and highway, including the *locus in quo*, and thereby became and have ever since been a public street and highway to and from the Shrewsbury river.

That the Mayor and Council of the Borough of Seabright have heretofore accepted said Beach street as a public highway extending to said Shrewsbury river and have spent public money upon the same and passed various ordinances in relation to said

Beach street, recognizing its existence as a public highway.

That the Mayor and Council of the Borough of Seabright have recognized that the wants, necessities and convenience of the public now require the use of that portion of Beach street which is occupied by the defendant, and as a token of such recognition various ordinances and resolutions have been passed and this suit has been brought.

10 That notwithstanding the right of the citizens of the Borough of Seabright and of the public to pass and repass over and upon the tract of land above described, and that said public authorities were the owners thereof and entitled to the possession thereof, and have been the owners and entitled to the possession thereof since on or about the year nineteen hundred and one, yet the said defendant did on or about the said year nineteen hundred and one wrongfully and unlawfully and without right
20 or title, enter into and upon the same, ousting and ejecting the plaintiff therefrom and excluding the citizens of the Borough of Seabright, Township of Ocean, County and State aforesaid and the public generally, other than the defendants, from their right aforesaid to pass and repass over and upon so much of said public street and highway as is above particularly described, have ever since wrongfully and unlawfully withheld and still now wrongfully and unlawfully withhold possession thereof from
30 the plaintiff to its damage five thousand dollars, wherefore the said plaintiff prays judgment against the said defendant for the restitution and possession of said land and premises, together with damage and costs of suit.

And the said James M. Allgor, by Charles H. Ivins, his attorney, appears and defends this action and says that he is not guilty of the injury whereof the said the Mayor and Council of the Borough of Seabright has complained in its declaration, nor of
40 any part thereof, and of this he puts himself upon

the country, &c. And the said the Mayor and Council of the Borough of Seabright doth the like.

Therefore let a jury thereupon come before our Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Freehold in and for the County of Monmouth, on the first Tuesday of May, in the year of our Lord, one thousand nine hundred and two—, by whom, etc., and the same day is given to the parties aforesaid, there, etc. 10

And now at this day, to wit: the fifth day of November, A. D. nineteen hundred and two, before our said Supreme Court at Trenton, comes the said plaintiff by its attorney aforesaid and the Justice before whom, etc., having first sent hither his record had before him in these words, to wit:

Afterwards, that is to say, on the sixth day of August in the year of our Lord one thousand nine hundred and two, at a Circuit Court held at Freehold in and for the County of Monmouth, before 20 his Honor, J. Franklin Fort, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, according to the form of statute in such case made and provided come as well the within named James L. Allgor, defendant, as the within named Mayor and Council of the Borough of Seabright, plaintiff, by their respective attorneys, within named, who, by consent, having waived a trial by jury, tried said issue before the Court, and the same Justice having heard the same, saith that 30 the said James M. Allgor is guilty of the trespass and ejection above laid to his charge, in manner and form as the said Mayor and Council of the Borough of Seabright hath complained against him, and assesses the damages of the said the Mayor and Council of the Borough of Seabright, over and above its costs and charges, at the sum of six cents, and for those costs and charges the sum of &c.

Therefore it is considered that the said plaintiff do recover against the said defendant its term yet 40

to come of, and in the tenements aforesaid, with the appurtenances, and also fifty dollars and three cents for its costs and charges, by the said Court now here adjudged to the said plaintiff and with its assent, and hereupon the said plaintiff prays the writ of the State of New Jersey, directed to the Sheriff of the County of Monmouth aforesaid, to cause it to have possession of its said term yet to come of and in the tenements aforesaid with the
 10 appurtenances.

And it is granted to it returnable, etc.

Judgment signed this fifth day of November, A. D. nineteen hundred and two.

WILLIAM S. GUMMERE, C. J.

I, WILLIAM RIKER, JR., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains
 20 of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this twelfth day of May, A. D. nineteen hundred and three.

WILLIAM RIKER, JR.,
 Clerk.

BEFORE HON. JOHN FRANKLIN FORT, J.

LONG BRANCH, N. J., JUNE 21ST, 1902. 10

A P P E A R A N C E S .

For the plaintiffs,

WILLIAM J. LEONARD,
FREDERICK W. HOPE,
EDMUND WILSON.

For the defendant,

CHARLES H. IVINS, 20
FRANK DURAND.

MR. IVINS: If your Honor please, everything that needs to be proved in these two cases may be admitted to save time.

THE COURT: The defendants are not the same individuals?

MR. DURAND: The same *locus in quo* are in both cases, so they should be tried together.

THE COURT: How is it there are two different 30 defendants, if it is the same *locus in quo*?

MR. WILSON: I think the two cases involve exactly the same principles of law, and therefore I think they might both be disposed of together.

If your honor please, the Allgor suit is an action brought by the Borough of Seabright, to recover possession of a piece of land lying within the confines of Beach street in said borough, as the plaintiff insists. It has already been stipulated between counsel, that the *locus in quo* is within 40

the corporation limits of the Borough of Seabright. The plaintiff bases its claim in this suit in part upon a line of paper title :

First, a deed made by James R. Minugh to William W. Conover, dated July 20th, 1891, recorded in book 485 of Deeds, page 114. This deed conveyed a considerable tract of land in what is now known as the Borough of Seabright, comprehending all of Beach street, the *locus in quo* and the riparian lands at the foot of Beach street, lying on the South Shrewsbury river. That suggestion is important, as your Honor will see later; the *locus in quo* is really upon the riparian land, so-called.

On the same date, July 20th, 1901, William W. Conover conveyed land described in the last named deed to the Seabright Land and Construction Company, which deed is recorded in the Monmouth County clerk's office, in book 485 of deeds, page 421. Subsequently, on the 13th of May, 1892, the Seabright Land and Construction Company made a conveyance to the borough, which deed is recorded in book 503, page 340. This deed by express terms conveyed to the Borough of Seabright that certain lot or parcel of land and premises particularly described, being in the Township of Ocean, etc., and being designated on a map made by Mr. Denise, civil engineer, duly filed in the office of the clerk of Monmouth County, as Beach street and then follows the words of description, "Beginning in the westerly side of Ocean avenue and extending westerly about 484 feet, to the line for solid filling of the Shrewsbury river as established by the Riparian Commissioners and shown in aforesaid map." The conveyance is in the form of a quit claim deed and conveys "together with all and singular," with the usual words used in that class of conveyances. The deed makes reference to a map. The recitation as to the map, I think, is a mistaken one, for the reason that it refers to the

map as having been then filed. The deed was dated the 13th of May and the map was not in fact filed until the 9th day of July, 1892, but the deed was not recorded until the 5th day of August of that year, so that the mistaken reference may be thus explained. The map was filed after the date of the deed, but before the date of recording the deed. The deed was executed on the 23d of July. The map will be offered in evidence and I remark in passing, that it shows Beach street and shows 10 the exterior line for solid filling and so it shows the Shrewsbury river.

The defendant on the 25th of October, 1898, took a conveyance from the Sea Bright Land and Construction Company, for the last lot on the south line of Beach street. This was a lot therefore that was bounded on the west by the Shrewsbury river and on the north by the south line of Beach street. In that deed, the defendant also had conveyed to him all the riparian lands immediately adjacent and 20 west of the lot so purchased and lying in the Shrewsbury river. The deed contains this clause, "Together with all the right, title and interest of the party of the first part of any and to the lands lying under water between the exterior line for solid filling and the exterior line for piers immediately adjacent to the above described premises on the westerly side thereof"—and here are the important words for the purposes of this suit—"to the center line of Beach street." That pushed the 30 riparian grant up to the center line of Beach street and the extension thereof as laid by the Riparian Commissioners of the State of New Jersey and contained in the grant made by the state to James R. Minugh, dated February 21st, 1885, and recorded as stated, as by reference thereto will fully appear, being the same premises conveyed to the party of the first part, by W. W. Conover and wife by deed, etc. It will be obvious therefore that the plaintiff

and defendant took their title from a common source.

THE COURT : Both from the Seabright company ?

MR. WILSON : Yes. The deed to the defendant Allgor was recorded on the 22d of December, 1898, and the defendant Brennan took title from the Seabright Land and Construction Company, of the last lot on the north side of this street and at the water front, on the 2d of January, 1899. This deed was re-
10 corded on the 18th of April, 1899, in book 626, page 269. This deed conveyed in apt terms the lot, making specific reference to Beach street, running the course along Beach street and also containing these words : "Together with all the right, title and interest," etc., containing exactly the same clause as was recited in the deed to Allgor.

MR. DURAND : Only it applied to a lot on the north side, instead of the south side.

MR. WILSON : I think of nothing else that relates
20 to the paper title.

MR. IVINS : Why not put in the grant from the state to Minugh ?

MR. WILSON : I should recite as a part of the history of the title that it appears that the State of New Jersey made a grant to James R. Minugh, dated February 21st, 1885, and recorded in the clerk's office in book 387, page 481. By this conveyance Minugh acquired the riparian lands at the
locus in quo.

30 The trouble about the whole controversy is this : that after Brennan and Allgor had thus acquired title to the last lot on either side of the street at this terminus and had acquired, as they insist, the right to use as their own, lands under water at the foot of the street, they fill in and put a permanent structure upon the land thus redeemed and in consequence the public was prevented from reaching the tide waters of the South Shrewsbury river at that point, and this suit is brought to recover pos-

session of that land for the purpose of public travel and usage.

THE COURT : That is, the fee in the land.

MR. WILSON : The fee in the land. The insistence on the part of the plaintiff is that by the deed to the borough in 1892, and by the making of the map and the filing of it, there was an irrevocable dedication to the public use and that by reason of the circumstance that at the instant of dedication, the dedicator, namely the Seabright Land and Construction Company, was the owner of the fee in the street and the proposed street and was likewise the owner of all the land on either side of the street and was likewise owner of all the riparian lands at the foot of the street ; that they and those who claimed under them are stopped from ever saying that the route of that street shall not always be to the tide waters of the Shrewsbury, wherever they may be ; that Brennan and Allgor took with notice of dedication and that the lands which they took at the foot of the street were charged with that easement which the former owner had already imposed upon it.

THE COURT : Has Beach street been accepted by the borough ?

MR. WILSON : Yes, that ought to appear as a fact on the record and that the borough directed this suit.

MR. DURAND : There is no controversy about that.

MR. WILSON : The street as dedicated was formally accepted by the borough of Seabright and this suit to recover possession of the *locus in quo* was directed by a resolution of the governing body of Seabright. That is all there is in the general scope of the case. There are two things to be offered by way of proof. First, to offer some parole testimony as to what was the intent of the dedicator in making the original deed to the borough and the filing of the map. Dedication in this class of cases is essentially a question of intent, and any act done or words spoken by the dedicator at or

after the alleged dedication, becomes competent in that aspect.

In addition to that, the plaintiff wishes to show that after the street had thus been laid out and thus dedicated by deed and map, that the public generally used the street as a means of access to the water during the time intervening between the date of the dedication by this method and the time when the defendants acquired this title.

10 MR. IVINS : It is not admitted as broadly as that.

MR. WILSON : What do you admit ?

MR. IVINS : That individuals—that persons—that it was used as a public street and that individual people did have access to the water over that street and made use of the street for that purpose, but not for the public generally. I mean to say, that there were no barriers that stopped the public from going to the waters over the street.

MR. WILSON : This much you are willing to stipu-
20 late, I suppose, namely, that at the terminus of the street there was a bulkhead at the time of the dedication ; that the street was immediately after dedication accepted by the borough and worked, and that whoever pleased used this street as a method of reaching the river at the bulkhead, by climbing over the bulkhead to the river and so in returning reached the street from the river by climbing over the bulkhead and getting into the street in the same way.

30 It is hereby agreed in open court between counsel that the facts as stated by Mr. Wilson on behalf of the plaintiff up to this point, are admitted facts in this case, subject to the right of counsel on either side to call the attention of the Court to any errors and have the same corrected.

It is admitted that the defendants have erected a fence just beyond the exterior bulkhead mentioned in the deed of dedication relied on by the plaintiff and that said fence is upon the newly made or filled
40 land, lying within the lines of Beach street, if ex-

tended beyond said bulkhead between the exterior line for solid filling and the exterior line for piers.

It is further admitted that the defendants erected a fence, from the fence just outside the exterior bulkhead, through and along the continuation of the center line of Beach street, to the exterior line for piers.

It is admitted that this fence cuts off the right of the public to use the streets over the *locus in quo*.

Plaintiff's counsel offers in evidence :

10

A deed from Minugh to W. W. Conover.
Marked Plff's Ex. No. 1.

Also deed from W. W. Conover to the Seabright Land & Construction Company. Marked Plff's Ex. No. 2.

Also deed from the Seabright Land and Construction Company, to the Borough of Seabright. Marked Plff's Ex. No. 3.

20

Also copy of original map. Marked Plff's Ex. No. 4.

Also copy of the riparian grant of the State of New Jersey to Minugh. Marked Plff's Ex. No. 5.

PLAINTIFF RESTS.

MR. IVINS : If your honor please, it seems to me that it is proper to make a formal motion for nonsuit on the following grounds :

30

Because Beach street was dedicated to a certain fixed terminal line, the exterior line for solid filling of the South Shrewsbury river and not to the South Shrewsbury river or to a line at the river.

Because Beach street was dedicated by a terminal boundary defined as the exterior line for solid filling of the South Shrewsbury river 480 feet from Ocean avenue, a fixed point, and such dedication did not carry any right beyond that line.

Because at the time of the dedication of Beach 40

street to the Borough of Seabright, to the exterior line for solid filling of the South Shrewsbury river, the rights of the public in the waters flowing in that portion of the river between the exterior line for solid filling and the exterior line for piers, had been and were extinguished by the State grant to Minugh and such dedication without express words could not revive any such right in the public.

Because the State's grant to Minugh covering
 10 Beach street and also the *locus in quo* vested the lands described in the grant absolutely in him and extinguished all rights of the public therein ; that the grant was with two separate and distinct privileges, to reclaim by filling in to the exterior line for solid filling and to reclaim by erecting piers between the line for solid filling and the exterior line for piers ; that the former privilege was exercised and a part of the land so reclaimed by filling in, dedicated as Beach street ; that the lands between the
 20 two lines was not yet reclaimed by the erection of piers and that such filling in or dedication did not affect the lands between the two lines or the additional privilege of the grantee of reclaiming the lands between the two lines and excluding the public therefrom by the erection of piers or in the language of the grant, to appropriate the lands to his exclusive private uses.

Because the right of the public to extend a street laid out to a public navigable river to the new
 30 water front obtained by filling in by the owner, is based either on accretions or the union with the easement of the public in the river and such rule does not obtain here for the reason that at the time of the dedication, the public had no rights in that portion of the river between the two lines of solid filling and exterior line for piers.

Because Beach street was not dedicated and laid out to the river.

Because the right to reclaim and erect piers and
 40 exclude the public from that portion of the river

lying between the exterior line for solid filling and the exterior line for piers, existed when Beach street was dedicated and the street was dedicated subject to that right.

Because the deed dedicating Beach street does not in express words or by implication by any possible construction vest any right in the borough beyond the exterior line for solid filling.

Because the conveyances to Allgor and Brennan of the land in front of Beach street to the exterior ¹⁰ line for piers, negatives any possible presumption of any intention of the grantor in the dedication to vest any right or interest in the borough beyond the exterior line for solid filling.

Because a grant from the State of land under navigable waters vests the absolute title to the same in the grantee, and such lands after such grant are subject to the ordinary rules which apply and govern real estate.

Motion to non-suit denied and exception ²⁰
by defendants allowed and sealed accordingly.

[L. S.]

Defendant's counsel offers in evidence deed from the Seabright Land and Construction Company, to James M. Allgor, dated October 25th, 1898. Acknowledged November 1st, 1898, ³⁰ and recorded December 9th, 1898, in book 622, page 9.

Marked Deft's Ex. No. 1.

Defendant's counsel also offers in evidence a deed from the Seabright Land and Construction Company to Anna G. Brennan, dated January 2d, 1899 ; recorded in book 626, page ⁴⁰

269, on April 18th, 1899; acknowledged February 27th, 1899.

Marked Deft's Ex. No. 2.

MR. WILSON: I wish to offer testimony when your honor deals with that question, as to what was the intent and purpose of the dedicator, on the ground that the clause in each deed which relates to the rights of the defendants beyond the exterior
10 line for solid filling as it was when the street was dedicated, may be regarded by the Court as ambiguous. If the language is not thought ambiguous (and I do not think it is) this offer is not pressed.

I also wish to prove that when the Seabright Land and Construction Company conveyed to Allgor and Brennan, there was no consideration paid for the land in the street and that it was included, for a certain purpose, to protect the public rights and that they were notified of the dedication.

20

TESTIMONY CLOSED.

Adjourned.

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40

LONG BRANCH, N. J., AUGUST 6th, 1902.

Defendant's Counsel asks the Court to direct a verdict for the defendant.

Motion denied.

Exception allowed and sealed accordingly.

J. FRANKLIN FORT.

[L. s.]¹⁰

OPINION.

LONG BRANCH, N. J., AUGUST 6th, 1902.

FORT, J. There seems no possible construction of the deeds in evidence in this case which will sustain the contention of the defendants. The Conover deed of July 20th, 1891, conveys the whole tract, subsequently plotted by the Seabright Land Company, to that company and refers to Beach street as running to the new exterior line of solid filling. This deed also conveys all the right of Conover in the lands granted by the State to Minugh, who had conveyed to Conover. The State "Riparian grant" to Minugh was made in 1885.

After the deed of Conover in 1891, to the Seabright Land Company, that company filed its map and showed Beach street running to the "new exterior" line of filling. That was below the original high water mark. In May, 1892, after the map was filed and by direct reference to it, the Seabright Land Company conveyed to the plaintiffs, Beach street as designated on said map. The street was dedicated as thirty-five feet wide and as extending four hundred and eighty feet to the line of solid filling of the Shrewsbury river as established by the Riparian Commissioners. It is clear that it was the intent of this conveyance to convey the land down to the water. At the time this grant was 40

made to the municipality it was clearly the intention, plainly expressed in the grant, to give the public access to the water by this street. The map dedicated it, the deed confirmed it; both map and deed fixed the public right to the river. All the right the Seabright Land Company had in the waters or lands under them lying in front of the street conveyed, passed to the municipality.

But if there were doubt about this construction
 10 of the plaintiff's deed, the defendants' deeds would clearly defeat any right in them to retain the *locus in quo* against the municipality. The defendants claim under the same grantor as the plaintiff. By the defendants' deeds, I think the Seabright Land Company confirmed and made clear the character of its intended grant to the municipality. The lands are conveyed to the defendants by specific description starting at a point (in the Allgor deed), on the south side of Beach street, at the northwest
 20 corner of lot No. 43 on the map. The land conveyed is expressly stated to run to the exterior line of solid filling, "as now established by the Riparian Commissioners," and is defined as running along said exterior line of solid filling to the south side of Beach street—not to the center of Beach street—and from said point on the south side of Beach street at the exterior line of solid filling the course is along the said south side of Beach street to the beginning. Following the meets and bounds de-
 30 scription is this clause :

“Together with all the right, title and interest of the party of the first part, of, in or to the lands lying under water between the exterior line for solid filling and the exterior line for piers, immediately adjacent to the above described premises on the westerly side thereof, and to the center line of Beach street and the extension thereof, as fixed by the Riparian
 40 Commissioners of the State of New Jersey and

contained in a grant made by the state to James R. Minugh, dated February 21st, 1885, and recorded in the Monmouth County Clerk's office in book 387 of deeds on page 481, etc., as by reference thereto will fully appear.

"Being part of premises conveyed to the party of the first part by W. W. Conover and wife, by deed dated July 20th, 1891, and recorded in the office of the Clerk of Monmouth County in book 485 of deeds, page 120, etc." 10

This is too clear for construction. The deed recognizes the existing street in terms and with equal clearness refers to the "extension thereof." This clause in the deed conveys the title to center of the street, subject to the then existing public easement, and can not affect the grant to the plaintiff by the defendants' grantor and under which the plaintiff claims. If it were abandoned as a street, defendants would then have rights, but this clause can receive no construction which can give it greater force.

This case can not be distinguished from *Hoboken Land Company vs. Hoboken*, 7 Vr., 540.

The plaintiff will have judgment.

Counsel for defendant prays exception to the Court's finding in the following particulars :

To so much of the finding as declares that the deed from the Seabright Land and Construction Company to the Borough of Seabright, dated May 13th, 1892, recorded in Monmouth County Clerk's office in book 530 of deeds, page 340, conveyed the land down to the water.

10 That the said grant gave the public access to the water by Beach street.

That the map offered in evidence by the plaintiff dedicated said Beach street to the water and fixed the public right to the river.

That all the right the Seabright Land Company had in the waters or lands under them lying in front of Beach street, passed to the borough.

That the defendant's deed defeats any right in the defendant to retain the *locus in quo*.

20 That on a construction of defendant's deed it confirms a grant from the Land Company to the Borough of Beach street to the river.

That on a construction of defendant's deed, Beach street was extended by the terms of said deed to the waters of the river.

Counsel for defendant also prays exception to the Court's refusal to render a judgment for the defendant.

J. FRANKLIN FORT. [L. S.]

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40

ASSIGNMENTS OF ERROR.

And now at this day the plaintiff in error assigns the following causes of error :

1. Because the justice who tried said cause at the trial thereof when the plaintiff had rested its cause, refused to non suit the plaintiff at the request and upon the motion of the defendant. 10

2. Because the said justice decided that the deed from the Seabright Land and Construction Company to the Borough of Seabright, dated May 13th, 1892, recorded in clerk's office of Monmouth county, in book 503 of deeds, page 340, conveyed the land down to the water.

3. Because the said justice decided that the said grant gave the public access to the water by Beach street. 20

4. Because the said justice decided that the map offered in evidence by the plaintiff, dedicated said Beach street to the water and fixed the public right to the river.

5. Because the said justice decided that all the right the Seabright Land Company had in the waters or lands under them, lying in front of Beach street, passed to the borough.

6. Because the said justice decided that this defendant's deed defeats any right in the defendant to retain the *locus in quo*. 30

7. Because the said justice decided on a construction of defendant's deed, that it confirmed a grant from the Land Company to the Borough of Beach street to the river.

8. Because the said justice decided on a construction of defendant's deed, that Beach street was extended by the terms of said deed to the waters of the river.

9. Because the said justice, when the parties had 40

rested, refused the request of the said defendant to render a verdict and judgment for the defendant.

10. Because it appears from the record that judgment was rendered for the plaintiff against the defendant, whereas judgment ought to have been given for the defendant against the plaintiff.

And the said James M. Allgor, defendant, prays that the judgment aforesaid may be reversed, annulled and for nothing held and that he may be restored to all things which he has lost by occasion of the said judgment, &c.

CHARLES H. IVINS,

Att'y of Defendant and Plaintiff in Error.

Jointer in error in usual form.

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EXHIBITS.

Plaintiff's Exhibit No. 1.

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This indenture, made the twentieth day of July, in the year one thousand eight hundred and ninety-one, between James R. Minugh and Sarah A., his wife, of Seabright, in the Township of Ocean, County of Monmouth and State of New Jersey, of the first part, and William W. Conover, of the Township of Shrewsbury, County of Monmouth and State of New Jersey, of the second part :

Witnesseth, that the said party of the first part, for and in consideration of the sum of thirty thousand dollars, \$30,000, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipts whereof is hereby acknowledged ; and the said party of the second part, his heirs, executors and administrators, forever released and discharged from the same by these presents have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever,

All that tract or parcel of land and premises, situate, lying and being at Seabright, in the Township of Ocean, County of Monmouth and state of New Jersey.

Beginning at a point on the shore of the Atlantic ocean, said point being in line with the center line of New street, and from thence running (1) west 40

along the center line of New street to a point, said point the southwest corner of a lot on the north side of New street, and being the same lot now or formerly occupied by Irwin & Nesbitt ; thence (2) north along the west line of said lot and at right angles to said first line to the southerly lines of lands of the Seabright Fishery Association ; thence (3) west along the south line of the Seabright Fishery Association land to the South Shrewsbury river ;
 10 thence (4) south along said river to the line of lands of Hendrickson and Conover ; thence (5) east along their line to the ocean ; thence (6) north along the ocean to the point or place of beginning, and being intended as part of the premises and real estate conveyed to said James R. Minugh by Arthur V. Conover by deed dated October 5th, 1870, and which said deed is recorded in the Monmouth County Clerk's office in Lib. 227 of deeds, pages 281, &c., excepting
 20 acquired by the Long Branch and Sea Shore railroad by deed to said Railroad Co., dated June 27th, 1864—and right of way for turnpike adjoining said railroad.

Also all that parcel of land part of which was formerly and part of which is still flowed by tide water, lying at Seabright, in the Township of Ocean, County of Monmouth and State of New Jersey, described as follows :

Beginning at a point in the original high water
 30 line of the easterly shore of the Shrewsbury river, where the same is intersected by the division line between lands of Conover and Hendrickson and lands of the said James R. Minugh ; and from thence westerly at right angles with the Long Branch and Sea Shore Railroad and along the line of lands granted by the State of New Jersey to William W. Conover. Samuel T. Hendrickson and James H. Hendrickson, April 22d, 1882, four hundred and ninety-eight feet to the new exterior line
 40 for solid filling established by the commissioners

appointed under the authority of the act entitled
"An act to ascertain the rights of the state and of
riparian owners in the lands lying under the waters
of the bay of New York and elsewhere in the state,"
approved April 11th, A. D., 1864, and the supple-
ments thereto; thence northerly along said new
exterior line for solid filling curving to the right
with a radius of eight hundred and fifty feet, one
hundred and ninety-two feet to a point; thence
northerly still along said exterior line parallel with 10
the Long Branch and Sea Shore railroad and dis-
tant five hundred and forty feet westerly from the
center line thereof, two hundred and seventeen
feet; thence easterly and parallel with South street
in Seabright thirteen feet to the present high water
line of the easterly shore of the Shrewsbury river,
where the same is intersected by the division line
between land of the Seabright Fishing Association
and lands of the said James R. Minugh extended
westerly to the said present high water line; thence 20
easterly along the said last mentioned division line
extended to the original high water line of the east-
erly shore of the Shrewsbury river; thence south-
easterly and southerly along said original high water
line to the place of beginning. Excepting out of
the lands under water above described, so much as
is included within the right of way lines of the Long
Branch and Sea Shore railroad; provided, however,
that if the said James R. Minugh is not the owner
of the land adjoining the land under water hereby 30
conveyed, then and in that case, this conveyance so
far as the same binds the state, and all the covenants
herein on the part of the state, shall be void as
affecting any part or parts of said lands joining
lands not owned by said James R. Minugh, with the
right, liberty, privilege and franchise to exclude the
tide water from so much of the lands above de-
scribed as lies under tide water, by filling in or
otherwise improving the same and to appropriate
the lands above described to his exclusive private 40

use, and also all and singular the lands under the water lying between the exterior line for solid filling and the exterior line for piers as fixed by the commissioners, under the authority of the act aforesaid and the supplements thereto and bounded by the northerly lines of the above described tract extended westerly to said pier line, with the right, liberty, privilege and franchise of building piers alone upon the lands last above conveyed, that is to
 10 say : that which lies between the exterior lines already fixed and above mentioned, and if and when said exterior lines shall be fixed at any points or places further out in said river, also any and all lands under water lying between the present exterior line above described and the new exterior line or lines that may be hereafter fixed, the same to be used for solid filling and for piers respectively, agreeable to the terms of such extension. The above description is taken from a grant made by the
 20 state of New Jersey to James R. Minugh, dated February 21st, 1885, and recorded in Lib. 387 of deeds, page 481, in the Monmouth County Clerk's office, reference being thereunto had will more fully appear.

The rest of this deed, after excepting several lots of land in no wise connected with the *locus in quo*, is comprised of the usual covenants of a warranty deed and the covenant of future assurance.

Acknowledged July 20. 1891. Recorded July 24. 1891. Book 485. Page 114. V.

30

Plaintiff's Exhibit No. 2.

This indenture, made the twentieth day of July, in the year one thousand eight hundred and ninety-one, between William W. Conover and Angeline his wife of the Township of Shrewsbury, County of Monmouth and State of New Jersey, of the first part, and the Seabright Land and Construction Company, a corporation of New Jersey, of the second part :

40 Witnesseth, that the said party of the first part,

for and in consideration of the sum of thirty thousand dollars, \$30,000, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged ; and the said party of the second part, its successors, forever released and discharged from the same by these presents, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these 10 presents do grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part, and to its successors and assigns forever, all that tract or parcel of land and premises, situate lying and being at Seabright, in the Township of Ocean, County of Monmouth and State of New Jersey.

Beginning at a point on the shore of the Atlantic ocean, said point being in line with the center line of New street, and from thence running (1) west 20 along the center line of New street to a point, the said point being the southwest corner of a lot on north side of New street, and being the same lot now or formerly occupied by Irwin & Nesbit ; thence (2) north along the west line of said lot and at right angle to said first line to the southerly line of lands of the Seabright Fishery Association line, thence (3) west along the south line of said Seabright Fishery Association to the South Shrewsbury river ; thence (4) south along said river to the line of lands of 30 Hendrickson and Conover ; thence (5) east along their line to the ocean ; thence (6) north along the ocean to the point or place of beginning, and being intended as part of the premises and real estate conveyed to said James R. Minugh by Arthur V. Conover by deed dated October 5th, 1870, and which said deed is recorded in the Monmouth County clerk's office in book 227 of deeds, pages 281, etc.

Also all that parcel of land part of which was 40

formerly and part of which is still flowed by tide water, lying at Seabright in the Township of Ocean, County of Monmouth and State of New Jersey, and described as follows : beginning at a point in the original high water line of the easterly shore of the Shrewsbury river where the same is intersected by the division line between land of Conover and Hendrickson, and lands of the said James R. Minugh ; and from thence westerly at right angles with the

10 Long Branch and Seashore railroad and along the lines of land granted by the State of New Jersey to William W. Conover, Samuel T. Hendrickson and James H. Hendrickson, April 22d, 1882, four hundred and ninety-eight feet to the new exterior line for solid filling established by the commissioners appointed under the authority of the act entitled "An act to ascertain the rights of the state and of riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in the state,"

20 approved April 11th, A. D., 1864, and the supplements thereto ; thence northerly along said new exterior line for solid filling curving to the right with a radius of eight hundred and fifty feet, one hundred and ninety-two feet to a point ; thence northerly still along said exterior line parallel with the Long Branch and Seashore railroad and distant five hundred and forty feet westerly from the center line thereof, two hundred and seventeen feet ; thence easterly and parallel with South street in

30 Seabright thirteen feet to the present high water line of the easterly shore of the Shrewsbury river where the same is intersected by the division line between land of the Seabright Fishing Association and lands of the said James R. Minugh extended westerly to the said present high water line ; thence easterly along said last mentioned division line extended to the original high water line of the easterly shore of the Shrewsbury river ; thence southeasterly and southerly along said original high water line to

40 the place of beginning : excepting out of the lands

under water above described so much as is included within the right of way lines of the Long Branch and Seashore railroad ; provided, however, that if the said James R. Minugh is not the owner of the land adjoining the lands under water hereby conveyed, then and in that case this conveyance so far as the same binds the state, and all covenants herein on the part of the state, shall be void as affecting any part or parts of said lands joining lands not owned by said James R. Minugh with the right, 10 liberty, privilege and franchise to exclude the tide water from so much of the lands above described as lies under tide water by filling in or otherwise improving the same and to appropriate the same above described to his exclusive private use, and also all and singular the lands under water lying between the exterior line for solid filling and the exterior line for piers as fixed by the commissioners under the authority of the act aforesaid and the supplements thereto, and bounded by the northerly and 20 southerly lines of the above described tract extended westerly to said pier line, with the right, liberty, privilege and franchise of building piers alone upon the lands last above conveyed, that is to say : that which lies between the exterior lines already fixed and above mentioned and if and when said exterior lines shall be fixed at any points or places further out into said river ; also any and all lands under water lying between the present exterior line above described and the new exterior line or lines that 30 may be hereafter fixed, the same to be used for solid filling and for piers respectively, agreeably to the terms of such extension.

The above description is taken from a grant made by the State of New Jersey to James R. Minugh dated February 21st, 1885, and recorded in Liber 387, page 481, etc., in the Monmouth County clerk's office, reference being thereunto had will more fully appear.

The rest of this deed, after excepting several 40

lots of land in no wise connected with the locus in quo, is comprised of the usual covenants of a warranty deed and the covenants of further assurance.

Acknowledged July 20, 1891. Recorded July 24, 1891. Book 485, page 120.4c.

Plaintiff's Exhibit No. 3.

Commission conveying to said grantee and its successors the tract of land at Seabright known as Beach street mentioned in said bill of complaint, is
 10 on file with me as Borough Clerk, and that the following is a true copy thereof, to wit :

THIS INDENTURE, made the thirteenth day of May, in the year one thousand eight hundred and ninety-two, between the Seabright Land and Construction Company, a corporation of New Jersey, party of the first part ; and The Seabright Borough Commission (body corporate), party of the second part ; WITNESSETH, that the said party of the first part, for and in consideration of the sum of one dollar lawful
 20 money of the United States of America, to it in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released, and forever quit-claimed, and by these presents does remise, release, and forever quit-claim unto the said party of the second part, and to its successors and assigns forever, all that certain street, lot or parcel of land and premises,
 30 hereinafter particularly described, situate, lying and being in the Township of Ocean, County of Monmouth and State of New Jersey, at Seabright, *being known and designated as "Surf street"* on a map of the property of the party of the first part made by W. H. DeNyse, Civil Engineer, and duly filed in the office of the Clerk of Monmouth County. Beginning on the west side of Ocean avenue as shown on aforesaid map, and running westerly to the east side of Front street a distance of three
 40 having a uniform width of thirty-five (35) feet.

And also, that certain street, lot or parcel of land and premises known and designated on aforesaid map as "Beach street." Beginning in the westerly side of Ocean avenue and extending westerly about four hundred and eighty feet to the line of solid filling of Shrewsbury river as established by the Riparian Commissioners and shown on aforesaid map.

Said street having a uniform width of thirty-five (35) feet. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, its successors and assigns, to its and their own proper use, benefit and behoof forever.

.....
THE SEABRIGHT LAND
AND CONSTRUCTION
COMPANY.
Seal.
.....

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed by its President and attested by

its Secretary, and its common seal to be hereto affixed, the day and year first above written.

JOHN L. RIKER, President.

Attest :

PAUL WALTON, Secretary.

The foregoing deed was acknowledged before Levi P. Druvin, Commissioner of deeds. July 23, 1892. Recorded August 5, 1892. Book 503. page 840. &c.

Plaintiff's Exhibit No. 5.

THE STATE OF NEW JERSEY

TO

JAMES R. MINUGH.

The State of New Jersey, to all whom these presents shall come, greeting, whereas pursuant to an act of the legislature of said state, approved March 10 31st, 1869, entitled "Supplement to an act entitled 'An Act to ascertain the rights of the State and of Riparian Owners in the lands lying under the waters of the Bay of New York and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," and other statutes and joint resolutions of said State: James R. Minugh of Seabright in the Township of Ocean in the County of Monmouth and State of New Jersey being the owner of lands fronting on the Shrewsbury river in the State 20 of New Jersey, which lie above high water mark, and in front of which the lands hereinafter leased lie, and so is riparian proprietor within the said acts and joint resolutions; and being desirous of obtaining a lease for the lands under water hereinafter granted, did apply to the commissioners appointed under said act approved March 31st, 1869, and to the governor of said state for a lease of the lands hereinafter granted and to fix the price and reasonable compensation and the annual rental for the lease of so much 30 of said lands under water as lie below high water mark and might properly be included in the lease and the boundaries and the price reasonable compensation and the annual rental to be paid for the same. And

Whereas, in compliance with the said application the said commissioners, to wit: Thomas McKeen, Bennington F. Randolph, Amzi Dodd and Gersham Mott, having due regard to the interest of navigation, agreed to lease the lands hereinafter granted 40 and determined that the sum of twenty-eight dol-

lars and sixty-three cents (\$28.63) as the annual rental to be paid for all of said lands under water so designated and did fix the sum of four hundred and nine dollars (\$409.00) as the price or reasonable compensation on payment of which a conveyance of all or any part of the said lands free from rent would under said act be made. And

Whereas, the said applicant, James R. Minugh, secured to be paid to the treasurer of this state the said annual rental and have since applied to the 10 present commissioners for a conveyance assuring to him the lands under water hereinafter granted. And

Whereas, the State of New Jersey by the said commissioners first above named did by lease dated the seventeenth day of June, A. D., 1882, duly executed, bargain and sell, lease and convey the lands under water hereinafter granted in perpetuity, which lease contained a covenant and agreement by said state that a conveyance would be made to the said James R. Minugh, his heirs and assigns, of the 20 said lands in said lease mentioned with the rights, liberties, privileges and franchises or any part thereof he might desire free and discharged of the whole or of an equitable portion of the said rent on his paying to the said state the sum of four hundred and nine dollars or an equitable portion thereof on application duly made therefore. And

Whereas, the said James R. Minugh desires that a grant in fee of the said lands under water herein- 30 after more particularly described may be conveyed to him free and discharged of the said rent and has duly made application therefor to the present Riparian Commissioners of the State of New Jersey, viz: Bennington F. Randolph, Amzi Dodd, Miles Ross and Arthur G. Ogilby, (Thomas McKeen and Gersham Mott, formerly commissioners, being now deceased). And

Whereas, the said commissioners have determined that the sum of four hundred and nine dol- 40 lars (\$409.00) for a conveyance of the said lands un-

der water as hereinafter granted. Now therefore, the said State of New Jersey by the said commissioners, the governor of said state concerning, in consideration of the premises and of the sum of four hundred and nine dollars duly paid by the said James R. Minugh to the said state, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell, quit-claim, and convey unto the said James R. Minugh and to his heirs and assigns forever,

All that parcel of land part of which was formerly and part of which is still flowed by tide water lying at Seabright in the Township of Ocean in the County of Monmouth and State of New Jersey, described as follows :

Beginning at a point in the original high water line of the easterly shore of the Shrewsbury river, where the same is intersected by the division line between lands of Conover and Hendrickson and
 20 lands of the said James R. Minugh, and from thence westerly at right angles with the Long Branch and Sea Shore railroad and along the line of lands granted by the State of New Jersey to William W. Conover, Samuel T. Hendrickson and James H. Hendrickson, April 22d, 1882, four hundred and ninety-eight feet to the new exterior line for solid filling established by the commissioners appointed under the authority of the act entitled "An Act to
 30 Owners in the lands lying under the waters of the Bay of New York and elsewhere in this state," approved April 11th, A. D., 1864, and the supplements thereto, thence northerly along said new exterior line for solid filling curving to the right with a radius of eight hundred and fifty feet, one hundred and ninety-two feet to a point, thence northerly still along said exterior line parallel with the Long Branch and Sea Shore railroad and distant five hundred and forty feet westerly from the centre line
 40 thereof, two hundred and seventeen feet, thence

easterly and parallel with the South street in Seabright thirteen feet to the present high water line, the easterly shore of the Shrewsbury river where the same is intersected by the division line between lands of the Seabright Fishing Association and lands of the said James R. Minugh extended westerly to said present high water line, thence easterly along said last mentioned division line extended to the original high water line of the easterly shore of the Shrewsbury river, thence southeasterly and south-10
erly along said original high water line to the place of beginning. Excepting out of the lands under water above described so much as is included within the right of way lines of the Long Branch and Sea Shore railroad, provided, however, that if the said James R. Minugh is not the owner of the land adjoining the land under water hereby conveyed then and in that case this conveyance so far as the same binds the state and all the covenants herein on the part of the state shall be void as affecting any part 20
or parts of said lands, joining lands not owned by said James R. Minugh. With the right, liberty, privilege and franchise to exclude the tide water from so much of the lands above described as lies under tide water by filling in or otherwise improving the same and to appropriate the lands above described to his exclusive private uses. And also, all and singular the lands under water lying between the exterior line for solid filling and the exterior line for piers as fixed by the commissioners appointed 30
under the authority of the act aforesaid and the supplements thereto and bounded by the northerly and southerly lines of the above described tract extended westerly to said pier line with the right, liberty, privilege and franchise of building piers, alone upon the lands last above conveyed, that is to say, that which lies between the exterior lines already fixed and above mentioned. And if and when said exterior lines shall be fixed at any other point or places further out into said river. Also any 40

and all lands under water lying between the present exterior line above described and the new exterior line or lines that may be hereafter fixed the same to be used for solid filling and for piers respectively, agreeably to the terms of such extension.

Together with all and singular the hereditaments and appurtenances thereunto belonging and all the rights of the state in said lands, to have and to hold all and singular the above granted and described
 10 lands covered with water and premises unto the said James R. Minugh and to his heirs and assigns forever.

In witness whereof, the said state has caused these presents to be sealed with the great seal of the said state and to be subscribed by Leon Abbett, the governor of said state, and three of the said commissioners and attested by Henry C. (L. S.) Kelsey, the secretary of state thereof, this twenty-first day of February in the year one thousand
 20 eight hundred and eighty-five.

The words "First above named" in 33d line of 1st page and "Three of the" in 36th line of 3d page interlined before execution.

R. C. BACOT.

LEON ABBETT, Governor,
 BENNINGTON F. RANDOLPH,
 AMZI DODD,
 ARTHUR G. OGILBY.

30 Witness, R. C. BACOT.

Attest :

HENRY C. KELSEY,

Secretary of State.

STATE OF NEW JERSEY, }
 Hudson County. } ss.

Be it remembered that on this third day of March, eighteen hundred and eighty-five, before me, the
 40 subscriber, a Master in Chancery of New Jersey,

personally appeared Robert C. Bacot, of full age, who being by me duly sworn, on his oath saith that he saw Bennington F. Randolph, Amzi Dodd and Arthur G. Ogilby, three of the within named commissioners, sign and deliver the within deed as their voluntary act, and that he, the said Robert C. Bacot, thereupon subscribed his name as an attesting witness thereto.

R. C. BACOT.

Sworn and subscribed before me at Jersey City 10 the day and year aforesaid.

JOHN V. BACOT,
Master as aforesaid.

Rec'd and recorded April 20th, A. D. 1885.

JAMES H. PATTERSON,
Clerk.

Compd.

20

Defendant's Exhibit No. 1.

SEABRIGHT LAND AND CONSTRUCTION COMPANY

to

JAMES M. ALLGOR.

I. R. S. Stamp,
\$1.00 cancelled.

This indenture, made the twenty-fifth day of 30 October, in the year one thousand eight hundred and ninety-eight, between the Seabright Land and Construction Company, a corporation of New Jersey, party of the first part, and James M. Allgor, of the Borough of Seabright, in the County of Monmouth and State of New Jersey, party of the second part,

Witnesseth, that the party of the first part, for and in consideration of the sum of six hundred dollars, lawful money of the United States of 40

America, to it in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged from the same by these presents, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm, unto the
 10 said party of the second part, and to his heirs and assigns forever, subject nevertheless to the conditions hereinafter named,

All that parcel of land hereinafter particularly described, situate, lying and being in the Borough of Seabright, County of Monmouth and State of New Jersey.

Beginning on the south side of Beach street at the northwest corner of lot No. 46 on said map, and running thence (1) southerly along the west line of
 20 said lot No. 46 and parallel with Ocean avenue as shown on said map, sixty-seven (67) feet and seven (7) inches, to the south line of the whole tract of which the lot herein described is a part ; thence (2) westerly along said line twenty-one (21) feet and eight (8) inches more or less to the exterior line for solid filling as now established by the Riparian Commission of the State of New Jersey ; thence (3) northerly along said exterior line for solid filling to the south side of said Beach street ; thence (4)
 30 easterly along the south side of said street thirty-one (31) feet and four (4) inches more or less to the place of beginning.

Together with all the right, title, and interest of the party of the first part, of, in, or to the lands lying under water between the exterior line for solid filling and the exterior line for piers, immediately adjacent to the above described premises on the westerly side thereof, and to the center line of Beach street and the extension thereof, as laid by
 40 the Riparian Commissioners of the State of New

Jersey and contained in a grant made by the State to James R. Minugh, dated February 21st, 1885, and recorded in the Monmouth County Clerk's office in book 387 of deeds on page 481, etc., as by reference thereto will fully appear.

Being part of premises conveyed to the party of the first part by W. W. Conover and wife by deed dated July 20th, 1891, and recorded in the office of the Clerk of Monmouth County in book 485 of deeds, page 120, etc. 10

Subject nevertheless to the following conditions :

First : No hotel, drinking saloon, barroom, place for the sale of liquor, either spiritous, vinous, or malt, gaming-house, brothel, slaughter-house, furnace, manufactory, brewery, distillery, building for the curing or storing of fish, nor any building other than one dwelling house for a single family with the usual out-buildings, appropriate thereto and costing not less than seven hundred dollars, shall be erected, maintained or permitted 20 on any part of said lands unless herein specifically permitted.

Second : No building of any kind shall be erected or permitted on said lands nearer than ten feet from the line of the street on which the lands front, nor any piazza, porch, or portico thereof, nearer than five feet from said line of the street.

Third : No privy or other closet or place or thing for the depositing or carrying of fecal matter or of-30
fal or refuse of any kind shall be erected or per-
mitted on said premises excepting such as shall
conform to and be regulated and cared for in ac-
cordance with the laws of this state and the regula-
tions of the Board of Health or other govern-
mental body or bodies, local and state, which shall
from time to time have cognizance of such mat-
ters. And on the breach of any of the foregoing
conditions by said James M. Allgor, his heirs, de-
visees, tenants or assigns, the state herein granted
and conveyed shall thereby cease, determine and be- 40

come void, and the property herein conveyed shall forthwith thereby revert to and become vested in fee simple in the said The Seabright Land and Construction Company, its successors or assigns.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also the estate,
 10 right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances:

To have and to hold the above granted, bargained and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns to his and their own proper use, benefit, and behoof forever, subject to the condi-
 20 tions aforesaid. And the said The Seabright Land and Construction Company, doth for itself, and its successors, covenant, grant and agree, to and with the said party of the second part, his heirs and assigns, that the said The Seabright Land and Construction Company, at the time of the sealing and delivery of these presents, is lawfully seized of a good, absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted, bargained and described premises, with
 30 the appurtenances, and hath good right, full power, and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid. And that the said party of the second part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first
 40 part, its successors or assigns or of any other per-

son or persons, lawfully claiming or to claim the same, subject to the conditions aforesaid: And that the same now are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances of what nature and kind soever.

And also that the said party of the first part and its successors and all and every other person or persons whomsoever, lawfully or equitably deriving 10 any estate, right, title or interest of, in, or to the hereinbefore granted premises, by, from, under or in trust for them shall and will at any time or times hereafter upon the reasonable request, and at the proper costs and charges in the law of the said party of the second part, his heirs and assigns, make, do and execute, or cause or procure to be made, done and executed all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law for the better and more 20 effectually vesting and confirming the premises thereby intended to be granted in and to the said party of the second part, his heirs and assigns forever as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised, or required, subject to the conditions aforesaid. And the said The Seabright Land and Construction Company, the above described and hereby granted and released premises, and every part and parcel 30 thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said party of the first part, and its successors, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof, the said party of the first part has caused these presents to be signed by its President and attested by its Secretary, and its 40

common seal to be hereto set, the day and year first above written.

THE SEABRIGHT LAND AND CONSTRUCTION CO.

W. E. CONNOR,
Vice President.

Attest :

PAUL WALTON,
Secretary.

[L. S.]

10

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.

Paul Walton, being duly sworn on his oath says that he is the Secretary of the Seabright Land and Construction Company, the grantor in the within indenture named, that he is acquainted with the corporate seal of said corporation, and the same is affixed to said instrument; that Washington E. Connor is the Vice President of said corporation
20 and was such officer at the time of the execution of said instrument, that deponent saw said officer sign said instrument, and affix said corporate seal thereto, and deliver the same as the voluntary act and deed of said corporation and by its authority, and deponent signed his name thereto, at the same time as a subscribing witness.

PAUL WALTON.

Sworn and subscribed before me }
30 this 1st day of November, 1896, }
at New York City, New York. }

CORNELIUS DOREMUS,
Master in Chancery of New Jersey.

Received and recorded December 22d, A. D.
1898, at 9 o'clock, A. M.

Comp'd.

JOSEPH McDERMOTT,
Clerk.

40

Defendant's Exhibit No. 2.

was deed from Seabright Land and Construction deed from said association to James M. Allgor, Company to Anna G. Brennan, in same form as dated January 2d, 1899. Recorded April 18th, 1899. Consideration \$80,000, and conveys all that parcel of land, hereinafter particularly described, situate, lying and being in the Borough of Seabright, County of Monmouth and State of New Jersey. 10

Beginning in the northwest corner of Beach and Front streets (as the same are laid down and shown on a map of the property of the party of the first part, made by W. H. DeNyse, Civil Engineer, and duly filed in the office of the clerk of Monmouth County, and running thence (1) northerly along the westerly line of Front street, thirty-eight feet and three inches to lot No. 43 on said map; thence (2) westerly along the same and parallel with Beach street seventy-three feet and ten inches to the exterior line for solid filling of the Shrewsbury river, as now established by the Riparian Commissioners of the State of New Jersey; thence (3) same southerly along the said exterior line for solid filling thirty-eight feet and three inches to the northerly line of Beach street; thence (4) easterly along the same seventy-three feet and two inches to the point or place of beginning, 20 30

Being lot No. 44 on the aforesaid map. Being part of the premises conveyed to the party of the first part by W. W. Conover and wife by deed dated July 20th, 1891, and recorded in the office of the Clerk of Monmouth County in book 488 of deeds, page 180, etc.

Together with all the right, title and interest of the party of the first part, of, in, or to the lands lying under water between the exterior line for solid filling and the exterior line for piers, immediately 40

adjacent to the above described premises, on the westerly side thereof, and to the center line of Beach street, and the extension thereof, as fixed by the Riparian Commissioners of the State of New Jersey and contained in a grant made by the state to James R. Minugh, dated February 21st, 1885, and recorded in the Monmouth County Clerk's office in book 387, of deeds, on page 481, etc., as by reference will thereto fully appear.

- 10 Subject to the same conditions as specified and set out in the Allgor deed.

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