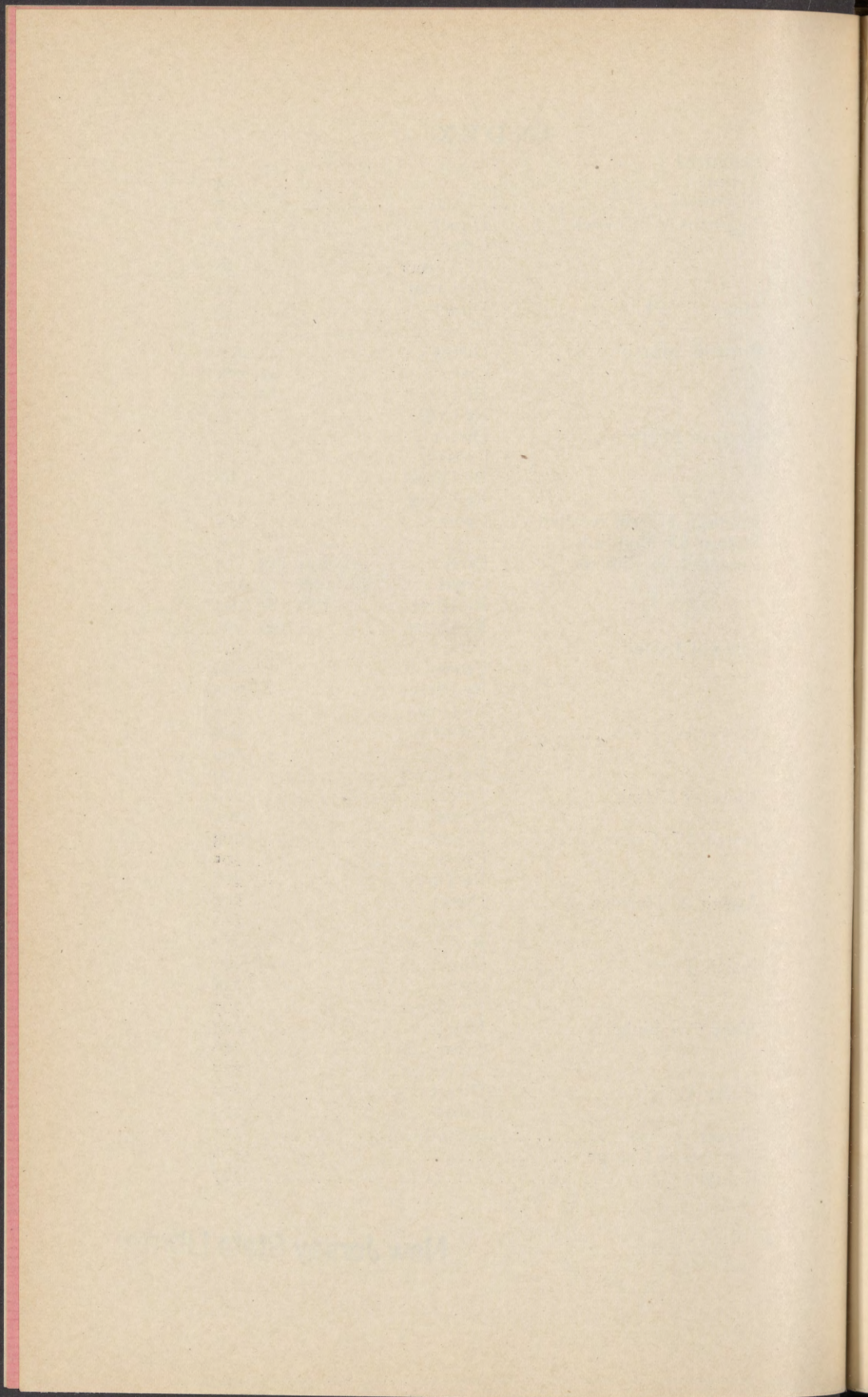


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Middlesex County Circuit Court.

THE BOROUGH OF ROOSEVELT

Plaintiff,

vs.

HERMAN SHAPIRO AND JACOB LEVINSON,

Defendants.

10

Herman Shapiro and Jacob Levinson, the defendants in this cause, were summoned to answer unto The Borough of Roosevelt, the plaintiff therein, in an action of ejectionment.

20

"The Borough of Roosevelt, the plaintiff in this action, by Peter F. Daly, its attorney, demands of Herman Shapiro and Jacob Levinson, the defendants herein, the possession of a certain tract of land and premises situate in the Borough of Roosevelt, in the County of Middlesex, and State of New Jersey, described as follows:

"Beginning at a point on the southerly side of the Union Landing Road, as the same is laid out on a certain map or maps described as No. 217 in the Clerk's Office of the County of Middlesex, entitled, 'Map of Building Lots of Lizzie B. Colwell at Carteret, Middlesex County, New Jersey, filed August 23, 1892, surveyed by Louis Quien, Elizabeth, New Jersey, marked Filed December 8, 1892,' which said point is distant fifty-six and sixty-six one-hundredths feet from a point formed by the intersection of the said side of said road as laid out on said map with the westerly side of the branch of the Central Railroad Company of New Jersey, at Carteret, as the same is laid out on said map; thence

30

running westerly along the said side of the aforesaid road as laid out on said map, fifty feet to a point in the line of land claimed to be owned by H. Gerke; thence along said Gerke's alleged line in a southerly direction and at right angles with the aforesaid road so laid out on the said map, sixteen feet; thence running in an easterly direction parallel to the aforesaid line of said road as laid out on said map, fifty feet; thence running north-
10 erly at right angles to said lot so laid out, sixteen feet to the place of beginning, being sixteen feet off the northerly ends of lots thirty-one and thirty-three in Block 2, as described on said maps, and the plaintiffs say that their right to the possession of the same accrued on the first day of January, nineteen hundred and three, and that the said defendants wrongfully deprive them of the possession thereof, to their damage, one thousand dollars.

"PETER F. DALY,
 "Attorney of Plaintiff."

20

The defendants answer as follows:

"And the said Herman Shapiro and Jacob Levinson, by Alan H. & Theodore Strong, their attorneys, appear and defend this action and say they are not guilty of the injury whereof the said The Borough of Roosevelt hath complained in its declaration, nor of any part thereof; and of this they put themselves upon the country.

"And the said plaintiff doth the like.

30

"ALAN H. & THEO. STRONG,
 "Attorneys of Defendants."

This action was tried before Frank T. Lloyd, with a jury, at the Circuit Court, on the eleventh day of April, nineteen hundred and thirteen.

The cause having been heard and submitted to the jury, they returned their verdict as follows:

They find for The Borough of Roosevelt.

Whereupon it is adjudged that the plaintiff do recover the possession of the lands in the declaration men-

tioned, and also its costs of suit, which were taxed at the sum of seventy-four dollars and four cents (\$74.04).

Judgment entered April eleventh, nineteen hundred and thirteen.

State of New Jersey,
County of Middlesex, ss.

I, Bernard M. Gannon, Clerk of the County of Middlesex, do hereby certify that the foregoing is a true, full and correct copy of a certain judgment as the same is on record in my office in Book M of Judgments, on pages 50, etc.

10

In testimony whereof, I have hereunto set my hand and affixed my seal of said county, this 7th day of August, A. D. 1913.

BERNARD M. GANNON,

(Seal)

Clerk.

20

30

Middlesex County Circuit Court.

10

THE BOROUGH OF ROOSEVELT

vs.

HERMAN SHAPIRO AND JACOB LEV-
INSON,

In Ejectment.
Notice of Appeal.

Filed

1913.

To Russell E. Watson, Esquire, Attorney for Plaintiff:

Take notice, that the defendants appeal to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds:

20

1. The Court overruled the following question propounded on the part of the said defendants to one Augustus W. Colwell, a witness for said defendants, to wit: "What conversation did you have with these gentlemen at that time on the subject of the width of Rahway avenue?"

2. The Court permitted Herman Shapiro, one of the defendants, to be asked on cross examination, the following question, to wit: "That second Rizchak building that you see on the picture there, how long do you remember that being there?"

30

3. The Court admitted in evidence on the part of the plaintiff a certain map called the Vidal map and marked *Exhibit D 3* in said action.

4. The Court admitted in evidence on the part of the plaintiff a certain other map made by one Simons and marked *Exhibit D 8* in said action.

5. The Court admitted in evidence on the part of said plaintiff a certain photograph marked *Exhibit D 4* in said action.

6. The Court admitted in evidence on the part of

said plaintiff a certain other photograph marked *Exhibit D 5* in said action.

7. The Court admitted in evidence on the part of the plaintiff a certain other photograph marked *Exhibit D 6* in said action.

8. The Court admitted in evidence on the part of the plaintiff a certain other photograph marked *Exhibit D 7* in said action.

9. The Court admitted the following question asked on the part of said plaintiff of one Simons, a witness for said plaintiff, to wit: "And in locating this southerly side of Rahway avenue as you have stated, and fitting it in with the trees, and these various angles that you speak of, what was the width of Rahway avenue?" 10

10. The Court admitted in evidence on the part of the plaintiff a certain deed dated June 30, 1905, from John B. Crowell and wife to DeWitt Winchell, recorded in Middlesex County Clerk's Office in Book 369 of Deeds at page 454.

11. The Court admitted in evidence on the part of the plaintiff a certain other deed of the same grantor to the same grantee dated August 7, 190, recorded in said Clerk's Office in Book 375 of Deeds at page 208. 20

12. The Court admitted in evidence on the part of the plaintiff, a certain map of property of one John B. Crowell, M.D., made by Franklin Marsh, surveyor, and filed in Middlesex County Clerk's Office March 27, 1905, the same being marked *Exhibit P 9* in said action.

13. The Court permitted counsel for said plaintiff in summing up after the conclusion of the evidence, to say to the jury as follows: "I say that Mr. Strong has said this is a case of taking Mr. Shapiro's property without compensating him. I say that there is no such danger in this case and there should not be any such thought, because Mr. Shapiro, if he purchased from Mr. Colwell one hundred feet, he is entitled to ask Mr. Colwell to give him the one hundred feet, and if Mr. Colwell stuck him out into the road under a warranty deed, he can ask Mr. Colwell to make compensation for the land that 30

he didn't give him," and said Court refused to direct and did not direct the jury as requested on the part of said defendants to disregard said language, or say to said jury (as so requested) that the question of Shapiro's recovery against his grantor, or any grantor, is immaterial in the case and should not be considered by them.

14. The Court permitted said counsel in his said address to the jury to further say: "The real man was
10 the man sitting there. You heard him go on the stand" (referring to one Augustus W. Colwell). And said Court approved said language.

15. The Court in charging the jury permitted the jury to consider for the purpose of determining the southerly line of Rahway avenue, a measurement from the head of a certain worm putting out of a creek, said worm being mentioned in one of the deeds conveying said premises.

20

ALAN H. & THEO. STRONG,
Attorneys for Appellants.

30

Middlesex County Circuit Court.

APRIL TERM, 1913.

THE BOROUGH OF ROOSEVELT,

vs.

HERMAN SHAPIRO AND JACOB
LEVINSON.

10

Ejectment.
No. 1 in the List.

Transcript of stenographer's notes of evidence taken in the above entitled cause, before HON FRANK T. LLOYD, Judge, and a Jury, at the Court House in the City of New Brunswick, N. J., on the seventh day of April, A. D. 1913 at 10.45 a. m.

20

APPEARANCES :

MR. GEORGE S. SILZER,

MR. RUSSELL E. WATSON, for the Plaintiff.

MESSRS. A. H. & T. STRONG, for the Defendants.

A jury being empanelled and found satisfactory, they were sworn.

Mr. Alan Strong opens the case for the plaintiff.

30

THE COURT: Counsel in these causes having formally in open Court agreed that cause number two in the Supreme Court, White v. The Borough of Roosevelt, and cause number one in the Circuit Court issues, Borough of Roosevelt v. Shapiro and Levinson, should, when reached upon the trial list, be tried together with the Supreme Court issue, it is hereby ordered, on the call of number two in the Supreme Court, that both causes shall be tried together.

MR. SILZER: Will your Honor also add the order that we are to close?

THE COURT: The Court will control that. That is done in open Court here. I think there is no trouble about that.

10 *Augustus W. Colwell*, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath, saith:

Direct Examination, by Mr. Alan Strong.

Q. Where do you reside, Mr. Colwell? A. New York City.

Q. Were you, or was Lizzie B. Colwell formerly the owner of a tract of land in the Township of Woodbridge? A. Yes, sir.

20 Q. And was there a map filed in the clerk's office of that tract of land, dividing it into lots? A. Yes, sir.

The Court: What is the map?

Mr. Strong: It is entitled, "Map of building lots, Lizzie B. Colwell, Carteret, Middlesex County, New Jersey; filed August 29th, or 24th, 1892; surveyed by Louis Kuien, Elizabeth, New Jersey."

The Court: It purports to be what?

Mr. Strong: Carteret.

30 Mr. Silzer: What is the filing number of the map, Strong, do you know?

Mr. Strong: It is number 217 of the file of maps filed in the County Clerk's office.

The Court: Filed when?

Mr. Strong: I don't know that the filing date appears otherwise than in the title.

The Court: This comes from the clerk's office, does it?

Mr. Strong: Yes, sir. Filed August 24th, 1892, P. Convery, Clerk.

The Court: Is Carteret the same as the present Borough of Roosevelt?

Mr. Strong: Yes; I think that will be admitted; or at least the Borough of Roosevelt includes this this part of Carteret.

Mr. Watson: Yes, it does.

Q. Was this filed by the authority of yourself and Mrs. Colwell? A. That map is, but this is mutilated somehow or other. I don't recognize it. I mean the superscription. 10

Q. Something pasted on? A. No, it is chemically done. The original marking is underneath that. How it was done, or when, I don't know.

Q. Do you recognize the map? A. Substantially, yes.

Q. The only thing that you don't identify about it is the superscription? A. That I do not recognize.

Q. Was there a subsequent map filed by way of amendment of that map? A. This was the first map filed, because this has alleyways, which was abandoned and put into plain lots without any rear alleys. 20

Q. When you say this was the first, you are referring to a different map that I have shown you? The second map I now show you was really the first one filed? A. No. My impression is that this is the first one, because it has these alleys. The lots are wider and deeper.

The Court: Do not let us get into confusion about that. What purports to be the filing of this, Mr. Strong? Was it filed? 30

Mr. Strong: Yes. The map which I now show the witness, produced also from the files of the County Clerk's office, is marked "Filed December 8th, 1892. P. Convery, Clerk."

Q. The blue print which I showed you first seems to have been filed August 24th, 1892. A. Yes, sir; and December '92?

Q. And the one which you have now in your hands,

filed December 8th, 1892, and this, you will notice by the title, appears to be, or is entitled "Amended map of building lots at Carteret, Middlesex County, New Jersey, 1892." *A.* What is your questions, please?

Mr. Strong: I do not think they give any date of survey other than the dates expressed in filing.

Q. Were both of these maps filed at the instance of Mrs. Colwell? *A.* Yes, sir.

10 *Q.* Lizzie B. Colwell was your wife, was she?

A. She was.

Q. And in accordance with these maps were conveyances made of the different lots? *A.* According to that map. Not according to this (indicating).

Q. According, you say, to the map of August, 1892?

A. The blue print.

Q. The blue print map, which is the August map.

By the Court.

20 *Q.* Was Lizzie B. Colwell the owner of this tract?

A. Yes, sir; at that time.

By Mr. Strong.

Q. I show you a deed dated the 30th day of October, 1899, and recorded the 27th of March, 1900, in book 315 of deeds of Middlesex County, page 126. Was that deed executed by yourself and your wife to Mr. White?

A. Yes.

Mr. Strong: I will offer the deed.

30 *A.* Is that deed according to the tracing, or the blue print?

Mr. Strong: I offer it now, and then I will state that in a moment.

(Deed entered in evidence and marked Exhibit P. 1).

Mr. Strong: The deed conveys all those certain lots being known and designated as lots numbers 4, 5, 6 and 7, in block two, on a certain map entitled, "Map of building lots, Colwell, Woodbridge Town-

ship, Middlesex County, State of New Jersey." And known as map number 217. That calls for the blue print map.

Mr. Watson: They are both number 217.

Mr. Silzer: In order to get it on the record properly, one is the December map, and August map.

Mr. Strong: Wait until I read it. "And known as map number 217, surveyed by Louis Quien, Elizabeth, New Jersey, filed August 24th, 1892, and amended map filed December 8th, 1892, at the clerk's office, Middlesex County, New Jersey." It refers to both maps. "Lots number 5 and 7 facing Union Landing Road, starting fifty feet from Colwell Street; lots number 4 and 6 facing Fitch street, starting twenty-five feet from Colwell street. Above lots all being twenty-five by one hundred feet." 10

The Court: Is there any difference in the question here involved on the two maps? 20

Mr. Strong: No. The maps are indential in regard to that part of it. The second one amends the original map in another part.

Mr. Silzer: We think the maps are very significant. They differ right at the point where the dispute arises.

Q. Lots 5 and 7 fronted on Union Landing Road, I see. Is there another name for that road?

A. Rahway avenue.

Q. That is the same as Rahway avenue, is it? 30

A. The same.

The Court: Is that the same on both maps, amended the same, I mean?

Mr. Strong: I think so.

Q. Was it designated on both maps? A. I think Rahway was changed, and they adopted the name Rahway long afterwards.

Q. When did you or Mrs. Colwell become the owner

of this entire tract? *A.* I can't remember. I do not remember.

Q. Some time prior to these maps? *A.* It must have been.

Mr. Strong: I will put that deed in evidence a little later. I haven't the original deed, but I will put it in before we get much further.

Q. At the time of her purchase what was the condition of this tract of land? *A.* What condition do you mean?

Q. I mean the physical characteristics of it? Was it built upon? *A.* Some places.

Q. At the time she bought it was it? *A.* No, no. I bought it originally and business complications necessitated my putting it in my wife's hands.

By the Court.

Q. When did you buy it, about, I mean? *A.* '89.

Q. And transferred it to your wife when? *A.* Some
20 time afterwards.

By Mr. Strong.

Q. Do you remember when? *A.* I cannot.

Q. Now I ask you at the time that these maps were made, which was in '92, what was the physical characteristic of the tract? Was it at that time built upon?

A. There might have been some buildings, but I cannot remember. There could not have been many.

Q. Was it fenced at all? *A.* There had been a very strong, good fence running along Union Landing Road,
30 or the Rahway Road.

Q. Rahway avenue they called it? *A.* Good strong fence up there.

Q. Was there a survey actually made of the property? *A.* There was.

Q. For the purpose of being put into lots? *A.* Before I bought it, or pretty soon after I bought it.

Q. Was there another survey made at the time these maps were prepared? *A.* There was another survey made covering the village lots.

Q. What do you mean by that? Was that the entire tract? A. No, sir; that was the tract west of the Jersey Central railroad; it was put in village lots.

By the Court.

Q. Is that the part that is covered in these maps?

A. It is.

By Mr. Strong.

Q. Do these maps, or not, cover the entire tract?

A. They do, of the lots.

Q. No, but I mean the entire ownership that you bought there? A. No, sir. East of the Jersey Central Railroad was for manufacturing purposes. There were no lots sold.

Q. Was it all purchased by you in one conveyance?

A. One conveyance.

Q. From whom? A. A man whose name commences with H.

Q. I can get that in a few minutes.

A. Hughes, man named Hughes.

Q. And the other portion of it, I mean the portion which is not included in these maps, what did you do with that? A. Manufacturing purposes. I had a river front.

Q. Was that built upon? A. No, sir.

Q. It has not been built upon? A. No, sir.

Q. No factories erected there? A. There is one that I put up myself.

Q. When? A. '89 or '90.

Q. And you occupied it, did you, the factory?

A. I did.

Q. For manufacturing purposes? A. Yes.

Q. And that occupies a part of the entire tract, does it? A. Yes, sir.

Q. Of which these maps show another part, cover another part? A. The maps cover the building lots, and the other part is not mentioned there at all.

Q. At the time that you made this conveyance to Mr. White, what was the width of Rahway avenue as actually in use?

Mr. Silzer: I don't think the witness has stated that he knows yet.

The Court: He has lived there.

Mr. Silzer: No, he didn't live at this part. He used the lower part, beyond the railroad, which is a considerable distance away, for manufacturing purposes.

The Court: Let us see if he observed it.

10 Mr. Strong: I will withdraw the question and put it in a different form.

Q. At the time that you made this conveyance to White, in October, 1899, was there any fence existing along the line of Rahway avenue? A. No, sir.

Q. There was none then? A. The inhabitants had taken the fence posts away.

Q. Down to what time was there a fence there?

A. A very good one.

Q. And was down to what time? A. That I cannot tell.

20 Q. Was it there when you became the owner of the property?

Mr. Silzer: I object to that. I don't think Mr. String ought to put the words in his mouth.

The Court: He has already stated that, Senator.

Mr. Silzer: He stated he couldn't tell.

The Court: No, he had already stated when he bought it there was a good fence there, a wooden fence, he said.

30 *By the Court.*

Q. Was there a fence there when you got it?

A. There was a good fence.

Q. How long did it remain there, the question is.

By Mr. Strong.

Q. After you bought it? A. Well, I don't think more than five or six or seven years. It went away by piecemeal. First one set of rails and then another, and then we pried up the posts.

Mr. Strong: Shall I put in the documentary title of Shapiro with this witness or not?

The Court: Why don't you finish with him as to what he knows about the width of the street, and its boundaries?

Mr. Strong: Because the testimony would perhaps relate to both cases, that is what I was thinking of.

The Court: Just as you please about that.

Q. What was there, at the time that you made the conveyance to White, to indicate the width of Rahway avenue? A. Very soon after I bought I had the authorities from Woodbridge examine the property to define where the line of the road was. They settled—

10

Mr. Silzer: I object.

Q. I don't care to have you give that, since the other side object to it, but what I want to get is, what was there on the ground physically to indicate? A. Trees, and the fence.

20

Q. What trees were there? A. Large elm trees, sixty-five years of age, about.

Q. And where did they stand? A. They stood on the north side in the yard of the people. They stand there yet. On the south side they stood outside of the line, boundary line.

Q. Outside— A. Of the fence, of where the fence had been.

Q. These lots of White are on the south side, are they not? A. They are.

30

Q. The trees on the south side stood outside of your front boundary? A. Yes. Outside of the fence.

Q. How many of the trees were there? A. Possibly ten. There might have been less, but I think ten.

Q. Did they stand in a column, or otherwise?

A. No, they were distances apart, if I remember correctly, from twenty to thirty feet, not less than twenty, and maybe more than thirty.

Q. And with reference to each other, you said they

were twenty or thirty feet apart, and how did they stand rather with reference to the side of the road?

A. Relatively in a straight line, as though they had been planted intentionally.

Q. And where were they with reference to the road as it was actually used at that time?

A. The road was run between the two lines of trees.

Q. The one line on each side? *A.* About nearly central.

10 *Q.* Do those trees exist there at this time? *A.* On the north side they do. On the south, no.

Q. Do you know what has become of them?

A. They were cut down.

Q. Do you know by whom? *A.* I don't know by what orders, but when the street was talked about being wider, and they settled they wanted to do it, I found the stumps laying on another section of my land, but the trees were down.

20 *Q.* Did you order them cut down? *A.* I did not. I requested that they should not be cut down.

Mr. Silzer: I move to strike out that question and answer.

The Court: The last part is not responsive.

Q. Did you and Mrs. Colwell make other conveyances of lots on these meadows? *A.* Yes, sir.

Q. Numerous or otherwise? *A.* What is that?

Q. How many, about? *A.* Couldn't tell you.

30 *Q.* Well, were there a large number, or a small number.

Mr. Silzer: I object as immaterial.

A. I could only tell you by going to the records here in town.

The Court: When you say other conveyances do you mean according to this plan?

Mr. Strong: Yes. Out of this tract, and in accordance with the maps.

By the Court.

Q. You say there were? *A.* There were some, but

I can't remember the number.

By Mr. Strong.

Q. Did you and Mrs. Colwell make conveyance of two lots to a man by the name of Steinberg?

A. Yes, sir.

Mr. Watson: I object. This is not the way in which the case was to go in, according to Mr. Strong's statement.

Mr. Strong: I don't care especially about putting it in, only while this witness is on the stand I wanted to get his testimony with reference to conveyance as regards those lots, but if your Honor thinks I ought to reverse it— 10

Mr. Watson: I will withdraw the objection and let it go at this time.

A. How I found the road width?

Mr. Strong: I haven't the original Steinberg deed here. I will put that in. I have an agreement here, I see. 20

Q. Have you anything else to say with regards to what there was to define the width of the highway, Rahway avenue? A. The distance across from fence to fence, I have that distance, it was forty-nine and one-half feet. It was generally considered a three—

Mr. Silzer: I object to that.

Q. Do you know the measurement between the old fence that you said existed in front of your lots, and the fence on the opposite side of your tract? A. Three rods, forty-nine and one-half feet. 30

Q. Was that the actual measurement? A. Yes, sir. Various places.

Q. Do you mean to say throughout the entire front of your property, or where? A. No variation—no appreciable variation.

By the Court.

Q. What was the length of the front of your prop-

erty on the road? *A.* I think it was about seventeen hundred feet originally. I may be astray, but not much.

By Mr. Strong.

Q. Was the entire front included in these maps?

A. No, sir. The land east of the Jersey Central Railroad is not included on either map.

Q. That fronted on Rahway avenue also, did it?

10 *A.* It did. The same width.

Q. Has that other portion ever been plotted in lots?

A. No, sir. None of my land has ever been plotted in lots prior to my buying it.

Q. I am talking now since then. Has the other portion ever been plotted in lots? *A.* No.

Q. On the other side of the railroad? *A.* East of the railroad it has not been plotted; except one or two small blocks.

20 *Mr. Silzer:* I would like to have those maps put up so the jury can see what we are talking about.

Mr. Strong: I offer those maps in evidence.

(Blue print entered in evidence and marked Exhibit P 2).

(Second map entered in evidence and marked Exhibit P 3).

The Court: What is the claim on behalf of the Borough, that this is a four rod street?

Mr. Watson: That this is a sixty foot street.

30 *Mr. Silzer:* Sixteen feet in dispute. They claim it is a forty-four foot street, and we claim sixty feet.

The Court: I understood the witness to say that his actual measurement showed forty-nine and one-half feet.

Mr. Watson: He did say that, but the pleadings call for sixteen feet. And in the case of *Roosevelt v. Shapiro*, Shapiro is actually in possession of sixteen feet.

Cross Examination, by Mr. Silzer.

Q. Mr. Colwell, will you step down here, please. At the top of the August map is "Union Landing Road." That is the road that is now called Rahway avenue, isn't it? A. Yes.

Q. That also appears at the top of the December map? A. Yes.

Q. Marked "Union Landing Road." I understand that the August map, which is the blue print on the left, was the first one that you had prepared, and the one on the right, the December map, called the amend- 10
ed map, is the second one you had prepared?

A. I don't see the date on that.

Mr. Strong: Here it is. It is turned upside down.

Q. Your idea was that the December map, the one on the right hand side, which had the alley in, was the one that you had, but on which you didn't sell the lots?

A. I have never sold a lot on that map. 20

Q. And that was the old map, but the one on the left — A. If my memory serves me I did not sell on that, because those lots are deeper, and there was an alley, and then they were made up to the other line here.

Q. But the map on the left, the August map, as we call it, so as to distinguish it, that is the one upon which you sold your lots? A. That is the one I sold all the lots.

Q. Both of these maps which you filed show the road in question to be forty-four feet wide, don't they? 30

A. I think that is what I found, forty-four, or forty-nine.

Q. Haven't you already testified that it was forty-nine and one-half feet, and you found it so? A. It was a three rod road.

Q. So that you have it measuring now five and one-half feet shorter than you found it on the road, is that right? A. I haven't seen these maps to discuss the width of the road. I am going by my memory of twenty years ago.

Q. Both of your maps show the road, according to the map, to be forty-four feet wide, don't they?

A. Yes, they are both forty-four feet.

Q. And you have already testified that you found upon the ground, by actual measurement yourself, as you stated running uniformly throughout, the road to be a three rod road, forty-nine and one-half feet wide?

A. I did state that, but there is a big chance that I am mistaken, and that is the correct figure.

10

Mr. Strong: When he said that, he points to the map.

Q. Are you mistaken now, or were you mistaken when you testified positively a few moments ago that it was a three rod road? *A.* I would rather depend upon those figures there.

Q. Why did you then testify positively under oath and clearly say that you found the road to be forty-nine and one-half feet? *A.* Because that was my impression now from memory that I have drawn on thirty years ago.

Q. Is it true that the road was forty-nine and one-half feet? *A.* I would rather depend upon that for that (indicating).

Q. Will you swear that it wasn't forty-nine and one-half feet, after having sworn that you found it so?

A. I will depend upon that. That is the figure upon both maps.

Q. Will you swear that it was not forty-nine and one-half feet wide? *A.* I will swear it was these figures here.

Q. You will now swear it was these figures?

A. Yes.

Q. And a few moments ago you swore it was those?

A. I did say so, but I was drawing on my memory of thirty years.

Q. Then why didn't you say to Mr. Strong, Mr. Colwell, that your memory was a little in doubt about it, and that you would not swear?

A. Well, I have said that several times.

Q. Did you say that with reference to this forty-nine feet? A. I don't remember that.

Q. In the first map you had an alleyway put through the back of these lots, didn't you? A. Yes, sir.

Q. That alleyway was— A. In this map (indicating).

Q. The first map that you had prepared the alleyway was ten feet wide, wasn't it? A. Yes.

Mr. Strong: You are confusing the maps, because this is the first map. 10

Mr. Silzer: No, the gentleman said this was the first map that he drew that had an alley in it, but he didn't sell by that, and he drew another one and sold by that.

Mr. Strong: As to which is the first map, I think you ought not to try to confuse the witness. The dates will show which is the first.

Q. According to the December map, which was the first map that you made? 20

Mr. Strong: That is not correct.

Q. That is true, isn't it? A. I don't say that is true at all. If that is a date in issue.

Q. That is the date of filing. A. Well, by file.

Mr. Strong: Refer to them by the dates of filing.

Q. This map is dated 1890. Do you remember that now? I am speaking now of what we call the December map, filed in December '92? A. Well, my impression is now that I made that map with the streets with the convenience that rubbish and garbage together—rather than get out on the front street. 30

Q. That is not the question. The question is whether the map which we have called the December map, and which is dated in 1890, whether that wasn't the first map that you made, and that afterwards you made the other one marked the August map, from which you sold? A. That was made on the red lines in '90. These

are made on the blue lines, and I had that map and changed it to black lines—I should say black lines, I changed it to black lines. I read that from the dates.

Q. The December map was the first map you made?

A. The red lines.

Q. The first map itself? *A.* No, that don't hold good at all. This here was made later. The black lines must have been taken out of the records here, and put in later when this thing was made (indicating).

10 *Q.* Black lines taken out of the record? *A.* The drawing was taken out.

Q. Off the record? *A.* And black lines put in.

Q. Didn't you file this map as it now with the county clerk? *A.* With the red lines, not with the black.

Q. Do you mean to say the county clerk put black lines after you filed it? *A.* No, he did not. That was done in my office. That is plain to be seen, because you will notice the black lines overspreading the red, and I did not sell a map on the red lines.

20 *Q.* Did you originally plan to sell it with an alley?

A. I did.

Q. And after you changed your mind about it?

A. Yes.

Q. Therefore the December map, which had the alley on it, was the first map, and when you decided not to sell according to the alley, you used this one?

A. You use the word red lines, that was my first map.

30 *Q.* I didn't use the word red lines. *A.* No, I want you to, because that specifies that part of the drawing, but this part, the lower part, the back streets, Randolph street was made after the red lines were made.

The Court: Does there appear to be any date of filing except December '89?

Mr. Silzer: No, but the map is dated '90.

Mr. Strong: That is, the red lines are dated '90.

A. That is what I want to convey.

Q. What I want to know is whether the December map was the first one upon which you started to do

business, and whether that wasn't the map which was afterward changed to the August map since which time you have used the August map for the selling map?

A. When you use the red lines on the first map, yes. Then I changed it and put on the black lines on these two, and you will find my deeds read that way, unless there happened to be a mistake.

Q. Why did you file both maps? A. Because I didn't want to sell by the red lines. I wanted to sell by the black.

10

Q. Then this was the first map, wasn't it? A. I should judge it was, from the dates.

Q. Will you point out to me the lots that Mr. White is interested in, lots 4, 5, 6 and 7 in block two? A. 4, 5, 6 and 7 (indicating).

Q. This is Rahway avenue, is it? A. Yes.

Q. Here is lot 4 (indicating), 5, 6 and 7, is that correct? A. Correct.

Q. And Mr. Shapiro's lots, where are they? A. 1, 2, 3 is railroad. I think Shapiro's is 22.

20

Q. This is 29 there, (indicating). A. I believe the railroad has three lots there. Now you are asking me to go back twenty years.

Mr. Strong: 31 and 33 in block two.

A. There is 29, 30, 31 and 33. That 25, thirty-one and six-tenths is the railroad. Those to the west, 31 and 33, are Mr. Shapiro's.

Adjourned until 2.00 p. m.

30

Afternoon Session, 2.00 p. m.

Augustus W. Colwell, resumed.

Cross Examination (continued), by Mr. Silzer.

Q. Mr. Colwell, will you come back again and get together on this map. One of your answers this morning reads this way, "The distance across from fence to

fence, I have that distance, it was forty-nine and one-half feet; it was generally considered a three"—and then you stopped. Did you mean a three rod road?

Mr. Strong: You struck out that portion. It was withdrawn.

Mr. Silzer: I have a right to ask that now.

Mr. Strong: Don't say that he said that.

Q. Considered a three, that is where it stopped. Now
 10 I ask you whether or not this is considered a three rod road? A. Yes.

Q. That is forty-nine and one-half feet? A. I heard it spoken of as a three rod road.

Q. You were asked the question "Q. Do you know the measurement between the old fence that you said existed in front of your lots, to the fence on the opposite side of your tract? A. Three rods, forty-nine and one half feet. That is right, isn't it?

A. That was three rods. That would be three rods,
 20 forty-nine and one-half feet.

Q. You saw some trees there, didn't you? A. Yes.

Q. Well, the trees on one side of the road were outside of the fence line, and on the other side of the road they were inside of the fenceline, weren't they?

A. Yes.

Q. On your side of the road they were outside of the fence line? A. Yes. That is I remember. I am not taking my oath to a foot or an inch, but I remember it being outside of my original fence. That fence has
 30 been torn down many years.

Q. You don't know how far the trees were from the fence line, do you? A. From the fence? They were touching it in some cases. That is my memory of it.

Q. Might be as wrong about that as you were about the forty-nine feet, I suppose? A. I am telling you it is my memory of it.

Q. I am trying to find out how your memory it?

A. I am telling you the best of my memory.

Q. Have you talked with Mr. Marsh and Mr. Strong

about this part of it? *A.* Not a word.

Q. Not a word since this morning? *A.* Not a breath.

Q. You understand that the amount in dispute between the borough and the owners to whom you sold is sixteen feet? *A.* I believe they took the sixteen feet.

Q. If this road was as you said, forty-nine and one-half feet instead of forty-four feet—twenty-two on each side? *A.* Twenty-two on each side.

Q. That is forty-four. Now if it was forty-nine and one-half feet, as you first stated, that would be five and one-half feet different from what is shown on your map, wouldn't it? *A.* The map is correct. 10

Q. And you are incorrect? *A.* My statement was drawing on memory a good many years back.

Q. I say, if your first statement was correct, that would account for five and one-half feet, wouldn't it?

A. It couldn't be correct, because it only was forty-four.

Q. Why did you swear to it? *A.* Because I was trusting to my memory. 20

Q. Well, aren't you doing that in everything you are saying now, trusting to your memory? *A.* A great deal of it I am trusting to my memory.

Q. If you add the ten feet alleyway that you first put upon your map, to the five foot and a half that you found when you testified a while ago, that will make fifteen feet and a half, which is just the difference in disputes between your people and the borough, isn't it?

A. That alleyway was—

Q. Won't you answer the question? *A.* I am doing it, and I am going to answer it my way. That alleyway was merged into this back line of streets, and no possible connection would it have with widening the street. The same way when I make a mistake in saying forty-nine, the difference cannot be merged into what you took off the street. 30

Q. You had a certain amount of land, didn't you?

A. Yes.

Q. And you laid it out in a certain number of lots, didn't you? A. Yes.

Q. Now, according to this map, that is the August map, you have got New Jersey avenue here, haven't you? A. The regular map—

Q. Can't you answer the question, please, Mr. Colwell. How far is New Jersey avenue at Colwell street, from Jersey avenue to Rahway avenue? A. Well, I say New Jersey avenue is not on my selling map, nor
10 this street is not named, nor this, (indicating), but New Jersey avenue is—

Q. Will you please answer the question? A. I will if I can. I am trying to answer it my way.

Q. You are not listening to me. I am asking you how far on the August map it is from Jersey avenue to Rahway avenue?

Mr. Strong: That is apparent on the face of the map.

20 Mr. Silzer: I have a right to ask him.

Mr. Strong: I object. These are things that are apparent on the face of the map.

The Court: Yes, but I think it is competent cross-examination in testing the witness' memory.

Mr. Strong: Memory as to the contents of the map.

The Court: He is testifying from the map. I think the examination is a fair one.

(Question repeated by stenographer.)

30 A. I have no Jersey avenue.

Q. Don't you see it in front of you on the August map? A. I see it on that, but I have no Jersey avenue—

Q. This is the map that you filed, isn't it? A. I did but this must have been somehow or other—you have got me confused now. There is no Jersey road—Jersey railroad, yes, but there is no Jersey dirt road here.

Q. Can't you answer? A. I will try to.

Q. Why don't you do it, Mr. Colwell? A. I am trying to.

Q. My question was, how far is it on your August map from Jersey avenue, as outlined on your map, to Rahway avenue? A. Now, understand, I don't admit to any Jersey avenue on my selling map, or located in Carteret.

By the Court.

Q. Mr. Colwell, counsel is referring to a street marked New Jersey avenue, and asks you what the distance is from that to this road? 10

Mr. Strong: If counsel had said New Jersey avenue it would have been strictly accurate.

A. It is two hundred feet, and twenty-two feet to the centre of the road.

By Mr. Silzer.

Q. To the southerly side of the road is two hundred feet, isn't, from the southerly side of the road to New Jersey is two hundred feet? A. Yes.

Q. Will you come over here, please. On the December map, from the southerly side of Rahway avenue to what is now called Fitch street is two hundred feet, isn't it? A. It is one hundred feet and one hundred feet, yes. 20

Q. Now in the middle of the last one hundred feet you have put a ten foot alleyway, haven't you?

A. No, I haven't.

Q. Within that same two hundred feet that runs from Rahway avenue to Fitch street on this map is outlined a ten foot alleyway, isn't it? A. In red, yes, but in black, no. I am giving you figures on the black lines. 30

Q. I am asking you whether upon this map of your's — A. That map is no good to get the distance from one avenue to the other.

Q. Isn't much good anyhow, is it? A. I haven't sold anything on that map.

Q. If you took that ten foot alleyway with the five and one-half feet that you said Rahway avenue was wider, that would make the sixteen and one-half feet that is in dispute between you, wouldn't it?

A. That alleyway was taken out twenty or thirty years ago. It is not a recent take out.

Q. You made the map, you put it out then, didn't you?

A. To take from the black lines to those black lines is two hundred feet. Exclusive of any alleyway at all. That is in red lines. It was never used for a sale.

Q. You left that alley in there? *A.* No, I didn't leave it in there, not with the black lines.

Q. What did you put it on for?

10 *A.* Put it on for the red lines.

Q. I don't care whether you put it on in green or yellow, I want to know why you put Central Alley through there?

A. For the convenience of buyers, so that they could take out their rubbish and garbage and ashes.

Q. Wasn't it done because you had sixteen feet to account for so as to let your people shove back that ten feet? *A.* No.

20 *Q.* Then why didn't you put alleyways through these other lots?

A. Those would be a better class of people than would get on the back line.

Q. Why didn't you put alleyways on those?

A. Because there wouldn't be a good class of people.

Q. How did you know who was going to buy?

A. I didn't. I only thought it.

Q. That is the best explanation you have?

A. I can't have any other reason.

30 *Q.* But you never did sell according to this latter, did you? *A.* No.

Q. Then is that because the better class of people didn't show up? *A.* No, it is because I found the people didn't want it.

Q. Who was it repudiated?

A. I couldn't tell you now.

Q. Do you recognize that street shown on this photograph? *A.* No names on the street, but I should judge I could say yes.

Q. Well, now, let us be sure whether you are going

to say yes or no this time? *A.* I should say I recognize it, although there is no names on the street.

Q. What is it? *A.* It is part of Carteret.

Q. What do you see on there? What is that building that sticks out there? *A.* It is Mr. Shapiro's building.

Q. What is on these lots over here (indicating)?

Mr. Strong: I object. There is nothing of that kind in the case for the purpose of cross examination at this time.

10

The Court: I think that is true.

Mr. Silzer: I have a right to identify them while the witness is on the stand.

The Court: Yes but you are going further and asking him to describe the condition of the photograph, and what it represents.

Mr. Silzer: I am going to ask him if he recognizes that second street.

The Court: He may answer the question whether he recognizes a photograph, if that is all you want to do. It is not available to use to the jury.

20

Mr. Silzer: Oh, no, not at the present time.

A. If the name wasn't on it I would not recognize it.

By Mr. Strong.

Q. They put the name on it, did they?

A. Oh, no, it is photographed on it, two names there. I would not recognize it without those names.

By Mr. Silzer.

30

Q. Do you recognize the other one without the names? *A.* I recognized it because it was opposite there.

Q. Do you recognize those?

A. No, sir; except by the names.

Q. Do you recognize the picture? Do you recognize the street? No, I do not recognize the street without those names.

Q. I just ask you the flat question—

A. I answer it that way, no, without the names. I have a right to put that qualification in. For me to say no, I am wrong; for me to say yes, I am wrong again.

Q. Wrong all the time then?

A. I would be in that instance.

Q. Did you sell the Central Railroad station property too?

A. I did.

Q. That is next to Shapiro's. *A.* Yes, sir.

10 *Q.* Do you recognize that on this picture? That you couldn't recognize unless there was a name on it?

Mr. Strong: I object. I think the witness has said he does not recognize the picture, and that is as far as the matter ought to go. They cannot make testimony upon our case.

The Court: I think, Senator—

A. I do not see any building I recognize as the railroad station.

20

The Court: I think it is a matter that is outside of the direct examination, and if it is intended to prove those photographs it can be done otherwise. If you are trying to refresh this witness' memory by something, if that is the purpose of it—

Mr. Silzer: The witness has testified to the width of that road, and here are photographs of some old locations, as I understand it, and I want to see if he recognizes them.

30

Mr. Strong: They are not photographs of old locations.

The Court: He may answer if he recognizes them, but I don't think it is competent to go on and introduce the contents of the photographs.

Q. You do not recognize, you say, the Central Railroad station on that? *A.* I do not.

(First photograph shown witness marked D 1 for identification.)

(Second photograph shown witness marked D 2 for identification).

Q. Where is the original map from which that blue print was made? A. I don't know.

Q. Why not? A. Because I haven't got it.

Q. What did you do with it? A. I don't know where it is. I haven't seen it for years.

Q. Have you looked for it? A. Yes.

Q. Couldn't find it? A. No.

Q. Well, you sold by both of these maps, didn't you? 10

A. No, sir; I did not sell by the tracing.

Q. Well, your deed to Mr. White says, being known and designated as lots 4, 5, 6 and 7 on a map entitled, a map of building lots at Colwell, Woodbridge Township, Middlesex County, New Jersey, known as map 217, surveyed by Louis Kuien, Elizabeth, New Jersey, filed August 24th, 1892. That is one map, isn't it?

A. That is evidently one map you are reading.

Q. And amended map filed December 8th, 1892, that is the other one, isn't it? A. I don't understand the phraseology. If it is, it refers to the black lines. 20

Q. This deed refers to both maps, doesn't it?

A. Oh, yes; it refers to both of the maps.

Q. So that you are wrong again when you say that you didn't sell according to both maps, aren't you?

A. No, I am not wrong.

Re-Direct Examination, by Mr. Strong.

Q. Did the alleyway designated in red have anything at all to do with the question of the width of Rahway avenue? A. Never did. 30

Q. Have any reference to it at all? A. Not in the slightest. It was merely a matter of convenience for the buyers.

By the Court.

Q. Was it taken out of the one hundred feet between streets? A. No, sir. The lots were one hundred feet deep, plus ten feet for the alley. That was two hundred and ten feet.

Q. In the original plotting on the blue print it is one hundred feet between streets, as I understand it?

A. Two hundred feet between streets, front lots and rear lots.

Q. And the street on the white print corresponding to New Jersey avenue, is that the same distance from the street— A. The red lines on the tracing—

Q. (Continued)—from this avenue (indicating)? Is that the same distance from Rahway avenue that New Jersey avenue is? A. No, sir; one is two hundred and ten and the other is two hundred.

By Mr. Strong.

Q. Is there any difference in the line of Rahway avenue? A. No, sir; there is no difference in the line of Rahway avenue. It was just as I bought it, and just from which I sold, and just according to the directions given me by the authorities in Woodbridge.

Mr. Silzer: I move to strike the last out. That is not responsive and it not evidential.

Mr. Strong: You are sensitive on that point.

Mr. Silzer: I don't propose to let him run in a lot of stuff that he could not do legally. I am very sensitive about that.

The Court: Yes, it is stricken out.

Q. Was the width of Rahway avenue ever given to you by any of the public authorities?

Mr. Silzer: I object, for obvious reasons.

Mr. Strong: What are they?

Mr. Silzer: If any public official told him anything, it does not bind the Township.

Mr. Strong: It may or may not. It depends on how it was done.

Mr. Silzer: Let us have the way it was done.

Mr. Strong: I have got to make a start somewhere.

The Court: Of course there could be ways in which a municipality could bind itself, but I think it ought to appear, Mr. Strong.

Mr. Strong: I don't know what there is about it.

Mr. Silzer: You ought to know. He is your witness.

The Court: He may answer the particular statement whether he received any information from any municipal authority.

(Question repeated by stenographer.)

The Court: Objection sustained.

Q. Did you get any information from any municipal authority regarding the width of Rahway avenue?

10

A. I did.

Q. From whom, and in what manner? A. Judge Brown of Woodbridge, he came up there—

Mr. Silzer: One moment.

Q. Who was Judge Brown? A. I don't know what his political position was, or official position, but he was a prominent man in Woodbridge in the council.

20

Q. Was he a member of the Township Committee, do you mean? A. He was.

Q. Did you make any application to the Township Committee on this subject? A. I did.

Q. In what way did you do it? A. I asked him to send somebody up there to see whether my deed and the drawings I was going to make would be correct.

Q. Who did you make that application to? A. To the Township Committee of Woodbridge.

Q. In session, as they were in meeting? A. I couldn't tell you. I guess I sent it to the county clerk.

30

Q. Do you mean a written application? A. Yes. That I daresn't say.

Q. When you say the county clerk, do you mean the clerk here in— A. No I mean the council clerk, or the Township Clerk.

The Court: Was the township the predecessor?

Mr. Strong: Yes.

A. We were seceders.

Q. At the time you are now referring to did the Borough of Roosevelt exist? *A.* No, sir.

Q. In what municipality was this property included?

A. Woodbridge Township.

Q. Following your application that you have referred to, did you have any communication with the Township Committee, or any of them? *A.* They came up there to examine the situation.

Q. Who did? *A.* Judge Brown, and some other
10 gentlemen of the committee. I do not know their names.

Q. When was that with reference to the making of these maps? *A.* Before the making of any of them.

Q. What conversation did you have with these gentlemen—

Mr. Silzer: I object to that.

Q. (Continued)—at that time, on the subject of the width of Rahway avenue?

20 *Mr. Silzer:* I object to that. The action of the body, as shown by the minutes of the Township Committee, if any action whatever was taken, are the best evidence.

The Court: *Mr. Strong,* I am not inclined to think that there is enough to indicate an authority in any individual to speak, at this time.

Mr. Strong: Does your Honor overrule the question?

30 The Court: I think it is inadmissible at this point.

Mr. Strong: Prays exception.

Exception allowed—sealed accordingly.

Judge.

Re-Cross Examination, by Mr. Silzer.

Q. *Mr. Colwell,* did I understand you correctly when you said to the Court that the alleyway was taken out of a block that was two hundred and ten feet long?

Mr. Strong: Wide.

Q. Or wide? A. I said the alleyway was included—the lots were one hundred feet deep, each of them, and the alleyway came in between.

Q. So that the whole block was only two hundred feet? A. No, that would be two hundred and ten, but I can't swear that is the correct thing by the red lines.

Q. Didn't you swear to that when the Court asked you? Didn't you tell the Court that the block was two hundred and ten feet? A. I told him—yes, I said that.

Q. It is not true, is it? A. I don't say that it is not true. I might be mistaken. 10

Q. Why do you say things if you might be mistaken?

A. Because I haven't stated them.

Q. Why do you say them? Why don't you say, I don't know, I may be mistaken? A. Well, perhaps I had better.

Q. Don't you think you had better? Suppose you look at this map and see whether it is not two hundred feet instead of two hundred and ten. Running from Union avenue down Colwell street, lot number one is one hundred feet, isn't it? A. On black lines yes. 20

Q. Well, on every line it is one hundred feet, isn't it?

A. No.

Q. Isn't the red line that runs parallel with the black line one hundred feet? A. Yes, but here is the red line running down here to that line there (indicating).

Q. I am talking about lot number one. A. Then the red line comes beyond and it comes down here.

Q. Isn't lot number one one hundred feet deep?

A. Yes. 30

Q. And isn't lot number two, which is immediately beneath it, one hundred feet deep?

Mr. Strong: I object to that. Counsel is misleading the witness constantly, and I think your Honor ought to see the map. The witness said yes, by the black line. They had no existence except by black line; lots number one and two through red lines. One and two are black lines.

By the Court.

Q. When you speak of red lines what do you mean, those that run on down here (indicating)? A. Yes, sir. They were there to the alleyway. One hundred and twenty, or one hundred and twenty-five, then the alley was ten, and then here was another one hundred and twenty, or twenty-five, I can't see what it is. That was the street. Here commenced the other street, which has the red lining, was all abandoned, and the new one
 10 with the black lines over it, and you can easily distinguish the black line covering the red lines, so that it resolved itself into one hundred feet there, one hundred feet here, and then a new street which is now called Fitch street.

By Mr. Silzer.

Q. I get right back to the question I asked you before, didn't you say to the Court that the alleyway of ten feet was in addition to the one hundred feet in depth
 20 of each lot? A. That is where I was mistaken.

Q. That is all then. A. In making the idea that the red lines were the same depth as the black lines. They are not. The red lines are deeper.

Re-Direct Examination, by Mr. Strong.

Q. Is the width of the alley, the ten feet width of the alley, additional to the depth of the lots shown in red?

A. They are shown in two ways there.

(Question repeated by stenographer.)

A. What about it?

30 Q. Is it additional? A. Yes, sir.

By the Court.

Q. Was the alley put on only with reference to the lots as plotted in red ink? A. Yes, sir; only

Q. And not with reference to the black lines?

A. Never. Not at all.

Q. Which was first on the map? A. It is evident that the red lines were first, and the word "amended" is covering the black lines.

By Mr. Strong.

Q. As I understand you, I think you have already stated it, and I don't want to repeat if you have, that the line of Rahway avenue, whether it is shown in red or in black, is identically the same? A. Identically the same. It was never changed by me.

Q. Or anybody else until the— A. Oh, no. It was arbitrarily changed.

10

James T. White, the plaintiff, being duly sworn according to law on his oath, saith:

Direct Examination, by Mr. Strong.

The Court: Mr. Strong, was it your intention to examine the last witness with respect to the other property specifically, or is it contended that what he has said respecting this covers the other?

Mr. Strong: He has testified generally about the width of the street through his entire frontage.

20

The Court: Yes, but he said nothing, as I recall, about the Shapiro lots, as to their exact location, and how they bordered on the street.

Mr. Strong: They appear by plotting on the map.

The Court: And by description in the deed.

Mr. Strong: Yes. So that I don't know as there is anything specific that I care to ask him about the Shapiro lots.

The Court: Alright.

30

Mr. Strong: I will say to your Honor that I am in a little uncertainty as to whether I should put in Shapiro's case now, or later, after they have put in their case. That is, letting the Shapiro case take the regular course that it would naturally take. Shapiro's testimony.

The Court: I was only speaking with relieving the witness. If you had finished with him, that is all there is to it.

Mr. Strong: I am subject to your Honor's direction as to that part, as to whether I should put in Shapiro's title now, or wait until after they had put in their's. The two cases are being tried together.

The Court: I think it is a matter entirely in your own control.

Q. Mr. White, where do you live? A. I live at 497 Fourth street, Brooklyn, New York.

10 Q. Are you the James T. White mentioned in this deed from Augustus W. Colwell and wife, marked Exhibit P 1? A. Yes.

Q. Dated the 30th of October, 1899. At the time that you purchased these lots had you seen the property there, the lots that you bought? A. Oh, I had seen them, yes, years before.

Q. What is that? A. I had seen them years before.

Q. And when did you see them last, with reference to the deed? How long prior to the deed? A. Do 20 you mean the maps?

Q. No, the lots, the ground? A. Oh, I saw them a few days before I signed the deed.

Q. What was the condition of the lots at that time? Just describe to us how the property lay, and what it was? A. On the block referred to there was a house on the corner, to my recollection.

Q. On the corner of what street? A. That is Third and Fitch, or Colwell and Fitch.

Q. Not on Rahway avenue? A. In my recollection 30 there is nothing in that neighborhood on Rahway avenue.

Q. What was there on Rahway avenue along the front? A. I couldn't just say. I think there was a fire house there.

Q. Fire house? A. Yes, on Rahway avenue.

Q. What part of Rahway avenue? A. That is just to the, I would say to the east, right near the New Jersey Central Railroad tracks.

Q. Well, do you remember the trees that Mr. Col-

well has referred to? *A.* The first opportunity, when I first looked at the property trees were there.

Q. What was there to indicate the width of Rahway avenue at that time? *A.* The stakes. Oh, I don't know.

Q. Where were the trees with reference to the travelled part of Rahway avenue? *A.* There was a mound there, and they were up on the mound.

Q. Where was the mound with reference to your lots? *A.* It was immediately in front of them. My 10
lots were on the mound.

Q. When you speak of the mound, just what do you mean? *A.* Well, it is an elevation of four or five, maybe six feet above the roadway.

Q. Above the roadway? *A.* Yes.

Q. And were there any of these trees on your lots?

A. There were, yes.

Q. Where were they with reference to the roadway?

A. They were parallel; they ran parallel with the 20
road.

Q. In line? *A.* I couldn't say that. I never took particular notice of that.

Q. Well, where were they? Were they on the mound or were they down below? *A.* They were on the mound.

Q. Was there any fence in front of your lots when you bought them? *A.* I never saw one.

Cross Examination, by Mr. Silzer.

Q. Mr. White, the fire house that you speak about 30
being there when you bought your lots, can you point that out on this D 1 for identification? *A.* No, I couldn't.

Q. Take a look at this, please, at the extreme right of the picture, is that the fire house?

Mr. Strong: I object. Counsel is making the same effort that he made with the last witness to work in these photographs, whatever they may be, on our case.

The Court: I know, but they will not be permitted to be used in any way, nor permitted to be worked in. If he wants to get them identified from the witness, it saves recalling him.

Mr. Strong: Well, but he is calling his attention to a specific property on the picture. He is not asking him, do you recognize this as a photograph of the locality generally, but he is calling attention to some particular thing on it, with the idea of proving it.

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The Court: I think counsel is not offending on cross examination up to this point.

Q. Do you recognize this picture D 1 for identification? A. I do not.

Q. Take a look at it? A. I don't know the place.

Q. Just look at it carefully? A. I make the answer the same way. No.

Q. Where do you live? A. Fourth street, Brooklyn, New York.

20

Q. How often have you been out to Rahway avenue?

A. I have been there probably once in five years.

Q. When were you there recently? A. About three or four years ago.

Q. Is that the last time? A. Yes.

Q. Do you recognize the picture in front of you as Rahway avenue? A. No, I couldn't.

Q. Do you recognize Mr. Shapiro's property on that? A. No.

30

Q. Do you know where the fire house is that you speak of? A. I pass it in passing from the station to my house.

Q. It is between your lots and the station, isn't it? A. Yes.

Q. How far up from the station? A. Oh, I should judge seventy-five or one hundred feet.

Q. Do you know where Mr. Shapiro's building is? A. Couldn't locate it, no.

Q. Have you known Mr. Shapiro brought suit against the Borough? A. I certainly do.

Q. Do you mean to say you were interested in the same litigation and didn't know where Mr. Shapiro's lot is? *A.* I am not interested in the same litigation. My suit was independently started.

Q. Yes, but you know both suits were on the same question? *A.* Practically, yes.

Q. And you don't know where Mr. Shapiro's house is? *A.* No, I do not.

Q. Haven't the slightest idea, have you? *A.* Excepting that it is on Rahway avenue, that is all.

10

Q. Did you ever see it? *A.* I may have seen it, yes.

Q. Don't you know whether you did or not? *A.* I don't know, no. I don't know what houses I saw in Carteret. I couldn't swear to it.

Q. Have you been down there since the street has been opened? *A.* Once.

Q. Do you remember a house that sticks out into the road between your lots and the station?

Mr. Strong: I object.

20

A. Yes.

Q. What?

Mr. Strong: I object. We haven't gone into Shapiro's title as yet.

The Court: That is true, but you have gone into the boundaries of this street, and anything that deals with the physical structure of the street, and what is on it, may throw light, I think.

Mr. Strong: Here is a photograph—

The Court: No, he is not asked about the photograph.

30

Mr. Strong: I know, but it is part of the same thing. He is asked about recent conditions, what sticks out in the street now. That is not the question we are trying, and I have not gone into that at all. The question is when did these originate. What they may have done to the street since then—admitted they have undertaken to move some parts of the street.

The Court: If that is the purpose, how can it be competent?

Mr. Silzer: That is not the purpose of it. He has identified a certain building, and I am trying to get him to locate that building, just from my investigation, according to his own testimony.

The Court: Is the Shapiro building—

Mr. Silzer: Just below it.

10 The Court: Put there before this litigation, of course, commenced, I suppose?

Mr. Silzer: Of course.

Mr. Strong: Yes, but not before the time he bought his lots.

Mr. Silzer: That does not make any difference.

Mr. Strong: Yes, that is all I have asked him about.

Mr. Silzer: In order to get him to identify the fire house that he has spoken about, I can ask him about any of these things.

20 The Court: If those are matters of construction that have arisen since, they cannot throw light on it.

Mr. Silzer: They haven't arisen since; and furthermore, this witness has spoken of a certain building. Now I am testing him by cross examining the man to locate that building, so we may know where that building is. One of the ways of testing him is by saying, don't you know where the Shapiro building is, the one that sticks out in the street, do you remember that. To locate, in conjunction with that, this fire house that he spoke about.

30 The Court: It is quite obvious it would be unfair to introduce conditions that exist now, by the guise of cross examination, and thereby give the impression to the jury that there was a status of this street fixed and established by construction on it.

Mr. Strong: Your Honor will recall, moreover.

that the fire house was not on the front street at all, but on Fitch avenue.

Mr. Silzer: No, Rahway avenue.

Mr. Strong: He didn't say that.

By Mr. Strong.

Q. Where was the fire house? A. On Rahway avenue.

By Mr. Silzer.

Q. Do you know where Mr. Shapiro's store is? 10

Mr. Strong: I object.

A. No, I couldn't say that.

The Court: He may answer that. That far I think it is inoffensive.

Mr. Strong: Where his store is now, or was then?

The Court: He has simply asked the question as to the witness' knowledge. 20

Mr. Strong: At this time, where it exists?

Mr. Silzer: Yes,

A. I don't know.

Q. You don't know? A. No.

Q. Do you know whether Shapiro's store is between your lots and the railroad station? A. I don't know, no. I couldn't swear to it.

Q. Do you know whether the fire house that you refer to is between your lots and the railroad station?

A. Yes. 30

Q. It is? A. Yes.

Franklin Marsh, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath, saith:

Direct Examination, by Mr. Strong.

Q. Where do you live, Mr. Marsh? A. Rahway.

Q. What is your profession? A. Civil engineer.

Q. How long have you been a civil engineer?

A. Since 1881.

Q. '81? *A.* '81.

The Court: I suppose there will be no objection to Mr. Marsh testifying as an expert surveyor, is there?

Mr. Strong: I am not calling him as an expert surveyor at this time, but I presume his qualifications would be admitted.

10

Q. Have you been living in Rahway all that time?

A. All except one year, that is, since 1865.

Q. Do you know the locality of the Rahway road as indicated on the Colwell maps here that have been offered? *A.* Yes, sir; I can remember that place since Mr. Pierce was on it. And long prior to Pierce, and prior to Colwell. Since 1872 I can remember that well. I used to be in the express business and used to drive down to that dock to get the express matter.

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By the Court.

Q. What was it known as then, Mr. Marsh?

A. Why, I don't know as it had any particular name. Union Landing Road, or Blazing Star Road, or New Blazing Star Road. I don't know as it had any name at all.

By Mr. Strong.

Q. Did you use to travel the road quite frequently?

A. Yes, sir.

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Q. As early as '72? *A.* Yes, sir; day in and day out.

Q. And since then what familiarity have you had with it? *A.* I staked some two or three, or three or four hundred lots for Mr. Colwell there.

Q. Have you had occasion to be down in that locality and see the road actually from time to time? *A.* Well, I guess Carteret really gave me a living for about ten years.

Q. Do you mean in making surveys? *A.* In making surveys; yes, sir.

Q. At your earliest recollection in 1872, that was the date you fixed? *A.* Yes, sir. I have been down prior to that, but I know well from '72.

Q. Well, say in 1872, this Colwell property was then known as the Pierce property? *A.* Yes, sir; Pierce owned it then at that time, if I mistake not.

Q. What use did Pierce make of it? *A.* Well, he used to plant watermelons, I can remember that.

Q. Was it a farm then? *A.* It was a farm, yes.

Q. Was it, or not, enclosed? *A.* It was enclosed, yes.

Q. By fencing? *A.* Yes, sir.

Q. Were there farm buildings on it? *A.* Yes, but not in this particular portion. They were down at the place called the ship.

Q. What was there to define the limits of this road called Rahway avenue, or the Union Landing Road, as you call it? *A.* Fences on either side.

Q. On the side of the Pierce property was there a fence? *A.* Yes, sir.

Q. Extending the whole width of the property?

A. Yes, sir.

Q. Subsequently, and how long after that was that fence maintained? *A.* I couldn't say. I surveyed the lots. The fence was then down, but the line was there, the line of post holes.

Q. The fence was then down, was it? *A.* It was, I think, down.

Q. Wholly, or not? *A.* It was practically all down.

Q. When was that? *A.* I have an idea about '92. Shortly after this map was made by Mr. Kuien.

Q. Shortly after the map was made? *A.* Yes.

Q. The post holes were then visible, were they?

A. Yes, sir. I don't doubt—well, no, I couldn't find any now, because they have been completely dug away.

Q. How did those post holes, and how did the original fence agree with the line of Rahway avenue as shown on these maps of the Colwell property? *A.* On that, as laid down by Mr. Kuien, I don't think there was

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a shadow of turning. It was almost in a straight line without any deviation on either end.

Q. What was a straight line? *A.* The fence line agreed with Mr. Pierce's survey.

By the Court.

Q. That is these maps? *A.* Yes, these maps. I used that blue print, or one blue print, for use in the field.

10 *By Mr. Strong.*

Q. What was there on the other side of the street, opposite the Colwell property? *A.* Well, it was fenced

Q. The fence at that time existing? *A.* Yes. Partly picket on the north side in those days.

Q. What was the width between the fences?

A. Well, I don't know. I presume forty-four feet. That is it practically.

Q. Between the two fence lines? *A.* Between the two fence lines, yes. That is in front of the Colwell property.

Q. I am speaking of the Colwell tract shown on these maps as a whole, and the distance between the fence in front of that property and the fence on the other side of the road? *A.* Practically forty-four feet. There might be some slight deviation on the north side.

Q. The north side is the side not Colwell's side, but the opposite side? *A.* Well, Colwell owned there, and where he owned there it was forty-four feet.

Q. The tract is shown on these maps as wholly on the southerly side? *A.* Wholly on the southerly side; yes, sir.

Q. From the time you first became familiar with the property, down to the time that you made the survey there for Colwell, was there any change in the line of Rahway avenue as it was indicated by the fences on the southerly side, and as indicated on these maps?

A. No, I think it was indentially the same.

Q. After that when was there any change in that line, the first change? *A.* Well, of actual knowledge I don't know. I know that there is a change now.

Q. Do you know when approximately? A. No, it is within the past four or five years.

Q. Within the past four or five years? A. Yes, the township has widened out.

Q. On which side? A. Practically on the south side.

Q. That is on the Colwell tract? A. That is on the Colwell tract; yes, sir.

Q. To what extent? A. They practically widened there sixteen feet.

Q. Speaking with reference particularly to the White 10
lots, do you know the location of the lots of White?

A. Yes.

Q. You have heard their numbers given here as 7 and 9 in block two. Was the street widened there at those lots? A. Yes, the street is widened now.

Q. And within the last three or four years?

A. Within the last four or five years, or three or four years; I don't know exactly when it was.

Q. To what extent? A. Sixteen feet to the south.
It was widened on the south side of it. 20

Mr. Silzer: I understand you are exhausting these witnesses in both cases.

Mr. Strong: The witnesses as far as they have gone, yes.

Cross Examination, by Mr. Silzer.

Q. How old are you, Mr. Marsh? A. I am fifty-seven years old.

Q. What year were you born in? A. '56.

Q. And lived in Rahway all this time? A. Since 30
1865, excepting one year.

Q. Since 1865? A. Excepting one year.

Q. Where did you live before that? A. San Francisco, California, and Linden, New Jersey.

Q. When was it that you first started to go through Roosevelt? A. Along in the '90's, about '90.

Q. What were you doing there in '72 then? A. I said I drove an express wagon. I was interested in the express business in '72, along there, I took the express

between New York and Rahway, and used to come down there to the dock for a year or more to get the goods.

Q. You were then a boy of sixteen, weren't you?

A. Yes, sir.

Q. And as you would go along you would look at the fences? *A.* Yes, sir.

Q. What other fences can you tell me about in 1872 along the Rahway road? *A.* Why, I should say that

10 all fences were up.

Q. You would say all were up? *A.* Yes.

Q. Weren't any of them down then, were there?

A. It was the exception, rather than the rule, to have them down in those days.

Q. Were there any of them down on that road?

A. Not to my recollection, but I remember the old rail fence that used to be down along the—

Q. You have been there surveying for Mr. Colwell, haven't you? *A.* Yes, I done some work for him.

20 *Q.* You staked out these very lots for him which are now in dispute? *A.* Yes, I spent a summer there.

Q. You feel a slight amount of responsibility for these lots being where you staked them? *A.* I don't think there is any responsibility attaches. I staked them.

Q. And you have been his surveyor engaged in this case, haven't you? *A.* Well, yes.

Q. You made an affidavit for the purpose of getting an injunction against the borough in the Shapiro case?

30 *A.* I think I did make an affidavit in that case.

Q. Well, in other words, you have been retained by Colwell, or by Shapiro and White? *A.* Well, Shapiro only. I have never seen Mr. White before to-day.

Q. You are interested to the extent of being a surveyor retained by one side? *A.* Yes if that makes it so.

Q. Does that stimulate your recollection any, Mr. Marsh? *A.* Not particularly.

Q. Tell us whose fence was down on that road in

1872? *A.* I don't know of any fence being down along there.

Q. Do you remember any particular fence that was up? *A.* Yes.

Q. Whose fence can you recall? *A.* They were all up.

Q. All up? *A.* Practically, yes.

Q. Why do you say practically? *A.* Because I don't remember any being down.

Q. You are not sure about it at all, are you? *A.* I 10 don't believe there was a fence down.

Q. Do you mean to tell this jury that you, a sixteen year old boy in 1872, can remember to-day the different fences and what shape they were in in 1872? *A.* Yes, I remember the Pierce farm.

Q. That is not what I asked you. What was it attracted you to the Pierce farm, the watermelons growing on it? *A.* Yes, they had watermelons growing there.

Q. The whole farm was covered with watermelons? 20

A. No, but we used to steal one once in a while.

Q. What else did they raise on this Pierce farm?

A. I don't remember anything else but the watermelons.

Q. How many acres were there in this Pierce farm, about one hundred and fifty, weren't there? *A.* I don't know. I presume the deed states, about eighty including the salt meadow.

Q. You surveyed that, didn't you? *A.* No.

Q. Were there any fences on the Krutky place? 30

A. Yes.

Q. When is the last you saw that fence? *A.* When I saw it last?

Q. Yes. *A.* Four or five years ago.

Q. Same fence that was there in '72? *A.* Well, I don't say it was the same fence.

Q. Same location? *A.* Yes, same location.

Q. That was a fence continuing on with this Pierce farm, wasn't it? *A.* Yes.

The Court: Is that outside of the boundaries?

Mr. Silzer: That is the next property to the west

Q. That is the next property to the west, isn't it, Mr. Marsh? A. Yes, the next property to the west. That was fenced.

Q. Do you remember the Radley fence, that was the next property to the east? A. That was fenced.

10 Q. And that continued right on with the Pierce farm fence, didn't it? A. If my memory serves me right it continued right on.

Q. That is the same, isn't it? A. Now?

Q. Yes. A. No. I should say it had been moved back.

Q. Moved back? A. Yes.

Q. When was it moved back? A. I don't know.

Q. Long ago? A. I couldn't tell you.

Q. Didn't you keep track of the fences down there?

20 A. No, I didn't keep track. I say I was there only a year in '73, and then I don't know anything about it until 1890. I passed to and fro over the road many times since.

Q. You went down in '72, that was the one year when you drove by with an express wagon?

A. Over it, yes.

Q. And you didn't think about the thing again until 1890? A. No. I presume I have driven by there many times.

Q. I say you paid no particular attention to it then?

30 A. I didn't pay any particular attention.

Q. The Radley fence continued right on with this Pierce fence, didn't it? A. My impression is that it did. It had never been moved back.

Q. Was the road the same width on the east of this Colwell property as it was in front of Colwell?

Mr. Strong: I object. It is not within the direct examination, and it is not material. What we are concerned with is the width of the road in front of this seventeen hundred feet.

Q. There was an isolated fence line—

Mr. Strong: If it varied in some other places what difference does it make, it cannot effect the merits of the case.

The Court: I think it is cross examination.

(Question repeated by stenographer.)

A. I think it was.

Q. And was it the same width to the west of the Colwell property as it was in front of the Colwell? 10

A. No, slightly narrower.

Q. How much narrower? A. I should think it narrowed up to one place within twenty feet.

Q. That is the property west of the Colwell tract?

A. Yes.

Q. Came down to twenty feet? A. Narrowed in to twenty feet, yes.

Q. Didn't you draw a map making it sixty feet?

A. I don't think I did.

Q. How is your recollection on that? A. Well, you might ask me. I made a map according to the fence line. 20

Q. Didn't you make a map which was sixty feet at the west of this Colwell property?

Mr. Strong: Where do you mean, immediately adjoining?

Mr. Silzer: Yes, sir; immediately adjoining.

A. Possibly I did.

Q. If you did, how is that consistent? A. I might have made two maps. 30

Q. One twenty and one sixty? A. Yes. No, I didn't make one twenty; I said it narrowed down to at one place.

Q. How is it you make streets in such condition on the maps? A. I made it as I thought was right.

Q. You were a man who saw this from 1872?

A. I did. I say I made a map according as the fence line was.

Q. Do you know where John street is? A. Yes.

Q. Where is that located with reference to the Colwell property? A. Directly in front of it, just slightly below Colwell street.

Q. Is it part of the Colwell tract? A. Yes.

Q. Part of the Colwell tract, isn't it? A. Yes.

Q. That is just west of Colwell, isn't it? A. No, it is directly in front. Do you mean John B. Colwell?

Q. Yes. A. You asked where John street was.

10 Q. Yes. A. John is on the north side of the road.

Q. That is directly opposite the Colwell tract, isn't it?

A. Yes, very nearly opposite Mr. White's lot.

By the Court.

Q. What are the points of the compass on those two maps? A. North is to the upper part of the map. The road runs southeasterly, south sixty-six degrees east, about.

Q. Then the west end is that side (indicating)?

20 A. The west end is this side and the east end is that side (indicating).

The Court: You are looking at the map from the south.

Mr. Silzer: This is about north (indicating).

By Mr. Silzer.

Q. Will you show me where John street is? It is on the opposite side of Rahway avenue, isn't it?

A. I would say it is about in here (indicating).

Q. Almost opposite Colwell avenue? A. No.

30 Q. Just a little east of Colwell avenue? A. It is one house or two.

Q. Did you make this map number 221? A. No, sir.

Q. Take a look at the bottom? A. I didn't make it.

Q. Take a look at the bottom? A. That is a forgery.

Q. That is a forgery? A. Yes, it is a copy. Not even certified.

Q. Is it a copy from a map that you made? A. I presume it is, but I wouldn't swear to it.

Q. Did you make the original of which this is a copy?

A. I don't know that this is an absolute copy. I say I didn't make that map.

Q. Did you make a map with the same title this is, of that same location? *A.* Possibly. I wouldn't swear to that either.

Q. Isn't this a copy of an original map that you made?

A. I don't know. If I had the two and compared I might say so. I think possibly it is.

Q. You think possibly it is? *A.* Yes,. I can't af- 10
firm it or deny it.

Q. This is a map that is filed in the county clerk's office? *A.* Yes.

Q. Do you recognize it? *A.* It is not my work.

Q. Well, the original is your work, isn't it? You think it is? *A.* No, I don't think that is my work.

Mr. Strong: What number is that map?

Mr. Silzer: 221.

Q. Did you make a map like that? *A.* I made a 20
map like that.

Q. Tell me in what particular this copy, which is on file as the original record in the county clerk's office, is different from the original which you made?

A. I couldn't tell you.

Q. It is not any different that you could say, is it?

A. I don't know.

Q. Will you tell me what you have made Rahway avenue on the original of which this is a copy?

A. No, sir; I couldn't tell you. 30

Q. What does it show on that map?

A. Does not show anything.

Q. Doesn't it show forty feet?

Mr. Strong: I object.

A. No sir.

Q. You say it doesn't show forty feet?

Mr. Strong: I object.

The Court: I think that is a proper objection.

Q. Do you recognize the handwriting on the top here "Copy, F. M."?

A. I said that is my handwriting "copy".

Q. You have marked on the top of this map, which is on record in the county clerk's office, in your own handwriting? A. Yes.

Q. "Copy F. M."?

A. But without ever being compared.

Q. Do you certify upon the records—

10 A. That is no certification. I just put that there to show that I didn't make that map.

Q. By putting on it "Copy, Franklin Marsh"?

A. Yes, it was a copy, and it wasn't the original, nor it wasn't the original I gave that man.

Q. And yet you put on this map which is in the county clerk's office, in your own handwriting—

A. Yes I did that.

Q. (Continued)—"Copy, F. M."? And you know in putting that on there that every man who has searched
20 title relies on the fact that you certified on the top there "copy"? A. No, I don't sign that way.

Q. Didn't you sign "Copy, F. M."?

A. Yes, I put F. M. there.

Mr. Silzer: Now I submit I have a right to ask him what he made this very road in dispute, and at this very point.

The Court: On the original map undoubtedly.

Mr. Silzer: He has certified this one as being
30 a copy, F. M.

A. I only signed to show it wasn't my work.

Q. The way to show it wasn't your work was to put on "Copy, F. M."?

A. That it was a copy of anything. I don't know who put that on, or when it was filed, or how it ever got there.

By the Court.

Q. Mr. Marsh, do I understand you to say—

A. I didn't make the map.

Q. I understand you to say you didn't make the map, but are the words "Copy, F. M." your handwriting?

A. That is my writing, yes. I presume it is the same map, but I can't affirm or deny. There may be some errors in there.

Q. Do you recognize it? *A.* I made a survey there, but it doesn't seem to me that I made quite as much in here. Or I may have made two maps.

Q. When did you make the entry on there "Copy, F. M."? *A.* I couldn't tell you. Years ago. 10

A. Was it before or after the filing?

A. Oh, after the filing.

Q. After the filing?

A. After the filing, of course, or else it wouldn't—it must have been in the office at that time, or else I couldn't have had access to it. I don't doubt but what it is a true copy, but I wouldn't swear that it is a true one.

Q. What is your best recollection about it? Does it conform to the original which you made? 20

A. I don't know. I can't affirm nor deny, Judge. I didn't have a map with me to compare to see if it was.

Q. Have you any recollection of why you put the words there? *A.* To show it wasn't my work.

Q. To show it wasn't the original, you mean?

A. To show it wasn't the original. It was signed by my name without any scale or anything else.

By Mr. Strong.

Q. Do you know whose writing it is? 30

A. I haven't the slightest idea; don't know who made it.

By Mr. Silzer.

Q. Did you lay any lots out on the ground from this map? *A.* Yes, sir; I did.

Mr. Strong: What map?

Mr. Silzer: The map you hold in your hand.

A. I suppose I put eight or ten.

Q. According to this map, didn't you?

A. I don't say that map, but a map like it; yes, sir.

Q. A map like it? A. Yes.

Q. And there you made Rahway avenue forty feet, according to the way you laid it out?

A. I don't know how I made Rahway avenue. I didn't survey for Rahway avenue.

Q. Didn't you put it on this map, and didn't you lay the lots out according to a street Rahway avenue
10 opposite this place?

A. I don't think I took measure. I just put the street on there.

Q. Isn't this drawn according to scale?

A. I don't know that the street is.

Q. Haven't you said on this, drawn according to scale?

Mr. Strong: This is not his work at all. He has not said anything about a scale on this map.

20 The Court: I do not know what the witness' attitude is toward it. Among other things he says he does not doubt that is a true copy, and then again he says he never compared it and does not know whether it is a true copy.

Mr. Strong: Here is a map; to be sure it is on file in the clerk's office, but who made it, whether it was a surveyor, nor with what accuracy it was made, we don't know anything about it. It purports to be a copy of this witness' work, and yet he says he has never checked it up.

30 The Court: This cross examination wholly depends upon the propriety of using the map on the theory that it is his work.

Mr. Strong: Well, it is not his work, and he said so.

The Court: The actual map is not his work, but I do not know whether he means to say with respect to whether it is correct or not.

Mr. Strong: They are depending on the scale of the map as showing forty feet, whereas they now

say forty-four feet. The scale is forty feet to the inch, and your Honor could see how much would depend upon the accuracy with which this map was drawn from the original. We don't any of us know who did it. We don't know with what accuracy it is done, and for them to depend upon a mere difference in scaling a map which we don't know who made, and which nobody has ever verified the accuracy of, is altogether unfair, and the witness is quite right in saying that he does not stand for it, in the absence of his own map, or something to show that this has been accurately taken from it. You can see a very slight difference in the use of a scale would make all the difference they are talking about, between forty feet and forty-four feet. **10**

A. The width of the street, in order to make any figures, or comparison, I wouldn't guarantee it twenty, or thirty or forty feet.

Q. Mr. Marsh now I show you a map filed in the county clerk's office number 267? **20**

A. Yes, sir; that is my work.

Q. No doubt about that, is there? *A.* No doubt.

Q. This map shows the property directly opposite the property in dispute, doesn't it? *A.* Yes, sir.

By the Court.

Q. What is the date of that map? *A.* 1895.

By Mr. Silzer.

Q. You show that on Rahway avenue, don't you? **30**

A. Yes, sir.

Q. How wide do you show Rahway avenue?

A. I don't know. There are no figures placed there.

Q. Will you scale it?

A. I wouldn't guarantee the scaling.

Q. Will you scale it?

A. It wouldn't be any use if I scaled it twenty feet or forty feet.

Q. Haven't you got a lot of other streets on there?

A. Yes, those are right.

Q. But this one may be wrong, is that it? Didn't you put on the bottom of your map, scale is what?

A. Yes.

Q. Scale is what? *A.* Scale is sixty feet.

Q. To the inch? *A.* All I guarantee there is this line here (indicating).

10 *By Mr. Strong.*

Q. When you say that, which line is that?

A. The south line of the property, and not the north line of Colwell. It has no reference. It wouldn't tie in there.

By Mr. Silzer.

Q. Will you scale Rahway avenue as you have shown it on that map?

20 *Mr. Strong:* I object. The witness has said it has no reference to the northerly line of Rahway avenue.

A. It shows forty-four feet.

Q. Are you sure about that?

A. If that is sixty, yes.

Q. Suppose you take it opposite Christopher street and see what it is? Don't you know the ruler you are holding? Have you got the 'right ruler?

A. That is fifty. I don't guarantee the width of that street; I don't put any figures on.

30 *Q.* Where is Christopher street? Opposite what place on our location?

A. It doesn't come opposite there at all.

Q. Isn't it opposite the Colwell tract? *A.* No.

Q. Where is it? *A.* Why it is down in front of the other Colwell tract.

Q. Is there any part of this map opposite the Colwell property? *A.* Yes, about

Q. John street is, isn't it? *A.* The line comes in about here; it comes in just in front of the old home-stead.

By Mr. Strong.

Q. When you say here, you had better get it on the record. That is between Christoher and Charles streets? A. I should say within two hundred feet west of Charles street line would be in here somewhere (indicating).

Q. That is the side line of the Colwell property?

A. That is the side line of the Colwell property. Say two hundred feet from Charles street.

10

By Mr. Silzer.

Q. Take it at the point you have just marked. How wide is Rahway avenue shown there?

A. I tell you I don't know.

Q. Well, look at the scale?

Mr. Strong: I object.

A. I tell you the scale has nothing to do with it in this case.

The Court: Answer the question.

20

A. It is marked fifty feet, and possibly it was fifty feet there. There was a break in the road there, but I didn't intend to show any break, and had no reference to the other property when I made that survey. In fact, there are no lines of any streets down there to indicate when you come down to a fine point.

Q. I show you map number 527, the King Marsac map, do you know where that is? A. Yes.

Q. Just west of the disputed land, isn't it?

A. It is some west.

30

Q. How wide is Rahway avenue there?

A. I don't know. This line here is marked (indicating). That line is just put in to show a street, and never measured across.

By Mr. Strong.

Q. When you say this line is correct, what line do you mean?

. The north line, or the line furthest from the

property which I surveyed; I never put it in, never measured it across.

Q. With reference to this particular map, you said this line is correct. I want to get it on the record, which line you said is correct? A. I mean to say the line furthest from the property surveyed in question.

Q. When you said one line was correct, I want to know which line you meant?

A. This line here is correct (indicating).

10 Q. Is that the north, south, east or west?

A. This is the south line.

Q. Of Rahway avenue? Yes, of Rahway avenue. That was the fence line at that time.

By Mr. Silzer.

Q. Tell me as shown on this map the width of Rahway avenue there?

20 Mr. Strong: I object to the question for the reason that that is not involved in the case in any way, and is not cross examination. The witness is not here as an expert; he is simply here testifying to how he found the fences on the Colwell property at a certain time. His work as a surveyor is presented as relating to other tracts entirely and he is asked how he is—

The Court: He has gone further than that. He has testified to the various widths of Rahway avenue.

30 A. Only in front of the Colwell property.

Mr. Strong: Not on direct examination he didnt.

The Court: Yes, on direct examination. He gave forty-four feet.

A. At the Colewell property, and there both sides tied in.

The Court: That makes him a witness on the width of the street. Counsel has undoubtedly a right to ascertain whether he has made any dif-

ferent statement, or any statement which is inconsistent with it, and the use of these maps for such a purpose, I think, is competent, if counsel can succeed in showing it. I don't know that he can.

Mr. Strong: He has not undertaken to establish the width of Rahway avenue as uniform for miles in either direction.

The Court: Yes but he has given a map, which is an accurate map for both purposes. 10

Mr. Strong: We didn't produce those maps.

The Court: I understand, but the witness has made them, and if he has made them they may be used, if they are contradictory, with him, as to whether he has made a different statement at some other time than the ones he is now making.

Mr. Strong: With relation to some other property?

The Court: If it throws light on his accuracy of the statement about forty-four feet yes. 20

Q. Rahway avenue on this map which I just show you, in front of the King Marsac property, as outlined by you on this map, is sixty feet, isn't it?

A. Now I want to—

Q. Can't you answer the question? A. It scales sixty feet, but can't I explain?

Mr. Strong: Yes.

A. I made two or three surveys of that property, because the question of that sixty foot street come in, and it may be that I have one map which gives a true width, and I may have made that the sixty foot. I cannot from memory now tell which is which. That may be according to the new lay out. 30

By the Court.

Q. Mr. Marsh, I understood you to say that the road itself was a general road of approximately a regular width?

Mr. Strong: No, he didn't say that.

A. No. I said at that place.

Q. I understand you to say that the lines of the fences ran uniformly?

Mr. Strong: No, he didn't.

A. I said this, that at the Colwell property it was surveyed—

10 Q. Didn't you say that, and didn't you add then that you thought that the other fences had been set back since? A. Below?

Q. Yes.

A. And they have been set back above too.

Q. When was that done?

A. Within four or five years.

Mr. Strong: Done by the township or borough.

A. It was done by the township since I have worked down there. But there was one place where the
20 fence on the Crowell property, or what was immediately next—

Q. And when you say that they were even, was it as they were before the change by the borough?

A. No.

Q. Before they were set back?

A. Down where this tract was, in around by Crowell's, they were approximately parallel. As we went further towards Rahway, the original property, that is the Fitch tract, there was one place where it
30 narrowed up considerably, and I never could find a record of the width of that street.

Q. What I am getting is the line you say was a continuation of the fence line, a part of which was subsequently—when you spoke of a width of forty-four feet here? A. Yes.

Q. Was the fence line that formerly existed the one that you referred to, or the one that existed after the change had been made?

A. I am talking about the former surveys. There

was a little break to the west of the Colwell tract.

Q. I understood you to say there were some little deviations from the specific width? *A.* Yes

Q. But in which way? I understood you to say that it was—

A. And then it narrowed up towards Gantz street.

The Court: There is no record of this I suppose?

Mr. Strong: There is no record.

10

By Mr. Silzer.

Q. You made the map on the Crowell property, right west of the Colwell, didn't you? *A.* Yes, sir.

Q. In 1903? *A.* Yes, I made two maps.

Q. That is more than five years ago? *A.* Yes.

Q. Did you make the road then sixty feet?

Mr. Strong: I object.

A. I don't think so.

Q. What did you find the road then?

20

Mr. Strong: I object.

A. I don't know.

Mr. Strong: He has not undertaken to give the width of these roads; he has not undertaken to say that the width was uniform through these properties, and on the direct examination he has been confined to the width through these seventeen hundred feet. How is it cross examination to show all these other pieces of rail

30

The Court: You would not expect the next door neighbor to have a sudden expansion or contraction of the width of the street.

A. There were places where it was more than forty-four feet, above and below, and there were places it was a good deal less than forty-four. I surveyed there invariably.

Q. Well, you don't recollect how it was in 1903, but

you have a very distinct recollection how it was in 1872, but not 1903?

A. You are bringing me some maps where I have just put a black line, and you want to confine me so absolutely, where there is no figures marked.

Q. My last question was whether you remembered where the fence was in front of the Crowell property, which is just west of ours in 1903 and you said you didn't. *A.* That is shown on that map.

10 *Q.* You said you had no recollection of that fence in 1903 did you? *A.* Which fence?

Q. In the property just west of ours, it binds on ours? *A.* Do you mean

Q. Crowell? *A.* The J. B. Crowell tract?

Q. Yes. *A.* Yes, there was a fence there. I say I surveyed according to the fences.

Q. In 1903?

A. Whenever that survey was made, yes.

Q. Was that the same fence that was there in 1872?

20 *A.* Practically the same fence, yes.

Q. In all the surveys you made it was according to the fence lines as you found them? *A.* According to the fence line, or old post holes. Lines of posts.

Q. How far back can you recollect the road being sixty feet wide? *A.* I don't know that I ever saw it sixty feet wide until within say probably 1890.

Q. That is about the time these maps were made?

A. About the time that I surveyed for Colwell. I think the fence below where it really should have been
30 sixty feet, where it is really virtually dedicated sixty feet, it seems to me the fence was away out even with the other fences at that time.

Q. Just about the time you were surveying for Colwell, you found this road sixty feet wide both sides of Colwell, didn't you? *A.* No, sir.

Q. Which side was it where it was dedicated sixty feet? *A.* On both sides apparently it was dedicated except on the west. I don't know what was dedicated there.

Mr. Strong: We ought not to get in the question of dedication.

The Court: If there is something that shows that, it is better than this witness' statement.

Mr. Silzer: He volunteered himself.

A. On the east it was dedicated.

Q. And in 1890 you saw on the east of this property, the Colwell tract, the road was sixty feet wide?

A. No, I don't think it was sixty feet wide. It had been dedicated, but I think the fence on the south side was out towards the north. 10

Q. That is to say, it was sixty feet, but the fence on the east of us was shoved out into the road?

Mr. Strong: I object. All we want of this witness at this time is the location of the road as it existed.

The Court: Yes, his observation.

A. I surveyed both sides for Mr. Colwell, and I surveyed it forty-four feet, and those lines are parallel and were made forty-four feet. 20

Q. And you did that because you found the fence there. A. Because part of the fence there, and this map also called for it.

Q. The property that you found shoving out into the street, how far out was that to the east of Colwell?

A. To the east of Colwell? I don't know whether it was any further—I don't know as it was as far.

Q. About the same distance out that Shapiro is out now? 30

A. It runs in my mind that Mr. Kuien's fence was even with some of the other fences there, was out in the street.

Q. The fellow that was out below there, and shoved back, was about the same distance that Mr. White and Mr. Shapiro, about sixteen feet?

A. No, I wouldn't say that.

Q. Well, twelve feet? A. Possibly.

Q. And they went back, didn't they?

A. I didn't measure it.

Q. Well, the street is opened full width there, isn't it? *A.* It is now, yes.

Q. When was it that you first saw the street west of the Colwell sixty feet wide? *A.* Oh—

Mr. Strong: He has not said that he saw it sixty feet wide at any time.

Mr. Silzer: 1890, I think he said.

10

A. It wasn't sixty feet in 1890.

Q. How wide was it?

A. Possibly forty-five or forty-six feet, and then it ran up to probably within twenty or thirty feet at the other end. That is on the Fitch tract, fronting on the Fitch tract.

Q. Which way is the Fitch? *A.* To the west.

Q. How wide did you show it in 1903 on the Crowell map, that is Fitch, isn't it?

20 *A.* I made two Crowell maps. I don't know which one he filed, or which one he adopted.

Q. Did you make two different widths for the street?

A. Yes.

Q. Why is that? You were in doubt, weren't you?

A. I was in doubt, yes, but I am not in doubt now.

Q. Although you had been down there in 1872 and saw the fences? *A.* Why, the fence was there when I made the survey.

Q. You are still in doubt, aren't you?

30

Mr. Strong: This witness is simply here for his observation; not as an expert surveyor at all. Where he may have laid the lines according to some surveyor's theory has nothing at all to do with the case. It is going beyond the direct examination to ask him questions of that character.

The Court: That is not quite this question, Mr. Strong. The question is how certain he is of his statement of the width.

Mr. Strong: The width as defined by existing

fences. That is not what they are getting at.

The Court: The witness has given his best opinion.

A. There are some that claim sixty feet street down there.

Q. Mr. Marsh, in 1872 did you measure this street?

A. No, sir.

Q. When was the first time you measured the width of the street? *A.* Beyond the Colwell tract I don't know that I ever measured it. 10

Q. Well, in front of this—

A. I possibly have taken it and tied it in.

Q. In front of this Colwell property when is the first time you ever measured it, if you measured it at all? *A.* When I measured the lots, immediately at that time.

Q. At what time? *A.* In 1890 or '91, whenever I staked those lots.

Q. When you staked the lots for Mr. Colwell? 20

A. Yes.

Q. Then you measured the street? *A.* Yes.

By the Court.

Q. Were there any posts there then, or post holes?

A. Yes, sir.

Q. Did you actually measure then the distance between the fence lines?

A. No, there was no fence at that time on the west. There were simply some building stakes put in by Mr. Kuien, who had made the previous survey. 30

By Mr. Silzer.

Q. You didn't come there to survey it, did you?

A. Survey what?

Q. This Colwell property?

A. No, I went there to stake lots.

Q. Simply to put these stakes in where Mr. Kuien had made the map? *A.* Yes.

Q. You took Kuien's stakes, didn't you? *A.* Yes.

Q. Then you had no occasion to measure across the

street at all? *A.* Oh, I had to measure across because I began on that side of the street.

Q. And all of this Colwell runs on the south side of Rahway avenue? *A.* Not all. No, he had property on the north side.

Q. If Mr. Kuien's stakes were there why did you have to go measure the width of the street?

A. I had to measure there forty-four feet.

Q. Why? *A.* Because I was measuring according
10 to his map as laid out.

Q. Weren't his stakes on both sides of the street?

A. No, I didn't find any on the south side.

Q. That is the side the trouble was on, wasn't it?

A. No. I didn't know there was any trouble here. This trouble has arisen here within three or four years.

Q. The side that is now in dispute you didn't find any stakes in 1890 when you went to stake it out?

A. I don't think I found very many.

20 *Q.* Did you or didn't you find them?

A. I don't think I found any.

Q. Do you know whether you did or not?

A. No. It is a good long while ago. I don't think I found any, though.

Q. Then at the disputed point there were no stakes?

A. There were no stakes.

Q. Were there any stakes south of Rahway avenue at all on the Crowell property, where Mr. Kuien had surveyed? *A.* On the Crowell property?

30 *Q.* Yes. On the Colwell property?

A. Not that I could find.

Q. Did you go later and survey this lower piece?

A. No, I started in—

Q. Tell me how you staked this land, if you didn't survey it and didn't find any stakes?

A. I went down to see Mr. Kuien, and Mr. Kuien gave me a map and told me there were stakes there, and that he had staked certain properties.

Q. Tell me how, Mr. Marsh, if there were no stakes on the south side of Rahway avenue. *A.* Yes.

Q. And you didn't survey on the south side of Rahway avenue that you could stake those lots in 1890?

A. Mr. Colwell owned on the north side and Mr. Kuien also surveyed that and had recently staked for houses there.

Q. I mean talking about the south side now?

A. Yes. So I took the stakes on the north side, and even took parts off a house so as to continue my course, because I had eleven or twelve hundred feet to run, and I only had a one hundred and fifty foot line between stakes. I didn't want to make an error, and rather than offset and have a possible slight error, I even cut through a house to get the line direct from two stakes. 10

Q. Did you have your surveyor's instruments along then? *A.* Yes.

Q. But you made no survey? *A.* I staked the lots with reference to the—

Q. What I want to know is this, how could you stake those several hundred lots there? *A.* Yes. 20

Q. On the south side of Rahway avenue, if Mr. Kuien didn't give you the stakes, and put them in the ground, or you didn't make a survey?

A. He did have some in the ground, otherwise I couldn't have made the survey, unless I made a new survey, which I didn't do.

Q. Are you sure that there were stakes on the south side of Rahway avenue?

A. No, I don't think there were any. I remember commencing at the north side, and remember cutting through the building. 30

Q. If there weren't any there he didn't give you any, did he? *A.* No.

Q. And you didn't make any survey? *A.* No.

Q. How in the world could you stake off those lots?

A. Because he had two maps that were tied in together.

Q. That is the best explanation you can give?

A. That is a good way of surveying I should say.

Q. That is to say, without making a survey at all, you could take these two maps and put them together on the ground and just measure them off?

A. He had one reference from the railroad, and he had the other reference from the railroad.

Q. Did you see the Central Railroad station there at the time? *A.* Yes. I don't know whether I did or not. That I don't remember.

Q. You have a good memory and it goes away back
10 to '72? *A.* Sometimes it does.

Q. Do you remember the fire house? Do you remember seeing that there?

A. No, I don't remember that.

Q. Was it there, or wasn't it?

A. I should say it wasn't there in 1890.

Q. You are sure about that aren't you? *A.* I don't think there was a house on the property.

Q. Are you sure about it or aren't you?

A. I am pretty sure there wasn't a house on the
20 property.

By Mr. Strong.

Q. On what property?

A. On Colwell's property to the south.

By Mr. Silzer.

Q. How long has the fire house been there?

A. I couldn't tell you.

Q. You have a good memory? You remember the fence. Don't you remember the fire house? You
30 made your living down there, you know, for about ten years. *A.* I did make my living out of that place for years.

Q. And you don't remember how long the fire house has been there? *A.* No.

Q. And yet you could locate this old fence, when you were sixteen years old? *A.* If I had gone down there for ten years I couldn't have located it in ten years.

Q. And the first time you measured the road to have

it forty-four feet, was when you staked it out for Mr. Colwell? *A.* Yes, at that point.

Q. Did you stake out that alley that he had on there too? *A.* Oh, I have staked it out long afterward.

Q. What did you stake the alley out for?

A. Making surveys down the alley. Hold on, by the way, which alley do you mean?

Q. Are you talking about an alley?

A. I know, but I refer to a little street that doesn't appear on the map at all. 10

Q. I am talking about the alley where they used to raise watermelons.

A. No, I never knew there was an alley over there.

Q. Which one were you talking about? *A.* An alley that runs down from the north side.

Q. Down where? *A.* Through the Colwell property.

Q. Is there another alley over there? *A.* Well, you may call it so. It is twenty feet wide.

Q. That is to say, Mr. Colwell had an alley on both sides of Rahway avenue, did he? *A.* No, not the way that you are thinking. He cut one small street that runs down through his other property. 20

Q. How far was the fence away from the trees on the north side of Rahway avenue? *A.* Well, I had to offset the front line because there were trees in the line.

Q. I am now talking about the north side of Rahway avenue? *A.* North side of Rahway avenue?

Q. Yes. In 1872 how far were those trees from the fence? North side now I am talking about.

A. Do you mean the trees in Crowell's yard? 30

Q. I mean a row of elm trees on the north side of Rahway avenue opposite the Colwell property?

A. I don't know.

Q. Were they in or outside of the fence? *A.* I couldn't tell you that. They now are in.

Q. On the south side were the trees in or outside of the fence? *A.* They were on the outside of the fence.

Q. How do you remember that? Didn't you, as you were travelling along as an expressman, look on both

sides of the street? *A.* Yes, but I don't remember whether those large trees on the Crowell property were inside or outside of the fence that may have existed then. I only said there was a fence there.

Q. On the south side were they inside or outside of the fence? *A.* They were outside of the fence, and some were on the line, because I had to offset to get around the trees on the front line.

10 *Q.* In 1872 some of the trees on the south side were on the line of the fence, and some were outside of the fence? *A.* There were some directly in the line.

Q. And some outside? *A.* But if you refer to elm trees it is my impression that they were outside of the fence.

Q. How far outside? *A.* Oh, I couldn't tell you.

Q. How much distance was there between the fence and the elm trees? *A.* Couldn't tell you.

Q. Don't remember that? *A.* No.

20 *Re-Direct Examination, by Mr. Strong.*

Q. Can you tell approximately? *A.* Some of those trees were outside of the fence, and some were inside of the fence.

Q. Do you mean on the Colwell tract?

A. No, to the west.

Q. I am talking now about the Colwell property?

A. I don't remember how they were now.

Q. Whether they were in the fence line, or outside?

30 *A.* It is my impression that they were outside of the line.

Q. You are not able to approximate? *A.* I know just above they were on the inside, some of them.

Q. Which way do you mean? *A.* Towards the west on the Fitch tract, but I don't remember ever cutting any trees there just at the Fitch line. Down below there were some trees in the line itself.

Q. Calling your attention to this map 221, which you say is not your work. *A.* That is not, no; the map was not drawn by me.

Q. Have you indicated in figures the width of Rahway avenue? *A.* No, sir.

Q. Where would Rahway avenue be on this map?

A. It would be here (indicating), just north of the—

Q. It is what is marked what, Carteret avenue?

A. Carteret avenue. That is another name for it.

Q. It is also called by that name, is it? *A.* Well, it is, apparently on that map it is named Carteret avenue.

Q. This map shows John street, doesn't it?

A. Yes, sir. 10

Q. And have you given, or is there a width given on this map for John street? *A.* Yes, sir; there is a width given on that.

Q. But no width given for Carteret? *A.* No width given on Rahway avenue. Nor any map that I ever make do I ever indicate here the width of the roads. I draw a line to show the roads. I might take a measure somewhere and put it down parallel with the other line.

Q. What is indicated by the fact that there is no width given for Carteret avenue? What does that indicate? *A.* Simply that I didn't measure it. 20

Q. Here is another map 267. This is your work, isn't it? *A.* Yes, sir.

Q. Is there any width given in figures for Rahway avenue on this map? *A.* No, sir.

Q. Is there a width given in figures on all the other streets? *A.* In each and every instance.

Q. What does the fact that there is no width given in figures on Rahway avenue indicate? *A.* Simply to show that there was a road there, and that I really at this point didn't know the actual width of the street. 30

Q. Didn't undertake— *A.* Didn't undertake to put it down, because I might put down a wrong width, if I should put down any particular distance.

Q. The survey of the property contained in this map, that is the property belonging to Rachael A. and John B. Crowell, extended how far? *A.* From Rahway avenue back to the meadows.

Q. Southerly from Rahway avenue? *A.* No, northerly; it is on the opposite side.

Q. Did it embrace Rahway avenue in any way?

A. No.

Q. Was this map shown you also? *A.* Yes.

Q. What number is this, 527? *A.* 527.

Q. Are there any figures to indicate the width of Rahway avenue there? *A.* There is none of Rahway avenue, but that may be that that line is set back to the next sixty foot line, because this was in process of widening at this time.

10 *Q.* Rahway avenue was? *A.* Yes, and I may have set it back to the line they tried to adopt. I wouldn't swear that it is, or it isn't, but I didn't even give a width there.

Q. You did not give a width on Rahway avenue on this map, did you? *A.* Not even on that map.

Q. Have you in the instance of every other street shown on this map, given a width?

A. Yes, sir; given a width.

20 *Q.* Is this map intended to show the width of Rahway avenue? *A.* Not particularly, no. If that is for sixty feet width, then it has been made to agree to the new lines. I think I staked this after the new line was adopted, but I am not sure.

Q. This was filed March 22d, 1909? *A.* Yes.

Q. That was after the— *A.* And I imagine that the Rahway avenue on that map may have been intended to be sixty feet to the new line, but I am not sure without going over my calculations.

30

Herman Shapiro, one of the defendants, being duly sworn according to law on his oath, saith:

Direct Examination, by Mr. Strong.

Q. Mr. Shapiro, where do you live? *A.* Carteret. Called the Borough of Roosevelt.

Q. Are you the person named in this deed which I show you now from Morris Steinberg, and Sarah, his wife, dated the 22nd of May, 1892? *A.* Yes sir.

Q. 1902 A. Yes.

Q. This deed is recorded 27th of May, 1902, book 337, page 98? A. Yes, sir.

Mr. Strong: I offer the original deed in evidence. (Deed entered in evidence and marked Exhibit P 4).

Mr. Strong: I will say, referring to the deed, that it conveys two lots fifty feet, described together, fifty feet front and one hundred feet in depth, being known and numbered as lots 31 and 33 in block number two, on map or maps designated as number 217 in clerk's office of Middlesex County, entitled, "Map of building lots, Lizzie B. Colwell, at Carteret, Middlesex County, New Jersey, filed August 23rd, 1892; surveyed by Louis Kuien, Elizabeth, New Jersey. Also amended map of building lots of Colwell, Middlesex County, New Jersey, 1892; scale fifty feet to the inch; map 217, filed December 8th, 1892."

10

20

Q. When you purchased this property in 1902 what was there on it? A. In my possession?

Q. On those two lots? A. Building fifty feet front, occupying both lots.

Q. Covering the whole front? A. The whole front.

Q. On what streets? A. On Rahway avenue.

Q. Where was the front of the building with reference to the line of the street as it was then used?

A. The original line, it was laid out, it was forty-four feet, the road.

30

Q. Well, what I want to get at is, was the front of your building on the line of the street as it was used, or was it back from the street, or was it out in the street? A. It was just as it is to-day.

Q. It hasn't been changed yet? A. Yes, sir.

By the Court.

Q. Was the street there in front of you? A. Yes sir.

Q. Counsel wants to know whether it was on the line of the street or whether it set out any, or whether

it was set back? *A.* It is on the line; supposed to be according to the surveys.

By Mr. Strong.

Q. And it covered the entire front of the lot?

A. Yes, sir.

Q. What did you do with the building? You bought the property with the building on it? *A.* Yes, sir.

Q. What use has been made of it? *A.* Why, I have
10 been using it as two stores.

Q. Where is your residence? Where do you live with your family? *Q.* I live upstairs.

Q. In the building? *A.* In the building; yes, sir.

Q. And have ever since you have bought it? *A.* I have been living there until December, 1911. I moved to a private house after.

Q. Did you take possession of the building at once when you bought it? *A.* I was in it at the time.

Q. In it already? *A.* Yes, sir. I been paying rent
20 before until I bought it.

Q. You rented it from Steinberg, did you? *A.* From Steinberg; yes, sir.

By the Court.

Q. How long before?

By Mr. Strong.

Q. How long had you rented? *A.* I have been there, it will be eighteen years the first of January coming. It was seventeen years last January I have been
30 in Carteret and occupying the same premises.

By the Court.

Q. Do you mean in 1896 you went there? Do you mean you paid rent from '96 on? *A.* Yes, sir. I believe a year previous to that. I am not certain, according if I should look up the papers.

By Mr. Strong.

Q. Your deed is dated 1902. How many years were you a tenant? *A.* I have been—

Q. How many years did you occupy it as a tenant?

A. One second, please. I believe seven years prior to buying of it. Either six or seven, I am not positive, but I have got records home to prove it.

Q. Was there any change in the property so far as the building was concerned at that time? A. Yes, sir; several changes.

Q. Any change so far as the street line went?

A. Not the line. Just merely I used to have an alleyway between the two houses to drive in—

10

By the Court.

Q. Was there any change so far as the front was concerned? A. Just merely I put in different glass.

Q. No. In the front line of the street? A. No, sir.

The Court: When did Roosevelt become a borough?

Mr. Watson: 1906.

By Mr. Strong.

Q. How long had you known this property before you became a tenant there? A. Two years before I became a tenant. 20

Q. Where were you living then, in Carteret?

A. No, I was in New York.

Q. When did you come out there to live? A. I came out, it was either '92 or '93, I am not positive, 1892 or 1893.

Q. What was there at that time when you first knew the property there to mark the line of the street on the south side of Rahway avenue? A. When I first came there? 30

Q. Yes. A. There was a building 22x40, as it stays now.

Q. Where is that? A. It was used as a grocery store.

Q. Where was that with reference to your property?

A. That is the property I am in now.

Q. Was that building there then on these lots?

A. That building was there.

Q. Where did that stand with reference to the front

line of the street? *A.* The same as it is now, just facing Rahway avenue.

By the Court.

Q. That building was enlarged, was it, to fifty feet?

A. There was built an addition to it, to the twenty-two was built an alleyway to the building.

Q. Always on the same line of the street? *A.* On the same line; yes, sir.

10 *By Mr. Strong.*

Q. You simply built another building alongside of it?

A. Another building alongside of it.

Q. And made it all one building? *A.* One building. I didn't, but old man Steinberg did it.

Q. Steinberg did that while he owned it?

A. Yes, while he owned it. I bought the whole building together.

Q. Well, what else was there along the line of Rahway avenue on that side? *A.* There was an old fence
20 when I came there, just like the farmers have a fence, kind of 2x4, it rough pieces, and a couple of posts.

Q. Where was that fence? *A.* The fence was right on the line with the building.

Q. Same line with the building? *A.* Yes sir.

Q. How far did it extend along that line? *A.* I couldn't remember. I know it was on that lot, it was an empty lot.

By the Court.

Q. Do you mean the next door lot? *A.* The next
30 door lot to the building now on it. There was an old tree on it.

Q. How long a fence was this? *A.* Must have been about twenty feet, I suppose, because I used to use a driveway.

By Mr. Strong.

Q. As you went on then from your property down towards the Central Railroad, what was there along the street? *A.* When I first came there was an old little office used as an office by Colwell's agents, a man by

the name of Harris used to be there when I came there.

Q. Whereabouts is that? *A.* It is a driveway now, right next to my building.

Q. Was it on your lots? *A.* No, sir; it was on the Central Railroad Company's property. It was at that time Colwell's yet. He sold them after to the Central Railroad.

Q. Where did that stand? *A.* The same line as the house.

Q. As your house? *A.* Yes, sir.

10

Q. Do you know where the lots that White owned are? *A.* Yes, sir.

Q. As you went from your property down along White's property, what was there along there at that time when you first knew the property to mark the street line? *A.* Was kind of a bank like, about three feet higher than the street.

Q. Do you remember any fence along there? *A.* I don't remember a fence. I am not positive.

Q. Do you remember any trees along there—

20

A. I don't believe there was any trees on his lots. I don't think so.

Q. But on the line of the street down towards his lots? *A.* There was towards Brady's corner, they used to call it, there was some big trees.

Q. How large would you say they were? *A.* They probably been forty feet high, some of them; some a little smaller. They was big heavy trees.

Q. What kind of trees? *A.* Elm trees.

Q. Where were they? *A.* I knew it was, because I saw them cut down. The people who owned it are right here in the court room too.

30

Q. When were they cut down? *A.* Just about a year and a half ago, I believe, maybe less.

By the Court.

Q. Where were these trees? *A.* Right on the line of the street.

Q. Yes, but whereabouts, what part of the street?

A. With the fence.

Q. Near whose property, or in front of whose property? *A.* Crowell's property and Colwell's property.

By Mr. Strong.

Q. Were there some of them along Colwell's property? *A.* Yes, sir.

Q. Where did they come with reference to the front of your building? *A.* With my building.

Q. Yes. *A.* There was one tree in the front of my building.

10 *Q.* One tree in the front of your building? *A.* Yes, sir; and the stump of it is laying right under my stoop yet. The stump of the tree is right under my stoop.

Q. One of the big trees? *A.* Yes, sir; one of the big trees. It will take more than a day for people to dig it out.

Q. The stoop of your building—

The Court: Can't we find out where these trees were as bearing on these fences he has given us?

20 *Mr. Strong:* I intend to ask that.

Q. One of these trees is under your stoop?

A. A stump.

Q. The stump is under the stoop? *A.* I had boards over it to make it a sidewalk. My building has three steps from the street, four steps, I believe; it is higher up, since they made the grade of Rahway avenue my building was left high up. There is four steps to get into the store.

Q. Was the stoop, as you call it, the place going up—

30 *A.* Steps.

Q. Were they inside or outside of what you call the street line? *A.* It was down there as a sidewalk before, and after they widened Rahway avenue I was cut off that there was no way to get into the store, that I had to go and make steps to go into the store.

Q. You made the steps after they? *A.* After they widened the avenue.

Q. Then before they widened the avenue weren't there any steps there? *A.* No, sir; there was a sidewalk.

Q. And these steps that you put there, that is where the tree is, is it? A. The tree is right under the big boards, right over that stump of the tree.

Q. Was the tree growing there when you first came there? A. It wasn't growing, it was cut off, and they had to build the second building, the additional building.

Q. Cut off to make room for the second building?

A. To make room for the building.

Q. Where is that tree with reference to the front wall of the building? A. It is between the two lots; the first building was twenty-two feet— 10

By the Court.

Q. No, but as between the street and the wall?

A. Between the street and the wall, well, I suppose it was about, I think two feet from the wall.

By Mr. Strong.

Q. Towards the— A. Two feet or eighteen inches from the wall to the tree. 20

Q. That is, the tree was that distance further out towards the street, was it? A. Yes, sir; eighteen inches or two feet from the wall.

Q. The other trees that you said were along Colwell's line, along Colwell's property there, were they—where did they come with reference to the front of your house? A. I don't know how wide they are.

Q. Whether they were further in, or further out?

A. I couldn't say. I knew they was, but what way, which line they was, I couldn't say. 30

Q. You filed a bill in the Court of Chancery against the borough didn't you, to stop them? A. Yes, sir; I did.

Q. What was it that led you to do that?

Mr. Silzer: I object to that as immaterial. The Court of Chancery has not settled this case. It has simply sent it so that we might settle it.

The Court: What is the point?

Mr. Strong: Only to show what they proposed

to do and what they expected to do, and what change they undertook to make in the line, that is all.

Mr. Silzer: They could do that without your bill in Chancery.

The Court: If he knows anything upon the subject he can tell us, irrespective of the—

Mr. Strong: I only wanted to show, irrespective of what they did. I don't care anything about the Chancery bill; I don't propose to offer it.

10

Q. In 1909 was anything done by the Borough of Roosevelt with reference to your property? A. They cut around both ways of my property. They cut open the street both ways, and they were going to cut me off, not to leave me any entrance to get into the store; I was told that they were going to do it.

Q. Had they, in fact, done anything along the line of the street to widen it? A. They widened it; yes, sir.

20

Q. On both sides of your property? A. Yes, sir; but one piece I owned before, that wasn't done.

Q. The line of this widening that they were doing, how far would that come on your building, how far back? A. Sixteen feet.

Q. Sixteen feet back from the front of your building?

A. Back from my building. I will have to move sixteen feet.

Cross Examination, by Mr. Silzer.

30 Mr. Shapiro, you say they widened the street?

A. Yes, sir.

Q. Everybody back but you? A. And a couple of more.

Q. I say, everybody is back but you? A. Another one.

Q. Who else isn't back? A. William Rock.

Q. Where is his property? A. I used to own it before.

Q. Well, outside of the properties that you own, everybody is back, aren't they?

Mr. Strong: And White.

A. There was no properties on the building to go back.

Q. Everybody else was back? A. Not everybody else, but just merely it was open ground, and they took it themselves.

Q. When in 1909 they widened this street everybody went back except you, didn't they? A. Nobody went back but one man. 10

Q. You didn't go back? A. No, only one man went back, that is all.

Q. All the rest of them were already back? A. It wasn't back. They were open ground, and the borough took them themselves.

Q. In 1909 did you say there were no buildings on that street? A. No, sir; but one.

Q. You didn't say that before? A. Well, I can say it, yes.

Mr. Strong: Only one, he said. 20

Q. Do you know where the fire house is? A. Yes, sir.

Q. Was that building there in 1909 when they changed your house? A. Yes, sir.

Q. Well, the fire house wasn't put back? A. No, it wasn't put back.

Q. Then that was back where it is to-day? A. That was built on the line—

Q. That was built on the line, wasn't it? A. That was built where they wanted to build. 30

Q. That was built on the line, wasn't it? A. The line they wanted.

Q. Who else was already back on the line in 1909?

Mr. Strong: I object to counsel putting in the witness' mouth that expression "on the line."

Mr. Silzer: That is what he said. I didn't put it in his mouth. He put it in his own.

Q. You said back on the line, didn't you, Mr. Sha-

piro? Didn't you? *A.* They used—

Q. Didn't you say that? Didn't you say back on the line a few minutes ago? *A.* What line? There was no line established yet.

Q. Not yet? *A.* No, sir.

Q. I say, everybody is back but you, that is right, isn't it? *A.* No there is somebody else isn't back.

Q. Who else isn't back? *A.* William Rock.

Q. On this property that you sold to Rock?

10 *A.* Yes, sir.

Q. Outside of the property that you are in, and the property that you sold to Rock, everybody is back on the sixty foot line, that is right, isn't it? *A.* There was no line, no.

Q. Everybody is back sixty feet? *A.* There was no line, because I will prove it to you—

Q. Just answer the question? *A.* What?

Q. Outside of your property, and the one that you sold to Rock, everybody is back on the sixty foot line, that is right, isn't it? *A.* There was no sixty foot line.

20

By the Court.

Q. The question is whether or not the other parties are back on the street of a width sixty feet? *A.* I believe they are on the width.

By Mr. Silzer.

Q. Mrs. O'Donnell was back without being put back?

A. She put back herself.

Q. I say, she was back without being pushed back?

30 *A.* She was not; no, sir. She had the stoop and the fence right the same as my building.

Q. Isn't Mrs. O'Donnell's house where it always was? *A.* The stoop is taken off, and the fence.

Q. How much of a stoop? *A.* Must have been about ten or twelve feet.

Q. Of a stoop? *A.* With the fence, you know, it was fenced around. She had flowers along there.

Q. Isn't the stoop there now? *A.* I believe there is, yes.

Q. Then it wasn't taken away, was it? *A.* She lined it in. She cut it off.

Q. How much did she cut off? *A.* Must have been about twelve feet.

Q. Twelve feet of stoop? *A.* Not a stoop. The fence around the stoop. And she changed round the stoop.

A. Where did she put the stoop? *A.* One she put on the side way of Colwell street, and the other there, honestly I can't recollect at the present time. 10

Q. You can't remember that? *A.* Not at this minute.

Q. How about the church? Isn't there a church there? *A.* Not in my neighborhood.

Q. Did you ever see an Episcopal Church down there? *A.* Yes, sir; on the other side of the school.

Q. That is on the same Colwell tract, isn't it?

A. I believe it is Colwell tract.

Q. You remember that? *A.* Yes, I know that. But it is not in my block. 20

Q. That was back on the sixty foot without any moving? *A.* There was no sixty feet established.

Q. I say, that was back sixty feet without being touched? *A.* I believe it is seventy feet away from the line, the way the church sets there now.

Q. I say the place where the church is, the church didn't have to be moved in order to open the street?

A. The church is away in. I think it is seventy feet where the church is. I am positive it is more than sixty. 30

Q. In front of Mr. Ritsack, there was sixty feet without moving any house? *A.* I couldn't say if it is sixty or more. He is back to some people.

Q. Everybody is back of your house, aren't they? How about Ed Hyle? *A.* That is on the other side of the railroad.

Q. Sixty feet there, isn't it? *A.* I think so.

Q. The way the thing stands there is that everybody is back, but you stick out in the street, don't you.

A. Yes, sir.

Q. Do you know where the Central Railroad station is?

A. Yes, sir.

Q. That is just below you, towards the east, isn't it?

A. Right next to me.

Q. And that is back to sixty feet, isn't it? *A.* It was immaterial to them where they are.

Q. I say, that is back sixty feet? *A.* It is more than sixty feet.

10 *Q.* And hasn't it always been on the sixty foot line?

A. Who?

Q. Central Railroad? *A.* That was not on the sixty foot line.

Q. Did the Central Railroad move their station?

A. Yes, sir; they moved.

Q. They moved it when the street improvement was made? *A.* They cut off something, or they changed it.

20 *Q.* What did they cut off? *A.* Some of the building, they moved or changed it.

Q. What did they cut off? *A.* I couldn't remember.

Q. Do you mean to say that, Mr. Shapiro, that the Central Railroad cut off something from their station?

A. They changed around, either they moved, or done something.

Q. What did they do? *A.* I don't remember. I know they done something about it.

Q. Can't you tell me anything they did to it?

A. Who? I know they changed around the building.

30 *Q.* What did they change the building? They added something to it didn't they? They put an addition on it, didn't they? *A.* I don't think they did put an addition.

Q. Did they add a single thing on the street line?

A. They changed around the building.

Q. Did they do anything on the street line? *A.* Yes.

Q. What? *A.* They moved back I believe.

Q. Do you swear to that? *A.* Either they moved back, or fixed it up—

Q. Do you swear that you saw them move back?

A. I couldn't say what they done, but I remember they done something about the building. Whether they moved back, or they cut off something, I couldn't remember.

Q. Will you say that the Central Railroad did a single thing on the street line, required by the making of that street sixty feet? *A.* Well, they had to do something.

Q. What did they do? *A.* Either they moved back, 10
or they cut off; I don't remember it.

Q. Is your memory good? *A.* That is honest, Senator, I can't remember.

Q. Why, you live right next door. *A.* Right next door to it, but I have other things to look after without remembering such things.

Q. Do you mean to tell this jury that the Central Railroad touched their building at all on the street?

A. They done something to it.

Q. What? *A.* I don't know. 20

By the Court.

Q. Did they do anything towards moving it back?

A. They done something, but what they done I don't remember. They are back in.

Q. How far are you from the building? *A.* From the depot I am probably thirty feet.

Q. About thirty feet? *A.* Yes, sir.

Q. Can't you tell us whether or not that building was moved out, or in? *A.* It is in off the street. 30

Q. Yes, but was it changed in any way at the time?

A. It was changed.

Q. Do you mean changed so that the frontage was further away from the street? *A.* Yes, sir. It was changed, but how they changed it I don't remember.

By Mr. Silzer.

Q. Will you look at D 1? Do you recognize that picture? *A.* Which one do you mean?

Q. Do you recognize the street? *A.* Yes, sir, I recognize the street.

Q. That picture is taken from west of your property looking down along the sidewalk, isn't it?

A. Yes, sir.

Q. Do you recognize your building? *A.* Yes, sir; I do.

Q. Your building is the one that sticks out in the street, isn't it? *A.* Yes, sir.

Q. What is the building right next to your's?

A. That is Rizchak's.

10

Mr. Strong: I object to this. It does not show conditions prior to this opening at all, and it is not competent; it is not cross examination either.

The Court: When was this action brought?

Mr. Strong: The action was brought in 1909.

The Court: Was the photograph taken before the action was brought?

Mr. Silzer: No, sir; but I want to follow up this question.

20 *Q.* Isn't the Rizchak property, which is right next to your's, in the same location as it was before 1909?

Mr. Strong: I object.

A. I believe that was built later than 1909.

By Mr. Strong.

Q. Built later? *A.* Yes, sir.

Mr. Strong: Your Honor sees how unfair it is to use a photograph like that, made recently, in a suit that relates to conditions four or five years ago, when the property wasn't built up at all.

30

A. Property wasn't built next to me that time.

By Mr. Silzer.

Q. Was the building next to Rizchak? Do you recognize the next building to it?

Mr. Strong: I object.

Q. I ask you whether that one was—

The Court: Senator, this can only be very remotely permissible.

Mr. Silzer: This man says that he built his house out on the line as it then existed. Now I certainly have a right—

The Court: Yes, but those houses didn't exist at the time.

Mr. Silzer: I am not so sure they didn't.

The Court: You must take his say so, on cross examination.

Mr. Silzer: I am just asking him now.

The Court: You have a right to ask, but do not incorporate anything about the photograph that the jury may get. 10

Mr. Silzer: I am going to offer these later.

The Court: That may be, but they are not admissible on this cross examination.

Mr. Silzer: I am not going to offer them at this time.

Q. Do you recognize the building from you as the Rizchak building?

Mr. Strong: I object. I don't think these photographs have any place in the case at all. I don't think they ought to be constantly lugged in. 20

The Court: Not unless they are shown to have existed at the time before this suit was brought.

Mr. Strong: Even if they had, they show a great many conditions that didn't exist then.

The Court: I think if there are conditions that existed before the suit was brought, it is legitimate cross examination.

Mr. Strong: Suppose there may be one building there that was there before the suit was brought, and all the rest have been stuck in since, and they have taken this picture since. 30

The Court: With the qualification that it shall not be used before the jury, I think counsel may refer to it to test this witness' accuracy. If he can suggest anything to him that will change his testimony, he has a right to do it, if it is done by refreshing his memory.

Q. That second Rizchak building that you see on the picture there, how long do you remember that being there?

Mr. Strong: Prays exception.

Exception allowed—sealed accordingly.

Judge.

Mr. Strong: I object to this question too.

(Question repeated by stenographer.)

10

Mr. Strong: That is reading the picture into the case.

The Court: It is if the jury sees the picture, but if the witness will turn the picture this way they will not see it.

Mr. Strong: If the jury never sees the picture, what can the testimony amount to?

The Court: That is not the purpose, I understand.

20

Mr. Strong: It is not the ostensible purpose, but you and I know what the purpose is.

The Court: I am guarding you against the underlying purpose that you think exists, but I can't shut out legitimate uses of it.

Mr. Strong: Prays exception.

Exception allowed—sealed accordingly.

Judge.

(Question repeated by stenographer.)

30 A. Not as being —I believe about eight years. I believe it is up between seven or eight years. The wooden frame next to the fire house.

Q. That has always been back on the line, hasn't it?

A. Senator, if you will allow me to say—

Q. Just answer the question? A. I want to explain you—what you want to call line, and I can't call it line.

Q. It has always been back where it is now?

A. Where it is now; yes, sir.

Q. That wasn't moved back by an improvement, was it? A. It was built—

Q. I say, it wasn't moved back? *A.* It was built after the agitating was about making a sixty foot road.

Q. This was done in 1909? *A.* It was agitating for about fourteen years for making the avenue sixty feet, and the mayor is here to verify it.

Q. How do you know that? *A.* Because we had conversations about it, and we had public meetings about it.

Q. Do you mind answering the question? *A.* I will answer you anything you want.

10

Q. I say when the street was widened in 1909, the second Rizchak building was there where it is to-day, which is twelve feet back from where you are?

A. The frame building?

Q. Yes. *A.* Yes, sir.

Q. And the building next to it is the fire house?

A. The fire house was there.

Q. That was also there? *A.* Yes, sir.

Q. That has been there how many years to your knowledge? *A.* Well, the fire house must be about probably sixteen years.

20

Q. Sixteen years back where it is now? *A.* Yes, sir. Because they had to have a run out from the fire house. They had to go back.

Q. That building didn't have to be moved back?

A. Because they had to build it back.

Q. I say, they didn't have to move it back? *A.* It wasn't moved, no.

Q. You bought this property from your brother-in-law, Steinberg? *A.* Not from my brother-in-law, but he is a cousin to my mother, old man Steinberg.

30

Q. Don't you own some other houses on that same street? *A.* On Rahway avenue?

Q. Yes. *A.* No sir; I don't own no houses, no.

Q. Didn't you own some others? *A.* I owned; yes, sir.

Q. Show me where they were, will you? Come down here and show me where they were, your present lots being 33 and 35, aren't they? *A.* Yes, sir.

Q. Where were the others, how far west? *A.* This is Rizchak's, and I own 23 and 21.

Q. 23 and 21? *A.* Yes, sir.

Q. Was there any building on 23 and 21?

A. Yes, sir.

Q. That is back to the line, isn't it? *A.* No, sir; it ain't.

Q. Is that the one that you are talking about, Rapp?

A. Yes, sir.

10 *Q.* Where is the post office? *A.* 11 and 9.

Q. Post office on that? *A.* Yes, sir.

Q. That is back on the line, isn't it? *A.* No. The mayor gave them the line. It isn't on the line.

Q. How long have you owned that post office?

A. Post office, must be about eight years, or less, I don't know.

Q. That is back on the sixty feet, isn't it?

A. No sir.

20 *Q.* How far out is it? *A.* About two and one-half out, I believe, ain't it.

Q. It is about fifty-eight feet and a half at that point, is it? *A.* From fifty-seven and one-half or—

Q. Or fifty-eight and one-half? It is practically on the sixty foot line, isn't it? *A.* They had—

Q. Just answer the question?

Mr. Strong: I object.

30 *Q.* It is about fifty-eight feet and a half wide at the point where you own the post office *A.* No, it ain't fifty-eight and one-half feet.

Q. Fifty-seven and one-half? *A.* Between fifty-seven, or fifty-seven and one-half.

Q. How long have you owned that? *A.* I couldn't say exactly the year. Five or six years.

Q. You bought that place since you owned the one we are now fighting about, didn't you? *A.* Yes, sir; I bought the lots and built the house.

Q. You built your house on it? *A.* Yes, sir.

Q. That is to say, you owned this place we are now

fighting about, and then you bought the place where the post office is, and built a post office on it, which was made a road fifty-seven or fifty-eight feet wide at that point, is that right?

A. I bought the lots and put up a building forty-two and one-half feet wide.

Q. And put it back so that the road would be fifty-seven or fifty-eight feet wide? *A.* I didn't put it back. I built it just according Linsley's survey.

10

By the Court.

Q. When was that done? *A.* That was done when they were already talking about establishing the line.

Q. What year? *A.* I don't say whether it is five or six years.

By Mr. Silzer.

Q. According to whose survey? *A.* They engaged a man by the name of Linsley to establish a line on Rahway avenue, and I went according to his line. They were going to take off two and one-half feet further the other side.

20

Q. Who was it made the survey upon which you built your post office building? *A.* I believe Marsh.

Q. How many feet is that above the property that is now in dispute? Within two hundred feet of the present location, after you owned the present property, you, after Marsh's survey, built a property that makes the road at that point fifty-seven or fifty-eight feet wide, didn't you?

30

Mr. Strong: No, he didn't say so. He said he built it according to Linsley's line, who was employed by your people to give the sixty foot line.

Q. Mr. Marsh made the survey, you say?

A. Mr. Marsh made the survey, yes, sir.

Q. And according to that survey you put the property which is within two hundred feet of the one we are now fighting about? *A.* It is more than two

hundred feet. It is about two hundred and fifty feet.

Q. You built it so that the road at that point is about fifty-eight feet wide? *A.* Fifty-seven and one-half, I think.

Q. When did you ever see a fence on any of the Colwell property? *A.* When I first came to Carteret.

Q. When was that?

A. I guess it is ~~seventeen~~ years ago.

Q. And where did you see a fence then?

10 *A.* In several places. It was above the school there, and there was—on Colwell's there wasn't much of a fence, but there was some on the Krutky property, that is on King Marsac now.

Q. Well, the fence was all on a straight line, what there was of it, wasn't there? *A.* It wasn't all straight. It didn't run exactly straight.

Q. Well, the line that came from the west of the Colwell tract, and to the east of it, Radley, together with the Colwell fence were all on a line, weren't they?

20 *A.* It wasn't fenced at all ~~there~~. There were some buildings in the way.

Q. What building was there?

A. Yes. Mrs. O'Donnell's was there.

Q. Is that the only one? *A.* On that side I believe there was only one building that is all.

Q. What kind of houses? *A.* Where I had it before, Rock's building, that was on it too.

Q. What kind of a house is Mrs. O'Donnell's house?

A. Frame building.

30 *Q.* How big? *A.* It is a big size building.

Q. How much frontage?

A. I believe it is twenty-two or twenty-four; I couldn't say positive.

Q. And she cut off twelve foot of stoop from the front of it? *A.* Not stoop. She took in the fence.

Q. Everybody took their fences down, didn't they?

A. She had fenced in—

Q. Everybody took their fences down that had any left, didn't they, on this street? *A.* In some places it

was only like a farm fence.

Q. Can't you answer the question?

A. There was many fences.

Q. Everybody who had a fence, when they opened this street and put the sidewalk down, took the fence away, didn't they? *A.* Where they had a fence in the way, yes.

Q. And that is what she did, didn't she?

A. She done it.

Q. You couldn't put the sidewalk down if you left the fence there? *A.* No, sir. 10

Q. Who put this stump under your stoop?

A. I found it there.

Q. Is it the piece they cut off, or the piece that grew in the ground? *A.* No, it is a piece cut off from a tree.

Q. Is it a piece that is left in the ground?

A. It is there, if you will take the trouble to come there.

Q. Please answer the question? *A.* It is there.

Q. Is it a part of the tree left that had been growing in the ground? *A.* Yes, sir. 20

Q. You have built your stoop over that, haven't you? *A.* Yes, sir.

Q. How did you get in your store before you built the stoop? *A.* It was cinders.

Q. How wide is your stoop?

A. It is not—in one place, it is about four feet, the top one, and then there is steps to go off. I think it is twelve inch boards, ten or twelve. 30

Q. How far does it run out from the edge of your building towards the street, this stoop? *A.* Probably for about eight feet, either more or less.

Q. So that after the borough cut the trees down you put an eight foot stoop in front of your property, did you? *A.* The borough didn't cut no trees in that neighborhood. There was buildings on it.

Q. Who cut this stump down? *A.* Which stump?

By the Court.

Q. The one you have been talking about under your

stoop?

A. It was there. We cut it down ourselves when we built the second building, and it was opposite that way.

By Mr. Silzer.

Q. Before that you came right into your building without any stoop? *A.* The cinders was right over it.

Q. Over that stump? *A.* Over that stump; yes, sir.

10 *Q.* And then after you built your building couldn't you go in without having any stoop? *A.* No, after they widened the street I couldn't get in the store without the stoop.

Q. Before the borough did anything— *A.* Yes, sir.

Q. (Continued)—there was an entrance to your store, wasn't there? *A.* Yes, sir.

Q. And that entrance was over a sidewalk which was made of cinders which were on top of the stump?

A. Yes, sir.

20 *Q.* After the improvement was made couldn't you get in the same way? *A.* I couldn't do it.

Q. Why not? *A.* They were going to cut me off so I shouldn't have any way to get in the store.

Q. Why couldn't you get in the same way after the improvement as you could before?

A. The borough cut it down.

Q. Cut what down. *A.* Around the sidewalk, and I couldn't leave no cinders around because it would have been always down.

30 *Q.* Did they touch your building at all? *A.* They didn't touch the building, but they touched close to it.

Q. They didn't interfere with your building, or the stump at all, did they? *A.* No.

Q. You could get into your building before the improvement, couldn't you? *A.* Yes, sir.

Q. Without a stoop, couldn't you? *A.* Yes sir.

Q. Before the borough improved the rest of the street, and without touching you at all? *A.* Yes, sir.

Q. You were able to go into your building from a

sidewalk that covered this stump, weren't you?

A. Yes, sir.

Q. And after the improvement you built a stoop out eight feet over this stump?

A. I didn't build it out.

Q. Who did build it out? A. One second, if you will allow me to explain.

Q. Who did build it out? A. There was a cinder—

Q. Who did build it out? A. I made an entrance to the store, a front entrance, the steps what you see right here. 10

Q. That was after the— A. After the borough cut it out.

Q. The borough hadn't touched your property at all? A. No.

Q. And before that you could go into your store over the cinder sidewalk, couldn't you?

A. Because they had a cinder sidewalk all the way through.

Mr. Silzer: I would ask the witness to answer the question. 20

A. There was a cinder sidewalk all the way through.

By the Court.

Q. Did the street change the grade in front of your building, or the street grade change? Did the borough change the grade? A. Yes, sir.

Q. And you put a stoop over it then? A. I had to put a stop over it then.

Q. How far out did you put it in feet, how many feet out? A. It might be eight feet from the building. 30

Q. And you did it? A. Yes, sir. I made a front entrance to the store.

By Mr. Silzer.

Q. And they didn't cut that—

A. That was a cinder sidewalk all the block.

Q. And you could walk right in your store without any stoop? A. Yes, sir; only one step was right over it.

Q. I say, previous to that you could walk over the stump that you covered up, right straight in your store without a stoop? *A.* Yes, sir.

Q. How many feet is it between your building, as it is located and the stump? *A.* Probably eighteen inches or two feet, I am not positive.

Re-Direct Examination, by Mr. Strong.

Q. Why was it necessary to build this stoop out there?

10 *A.* They cut off the cinder sidewalk, and I was left just hanging from both sides, and there was no way to get in the store; I was about two feet from the ground on this side (indicating) where the building juts out, and the front, there was no way of getting in at all.

Q. How high was the floor of your store above the sidewalk after they cut down? *A.* About two feet or more.

Q. Two feet or more? *A.* Yes, sir.

20 *Q.* And in order to get into your store you had to put a stoop there? *A.* I had to make steps to get into the store.

Q. That is what you call a stoop?

A. Yes, sir; stoop and steps.

Q. Before they meddled with your property you could walk right in on the same level with the sidewalk? *A.* With the sidewalk; yes, sir.

Q. When they began to talk about making the street sixty feet wide, you say, was some fourteen years ago?

30 *A.* Yes, sir.

Q. At that time your building was there was it?

A. Yes, sir; the building was there.

Q. What other buildings were there along that side of Rahway avenue?

A. There was in the block where I am, there was the fire house, and there was a number of buildings already that time. There was a fire hall, and there was that Rap building, and the Linsky building.

Q. When was the Rapp building put there?

A. That has been put up about eighteen years ago, I think.

Q. Eighteen years ago? A. Yes, sir. One building next. They built another addition to it after.

Q. When that was put up was there any talk about widening the street, when you built the Rapp building?

A. No, sir; not when that was.

The court: That is the other building that he says is out?

Mr. Strong: Yes, sir.

10

Q. Where is the front of the Rapp building with reference to the sixty foot line that they want to make? How far out is the Rapp building?

A. Well, they got a bay window out on the road, might be about six or eight feet. I am not positive.

Q. Mrs. O'Donnell's property there you said that there were ten or twelve feet taken off in front?

A. The fence.

Q. Was the fence out that far? A. Yes, sir.

20

Q. And flowers, you said, for a garden?

A. Flowers; yes, sir.

Q. The Rizchak building, was that put there before or after they began to talk about widening out to sixty feet. A. After.

Q. The postoffice building, that was put there after, was it? A. Yes, sir.

Q. You said something about you built the post-office building according to Linsley's survey?

A. Yes sir.

30

Q. Who is Linsley?

A. He used to be the—he had an electric plant in Carteret, and he does some surveying at different times for different parties, whoever engages him. He is a Woodbridge man, I believe.

Q. Did he survey for you? A. He surveyed for me some place; not this place.

Q. I mean the Rapp building? A. No, sir; not for me; for the borough.

Q. And you built that building according to that line, did you? *A.* Yes, sir.

Q. You said that Marsh made a survey?

A. Marsh staked out the lots.

Q. And where did Marsh stake out the lots?

A. He staked out on the same as Rizchak's is now.

Q. Where is Rizchak's?

A. That is the brick building what they are referring to, Rizchak's building. Not alongside of me, but
10 next to the postoffice; and then Rizchak came over to me and he said—

Q. Never mind that. So that all of these buildings except the Rapp building, and Mrs. O'Donnell's building, and your buildings here in question, they were all put there after they talked about making the sixty foot line weren't they? *A.* Well, there is another building was moved back. A fellow by the name of Linsky.

Q. There was another one besides that was there
20 then? *A.* Yes, sir.

Q. What building is that? *A.* It is right next to the postoffice, to me.

Q. Was that moved back too?

A. That was moved back to.

Q. Whose building is that? *A.* Linsky's.

Q. How far back did that have to be moved?

A. I couldn't say positive. About ten feet. I don't know how much.

Q. Were there any other buildings that existed
30 there before they began to agitate this matter of widening out to sixty feet, except those you have mentioned?

A. I don't know. I believe there was near the school a small little building, Meyer Youkman. I think it was a little building. I am not positive.

Q. Did that have to be changed? *A.* I think it had to. That was on the other side of Colwell street.

Q. Oh, it was on the southerly side of Rahway avenue, was it? *A.* Yes, sir.

Re-Cross Examination by Mr. Silzer.

Q. You say about fourteen years ago they were talking about this street being sixty feet wide, and about putting people back, were they? *A.* Yes, sir.

Q. You knew about that, did you?

A. Who knew? I heard about it, yes.

Q. You knew then fourteen years ago that they were claiming this street was sixty feet wide, and they were going to put people back?

A. I heard them talking about it.

10

Q. And knowing that, in 1902 you bought this property, didn't you? *A.* Yes, sir.

Q. Bought it with your eyes open? *A.* Yes, sir.

Q. And shortly after that, when Mr. Rizchak built his property you built a foundation to put your house back on, didn't you? *A.* That was quite a few years later.

Q. How many years later?

A. About four years later, I think.

Q. About four years later, when Mr. Rizchak was doing his work— *A.* He put his building up.

20

Q. (Continued)—you built a foundation to put your house back so that it would be on the sixty foot street, didn't you? *A.* Yes, sir; I did.

Q. That was before the borough took any steps to force anybody, wasn't it? *A.* That was.

Q. Mr. Rapp is out on the street about three feet with a bay window, isn't he?

A. I couldn't say how much; three or four.

Q. It isn't over three? *A.* Around that neighborhood. Three or four feet, I believe.

30

Mr. Silzer: We want to ask Mr. Marsh a question we omitted.

Franklin Marsh, recalled.

Further Cross Examination, by Mr. Watson.

Q. Mr. Marsh, did you make a survey on Rahway

avenue, on this Colwell tract, for Edward J. Heil?

A. Yes.

Q. Did you give Mr. Heil what is called the sixty foot line on which to erect his building?

A. I gave a sixty foot line, but I staked it out sixteen feet further and told him he owned that property.

Q. But you told him to build on the sixty foot line?

A. I advised him, in the interest of the township, knowing they needed improvements, I did actually set
10 back a good many buildings, but not because they had to go back.

Q. You told Mr. Heil to put his building back on the sixty foot line? *A.* I advised him to go back. It would make it easier and cheaper for the township when they would come to condemn.

Q. Didn't you tell him you were doubtful about the true line of this street? *A.* No.

Q. Do you know a man named Nicholas Rizchak?

A. Yes, I set his stakes out that same way.

20 *Q.* This Rizchak survey you made was right next to the Shapiro property in controversy here? *A.* Yes.

Q. And you told him to put his building on the sixty foot line? *A.* I advised him to.

Q. And told him you were doubtful as to the width of Rahway avenue? *A.* No.

Q. Never made any such statement as that? *A.* No.

The Court: If you are going to use this as contradictions, you will have to be more specific.

30 *A.* I never staked a lot on that street inside of the forty-four foot line before, after, or even now.

Q. About ten years ago you made this survey for Mr. Heil? *A.* I don't know how long ago I made it.

Q. Do you remember making the survey?

A. Oh, yes, Mr. Linsky below there is the same way, and the rest of them.

Q. At the time you made this survey for Mr. Heil, didn't you say to him that there was some doubt, and that you were doubtful as to the location of the south-

erly line of Rahway avenue, and that therefore he had better keep back to the sixty foot line? A. No.

By the Court.

Q. Your mind is drawn, is it Mr. Marsh, to the occasion on which you talked to him about it?

A. Yes, sir; I always advised him to keep back, for the simple reason it would be cheaper for the township.

Q. And in view of that you say you did not?

A. I did not. I always staked out the lots to the forty-four foot line. 10

By Mr. Watson.

Q. Do you know Nicholas Rizchak? A. Yes.

Q. About the same time did you make a survey for him? A. Yes, and I did Mr. Shapiro the same way.

Q. On the property next door to Shapiro's property?

A. Yes, all of them.

Q. You remember the occasion, do you? A. Yes.

Q. At that time did you say to him that you were doubtful as to the true location of the southerly line of Rahway avenue? A. No, sir; I told him he could always bring in a claim for damages. 20

Q. And that there was doubt about it, and that he had better keep back to the sixty foot line? A. No.

Q. Did you then and there advise him to keep back?

A. Yes, I advised him to build on the sixty foot line each and every one of them.

Q. As a matter of fact he did build on the sixty foot line? A. Yes, and I even give Mr. Shapiro the same advice. I gave the lines, then when he built two feet out I advised him to keep back, because it would be cheaper for the township, or the borough, to widen. I imagined that the widening was coming, because it was discussed. 30

Q. And, as a matter of fact, Rizchak also built back on the sixty foot line? A. Yes.

Q. Under your advice?

A. Under my advice. I will admit that I advised

him, but I staked the lots to the forty-four foot line in each and every instance, and told them they owned the property.

By the Court.

Q. Did you say to any of these people that you were in doubt about where the true line was, on those occasions? *A.* No, sir.

By Mr. Strong.

10 *Q.* You gave that advice, you said, to Heil and to Rizchak?

A. Yes, and to Linsky. To anyone who put up a good permanent building. Not because they didn't have a right to build to the forty-four foot line, but simply because it would be better in the end. The property would be worth more, I looked at it; I don't know, you couldn't call it philanthropy, or anything of that sort, but I advised them to keep back, because it would make it cheaper for the township to pay

20 damages eventually.

Q. What did you say to them as to their ownership, how far they owned? *A.* That their ownership came out sixteen feet further.

Q. To what line? *A.* To the line now where they have taken up the stakes that were placed in. They even took up iron stakes that were placed out.

Q. That is, out to the forty-four foot line?

A. Out to the forty-four foot line in each and every instance.

30 *Mr. Silzer:* If you are going into what we expect to cross examine him on his engineering and surveying.

Mr. Strong: Don't worry about that. I am following your cross examination. That is all.

Mr. Strong: I have here a record of a deed from Lizzie Colwell, and Augustus W. Colwell, to Morris Steinberg, book 265 of deeds, page 341; dated the fifth day of July, 1893; duly acknowledged and recorded the sixteenth day of Febru-

ary, 1894, conveying lot 33 on block two of the Colwell map. Also a deed from Colwell and wife to Steinberg again the same parties, in book 290, page 433; dated the eighth day of October, 1896; and acknowledged and recorded April 5th, 1897, conveying lot number 31 in block two on the Colwell map, apparently referring to both maps. I offer the records of those two deeds.

Mr. Strong: We rest.

10

MOTION FOR NON-SUIT.

Mr. Silzer: We move for a non-suit in this case. It does not seem to us that the plaintiff in the one case, and the defendant in the other, the plaintiff for the purpose of this suit, has made any case upon which a verdict could be predicted.

The Court: The motion will be denied.

20

Mr. Silzer: Prays exception.

Exception allowed—sealed accordingly.

Judge.

Mr. Watson opens the case for the Borough of Roosevelt.

Adjourned until to-morrow morning, Tuesday, April 8th, 1913, at 10:45 a. m. 30

Transcript of Stenographer's notes of evidence taken in the above entitled cause before Hon. Frank T. Lloyd, Judge, and a jury, at the Court House in the City of New Brunswick, N. J., on the eighth day of April A. D. 1913, at 10:45 a. m.

Appearances: Mr. George S. Silzer, Mr. Russell E. Watson, for the plaintiff. Messrs. A. H. & T. Strong, for the defendants.

Frederick F. Simons, a witness produced on behalf of the defendant, being duly sworn according to law or his oath, saith :

Direct Examination, by Mr. Silzer.

Q. Mr. Simons, you are a civil engineer?

A. Yes, sir.

Q. How long have you been such?

A. About twelve or thirteen years.

10 Q. Were you formerly county engineer? A. Yes sir.

Q. You are the borough engineer of the Borough of Roosevelt? A. Yes, Sir.

Q. And have been there for how long?

A. Since 1907.

Q. How long have you lived in the Borough of Roosevelt? A. I came there in 1901.

Q. At the request of the borough have you made a map of the property which was formerly of Noe, and which includes the present property in dispute?

20 A. Yes, sir.

Q. Is this the map? A. That is the map; yes, sir.

Mr. Strong: Before you exhibit that map you ought to prove it. I told you that before.

Mr. Silzer: I know, but I can't prove it until I put it where a man can see it.

Mr. Strong: And where the jury can see it incidentally.

Q. Have you made a survey of the Colwell tract?

30 A. Yes, sir.

Q. And of the tracts to the west and east thereof?

A. Yes, sir.

Q. Does this map show the location as you found it upon the ground? A. Exactly.

Q. And have you shown Rahway avenue on the map as you find it upon the ground? A. Yes, sir.

Q. And the black spots on the south of Rahway avenue, what do they indicate?

A. They represent the buildings, dwellings.

Mr. Strong: Just have him state what that represents, as to what date.

Q. When was this map made?

A. This map was made last month, completed about the first of the month, about the first of April.

Q. And does it truly represent the situation as you found it there? A. It does.

Q. Have you indicated upon this map the Radley tract? A. Yes sir.

Q. Taking the old deed, when Noe owned both tracts, as shown by the deed in the county clerk's office, does this map show the whole tract as it was owned by Noe before it was divided? A. Formerly these tracts were all a part of Peter Noe's property.

Q. All a part of Peter Noe's?

A. Peter Noe's; yes, sir.

Q. And have you indicated upon this the first conveyance made by Peter Noe out of the whole tract?

A. Yes sir.

Q. In what way? A. Designated by the Houghwort tract.

10

20

Mr. Silzer: I am going to offer the map as soon as I get those deeds, if you desire to ask the witness about it.

Mr. Strong: I don't care anything about having the deeds present, but I will cross examine him on the map, if you are through with that part of it.

Mr. Silzer: I thought I might as well save some time. 30

Cross Examination by Mr. Strong.

Q. This map represents conditions as you found them in March, 1913, is that right? A. Yes, sir.

Q. That is what it is intended to do?

A. Show it up to date.

Q. And the buildings that you have delineated there are the buildings as you found them existing then?

A. Yes, sir.

Q. Irrespective of conditions as they existed in 1908, prior to the beginning of this suit? A. Yes, sir.

Mr. Strong: I object to the map, of course. We are not concerned with the present condition and location of buildings. Beyond that the map has some lettering on it which is objectionable, and ought not to appear there.

Mr. Silzer: The lettering can be struck off. I have no objection to that.

10

The Court: What is the object in putting in a map with the present buildings, as distinguished from those that were there at the time the suit was brought?

Mr. Silzer: I don't see that can do any harm. It shows the situation, and the witness simply states that is the present condition. The jury cannot be deceived by that. It makes impressions that cannot be properly eliminated. In addition, to that a certain number of properties have been spoken of along there. Now it locates the White and the Shapiro building.

20

The Court: Yes, I know, but the witness is not permitted to write out his testimony and hand it to the jury.

Mr. Silzer: Of course not.

The Court: That is the effect of it.

Mr. Silzer: It locates the station that has been spoken of, and it locates the fire house, and this other building that Mr. Shapiro testified to yesterday.

30

The Court: Yes, but the objection is that it gives a concrete effect to testimony by giving the appearance of a street sixty feet wide, which would make an impression upon the jury that possibly the testimony itself might not do.

Mr. Silzer: The witness has already testified this is the condition in March, 1912. The jury cannot be misled by that.

The Court: That is the part that is immaterial

in this action, what the condition is now. The test is, what was the condition prior to the bringing of this action, and for a number of years prior.

Mr. Silzer: The map is only for the purpose of illustration.

The Court: I understand that, and if this is simply to fix the general lay of the ground.

Mr. Silzer: My main purpose is this: To show that this whole tract was once owned by Noe; that he divided it, and Mr. Watson opened this yesterday, but, of course, these things are difficult to get hold of until you have stated them, and it shows that he started from this worm which is a definite location from this creek, and that 1089 feet, or five chains and something, the first description here, when Mr. Noe sold this Houghwort tract, was 1089 feet to the southerly side of Rahway avenue. Now that brings it to a certain definite, positive location. Then it comes to here to a kink in the road, and another kink here, and comes down and fits in all the way around to the location of the sixty foot road.

The Court: There is no doubt that the map, so far as it is intended to illustrate such a purpose as that, would be legitimate, if you had not included in it things which may give an undue impression to the jury.

Mr. Silzer: It cannot give an undue impression when the witness tells the jury that these buildings must be considered as of the present day, and not—

The Court: Cannot you get these buildings off? Cannot you erase those?

Mr. Silzer: The jury understands now that is the present day condition. It cannot mislead them about anything further back.

The Court: I know that is true, but human faculties do not carry everything forever. Can you get those off?

Mr. Strong: It is entirely unintentional, but it is a circumstance that the blackest things on that map are the present day buildings, in addition to the line of the street, which wasn't the line of the street originally. It is perfectly easy to make a map that would be a fair map.

10 The Court: I will not admit the map, Senator, with the buildings on, that is to say, the buildings that have been put on since this suit began. If they can be erased in any way, or eliminated, the map will be received. That is to say, received for the purpose for which the map is receivable, to illustrate, and not to prove.

Mr. Silzer: Can you chalk them over with chalk, will that take them out?

The Court: Understand I am not referring to the buildings that were there before the action was commenced; only those since.

20 Mr. Strong: I wish my objection to go further, while they are changing the map. This shows a street sixty feet in width, which is practically a theoretical street, at least so far as the case indicates now.

The Court: I cannot rule it out on that ground. The testimony of some of the witnesses is that this street is a sixty foot street. If they bring a map in accordance with that I cannot reject it.

30 Mr. Strong: There has been no testimony yet. It has been talked about, and until testimony has been given along lines, I don't think they have a right to put up a theoretical thing like that.

The Court: I am assuming that the opening will carry out what it has indicated.

Mr. Strong: I think we ought to have the proof before the map comes in in that shape.

Mr. Silzer: I don't understand that the map is for any other purpose than of illustration. If it is misleading, of course, it cannot be used.

The Court: Senator, I have always been very

strict in the admission of maps for illustrative purposes. It is only another way, in many instances, of giving forceful character to some feature of testimony which it otherwise would not get. And for that reason I have always restricted it to the legitimate bounds.

Q. Have you marked out those buildings which were erected since this suit was started?

A. There are eight buildings that have been put up 10 since this suit was started.

Mr. Strong: Your honor sees what that marking amounts to.

The Court I do not see.

Mr. Strong: The witness had dabbled it over with chalk. I submit that map ought to be taken away entirely.

The Court: Take the map and correct it so that the original marks cannot be seen. If you can do that bring it back. 20

Mr. Watson: We offer in evidence deed from Peter Noe to Benjamin Noe, Book 9, Middlesex County clerk's records, page 164.

The Court: Mr. Watson, have you a brief of these deeds?

Mr. Watson: There are twenty or twenty-one.

The Court: Have you submitted it to Mr. Strong?

Mr. Watson: We have not yet.

The Court: Cannot we save time by having the brief offered in evidence? 30

Mr. Strong: I don't care about handling all these books, but I would like to have a statement as we go along of what the deeds are.

The Court: I thought if you were handed a copy of it, and the stenographer handed a copy, it would save a great deal of time here.

Mr. Strong: I haven't gone back over these fifteen or twenty years.

Mr. Silzer: I have got to cover these with the surveyor.

Mr. Strong: I would be very glad to agree to the suggestion if I had this statement.

10 Mr. Watson: Book 9, page 164, Peter Noe to Benjamin Noe, deed dated March 29th, 1811; duly acknowledged and recorded September 12, 1811. This deed conveys lands in the township of Woodbridge described as follows: "Beginning at a stake planted on the east side of the mill pond creek, on the north side of a small worm jutting out of said creek, and from thence running north twenty-five degrees, fifteen minutes east, sixteen chains and fifty links to the southwest side of the road leading from the New Blazing Ferry to Bridgetown. Thence along the same north seven-ty degrees thirty minutes west, sixteen chains sixty-seven links to a large white oak tree. Thence north fifty minutes east, fifteen chains eighteen links to the corner of said road. Thence along 20 another road south nine degrees west twenty-eight chains sixty-three links to a stake. Thence south sixty-two degrees east thirteen chains to the aforesaid creek. Thence down along said creek, as it runs the several courses thereof, to the place of beginning, containing seventy-five acres more or less, bounded easterly by lands of Peter Noe, northerly and westerly by highways, southwesterly by land of Peter Noe, and southeasterly by his mill pond creek.

30

Second, deed from Benjamin Noe to Peter D. Houghwort, dated March 31st, 1817; acknowledged and recorded May 12th, 1817, in Book 12 of deeds Middlesex County clerk's office, page 491. This deed conveys the tract of seventy-five acres as described in the deed Noe to Noe, Book 9, page 164.

Mr. Strong: Same description exactly?

Mr. Watson: I will read it. I will not vouch for it word for word.

The Court: Is it substantially so, Mr. Watson?

Mr. Watson: Yes, sir.

The Court: Do not undertake to read it again.

Mr. Silzer: Now we have this map ready, and we will save a good deal more time, I think.

The Court: How late does this bring the title down, the adjoining properties?

Mr. Watson: It only brings it down to 1817.

The Court: I see this deed is 1817, but how long did it remain in Houghworst? 10

Mr. Watson: We only offer that evidence to show boundaries by which the Colwell tract was conveyed, and it is unnecessary for any further, because all the Colwell deeds refer to the boundaries as fixed by these two deeds.

Direct Examination (continued), by Mr. Silzer.

Q. Now, Mr. Simon, have you eliminated from the map all properties that were not there at the time the suit was started? A. Yes, sir. 20

Q. And you have also eliminated the legend which was on the right hand side? A. Yes, sir.

Mr. Strong: You renew your offer, I suppose, now?

Mr. Silzer: Yes, sir.

Mr. Strong: I object to it still.

The Court: I think it is admissible now for the purpose of illustration.

Cross Examination (continued), by Mr. Strong. 30

Q. Do you mean to say that this map shows the line of the highway as it existed prior to the change made by the borough in 1908? A. Shows it the same now as it always has shown it, as it always has been.

The Court: Just answer the question.

Q. Do you mean to say that map is a correct delineation of the line of the highway as it existed prior to any change made by the borough? A. Yes, sir.

Q. Actually as it existed on the ground, or do you

mean a theoretical highway? *A.* Actually as run out as surveyed.

Q. Do you mean as it existed on the ground, where the monuments were and the fences were at that time?

A. No, I didn't run out my line to the fences. I took actual measurements made in deeds, I took actual surveys and run the surveys out.

Q. Was this a theoretical line and not a line that was shown by existing fences at that time? *A.* It is not a
10 theoretical line; no, sir.

Q. Is it the line shown by fences that existed in 1908? *A.* There were no fences along there in 1908.

Q. Was there anything to mark the line of the highway in 1908? *A.* The measurements given in deeds, and descriptions.

Q. That is to say, you got this line which you have delineated on this map, from your examination of deeds? *A.* Deeds, and making actual surveys.

20 Mr. Strong: I object to that.

The Court: Does the fee purport to be in these adjoining owners?

Mr. Strong: Oh, yes.

The Court: No doubt of that?

Mr. Strong: No question of that, I think, on either side.

Mr. Silzer: They run to the southerly side of the highway.

Mr. Strong: But that, of course, carries the fee under the decision in *Salter v. Jones*, I think it is.

30

The Court: It does, unless the State has a fee, and there were no conveyances, as I understand here.

Mr. Silzer: No. The original deed in 1812 ran to the southerly side of the highway, and that is what he has indicated on this map, and I propose to have him point out.

Mr. Strong: I submit this map is still an unfair representation. It is something this witness has gotten up according to his construction of a lot of

old deeds. The deeds are here to be offered, I suppose, and ought to be offered first, until we know what is in the deed.

The Court: Under the undertaking of counsel, and the opening, I shall receive it for illustration only.

Mr. Strong: It seems to me that it is manifestly unfair. It is hardly better than it was before. They have got a straight line running through there, which certainly is not the condition as it existed in 1908. 10

By the Court.

Q. What does your lower black line represent, Mr. Simon? A. That is the property line; this is the property line here.

Q. Which you ascertained in what way? A. By actual survey.

Q. By surveys? A. Yes, sir.

Q. Do you mean by your own surveys, or by descriptions in the deeds, and measurements? A. By surveys and measurements given in the deeds. All the old deeds call for this distance, 1089 feet from the head of this worm. 20

Q. And then are these various buildings located exactly as they were on the ground as related to this highway? A. Yes.

By Mr. Silzer.

Q. Your location depends upon running a line from a worm down here 1100 feet away from the line of the avenue, isn't that so? A. No, sir. 30

Q. That is one of the things you rely on, isn't it?

A. No, sir; not 1100 feet.

Q. Well, 1089 feet? A. Yes, sir.

Q. Your location depends upon that measurement, doesn't it? A. For this side of the tract; yes, sir.

Mr. Strong: Your Honor has heard that deed read, that is, the description which was just read a moment ago, and I want to call your Honor's at-

tention to the absolute unfairness of it, as that deed illustrates. This is the deed of Benjamin Noe, that was put in evidence, to Peter Houghwort, and your Honor will notice, "All that tract of land situated in the Township of Woodbridge, beginning at a stake planted on the east side of the mill pond creek, on the north side of a small worm jutting out of said creek, and from thence running north so many degrees and so many minutes to the southwest side of the road leading from Blazing Star Ferry to Bridgetown, and thence along the same, and so on." And then it comes back again to the aforesaid creek, and thence down along said creek as it runs the several courses thereof, to the place of beginning. That place of beginning is evidently the place where the worm enters the creek. Your Honor will see it begins—

10

Mr. Silzer: That is a matter of argument when we get through.

20

Mr. Strong: This is a matter of construction for the Court. This is not a matter to go to the jury, but it is a question of law for your Honor to pass upon, what this means. It begins on the east side of the creek, according to the description, begins on the east side of the creek, and on the north side of the worm entering the creek. If that means anything it means the junction of the worm and the creek. And then it comes on up here and so around, and gets back to the creek, and comes

30

down the creek to the place of beginning. It does not run along the worm at all to the place of beginning. It comes down the creek to the place of beginning. And then on top of that, after the description is ended, it goes on to bound the tract.

The Court: Is there any divergence between counsel on that point?

Mr. Strong: Absolutely so. They take their measurements from the end of the worm. Here is where they have started to measure their distance, beginning from there, and they fix the line of this

highway by running 1089 feet from the beginning of the worm up there, whereas the plain wording of the deed is from the junction of the worm and the creek. That is what they build this map on. Let me call your Honor's attention to the final ending of this description: "Containing seventy-five acres, bounded easterly by lands of Peter Noe, northerly and westerly by the highway, southwesterly by lands of Peter Noe, and southerly by the mill pond creek. There is no binding on the worm at all. It only uses the worm for the purpose of fixing the junction of the worm and the creek. That is the beginning point, and that is the point to which the survey finally comes around and ends. If they measure their distance from that point they don't get anywhere near the road. 10

Mr. Silzer: He would be two hundred and sixty-four feet further back from the road, according to his own contention, if that is what it says.

Mr. Strong: May be so. Who knows where the worm was, or where the creek was, or where the highway was one hundred years ago? 20

Mr. Silzer: We will show where it was.

Mr. Strong: That is what they build this map on, and I say it is absolutely unfair.

The Court: I will withhold the disposition of the question until we have gotten further into the case.

Mr. Strong: In the meantime, the map, with all its unfairness, gets before the jury. 30

Mr. Silzer: The surveyor says he makes a survey upon the ground.

The Court: Yes, but he bases it upon descriptions which are at best uncertain. Now it is building one uncertainty upon another.

Mr. Silzer: Not in this case at all. Not at all; no, sir. May be uncertain to my friend here, who tries to lose two hundred and sixty-four feet himself, but surveyors find locations, and that is just exactly what we propose to prove.

The Court: You may go on and further prove the map.

Mr. Silzer: We propose to prove Mr. Noe owned this whole thing.

The Court: You are speaking, for example, of surveyors, what they rely upon, but we have nothing of that sort here yet. You see there is a discrepancy as it stands now, a very marked discrepancy from the starting point mentioned in the deed.

10

Mr. Silzer: Not at all.

The Court: If the deed is to be regarded literally as meaning what it says.

Mr. Silzer: Absolutely not.

Mr. Strong: Let us understand where we are with regard to the map.

The Court: I have suspended the ruling on it until we have gone further into the case.

Direct Examination (continued), by Mr. Silzer.

20 Q. Now, Mr. Simon, did you take this original Noe property, as described in the deeds, and locate it upon the ground and put that upon this map? A. The Peter Noe tract?

Q. Yes. A. Yes sir.

Q. And in doing that did you take into consideration anything?

Mr. Strong: Don't lead the witness unnecessarily. Let him tell what he did do.

30 Q. Did you take into consideration anything except the deed itself? A. Well, I located definitely the head of this work that is mentioned in two or three deeds.

Q. What else did you do? A. Take on the Radley tract, to the east of this tract in question, there is a well defined line there, and measurements given.

Q. One of the boundaries of this Noe tract?

A. Yes, sir.

Q. What else? A. And by running out the line of the Houghwort tract it fits in together.

Q. In the Houghwort tract are there any kinks in

the road, and an acute angle at the northwest side?

A. Yes, sir; there is.

Q. Did you locate those by your survey? *A.* Yes, sir.

Q. If your location of the worm was not correct, would the other lines on the side of the road here, and these kinks, have fit in? *A.* They would not; no, sir.

Q. In other words, would they correspond with the location that you found them? *A.* They all fitted in together.

10

By the Court.

Q. Are they given by the points of the compass, and then by distances? *A.* Both, yes.

Q. And do they exactly correspond? *A.* They all fit in together with the head of this worm.

Q. I say, do they actually correspond, both the distances and directions, with the actual examination on the ground?

A. Well, the angles are the same. Of course, the bearings would be different in the variation from their turn, but the angles are the same, and the distances are the same. Do you understand, the magnetic course would be different than it was twenty years ago.

20

Q. Do you know what the difference is?

A. The different angles?

Q. No, the variation from that time to this?

A. Well, it could be figured out.

Q. Have you done that to determine whether or not the variations—that making allowance for the variation, the correct angles are given? *A.* Yes, sir; we always do that.

30

Q. Well, are they correctly given? *A.* Yes, sir.

By Mr. Silzer.

Q. Speaking of the head of this worm, what have you to say as to what you found at the head of the worm? *A.* Well, it is a very—there is no mistaking the head of the worm there. It is very evident.

The Court: Let me have the exact language of that description, beginning at the worm.

Mr. Silzer: "Beginning at a stake planted on the east side of the mill pond creek, on the north side of a small worm putting out of a small creek, and from thence running north twenty-five degrees fifteen minutes east, sixteen chains and fifty links to the southwest side of the road from the New Blazing Star Ferry to Bridgetown." That is 1089 feet.

10 The Court: The important thing I want to get is what his ground is for taking the head of this worm as the basis of a starting point.

Q. Taking from the tract on the east, Mr. Simon, where did you make your locations of the property lines on the east? Show me where the Noe tract originally ran on the east? A. The Radley tract, that ran from where your pointer is.

Q. Down here (indicating)? A. Yes, sir.

Q. And out to the Sound? A. Yes, sir.

20 Q. In making your survey, and putting the property on the ground, what did you find with reference to the fitting in of the Radley tract? A. On the southerly line of the Radley tract there is a well defined line of old trees. Some of the trees are standing, and there are quite a few stumps there. That is a well defined line.

Q. Was that built up at all? A. No, sir.

Q. Was it of such a character that it could recently have been changed at all? A. No, sir; just open fields.

30 Q. And had been for how long? A. Well, a good many years. I don't know how many.

Q. And there was a well defined line of trees along the southerly Radley tract? A. Yes, sir.

Q. Does that fit in with the Noe tract as you plotted it originally? A. Yes, sir.

Q. If your location, for instance, of this worm, was not correct, would your line fit in with this line of Radley, well defined line? A. It would not; no, sir.

Q. Now about your distance running from—are there any other distances that would not fit in, if your worm

was not properly located? *A.* On the Radley tract there, where it turns on Woodbridge avenue, it gives a distance of two hundred and eighty feet there. By running that out there it brings a line that is sixty feet south of the northerly line of Rahway avenue.

Q. And are there any maps of record in the Radley case that you looked up calling for a sixty foot street?

Mr. Strong: I object to this, putting in maps in that way, and what they call for. That is improper. 10

Mr. Silzer: A man makes his survey from filed maps.

Mr. Strong: We are entitled to see those maps. You cannot read the maps into the case that way.

The Court: Yes.

By the Court.

Q. Mr. Simon, did you get the depth of the Radley tract? *A.* Yes, sir.

Q. Is that defined in the Noe deed? *A.* The Peter Noe. 20

Q. Yes, Benjamin Noe, or either of them, for that matter? *A.* Well, it is defined a little later on in one of the subsequent conveyances.

Q. Is it defined so that you could follow the line of the street until you reached that tract, and then follow that a certain distance its depth? *A.* That distance is not given in the Peter Noe deed; no, sir.

Q. How did you trace along his line? *A.* Why, by maps actually on file here in the county clerk's office. 30

By Mr. Silzer.

Q. I show you map number 231. Is that the map to which you referred? *A.* Yes, sir; that is what is called the Vidal map.

Mr. Silzer: We offer that.

Mr. Strong: That is objected to.

The Court: What is it? What is its history?

Mr. Silzer: It is a public record in the county clerk's office.

The Court: We are in ignorance of this.

Mr. Silzer: I say it is a map filed in the county clerk's office, and therefore is admissible in evidence.

Mr. Strong: Every filed map is not admissible in evidence.

Mr. Silzer: Against the owner, who is an abutting owner, and lays it out as a sixty foot street, it does.

10 The Court: What does it purport to be?

Mr. Silzer: It purports to be a map made in 1826 by Francis Videl, and lays out this adjoining property.

The Court: Was Videl the owner of the land at that time?

Mr. Silzer: Yes, sir.

Mr. Strong: Not this land.

Mr. Silzer: The adjoining land here.

20 The Court: Is that admitted? Is it admitted that Videl was the owner of adjoining land on this highway covered in this map?

Mr. Strong: I don't know whether that is so or not. I only know that there is that map which your Honor sees. That is absolutely all I know about it.

The Court: Of course, no stranger has a right to put a map on file and bind anybody, but the owner can.

30 Mr. Strong: He can bind himself. But can he bind his adjoining owners?

The Court: If he owns the street or the highway he can by implication dedicate it, certainly.

Mr. Strong: What I am speaking of is this: Videl owned the Radley tract, they say. Now, for the purpose of speculation he makes a map, and plots it out, and dedicates this street sixty feet in width. Is that going to be an argument against us in years afterward to say that because Radley or Videl, whoever it was that owned that tract, chose to make a map and show on it a sixty foot

street, that that is going to be an argument against us and compel us to dedicate, because he dedicated?

The Court: Where you are adjoining owner?

Mr. Strong: We are an adjoining owner.

The Court: Isn't it some evidence from which a jury can draw an inference of the width of the street in the origin?

Mr. Strong: Not the least in the world. You know how these maps are made. They are made to sell lots. And here was a street that was perhaps undefined at that time, and the owner, for the purpose of giving value to his lots chose to lay out for his purpose a street sixty feet wide through his land. Not to say that that was the original width, but he makes it by dedication, so far as he is concerned, a street sixty feet wide. How is that receivable against us? 10

The Court: It has been testified to by the plaintiff's witnesses as to the width of this street at various points, including, as I recall, this particular section of it. 20

Mr. Strong: They originate in this dedication in 1828.

The Court: No matter how it originates.

Mr. Strong: I think it makes all the difference in the world.

The Court: I think counsel has a right to show the history of that highway, as you have introduced it, apart from the question as to whether or not it is not some evidence as to the width of the street joining. 30

Mr. Strong: Your Honor will recall that I didn't introduce any evidence. The introduction of the width of the highway at other points was done upon cross examination, against my objection.

Mr. Silzer: You recalled Mr. Shapiro.

Mr. Strong: I didn't call Mr. Shapiro upon any point unconnected with the width of the highway in front of Colwell's tract. I confined myself to the width in front of Colwell's tract, and on cross

examination, and against my objection, you were allowed to go further with him. Now there is certainly nothing in my case, as I have chosen to present it, that justifies counsel for the defendant in coming in here now with a speculator's map, seventy or eighty years old, made to sell lots upon an adjoining tract, and delineating there a street sixty feet wide, for their purposes, and to say now that is an argument that this street was sixty feet wide throughout.

10

The Court: Senator, is it your contention that this street in its entirety is sixty feet wide?

Mr. Silzer: Yes, sir. We propose to show that it always has been uniform all the way.

Mr. Strong: You haven't shown anything like that yet.

Mr. Silzer: No, we cannot show everything at once.

20

Mr. Strong: I submit if you are going to prove that, you ought to prove it at the start, instead of getting in in this unfair way the conclusions of a surveyor, based upon such things as this worm, and based upon dedications of adjoining property, and say from that that the jury are going to infer that this ought to be sixty feet, where it never has been anything like sixty feet in width.

The Court: Well, Mr. Strong, I am inclined to admit the map.

30

Mr. Strong: Prays exception.

Exception allowed—sealed accordingly.

Judge.

(Map entered in evidence and marked Exhibit D 3.)

Mr. Silzer: I offer this map now on the blackboard.

Mr. Strong: I object to that. Perhaps I had better cross examine this witness a little further about it.

The Court: The point I want information on is as to why the witness has taken the head of this run or stream.

Mr. Silzer: It is merely corroborative. It is not the turning point. Mr. Strong says so, but that does not make it so.

The Court: I understand that, but I am dealing with the use of this map. We are not going to let the jury use something which may turn out to be wholly fallacious, and in order to admit it, it must be justified. The description that I take from this starting point is that it is at the junction of the creek with this worm or stream. 10

Mr. Silzer: It does not say that. It says, "Stake planted on the east side of the mill pond creek, on the northwest side of a small worm putting out of the creek." Here is the creek (indicating), and here is the worm that is jutting out of it (indicating). It is jutting out of this creek. 20

By the Court.

Q. Mr. Simon, what was the point at which you measured? A. I measured from the head of this worm, on the north side of this worm. This worm runs north and south, and the old descriptions call, beginning at a point on the north side of this worm.

Q. You have taken the north end? A. Well, north end, or north side, whatever way you want to call it. If you take your 1089 feet from the creek that would bring you back a couple of hundred feet more. 30

Q. Is there any other reason for taking it there?

A. Well, it is that distance given in the course, the angle, and in running out the angles as given on the Houghwort tract.

Q. Was there any mark of any kind at this point? The stake, of course, was gone? A. At the head of the worm?

Q. Yes, if there ever had been one there? A. It is a well defined point; it is like a small creek, a small brook.

Q. I understand, but you have taken the head of the worm, and this description speaks of a stake on the north side of the worm. A. That would be the head of it.

Q. The stake is gone, if there ever was one?

A. Oh, yes.

Mr. Silzer: We have photographs of that point, well defined, as Mr. Simon says.

10

The Court: I am trying to get from him not the definition of the point at all, but his reason under this description of taking that starting point.

Q. Was there any other reason? A. To determine this one point upon Rahway avenue?

Q. Yes. You see a vital result hangs upon it.

A. Well, by getting that point there, and turning your angles both ways, they all fit in together, by running out to that old Blazing Star Road it checks with that road.

20

Q. What would have been the result if you had started with the junction of the creek, not as to distance, but as to points of compass, directions? A. Well, the angles wouldn't have been the same.

Q. Wouldn't harmonize? A. No, sir; and your distance would fall short about two hundred and eighty feet.

The Court: Proceed, Mr. Strong.

Cross Examination (continued), by Mr. Strong.

30

Q. This map, so-called Videll map, marked Exhibit D 3, is that co-extensive with what you call the Radley tract? A. The Radley tract is a portion of that.

Q. What portion of it is it? A. The Southerly portion.

Q. You haven't shown the boundaries of the Videll tract there, have you, on your map? A. Well, the southerly side of Rahway avenue, that we are interested in, I have.

Q. Does the Videll tract extend the other side of Rahway avenue? A. Yes, sir; on both sides of Rahway avenue.

Q. Is this Rahway avenue indicated on the Videl map the same as the Rahway avenue that you undertake to show? *A.* Yes, sir.

Q. What confirmation do you get from the Videl map of the location of the southerly side of Rahway avenue?

A. One point here is given on the Videl map as two hundred and eighty feet from this line here, a well defined line (indicating).

Q. The point you describe as the southeast corner of Woodbridge avenue and what? *A.* Southeast corner 10
of the tract in question.

Q. Where is Woodbridge avenue—here is Woodbridge avenue on the Videl map. Is that Woodbridge avenue the Woodbridge avenue you show on your map?

A. Yes, sir.

Q. Did you measure the distance from the line of trees up to the line of Rahway avenue as you found it on the ground? *A.* I measured up the distance as given on the map, to determine the line of Rahway
avenue. 20

Q. Well, the distance on the map up how much?

A. Two hundred and eighty feet at that particular point.

Did you measure that distance from the line of trees?

A. The line of trees and stumps; yes, sir.

Q. You haven't located the trees and stumps so that I can see where they come in the line, have you?

A. Marked them on the map?

Q. Yes. You haven't have you? *A.* I haven't designated them on the map; no, sir. 30

Q. Do you mean those trees and stumps are in an absolutely straight line? *A.* Well, they wouldn't vary over a foot, or two foot at the most.

Q. Well, what part of the line of trees and stumps did you take? *A.* Well, I always take the average.

Q. You took the average line of the trees and stumps did you? How many of those trees and stumps were there? *A.* There were about a dozen there, I should say, ten or twelve.

Q. Did your line run through all these trees and

stumps, or did it run to one side of the trees, and which side of the trees? *A.* I said I took the average.

Q. Well, the average. They varied, you say, a couple of feet. And by taking the average how near did you come out to your line of Rahway avenue?

A. That is how I determined the line of Rahway avenue, by taking that measurement.

By the Court.

- 10 *Q.* The question is, how near did it come to fitting in? *A.* Well, it fits in a point of sixty foot south of the northerly line of Rahway avenue, a uniform line.

By Mr. Strong.

Q. Exactly sixty feet, you mean, do you, to an inch?

A. Yes, or one and one-tenth, or something like that.

Q. What did you take as fixing the northerly line?

A. That is the uniform line all the way through there.

- 20 *Q.* What did you take as fixing the northerly line? It is easy to say it is a uniform line, but what is there that shows it? *A.* Well, the properties have been laid out there.

Q. Who laid them out, you and Tice? *A.* No, sir; Mr. Morris, I believe, laid some properties out there.

Q. What else is there about the Videll map that helps you in running out the line of Rahway avenue?

A. Well, in the old deeds they give a description of that ditch there.

- 30 *Q.* What old deeds? *A.* Well, any of the deeds with reference to the Radley tract.

Q. Do you find that ditch on the Videll map? *A.* I haven't looked yet.

Q. Take a look? *A.* Designated by a straight line.

Q. Where is it? *A.* Right there (indicating).

Q. That straight line indicates a ditch to your mind, does it? *A.* That is what the description called for.

Q. What description? *A.* Any of the descriptions in this Radley tract.

Q. Show us one description that calls for that ditch in connection with this map?

Mr. Strong: To illustrate the fairness of the witness I will ask your Honor to look at what he calls the ditch.

Mr. Silzer: Is this argument?

Mr. Strong: Well, it is addressed to the Court.

Mr. Silzer: Try your case according to law.

Q. What else is there about the Videll map that gives you any assistance in locating that line of Rahway avenue? A. Well, in the first place the width of the road is marked distinctly there as sixty foot wide. 10

Q. Anything else? A. There is another point along this street here.

Q. Lafayette street you are pointing to? A. Yes.

Q. Get back to the ditch that you say is called for in the deed. Does that delineate the ditch as you found it there? A. Yes, sir.

Q. Is the ditch straight? A. Yes, sir.

Q. As you have drawn it? A. It is not a uniform width, but the center line would be a straight line. 20

Q. Took an average line? A. No, that gets wider as it comes towards the Sound, and comes up to a point, but the center line of it is a straight line.

Q. You say that from the head of the worm to this line of Rahway avenue, as you conceived it to be, you find to be how many feet? A. 1089 feet.

Q. Exactly? A. Yes, sir.

Q. And that, you say, agrees with the description that was prepared over one hundred years ago?

A. I don't say over one hundred years. About one hundred years. 30

Q. The first deed we have is March 29th, 1811, in which that description occurred. Do you know what kind of a means of measurement the surveyors who drew that description had? A. Well, in those days they used a chain sixty-six foot long.

Q. Sometimes they did it, and sometimes they used other means of measurement, didn't they? A. If they did I didn't know about it.

Q. Don't chains vary a good deal? Don't they

stretch and wear with use to an appreciable extent?

A. No, sir.

Q. Never heard of that? *A.* I did not. Not very much. Maybe an inch, or something like that.

Q. Might stretch an inch? *A.* Possibly.

Q. An inch in what length? *A.* Well, one inch in sixty-six feet. I have never heard of it stretching quite as much as that.

Q. How many chains are there in that measurement?

10 *A.* Sixteen.

Q. If that stretched one inch in one chain that would be sixteen inches right there?

Mr. Silzer: We are merely in the field of speculation.

Mr. Strong: That is the field you are in, and I am following you.

20 *Q.* Isn't it your experience, Mr. Simon, that these old measurements running in descriptions one hundred years ago, or even less than one hundred years, that you generally find a greater distance than the number of chains and links would call for? *A.* A greater distance?

Q. Yes. *A.* No, sir.

Q. What? *A.* No, sir.

Q. It is not your experience? *A.* To find a greater distance?

30 *Q.* That you generally find a greater distance on the ground than the number of links and chains would call for in actual measurement? *A.* No, sir.

Q. That is not your experience? *A.* No, sir.

Q. And your experience is of what length?

A. Twelve or thirteen years.

Q. Is it your experience that these descriptions of one hundred years ago can be relied upon with accuracy to determine the distances nowadays? *A.* Distances with the angle of the courses given.

Q. I am not talking about the courses at all. I am talking about the distances, measurements? *A.* Yes, sir.

Mr. Silzer: He says with angles and courses given they can be, that is his answer.

Q. I am talking about distances, and not angles or courses. I want to know whether in your experience you find that measurements given in deeds one hundred years or more ago, in links and chains, that those distances can be relied upon in locating the ground now, irrespective of courses and angles? A. Yes, sir.

Q. That is your understanding, is it? A. Yes, sir. 10

Q. And because of that experience of your's, and the accuracy that you have noticed in deeds of one hundred years old, you have taken this distance from the head of the worm, rather than from the side of the creek? A. Couldn't take it from the side of the creek.

Q. Why not? A. It would be impossible.

Q. Why? A. It would be absurd on the face of it. It would bring the line of Rahway avenue two hundred feet away down here from where we claim it is. Rahway avenue would be two hundred and sixty feet wide, 20 instead of sixty.

Q. All that might easily be if there was an inaccuracy in the chains and links given? A. What, two hundred and sixty feet?

Q. Yes. A. No, sir.

Q. Suppose that the number of chains and links in the deed was inaccurately written, that might be, might it not? A. No, sir.

Q. Couldn't be? A. Nothing like two hundred and sixty feet. 30

Q. Because it wouldn't suit your theory, is that it?

A. No, sir.

Q. What else have you upon which you locate the line of Rahway avenue? A. The distance given in the old deed, and several conveyances.

Q. What conveyances? A. Why, from Benjamin N. Noe to Peter Houghwort.

Q. That is the one we have already had with reference to the worm, is it? A. Yes.

Q. What else? A. Subsequent conveyances have

all given that same distance there to the point in the road.

Q. That would control as to the point where this line should strike Rahway avenue, I suppose, and that would help you to fix the point where the line from the worm would strike the avenue, but it has nothing to do with the— *A.* No, it would help us to find where this bend is.

Q. The bend is there on the ground, isn't it?

10 *A.* Yes, sir.

Q. Isn't it defined on the ground, or is it? *A.* It is defined on the ground now.

Q. Let us go back prior to the time when the borough and you and the rest of them set out to make these changes, how was it then? *A.* Why, there was nothing there then.

Q. Nothing there to define it at all, and you couldn't tell where the bend was at all then? *A.* No, not at that time. We run out the line of angle to determine

20 the bend.

By the Court.

Q. There was a road there, wasn't there?

A. A roadway.

Q. And the road that was used? *A.* But not a property line.

30 *Q.* Would that give you no indication as to the bend in the road as to the lines of the road itself? *A.* Well, it would bring out on the property line, but, of course, the roadway, you understand, is in considerably from the property line.

By Mr. Silzer.

Q. The Court asked you if there was a bend in the road, not in the property line. *A.* Oh, there was a bend in the road, yes.

By Mr. Strong.

Q. Was the bend in the road defined in any way in 1908, before the borough set to work to make these changes? *A.* The bend in the roadway; yes sir.

Q. How was it defined? What was there to show, as you have undertaken to show it there? *A.* Well, there was a highway, and we had a macadamized road for years.

Q. What was there to show the line of it, the limits of? You have put down there straight lines, apparently, running all the way through for a long distance, and you want us to understand that that indicates Rahway avenue? *A.* Yes, sir.

Q. Now I ask you, was there anything on the ground there in 1908, which these lines represent? I am talking about what you could physically see on the ground.

A. Not at that time; no, sir; not at the bend.

Q. Was there anywhere else? *A.* Along here do you mean (indicating)?

Q. Anywhere along the line of Rahway avenue as you have shown it, was there at that time anything which is indicated now by the black lines? *A.* No, sir. I had to run the lines out to determine where the line of the roadway.

20

Mr. Silzer: We offer the map.

Mr. Strong: Does your Honor admit the map?

The Court: Yes, I think I will admit it for illustration. Gentlemen of the Jury, you will understand that anything that is delineated on this map is not evidence. It is only the markings of a surveyor to enable you better to understand the evidence that is put in, that may be evidence.

Mr. Strong: I desire an exception to the use of the map.

30

Exception allowed—sealed accordingly.

Judge.

Mr. Strong: It does not indicate conditions as they existed prior to the time when the borough made the changes, and it is based upon an incorrect reading of the description which calls for the worm, calls for the junction of the worm with the creek, and not from the north end of it, and be-

cause there is no evidence in the case which justifies any such delineation from Rahway avenue as is there contained.

The Court: Note an exception.

(Map entered in evidence and marked Exhibit D 8.)

Direct Examination (continued), by Mr. Silzer.

10 Q. Mr. Simon, taking this first deed from Benjamin Noe to Houghwort. Have you indicated the Houghwort property on there? A. Yes, sir.

Q. Show to the jury what part Mr. Benjamin Noe owned altogether, A. Altogether?

Q. Yes. Show what the original Noe property consisted of? Just go around the boundaries of it?

A. Benjamin Noe or Peter Noe?

Q. Peter Noe. A. Peter Noe (indicating).

Q. What do you strike there?

Mr. Strong: Where?

20 Q. There now, what property do you come to there?

A. Radley tract.

Q. What was that formerly? A. Formerly called the Videl tract.

Q. Now go on? A. (Witness indicates).

Q. That is the Sound, is it? A. Noe creek.

Q. Go on. A. (Witness indicates).

Q. Wait a minute before you strike there. A. Strike a lot of trees and bushes.

30 Q. What next? A. Then we strike a highway, Blaizng Star Road.

Q. In this first deed, when Noe sold to Houghwort, "Beginning at a stake"—I wish you would find this—"planted on the east side of the mill pond creek." Where is the mill pond creek? A. Noe's Creek used to be called the Mill Pond creek year's ago.

Q. "On the north side of a small worm putting out of said creek". Is there a small worm putting out from the creek? A. There is the worm, and there is the north side of it (indicating).

Q. Is the worm there yet? A. Yes, sir.

Q. Is it well defined? A. It is.

Q. Is there any trouble finding the head of the worm?

A. No, sir.

Q. Can you see it? A. Yes, sir.

Q. Were photographs taken of that location?

A. Yes, sir.

Q. In your presence? A. Yes, sir.

Q. I show you first picture and ask you what that is?

A. That shows how the worm comes into the creek, that is this point here (indicating).

10

Q. And looking which way? A. Looking north, looking up the worm.

Q. Is that a correct picture of it as you found it?

A. Yes, sir.

Q. How long have you known this condition with relation to the creek and the worm to exist, to your own knowledge, how many years? A. Oh, six or seven years.

Mr. Silzer: We offer the picture in evidence.

Mr. Strong: Just a moment before we come to that. You had him go around some boundaries there, and I took that to be the boundary of this deed from Peter Noe to Benjamin Noe, is that right? 20

Mr. Silzer: It is the original Noe property.

Mr. Strong: We haven't anything to show what the original Noe property is.

Mr. Silzer: This deed will show it.

Mr. Strong: Put it in then. The deed does not show it so far that we have. I object to that. 30

Mr. Silzer: We will introduce the deeds out of Noe to both of these pieces.

The Court: Do it now.

Mr. Watson: The two deeds by which Houghton got title to the westerly tract are in.

Mr. Strong: Where is the deed to the original Noe, have you got any?

Mr. Watson: There is no deed to either Noe, but there are deeds out of him. Book 13, page 338, Peter Noe to John C. Noe and Benjamin Noe.

Mr. Silzer: The only difficulty with this is that it disturbs the arrangement by which I can make this thing clear to the Court and jury, by having Mr. Strong come in piecemeal.

The Court: You cannot make any confusion to put these deeds in.

Mr. Strong: You have asked him to give the outlines of this tract, and I want to know whether he is doing it correctly.

10

The Court: We must have the deed.

Mr. Silzer: We have shown the Houghwort tract, and then I will introduce the next deed.

Mr. Strong: I move to strike out what he has undertaken to give, the whole of it.

The Court: If the deed justifies it, it will be retained, but it is only a matter of form now.

Mr. Strong: I think we ought to have that deed.

20

The Court: The Court has already indicated that.

Mr. Watson: Peter Noe to John C. Noe and Benjamin Marsh Noe.

Q. As Mr. Watson reads the deed, will you point out to the jury how you located that, and what you did on this map?

30

Mr. Watson: Deed dated July 3rd, 1817; recorded September 17th, 1818; Book 13 Middlesex County Clerk's office, page 338. This is from Peter Noe to John C. Noe and Benjamin Marsh Noe. Township of Woodbridge, County of Middlesex, State of New Jersey, containing eighty acres more or less, bounded southerly by the sound.

Q. Point that out? A. (Witness indicates).

Mr. Watson: Westerly by the creek called Noe's creek.

Mr. Strong: That is not southerly. That is easterly, isn't it, where you pointed to the sound?

Mr. Silzer: You are off on your compass.

A. Here is the tract here, and the sound runs along it (indicating).

Mr. Watson: Southerly by the sound, and westerly by the creek called Noe's creek.

Mr. Strong: That is southerly instead of westerly.

A. Well, the creek is crooked. Of course, it isn't exactly westerly; it runs south and west a little. 10

Mr. Watson: Northerly by land which the said Marsh Noe conveyed to blank, the name is not given, Easterly part by the road leading from the New Blazing Star Ferry to Bridgetown, and part by lands formerly of John Clark Noe and Daniel D. Tompkins.

Mr. Silzer: We offer that photograph in evidence.

Mr. Watson: That is all of that tract. Book 14, page 264, John C. Noe and Benjamin M. Noe to Stuart T. Randolph and John F. Randolph, dated April 1st, 1820; recorded April 1820, date not given. Bounded southeasterly by the Sound; southwesterly by the creek called Noe's Creek; northwesterly by a tract of land conveyed by Benjamin M. Noe to Houghwort; and northeasterly part by the road leading from the New Blazing Star to Bridgetown, part by land of Daniel D. Tompkins, and part, a lot of two acres which Peter P. Noe conveyed to James Runyon, which tract of land above described was conveyed from Peter Noe to the said grantors by deed bearing date July 3rd, 1817. There are other tracts in it, but that is the only tract that relates to us. 20 30

Mr. Silzer: I offer that photograph in evidence.

Mr. Strong: I object to it. This is the worm as it existed when?

Mr. Silzer: As he has known it to exist I think he said for six years.

A. Six or seven years.

By Mr. Strong.

Q. When was this taken? A. Taken, I think, some time last year, I think last fall. I am not sure of the date.

10

Mr. Strong: I object to it.

The Court: It will be admitted for the limited uses of illustration.

Mr. Strong: The ground of the objection is that the condition a year ago may have been very different from what it was one hundred years ago, or even ten years ago.

The Court: Yes, but it may not have differed from six years ago.

20

(Photograph entered in evidence and marked Exhibit D 4).

Mr. Strong: Prays exception. Exception allowed—sealed accordingly.

Judge.

The Court: Objection is not made on the ground that the photograph itself is not proven, Mr. Strong?

Mr. Strong: Oh, no.

30

By Mr. Silzer.

Q. What does this picture show? A. This shows where this worm comes into the creek.

Q. Show me from what point this photograph is taken, as on the land there, looking in which direction?

A. Looking north.

Q. Put this where it was taken?

A. Over here somewhere (indicating).

Q. Looking which way?

Mr. Strong: That ought to be indicated on the map.

Mr. Silzer: Indicate on the map about where it was taken by putting a T on it.

(Witness indicates).

Q. Looking in which direction? A. Northerly direction.

Q. You are a surveyor and you understand these things, but the rest of us are not, and if you will indicate to us we will see it better.

A. (Witness indicates).

Q. Looking up that way?

10

Mr. Strong: That does not indicate anything to the stenographer.

Q. Looking that way, northerly, you said? A. Yes.

Q. Is there anything on this picture to indicate the head of the worm? What is this right in front of us?

A. That is the creek.

Q. In the picture you are looking up towards Rahway avenue, are you? A. Up towards Rahway avenue.

20

Q. Have you shown the school on your map?

A. Yes, sir (indicating).

Q. Large building north of Fitch street. Is that shown on this photograph? A. Yes, sir; that is the schoolhouse there (indicating).

Q. Where is the head of the worm?

Mr. Strong: You had better indicate that on the photograph.

Mr. Silzer: Mark it S on the photograph, school.

30

Q. Is there anything on this picture to show the head of the worm? A. I followed the head up, and it comes up to this point here (indicating).

Q. Where you find the man standing? A. Yes, sir.

The Court: What shows it, the growth of the grass on the edge?

Q. Along this worm what is shown on the photo-

graph, and actually on the ground? *A.* Along the edge of the worm is high sedge grass.

Q. Is that this which is shown rather brownish sticking over the rest of the meadow?

A. Yes, that dark grass.

Mr. Strong: How did he indicate the head of the worm?

10 Mr. Silzer: Man standing at the head of the worm.

Q. Is, or not, that worm well defined?

A. It is very well defined.

Q. I show you another picture and ask you from what point that is taken? *A.* That is taken on the south side of the creek.

Q. Show me where on the map? *A.* That is taken from near the head of the worm.

Q. Put T on there. *A.* (Witness indicates with T).

20 *Q.* And looking in which direction?

Mr. Strong: That ought to be T 2.

Mr. Silzer: Put T 2.

Q. Which direction were you looking when that was taken? *A.* Looking in a southerly direction.

Q. Down towards the creek? *A.* Down towards the creek.

Q. And does this truly represent it as it was on that day, and as you have known it for six or seven years?

A. Yes, sir.

30 Mr. Silzer: We offer this in evidence.

Mr. Strong: I wish to make the same objection and to have the same exception.

The Court: Yes.

Exception allowed—sealed accordingly.

Judge.

Mr. Strong: As I have in reference to the other photograph.

By the Court.

Q. Does this condition represent a continuing condition for several years back? *A.* Several years; yes, sir.

(Photograph entered in evidence and marked Exhibit D 5).

By Mr. Silzer.

Q. This, you say, is taken from the head of the worm, as indicated by T 2, looking down towards the creek, is that right? *A.* Yes, sir. 10

Q. Is the worm indicated at all on that picture?

A. It is very well defined.

Mr. Strong: I object to his saying very well defined and move to strike it out. He is asked how it is indicated on this picture.

Q. How is it indicated? *A.* By tall sedge grass, and it is three or four feet below the level of the meadow there. Kind of a hole there. 20

Q. In looking at the worm, coming down towards the creek, does it stand out from the rest of the picture?

A. Yes, sir.

Q. Is it plainly visible on the ground? *A.* Yes, sir.

Mr. Strong: I object. The picture shows for itself.

Q. Is it plainly visible on the ground? *A.* Yes, sir.

Q. How? *A.* It is defined by tall sedge grass and the water in there. 30

Q. I show you another picture and ask you where that was taken? *A.* That was looking right down on the head of the worm.

Q. That shows the situation as it existed the day it was taken? *A.* Yes, sir.

Q. And for how long before, to your personal knowledge? *A.* Six or seven years at least.

Q. Does this correctly show the situation? *A.* It does.

Mr. Silzer: We offer this in evidence.

Mr. Strong: Objected to for the same reason as before.

The Court: It will be admitted. Note exception.

Exception allowed—sealed accordingly.

Judge.

(Photograph entered in evidence and marked Exhibit D 6).

10 Q. Will you indicate where the head of the worm is? A. This point here (indicating).

Q. What did you find actually upon the ground?

A. Why, the tall sedge comes to an end there.

Q. Stops, does it? A. Stops right there.

Q. You mean by that the sedge that ran all the way from the creek up the worm?

A. Yes, sir; high sedge.

Q. Stops there? A. Stops there, and it is about a couple of feet deep.

20 Q. What is there in it? A. Well, there is water in there; is like a small brook, or a small creek, or something like that.

Q. Is that, or not, upon the ground clearly defined, so that there is no possibility of losing it?

A. It is well defined.

Q. I show you another picture and ask you where that was taken from? Mark T 3 where that was taken from. A. (Witness indicates T 3).

Q. That was looking in which direction?

30 A. Looking in an easterly direction.

Q. Towards the side of this worm? A. Yes, sir.

Q. Does that correctly show the situation as you have known it for six years at least? A. It does.

The Court: Senator, is there anyone who knows the history of this little body of ditching, or whatever it might be? Is there anyone who knows its continuing condition?

Mr. Watson: Mr. Herman knows it back to his boyhood.

Mr. Silzer: And the physical conditions are quite apparent.

Mr. Strong: I want an exception on this photograph.

The Court: Note an exception.

Exception allowed—sealed accordingly.

Judge.

(Photograph entered in evidence and marked 10 Exhibit D 7).

Q. This, Mr. Simon, is looking at the side of the worm, is it? A. Yes, sir.

Q. Is the side of the worm apparent upon this picture at all? A. Yes sir.

Q. How is it shown? A. By the tall sedge grass.

Q. That runs from the creek to where? A. To the head of the worm, and through the sedge there you can see water in this worm.

Q. Where the worm doesn't run up, is the sedge grass 20 as high as it is where the worm does run?

A. No, sir.

Q. Stands up above the rest of the meadow?

A. Yes, sir; a couple of feet above it.

By the Court.

Q. That is always the case where a body of water is, isn't it? A. Yes, sir.

By Mr. Silzer.

Q. Taking that point of the worm as you found it, 30 and as shown by these pictures locating the worm, will you follow the Houghwort deed by the description as you put it on there, and from thence, that is, from the worm, from thence north twenty-five degrees fifteen minutes east sixteen chains and fifty links to the southwest side of the road leading from the New Blazing Star Ferry to Bridgetown? A. Yes, sir.

Q. Did you measure that from the worm? A. I did.

The Court: He has given us that, Senator.

Mr. Silzer: But the jury has not had it.

The Court: He said it out loud.

Q. From there, Mr. Simon, what did you find along that line? A. On this line here (indicating)?

Q. Yes. A. There is a lot of old posts there, old fence posts, and a pile of rocks all the way along there.

Q. When you got to the southwest—

10 *By the Court.*

Q. How far down do these posts and rocks extend?

A. They extend down to about—well, the old posts go right down to the head of the worm.

Q. Do they go any further towards the creek?

A. No, sir; I never saw any signs of that kind there.

Q. Did you get any idea of the age of these posts?

A. No, I couldn't say. They have been there as long as I remember. As long as I have been in town.

Q. When you first knew them what were they like?

20 A. Just the butts had ben cut off.

Q. Could you tell whether they indicated an old fence? A. Old fence. The posts had rotted off, and there was just the butts down in the ground.

By Mr. Silzer.

Q. Those posts, you say, started from down to the worm and ran along that line to the road?

A. Yes, sir.

30 Q. When you got to the road which is indicated on this deed as the southwest side of the road, how does the next description run?

Mr. Watson: Thence along the same north seventy degrees twenty minutes west, sixteen chains sixty-seven links to a large white oak

Q. What did you find there, anything? A. No, sir; I ran the distance and turned the angle that is given between the two courses and found the bend here.

Q. Then the next course was what?

Mr. Watson: Thence north fifty degrees west,

fifteen chains eighteen links to the corner of said road.

A. Here (indicating).

Q. Did you find anything there? Any other posts or anything? *A.* No, sir.

Mr. Watson: Thence along another road south ninety degrees west, twenty-eight chains and sixty-three links to a stake.

10

Q. Did you find anything along this road?

A. Yes, sir; a line of trees and bushes, a well defined line.

Q. That is the New Blazing Star Road? *A.* That is the New Blazing Star Road, this point here (indicating).

Q. You found a line of trees and what did you say along the Blazing Star Road? *A.* The trees and bushes were along this line.

Q. We hadn't come to that. What did you find along the Blazing Star Road? *A.* There is a line of bushes along there, an irregular line.

20

Q. When you got down to this point do you know the next description?

Mr. Watson: Thence south sixty-two degrees east, thirteen chains to the aforesaid creek.

Q. What did you find along that line? *A.* A line of trees and bushes, well defined line.

Q. How old did these trees seem to be? *A.* I don't know. They have been there a good many years. I couldn't say. Maybe forty or fifty or sixty, or maybe longer.

30

Mr. Watson: Thence down along the said creek as it runs its several courses thereof to the place of beginning.

Mr. Strong: Place of beginning. You are pointing up on the worm, and not on the creek at all.

Mr. Silzer: Part of the creek. Isn't the worm a part of the creek?

Mr. Strong: No.

Q. Now, Mr. Simon, if that worm were not located as you have located it, would the angle which you found here in this road, and this angle, and the angle down here on the Blazing Star have fitted in with the property as you found it there at all?

10 Mr. Strong: That is objected to as leading. I move to strike it out. Of course, I realize that is not a complete remedy.

The Court: Avoid leading in the future.

Q. Now, Mr. Simon, in running this course around, what effect would there have been when you came, for instance to the first bend of this road, if the worm were not located as you have located, as you found it on the ground?

20 The Court: You mean the starting point?
Mr. Silzer: I mean the starting point.

A. Well, the bend wouldn't coincide with it.

Q. What about the Blazing Star Road at the junction of Rahway avenue, what would happen there?

A. The worm wouldn't coincide with the Blazing Star Road.

30 Q. This line of trees down here, what would have happened there, at the starting point? When you came to this line of trees that you speak of, what would have happened there? A. It wouldn't have touched the line at all.

Q. And in locating this southerly side of Rahway avenue, as you have stated, and fitting it in with the trees, and these various angles that you speak of, what was the width of Rahway avenue?

Mr. Strong: I object. That is a question for the jury.

Mr. Silzer: Oh, no.

The Court: Objection overruled.

Mr. Strong: Prays exception.

Exception allowed—sealed accordingly.

Judge.

A. Sixty foot.

Q. How did you get that sixty foot, Mr. Simon?

A. On the north side of Rahway avenue there have several properties been represented, and there is a uniform line, and by measuring up here the distance and the angle given, when I get to this point I find a line that is sixty foot south of the northerly line of Rahway avenue.

10

Q. You have spoken several times about getting the angles. What has that to do with it in running out the line of a deed of this kind?

A. Well, if you didn't get your angle right it would throw your distances off, it would throw everything off.

Q. Throw everything off? A. Yes.

Q. Taking the deed to the property to the east—

20

By the Court.

Q. Mr. Simon, was the north point of the compass in the early times a variation to the westward, or to the eastward? A. Eastward.

By Mr. Strong.

Q. You mean that it was more to the east than it is now? A. Yes, sir; more to the east than it is now.

Mr. Watson: Did your Honor note the difference in the descriptions of that tract between the first deed and the second deed?

30

The Court: I thought perhaps that would explain, but it adds to the confiction, the witness' answer.

Mr. Watson: It does not seem so to me.

The Court: It is a little deviation from north now, you see.

Mr. Watson: In the first deed those boundaries are given as north, south, east and west; whereas

in the second deed they are given as southwesterly, southeasterly, etc.

The Court: There is a description of the Sound as being on the south side. If the compass point were thrown more to the easterly, obviously it would be less on the south side than on that map.

Mr. Silzer: But still on the map as shown on there.

The Court: I suppose there is no doubt about what is intended.

10

Q. This first deed where it runs to the southerly side of the road from New Blazing Star Ferry, show where that ferry is? A. That was down here where the present dock is.

Q. To Bridgetown? A. That is this road (indicating).

Q. Where does it go on to Bridgetown, do you know? A. Up this road here (indicating).

20

Q. Yes, right on past the front of this property?

A. All the way across this property.

Q. With the map 231, Exhibit D 3, the town of New Woodbridge, in Middlesex County, surveyed by Francis P. Videl in 1826, will you show the jury where Rahway avenue is shown on this map.

A. Rahway avenue (indicating).

Q. Where is Blazing Star Ferry?

A. Down here (indicating).

Q. This property here is to the south of the road?

A. South of the road; yes, sir.

30

Q. Show where the property which is on this map is on that one (indicating)? A. (Witness indicates).

Q. Rahway avenue is on this map where?

A. (Witness indicates).

Q. And the width on this map of Videl's is how much? A. Sixty feet.

Q. Do you know whether the lots are laid out on that Videl map on the ground that they are upon this old map of 1828? A. They are laid out according to that map.

Q. And are the lots laid out in front of that property to make a street sixty feet wide? *A.* Yes, sir.

Q. In the deeds which refer to this map?

A. They all refer to that map.

Q. An actual measurement upon the ground for as long back as you can remember makes that road in front of the Videl or Radley property how wide?

Mr. Strong: I object.

A. Sixty feet.

10

The Court: The objection is well taken.

Q. Mr. Simon, you have already, in following Mr. Watson in taking this second tract, given the boundaries. The deed has described it by boundaries hasn't it? *A.* Yes sir.

Q. When you came down to this Radley property that you have just shown us here— *A.* Yes, sir.

Q. (Continued)—did you run down the line of the Radley property on Woodbridge avenue? *A.* Yes, sir; I went up this way here two hundred and eighty feet. 20

Q. Is that the amount that is shown on this map of 1828? *A.* It is.

Q. Two hundred and eighty feet?

A. Two hundred and eighty feet.

Q. Running that from this original Noe property, two hundred and eighty feet up to the southerly side of Rahway avenue what does that make Rahway avenue at that point? *A.* Sixty foot.

Q. In coming along this boundary and using the Radley map of 1828, or Videl map you call it, don't you? *A.* Yes, sir. 30

Q. What do you find along this southerly boundary of the Radley property? *A.* A line of trees and stumps down to this point and the ditch at this point here (indicating).

Q. Are they in the line of the Radley property as laid out on that map in 1828? *A.* Yes, sir.

Q. That part there where you found these old trees along there (indicating), what has been the character

of that land there? *A.* Farm land, open land, there is nothing on it.

Q. Is there any indication of anybody building there and putting up trees recently, or anything of that kind, along this line? *A.* Not at all.

Q. It is an old line, isn't it? *A.* Old established line.

Q. Was there any fence along any part of that Radley property?

10 *Mr. Strong:* When?

Mr. Silzer: At the time during the last six or seven or eight years.

Mr. Strong: I object.

Mr. Silzer: Prior to this time.

Mr. Strong: What time do you mean by that?

Mr. Silzer: Prior to the institution of this suit.

Mr. Strong: I think it should be prior to the time when the borough undertook to make any changes.

20 *The Court:* That is what I suppose counsel is referring to. Is it? I say you are referring to the time prior to the borough making any changes in the boundary of the street?

Mr. Silzer: Yes, sir.

Q. Prior to that time was there any fence along any part of that Radley property? *A.* Yes, sir; there was.

Q. Where? *A.* Along this portion here, there is some of the fence there now (indicating).

30 *Q.* That is on the westerly side of Woodbridge avenue? *A.* That is on the westerly side of Woodbridge avenue.

Q. Along this point where you make it two hundred and eighty feet? *A.* Exactly. There is a fence along this portion here (indicating). There is about half of this line here.

Q. That is the southern line of the Radley property?

A. Yes, that is where the line of the trees and stumps is.

Q. How old is that fence? What is its appearance?

A. Well, some of it is old fence, and some of it is of recent build.

Mr. Watson: I desire to offer in evidence the deeds—

Mr. Silzer: This is the chain of deeds for the Colwell tract, this piece through here (indicating). The purpose of that is to show that this Colwell title ran down, and used by boundaries, each deed following the other, and describing it as being bounded by the Sound etc., all the way through until the deed from the sheriff to—Hughes to Colwell, and each one of those being by metes and bounds, and as we shall insist, recognizing this 1089 feet. Another point is this: Your Honor will observe if our contention is correct, that this is sixty feet, the rest of this road, and they say they go out sixteen feet then there would have been a line running ou here into the road, and this property would have been bounded by an additional boundary on the west, namely, by Rahway avenue on the west, where this would jut into the road which does not appear in any of the deeds at all.

Mr. Watson: I think we have book 13, page 338, Peter Noe to John C. Noe and Benjamin M. Noe and book 14, page 264, John C. Noe and Benjamin Marsh Noe to Stuart F. Randolph and John T. Randolph. The next one is book 19, page 297, John F. Randolph to Stuart F. Randolph, one-half interest tract described as follows: Southeasterly by the Sound which separates New Jersey and Staten Island. Dated April 27th, 1827; acknowledged and recorded April 18th, 1827. Conveys one-half interest tract described as follows: bounded southeasterly by the Sound which separates New Jersey and Staten Island; southwesterly by the creek called Noes creek; northwesterly by a tract of land conveyed by Benjamin M. Noe to

Houghwort, and northeasterly partly by the road running from New Blazing Star to Bridgetown, and partly by lands heretofore of Daniel D. Tompkins, Esq., which said tract of land above described was conveyed from Peter Noe to John C. Noe and Benjamin M. Noe, etc.

10 The next deed is book 28, page 614, Stuart T. Randolph to William S. Watkins, dated March 15th, 1834; acknowledged and recorded June 27th, 1835, book 28, page 614. Description as follows: bounded southeasterly by the Sound which separates New Jersey from Staten Island; southwesterly by the creek called Noe's Creek; northwesterly by tract of land conveyed by Benjamin M. Noe to Houghwort and Northeasterly partly by the road leading from the New Blazing Star to Bridgetown, and partly by lands formerly of Daniel D. Tompkins, Esq., containing seventy-eight acres, more or less.

20 The next one is book 34, page 39, William S. Watkins to Henry Robinson, dated February 20th, 1839; acknowledged and recorded February 27th, 1839, book 34, page 39; description, bounded southeasterly by the Sound which separates New Jersey and Staten Island; southwesterly by the creek called Noe's Creek; northwesterly by tract of land conveyed by Benjamin M. Noe to Houghwort; northeasterly partly by the road leading from New Blazing Star to Bridgetown, and partly by lands formerly of Daniel D. Tompkins, Esq. Seventy-eight acres, more or less.

30 The next deed is Henry D. Robinson to Henry Robinson, Jr.; book 35, page 290; dated June 3rd, 1840. Acknowledged and recorded June 5, 1840. Bounded southeasterly by the Sound which separates New Jersey and Staten Island; southwesterly by the creek called Noe's Creek; northwesterly by a piece of land conveyed by Benjamin M. Noe to Houghwort; northeasterly partly by

the road leading from New Blazing Star to Bridgetown, and partly by lands formerly of Daniel D. Tompkins, Esq. Containing seventy-eight acres.

The next deed is from the sheriff, James M. Brewster, sheriff, to Peter D. Breisted; dated October 18th, 1841; recorded October 26th, 1841, book 36, page 354. Sheriff's deed on foreclosure. William S. Watkins, Complainant; Henry Robinson and others, Defendants. Bounded as follows: southeasterly by the Sound which separates New Jersey from Staten Island; southwesterly by the creek called Noes Creek; northwesterly by tract of land conveyed by Benjamin M. Noe to Houghwort; northeasterly partly by the road leading from the New Blazing Star to Bridgetown, and partly by lands formerly of Daniel D. Tompkins, Esq. 10

The Court: Is Tompkins' and the Videl tract the same?

Mr. Watson: Yes, sir. Containing seventy-eight acres, more or less. 20

The next deed is from Asher Bissett, sheriff; sheriff's deed on foreclosure; Peter D. Breisted, et. als., Defendants; to Isaac K. Jessup; dated September 3rd, 1844; recorded September 4th, 1844, book 40, page 308. First lot bounded as follows: Southeasterly by the Sound which separates New Jersey from Staten Island.

The Court: Don't these follow all the same description? 30

Mr. Watson: Yes, sir.

The Court: There is no use reading them.

Mr. Strong: I haven't said it was necessary to read it when the same description followed.

Mr. Watson: It is the same description. Isaac K. Jessup to Stephen G. Wood, trustee of Esther Breisted. Dated May 5th, 1846; recorded May 22nd, 1846, book 43, page 107. Same description. It is to a trustee. It is a married woman's trust for sole use with power of sale.

Stephen G. Wood, trustee of Esther Breisted, now known as Esther Wood, of the first part, Esther Wood formerly known as Esther Breisted, of the second part, and James McClave, Sr., of the third part; dated August 18th, 1858; acknowledged and recorded October 5th, 1858, book 78, page 602. Same description.

10 Book 121, page 433. James McClave, Sr. to Robert T. Pierce; dated May 2nd, 1870; recorded May 18th, 1870, book 121, page 433. Same description.

Book 181, page 384; Edward F. Roberts, sheriff, James W. Hughes, grantee; dated March 21st, 1878; recorded June 29th, 1880, book 181, page 384. Sheriff's deed on foreclosure. Robert T. Pierce and others, Defendants. Same description.

20 Mr. Silzer: This deed is the first time the description has been changed, except by giving the boundaries. Now they jump to 1888, when they give it by metes and bounds.

Mr. Watson: Dated June 9th, 1888, James W. Hughes to Augustus W. Colwell.

Mr. Silzer: That is the man was on the stand yesterday.

Mr. Watson: And Mary B. Lefferts as tenants in common. All that tract of land in the township of Woodbridge, etc., bounded as follows:

30 Q. Now, Mr. Simon, follow this on the map.

Mr. Watson: Beginning on the northerly line of Noe's creek, at the worm which forms the easterly boundary of land belonging to C. M. Crowell; thence along said worm until the same is intersected by a line running on a course north seventeen degrees fifty-five minutes east, two hundred and sixty-six feet ten inches from the place of beginning.

Q. Now, let me ask you, Mr. Simon, what was the

distance that you found, in making your measurements from the head of the worm, where you started, to the middle of this creek? *A.* Center of the creek?

Q. Yes. *A.* Why, two hundred and sixty-six foot to the edge of the creek, the northerly edge.

Q. Two hundred and sixty-six? *A.* Yes, sir.

Mr. Watson: Two hundred and sixty-six feet ten inches from the place of beginning. Thence still along the line of said C. M. Crowell's land, north thirty degrees five minutes east, eleven hundred and sixty-three feet ten inches to the center of the road leading from New Blazing Star to Bridgetown. 10

Q. Eleven hundred and sixty-three feet would take you where? *A.* Eleven hundred and sixty three foot would take you away over on the other side of Rahway avenue. That is evidently incorrect.

Q. Away into the properties on the other side?

A. Yes, sir. 20

Q. That description says to the middle of the road, doesn't it? *A.* To the center of the road.

Mr. Watson: Thence along the center line of said road south sixty-six degrees twenty-five minutes east, eleven hundred and fifty feet eleven inches to lands of Alfred M. Radley.

Q. Had any of the earlier descriptions that have been read here, Mr. Simon, until Mr. Colwell got hold of it, read to the middle of the road? *A.* No, sir. 30

Q. They all read to the southerly side of the road?

A. Southerly side of the boundary.

Mr. Watson: Thence along the line of the same south twenty-nine degrees forty-three minutes west three hundred and ninety-six feet ten inches.

Q. Did Mr. Radley's line at that point go to the middle of the road, Mr. Simon, according to Radley's or Vidal's old map? *A.* To the southerly line of the road.

Q. So could this description go to Radley's property as it is laid out there? *A.* No, it would not fit in.

Q. Why, according to this description? Where does it take it to? *A.* Over on this side of Rahway avenue.

Q. And if it followed down the middle of the road, it would not go to Radley's property, would it, because he starts on the southerly side? *A.* Southerly side.

10 *Q.* If this description ran along the southerly side of the road, as you found it, and as you have indicated, that would go to the Radley property, wouldn't it?

A. Do you mean that distance given?

Q. Yes. *A.* Yes, sir.

Mr. Watson: Thence still along the line of the same south sixty-eight degrees forty-five minutes east, to lands of Alfred M. Radley; thence along the line of the same south twenty-nine degrees forty-three minutes west, three hundred and ninety-six feet ten inches.

20 *Q.* Where does that take you to? Where that line of trees were? *A.* The line of trees?

Q. Yes. *A.* No, sir.

Q. Where would it take you?

A. It would not reach the line of trees.

Q. It would not reach the line of trees? *A.* No, sir.

Q. If it were dropped south and made a sixty foot road, would it reach the line of trees then? *A.* It would reach the average line of trees; yes, sir.

30 Mr. Watson: Thence still along the line of the same south sixty-eight degrees forty-five minutes east, nine hundred and eighteen feet two inches; thence still along the line of the same south sixty-six degrees twenty-two minutes east, three hundred and sixty-one feet to high water mark of Staten Island Sound. Thence southerly along high water about fourteen hundred and thirty-five feet to Noe's Creek. Thence along the northerly line of Noe's Creek the several courses thereof to the

place of beginning; containing about eighty acres of ground, and being the same premises conveyed to the said James W. Hughes by Edward T. Roberts, sheriff, and etc., by deed recorded in book 181 of deeds for Middlesex County, on pages 384, and etc.

The next deed is in book 242, page 278.

Mr. Silzer: That last one was to Colwell and Lefferts.

Mr. Watson: This deed is dated June, 1891; 10 recorded June 26th, 1891, book 242, page 278; conveyed by Mary D. Lefferts and husband to Augustus W. Colwell; conveys one-half interest in the description by metes and bounds, the same as the last deed. That gets all the titles in Augustus W. Colwell.

Adjourned until 2.00 p. m.

20

Afternoon Session, 2:00 p. m.

Frederick F. Simons, resumed.

Direct Examination (continued), by *Mr. Silzer*.

Q. Mr. Simons, when the improvement was made on this street, did you find any trees along that street?

A. Yes, sir; several of them.

Q. Along the front of this Colwell property?

A. Yes, sir.

Q. Will you mark them on that map, where you 30 found them?

The Court: When you say along the street do you mean the south side, or near the south side?

Mr. Silzer: South side of Rahway avenue, near the Colwell property.

A. (Witness indicates).

Q. Will you state where that is? A. Those trees come right along what is now the edge of the present

cement walk, or about eight or nine feet from the property line.

Q. You spoke this morning about starting from a worm and running up here a certain number of degrees and minutes to the southerly side of Rahway avenue, along the property line here? *A.* Yes, sir.

Q. If you start at any other point than this worm, and use the bearing that is set out in the deed, would you strike this property line? *A.* No, sir; you would
10 run parallel to it, at some distance away from it.

Q. The other would take you away from an established fence of posts that you found there?

A. Yes, sir.

By the Court.

Q. How far were the trees that you have mentioned north of the line that you say is the southerly line of the avenue? *A.* About seven or eight feet. Of course the trees were not quite uniform, but they were in fairly
20 good line. They average about seven or eight feet from the property line, the sixty foot line.

By Mr. Strong.

Q. You said eight or nine feet a few moments ago, didn't you? *A.* Well, they would average about eight feet.

By Mr. Silzer.

Q. Show us on that map where the Shapiro property is? *A.* This building here extending out over the street (indicating).

30 *Q.* How far does that extend beyond the southerly line of Rahway avenue as you located it, as you have described it? *A.* Twelve feet.

Q. Where is the White property, marked White?

A. Yes, sir.

By the Court.

Q. How old were those trees, Mr. Simons?

A. They were about eighty years old. The lady that planted those trees lives on the other side of the street.

By Mr. Strong.

Q. I don't suppose you know who planted them, do you? A. Yes, sir.

Q. Somebody told you so? A. No, the lady told me so herself.

Mr. Strong: I move to strike it out.

The Court: Yes. It is not competent.

By Mr. Watson.

Q. What kind of trees were those, Mr. Simons? 10

A. Elm trees.

Q. How large are they?

Mr. Strong: Who is examining?

Mr. Silzer: We are just expediting matters.

Mr. Strong: I think we had better have the counsel conduct it.

By Mr. Silzer.

Q. What kind of trees were they? A. Elm trees.

Q. How big were they? A. About two feet, or two feet six in diameter. 20

By the Court.

Q. Were there any corresponding trees on the other side? A. This side here?

Q. On the north side? A. No, sir.

By Mr. Silzer.

Q. Now, Mr. Simons, I show you map number 394.

Mr. Strong: Your map is not in evidence, as I understand it. 30

Mr. Silzer: I think it was identified when Mr. Marsh was on the stand.

Q. Where does this Crowell map come in in connection with the Colwell property?

Mr. Strong: I object. That map has not so far been offered in evidence.

Mr. Silzer: I haven't offered it in evidence.

Mr. Strong: You have no business to use that map until the map is offered in evidence.

Mr. Silzer: That is my question at the present time.

Mr. Strong: I object.

The Court: Objection sustained.

Q. Do you know where the Crowell tract is?

A. Yes, sir.

Q. Where is it with reference to the Colwell tract?

A. Just west of the Colwell tract.

10 Q. Do you recognize this map? A. Yes, sir.

Q. What is it?

Mr. Strong: I object.

The Court: I suppose it speaks for itself, doesn't it, Senator, so far as this witness can speak of it?

Mr. Silzer: I suppose he can tell what it is, if he knows.

The Court: Well, it has not been offered in evidence. There is nothing by which he has any right to give its contents.

20 Mr. Silzer: I am asking him to identify it.

Q. Is this, or not, the Crowell tract that adjoins the Colwell tract? A. It is.

Mr. Silzer: We offer this in evidence. It is a filed map.

Mr. Strong: I object to it. I don't think it has anything whatever to do with the question which is involved in this case.

30 The Court: Mr. Strong, isn't it competent as bearing upon the boundaries of the lands that bear upon this claim, particularly the historical relations of the plaintiff's title?

Mr. Strong: I don't see how it is. This is a map, and the date of it is July, 1903. It is somebody's lay-out for the purpose of selling lots on an adjoining property, or some other property, at any rate. Now why should maps of that kind be used as evidence against us? It does not seem to me to be evidence.

The Court: It only assists in determining where

the true boundaries of the plots that are relevant are, and it does, it seems to me afford some light there.

Mr. Strong: I can't see how that it does. Your Honor will see this is only ten years old. That was after this project of the borough was hatched, and after they began to talk about it, and to—

Mr. Silzer: Oh, no.

Mr. Strong: (Continuing)—and to put the thing through, and people who have owned this Crowell property conformed to their ideas. The injustice of the whole thing is that it has to go in for something, and because somebody else adjoining their property—

The Court: This does not touch the street at all?

Mr. Silzer: Yes, sir; it touches the street, and touches this worm, and how the owner next to our's treated his property.

Mr. Strong: It is not in any sense an ancient document. It is somebody's work ten years ago.

Mr. Silzer: And before this was a borough.

Mr. Strong: That does not make any difference.

The Court: I suppose it comes in the same situation that I have dealt with respect to the Vidal map.

Mr. Strong: The only difference is that the Vidal map is—

The Court: Except as to time.

Mr. Strong: That may make a very important difference. The mere fact that it is a map that is filed, it is not entitled to be used as evidence unless it is proved in some way by somebody.

The Court: If you are objecting to its not being proved, that is another matter.

Mr. Strong: I am objecting to it not being proved.

The Court: But if the objection is that it is irrelevant, I am inclined to think it is admissible.

Mr. Strong: I object to it upon both grounds, as not having been proved; and further, that it is entirely irrelevant. And furthermore, as having originated within the time when this question of the width of the road became agitated.

The Court: I think that objection only goes to its value, and not to its admissibility.

Mr. Strong: I think it goes further than that.

10 The Court: His theory rests now upon the idea that the road is a public road by user, or implied dedication. Now, the period of time runs anterior to the suit, of course, and isn't it competent to bring that in at any time prior to the suit, so long as it covers sufficient amount of time?

20 Mr. Strong: The only theory upon which the map can be used at all, or any map, as I understand it, is because it is ancient. Now this is not an ancient map, surely. It is only ten years old, and as I say, it originated since this controversy arose. It is somebody who prepared this map upon a line of the idea that these people have espoused on the other side. Who knows who he is? Who knows how accurate it may be? Who knows whether he was one of the borough crowd, or whether he was one of the crowd that represent Mr. Shapiro?

The Court: I think the test is the period of time as to what the people have done with the property. If you require proof of this, because it is not an ancient deed, that is another matter.

30 Q. Mr. Simons, on this Crowell property have any lots been bought and sold, and houses built according to this map, to your knowledge? A. Yes, sir; along Rahway avenue.

Q. Are any of them indicated on that map? A. The houses are indicated.

Q. Five black spots to the west of the division line? A. Yes, sir.

Q. In making up this map did you use the Crowell map at all, or any old surveys in that neighborhood, if

you used the Crowell map at all? A. Used this distance here.

Q. Do you mean by that the distance from the worm to the road? A. Yes, sir; used it as a check.

Mr. Silzer: I offer the map.

Mr. Strong: Objected to as before.

The Court: You will have to prove the map, Senator. The mere fact that a map is found in the clerk's office, without its authenticity, or author, does not admit it. 10

Mr. Silzer: I understand another rule which admits it is this: That if an owner of property treats the adjoining line to others as being properly located, and makes a map, and also treats the road as being in a certain place, and sells lots according to that map, that these actions by the abutting owner, which are admission against his interest, so to speak, are evidence from which a map which he himself makes and dedicates and acts upon— 20

The Court: The difficulty there is that I have nothing before me of that kind.

Mr. Silzer: The witness says the lots have been sold.

The Court: Yes, the witness says the lots have been sold, but he does not say by whom.

Mr. Silzer: The owner puts this map upon the files. The lots are sold according to it.

The Court: There is a way of proving the sales, of course, but this not the way to do it. 30

Mr. Silzer: This witness has testified that lots have been sold and houses located according to this map. That must have come from the owner of it, who owned the lot. They could not have been sold by anybody else.

The Court: Isn't it a very easy matter to prove by whom that map was put on record? It appears to have been prepared by Mr. Marsh.

Mr. Silzer: Yes. I don't care to call the adverse witness. They had trouble enough with him

themselves. But this is an admission against interest of the abutting property owner, in which Mr. Marsh locates this very worm, and locates the distance, and the property owner next door treats it as valid. He says, I am the adjoining owner, this is the way I used my property, I put a map on file and I sell lots by it.

10 Mr. Strong: How can what the man next door does with his property, how can that be any evidence against us?

Mr. Silzer: Because it fits right in.

Mr. Strong: Absolutely nothing to do with it.

Mr. Silzer: That is a pretty—

The Court: The objection then is not made that there is no proof of the use of this map by the owner?

Mr. Strong: I have repeatedly said that I do object.

20 The Court: I know, but you let come in the last declaration of the witness that the owner has made conveyances according to this map, which if it were produced on the record here. it would be admissible and proof of the fact. And also proof that there had been an action by an owner indicating a use of his property.

Mr. Silzer: We will produce a deed, if Mr. Strong insists upon it, of a transfer along that Crowell tract.

30 The Court: If he is willing to take the witness' statement for it—

Mr. Strong: No, I don't take his statement for anything. I insist that the map should be proved regularly, and if they want to prove sales, they will have to put deeds in, and even then that will not prove the map, it will not make it relevant to the case.

The Court: I am inclined to think it would be an adoption of it by the owner.

Mr. Strong: Very well, but as I have said so

many times, I don't wish to reiterate it too often, but it does seem to me that what the owner has done with his property within the last ten years has nothing whatever to do with our title. Whether the owner recognized the map, or sold by it, or whether he made the map in a way to make the street wider than we have chosen to make it in front of our property, is absolutely irrelevant; but besides the irrelevance, I wish to make my objection clear that this map must be proved.

10

The Court: Proceed.

Mr. Silzer: We will turn the witness over for cross examination, subject to the introduction of deeds, which Mr. Watson will locate, so that we can offer this map.

Cross Examination (continued), by Mr. Strong.

Q. You undertook to put on your map a few minutes ago the trees which you said existed at the time that the borough undertook to change the avenue. You don't mean to say that you have accurately located those trees, do you? A. On the map?

20

Q. Yes. A. Yes, sir.

Q. The trees that you have put here are in the exact position that they were before the borough made any changes? A. Come right along the edge of the walk, where shown on the map.

Q. You mean then to say, in putting those trees on without measurement, and without any data to tell you where the trees were, you swear to those locations, do you? A. I have data to run the lines on.

30

Q. What have you got in the way of data that enables you to put those trees where you have endeavored to put them? A. The fact that they run out to the line on the sidewalk.

Q. Were the trees all in a line? A. Fairly uniform line.

Q. You would say that they were in fairly uniform line, would you? A. Yes, sir.

Q. And they all were in the same relative location to

the property line, were they? *A.* They were parallel with the property line.

Q. And they were all a distance of eight feet from the property line? *A.* The average line—the center line of the trees was about eight foot from the property line; yes, sir.

Q. What you call the property line is the sixty foot line, is that right? *A.* That is the property line.

10 *Q.* Now, you have along on each side of Rahway avenue heavy black lines, which I understand represent cement walks? *A.* Yes, sir.

Q. When were they put there? *A.* They were put there, I think, in the summer of 1909.

Q. 1909. And when were these trees cut down?

A. They were cut down just previous to the laying of the cement walks.

Q. In 1909, were they? *A.* Maybe the spring of 1909, or the fall of 1908. I couldn't say exactly. Just before the cement walks were laid.

20 *Q.* You have located on your map the Shapiro building, haven't you? *A.* Yes, sir.

Q. This is it where the words "Shapiro Building" are? *A.* Yes, sir.

Q. And that extends beyond the line of your sixty foot line how far nearly? *A.* Extends twelve feet over the property line.

Q. By the property line you mean your sixty foot line, is that right? *A.* I mean these property lines.

30 *Q.* Well, you mean your sixty foot width, is that right? *A.* Sixty foot wide road; yes, sir.

Q. And Shapiro's building is twelve feet further to the north? *A.* Yes, sir; twelve feet over the line.

By Mr. Silzer.

Q. That has been scratched out since this morning, where it extends over into the street, hasn't it?

A. No, sir.

Q. Is it on there now? *A.* Yes, sir.

By Mr. Strong.

Q. There is another building in here. Whose is that

that extends over the sixty foot line? *A.* That is Rapp's building.

Q. Suppose I put "Rapp" there. On your map you have Fitch street, have you, John and Sharet street and Randolph street? *A.* Yes, sir.

Q. Upon what map do these streets appear?

A. All the lots were sold off Fitch street, according to Fitch street.

Q. I mean, where do you get these streets that are designated on your map? *A.* The names? 10

Q. Yes, or the streets themselves, as they exist?

A. Off the Colwell map.

Q. From the Colwell map? *A.* Yes, sir.

Q. Is that one of the maps that were offered yesterday? *A.* With the exception of Rahway avenue, which I didn't get off the Colwell map.

Q. You put these streets on, Fitch and Sharet and Randolph and Harris and Noe, and the other streets, from the Colwell map, is that right? *A.* From the Colwell map, but not the Rahway avenue line though. 20

Q. You followed the Colwell map, with the exception of the Rahway avenue line, that is right, isn't it?

A. Yes, sir.

Q. According to the Colwell map what is the depth of the block from Rahway avenue, as shown on that map, to Fitch street? *A.* Which map do you mean? There are two maps.

Q. Colwell maps? Is there a difference in the depth of either of them? You are familiar with this map, aren't you, of Lizzie B. Colwell? *A.* Yes, sir. 30

Q. What is the depth of the block from Rahway avenue to Fitch street on this map? *A.* Two hundred feet from Rahway avenue to New Jersey avenue, as shown on this map.

Q. Does New Jersey avenue correspond with Fitch street? *A.* That is what it is designated on that map; yes, sir.

Q. And it should be two hundred feet, according to your map, from the southerly line of Rahway avenue, is that right? *A.* Yes, sir; according to this map.

Q. And this map, that is the map filed August 24th, 1892. What is the distance from the southerly line of Rahway avenue, as you make it, to the northerly line of Fitch street? A. One hundred and eighty-four feet.

Q. That is to say, it is fourteen feet short of the distance called for on this map? A. No, it is sixteen.

Q. What is the depth of the lots fronting on Rahway avenue, the lots of Shapiro, what is the depth of those lots according to the Colwell map? A. One hundred
10 feet from Colwell's line.

Q. How much short would the lot be by taking the width of sixty feet for Rahway avenue? A. Sixteen foot.

Q. So that by adopting that sixty foot line it means sixteen feet off of the front of Shapiro's lots, is that right?

Mr. Silzer: I object to that. That depends on what Mr. Colwell does to supply it on the other end. That is a mere conclusion.

20

The Court: Do you mean by the comparison of the map and the ground?

Mr. Strong: I mean by Colwell's map the lot is one hundred feet deep, and taking the sixty foot width means cutting sixteen feet off of his lots.

The Court: According to the map?

Mr. Strong: According to Colwell's map.

The Court: You may answer.

A. Yes, sir.

30

Q. And that means how many feet off of Shapiro's building? A. It means twelve feet off the main part of the building.

Mr. Silzer: That is, if it is not moved back, you mean?

Mr. Strong: It means as it stands, whether it is moved back or not.

Q. I call your attention to the deed from Peter Noe and wife to John Clark Noe and Benjamin Marsh Noe, book 13 of deeds at page 338; it is bounded southerly

by the Sound. Which do you call southerly? *A.* Here is the north point, and this would be south (indicating).

Q. Which is southerly? *A.* This is the south end of the map (indicating).

Q. Is the Sound southerly? *A.* Well, it is southeasterly. It is southerly, if you want to call it that way.

Q. If you want to make it fit you call it southerly, is that right? *A.* Southerly, general direction.

Q. More nearly easterly, isn't it? *A.* Southeasterly.

Q. Westerly by the creek called Noe's Creek. Which 10 is that? *A.* (Witness indicates).

Q. That you call westerly, do you? *A.* Southwest-erly, to be more correct.

Q. Northerly by land which the said Marsh conveyed to—. Which do you call northerly? *A.* This would be northwesterly.

Q. Taking it as the description runs northerly, which do you say is the northerly side? *A.* North runs up this way (indicating); this would be northwesterly, and this northeasterly. 20

Q. Then the line which you have shown there as running up from the worm to Rahway avenue? *A.* This line here (indicating).

Q. You call this the northerly side, do you?

A. I call this the westerly side.

The Court: Mr. Strong; are you dealing with the description in the map, or are you dealing with the witness' judgment as to what would be north?

Mr. Strong: I am dealing with the description 30 of the map. I am asking him to tell us where the north line is.

The Court: Is there any doubt but that there is but one creek there, and that is the one referred to on the westerly side?

Mr. Strong: Yes.

The Court: Can there be any confusion about that?

Q. I think the northerly side is more accurately the

westerly side, isn't it? *A.* Northwesterly, to be accurate.

By the Court.

Q. You have already described it so, haven't you, Mr. Simons? You have spoken of it as the westerly and southerly sides, haven't you? *A.* Yes, sir.

Q. That is more accurate, isn't it, to speak of it, instead of the description in that deed? *A.* Northwesterly.

10

By Mr. Strong.

Q. Which would be the northerly side of the worm?

A. This point here (indicating).

Q. When you come to talk about the worm, you mean the end, and not the side? *A.* Well, the northerly side; you go up the worm until you come to the northerly side of it.

Q. Do you draw any distinction between the side and the end? *A.* If anything is running north and south, when you go up to the northerly side you have to run up to the end of it in order to be on the northerly side of it.

20

Q. In other words, to suit your purposes you would call it the northerly end, but when you talk about the northerly side for the purpose of giving the boundaries of the Houghwort tract, you take the westerly side, is that it? *A.* No, sir.

30

Q. It seems to me so. Now this worm, you picked out a certain point which measured, you say, exactly 1089 feet from a point in Rahway avenue. Now, did you put a stake, or a monument in at the end of the worm? *A.* Yes, sir.

Q. What kind of a monument? *A.* Stake.

Q. And was that stake—where was that stake?

A. Well, that stake was put in several years ago.

Q. Oh, well, put in at the time you began to monkey with Rahway avenue? *A.* Four or five years ago.

Q. Whereabouts is it, or was it then? *A.* At the head of the worm, north side of the worm.

Q. Oh, yes, you say at the head of the worm. Did the end of the worm come to an abrupt conclusion?

A. Yes, sir. There was a jump up there of a couple of feet.

Q. Couple of feet? A. Yes, sir.

Q. It didn't go off gradually, but it was abrupt, was it, down straight two feet deep? A. Yes, sir.

Q. You mean that, do you? A. I mean it.

Q. And does that show in one of these pictures?

A. I think that shows a hole looking down in there. 10

Q. This you are calling Exhibit D 6, is that right?

A. Yes, sir.

Q. You are referring to Exhibit D 6 A. Yes, sir.

Q. And you think that shows the hole, does it? Just mark where you consider the end of the worm to be?

A. (Witness marks). Right down where you see the water.

Q. You make an X? A. Yes, sir.

Q. How near to the edge of the water is that, where you put the X, and where you say the stake was put? 20

A. The stake was put right down in the bottom.

Q. Well, I am talking not about the bottom. Do you mean put in below the water? A. Put right down flush with the water. To put it in the worm you had to put it down in there.

Q. How far was that from the furthest edge of the—the most northerly edge of the worm? A. Right at the northerly edge of the worm.

Q. How much water was there in the worm at that point? A. Well, it depends on the tide. There is a 30 five foot tide there that varies during the day.

Q. How far north does the tide go beyond the place where you put your X on the end? A. That is where the tide stops, right at that point. The tide comes no further.

Q. Never comes any further than that? A. That determines the end of the worm.

By the Court.

Q. Does this little rivulet run dry? A. When the

tide runs out it is dry; when the tide comes in it is filled.

Q. Does the meadow drain into it on the sides?

A. Yes, sir. Of course, the meadows are flat, and runs all over, but the tide fills it up at high tide, and comes right up to this point.

By Mr. Strong.

Q. How far does the tide come up when it is low tide? *A.* Extreme low tide?

10 *Q.* Yes. *A.* Well, probably wouldn't come up maybe half way.

Q. Not more than half way up? *A.* At extremely low tide.

Q. Well, the average low tide, how high would it come up? *A.* Well, it wouldn't come up to the head of the worm. Probably come up three-quarters of the way. Quite a grade there.

Q. Come up to about where it is designated Maple avenue? *A.* Up further than that.

20 *Q.* Put something there to show where you say the average low tide would come? (Witness indicates.)

Q. How many feet is that from what you call the end of the worm? *A.* Well, I couldn't give you the exact distance.

Q. Well, you have undertaken to designate it on your map. Now tell us, from the place where you have designated it, how far is it to the edge of the worm as you have indicated? Take your scale and see.

A. About twenty or twenty-five feet.

30 *Q.* You gave us the position from which you say the photograph D 4 was taken? *A.* Yes, sir.

Q. You have marked a school building with the letter S, didn't you, that is here (indicating)?

A. Yes, sir.

Q. It is opposite to what street that comes out on Rahway avenue, what street is that? *A.* Charles street.

Q. Your photograph shows you are looking almost directly at that school building, aren't you? *A.* Well, there is a distance there of half a mile. You are not looking right directly at the school house.

Q. According to the place that you have marked with T 1, you are looking up the side of the schoolhouse, you are not looking directly up the worm, are you?

A. Well, the head of the worm is to the left.

Q. Do you think you have got the position correctly shown? *A.* That worm comes to the left; in a straight line from the point where the picture was taken, to the schoolhouse, would show that line here.

Q. It says looking up directly into the worm as it enters the creek, doesn't it? *A.* No. Taken on this side 10
of the creek.

Q. Which side? *A.* On the southerly side of the creek, the picture was taken.

Q. Is it not taken more to the left than it should be?

A. Well, I couldn't give the exact spot.

Q. You don't know where it was taken, do you?

A. Right close to where the worm comes into the creek.

Q. And looking directly into the mouth of the worm, isn't it? *A.* Well, a little off one side. 20

Q. Looking directly into the mouth of the worm, and also looking directly, or almost directly at the schoolhouse? *A.* The picture was taken on the southerly side of the creek, looking up towards the head of the worm, that is where the picture was taken from.

Q. The head of the worm, as you show it, is to the left, and shows where the man was standing, does it?

A. Yes, sir.

Q. How wide is the worm? *A.* About eight feet at the mouth. 30

Q. And how wide is it as you go on up from that point? *A.* Well, it comes in to about two or three feet in width at the head, at the end of it.

Q. Tapers down? *A.* Yes, sir.

By the Court.

Q. Is that what is commonly called a meadow ditch now? *A.* No, sir.

Q. I don't mean an artificial ditch, but a natural one?

A. Well, it is a little too large to be called a meadow

ditch. A ditch is usually a straight ditch, not over a foot or two feet in width at the most.

By Mr. Strong.

Q. Suppose that the true width of Rahway avenue is forty-four feet, instead of sixty feet, as you have tried to make it, what is there about your survey that would not harmonize? *A.* Why, you would come sixteen feet away from the worm, you would not come anywhere near it at all.

10 *Q.* Tell me what you mean by that? *A.* Where the worm comes now, if you used a forty-four foot line you would come away up here somewheres, away from the worm (indicating).

Q. You would come away from the worm?

A. Yes, sir.

Q. So that it all turns on the accuracy of the measurement one hundred years ago, is that right?

A. This point here (indicating).

20 *Q.* Yes. *A.* Yes, sir.

Q. And upon the true location of the northerly side of the worm, that is what it depends on? *A.* The northerly side of this one point here. That is one of the reasons.

Q. What other reasons? *A.* The location of these trees.

Q. Well, the trees are about eight feet from the line as you make it, as I understand it? *A.* Yes, sir.

Q. Trees eighty years old? *A.* Eighty years old.

30 *Q.* Well, how do they prove anything? What do they show? *A.* Well, there would be a walk inside of the trees.

Q. How far back does your knowledge of those things go? *A.* Ten years.

Q. This map of the Colwell property goes back about twenty years doesn't it? *A.* Yes, sir.

By the Court.

Q. When you say a walk inside of the trees, do you mean between the trees and the house line? *A.* Yes, sir; the property line.

By Mr. Strong.

Q. In 1909 the borough graded the street out to the width of sixty feet, did they? A. I couldn't say whether it was 1909 they graded the street; no, sir.

Q. Well, you know when it was. Tell me when it was? A. I couldn't say about the date. I am talking about the sidewalk. I remember when the sidewalks were graded.

Q. When were the sidewalks graded? A. 1909.

Q. In doing that the two lots belonging to White 10 were cut down, were they not, a depth of some two or three feet? A. Couple of feet; yes, sir.

Q. And at the same time the sidewalk on both sides extending up to the Shapiro lot was also cut down a couple of feet, wasn't it? A. No, sir.

Q. It wasn't cut down? A. Not a couple of feet; no, sir.

Mr. Silzer: You are speaking now of the grade, are you?

Mr. Strong: I am talking about the grade of the sidewalk. 20

A. This is an extra high point right here where Mr. White's lots were. Down here there was nothing cut down hardly (indicating).

Q. In front of Shapiro's? A. Maybe just the question of a few inches to necessitate one more step.

Q. What was the height from the floor of Shapiro's building down to the sidewalk grade? A. Before the cement walk was laid? 30

Q. Yes. A. It couldn't have been over eighteen inches at the most. I couldn't give you the exact distance.

Q. You found one of those big trees, didn't you, right in front of Shapiro's building? A. No, sir; not right in front of it.

Q. Well, you saw it there yesterday, didn't you?

A. No, sir.

Q. This morning? Q. No, sir.

Q. Didn't you see the stump of a tree there?

A. The stump of a tree?

Q. Yes. No, I didn't see the stump of a tree.

Q. Do you mean you never saw the tree, or a stump of the tree in front of Shapiro's lot? *A.* I saw a big post he has got there in front of his step.

Q. A post? *A.* A post or stump to hold the lower step up. I never examined it.

10 *Q.* Weren't you there with Shapiro yesterday, and didn't you see—didn't he point out to you a tree, and the stump of a tree there? *A.* No, sir.

Q. This morning? *A.* Point out the stump of a tree to me?

Q. Yes. *A.* No, sir.

Q. Are you quibbling? Do you mean that he didn't call your attention to either a tree or a stump in front of his property? *A.* In front of his property the stump he is talking about is underneath the steps, which he testified yesterday. The stoop is over the
20 stump.

Q. Then you did see it, didn't you?

A. I didn't see any stump.

Q. I want to find out whether you mean to deny that Mr. Shapiro pointed out to you this morning a stump of a tree immediately in front of his building?

Q. No, sir; he did not point out a stump immediately in front of his property to me this morning.

Q. Did he point out a stump to you anywhere?

A. No, sir.

30 *Q.* What did he point out to you? *A.* He didn't point anything to me.

Q. Well, did you have a talk with Mr. Shapiro this morning? *A.* About a stump?

Q. Yes. *A.* No, sir.

Q. About anything indicating a stump in connection with his property? *A.* The only thing I talked about was the width of the steps, the width of the approach he was talking about.

Q. And you didn't see any stump? *A.* No stump.

Q. Not covered up?

A. If it was covered up I didn't see it.

Q. Then you didn't see it? *A.* I couldn't see it.

Q. Who was there with you? *A.* There was nobody went over with me. I went across the street.

Q. Didn't you go over to his property and see what he pointed out to you? *A.* I went over to measure the width of the steps.

Q. And didn't you measure a distance of two feet

Q. Didn't you go over to his property and see what he 10
stump? *A.* I did not; no, sir.

Q. Did you make any measurements at all? *A.* I measured the width of the steps.

Q. And that was all? *A.* And that was all.

Q. And you didn't see any stump?

A. I saw no stump.

Q. Did you see a post then? *A.* A post? He has got a whole row of posts on the bottom step.

Q. How many of them? *A.* I don't know. I didn't 20
count them.

By the Court.

Q. How would a stump located there compare with the line of trees that you have mentioned, for position in the street? *A.* The stump immediately in front of his building?

Q. Yes, a foot or two in front of his building

A. There is a main part of the building, and then he has about four or five steps there. Do you mean outside of the steps or outside of the building? 30

Q. I mean to say, you heard his testimony yesterday, didn't you, that there was a stump under his steps, and about a foot or two from his building? *A.* Yes, sir.

Q. How would that compare with being in a line with the trees that you mentioned as being there comparatively recently? *A.* Well, it would be practically the same line, or very close to it. He said the stump was eighteen inches from the building.

By Mr. Strong.

Q. What is eighteen inches from the building?

A. What is eighteen inches from the building?

Q. Yes. You understand me. You said something was eighteen inches from the building, and now I want to know what it is was eighteen inches from the building?

A. What he testified and said the stump was eighteen inches from the building. That is what he testified to. I didn't see it. Instead of that he has got four feet outside of the building, the steps and approach.

Q. He put that there in order to get in his building, did he not? *A.* I suppose he did.

Q. Couldn't get in without it, could he? *A.* Never could get in without steps before this time.

Q. Do you mean to say that there were steps there before the borough lowered the grade? *A.* He had a step or two. I don't know how many he had. He has got four steps there now.

Q. How many steps will you undertake to say were there before? *A.* I don't believe we cut it down more than two steps at the most.

Mr. Watson: I offer these deeds of conveyances on Rahway avenue, of the John B. Crowell map.

The Court: One is as good as a dozen.

Mr. Silzer: Not quite, in this case.

Re-Direct Examination, by Mr. Silzer.

Q. Will you come over here and show where these properties are that Mr. Watson is giving the deed for?

Mr. Watson: Deed dated June 30th, 1905.

Mr. Strong: I wish to object to these deeds as irrelevant, and as not properly having anything to do with the case.

The Court: Point out on the map to me where they are, Senator?

Mr. Silzer: They are right along Rahway avenue, on the sixty foot line that we contend for, as laid out on this map, and as conveyed there, and

as built upon by some of them.

Mr. Strong: Not located upon any map of the Colwell tract.

Mr. Silzer: Immediately adjoining the boundary which starts from the worm and runs to the southerly side of this avenue.

The Court: I will admit them. I think they are admissible, irrespective of the theory of their legal effect.

Mr. Strong: Prays exception.

10

Exception allowed—sealed accordingly.

Judge.

The Court: As showing what the street actually was. They will be admitted and an exception allowed.

Mr. Watson: Deed dated June 30th, 1905, John B. Crowell and wife to Dewitt Winchell; recorded Middlesex County clerk's office, book 369, page 454. Conveys lots numbers 10 and 11, John B. Crowell map.

20

Mr. Strong: I wish to object to that because the conveyances have been too recent to be of any importance in this controversy.

The Court: Objection overruled.

Mr. Strong: Prays exception.

Exception allowed—sealed accordingly.

Judge.

30

Q. Will you point that out, and mark W for Winchell? A. (Witness indicates).

Mr. Watson: Another deed, same parties, August 7th, 1905; recorded book 373, page 208. Conveys the same lot numbers on the same map. Refers to the map as a filed map. Book 416, page 318.

Mr. Strong: I wish to have the same objection and exception.

Exception allowed—sealed accordingly.

Judge.

The Court: Is this a continuation of the same title?

10

Mr. Watson: These are on the same—

The Court: What date do they bring it down to?

Mr. Watson: Those of 1905. This is 1908.

The Court: You are coming to a point where you ought not to introduce.

Mr. Silzer: They are all sold according to this map of 1903.

Mr. Strong: I wish an exception for each of these.

20

The Court: Yes. I do not want to go beyond the date of this suit, and I do not think you ought to go beyond the date when this change was in operation.

Mr. Silzer: It wasn't done until 1909. This map is dated 1903, and filed in 1905, and these deeds are all sold according to this map. That is the purpose I am offering to show, that the owner, John B. Crowell, these deeds are all from John B. Crowell—

30

The Court: I have already said that the use of the map is an adoption of it, just as effectually as a dozen would be. The acts of the owners, after this controversy, cannot be pertinent in any aspect.

Mr. Silzer: It shows an adoption of this map.

The Court: I say one shows it as well as a number, and I do not want to have the testimony used for an illegal purpose.

Mr. Silzer: Look for a Fitch deed there.

Mr. Strong: There is an offer pending, isn't there?

Mr. Watson: This deed is Crowell to Winchell, 1908.

Mr. Strong: Objected to.

The Court: When was this action brought?

Mr. Silzer: The improvement was 1908.

Mr. Strong: The date of this action is one thing. The date of these proceedings to change the line is another. I don't know when they set out to do this. It ran over a period of some years that they were discussing it. 10

The Court: Senator, if you want to get the map, I will admit the map on the single deed.

Mr. Strong: Prays exception.

Exception allowed—sealed accordingly.

Judge.

Mr. Silzer: It says map of property belonging to John B. Crowell, M. D., situated in Carteret, Woodbridge Township, Middlesex County, New Jersey, being same tract surveyed for the Fidelity Trust Company of Newark, New Jersey, July, 1903. Franklin Marsh, surveyor, Rahway, New Jersey. Filed Middlesex County clerk's office, March 27th, 1905. John H. Conger, Clerk. Number 394. 20

(Map entered in evidence and marked Exhibit D 9).

Q. Now, Mr. Simons, will you show the jury where this tract of the Crowell property is on the large map? 30

A. It abuts on this line here; Colwell runs over this way here (indicating), the portion right in there.

Q. It is bounded on the east by this line that runs from the worm to the southerly side of Rahway avenue?

A. Yes, sir.

Q. Along Rahway avenue to Lieck street or avenue?

Q. That has been put in there subsequently. Right down along the edge of Lieck avenue.

Q. And then down to the creek? A. Yes, sir.

Q. That is the creek down here (indicating)?

Q. Yes, sir.

Q. On the Crowell map made by Mr. Marsh do you find the words "head of the worm"?

A. Head of the worm; yes, sir.

10 Q. And from the head of the worm to the southerly side of Rahway avenue, as laid out by Mr. Marsh on that map, which is the westerly boundary of the Crowell property, what is the distance? Can you figure that out? A. From the head of the worm as he has laid it out?

Q. Yes to the southerly side? A. Is 1089 feet.

Q. And these lots that are on there, do they go to the southerly side of Rahway avenue, which makes a sixty foot road? A. Yes, sir.

Q. In other words, the 1089 feet from this worm to the southerly side of Rahway avenue, as laid out by Mr. Marsh, makes what width of the street?

20

Mr. Strong: I object.

The Court: Objection sustained.

Q. Taking the southerly boundary as laid out on this Crowell map, which gives the same distance for the easterly boundary as it does the westerly boundary of the Colwell, brings the southerly side of Rahway how far from the northerly side?

A. Approximately sixty foot.

30 *Re-Cross Examination, by Mr. Strong.*

Q. What do you mean by approximately?

A. Not over a foot off.

Q. This map here, the Crowell map, in other words, shows Sharot avenue, and Randolph avenue, and Noe avenue? A. And Fitch avenue.

Q. And Fitch avenue, as continuations of the streets on the Colwell map, does it?

A. This map here? That map there; no, sir.

Q. Haven't you got them so laid down on your map here? A. This property has all been re-laid; it has

been re-mapped from Fitch street down.

Q. When was it re-mapped? *A.* Couple of years ago.

Q. Since you undertook to change the line of Rahway avenue? *A.* That new map was made about between two and three years ago.

Q. Who did that?

A. King Marsac Company.

Q. The streets as shown on this map are not shown as the continuation of the streets shown on the Crowell map, are they? *A.* They weren't laid out as a continuation of the Crowell map. 10

Q. Do the streets on the Crowell map constitute a continuation of the streets on the Colwell map?

A. No, sir.

Q. They do not? *A.* They do not. Colwell laid his lots out 28 x 100, and the Crowell lots were laid out 30 x 120.

Q. 30 x 120, Crowell lots?

A. 120; yes, sir. That made the blocks 240, and on the Colwell tract 200. 20

The Court: Is this the same map that Mr. Marsh was cross examined upon yesterday?

Mr. Silzer: Yes, sir.

Q. Have you located any of the lots on this Crowell map? *A.* On Rahway avenue?

Q. Yes. *A.* Yes, sir.

Q. What lots have you located on this Crowell map on Rahway avenue? *A.* This house right here (indicating); I couldn't give the exact numbers because I haven't got my notes with me, but I have located two lots on that tract. 30

Q. What depth were those lots? *A.* 120 feet.

Q. 120 feet? *A.* Yes, sir.

Q. What was the depth that you allowed for those lots in locating them? *A.* That I allowed?

Q. Yes. How deep did you make those lots in locating them? *A.* Why, they run back to the rear line of these lots that fronted on Fitch street.

Q. How much depth did that give for the lots?

A. It gave approximately 120, maybe a foot off, the same as this distance from the worm.

Q. Was there anything to locate Fitch avenue on the Crowell map? *A.* The distance from the head of the worm up; yes, sir.

Q. I mean to say, was there anything on the ground here, anything visible on the ground to locate?

A. No, sir; nothing but open fields on the Crowell
10 tract.

Q. And so to locate the lots you simply measured back one hundred and twenty feet? *A.* No. I had to work from the head of the worm every time.

Q. Where is Maple street? *A.* That is not on the Crowell tract. That is the adjoining tract.

Q. What is this (indicating)?

A. This is Noe street here.

Q. You have got it marked Maple avenue.

A. Maple avenue runs up to here, and Noe street up
20 to this point here at the bend (indicating).

Q. You haven't got the Crowell map delineated on that map at all, have you, on your map?

A. Just the Rahway avenue line.

Q. But you haven't got any of the streets delineated on the map at all, have you? *A.* It has been re-laid out.

Q. I say you haven't got anything delineated on your map, except, as you say, the street line?

A. Street line of Rahway avenue.

30 *Q.* How does this Crowell map indicate the street line? *A.* By the distance of 1089 feet from the head of the worm up, marked "head of the worm" on that map there. That map is on a different scale.

Q. What distance is given on this Crowell map from the head of the worm down to the creek?

A. No actual distance marked there.

Q. Scale it? *A.* Two hundred and sixty feet.

Q. Do you mean that to be exact?

A. Exact as I can get it with the scale.

Q. What is the scale of the map?

A. One inch equals eighty feet.

Q. What is the distance on your map from the head of the worm, as you call it, to the place where the worm enters the creek? A. About the same, a little over two hundred and sixty.

Q. How much over two hundred and sixty?

A. About a foot.

Q. What is the scale of your map?

A. One inch equals one hundred feet.

10

Q. And the scale of the Crowell map?

A. One inch equals eighty feet.

Q. Show on this map where the northerly line of Fitch avenue would come on your map, the northerly line of Fitch avenue on the Crowell map?

A. (Witness indicates).

Q. That is the northerly line of Fitch avenue?

A. Yes, sir.

Q. What is the width of Fitch avenue?

A. Sixty foot on that map.

20

Q. Lay it off on your map? A. (Witness indicates).

Q. Now the next street is how far from that, Randolph avenue? A. No, Sharot. (Witness indicates).

Q. And the width of that avenue is how much?

A. Sixty feet.

Q. Have you scaled off sixty feet there?

A. Yes, sir.

Q. Get it accurately, if you can, is that right?

A. Yes, sir.

Q. Now then the next avenue beyond that, what is that, Randolph? A. Randolph.

30

Q. And the width of Randolph avenue is sixty feet?

A. Sixty.

Q. Have you laid off sixty feet. A. Yes, sir.

Q. What is the next block from that to the next avenue? A. I don't know whether there is another avenue on there or not.

Q. There is Noe avenue, isn't it? That is one hundred and twenty feet, is it?

A. Two hundred and forty feet. That shows on

the Crowell map the same distance, that is, the northerly line of Crowell avenue ought to be below the head of the worm.

Q. Just lay off Noe avenue, lay it off parallel with the others. You have got it twisted there. I want you to be accurate there.

A. I can't do it accurate. It would come up here like this (indicating).

Q. Is that at right angles with Lieck avenue?

10 A. Don't run right angles.

Q. Doesn't it, on the Crowell map?

A. Lieck avenue is not on that map.

Q. Well, Madison avenue then. Isn't Noe avenue shown as parallel with Rahway avenue? A. Yes, sir.

Q. Well, lay it off as parallel with Rahway avenue?

A. It is.

Q. You have done that, have you? A. I have.

Q. And the line of that will come below the worm, would it? A. Just as shown on that map.

20

Mr. Strong: I move to strike that out.

The Court: Answer the question. Strike it out.

Q. I want you to lay off accurately Noe avenue and show where it comes?

The Court: He says he has done that now. Ask him the next question.

Mr. Strong: He has not done it accurately.

The Court: He said he has.

30 A. These are straight lines here.

Q. Do you call those streets? A. They are parallel.

Q. You have two lines shown there. Rub out the one that is not right. A. I had to draw it in there.

Q. I want you to draw it correctly.

A. (Witness illustrates).

Q. How far is the southerly line of Noe avenue from the bend in the creek, in Noe's Creek, at the nearest point? You have located all that, haven't you?

A. Approximately twenty-five feet.

Q. Take the Crowell map and tell us how far the

southerly line of Noe avenue is from the edge of Noe's Creek? *A.* About thirty feet.

Q. How near thirty feet is it?

A. Well, those marks there. At what point?

Q. At the nearest point. This scale is what, one inch equals eighty feet, isn't it? *A.* Yes.

Q. Now take a look at that. Isn't that nearly forty feet? *A.* About thirty-eight or thirty-nine feet, but I would have to lay this map down flat in order to get it out accurate.

10

Q. Lay it down flat and get it out accurate?

The Court: We cannot take the time for that.

Q. Have you now accurately laid off the different streets as shown on the Crowell map? *A.* Yes, sir.

Q. That is, you have laid them off on your map, have you? *A.* Laid them off on my map.

Q. What is the distance from the head of the worm on your map, to the northerly line of Noe avenue as you have delineated Noe avenue on your map?

20

A. About fifty-five feet, or fifty-four feet.

Q. Try it again. Fifty how many? *A.* Fifty-four or five. There is a difference of a foot in the width of the line there.

Q. What is the distance from the head of the worm to the northerly line of Noe avenue as shown on the Crowell map? *A.* About sixty-one feet.

Q. What is the distance on your map from the southerly line of Noe avenue to the northerly line of Noe's Creek? *A.* That is about thirty-eight feet.

30

Q. What is the distance on the Crowell map?

A. Forty, or possibly forty-one.

Q. A little more than that, isn't it? *A.* Forty-one.

Q. What is the width of Rahway avenue as shown on this Crowell map?

Mr. Silzer: I understand Mr. Marsh to say that he didn't lay that out, the other side of the street, yesterday.

Mr. Strong: It don't make any difference, you

put it in evidence, and I want to know what it is.

Mr. Silzer: Mr. Marsh laid it out yesterday, but he didn't lay it off—

Mr. Strong: You cannot put it in and then squeal on it.

Mr. Silzer: No, we will not squeal on it.

A. Do you mean the distance designated on the map?

10 *Q.* On the Crowell map, what is the width of Rahway avenue in front of the Colwell property?

A. Approximately sixty foot.

Q. Approximately? *A.* Yes, sir.

Q. Let us hear how near it is to it? *A.* Well, it is not designated on there in figures. I mean by actual surveys.

Q. I am talking about the map. Scale it on the map.

Mr. Silzer: What part of it?

Mr. Strong: In front of the Colwell property.

20

A. Don't show in front of the Colwell property.

Q. Isn't there a line shown for the southerly line of Rahway avenue in front of the Colwell property, the property of Colwell? *A.* There is an offset there.

Q. Give me the distance there? *A.* In front of the Colwell property it shows about forty-eight feet.

Q. There is an offset there, isn't there? *A.* Yes, sir. It is wider in front of the Colwell tract.

Re-Direct Examination, by Mr. Silzer.

30 *Q.* Mr. Simons, Mr. Strong has asked you a number of measurements on the Crowell property, and he has asked you to put streets on there. Are those streets that you put in there according to the Crowell map that he had here? *A.* Yes, sir; according to that map.

Q. Has there been any change made in that?

A. Yes, sir; those streets have all been done away with.

Q. And who made the map doing away with the streets? *A.* I did.

Q. For whom? *A.* The King Marsac Company.

Q. The present owners of it? *A.* Yes, sir.

Q. How do the streets now on that property as re-mapped conform with the map that you have got?

Mr. Strong: Objected to.

The Court: Objection sustained. That is a recent map, isn't it?

Mr. Silzer: Yes, but Mr. Strong attempts to—he has produced this map which shows the actual location upon the ground; in other words, I have shown Fitch street running through here on a straight line. Now Mr. Strong brings this old map, which has been revised, and streets re-laid, and he gets Mr. Simons to put the streets out on this map, to indicate that he is throwing everything all out of joint, when the fact is that the streets have been re-laid; irrespective of the map I can ask him, did you relay these streets for the present owner, and who is the present owner.

10

20

A. Shapiro owns that property at the present time. Just recently—

Q. Who did you re-lay the streets for?

A. King Marsac Company.

Q. And the streets as re-laid, are they or not as shown upon your map, as you drew it originally?

Mr. Strong: I object.

Q. Actually on the ground?

Mr. Strong: I object.

30

The Court: Objection sustained.

Q. When was that done, Mr. Simons?

A. I re-laid that property three years ago.

Q. After this controversy arose? *A.* Yes, sir.

Mr. Silzer: The point I make, Mr. Strong cannot mislead the jury.

Mr. Strong: No effort to mislead the jury at all. Counsel on the other side put this map in evi-

dence, and I asked the witness to show how this map conforms to the map which he has drawn. We have nothing to do with later maps at all.

Mr. Silzer: On the other hand I have a right to ask him—you asked him how it conforms to his map, and therefore I have a right to find out how he came to make his streets to run parallel, and not according to that. Now he says there has been a new map made, which I made myself.

10

The Court: I think it is incompetent. I will overrule the offer.

Mr. Silzer: Isn't there some way in which I can show that this misleading testimony is not—

Mr. Strong: It is not misleading.

The Court: I don't understand that it is misleading. What I do understand is this: That you have produced a map which has the borough's contention as to the true location of this highway.

Mr. Silzer: Yes, sir.

20

The Court: You have also produced another map purporting to come from one of the former owners of the adjoining property.

Mr. Silzer: In which the lots were one hundred and twenty feet deep, and not one hundred.

The Court: No matter what they were, but the map was here to speak for itself. Then the witness was asked to determine how the bearings of that map bore upon the width of the street, and his answer was sixty feet.

30

Mr. Silzer: Yes, sir.

The Court: Mr. Strong has simply cross examined upon the map.

Mr. Silzer: No, he has gone further. He has taken that map and he has shown where the streets run on that map, and the lots being one hundred and twenty feet instead of one hundred feet, it brings the streets all lower. Now the owners themselves, seeing that the lots one hundred and twenty feet will not conform with the other streets which are

one hundred feet, have their property re-surveyed by this man actually upon the ground.

The Court: I think it is all since this action. I think it is incompetent. I will overrule the offer.

Q. Mr. Simons, according to the Crowell map there what was the depth of the lots?

A. One hundred and twenty feet.

Q. What are the depth of the lots in the Colwell property? A. One hundred foot.

Q. Would that, or not, account for the difference in the location of the streets? 10

Mr. Strong: I object.

Q. As you have delineated them on the map for Mr. Strong? A. Yes, sir.

Q. How far does the Rapp property stand out in the street, or what part of the property is out?

A. There is a bay window out three feet, or possibly four, a bay window.

Q. That has not been disturbed, has it, up to the present time? A. No, sir. 20

Re-Cross Examination, by Mr. Strong.

Q. Now, Mr. Simons, suppose you should take Rahway avenue upon your map to be of the width that it is shown on the Crowell map, in front of the Colwell property, what did you say that was, forty-eight feet?

A. It scaled forty-eight feet there.

Q. That forty-eight feet, making Rahway avenue forty-eight feet wide, would bring these streets twelve feet nearer to Rahway avnue than you have shown them on your map, wouldn't it? A. Twelve feet? 30

Q. Yes, the distance between forty-eight feet and sixty feet? A. Twelve feet; yes, sir..

Q. So that if you took the width of Rahway avenue as it is given on the Crowell map—

Mr. Silzer: It is not given.

Q. By scale—

Mr. Silzer: Mr. Marsh has testified that he didn't do it by scale.

Q. The map scales forty-eight feet, doesn't it, you have said so? A. In front of the Colwell tract.

Q. And if you take Rahway avenue according to the width of forty-eight feet that is given on the Crowell map, all these streets would come twelve feet further up, wouldn't they? A. Yes, sir.

10 *Re-Direct Examination, by Mr. Silzer.*

Q. Now will you take this map of Mr. Marsh's which he testified yesterday he hadn't scaled, and find out how much it scales on one end, and how much on the other, of Rahway avenue?

A. Do you want me to scale it?

Q. Yes. Take the west side of it first.

A. The west end he has got scaling here forty-five.

Q. Go on down towards the east end, what does it scale there? A. He has got it scaling fifty-two.

20 Q. Go on. How far are those points apart, from forty-five to fifty two? A. About five hundred feet.

Q. Go no. Where are you taking now?

A. In front of the Colwell.

Q. How far have you got it there? A. Forty-eight.

Q. Don't seem to be anything, does it?

Mr. Strong: I object.

Mr. Silzer: That is all.

30

Edward J. Heil, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

Direct Examination, by Mr. Watson.

Q. Mr. Heil, where do you reside?

A. Borough of Roosevelt.

Q. How long have you resided there?

A. Since '88. Twenty-five years.

Q. Do you own land on Rahway avenue?

A. Yes, sir.

Q. How near the Colwell tract?

A. On the Colwell tract.

Q. How long ago did you buy your land on the Colwell tract? A. About fourteen years ago.

Q. Did you have it surveyed? A. Yes, sir.

Q. By whom? A. Franklin Marsh.

Q. The gentleman who testified in this case?

A. Yes, sir.

10

Q. He surveyed these lots on the Colwell tract?

A. Yes, sir.

Q. How many lots? A. Four. These two on Rahway avenue, and two in the rear.

Q. Two on Rahway avenue. What width did he give you for Rahway avenue? A. Sixty feet.

By Mr. Strong.

Q. Did he give you a written survey? A. No.

By Mr. Watson.

20

Q. What did he do?

A. Why, he put me back on the southerly line.

Q. Did he stake lots out for you? A. Yes.

Q. Where did he put the stakes? A. On the sixty foot line of Rahway avenue designated.

Q. As he put these stakes for you, what width did he give Rahway avenue? A. Sixty feet.

Q. What did he say to you in reference to it?

A. He said that there was a question about the width of the road, the southerly line, a question of the southerly line of Rahway avenue, and that in order that there would not be any trouble he put me back on the sixty foot line.

30

Q. Trouble for whom? A. Well, for the property owner, for me.

Cross Examination, by Mr. Strong.

Q. He wanted that you should be on the safe side in case there might be any question, is that right?

A. Yes, sir.

Q. So he advised you to build at least sixty feet back, so that there would not be any trouble in any case? *A.* Yes, sir.

Q. At that time were the borough authorities talking about widening the road, the avenue? *A.* No, sir.

10 *Q.* When did they begin to talk about widening Rahway avenue? *A.* About 1907.

Q. Wasn't it earlier than that? *A.* It may have been. That is, in Wodbridge township. I am talking about the borough.

Q. The borough was incorporated in 1907, wasn't it?

A. 1906.

Q. Before it became a borough the township was agitating the width of that street, weren't they?

A. Yes, sir.

20 *Q.* For two or three years, weren't they, before the borough was incorporated? *A.* No, I don't know just how many; it may be one or two years; I couldn't say exactly. I know there was agitation.

Q. Are you an officer of the borough?

A. I am president of the board of education.

Q. And you have been a member of the township committee, or the borough council, I mean?

A. No, sir.

30 *Q.* Whereabouts are your lots on the Crowell tract?

A. Colwell tract.

Q. I mean the Colwell tract.

A. Just east of the Central Railroad depot, adjoining the Central Railroad property.

Q. And Shapiro's is west of the Central Railroad, isn't it? *A.* Yes.

Q. You have two lots, did you say? *A.* Four lots.

Q. I mean, they don't all front on the avenue, do they? *A.* No. Two on the avenue, two on Rahway avenue, and two in the rear.

Q. Two on Fitch street? A. Two on Fitch street.

Q. Have you got your deed here? A. No, sir.

Q. What numbers are they on the map, do you know?

A. I can't recall just now. I didn't look them up.

Q. Do you live on Rahway avenue? A. Yes, sir.

Q. The lots in the rear, on Fitch avenue, they front on Fitch avenue and run back to the other two lots, do they? A. Yes, sir.

Q. What depth have you got between the southerly line of Rahway avenue and the northerly line of Fitch avenue? A. One hundred and eighty-four feet. 10

Q. According to the Colwell map there should be two hundred feet, shouldn't there? A. Yes, sir.

Q. So that by the widening of Rahway avenue you lose sixteen feet? A. Yes, sir.

Re-Direct Examination, by Mr. Watson.

Q. And Mr. Marsh gave you this one hundred and eighty-four feet depth, did he not? A. Yes, sir.

Q. Do you know where the Central Railroad building is? A. Yes, sir. 20

Q. At the time of the making of this improvement, widening of the street, was that station moved back, or cut off, or in any way damaged or repaired?

A. It was not disturbed.

Re-Cross Examination, by Mr. Strong.

Q. Do you mean to say that the station of the Central Railroad was not moved at all? A. Absolutely wasn't touched.

Q. It is now just where it was before the change in the line, is it? A. Yes, sir. 30

Robert W. Helm, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

Direct Examination, by Mr. Silzer.

Q. Mr. Helm, you are the deputy county clerk?

A. I am.

Q. How long have you been in the county clerk's office? A. Since 1867.

10 Q. And as such have you had charge of the maps and books and etc. of the office? A. I have.

Q. I ask you to produce map number 93. How long have you known that map to be in the possession of the county clerk? A. I can't give any dates.

Q. Been there ever since you were there? A. Well, I can say thirty years. I can fix that.

Q. And from the number, Mr. Helm, what have you to say as to whether that is an ancient map or not?

A. This is a copy. This is not the original.

20 Q. And the original, what has become of the original?

A. It is in the office. It is very much dilapidated.

Q. This was made as a reproduction of the original for the purpose of preserving your files? A. It was.

Q. Under an act of the Legislature? A. Yes, sir.

Q. Is this, or not, an old map? A. It is an old map.

Mr. Silzer: We offer it in evidence.

Mr. Strong: I object. I don't see that it has anything to do with the present case.

30 The Court: Let me see what it is. What is the relevancy of it, Senator?

Mr. Silzer: The relevancy is that Rahway avenue is shown on that map, a map dated 1828, and Rahway avenue is shown to be of a uniform width throughout its whole length, from the Ferry up to the Blazing Star road, passing this very property. No kinks or shortenings in it of any kind.

The Court: Is this the bend here? Which is supposed to be the bend in front of the Crowell property?

Mr. Watson: There is none. This is the Blazing Star road.

The Court: Yes.

Mr. Watson: Colwell is about in here.

The Court: Then this is the bend.

Mr. Silzer: Yes, that is it. Here is the Blazing Star road, and here is the road comes down past our property.

The Court: There is no objection that this is not the original, Mr. Strong? 10

Mr. Strong: Oh, no; if the original is admissible I take this in place of the original. The original, as I understand it, is dilapidated, and ought not to be used. You see that is another map made for the purposes of speculation, laying off a certain tract of land there. It is not shown to have been made out by any owner of the property now in controversy; it does not appear who did it; and none of the conveyances in the Colwell tract refer in any way to that map. Moreover, you see the width of the avenue as given there is such a small scale, that nothing can be gathered from the width of it by scaling. 20

The Court: I have very much doubt about the admissibility of this map, unless we have something more about its authorship.

Mr. Silzer: This is an ancient map, and been in the county clerk's office for apparently seventy or eighty years; an ancient map.

The Court: Does it follow that every map which is put in a record office, irrespective of its origin and former custody, comes into evidence as showing the delineation of streets and roads? 30

Mr. Silzer: I understand ancient maps, which have been put upon the records for many, many years, and upon which it is apparently laid out in lots, and lots sold upon, are admissible.

The Court: There is nothing of that kind here.

Mr. Silzer: I have seen old maps admitted in

10 evidence, that were fifty and sixty years of age without anything being sold, or any further proof than they were old maps. For instance, in the litigation between the Borough of Metuchen and the Freeholders of South Amboy v. Pennsylvania Railroad Company, on the question as to how wide the street was over a certain crossing, we introduced any number of ancient maps which showed the location of the road, and that there was a road at a certain point at a certain time. The only purpose we offered this is to show that in 1828, when this ancient map was filed, that the road was uniform, that is all we offer it for. The man who made that map and filed it in the county clerk's office—that there was no kink, no shrinking in at one place of forty-four feet, and widening out at two other places to sixty feet. Simply for the purpose of showing that at the time the man made this map, he found apparently upon the ground, this ancient

20 map, a uniform highway throughout the whole length; and that is the theory, I understand, all ancient maps are offered for. That is to say, the people who drew them at that time found apparently upon the ground, and put upon the map, a certain condition, which, by reason of its age, makes it evidential.

The Court: Is it filed?

A. There is no mark on there.

30 Q. How long do you know it has been there, over thirty years, you said? A. I would say thirty years.

Q. Judging from its number, can you tell from number 93 how early that map could have been filed?

A. No.

Q. Maps number 95, or 96, or 100, can you tell about what time they were filed? A. No, not from the number.

Q. Judging from the appearance of the original map at the time you came into the county clerk's office, what have you to say as to whether the original had been

there for very long? *A.* It certainly has every appearance of having been there long; its color.

Q. And what else? *A.* Being broken by handling.

The Court: I will rule on it later on. I will not pass upon it at this present time.

Cross Examination, by Mr. Strong.

Q. The original map is in the county clerk's office?

A. Yes, sir.

Q. Have you ever had occasion to compare this copy with the original in detail, or scale it? *A.* I think once on some trial we had here. You were on one side. 10

Mr. Silzer: You offered it in evidence once.

Mr. Strong: I don't know anything about that. I don't think so. I said a while ago that this map might stand for the original. I don't want the original to be handled here, but if the map is to be received I want to have it here so that the surveyors may compare with the original to see if it is in any way different. 20

The Court: Cannot they do it in the office, without bringing it here?

Mr. Strong: Perhaps so.

Re-Direct Examination, by Mr. Silzer.

Q. Do you know who made this copy? *A.* I think Mr. Tice.

Q. How long ago, Mr. Helm? *A.* Oh, I don't know.

Q. About 1898, wasn't it? *A.* Ten or twelve years ago. 30

Q. Or '88? *A.* It is a good while ago.

Q. About how many years ago, as near as you can remember? *A.* Well, I should say offhand twelve or fifteen years.

Nicholas Rizsak, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

Direct Examination, by Mr. Watson.

Q. Where do you live, Mr. Rizsak? A. Borough of Roosevelt.

Q. How long have lived there? A. Twenty-two years.

10 Q. In business there? A. Steamship Agent.

Q. What is your business? A. Steamship Agent

Q. Do you own land on Rahway avenue on the Colwell tract? A. Yes, sir.

Q. How many lots? A. Four.

Q. Near Mr. Shapir's place? A. Alongside of Shapiro's.

Q. Directly next door to Shapiro? A. But not there where I occupy myself. It is more important where I occupy myself.

20 Q. Where do you occupy yourself? A. 110 Rahway avenue, alongside Rapp's.

Q. How far is that from Shapiro's? A. 250.

Q. How long have you owned that land? A. Where I occupy, 1910, ten years.

Q. Did Mr. Marsh stake out that lot for you?

A. Yes, sir; in 1903.

Q. 1903? A. Yes.

Q. Where did he put the stakes? A. On a sixty feet line.

30 Q. How deep were your lots on Rahway avenue?

A. At present?

Q. How deep were they when he staked them out?

A. One hundred.

Q. How deep are they now? A. Eighty-four.

Q. Where did he put the front stakes? A. On the sixty feet line.

Q. Why did he tell you to go back there? What did he say? A. He told me shall I put it on the sixty feet line, because after that street be widened, even if not in two or three, five, but might be take ten years, and

street must be widened. That is what he told me.

Q. He said the street must be widened? *A.* Must be wider.

Q. Did he say anything about the true width of the street?

Mr. Strong: I object.

A. Yes, sir; he told me that street be wider—that street be must sixty feet, and I repeated next day, I asked him again, and he told me same way. I give it to you line sixty feet, and you put your building where I told you. I hold receipt in my safe yet. **10**

Cross Examination, by Mr. Strong.

Q. He staked out the lots one hundred feet deep, you say? *A.* I only bought the lots as one hundred feet, but I soon started to build, and I called surveyor to stake out.

Q. He gave you a depth of one hundred feet for your lots? *A.* He did not. **20**

Q. And he told you that you had better locate your building on a width— *A.* On the sixty feet line.

Q. So that whenever the borough did widen the street? *A.* That I still be on the line.

Q. So that you would not have to disturb your building? *A.* Yes, sir.

Q. When did you say you bought, when was this?

A. 1903, ten years, when I build.

Q. That was before the borough was incorporated, wasn't it? *A.* Yes, sir. **30**

Q. You placed a building there, did you? Is that where you live? *A.* Yes, sir.

Q. Did you ever have any yard in front of your building? *A.* Why, I got.

Q. What? *A.* I got a yard.

Q. You had a yard in front of your building?

A. Yes. Well, I got next lot too.

Q. I am talking about—how much of a yard did you have in front? *A.* Oh, well, I got plenty. I got the rear lots too.

By the Court.

Q. How much front have you got in front of your house on the street for a yard? *A.* For a yard? I am on the line. Do you ask me about the rear yard?

Q. No, the front? *A.* I am on the sixty feet line. There is laid sidewalk.

By Mr. Strong.

Q. When you— *A.* Sixteen feet.

10 *Q.* Sixteen feet where? *A.* On the front now is sixteen feet that is a public road.

Q. When you located your property ten years ago, or whenever you bought, did you have a yard in front of your house? *A.* No, soon when I bought—

Q. Answer the question, whether you had a yard in front of your house, that is all I want to know?

A. No.

Q. You didn't have any fence in front of your house at all? *A.* I don't live there.

20 *Q.* You rented it, did you, to a tenant? *A.* I bought, and I build soon.

By the Court.

Q. When you built did you have a yard in front of your house, or not? *A.* No, I located on the sixty feet.

Q. You mean then, if you don't— *A.* Mr. Marsh, surveyor, gave me the line.

By Mr. Strong.

30 *Q.* You built your house on the line of sixty feet, did you? *A.* Yes, sir.

Q. And did you have any fence in front of your house at all? *A.* No.

Q. What? *A.* No.

Q. You didn't have any yard in front of your house? *A.* No.

Joseph W. Crane, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

Direct Examination, by Mr. Watson.

Q. You reside in Roosevelt, Mr. Crane? A. Yes, sir.

Q. How long have you lived there? A. Since 1895.

Q. You hold an official position there? A. Yes, sir.

Q. What is it? A. Supervisor. Street Commissioner.

Q. Street Commissioner of the Borough of Roosevelt? A. Yes, sir. 10

Q. Do you know the location of this line of Elm trees on the southerly side of Rahway avenue, to which reference has been made. A. Yes, sir.

Q. How long ago were they cut down? A. In May 1909.

Q. Who cut them down? A. Under my supervision I had the men cut them down.

Q. You bossed the job? A. Yes, sir.

Q. Where were the trees? A. Why, they were located in front of the Episcopal Church, and in the schoolhouse. 20

Q. Along the Colwell tract? A. Yes, sir.

Q. Where were they with reference to the present sidewalk? A. Well, this elm tree, there was about seven of them on that line, and some of them was on the northerly side of the sidewalk, and I think there was one or two of them on the southerly side of the present sidewalk, it is now.

Q. But the northerly most of the trees were on the outside of the cement sidewalk, as it now is? A. Yes, sir. 30

Q. How large were those trees? A. Some of them I guess, I think it was about five of them run about two, two and one-half feet through the bottom.

Q. All elms? A. Yes, sir—no, there was one pear tree.

By the Court.

Q. How long did you say you had known that con-

dition there? *A.* Oh, I have known it ever since I was a boy.

Q. How long is that? *A.* Well, I can go back about twenty years.

By Mr. Watson.

Q. Did you do any plowing and grading of the street inside of the line of those trees? *A.* On the inside of them trees?

10 *Q.* Yes, on the southerly? *A.* No, sir.

Q. Where the present sidewalk is? *A.* No.

Q. You did not? *A.* No, I just come up to the edge of them trees. Two of the butts come right into the gutter line. All I done, I graded the thirty-six foot roadway.

Q. What was there south of the trees? *A.* South of the trees?

Q. Yes. *A.* Sidewalk.

Q. How wide?

20 *By the Court.*

Q. Do you mean before this? *A.* Before I took them trees down; yes, sir.

By Mr. Watson.

Q. How wide? *A.* Well, I should judge between the trees and the southerly line there, about six or six feet and a half; there was a row of old stones, old pieces—butt of a post all along there, about six or six foot and a half, I won't say accurate, but maybe six foot and a half.

30 *By the Court.*

Q. That is the sidewalk was in width? *A.* Yes, sir; from the southerly side of them trees.

Q. What kind of a sidewalk was it? *A.* From time to time I put cinders on there.

By Mr. Watson.

Q. What was this line of butts that you speak of that you found? *A.* Why, they indicate to me that they were the posts of a fence line.

Q. You found post holes there? A. Yes, sir.

Q. And remains of old posts? A. Yes, sir; and stones around them.

Q. Was there a line of them? A. Yes, sir.

Q. How straight a line? A. Well, it is pretty straight.

Q. Approximately straight? A. Yes, sir.

Q. And that line was about six and one-half feet or so inside of the line of trees?

Mr. Strong: I object.

10

The Court: Objection sustained.

Q. How far inside of the line of trees was this line of old post holes and posts? A. From the inside of the tree to this post line run about six or six and one-half feet. I won't say approximately; somewhere around there; I didn't measure it.

By the Court.

Q. How long ago did you first observe that condition? A. I was appointed supervisor in June, 1906. I took charge of the streets of the borough of Roosevelt.

20

Q. I am speaking about this sidewalk. You say you have known it for twenty years about. How long have you known the sidewalk to be there? A. Why, there has always been a sidewalk, always been a walk along there. Wasn't so much of a sidewalk until I think the Woodbridge Township put cinders there, and then I finished up afterward on it. There has always been a walk way all along there always as long as I can remember.

30

Cross Examination, by Mr. Strong.

Q. Was this sidewalk on a straight line? A. Yes, sir; practically straight.

Q. So that it made a uniform width of the avenue, did it? A. Yes, sir.

Q. And did it extend on down in front of Shapiro's house? A. Well, practically down to Shapiro's place, and then there was an offset there.

Q. Didn't it run down in front of Shapiro's building?

A. Yes, sir.

Q. In a straight line, didn't it? *A.* No, sir. There was a little offset there right in front of the firehouse. The firehouse was set back where it is at the present time now, and then you had to come along to Shapiro's, and then you had to come out. There was a blacksmith shop set along there, with an old pear tree.

Q. What is it you mean by the firehouse? *A.* Do
10 you want me to show it to you?

Q. Yes, if you can. *A.* The firehouse is right in here (indicating).

Q. Is it right next to Shapiro's? *A.* No, sir.

Q. There is a vacant lot? *A.* No, sir; there is a building there now.

Q. I am talking about the time before you made the changes in the street, there was a vacant lot next to Shapiro's, and then came— *A.* No. There was a building, a one-story pool room set in there, and the
20 old blacksmith shop alongside of it.

Q. Are they shown on this map? *A.* No, sir; they are moved away.

Q. This sidewalk was graded, wasn't it? You said you didn't do any grading, but somebody did, didn't they? *A.* There wasn't much of a grade to be done there, because the schoolhouse, the present line of the schoolhouse to-day is very little different than it was before they graded it, and all the way down from Shapiro's.

Q. Wasn't there a cut of some two or three feet on
30 the White lots? *A.* Yes, sir. That wasn't done by me. That was a sidewalk grade. They went back. There was quite a little mound there, I guess about two feet or two and one-half feet high, you went down there and then you went down by the fire hall, where the fire hall was practically on a level. Nothing done down in front of the fire hall.

Q. But this White property they cut down two and one half feet, you say about. *A.* They cut in back

there about two and one half feet, they cut the bank and slope down a little.

Q. How far in did they cut in? *A.* I couldn't say, because I had nothing—that wasn't under my supervision.

Q. Who did that? *A.* That was given out by contract.

Q. Don't you know who did it? *A.* I don't know who did it. There was three or four different contractors worked on it.

10

Q. Do you mean to say you don't know who cut the property down in front of White's place? *A.* I do not.

Q. You don't know how far back they cut it?

A. Well, practically they cut back—

Q. Ten feet or so? *A.* No, I don't believe they cut back ten feet.

Q. You don't know? *A.* I won't say approximately, but maybe about five feet they went back. I won't say any more, because I had a cinder walk along there before they put this walk down.

20

By the Court.

Q. How old was the oldest building that had to be set back? *A.* The oldest building set back?

Q. Yes. *A.* I think it was Linsky's building or stores next adjoining the postoffice.

Q. How old was it when it was set back?

Mr. Strong: If the witness knows.

The Court: Yes.

A. I should judge that building set out there about six years before this widening.

30

The Court: How old is the Shapiro building, Mr. Strong?

Mr. Strong: Twenty years, or something like that.

A. One building is. The other is not.

Q. The one on the street I am referring to? *A.* There are two of them on the street, both adjoining each other.

Re-Direct Examination, by Mr. Watson.

Q. Mr. Crane, I show you a photograph. Does this depict the firehouse and walk to which Mr. Strong has referred in his cross-examination, as it was at the time to which Mr. Strong referred? *A.* This walk is practically to-day as the day before they put the sidewalk, pretty near.

Q. And where is the firehouse on that photograph?

A. Here is the firehouse right here (Indicating).

10 *Q.* Does that truly depict the situation as Mr. Strong questioned you and brought it out? *A.* No, sir.

Q. He asked you as to the sidewalk. *A.* Oh, sidewalk.

Q. And the location of the firehouse. Does that show it? *A.* This is just exactly as it was then, except that sidewalk down in front of it. The grade isn't a bit different.

Mr. Watson: We offer the photograph.

Mr. Strong: I object.

20

By Mr. Strong.

Q. The sidewalk has all been put down since?

A. Yes, sir; but no difference in the grade.

The Court: Is this in evidence?

Mr. Strong: No, it is not in evidence.

Mr. Watson: We offer it in evidence. It is a matter brought out by Mr. Strong in his cross examination.

30 Mr. Strong: I didn't bring anything out about that. I simply brought out a change about the sidewalk. Now they are putting in a situation entirely different.

Mr. Watson: Mr. Strong inquired as to the situation of this firehouse, and the street and sidewalk, and this photograph shows it.

Mr. Silzer: He has examined on everyone of the properties and asked him—

The Court: That does not give you a right to put pictures in of all the properties he talks about.

Joseph A. Hermann, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

Direct Examination, by Mr. Watson.

Q. Mr. Hermann, you reside in Roosevelt?

A. Yes, sir.

Q. How long have you lived there? A. All my life. Born there.

Q. How old are you, Mr. Hermann? A. Forty-six.

Q. What official position do you hold? A. At the present minute? 10

Q. Yes. A. Mayor.

Q. Are you acquainted with the physical condition of the worm, and north side of the worm, to which reference has been made on the Colwell tract?

A. Yes, sir.

Q. How long have you been acquainted with that locality? A. Ever since I have been a boy.

Q. As far back as your memory runs? A. Yes, sir.

Q. About how many years back, mayor? A. Well, I couldn't say offhand. You can imagine. 20

Q. I show you Exhibit D 5, photograph, which it has been testified to shows the condition of the north side of this worm. Is that locality familiar to you?

A. Yes, sir.

Q. Were you present when that photograph was taken? A. No, sir.

Q. How long has the condition of the head of that worm been as it there appears? 30

Mr. Strong: He has not said it has been as it now appears at any time.

The Court: Let him tell us. He has not identified the photograph yet.

Q. Is it a correct likeness of the head of the worm as you remember it? A. Yes, sir.

Q. How long has that condition existed to your knowledge? A. As far back as my recollection goes. I would say over thirty years.

By the Court.

Q. Was that worm, as it has been called, in the same position continuously during all this time? *A.* As near as I can remember; yes, sir.

By Mr. Watson.

Q. Describe the head of that worm? What is it?

The Court: That has been pretty well done, hasn't it?

10

Q. You have heard it described by other witnesses?

A. Yes, sir.

Q. I show you Exhibit D 4, showing the jutting out of the worm from Noe's Creek. Is that a correct likeness of the physical condition there? *A.* Yes, sir.

Q. How long has that condition existed, Mayor, to your knowledge? *A.* Oh, it is practically the same as when I was a boy running around there. I don't see any material change.

20

Q. I show you Exhibit D 6, which photograph purports to be—

Mr. Strong: I object. I think you had better not purport to tell him what that is.

Q. What in this photograph, Mayor, D 6, if you know? *A.* I don't recognize that much. That looks like the meadow land in through there, but I don't see any buildings or anything that I would know.

Q. You don't recognize this one? *A.* No.

30

Cross Examination, by Mr. Strong.

Q. I suppose you spent most of your early life down in the neighborhood of this worm, didn't you?

A. Oh, no. Around there. I used to go down there and play as a boy.

Q. Was there anything about the worm that was more attractive than any other part of the creek?

A. No.

Q. Nothing to attract your attention to the condition of the worm at that time, when you were a boy?

A. Well, not any more than we would have to run around the worm to get in along the creek.

Q. When was your attention first directed to the creek so as to pay any particular attention to it, to the worm, I mean? *A.* Oh, I know every foot of the land in through there.

Q. And yet you don't recognize this last photograph?

A. Well, I don't know that I would recognize it. It seems as though there is a lot of grass there, and stuff. 10

Q. Probably you would not have recognized any of the others if you hadn't been told what they were, would you? *A.* Oh, yes, I would.

Q. What did you say that is (handing witness photograph)? *A.* What do you mean?

Q. I say, what does that represent? *A.* That represents the land of the creek, and the little gully going up to through there, and the land immediately around where we are talking about.

Q. From what point is that taken? *A.* What do you mean? 20

Q. From what point was the photograph taken?

A. Oh, I couldn't tell you that.

Q. What way is it looking? *A.* Why, it is looking up towards Carteret.

Q. Which way with reference to the worm?

A. The worm goes to Carteret.

Q. Which side of the creek is it taken? *A.* It is the north side, that is, the worm is on the north side.

Q. Which side of the creek is the photograph taken from? *A.* I would imagine from the south, but I don't know. 30

Mr. Strong: The photograph I have shown the witness is D 4.

Q. I show you another photograph which is marked Exhibit D 7. What does that represent? *A.* That represents the land immediately around the worm, with the railroad bridge there.

Q. You see the railroad bridge, do you? A. Yes, sir.

Q. In the distance? A. Yes, sir; the Central.

Q. Is that the only thing you recognize about it?

A. Well, I would recognize some of the buildings there, if you want to know about that.

Q. Anything' else except the buildings? A. Yes. The sedge grass in around the worm there.

10 Q. Where is the worm? A. Right in here (indicating), the creek comes in through there.

Q. Put your mark where the creek is, put a mark on the photograph where the creek is? A. The creek comes in down around the bridge, and around that way (indicating).

Q. Where is the worm? A. From that I should think the worm would be in here (indicating).

Q. You don't see it at all, do you? A. In through that sedge grass there.

20 Q. Somewhere in the grass? A. On this photograph.

Q. Where is it? Mark it. A. I couldn't give you the close location of that with this.

Q. Mr. Watson didn't tell you what that picture was either, did he? A. He didn't have to.

Re-Direct Examination, by Mr. Watson.

Q. Were you present two or three days before these pictures—do you remember the occasion of the taking of these pictures? A. Immediately preceding it, yes.

30 Q. Were you present at the head of that worm at that time? A. Yes, sir.

Mr. Strong: Do you mean at the time they were taken.

Mr. Watson: Yes.

A. Not at the time they were taken. Before they were taken, as I understood Mr. Watson to ask me.

Q. A day or two before they were taken last fall?

A. Yes, sir.

Q. What was the condition of the head of the worm

at that time, compared with your knowledge and recollection of it from boyhood? *A.* Immediately the head of the worm? *A.* Yes.

The Court: He has given us that.

Mr. Watson: Not from the photographs.

The Court: I know, but he said the worm was in the same position as long as he remembered.

Q. How deep is the head of the worm? What is its size? *A.* Why, I would imagine that it is about three feet wide, or irregular depth. I would say somewhere around from eighteen inches to two feet deep. 10

Q. What is the character of the ground sloping down into the head of the worm? *A.* Why, it is all what we call salt grass. A little depression right at the head of the worm.

Q. How is it as to bearing weight, hardness?

A. Oh, it has been in the same condition ever since I can remember it.

Q. Does it bear the weight of a person? *A.* Oh, yes. 20

By the Court.

Q. What was the nature of the drop in the worm? Is it straight up and down, or on a slant? *A.* It is about straight up and down. The grass has grown up all around it. A little depression, and the grass all around it.

Q. Is that a characteristic of these meadow streams, or worms? *A.* Well, worms of that class, they stand fairly well. 30

Q. What is that? *A.* A ditch of that kind, with the sedge grass growing up around it, and the sedge grass immediately ahead of it, stands for years and years. I know lots of them out through the other side of the borough there.

Josiah Tice, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

Direct Examination, by Mr. Silzer.

Q. Mr. Tice, you are a civil engineer? *A.* Yes, sir.

Q. And have been for how many years? *A.* Since '78.

Q. Did you assist and work in conjunction with Mr. Simons in preparing the map, and in locating Rahway avenue? *A.* I was associated with him in making the survey, preparing and making the map; yes, sir.

Q. And in making your survey to locate Rahway avenue, what did you do? What did you do, Mr. Tice, in order to locate Rahway avenue and its width?

A. We did several things. We first consulted deeds and data at hand, record maps pertaining to that particular section of the country, and then from the records we laid out the southerly side of Rahway avenue, and checked up the results of our labors by running off to the side, following out the date of the deeds to the side.

Q. Can you indicate that as you go along? *A.* Yes.

Q. Please do so?

Mr. Strong: One moment. Before the witness undertakes to tell his conclusions, I think we ought to know what different records or other documents he referred to.

A. Yes, I don't know that I can recall the exact page and book now of those records, but I can—I consulted the deed of Peter Noe to Benjamin Noe, of the property known and shown on the map as the Houghwort tract, made in 1811. We consulted the deeds made for the adjoining land on the east, which was part of an original tract. My object, of course, was to get at a time where all of this land, before sub-divisions had been taken, a step by step process—

Mr. Strong: Never mind.

The court: Just tell what you examined.

A. Well, then we found the deeds from Peter Noe to Benjamin Noe, and his brother, J. C. Noe, we suppose he is a brother.

By Mr. Strong.

Q. Is that the same deed you last mentioned, or a different one? A. That is the deed coming out of Peter Noe for the land known as the Colwell tract. We traced down the title of that land in order to see if there were any changes in the descriptions that far back, until it got into the title of Mr. Colwell. There were record maps in the county clerk's office referring to this particular land or section. 10

Mr. Strong: I think we should have them specified.

The Court: Yes. Tell us what maps they were.

A. I consulted the Blazing Star map.

By the Court.

Q. Which one is that? A. That is called the Fitch map, dated in 1828. 20

The Court: Has that been offered in evidence?

By Mr. Silzer.

Q. That is the one Mr. Helm identified, wasn't it, Mr. Tice? A. That is the one Mr. Helm identified.

Mr. Strong: That has not been received.

A. We consulted the Videll map.

Q. That is of which tract? A. That is the tract shown on the map as the Radley tract. It is also an ancient map. 30

Mr. Strong: I object to that.

The Court: Yes. Do not tell us what it is. Just tell us what you examined, and the description of the map.

A. Then there were two Colwell maps, and a map of land which is west of the Colwell tract, part of the Houghwort tract, called a Crowell map. In the pro-

cess of time we came upon a map also, or I had access to a map of the Radley property, which is the part of the Videll map that is south of Rahway avenue, and along Woodbridge avenue, west of Woodbridge avenue, east of the Colwell tract as along Rahway avenue. Sometimes in the course we searched the records to see if we could find a return for this actual road, and we found no return in the county clerk's office that we could definitely locate as to the part of Rahway avenue which

10 runs from Brady's corner to the dock.

Q. Will you step down there and show me where Brady's Corner is? *A.* Brady's corner is the upper left hand corner of the map.

Q. That is the corner of Blazing Star road and Rahway avenue?

A. That is Rahway avenue your finger is on, and Brady's corner, as I understood it, is there where your finger is. That is the intersection.

20 *By Mr. Strong.*

Q. That is the extreme upper left hand corner of the map? *A.* Brady's corner is the upper left hand corner of the map, at the intersection of Rahway avenue with Blazing Star road.

Q. From Brady's corner to what point did you say you couldn't find any return? *A.* No return that we could actually locate from the Brady's corner to the dock. I don't just recall what other maps or deeds we referred to, but in the process of—

30 *By Mr. Silzer.*

Q. What did you do, Mr. Tice? Did you go upon the ground at all? *A.* We did.

Q. And did you locate any monuments of any kind?

A. We found in this deed to Houghwort—

Q. Will you take your pointer and point out to us where you found things, so that the jury may get this as we go along? *A.* In the deed to the Houghwort tract, it began on the side of a worm putting out from the creek. There is a worm located there.

Q. Did you see it? *A.* I saw it, and there was a boundary line running from Rahway avenue down to this worm, marked by old posts, broken off.

Q. Where is that boundary? *A.* Run along the boundary line between the Houghwort tract and the Colwell tract, down from Rahway avenue. There were trees upon the line, and old stumps. There was a large tree somewhere up near Rahway avenue we located on the ground, apparently an ancient line between the Houghwort tract and the Colwell tract, and it reached down to the northerly side of this inlet from the creek that has been termed a worm. In the map on file, called the Crowell map, made by Mr. Marsh, who had been there ahead of us, he had made reference to that worm a given distance towards Rahway avenue that closely corresponded with the distance called for by the Houghwort deed, and that was tested in measuring from the worm sixteen chains and a half or 1089 feet to Rahway avenue, and we fixed a point there.

10

By the Court.

Q. Mr. Tice, you refer to the worm at the origin, I suppose, at the head of it? *A.* Of the worm; yes, sir.

Q. What was your justification in taking that as a starting point in that deed? *A.* Because there was an ancient line running up from the head of that, and the point where the worm put out from the creek was some distance down to the east of where the head of this worm was, and there is a course and bearing given of the direction from which this line was run. If we went at any other part of the worm, we would have to come out into the line of lands, while we would run parallel with this old division line as shown through there, we would be some feet, forty or fifty feet to the east of that line that was there delineated, and we had no reason to go there.

30

By Mr. Silzer.

Q. If you had taken any other point except the point of the worm that you have indicated, and then follow-

ed the bearing which was given in the deed, would you have followed this property line that was marked by trees, if you had taken any other point than that?

A. No, sir.

Q. What did you find, if anything—

A. And the distance, upon measurements, agreed with that which showed upon the record map from Mr. Marsh, and it agreed—from our location we had made of Rahway avenue, it was corroborative of the fact that that was the line of Rahway avenue as we determined. And then again someone had located the end of that worm, where the sixteen chains and a half should start from, as being two hundred and sixty—

Mr. Strong: I object. What do we know about someone? I do not think that ought to come in.

Q. Where did you find a deed from Hughes to Colwell? *A.* It is a deed to Colwell.

20 *Q.* From Hughes to Colwell? *A.* Hughes to Colwell. That is the first time that any measurement is given of the Colwell tract.

Q. You found in that deed what?

A. That it gave a course from the side of the brook in a bearing that would carry it over to the worm at the head of the worm as shown on the Crowell map, would carry it over to that place two hundred and sixty-six feet, I think it was, and that was used, of course, in corroborating the position from which they had found the worm, and we found the worm there at that place; and after taking that line in that direction, carrying the elements of the deed of the Houghwort tract from that point to Rahway avenue 1089 feet—

30 *Q.* That is sixteen chains and fifty links?

A. That is sixty chains and fifty links, turning the angle shown by the courses and bearings of the Houghwort deed, would carry us, or should carry us along the road called for in the Houghwort deed. We turned that angle and ran the distance and found it came opposite a turn in the road.

Q. Now, Mr. Tice, what did you find physically upon the ground at what you call the head of the worm?

A. Found a hole in the ground, or a depression, rather.

Q. Will you describe this worm, and how it looked, and what indicated its presence?

A. Well, it was a depression.

Q. You are talking about the head, are you?

A. The north end, or north side of the worm, yes.

The Court: Mr. Strong, is there any divergence between your own view and that of the witness, who says it is a hole, perpendicular? **10**

Mr. Strong: I don't know that there is very much controversy about that.

The court: Three feet wide?

Mr. Strong: I am not prepared to assent to that.

The Court: I did not want to multiply the testimony.

Mr. Strong: I think he had better perhaps say it. I do not want to say that there will be no controversy about that. **20**

A. It was a depression. I don't think it was three feet deep. It was simply a depression where the waters coming down from the side hill evidently run into that portion, and allowed to lay as a periodical spring, as I should characterize it, where that should start out to enter this worm, as it is so called. At any rate from that part there is a distinct, not a deep, water-way, a depression in which the water comes in in the change of tide, and from which the water runs out when the tide is low, and when there has been rains and freshets, water draining from the meadows into this depression. It was winding, grew wider as it got towards the creek, and it was marked by cat tails and sedge grass of that kind that grew up along places in salt meadows of that kind that have more water coming through it. It was well defined, and well marked. **30**

Q. Go right on then from where you spoke last. When

you came up, as you said, starting with your worm, coming the distance and locating that head of the worm, you came up along this boundary line until you got to the southerly side of Rahway avenue? *A.* Yes, sir.

Q. You spoke about turning an angle. What do you mean by that?

A. The courses and bearings of two lines will make an angle, and in calculating that angle we used transits, and in calculating that angle, we turn the angle, in our
10 expression. You might say we took the bearing of the deed to run up Rahway avenue.

Q. Suppose this starting point of the head of the worm were in a different place, and you ran over, for instance, over into the Colwell piece here, or into the other way, would this angle turn so that it would strike the turn in the road up further to the west?

Q. The angle would be the same.

Q. Would it meet this turn in the road?

A. It wouldn't meet that turn in the road. The next
20 move would prove that.

Q. Then you went over here turned your angle, and you struck what? *A.* We took the metes of the deed and we came to a bend in the road, and turning the angle to the right—

Q. Was there a distance bend there?

A. There was. Following the angle to the right of the deed, we carried the distance of the deed up to the most northwesterly corner of the Houghwort tract, and there we should intersect the easterly side of a road,
30 according to the directions of the deed.

Q. What road is that?

A. That is the road that leads from Rahway to Blazing Star. We found the side of that road, and we found trees, and the remains of fences that are well defined along there at this corner, marking and determining that to my satisfaction, and I thought I exercised proper judgment. Then turning the angle for the next course to run along the side of the road—

Q. Following the lines and the directions of the deed still? *A.* Following the directions of the deeds.

Q. And the distances?

A. And the distances, you come down to a point at the southwest corner of the Houghwort tract, and there there is a line of trees, well marked, as will appear on old boundary lines by hilling, rising between a line of trees running the proper direction, agreeing with the angles of the deeds, and the distances, to the Noe's Creek, and then, of course, according to the deed it would run up Noe's Creek until we came there. All those distances fit with those corroborative points. From that we had determined Rahway avenue the southwesterly side of it, by a deed, the dimensions of a deed given by a person who owned all this tract. 10

By Mr. Strong.

Q. What deed is that? A. Peter Noe to Benjamin Noe.

By the Court.

Q. Mr. Tice, were all of these distances as accurate in their correspondence with the deed, as the one that you have defined from the head of the worm up to Rahway avnue, as measured sixty feet wide? 20

A. None of them would be just exactly to the avenue, your Honor.

Q. Were they as near as the one you have given?

A. They were as near; yes, sir.

Q. Singularly accurate a deed, wasn't it, for so old a one? A. Yes, it was a singularly accurate deed, but we found others on the other side of the land, showing just as accurately, showing that some surveyor got in. 30

Mr. Strong: I move to strike out what the witness last said.

The Court: Yes. Go on with what you were stating in answer to counsel.

A. From the Colwell tract, the deed Peter Noe to Benjamin Noe and J. C. Noe, conveying the other part of this large tract in 1818, I think there was no dimensions, that is, no metes or bearings given, courses or bearings; it was determined by the adjoining land. It

was qualified by the measurements, the boundary of the Houghwort tract, and it qualified by reaching the south-westerly—

Mr. Strong: I object. You have got the deed in evidence, and it shows for itself what there is about it.

The Court: It cannot do any harm to state it, if it is stated accurately.

10

Mr. Strong: I do not think the witness ought to be allowed to tell us about that.

The Court: He must tell us the basis of his conclusion, Mr. Strong, and it is not intelligent unless he does.

Mr. Strong: He has referred to those deeds. Now for him to say whether it does or does not qualify this or that or the other, that is a thing we can argue about. It is not a thing for him to expatiate on.

20

A. It is bounded on the northerly side by the road that leads from—

Mr. Strong: We have all those things in evidence.

Mr. Silzer: The man is telling what he did.

A. The Blazing Star map shows—

Mr. Strong: I object to that.

By the Court.

30

Q. Which is the Blazing Star map?

A. The one Mr. Helm identified.

The Court: You cannot refer to that now.

By Mr. Silzer.

Q. Go on with this?

A. From the maps I consulted it appeared that Rahway avenue—

Mr. Strong: I object.

Q. You are speaking now from the maps that you

have been offered in evidence? *A.* Yes, sir.

Mr. Strong: The maps that he consulted, which included the map *Mr. Helm* identified.

The Court: We will exclude that, *Mr. Tice*. Tell us, if you can, yourself.

Mr. Strong: There ought to be a question, I should think. I don't know that there is.

The Court: I am inclined to think, *Senator*, that there ought to be an examination. I think he ought to be examined so that counsel may know just what the witness is going to testify to. 10

Adjourned until Friday morning, April 11th, 1913, at 10:45 a. m.

Transcript of stenographer's notes of evidence taken in the above entitled cause, before *Hon. Frank T. Lloyd*, Judge, and a jury, at the Court House in the City of New Brunswick, N. J., on the eleventh day of April, A. D. 1913, at 10:45 a. m. 20

Appearances: *Mr. George S. Silzer*, *Mr. Russell E. Watson*, for the plaintiff. *Messrs. A. H. & T. Strong*, for the defendants.

Mary Coachinbarry, a witness produced on behalf of the defendant, being duly sworn according to law on her oath, saith:

Direct Examination, by Mr. Watson. 30

Q. Where do you reside, *Mrs. Coachinbarry*?

A. Carteret.

Q. How long have you lived at Carteret?

A. Past fourteen years.

Q. Do you know the location of the *Colwell tract* on *Rahway avenue*? *A.* I do.

Q. Where do you reside with reference to that tract?

A. Right opposite to the *Colwell tract*.

Q. Right across the street? *A.* Yes.

Q. You formerly visited at Carteret?

A. All my life.

Q. How long does your recollection of Rahway avenue at that point extend? *A.* Over forty years.

By the Court.

Q. How old are you now, madam?

A. I am fifty-one.

By Mr. Watson.

10 *Q.* Do you remember the line of trees along the southerly side of Rahway avenue? *A.* I do.

Q. Which have been referred to in this case?

A. Yes.

Q. Was there a fence along the Colwell tract?

A. There was.

Q. Where was that fence with reference to that line of trees? *A.* Between five and six feet between.

Q. Which side of the trees?

A. The trees was outside of the fence.

20 *Q.* What was between the trees and the fence, if anything? *A.* Well, a place to walk, a path, a walk.

Q. What kind of a walk? *A.* Well, a regular country walk.

Q. What was its width? *A.* About six feet.

Q. Was that used by the public? *A.* Yes.

Q. In what way? *A.* By walking.

Q. Was there a well worn path there? *A.* Yes.

Q. What kind of trees were these? *A.* Elms.

30 *Q.* How large? *A.* Well, they have been there, my aunt says, for over eighty years. They are very tall, very large trees.

Q. Who is this aunt of yours, Mrs. Coachinbarry?

A. Rachael A. Crowell.

Q. How old is she? *A.* Well, if she lives to the sixth of June she will be ninety years old.

Q. What is her present condition? *A.* Very poor health.

Q. Mental condition? *A.* Very poor.

Q. Is she a widow? *A.* A single lady.

Q. Does she live with you? *A.* She does.

Q. At Carteret? A. Yes.

Q. Right opposite the Colwell tract?

A. Right opposite the Colwell tract.

Q. Has she the use of her mind?

A. Not very well. At times she has.

Q. How long has she lived at Carteret?

A. All her life.

Q. In this particular house?

Mr. Strong: Obviously the lady does not know how long a person of ninety years of age— 10

The Court: All this is outside of the case. You have accounted for her not being here.

Mr. Watson: We want to show what this old lady has said about this fence and trees.

The Court: Is she an owner?

Mr. Watson: No, she wasn't an owner, but it is a statement by a person having knowledge in reference to a public highway. One of the exceptions to the hearsay rule.

Mr. Strong: You don't claim it was a boundary, do you? 20

Mr. Watson: Yes, boundary of the road, a public highway.

Mr. Strong: I don't see any ground on which it is admissible. I have not objected to what was said so far, but I thought it was so obviously hearsay it would be disregarded.

Mr. Watson: That is a well founded exception to the hearsay rule. Statements made by persons having knowledge, even deceased persons. 30

The Court: Yes, deceased persons, but not living persons.

Mr. Watson: Here is a person who hasn't any mind. So far as testifying before this court she is the same as a deceased person, and the statements made by her are with reference to a public highway.

The Court: Well put any question you want to.

Q. What statements, if any, has your aunt made to you with reference to these trees and the fence, Mrs. Coachinbarry?

Mr. Strong: I object to that.

Q. Opposite to what house on this Colwell tract do you and your aunt reside? *A.* Well, there is not a house just right opposite, but near a church.

Q. Near the church? *A.* Near the church

10 *Q.* Where is that church, what street, Mrs. Coachinbarry? *A.* Rahway avenue.

Q. Near what side street? *A.* Well, it's about midway.

Q. Between what streets?

A. Between Christopher and Charles.

Q. Well, on the other side of the street, how near Colwell street is it? *A.* Well, Fitch street is back of it.

20 *Q.* Colwell street runs at right angles to Rahway avenue. How near Colwell street is it?

A. Quite a little ways.

Q. To which direction, east or west? *A.* Well, Colwell street is more to the east.

Q. Of where you live? *A.* Yes.

Q. This house that you live in is the old Crowell homestead? *A.* Yes.

30 *Q.* And the Crowells owned the tract on the other side of the street? *A.* Not directly opposite. They owned a ways up, but not directly opposite to where I live.

Cross Examination, by Mr. Strong.

Q. Down to what time did the fence exist along the Colwell tract? *A.* Is existed there a number of years.

Q. Down to what time? *A.* Do you mean what year about?

Q. As nearly as you can fix it? *A.* Well, I don't know just what year, but it has been there a great number of years.

Q. I know, but I mean how recently? *A.* Over twenty-five years.

Q. Been there over twenty-five years? A. Yes.

Q. That is, you knew it standing as long as that?

A. Yes.

Q. You see what I am trying to get at is how recently it has been there? A. It was there twenty years ago.

Q. Has it been there within that time, as far as you can tell? A. Yes.

Q. How much within that time? A. Well, it has been going down piece by piece.

Q. Can't you say when you saw the last of it? 10

A. Well, that is rather hard to tell, when I saw the last.

Q. Was there any of it remaining there at the time that the borough undertook to widen the road?

A. There was no fence there at that time. It was all down by that time.

Q. All down before that? A. Yes.

Q. And the borough people cut the trees down in what they did, didn't they? A. Yes.

Q. How far did they widen out the road beyond the old fence? A. Well, they took off quite a number of feet. 20

Q. About how many, fifteen or sixteen feet?

A. Well, I don't know just how many feet they took, but they wanted to make a sixty foot road.

Q. And in order to do that they had to make it about sixteen feet wider, didn't they? A. Well, I should judge so.

Q. And that was done in 1909, wasn't it? A. It is five or six years ago; yes, about that time. 30

Re-Direct Examination, by Mr. Watson.

Q. Mrs. Coachinbarry, where was this line of trees with reference to the present cement sidewalk?

A. Why, this line of trees was cut down to make room for a sidewalk.

By Mr. Strong.

Q. How wide is the sidewalk that is there now?

A. Well, it is very wide. I don't recollect as I can

just tell. I think it is six feet wide. It is a good wide sidewalk.

Q. It is a regularly laid out sixty foot street, isn't it?

A. Yes, now.

Q. And a good part of that is in the sidewalk? *A.* A sidewalk on each side? *A.* A sidewalk on both sides.

Q. They didn't change the fence line on the other side at all, did they? *A.* Not on the north side.

10 *Q.* The change that you spoke of, fifteen feet, was on the south side? *A.* Yes.

Q. On the Crowell side? *A.* On the Colwell side.

By Mr. Watson.

Q. Do you mean to say that the Colwell fence was moved back fifteen or sixteen feet?

Mr. Strong: I object. You cannot argue with your own witness.

The Court: Objection sustained.

20 *Q.* Was that Colwell fence ever moved back?

By Mr. Strong.

Q. The fence wasn't there at that time? *A.* The fence was never moved back. It only just went down piece by piece. I never knew the fence ever moved at all. The fence was always there as far as I knew. The fence never was moved.

Mr. Watson: There is a question on direct examination pending.

30 *The Court:* I do not think it is admissible.

Mr. Watson: Prays exception.

Exception allowed—sealed accordingly.

Judge.

Josiah Tice, resumed.

Direct Examination (Continued), by Mr. Silzer.

Q. Mr. Tice, you have already explained to us how you located the worm, and the various angles and corners and things on what is known as the Houghwort tract. Now will you let us know what you did and what you found with reference to the balance of the Colwell tract, and what corroboration you found in order to establish the southerly side of Rahway avenue? A. The deed from Peter Noe to Benjamin Noe and John Noe, which is the Colwell tract on this map, makes the road leading from the dock to Rahway the one boundary to the north, the Houghwort tract another boundary to the west, and speaks of a tract formerly Clark, or formerly Tompkins, which is part of what is called the Radley tract on this map, and known on part of the Videl map. We found leading up to the westward from Woodbridge avenue, a line, well defined, ancient line, defined by very large trees, and old trees and stumps, and a fence upon it. Upon applying the test of that line running westwardly we came to Lafayette street, and we had measurements from that line to Rahway avenue, as given by the Videl map.

Mr. Strong: I object. The Videl map is not in evidence, and this gentleman cannot use that as any evidence.

The Court: I think the Videl map is in. It is the other map that was put in earlier.

Mr. Strong: Very well then.

Q. Now, Mr. Tice, what was your idea? Did you first locate the Radley tract in order to find out what the boundary was of Colwell?

Mr. Strong: I object.

Q. What was your idea in first locating what is now known as the Radley tract?

A. The Colwell tract boundary was bounded by the Radley tract, and it was necessary to get the location of

that first before we would know where, in my judgment, the Colwell tract boundary was. That is, in other words, the Colwell tract was bounded by the Radley tract; the boundaries of the Radley tract should be determined first, and the Colwell tract is subject to those boundaries. Applying the measurements of the Radley tract, or the Videl map, rather, on both Woodbridge avenue and Lafayette street, we got a portion of Rahway avenue, and upon applying the most westerly boundary of the Radley tract had, we got another point in Rahway avenue. All confirmed—

10 Mr. Strong: I object to that. I don't think this gentleman is here to lecture unlimitedly about this thing, or express his conclusions, and telling us what he confirms. That is a mere conclusion.

The Court: He may give the facts, whatever they are.

20 Mr. Silzer: That is a fact, whether he confirmed it or not.

The Court: No, I think he is going rather beyond the statement.

By the Court.

Q. What were you going to add there about the tract itself? A. I was going to add that the points we found on Rahway avenue, as based on the boundary line of the Radley tract—

30 Q. I understand that, but what were the bounds on the Radley tract that became a guide to you in the other? They were distances all given on that Videl map, were they not? A. Yes, sir; and we laid down the distances of the Videl map, as shown on there, to get those distances.

By Mr. Silzer.

Q. What were the guides which enabled you to definitely locate the Radley tract, and the southern side of Rahway avenue, on the Radley piece itself? A. The southerly boundary of the Radley tract is a well defined line, defined by large trees—

The Court: You have told us about that. You said there were stumps and trees there.

A. And the fence.

Q. What else did you find, anything with reference to distances that enabled you— A. Yes, the distances of the Videl map.

Q. Show us that.

By Mr. Strong.

Q. Give us the distances? A. Let me have the Videl map and I will do that. 10

By Mr. Silzer.

Q. This is the map marked Town of Woodbridge, 1826, Francis P. Videl, and number 231? A. Town of Woodbridge, Middlesex county, Videl.

Q. What year? A. 1826.

Q. Filed when? A. Map number 231, filed July 7th, 1893.

Q. Where is the Radley tract, that is this piece on this map, shown on the Videl map? A. At the lower, southerly part of the map. 20

Q. Where is Rahway avenue on that? A. The first street from the bottom up.

Q. Taking your Videl map, tell us what you did to find the boundaries of the Colwell tract? A. We found the boundaries of the Videl map defined on the ground, this line at the southerly part of the Videl map.

By the Court.

Q. Where is the Sound there, Mr. Tice? A. The Sound is over here (indicating). 30

Q. There seems to be a variation in that road. There is a course— A. That is the Old Blazing Star Ferry. That is where it once did go.

By Mr. Strong.

Q. Not within your memory, is it? A. No, I never saw it there.

Q. Don't know anything about it, except you have heard it? A. No, I have seen the records of it, and searched it.

Mr. Strong: I object to the witness making so many statements he don't know about.

The Court: Tell us about that tract, so far as it treats on the present description.

A. What do they want to know?

By Mr. Silzer.

Q. Mr. Tice, you have pointed out to us on the Vidal map some piece of ground that is shown on here as the
10 Radley tract. Where is it on this map, and on the Vidal map, that you found the well defined line of trees?

A. On the southerly line of property of the Vidal map.

Q. And that is where you have already pointed it out on this map? *A.* As the southerly line of property of the Radley tract.

Q. What else did you do with reference to the Vidal map to establish the southerly side of Rahway avenue?

A. We measured the distances of the Vidal map
20 along Woodbridge avenue.

Q. From these trees? *A.* From this line, southerly boundary, along the avenue.

Q. What did you find along Woodbridge avenue anything? *A.* Well, there were old trees there, and fences along there.

Q. Along Woodbridge avenue? *A.* Yes, the fence wasn't as ancient along Woodbridge avenue as it was reaching back here, or such immense trees or stumps.

Q. When you measured the distance shown on the
30 Vidal map from the southerly boundary, which you say is marked by fixed trees and so forth, to the southerly side of Rahway avenue, what did you find? *A.* Well, we measured northerly the distance of the map, which was two hundred and eighty feet, and fixed a point there.

Q. Where did that take you to? *A.* To the southerly side of Rahway avenue.

Q. What other point did you measure from these old trees in the beck here, any other street? *A.* We measured along Lafayette street.

Q. Show it to us on that map, will you? A. Lafayette street.

Q. Not away up there, down there. A. The first street cut there.

Q. Did you measure from the old trees and the old established line? A. From the old line; yes, sir.

Q. Up the distance fixed on the Videl map?

A. Yes, sir.

Mr. Strong: Tell us what distance.

10

Q. Where did that take you to?

By Mr. Strong.

Q. You measured two hundred and eighty feet?

Mr. Silzer: This is not cross examination.

Mr. Strong: I object to his—

The Court: He has given the distance on the easterly line. He is now giving near the westerly line.

Q. Whereabouts did you make this measurement?

20

Mr. Silzer: I insist Mr. Strong has no right to break in.

A. I measured on this side.

By the Court.

Q. Do you mean on Lafayette street? A. Yes, sir.

By Mr. Silzer.

Q. Following up there the distance that is set on the Videl map you reached a point where? A. We reached a point three hundred and thirty-four feet from the southerly side of the Videl map.

30

Q. Did you make any other measurements, Mr. Tice?

A. That is the measurement of the Videl map.

Q. I mean, did you make any other measurements on the Videl map in order to get your distances and check up the southerly side of Rahway avenue? A. Yes, we continued our line across, and measured up along this line (indicating).

Q. Which line? *A.* The most westerly line of the Videl map at the Radley tract.

Q. After you took the measurement did you fix a point in Rahway avenue? *A.* We did.

Q. Did you do anything else to check that up, do you recall now, any other measurements on the Videl map?

A. Well, naturally when we came to Rahway avenue and fixed our corner there, we carried a measure across to the other side of the street, which seemed to be, or
10 which was uniform, and it fitted sixty feet for Rahway avenue—

Mr. Strong: I object.

A. (Continued)—on that measure.

The Court: That question is not asked now.

Mr. Strong: I move to strike it out.

The Court: The question is whether or not you have made any other measurements. The addition is not proper. Strike out the addition for
20 the present.

Q. After having made these locations on the ground, your Videl map, from the old monuments, and the measurements from this map, did you establish the southerly side of Rahway avenue as shown on the Videl map? *A.* Yes.

Q. And how far was the southerly side of Rahway avenue on the Videl map, and on the ground, as you established it, from the northerly side of Rahway avenue? *A.* Sixty feet.
30

Q. Will you show on this map where you found that to be sixty feet? *A.* We found it to be sixty feet at Woodbridge avenue, and Rahway avenue.

Q. Run out along, Mr. Tice, wherever it was.

A. And at the intersection of the westerly boundary of the Radley tract with Rahway avenue.

Q. What is it shown to be—

By the Court.

Q. What about Lafayette street, did it correspond there? *A.* Yes, sir.

Q. Did these measurements that you have given, or not, correspond with the measurements of distances given on the map itself?

A. Not the one-hundredth, your Honor. None of those measurements would do that, but it did to a practical degree of certainty within three or four-tenths of an inch.

Q. All three of them? *A.* Yes, sir. Two hundred and eighty feet corresponded exactly, and the measurement along Lafayette street corresponded—we took that measurement, you understand, measured that distance off there to get the line. **10**

Q. What is there on the north side of the street that so definitely fixes its boundary? *A.* Buildings, lines and fences.

Q. Old? *A.* Old; yes, sir.

By Mr. Silzer.

Q. That is so all the way up, is it?

Mr. Strong: I object. Leading. **20**

A. All the way up.

Q. What have you to say as to whether or not there are similar property lines along the entire north side, as shown on this map?

Mr. Strong: I object. It is leading and suggestive, and it ought not to be put in in that general way. They give particular property lines that ought to be specified and explained.

The Court: Leaving out the property lines, what does he find on the north side of the street? **30**

Q. What do you find on the north side of the street with reference to the street itself? *A.* Where I measured across—

The Court: Is there any dispute, Mr. Strong, that the north line is definitely established?

Mr. Strong: I don't think so. I think the north line is established.

Mr. Silzer: If you admit it we will not waste any time.

The Court: We will not waste any time on it now.

Mr. Silzer: I understand it is not in dispute. It is admitted.

The Court: Yes.

Q. Then what further did you do in order to locate the southerly side of Rahway avenue? A. I carried the line between these points (indicating).

10 Q. Which points? A. That I had established on the southerly side of Rahway avenue.

Q. From where? A. At the westerly line of the Radley tract and the southerly side of Rahway avenue; at the northerly end of the boundary line between the Houghwort tract and the Colwell tract; I established then the southerly side of Rahway avenue, and at the point in the bend in the road, which also had been established, or I had established as the line of Rahway avenue, or found it to be established, and those three

20 points were in one line.
Q. And with the line established as you have told us, how far was the southerly line of Rahway avenue from the northerly line? A. Sixty feet.

Q. Throughout the entire length? A. I didn't measure every foot of the way, but every place that the measurement was taken across to the north side of the avenue was uniform.

30 Q. Mr. Tice, was there anything else that you did that I haven't asked you about, to establish the southerly side of that avenue? A. I don't know whether I have testified concerning a white oak at the bend in Rahway avenue.

Q. No, you did not. Where was that? A. In the deed to Houghwort, the distance along this point, the northeasterly corner of the Houghwort tract, to that bend in the road, runs to a large white oak tree, or a white oak tree, and we found—

By the Court.

Q. Do you mean the description itself calls for a

white oak tree? *A.* The description in the deed; yes, sir.

By Mr. Silzer.

Q. You found what? *A.* We found a large stump, a white oak stump, that our line went probably a foot, or a foot and a half to the southerly of this large white oak stump, at the place where the bend ought to be. I don't know that that was the tree meant for, but we supposed, it being a large stump, and in that vicinity, and it conforming with what we had done there, I assumed it of being some importance. Had an error, or had the line been run in any other direction from Rahway avenue along the Houghwort tract—

Mr. Strong: I object. There is no question pending.

Q. If the lines had not been run as you did them, and as the result of what you found there, would the lines have fitted? *A.* The easterly boundary of the Blazing Star road would not have conformed with it. If the line had been too far to the north it would not have hit the easterly line of the Blazing Star road; and if it had been too far to the south it would have pushed out into the road.

Q. Will you illustrate that so that we can see just what you mean by that? Suppose it had been too far north, where would that have brought the Blazing Star? *A.* If it had been too far north this Rahway avenue line would have revolved on that as a pivot and been over in there, so that we would have to come down here to get this other confirmation (indicating).

Q. Will you lay your pointer the direction in which Blazing Star road would have been, instead of the way it is, if it had been turned to the north? *A.* Blazing Star road was in a general direction that way (indicating). Whatever amount would have been different in here, the same angle coming this way would have thrown it over here (indicating).

Q. If that had happened, could this bottom line of

three that you have well established have fitted in there at all? *A.* No, sir.

Q. Where would it have thrown that? *A.* It would have thrown that more in that shape (indicating).

Q. This Colwell tract was recently conveyed, I think you said, just by stating the boundaries? *A.* Yes, sir.

Q. When did it first, in any of the deeds, cease being conveyed by boundaries, and fixed lines and distances given? *A.* When it was conveyed—

10

Mr. Strong: It is in the chain of title.

A. It is the last conveyance, or either the one prior, to Mr.— when it was conveyed by Mr. Hughes to Mr. Colwell.

Cross Examination, by Mr. Strong.

Q. Mr. Tice, surveyors nowadays use different instruments, both for measuring angles, and for measuring distances, to what they did one hundred years ago, don't they? *A.* I think they do. I don't recollect what they used then.

20

Q. But as a matter of common reading of your profession you know that, don't you? *A.* I think so. You took me to task a moment ago.

Q. I thought you would give us the benefit perhaps sometimes of the same liberality that you used for your own clients, but I see you are not inclined to.

A. You had no mercy on me.

Q. I suppose these old instruments have been laid aside, because they consider that the modern ones are more accurate, isn't that so? *A.* Undoubtedly.

30

Q. And as a matter of experience, and from knowledge of ancient surveys, you do find that modern surveys are much more accurate, don't you? *A.* We do, if an accurate man makes them.

Q. You don't expect, in taking up a survey and description which originated one hundred years ago, to find that it fits accurately, do you? *A.* No, sir; not absolutely.

Q. It would be a miracle if it did, wouldn't it?

A. Very near. It would have been an awful good man at that time.

Q. And he must have had instruments that were not then in the hands of any surveyor to do it, must he not? *A.* No. The old theodolite was in use then.

Q. And yet they have laid the old theodolite aside, because they have got something better nowadays?

A. Yes, but they could locate a straight line.

Q. But they couldn't measure angles with the same fineness and accuracy that you do nowadays? *A.* I don't think they attempted to, Mr. Strong. Land was plenty. **10**

Q. Land was plenty, and nobody cared much about a few feet, especially down in the swamps of Woodbridge township, isn't that so? *A.* No.

Q. It is also a fact, in relation to old surveys, isn't it, that you generally find that the distance on the ground, in the particular survey, is greater than the distance that is called for in links and chains? *A.* No, that is not always the case. **20**

Q. I don't say always, but isn't that one of the things that surveyors anticipate, that when they come to measure up the ground they generally find more there than the links and chains would read? *A.* I think that would largely depend upon who he was following, as to whether he expected it or not.

Q. I suppose the expectation would largely depend upon the man who entertained the expectation, wouldn't it? *A.* Yes. What he was looking for. If he has some lawyer there to look for trouble. **30**

Q. He would find it every time. So when you went out there to look for these boundaries, you knew what you were looking for, didn't you? *A.* I knew what we were looking for. I didn't know what we would find.

Q. And you found you made trouble for the Borough of Roosevelt? *A.* No. We made trouble for you, but we didn't for the Borough of Roosevelt.

Q. For those individuals who had their houses erected, and who would have to conform to your cast iron

line there was trouble, wasn't there? *A.* Not at that time.

Q. No, but now? *A.* Since they saw their lawyer, yes.

Q. Of course, you don't know where Noe's Creek ran in the year 1811, do you? I mean, do you know it? I don't mean that you have heard of it.

10 *Mr. Silzer:* It stands to reason the man is not old enough to have seen it. The question is ridiculous on the face of it.

A. Not unless you will permit me to guess.

Q. I will not permit you to guess. I don't want you to guess at all.

The Court: Let us proceed without any ex-

change between counsel and the witness.

Q. Is this map your work or Mr. Simons'?

A. In delineation the map is not mine.

20 *Q.* It is not your get up? *A.* I think Mr. Simons', his name is on it, and he said he made it.

Q. Another thing that surveyors understand is that monuments control courses and distances, isn't that so?

A. I so understand it.

Q. You recognize that? *A.* Yes, sir. I think I have seen surveyors that didn't.

Q. You are one of those who do recognize that principle? *A.* Yes, sir. I have had a great many good lawyers tell me it was correct.

30 *Q.* Following that principle, if you started from a given point, whether you started from Noe's Creek, or whether you started from the end of the worm, and ran a certain distance to the Blazing Star Road, you would go to that road, and when you got to that road you would stop, wouldn't you, no matter what the distance actually measured? *A.* If there was any way of determining the road I would consider that that determined the distance.

Q. And when you got to the road, and the next line called for a line along Rahway avenue such a distance,

or so many degrees and minutes, you would follow the avenue, wouldn't you, even if you didn't find the exact degrees and minutes? *A.* Yes, after once locating the road.

Q. And so on all the way around, and the mere fact that you found, if you did find, if it should happen that you found that the courses, the line and the angle didn't exactly agree with what you found on the ground, you would not skew your line across the road up here to argee with the angle, would you, but you would follow the road? *A.* After I had located the road. **10**

Q. As you went around this tract, you began at the end of this worm, didn't you, is that where the beginning point of the survey was, as you made it?

A. Yes, after the—

Q. Just answer the question. You have said so. Suppose I should ask you, irrespective of any deed, to go with me down in the swamp there to the northerly side of that worm, which side would you go to?

A. I would go to the northerly side. **20**

Q. Which one would that be? *A.* The northerly.

Q. Show me? *A.* The top of the map is the northerly side. The side of the worm nearest the top of the map would be the northerly side.

Q. So that you would substitute the word "end" for "side," wouldn't you? *A.* No, that would be the lawyer doing it. I would take it exactly according to the needle, as you asked me.

Q. There is my pencil, it has two ends and two sides, hasn't it, or more than two side possibly? *A.* Yes, that is many sided. **30**

Q. It is an octagon, perhaps, but it has two ends, disregarding the particular lateral form of that, but it has two sides and two ends. If I called for the side of the pencil would you go to the end? *A.* If you called for the side of the pencil, and I was surveying the pencil, I think I would go for where you called the side of the pencil, but if it was a worm, you would take the northerly side, just the same.

Q. The end of the worm and the side of a worm are somewhat different from the end and side of the pencil? They wiggle, is that it?

By the Court.

Q. What is it in that description that justifies you in going to the end of the worm and treating that as the side? *A.* The worm is not a point, it has a spread around about it, a smaller part in the middle, and sedge grass spreading it out, so that
 10 the worm is not fixed like the end of a lead pencil. It has a side of it. This is the surveyor's reasoning as we went around there. Your Honor will recollect, after getting to the Noe's Creek, beginning at the worm, after getting at Noe's Creek, it followed the course of the creek to the beginning; that is to say, it ran up this creek, on up this worm until it comes as far as it could go on the worm, and that is the beginning

Q. As I recollect the description it omitted any refer-
 20 ence to the work in the final course?

Mr. Strong: Yes, sir; or any other course.

A. Yes, sir; it followed the worm.

Q. But you had to get to your starting point somehow? *A.* Yes, sir; it followed the—

Q. The question I am asking is why you treated what would be substantially the terminus of the worm, at a northerly side of it? *A.* There was a fence that ran down to this worm. There was an old stake standing
 30 within a few inches of where we fixed our line, and there had been a surveyor who gave a course and bearing coming from the creek to that worm, and a distance, and they all corroborated together there in helping judge that to be the northerly side of the worm.

Q. Treating the direction in the compass on that deed, would they make sense regarded in any other way to speak of the northerly side, would there be any northerly side along the side of the worm treating it lengthways?

A. There wouldn't be any northerly side of that

worm treating it lengthways. The northerly side would be where it curves around this head of the worm, as it is termed.

Q. Does that enter into it in any way as enabling a surveyor to reach a conclusion? *A.* Undoubtedly. Certainly that would enter into it. We would find some data describing it as the northerly side of the worm and if we could go to the extreme northerly point of that worm, you would get what would be the exact rendering of that word, and whatever necessarily would be in there to qualify such condition, a surveyor would use, but that would be the strict rendering, the northerly side, the most northerly point or part of that worm would be its northerly side. 10

By Mr. Strong.

Q. You are familiar with the deeds in this chain of title, aren't you? *A.* Yes.

Q. You are familiar with a deed made by the same grantor—was it Peter Noe who made the grant in which this worm is first referred to? *A.* Peter Noe made the grant to Benjamin Noe. 20

Q. Are you familiar with the deed that he made afterwards to his sons for the remaining tract?

A. Yes, sir.

Q. Do you recall that he bounded that tract on the north by the Houghwort tract? *A.* Yes, sir.

Q. So that that same grantor, within a year, used the northerly boundary as referring to what must evidently have been the west side of the Colwell tract, didn't he? 30

A. He confined himself to the Houghwort tract.

Q. And he called that north? *A.* He made—I think there was some question of him calling that the north—

Q. No question about it at all, it is there in the book.

A. But he made Staten Island Sound the south.

Q. Yes, he made that the south, showing evidently the opposite to that, the Houghwort tract, was the north in his mind, didn't it? *A.* No.

Q. At the time that he said the Staten Island side

was south, and the opposite direction was the Houghwort tract, the north, showing that that was evidently in his mind as the north side, wasn't it? *A.* May I answer that as a surveyor?

Q. Not indefinitely. Just answer the question yes or no. *A.* I am going to answer it as a surveyor my way, if you please. The Houghwort tract was made in the description by a surveyor, with meets and bounds in it. The Colwell tract, as it was given in there, was made by some lawyer, or some lawyer's clerk, who had no meets and bounds, and there is a vast difference in defining the last between the two.

Q. And when he came to draw the deed for this later tract, with the Houghwort deed before him, and hearing this called the north side of the worm, he adopted the north direction as the boundary of his Colwell tract? *A.* That lawyer, or lawyer's clerk undoubtedly did.

20 *Q.* Well, the grantor adopted it?

By the Court.

Q. Mr. Tice, there is a hiatus in that description in the last course, isn't there, apparently. *A.* No, sir.

Q. Wouldn't you expect to find the surveyor describing that along the creek, and thence along the worm to the place of beginning? *A.* He says along the creek and mill pond. That creek was used for a mill pond, and this worm was part of the place for storing water for that mill pond.

30 *Q.* Does it speak of the mill pond? *A.* No.

Mr. Strong: I have the description here.

The Court: My impression was it read along the creek to the place of beginning.

Mr. Strong: "Thence south sixty-two degrees east thirteen chains to the aforesaid creek. Thence down along said creek, as it runs the several courses thereof, to the place of beginning, containing seventy-five acres, be the same more or less, bounded easterly by lands of Peter Noe, northerly and westerly by the highway, southwesterly by

land of Peter Noe, and southerly by the mill pond creek." That is the only reference to the pond at all.

A. That is the idea, and that is beginning at a stake planted at the east side of the mill pond creek, on the north side of a small worm putting out from said creek, that is the Noe the one that has a surveyor to write it, instead of being patched up.

By Mr. Strong.

10

Q. And he knew enough to differentiate between the creek and the worm putting out of the creek, didn't he?

A. No.

Q. Being a surveyor? *A.* No, the worm putting out of the creek.

Q. Is the creek? *A.* But it is the mill pond creek, the water stored in there for running that mill pond.

By the Court.

Q. Would that be good surveying description to speak of it as thence along the creek to the place of beginning, leaving out the worm, if in point of fact it ran to the head of the worm? *A.* Down along said creek as it runs the several courses to the beginning.

20

Q. Yes. *A.* The several courses to the beginning.

By Mr. Strong.

Q. Is that one of the courses of the creek, this worm?

A. Every time it makes a bend it is a different course, that is, when surveyors make. Lawyers may have it different.

30

By the Court.

Q. Would it be a closing up of the line? *A.* Yes, sir; it would be a closing up of the line; as long as there was a strip of water that you started on, and it had a bank and a boundary to follow around until you could get to that place, that would be a closing in of the line, if it made the various courses, down upon the creek its various courses. As long as there was an edge of the creek for it to follow, and could get back to that

original place, its various courses of the creek, or this worm putting out of the creek, it would go to that place, and I think would close in.

By Mr. Strong.

10 *Q.* That is your individual opinion. So that if there was any body of water it might be a brook running down along this line, and it said, after beginning at a point on the side of the creek, came around down the creek to the place of beginning, you would say that it had to run down the creek, and up the brook as far as necessary, to suit your theory, wouldn't it? *A.* If the deed said so.

Q. But the deed doesn't say so. *A.* This deed said so.

Q. That is your opinion? *A.* Yes, that is our difference.

Q. In other words, you say if there is any water at all that it can follow, you would call it the creek, until it comes back? *A.* Not a bit of it. I don't say that. That is what you said.

20

By the Court.

Q. In a description such as that is, would an arm of a creek in any sense be regarded as the creek itself?

A. If it is used as a mill pond, most surely it would, and that was used for a mill pond. Every arm of that creek, on the various places—

Q. Do you know how wide this creek is? *A.* About ten feet.

30 *Q.* And how wide is this turn at the end of it, the mouth? *A.* This brook would run up there at the bottom of it probably a foot or a foot and a half. It widens out.

Q. No, I say at the mouth.

Mr. Silzer: Mouth of the worm?

The Court: Yes.

A. About four or five. It is wider as the tide increases.

By Mr. Strong.

Q. There is no pond in that creek now, is there?

A. No, not that I saw.

Q. That has not been in any time within your recollection or observation? A. Not since my recollection.

Q. There is no dam anywhere that holds the water back? A. No, no dam.

Q. You say this was a pond in 1817, do you?

A. Why, the deed said so.

Q. No, it does not. Do you think this says it was a pond? The only reference is by mill pond creek. Now I understand that to be a creek entering a pond. 10

A. Bounded by what?

Q. Southerly by mill pond creek. Do you understand that to be a pond? A. Yes.

Q. Why? Just from that language?

A. No, I understand that—

Q. Oh, well, if you heard something—

The Court: Let him answer.

Mr. Strong: I don't want—

Mr. Silzer: Then don't ask a question.

Mr. Strong: I will withdraw the question. 20

Q. I only want to know if you base that upon the language of the deed? A. I base it upon the language of the deed, sure, that is the basis in all surveys.

Q. If there had been a pond there, there is no telling where the water went, it might have covered acres, you can't tell anything about it if it is a pond?

A. Sure. It is a tide water pond. That is a tide water mill that was in there, and it come just as high as the tide water came, and be held in, and then run 30 when the tide was going out.

Q. You don't mean there was ever any dam that held it, do you? A. Why, yes.

Q. When you talk about pond, do you mean the enter and flow of the tide? A. No, I mean a dam that was put in there when the tide came in and filled up the rivers and streams, creeks, and all its tributaries, filled it up with tide water, that they had a process of closing that up and stopping the water, and after the tide had

fallen a given length of time they had a flow of water to operate what was then known as tide mills.

Q. You measured from the end of your worm how many feet exactly, and inches? *A.* Well, I measured, it was measured under my direction, I didn't hold the chain, 1089 feet.

Q. Just exactly to what point did that 1089 feet come? How far from the opposite side of Rahway avenue at that point?

- 10** *A.* I think that came either four or five-tenths—the outside of the fence in there came four or five-tenths shy of being sixty feet, five or six inches, I should say. If you carried to the middle of the fence the sixty feet would be there.

Q. Do you mean measuring from the fence on the opposite side you came four or five what? *A.* Measuring the 1189 feet from our place at the worm to the point that I determined as the southerly boundary of Rahway avenue, from the Houghwort deed, then

- 20** checking across from that point there was fifty-nine feet six or seven inches to the southerly side of the fence across the road. The five or six inches could be taken in the middle of the fence, or middle of the line of fence.

Q. No trouble for a surveyor to take up five or six inches, is there, in running that distance? *A.* Oh, yes, a great deal of trouble.

Q. It would not bother you, would it? *A.* Yes. If I had a good natured man like you ask for it, I would want to see what I did it for before I did it.

- 30** *Q.* You got what you thought was a point there, didn't you? *A.* Yes, sir.

Q. You throw away the five or six inches, I suppose, to get sixty feet? *A.* No.

Q. Well, at any rate, you made sixty feet?

A. We got 1089 feet, and we fixed a point there that after we got these other points—my purpose was to determine where Rahway avenue was; there was no return that I had found, but I was going to take these deeds and get—after getting that point and putting it in there, then we got the other point we put in there—

Q. I am not asking you to go all over your survey.

A. I thought you wanted to know how I was going to use that.

Q. I understand, but wait a moment. Then you started on down on the other course? A. Yes.

Q. And you didn't find anything that definitely fixed the bend in the road, did you? A. Yes.

Q. I mean at the bend? A. Yes.

Q. What did you find? A. We found the stump of a large white oak, an old fellow.

10

By the Court.

Q. The stump that you have spoken of, do you mean? A. Yes, sir.

By Mr. Strong.

Q. You found an old stump there? A. Yes. And we ran our line—

Q. Wait, I didn't ask you about running your line, but what you found. You said you found the stump there? A. Yes,

20

Q. This is that course, "Thence along the same"—after having run to the southwest side of the road leading from the New Blazing Star Ferry to Bridgetown, "thence along the same north seventy degrees thirty minutes west, sixteen chains and sixty-seven links to a large white oak." You found a large stump, whereabouts was that?

A. The large stump was just to the north about a foot and a half from where we found our corner, to the north of the line that we have measured out.

30

Q. A foot and a half to the north? A. A foot or a foot and a half.

Q. You are throwing away six inches again. Why do you do that? Don't you know accurately A. Yes.

Q. Well, what was it? Was it a foot, or was it a foot and a half? A. Well, I don't know whether it was a foot, or a foot and a half. It wasn't exceeding a foot and a half.

Q. You can't tell us now? A. No, I can't refer to it now.

Q. You ran to that stump? A. No. We ran our line and when we got there we found the stump. We ran to a point opposite the stump.

Q. What do you mean by opposite the stump?

A. Because we were—

Q. Just what do you mean by opposite? A. Instead of striking the stump we went alongside of it.

Q. Alongside of it? A. Yes, sir.

10 Q. That is, on the southerly side of it? A. Yes, sir.

Q. About a foot or a foot and a half? A. Yes, sir.

Q. Where was that? What distance in chains and links was that stump from the point where your line came out on Rahway avenue? A. Distance of the deed.

Q. Tell me what it is?

A. Sixteen chains and sixty-seven links.

Q. Did you find it precisely at the distance of sixteen chains and sixty-seven links, the stump?

20 A. No, we found it opposite that point, as I told you.

Q. Was it precisely opposite that point?

A. I should say yes.

Q. Don't say yes if you don't mean yes.

A. I mean yes.

Q. Why did you hesitate? A. I was trying to recall how far it might possibly be. You are raising a question about a man telling six inches of the stump and there is a question in my mind whether we were six inches or a foot beyond that stump. My recollection is we were opposite the stump.

30 Q. Opposite what part of the stump, the middle?

A. No.

Q. The edge of it, which edge?

A. I think the westerly edge.

Q. The further edge? A. The further edge.

Q. How large a stump was it? A. Stump that was two and one-half or three feet across.

Q. And you ran to the further side of it, your measurement carried you to the further side of it?

A. Our measurement carried us within the area of the stump, and towards the westerly side.

Q. Didn't you say you thought you ran to the westerly edge of it? *A.* No. That is what you asked me if I hesitated about.

Q. What do you say now? What part of the stump did you run to with your measurement?

A. We ran to a point opposite the stump, within the boundaries of the stump, near its westerly side, if that would be definite enough for you.

10

Q. How near its westerly side?

A. That I couldn't give you.

Q. You are an accurate man, Mr. Tice, and you must have made accurate notes of this survey?

A. Yes.

Q. You have got them right there before you?

A. No, I haven't.

Q. Why didn't you bring them? You came here to testify, and sat around two or three days, and yet you haven't got your notes of this survey? *A.* Don't you get worried about that. Perhaps I might have all that is necessary.

20

Q. Perhaps so, but you don't seem to have that, do you? *A.* No, I don't think I have got the measurement as to the exact part, how far it is from the stump.

Q. You say it was a stump three feet in diameter. Was that a green stump? *A.* No.

Q. What was the appearance of it, an old stump?

A. Old stump.

Q. Pretty much rotted? *A.* Yes.

30

Q. You call it a white oak stump. Why did you call it that? *A.* Because we chipped off the wood and it looked like white oak.

Q. Do you mean a rotten stump, you can tell whether it is white oak, or what kind of a tree it is? *A.* Sure.

Q. What? *A.* I can tell whether it a white oak.

Q. No matter how rotten it is? *A.* No. That is another thing. It is only lawyers can do that.

Q. Where you have lined off on the other side of this

map, or rather your associate has, something that looks like streets radiating out or branching out, are those existing streets, or were they, rather, when you made your survey, streets in existence? Some of them were.

Q. How about the street with that angle in Rahway avenue, was that an open street?

A. I don't think it was.

Q. You don't think it was? A. No. I ain't sure.

Q. So this is just a picture of it, is it, so far as
10 that angle goes, with the road branching out of it?

A. I don't testify as to the map.

Q. You don't want to stand for the map throughout?

A. Well, yes.

Q. Will you stand for that? Do you want to say that there was a street there? A. You said it was made for a picture. I don't know whether it was made for a picture. That you ought to have asked Mr. Simons.

Q. You don't know whether it was gotten up with
20 the idea of being a picture, or not, do you, you don't want to say? A. I don't think it was got up to be a picture.

Q. You didn't have anything to do with it?

A. I didn't make the map.

Q. And you want us to understand it is not your map? A. I didn't make the map.

Q. We will not charge it up to you. When you get to that point, some point in or near the bend of the road, the point that you fixed there was somewhere
30 in the circumference of this rotten stump, was it?

A. No.

Q. How far away was it?

A. About a foot and a half to one side of it.

Q. About a foot and a half?

A. A foot or a foot and a half.

Q. More or less? A. No.

Q. That is a good surveyor's description, isn't it?

A. No.

Q. More or less? A. No.

Q. When you said you were a foot or a foot and a half from the stump, do you mean from the outside of the stump? *A.* Yes, sir. That is my recollection. If this were the area of the stump, then I was over here (indicating).

Q. Then you got over here a foot and a half, more or less? *A.* Yes.

Q. Then that point suited you, and you went on measuring down Rahway avenue, did you?

A. I went on measuring down Rahway avenue. I 10 didn't know whether that point was going to suit, or what, Mr. Strong. That was the point, following the directions of the deed.

Q. Well, you followed on down Rahway avenue, and you ran— *A.* The next course.

Q. Let me see what it is.

A. We made an angle to the right.

Q. It calls for an angle here does it? *A.* An angle to the right; yes, sir; twenty degrees and thirty minutes to the right. 20

Q. Thence north fifty degrees west fifteen chains and eighteen links to a corner of said road?

A. To a corner of said road.

Q. That is from the white oak tree?

A. That is this corner (indicating), the upper left hand corner of the map.

Q. You turned that angle, did you? *A.* Yes, sir.

Q. Did you take the exact angle—? *A.* Of the deed.

Q. It reads here, thence north fifty degrees west fifteen chains and eighteen links. 30

A. The angle taken was twenty degrees thirty minutes to the right. That is the difference between this bearing on the deed and that bearing on the deed (indicating).

Q. But the course that you followed from there was north fifty degrees west? *A.* No.

Q. What was it? *A.* North between forty-three and forty-four degrees west.

Q. Are you speaking now accurately? *A.* Yes.

Q. How accurately? Within a degree? *A.* Yes.

Q. Disregarding minutes? *A.* Disregarding minutes. The question was here, Mr. Strong—

Q. Never mind about that. I only want you to answer the question. You don't know the exact minute of the course that you ran? *A.* It is the—

Q. Just tell me? *A.* It is the fifty degrees—north fifty degrees west, less the variation of the compass found for that time.

Q. What was the variation?

10 *A.* Six degrees and fifty minutes, we found.

Q. Is there a regular table out of which you get the variation for— *A.* There are tables, yes.

Q. Where did you get this variation in this instance?

A. We got this variation in this instance by taking the difference in the bearing of the deed up this line, and the bearing of the instrument the day we were measuring the survey. We applied that variation to all the other courses of the survey.

20 *Q.* Well, you found what you thought was the variation by experiment there then, did you? *A.* No.

Q. How did you get it? *A.* Well, we read six degrees and fifty minutes less than the angle that was called for running in the Houghwort deed, and we were on this line that we were carrying out here, this line was marked, Mr. Strong, by trees, you know.

Q. I understand.

A. And we were going to survey out a farm.

30 *Q.* I understand, but I didn't ask you that. Do I understand then that you made a variation of six degrees and how many minutes? *A.* Fifty minutes.

Q. Almost seven degrees in running the line from the end of the worm? *A.* Yes.

By the Court.

Q. Did that fence line that you speak of determine that? *A.* The fence line—

Q. Yes or no, Mr. Tice.

A. Determine what, your Honor?

Q. Determine the variation in the degree when you compared the direction of the compass at that time,

with the present compass point?

A. The direction of the fence regulated that.

Q. Well, it determined the variation?

A. Six degrees and fifty minutes variation that we then found.

Q. That is to say, if the fence line which then existed was on a certain point of the compass? *A.* Yes.

Q. The difference between that and the present point of the compass would be the variation? *A.* Yes, sir.

By Mr. Strong.

10

Q. In other words you found your compass didn't read the same as the line from the end of the worm, not by nearly seven degrees, is that right? I think you said that already. *A.* It didn't read the same, what do you mean?

Q. It was not the same?

Q. The variation between that time, of six degrees and fifty minutes, as between the bearing of the deed and the bearing of this line which we had taken for the boundary line.

20

Q. Then I am right, am I not, in saying that your compass didn't give the line which the deeds called for, not by nearly seven degrees? *A.* No, you ain't right.

Q. I am not right? *A.* No. The deed called for the line my compass was on, but the variation allowed for that difference there, the natural variation.

By the Court.

Q. Mr. Tice, did you follow the variation all the way around? *A.* Yes, sir. That is the object in getting the first course.

30

Q. I understand that, but I am asking you what you did. *A.* That is the idea, for a check.

By Mr. Strong.

Q. In other words, this first line runs on a course north twenty-five degrees fifteen minutes east, sixteen chains fifty links. Now when you read your compass down there that day, you took a sight from the end of

the worm, did you? *A.* Well, we were on a line parallel with the line of the fence, in order to get around the tree.

Q. You did it by an offset? *A.* Yes.

Q. At any rate, what did you read on your compass for that course? I don't mean now by correcting the variation, or in any changes, I mean the actual minutes and degrees that you read? *A.* Thirty-two degrees and five minutes.

10 *Q.* Northwest? *A.* Northeast.

By the Court.

Q. What, Mr. Tice? *A.* Northeast

By Mr. Strong.

Q. And that, you say, was six degrees and fifty minutes different from the reading, that is, it varied six degrees and fifty minutes from the course north twenty-five degrees fifteen minutes east, is that right?

A. No.

20 *By the Court.*

Q. Mr. Tice, you say there are established tables giving the variation for different periods?

A. No, sir. Mr. Strong said that.

By Mr. Strong.

Q. Well, you say there are not?

A. There are not established tables with any regular—

By the Court.

30 *Q.* Suppose you didn't have any guide line like this fence line, or post line, or tree line? *A.* Then there are tables that give approximately the variation.

Q. Are they used in practice by surveyors?

A. Some, yes, sir.

Q. Did you consult them in this case? *A.* Yes, sir.

Q. What did you find? *A.* I found that this time there ought to have been a variation there of about eight degrees and twenty minutes, I think it was.

By Mr. Strong.

Q. Instead of six degrees and fifty minutes?

A. Yes, sir.

Q. In other words, one degree and a half difference?

A. Yes.

By the Court.

Q. Were there any deflections, any causes for deflections at all here? A. Do you mean local?

Q. Yes. A. No, there was no chances for local attraction, excepting if we got too close to portions of that fence, there was wire on the fence running up through there, but we took pains, we were ten feet off to one side for an offset there. 10

By Mr. Strong.

Q. That wire apparently had been upon there one hundred years, had it? A. No, I didn't say that.

Q. It didn't look like it? A. No.

Q. Having found this old fence line down there, and having found that your instrument didn't read within almost seven degrees of it, why, you dropped the reading of the instrument and took the fence line is that it? A. No. 20

Q. You went on down Rahway avenue, and what course did you take there? Down Rahway avenue—which way do you mean down Rahway avenue?

Q. Well, whether up or down, I don't care. West.

A. I measured the angle of the deed, compared this line we had here, which in this instance was—

Q. Wait a moment. From the place where you struck Rahway avenue first, you got an angle there, didn't you? A. Yes. 30

Q. And the deed says that you should run thence along the same, that is along the road north seventy degrees and thirty minutes west. What course does your sixty foot line in fact run as it is delineated on that map? A. That makes the angle of the deed—

Q. Can't you tell me? I am asking you now what is the exact course of the sixty foot line of Rahway avenue as you have got it laid out there?

A. With the improved instruments for measuring angles, we measure angles, instead of always reading a bearing, so that we measured the angle.

Q. Can't you tell me the bearing, if you can?

A. Oh, the bearing of the deed?

Q. No, the bearing of the line that you have laid out here on the map, that is what I want to know?

A. The line I have laid out on the map?

10 *Q.* You don't stand for this map, but tell me, if you can, the bearing of the line that you surveyed with Mr. Simons? *A.* North seventy-seven degrees twenty minutes west. Now I did that by measuring the angle producing that line.

Q. I didn't ask you that, but I knew you were ready to tell it, and you have told it.

A. Why didn't you give me a chance?

The Court: Mr. Tice, come back to the chair.

20 *Q.* Do you mean that the course north seventy-seven degrees twenty minutes west is the course of the line that you determined as the southerly line of Rahway avenue? *A.* That was the course taken that day, four or five years ago.

Q. You are telling us of having determined a certain line. Now I ask you whether that is the course of the line that you determined?

A. That was some five or six years ago.

Q. Has it changed since? *A.* Sure. Didn't you know that?

30 *Q.* How much has it changed?

The Court: Is that of any consequence?

Mr. Strong: I don't know that it is, but he seemed to bring it in.

The Court: We all know that a compass does change from year to year.

Q. That is the course you determined then, was it?

A. Yes.

Q. And did you find that the exact variation which there was between the line of old trees leading down

to the worm, was the variation that there was between the present compass, then present compass, to the southerly line of this street?

A. We measured the angles, Mr. Strong.

Q. I know, but after you measured the angles you got a certain course, didn't you? I don't care how you got at it, by measuring angles?

A. You get that by calculation.

Q. You did get it somehow?

A. Yes, you get that by calculation.

Q. But after all, what you were getting at was the course of that line, wasn't it?

10

By the Court.

Q. That is true, isn't it, Mr. Tice? A. Judge—

Q. You wanted to find out whether the course of this line corresponded with descriptions that you had?

A. Yes.

Q. And in order to do that you had to get courses to see whether they did correspond, didn't you?

A. I measured it from angles.

20

By Mr. Strong.

Q. Now, you went on with the next course, after you got beyond this oak tree, and what course did you find for that? A. I measured the angle of the deed.

Q. I don't want you to tell me that, I want you to tell me— A. And the course of the deed was south nine degrees west, and applying the variation that would make it south fifteen, fifty west.

Q. Now, you are simply adding to the course in the deed the variation that you found down on the old fence? A. That is all, sir. I told you it was derived by calculation only.

30

Q. That is the way you got at it, by adding in that variation every time, is that it?

A. That is the way we made comparisons with the various lines in there, because we made the angle given in the deed between the bearings of two lines of a deed, and we laid that angle off, and then we would get

our comparison from the variation that we found on the one line.

Q. In other words, having established this line up from the head of the worm, you took that as the basis of the whole survey?

A. No, we took that lot, and after we got around to the finish we established that line as correct. It was all dependent upon how we found corroboration along that line, the various points on down through until we
10 got to the end.

Q. But from that line you determined the variation of the compass? *A.* From that line we had the beginning. There was a marked line, and we took it as a basis.

Q. And from that line you swung the first angle, didn't you? *A.* Yes, sir.

Q. And then based on that line you swung the next angle, didn't you? *A.* Based on which line, the second line?

20 *Q.* Based entirely on the first line; of course, it had to be based on the second line too, I suppose, but it all went back to the first line? *A.* No, the next angle was swung because of the bearings of the second and third angle.

Q. But the second angle went back to the first, didn't it? *A.* Yes. If the first had been wrong, they would all have been wrong, if that is what you mean.

Q. Yes. *A.* Yes, if the first had been wrong they would all have been wrong.

30 *Q.* And if you had taken, as the deed called for, some part of this old stump, instead of going a foot and a half one side of it, and then had run the angle your line would have skewed either north or south to a considerable distance, wouldn't it?

A. Yes. Up at Brady's corner. That would have been a case where the survey would not close at all.

Q. Would not close at all? *A.* Yes.

Q. And yet you ignored that old stump, so far as running to it was concerned, didn't you? You didn't go to it within a foot and a half?

A. I didn't know the old stump was there until we ran the line and got the measurement there.

Q. Then when you did find it there you took that stump to be the remains of the oak tree called for in the deed, didn't you? *A.* I presumed that was it; yes, sir.

Q. And, of course, as a tree called for in the deed, it was a monument wasn't it? *A.* Yes.

Q. And yet you didn't go to that monument?

The Court: That has appeared, Mr. Strong.

10

Mr. Strong: Alright; very well, I don't care to urge it if it is clear.

Q. When you got up to this other road, what do you call this, the Blazing Star road?

A. The Blazing Star road.

Q. Was the easterly line of that Blazing Star road clearly defined? *A.* Not right at that point. It was further down to the south.

Q. What was there at that corner?

20

A. There were trees. There was an old fence that had been carried up on the Rahway avenue road, and on the west side of the Blazing Star road was a fence. Three rods from that fence to the eastward should be the easterly side of the Blazing Star road, and at that point our line coincided. Not to the one hundred—

By the Court.

Q. Did your compass variation correspond to that line too? *A.* Well, only by calculation. I don't think I took the compass variation at that point.

30

Q. Well, you ran the compass, didn't you, down?

A. No.

Q. Didn't you, on that line? *A.* No. On the—

Q. On the line running south? *A.* Yes, on the line running south. We checked our bearing up and it had the same variation as the other; yes, sir.

Q. Is that an additional check then to the line running from the worm up? *A.* Yes, sir.

Q. As to variations? *A.* Yes, sir.

By Mr. Strong.

Q. What did you find the course of the Blazing Star road to be? Have you got anything there to show?

A. Only the deed, and applying the six degrees and fifty minutes, Mr. Strong.

Q. What you are going to say is just add on six degrees and fifty minutes? *A.* Yes.

Q. The line that you established down the Blazing Star road, what was there to mark that anywhere down there? *A.* Down on the southerly end of it there was old remains of old fences, part of the fence up. Post holes running along.

Q. How far down? *A.* Within four or five hundred feet of Rahway avenue, and then all the way down.

Q. Beginning at about four or five hundred feet south? *A.* Yes, sir.

Q. And then further down did you find a fence in complete form? *A.* No, it was old, and battered down, and irregular.

20 *Q.* Battered down, and a piece here and there, and in and out? *A.* Not a continuous fence.

Q. You don't mean to say that the line which you determined for the line of the Blazing Star road, by simply adding the variation that you had determined on the line from the worm, you don't mean to say that that would run through all these old fences, do you, on the Blazing Star road?

A. Yes; it wouldn't follow the exact direction of all these old irregular fences, but take the general direction of all the fences, certainly. It would run through part of the fence, and in places where the fence was irregular, one part may be on one side of the road, and one part on the other.

Q. Sort of in and out, and you used your best judgment about it, that is it, isn't it?

A. Well, we used our best judgment, of course.

Q. Up at the corner of Rahway avenue you didn't find anything at all to mark the corner, did you?

A. No post.

30

Q. Well, did you find anything?

A. We found a fence running up along the southerly side of, a portion of the southerly side of Rahway avenue, right at that corner, and then west, across the Blazing Star road, was another fence, and that fence on the west side of Blazing Star road corroborated the measurement going up along the south side of Rahway avenue.

Q. How closely did it corroborate it?

A. Within five or six inches.

10

By the Court.

Q. What width did that make Rahway avenue?

A. Those measurements were with reference to Blazing Star road. Now across on the other side of this—we did check to the other side.

Q. I understood you to say that before you got to the corner you found some fences on the south side of Rahway avenue, and then running up to the corner?

A. No, right up to the corner there was some broken down fences.

20

Q. What did they give the width of Rahway avenue?

A. They give it sixty feet.

By Mr. Strong.

Q. Exactly, do you mean? A. Yes, on Rahway avenue.

Q. For what distance from Rahway avenue down?

The Court: Do you mean from the Blazing Star?

Mr. Strong: I mean from the Blazing Star.

30

A. I meant right at the corner of Blazing Star road.

Q. What length of fence was there on that corner?

A. Oh, a dozen, or half a dozen, or ten or a dozen panels of fence, or parts of it in there.

Q. And how far is that point from the beginning—it is about twenty-one hundred feet from the corner of the Colwell tract, isn't it? A. Yes, sir.

Q. Considerably over a quarter, and somewhat less

than a half a mile. You made some use of the Videl map, didn't you? *A.* Yes, sir.

Q. And along Woodbridge avenue, on the Videl map, you took a distance of two hundred and eighty feet, was it? *A.* Yes, sir. I had a copy of the Videl map there and I measured the distance down.

Q. Will you take your scale and bring it here and tell me what the distance scales on the Videl map from Rahway avenue down to the southerly line of the
10 Radley tract along Woodbridge avenue?

A. What it scales?

Q. Yes. *A.* On Rahway avenue to the—

Q. Southerly line of the Radley tract along Woodbridge avenue? *A.* It scales two hundred and eighty feet.

Q. Precisely? *A.* Yes, two hundred and eighty feet.

Q. What does it scale along the opposite line, the westerly line? *A.* Three hundred and fifty feet.

Q. Precisely?

20 *A.* Three hundred and fifty-one, probably, or two.

Q. Which is it, one or two? *A.* Either one.

Q. What distance did you take in order to confirm your survey along that line, three hundred and fifty, fifty-one, or fifty-two? *A.* No, I took five chains and sixty-five links as my basis on it.

Q. You told us you took the distance on the Videl map. *A.* That is the distance on the Videl map. Didn't you know it?

Q. Where is it? Show it to me. *A.* Down here
30 (indicating).

Q. Do you find it there? *A.* Yes.

Q. Where is it? Just point it out to me.

A. Here (indicating).

Q. What, in lead pencil? *A.* Five chains.

Q. Lead pencil? *A.* Yes.

Q. Do you take that as part of the map?

A. Took that as somebody having made the measurement there.

Q. Somebody had written down so many chains and

so many links in lead pencil? *A.* Yes.

Q. And so you took that, did you?

A. I checked up on that, Mr. Strong.

Q. How close did that come to the scaling of three hundred and fifty, or fifty-one or fifty-two feet?

A. Come about twenty some feet.

Q. Twenty some feet from it? *A.* Yes, sir.

Q. Then you didn't take the scaling of the map, did you? *A.* No.

Q. At that point? *A.* No.

10

Q. And all that you did take was a lead pencil memorandum that somebody had written on the map?

A. I checked up with that; yes, sir.

Q. Suppose you had taken the twenty feet which the scale of the map calls for, how would that have corresponded with your line along here? Twenty feet out, wouldn't it?

A. Why, if I had taken it from the scale, yes, it would have been twenty feet further, twenty feet further in Colwell's tract.

20

Q. I don't care which way, I am only testing the accuracy of it. If it comforts you, have it so.

A. It don't comfort me. I have got no interest in it.

Q. If you had taken simply the Videll map, as it appears to have been drawn by the draftsman in pen and ink, you would have taken along the western end of the Radley tract, as the measurement between Rahway avenue and the southerly edge of the Radley tract, a distance twenty feet different from what in fact you did take at that point?

30

A. Twenty feet less. That is, we would have fallen twenty feet further south of Rahway avenue, if we had taken the scale, but there are other differences on that map that would show why you shouldn't take the scale.

Q. Do you mean that the scale of the map is not reliable? *A.* That would imply so.

Q. That is what you mean?

A. Yes. If you look along Lafayette street the measurements are given on the different lots along there, and there is a definite place to calculate anything that is left there.

Q. How many times did you go over this survey of yours? Three different surveys, weren't there? I think I was there three different times. Twice I know I was there.

Q. And you made three complete surveys, didn't you?

10 *A.* No, sir; only one complete survey.

Q. I am not asking about the number of times you went there to complete a single survey, but did you not survey the entire property three times? *A.* No, sir.

Q. How many times? *A.* Why, once.

Q. You regard all your labors as part of one survey then? *A.* Until it is finished throughout, only one survey.

Q. You mean that you never have made a complete survey until you made your final survey?

20 *A.* Until we made out report; yes, sir.

Q. When you went around the tract first you didn't make this same result that you made finally, did you?

A. When I went around what tract?

Q. Well, when you went around the Houghwort tract? *A.* When we went around the Houghwort tract and closed in along with the boundary line on the south side, and found that the angles of the deed coincided with the line that started out there first, we considered that finished, and when we had established that

30 the northeast corner of the Houghwort tract, we had established a point on the southerly line of Rahway avenue.

Q. You didn't mean to say yes, did you?

A. I meant to state exactly the statement, but I didn't think yes would answer the statement as I have given it. I am wrong in that, but I thought I stated it clear.

Q. So that yes would not have been an adequate answer? *A.* Yes would have been your construction.

and the way I stated it is mine. That is all the difference.

Q. At what intervals did you go down there to survey on this matter of the line of Rahway avenue?

A. Well, in the matter of finishing and completing the survey, I did all the work within thirty days, field work.

Q. When did you do your first work?

A. I think it was in July.

Q. What year? *A.* 1908.

10

Q. How many days did you work there then?

A. Well, the first time I went down I worked one day.

Q. Did you finish your work in July, do you mean, in that same month that you started? *A.* I think it was all finished in July.

Q. All the work you did there was all within one month? *A.* Yes. I have been down since—

Q. I don't care about that.

A. Not to make a survey, but to show—

20

The Court: There is no question pending.

Q. Then you made your survey and completed your work all in the month of July, 1909?

A. All the field work that I did, 1908.

Q. 1908, was it? *A.* Well, it may possibly have been 1909. It was in July.

Re-Direct Examination, by Mr. Silzer:

Q. Mr. Tice, I would like to have you explain what you mean by the variation of the needle. Taking a survey that is made in 1817, and then take it up almost one hundred years later, why is it necessary to take into consideration the variation? *A.* Because there is a constant variation of the needle.

30

Q. What do you mean by that? Is the north point, the magnetic north point the same to-day as it was in 1817? *A.* The magnetic north is not.

Q. In what way is it different? *A.* It is swinging to the westward; the needle swings to the westward.

Q. So that if a man were standing as I am here to-day, one hundred years ago the north would have been eight degrees further east than it is today?

A. Yes, nine degrees.

Q. For instance, instead of pointing directly at that— *A.* In 1817, you say?

Q. Yes. *A.* Well, it would have been eight degrees.

Q. So that, for instance, instead of pointing directly at that map, north now, we will say, would be over to
10 near the window, that is the idea, isn't it?

A. That is the idea.

Q. Does that have to be considered when you take up a survey and description made in 1817?

A. It has to be considered and it receives more importance if you can't find any line with some established part to that line to use as a basis.

Q. So if you went out into an open field and you couldn't find any monuments of any kind, then it becomes very important, doesn't it?

20 *A.* Then it becomes necessary for you to calculate from the variation of the needle, and to know the time which the original deed, or the bearings of that deed, were taken.

Q. But suppose upon the ground you find a definite monument, like a fence that you have described here, do you consider that, where it is an old fence of that kind, and it fits in with the other angles, do you find that of any value? *A.* I looked upon the worm as a monument, and I looked upon a tree up—

30 *By the Court.*

Q. The question is whether you find them of value, when you find those conditions? *A.* I do.

By Mr. Silzer.

Q. You spoke about— *A.* They would govern—

Q. (Continued)—using angles. *A.* (Continued)—they would govern with me as against a calculation.

Q. Because calculations might be wrong, whereas the other is right? *A.* No, we would know, when you you are going to take the time to calculate, and they

are in the description of the deed, or whether the surveyor who made that description had also at that time made a calculation, that would be, as he would call it, the true meridian, or a calculation for the variation of of his time.

Q. After you have made allowance for your variation, do the angles in the deed and the description play any part?

A. The angles in the deed play the whole part, but we actually lay off the angles when we lay off the different courses and bearings. When you lay it off with a transit you calculate the angles given by those courses and bearings, and lay that off on the vernier, as Mr. Strong said, a little more degree of accuracy than what they would with a compass. 10

Q. Would there be any variation of the angles of the deed given one hundred years ago? *A.* No.

Q. So that the surveyor who laid it out, the angles would be the same as you found them today?

A. Unless he found local attraction on some part of his place, and in the process of time some of that local attraction had been removed. 20

Q. You mean by local attraction, if he ran against a piece of iron, or something of that kind? *A.* Yes.

Q. Which would draw his needle over a little bit?

A. Yes.

Q. I mean, ordinarily, would the angle given in a deed in 1817, be the same angle that you would find to-day? *A.* Yes, it should be.

Q. Did you find it so?

A. We did. That is what we laid off. 30

Q. You found the angles the same?

A. We made the angles the same in ascertaining and determining these lines. That was my contention with Mr. Strong.

Q. If this description started at the creek, instead of the worm in the creek, how wide would that road be in running it out?

Mr. Strong: I object.

Mr. Silzer: I will withdraw that.

Q. If this starting point in this deed, instead of starting at the worm, started, as Mr. Strong contended, at the creek, how far—

The Court: That has appeared beyond all question. Two hundred and some odd feet beyond the north of the present line.

Q. Would it bring the southerly line of Rahway avenue south two hundred and sixty feet?

10

Mr. Strong: I object.

A. It would.

Q. Now, Mr. Tice, with reference to the Videll map which you find there, you said that you checked it up, the twenty feet that Mr. Strong found a difference in the scale. How did you check it up?

A. We took the measurement given on the map on the easterly side of Lafayette street, and there the lot measurements are given.

20 *Q.* Does this map state how much each lot is on the easterly side of Lafayette street? *A.* Yes, sir.

Q. For instance, it says thirty feet, one hundred and twenty feet and thirty-eight feet, is that what you refer to? *A.* That is the westerly side. The easterly side is here.

Q. In adding up the figures given on this map for the front of those lots, do they make the—

Mr. Strong: I object.

30 *Q.* (Continued)—do they, or not, make the distance that you find upon this map? ..

Mr. Strong: I object. The question is leading.

The Court: I suppose it is a mere matter of calculation anyway.

Mr. Strong: Absolutely.

The Court: He may answer, if he has made the calculations.

Q. Have you figured them up, and if so, how do they compare with the distance you found?

A. I measured how long that distance was from the southerly line of the Radley tract—

By the Court.

Q. How do they compare? Are they accurate or not? *A.* They are accurate. I laid them off by the Videll map to ascertain the southerly side of Rahway avenue.

Q. Is there where you say you found the discrepancy in the twenty feet? *A.* No, the discrepancy is—

10

Mr. Silzer: In scaling the map.

Q. I understand, but that demonstrated that there was a mistake *A.* Yes, sir.

By Mr. Silzer.

Q. In scaling the map there purports to be twenty feet difference, but if you take the amounts that are given for the lot, there isn't any difference?

Mr. Strong: I object. Leading.

20

Q. Mr. Tice, what is the sum total of the distances given for the lots on that side of the treet, as marked on the map itself? *A.* On the east side of Lafayette street?

Q. Yes. *A.* Three hundred and thirty-four feet.

Q. What did you find upon the ground?

A. Three hundred and thirty-four feet.

Q. What does it scale?

A. I don't know. That isn't the point where he made the measurement for his scale. The measurement we made for the scale is alongside of the Colwell tract.

30

By the Court.

Q. That simply means, does it, that the map is not proportionate? *A.* That is it.

By Mr. Silzer.

Q. But the figures are accurately put upon the lot fronts?

Mr. Strong: Don't lead him.

A. Where the figures are they are accurate, of course.

Adjourned until 2:00 p. m.

DEFENDANT RESTS.

AFTERNOON SESSION, 2.00 P. M.

10 PLAINTIFF'S REBUTTAL TESTIMONY.

Harry Wright, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath, saith:

Direct Examination, by Mr. Strong.

Q. Mr. Wright, where do you live? A. Newark.

Q. What is your profession? A. Legal profession.

Q. Have you occupied yourself a good deal in searching of records? A. Yes, sir.

20 Q. You devote yourself to that largely? A. Yes, sir; I make a specialty of that.

Q. Have you made a search of the records of the county of Middlesex here in this clerk's office, and in other places, for any return of the road leading from the Old Blazing Star road down to the dock?

A. I have.

Q. Now known as Rahway avenue, and that section which is shown on the map here? A. I have.

Q. What efforts have you made to find such a return?

30 Where have you looked for it? A. I have looked through all the records here in Middlesex county, and also in the town clerk's office at Woodbridge, and Trenton, in the Secretary of State's office, and also one book up in the Historical Library at Newark, which is missing from the clerk's office at Woodbridge.

Q. Is that a township record that has been taken?

A. Yes, from the township records.

Q. Give us an idea of the care with which you have made this search? How carefully?

The Court: I suppose this is to show there is none?

Mr. Strong: Yes.

The Court: I understand that to be admitted at the very start of the case.

Mr. Silzer: Yes.

Mr. Strong: They didn't admit it in so many words, and we want to show a very extensive search for it.

Mr. Silzer: The conclusion he didn't find anything is all that is admissible. 10

Mr. Strong: Do you admit that there is no return in existence of this road?

Mr. Silzer: My objection is that your question should be, did you or did you not find anything.

Mr. Strong: I will ask that in a moment, after I ask what search he made.

The Court: I did understand early in the case that there was no record of the opening of this road. 20

Mr. Strong: They seem to be kicking on that. They don't seem to be willing to say so now in flat words.

The Court: Well, Senator, do you claim there is?

Mr. Silzer: We haven't offered anything in evidence to show it. They found no return, and Mr. Tice so stated on the stand.

The Court: Yes, Mr. Tice testified so, that there was none. 30

Q. With what care have you examined these records?

Mr. Silzer: I object. The only question is whether he found anything, or didn't he.

The Court: Objection overruled.

Mr. Silzer: I want to object that this is not rebuttal in any shape, manner or form.

The Court: This case has rebuttal in it all over.

A. I examined all of the records in the clerk's office

at Woodbridge Township by paging, reading every instrument.

Q. One page after another? *A.* Yes, sir. And also in Trenton I paged all of the Secretary of State's records.

By the Court.

Q. You made a complete search so far as the records of the State can throw light on it? *A.* Yes, sir.

10 *By Mr. Strong.*

Q. By paging them? *A.* By paging them, and reading each instrument.

Q. Did you find any trace of a return of the road?

A. There isn't any return in any of the records in existence.

Q. Did you find any indication of the existing width of the road in this part between Blazing Star and the dock?

20 Mr. Silzer: I object to that.

The Court: Do you mean in books? If he didn't find any record at all he couldn't find any indications of it.

Mr. Strong: He didn't find any record of the road return itself. I want to negative the fact that he found any—

The Court: It is for a negative purpose?

Mr. Strong: Negative purpose entirely.

30 Mr. Silzer: I submit the witness ought to say yes or no to this in express terms.

(Question repeated by stenographer).

Q. I will say of the width? *A.* Between the Blazing Star road and the ferry?

Q. Yes, that is it. Did you find the width stated anywhere in any record? *A.* No. There isn't any deed—

The Court: One momnet.

Q. You said no, did you? *A.* Yes.

Cross Examination, by Mr. Silzer.

Q. I suppose if you didn't find anything you didn't find where it was stated or where it wasn't stated, that is right, isn't it, Mr. Wright? *A.* I didn't find any record of it at all.

Q. Well, if you didn't find any record of any return, you didn't find any record of any width, did you?

A. No.

Q. Did you find the road that is running from Rahway Neck, a sixty-six foot road, running from Rahway Neck, in your searches through the records? **10**

Mr. Strong: What road is that?

Mr. Silzer: To Rahway.

A. Do you refer to the road running down to Kata-dins Point?

Q. No, a road from Rahway to Rahway Neck, and laid out in Rahway Neck sixty-six feet?

A. Yes, but that is not this road.

Q. How do you know it is not? *A.* Why, by the different owners on both sides of the road, or rather where 'he-- **20**

Q. What time did you find that road? *A.* What time?

Q. Yes, what year? About 1775, wasn't it?

A. I don't recall the year.

Q. Where is Rahway Neck, if this is not Rahway Neck? *A.* The whole section of the meadow and all the way down to, I think almost down to Smith's creel was called Rahway Neck. **30**

Q. This was all part of Rahway Neck, wasn't it?

A. Yes.

Q. And didn't that old Rahway Neck road that you found, wasn't it sixty-six feet? *A.* Well, I don't recall that.

Q. Why not? Weren't you looking for it?

A. No, I was looking for this road here.

Q. Do you know of any other road in 1775, except the Rahway Neck road, in existence in that neighborhood? *A.* Do I know of any other?

Q. Yes. *A.* The old Blazing Star road.

Q. That runs here at Brady's Corner, doesn't it?

A. Yes.

Q. Rahway was called Bridgetown in those days, wasn't it? *A.* Yes.

10 *Q.* Do you know any other road that ran from Bridgetown, or Rahway through Rahway Neck, except this road that ran down to the Ferry? *A.* I found several roads there, but by examining the owners on both sides of the road I determined that they weren't the roads we were after.

Q. Yes, you determined they weren't the road you were after. But did you find any other road running through Rahway Neck, and down to this ferry, in 1775, except the Rahway Neck road, which is sixty-six feet?

Mr. Strong: He has not said—you are speaking of another road than this. The question implies that this was a road running down to this ferry, but it is not.

20

The Court: It is cross examination.

Mr. Strong: I know, but it is a misrepresentation of his testimony. If your honor will attend to the question, he asks the witness if there was any other road running to this ferry. Of course, the implication is that this road ran to the ferry, whereas it does not, and the witness has said so.

30 *A.* There was no other road running down to the ferry, that is, to the New Blazing Star Ferry. There were other roads running to the Old Blazing Star ferry, which is not in controversy.

Q. But the old Blazing Star was laid out, as you see on that map, a three rod road? *A.* Yes.

Q. But the New Blazing Star ferry, which corresponds with the old Rahway Neck road, was sixty-six feet, as you found it?

Mr. Strong: I object.

A. I haven't said so.

Q. You found no other road that corresponded with it, did you?

Mr. Strong: I object. He has not said this corresponded with this road at all.

By Mr. Strong.

Q. This road that counsel is referring to, did it, or not, correspond with what is now known as Rahway avenue? *A.* No, it didn't.

Q. Was it this road at all? *A.* No.

10

By Mr. Silzer.

Q. Was there any other road that you found in '75, the time this Rahway Neck was laid out, that would fit into this location? *A.* I have said that there wasn't.

Q. And running to the Sound? *A.* I have said that there wasn't any road that would fit in that location.

Q. Is there any other one but the Rahway Neck road that ran to the Ferry on Staten Island Sound in 1775, that you found on the books? *A.* To a ferry?

Q. Yes. *A.* Only the one running to the Old Blazing Star ferry. 20

Q. Only the Old Blazing Star ferry? *A.* Yes.

Q. This Rahway Neck road was sixty-six feet, wasn't it?

Mr. Strong: I object.

A. I don't know. I wasn't particularly anxious to locate that.

Q. To find a sixty-six foot road? *A.* No, I wasn't looking for a sixty-six foot road at all, or any other width, in my examination. 30

By Mr. Strong.

Q. You were looking for what?

By Mr. Silzer.

Q. To find nothing? *A.* No, my examination was to locate Rahway avenue on account of the lines running north up to the body of the meadow, that is what my work consisted of. Mr. Marsh saw me looking at

the records and asked me what I was doing, and I told him I was examining north of the road.

Q. I don't want too much conversation. In your search did you find any road which corresponded with this road? *A.* No.

Q. Did you search the south side of this road at all?

A. No. What do you mean by searching the south side of the road?

Q. Well, the properties on the south side?

10 *A.* I recall all those deeds there, yes.

Q. Who owned the Houghwort tract in 1775, do you know? *A.* 1775?

Q. Yes. *A.* I don't recall offhand now, but I can tell you further back who owned the whole tract.

Q. If you don't know, then you don't know whether the Rahway Neck road went past the property or not, if you don't know who the owner was? *A.* I say I don't recall just now. I had all the names before me when I made the search.

20 *By Mr. Strong.*

Q. Did you find any deed for the Houghwort tract and the Colwell tract, which together at one time were owned by Peter Noe, I believe, did you find any early deed for those? *A.* I did.

Q. How early? *A.* It was in the early part of the 1700's, I think.

Q. Did that refer to any road? *A.* No, there was no road mentioned. The property ran down to the Sound.

30

Mr. Silzer: I suppose the deed speaks for itself. We do not want to trust to this gentleman's recollection, right or wrong.

Q. You said that you hadn't searched the property on the south side of the road. Did you look up the deeds in the title, the old deeds? *A.* On the south side of the road?

Q. Yes. *A.* Only incidentally. I was searching the chains of all of the property north of the road, and I

was trying to establish a base line there.

Q. But whether incidentally or otherwise, did you examine those deeds on the south side of the road?

A. I have read most of them, yes; if that is what you mean.

Franklin Marsh, re-called.

Direct Examination, by Mr. Strong.

10

Q. Mr. Marsh, you made a survey at one time of the Colwell property, didn't you? *A.* Yes, sir.

Q. Is that the property that is marked the Houghwort tract? *A.* Part of it.

Q. And is it the part adjoining the Colwell tract?

A. Yes, sir; immediately adjoining on the west.

Q. When did you do that surveying? *A.* 1903.

Q. And the map that was produced here the other day, is that the result of your survey? Was it for that purpose? *A.* It was for that purpose for the Title Company.

20

Q. Is that your map? *A.* Yes, sir.

Q. Referring now to Exhibit D 9. In drawing this map did you attempt to give any width for Rahway avenue?

Mr. Silzer: I object. That has been testified to.

A. No, sir.

The Court: He denied that before, Mr. Strong.

30

Q. Adjoining the land in this map, on the east, you have property of Colwell? *A.* Yes, sir.

Q. That is the Colwell tract that we are talking about in this case? *A.* Yes, sir.

Q. I notice at that point in your map on Rahway avenue the southerly line of Rahway avenue does not seem to be continuous? *A.* No, sir.

Q. What was the fact as you found it? *A.* I found that there was a slight jog on the Colwell tract, but I

ran it to the fence line as was then around the Colwell tract, so called.

Q. You were surveying the Crowell tract? *A.* I was surveying the Crowell tract. I only saw a jog. There was a curve, the fence curved within say thirty or forty feet.

Q. In what way do you mean, so as to narrow or to widen the street? *A.* It narrowed it to the forty-four foot line.

- 10 *Q.* In front of what property? *A.* In front of the Crowell property, just at the last few pieces of fence it curved, or broke in short tangents to meet the Colwell tract, so I broke back to the line of the street, or the line of the fence in its entire width, excluding the few panels immediately adjoining the Colwell tract where it bent in a curve.

By the Court.

- 20 *Q.* How long did that extension into the street, or into what is claimed to be the holding of the street run along the front of the Colwell tract?

A. I think extending the fence as it was along the road, that is the tangent, excluding the piece that curved—

Q. I want to know how long this little piece that curved was? *A.* About eight feet.

Q. Do you mean just a projection of one particular property, or one lot, or what? *A.* No.

By Mr. Strong.

- 30 *Q.* How long extended along the avenue is the question? *A.* Oh, for ten or eleven hundred feet.

Q. The whole length of the Crowell property?

A. The whole length of the Crowell property, and other properties. The Krutky property and the—

Q. That is the Videl map? *A.* No. They were all included on the Videl map, and beyond that was Brady.

Q. Did it go beyond the Videl line? *A.* No, it went down to about—I don't understand.

Q. Well, the Videl is the pink line there, now known as the Radley.

A. The forty-four feet run right straight down to the Radley fence. That was a straight line.

Q. Commencing where, at the corner you speak of?

Mr. Silzer: Mr. Marsh went all over this originally. Why is this rebuttal?

The Court: I didn't remember this part was. He was asked about some parts of the—

A. The fence—

Mr. Silzer: I object. I don't understand he can put his case in, and then come and rehearse it at all. This is not rebuttal at all.

10

The Court: Anything that may be rebuttal is, of course, proper; and in addition to that, the plaintiff here has the burden as a defendant, as well as of the rights, whatever they may be.

Mr. Strong: I don't know how much we got of this last matter.

By the Court.

Q. He said there was a jog out into the street, which extended from that point on down for eleven hundred feet, and to the Videll line, is that right?

20

A. No. The Videll line is the southerly line.

Q. Well, it is the easterly end of that map? A. The easterly end, yes. The fence on the west bent in a somewhat of a curve.

Q. Called the Houghwort line? A. Called the Houghwort line, immediately adjoining the Colwell property, for fifty or sixty feet bent to meet his fence. I made it a straight line by breaking back to the tangent, the great body of the property, and I extended it to meet.

30

Q. How far did this extend into the sixty? A. About eight feet, and then if I should make two straight lines at the intersection of those lines it would make about an eight foot difference.

Q. Can you take a piece of paper and show us what you mean exactly? A. In surveying the Crowell prop-

erty I came up this line (indicating), and I got an intersection of this line with this tangent here, for about eleven hundred feet. I disregarded that as a land mark. I came up here and took the old line fence, whic was shown by a hedgerow, and post holes, and fence, there was a fence there. Now this projection was about eight feet here (indicating), I think it was about fifty-two feet across on this line here (indicating), and the forty-eight or forty-four would make the eight
 10 feet—this was forty-four feet here, and it was forty-four feet the entire length of the Colwell tract.

Mr. Strong: I think that answers your Honor's question.

The Court: I do not quite understand it.

Q. You have projected it here sixty feet? A. No, never projected it.

Q. What was the width of it?

A. It was uncertain width. Well, it was fifty-two
 20 feet there, and it ran up to, very closely to probably thirty feet at the other end. The only thing I—the most peculiar coincidence is that my angle there is the same as Mr. Tice's to within three minutes, at the intersection of the old fence line, which shows that he didn't start at the same point I did at the worm. I didn't attempt to measure 1089 feet as called for in that particular deed. I used the fence as it was.

The Court: In the examination a great deal of
 30 this has been gone over. Try to avoid repetition.

Mr. Strong: Yes.

By Mr. Strong.

Q. You have told us what you did at the corner of the Colwell and the Crowell property? A. Yes, sir.

Q. At that point the forty-four feet width came in, did it? A. Came in; yes, sir.

Q. From that point how far did it extend easterly?

A. It extended clear to the Vidal tract line, uniformly forty-four feet, except where the Vidal map might have bordered on.

Q. Where would that be? Show us on the map, please? *A.* It was forty-four feet all along. There was no change in their tangent on either side.

Q. When you get down to the Videll map was there a change at that point, further easterly, I mean?

A. No, I think the board fence on the Colwell tract projected out at that particular time I made the survey.

By the Court.

Q. Was there a change there, the question is? Was there a change in the width of the street? *A.* Yes, there was—there should have been a change. 10

Q. Was there on the ground? *A.* No, I think Mr. Quien put his fence out when I was there.

Q. This was, you say, in 1903? *A.* 1903. I went in there in 1890, originally.

By Mr. Strong.

Q. Did you give any attention to the measurement from the worm as a guide to the width of Rahway avenue? *A.* No, sir. It is a matter of judgment as to location of the particular point on that worm, or the head of the worm. It ran a little beyond, up to a post, and it was hard to tell where a stream began and a worm began. It is one of those indeterminate things that I wouldn't want to set my judgment up against any other man's judgment. Mine might be as good as his, and it might be worse than his. 20

Q. In your judgment as a surveyor does the worm afford a reliable indication of the situation one hundred years ago? *A.* Not to my mind, no, because, that creek has changed three and four hundred feet in places, the creek itself. 30

Q. Do you know anything about these so-called worms, whether they are of a permanent character for hundreds of years, or whether they vary? *A.* I know of streams of water that were deep enough to swim in at one time, that you can't find the slightest vestige of them, unless you should dig a canal and cut a cross section.

Q. How as to that particular section down there, Have you had any observation in regard to that?

A. If several hundred feet of that creek would absolutely fill in within one hundred years, since 1817, I don't know why a worm couldn't fill in some, and the meadow be covered.

Mr. Silzer: I move that be stricken out. That is all argument and speculation.

10 The Court: Yes. Just answer the question.

Q. Have you known of any part of the creek disappearing? *A.* Yes, sir.

Q. Whereabouts do you mean? *A.* Down in the lower bend, that creek is not located as according to old deeds at all, in portions of it.

Q. The lower bend, you mean towards Staten Island sound? *A.* I mean towards Staten Island Sound; yes, sir; there has several hundred feet disappeared, a stream probably fifty feet wide.

20 *Q.* What is its width now? *A.* Well, it has taken another course, probably forty or fifty feet.

Q. The creek that runs down here at the mouth of this worm, what is the width of that approximately?

A. Sixteen to twenty feet. It depends upon what you would call the width. It is hard to tell what the width of a creek is, whether you measure from high water, or mean water, or low water. No two men would measure alike on a creek.

30 *By the Court.*

Q. Mr. Marsh, that deed meant that a worm put off from the creek, didn't it? *A.* Yes, sir; that is the way I understood it, and for that reason I could never reconcile it.

Q. Is it your idea that the worm and the creek could both have changed? *A.* They both could have changed.

Q. So as to have changed their conditions completely and still correspond with these compass points?

A. I won't say as bad as that, but there could have

been some changes, so that six, eight or ten feet couldn't be discovered, to my mind.

Cross Examination, by Mr. Silzer.

Q. What do you know about worms anyway?

A. It depends probably upon the kind of worms you refer to, Senator.

The Court. We are talking about this worm.

A. I don't know particularly about them. I have seen a great many. 10

Q. Will you tell me where this creek has changed fourteen or fifteen feet? *A.* I said several hundred feet.

Q. Where? *A.* Down beyond the bridge there.

Q. Beyond what? *A.* Down beyond the bridge.

By Mr. Strong.

Q. Where is the bridge? What do you mean by that? *A.* The so-called Woodbridge avenue on that map. 20

By Mr. Silzer

Q. Some factories changed it there, didn't they?

A. No, sir.

Q. They didn't? *A.* No, sir.

Q. There are factories located there? *A.* These creeks that I refer to have never been seen by living man, and the factories haven't been in there beyond that time.

Q. The ones you are talking about have never been seen by a living man? *A.* Not by a living man. 30

Q. And those are the ones you are testifying to that have been changed? *A.* Since 1817; yes, sir.

Q. Well, you know down there where the factories changed them, don't you, you know where that is?

A. No, I don't know that they ever did change any. Never to my knowledge.

Q. Not to your knowledge? *A.* No. There was one particular—there was a channel cut through by Maurer's.

Q. Wasn't the direction of the creek changed by Maurer's factory? *A.* Yes, but this stream ran very much further to the south than that.

Q. Still further? *A.* Still further; yes, sir.

Q. This one that you have in your imagination, no one has seen? *A.* No, sir; I know it, and surveyed it, and was paid for it, and the property owners on either side agreed to it, knowing it to be true. That land is worth something, Senator, down there.

10 *Q.* What is that? *A.* I say that land down there is worth something.

Q. Did I ask you anything about that? *A.* No, but I only volunteered that.

Q. This map that you made for the Fidelity Trust Company, is that the company that Mr. Wright is with?

A. Yes, sir.

Q. You have marked on here "head of the worm," haven't you? *A.* Yes.

20 *Q.* Well, you found the head of the worm, didn't you? *A.* I did at that time, yes, 1903, but my head isn't your head.

Q. How did you locate the head of the worm that time? *A.* Why, as best I could.

Q. You did locate it, didn't you? *A.* I don't know that I located it absolutely.

Q. You are not sure whether you located it or not?

A. But according to my judgment.

Q. Did you locate the worm, or didn't you? *A.* I located the worm yes.

30 *Q.* You located the head of the worm, didn't you?

A. Yes.

Q. And that was two hundred and sixty-four feet from the end of the creek, wasn't it? *A.* I don't know. Let me see that map. I make it two hundred and fifty feet to my location of the head of the worm and the creek.

Q. Tell me how you located the head of the worm?

A. Why, I presume that I—

Q. No presumption. I want to know how you did it? *A.* I examined the worm.

Q. Was there a worm there to examine? *A.* There was a stream, or a worm, or a ditch, or something of the sort.

Q. What was it that you saw there? *A.* And I think I measured to the place in that where it descended rather abruptly.

Q. Well defined, wasn't it? *A.* Oh, I don't know. I could have taken another place and probably I could have said head of the worm and been just as right, and I could have gone further south and said head of the worm, and been just as right. 10

Q. Could you have taken two sides of that worm that was surveyed? *A.* What is that?

Q. The north side of the worm, that would be the side towards Rahway avenue, wouldn't it? *A.* The north side of the worm?

Q. Yes.

By Mr. Strong.

Q. North head of the worm? *A.* North head of the worm would have been towards Rahway avenue. 20

By Mr. Silzer.

Q. Did you do that? *A.* I did, as I have located it on there.

Q. You were searching the Crowell tract, and that was a portion of the Houghwort tract, wasn't it?

A. I was surveying a portion of the Houghwort tract.

Q. How much did you make it from the head of the worm on this Crowell property? *A.* Ten hundred and eighty-eight feet and fifty-five one-hundredths to the intersection of the fences; the old fences, not the new ones. 30

Q. If the easterly boundary of the Crowell property was ten hundred and eighty-nine feet from the worm to the intersection of the fences, then, of course, it was ten hundred and eighty-nine feet on the other side of that line on Crowell, wasn't it? *A.* No, not necessarily at all.

Q. Well, if you got the head of the worm and measured up ten hundred and eighty-nine feet to a point which was at the intersection of the fences? *A.* Yes.

Q. That line wasn't any—it was ten hundred and eighty-nine feet on both sides of that line wasn't it?

A. No, I don't make it so at all.

Q. You measured from the head of the worm to the fence— *A.* I was surveying the property on this side. I wasn't surveying the property on the other side.

10 *Q.* Didn't the line run right through the two properties? *A.* Yes, that is right.

Q. Wasn't the line just as long on one side of the fence as it was on the other? *A.* No, sir.

Q. You ran ten hundred and eighty-nine feet from the head of the worm to Rahway avenue, didn't you?

A. Yes, to the fence as it was enclosed. I didn't look for—

Q. So that if it was longer on Crowell it was more than ten hundred and eighty-nine feet, wasn't it?

20 *A.* If it was longer on Crowell? No, that would be right. Colwell you refer to?

Q. I mean if it was on Colwell it would have been more than ten hundred and eighty-nine feet, wouldn't it? *A.* Yes, it would have been.

Q. And therefore it would not have corresponded with this early deed, would it? *A.* Yes.

Q. Doesn't the early deed say sixteen chains and fifty links? *A.* Yes, from the head of the worm. From what point?

30 *Q.* From the head of the worm? *A.* Oh, sure. I couldn't locate that head as it was one hundred years ago, and I couldn't locate it to-day if I should go down there ten hundred and eighty feet.

Q. You did locate it in making a map on the west of the line? *A.* Purely incidentally. It was an accident.

Q. In your own way in locating this property?

A. Yes.

Q. You located the head of the worm? *A.* Yes.

Q. And you got ten hundred and eighty-nine feet, the same as in that first deed? *A.* Yes.

Q. And you ran to the southerly side of Rahway avenue, didn't you? *A.* Yes.

Q. If you were going to locate the property next door to that— *A.* I should have gone out to the line of fence.

Q. (Continued)—you would have to go out into the street sixteen feet more, wouldn't you? *A.* Yes.

Q. Can you get that measurement there—why would you take on one side of the line, instead of ten hundred and eighty-nine, eleven hundred and something, **10** when your deed says ten hundred and eighty-nine?

A. There was a map filed on this side in which it is supposed to have broken back. That don't have anything to do with the property on the other side, for measurement.

Q. But when you take this early deed, the very first deed, and you run from the head of the worm ten hundred and eighty-nine feet, that gets you to a positive point, doesn't it? *A.* It gets me to the fence line on the west side. **20**

Q. In order to make this road forty-four feet wide, you have got to get more than ten hundred and eighty-nine feet, haven't you? *A.* Sure enough, yes.

Q. And you have got to get more than the deed says? *A.* No.

Q. Doesn't the deed say ten hundred and eighty-nine? *A.* No, sir; his deed doesn't say anything, nor never did say anything.

Q. And doesn't it say sixteen chains and fifty links?

A. No, it never did. Not on the other side. **30**

Q. Didn't the man who owned this property (indicating), the whole property, sell off this piece which lay right next to that one? *A.* Yes.

Q. And said ten hundred and eighty-nine feet to the southerly side of Rahway avenue? *A.* Yes, that was according to that particular deed.

Q. When one man owned the whole thing? *A.* Yes, but he could make it on the other side what he pleased, if there was no road there. There never was one laid.

Q. But in order to fit in your plan you have got to make more than the old deed shows, haven't you?

A. That is true enough.

Q. The very first deed that Mr. Noe made he sold off the Houghwort tract, didn't he? *A.* I am not so sure about that. I can tell by references.

Q. Then afterwards he sold the rest of it, didn't he?

A. I presume that he did.

10 Mr. Strong: Your deeds show that.

Q. Did you notice that he described it by boundaries after he sold the first? *A.* Yes, but he wouldn't bind sixteen feet. He don't bind it on the worm.

Q. If this line ran out into the road sixteen feet—

A. It didn't do that, as a matter of fact.

Q. Then this property would have been bounded on the north not only by Houghwort, but by Rahway avenue, wouldn't it? *A.* How is that?

Q. If this line had run out here sixteen feet into the highway? *A.* No, sir; it would not.

Q. Wouldn't it have been bounded on the west by Houghwort and Rahway avenue? *A.* I know, but they don't bind—

Q. Wouldn't it? *A.* Not necessarily, no. It is too small a piece to have a boundary in those days. Land wasn't worth anything.

Q. Wouldn't it have been bounded on the west by Rahway avenue? *A.* No, sir; not necessarily.

Q. Why not? *A.* Oh, that would be drawing things too fine. Those things weren't drawn fine.

Q. I say as a matter of fact if the man who owned this whole property, after he sold off and made forty-four feet here, that sixteen feet would have been bounded on the west by Rahway avenue, wouldn't it?

A. No, sir.

Q. Do you mean to say that, Mr. Marsh?

A. I do honestly.

Q. Do you mean to say if this line—

By the Court.

Q. Wouldn't the property still be that of the adjoining owner, and wouldn't his rights extend out to the center of the street, and wouldn't there still be an accurate description to say to the west? *A.* Well, yes, if you wanted to draw it as fine as that, but they don't extend to the center.

By Mr. Silzer.

Q. I want to know as a matter of actual fact, if he had those sixty feet, wouldn't it have bounded on the west— *A.* H would go to the old line condition then. He would go to the center of the old road. It would refer to the old lines. The lines would be contiguous if they were forty-four feet. It would only go half. 10

Q. Won't you scale this point from the creek to the head of the worm and see if it isn't two hundred and sixty feet? *A.* Two hundred and fifty feet.

Q. That only shows one-quarters, doesn't?

A. That shows one-eighths.

Q. Try this one, that is a little more accurate. 20

A. That scale isn't more accurate.

Q. The U. S. standard isn't accurate? *A.* I don't know. Mine is just as accurate as that.

Q. It isn't as minute, is it? *A.* Mine is marked in inches.

Q. Try it with this one. What is it?

A. Two hundred and sixty.

Q. Only ten feet off, weren't you? *A.* I got two twenty-fourths there, and that makes two hundred and forty. 30

Re-Direct Examination, by Mr. Strong.

Q. Where did your measurement of ten hundred and eighty-nine feet or ten hundred and eighty-eight and one-half feet, where did that bring you as the southerly side of Rahway avenue? *A.* It brought me to the old fence line.

Q. How far was that old fence line south of the northerly line of the avenue? *A.* I should say about eight feet; not sixteen, but eight.

Q. Eight feet? A. Eight feet, yes.

Q. Do you mean the avenue it only eight feet wide there? A. No, I mean to say there was a forty-four foot road, and to the old fence line projected out measured about fifty-two feet. I have had reference to note since I was here.

By the Court.

Q. How does that old fence line compare with the
10 present line along there? A. I don't know. They have changed things wonderfully. They just simply widened out, and tore down, and tore up, and tore fences, and cut down trees.

Q. Is it your idea that this map calls for a street fifty-two feet wide in front of it? A. Yes, sir; that is the way I made it. I only can scale on the old maps fifty feet, Judge, not over fifty feet, forty-five feet is all I got.

Q. I am speaking of your measurements from this
20 point, and your measurements from the worm site, which seems to be established.

A. The fence on the Crowell property made the street at that particular point about fifty-two feet, and then it ran to a place probably where it was only thirty feet wide, using the fence line.

By Mr. Strong.

Q. Where was that thirty feet place? A. Down at
30 this point (indicating). The two properties were close to each other, as the fences were then construed.

Q. I understood you to say there was a width of forty-four feet? A. To this edge, forty-four feet here between the fence lines.

Q. Now you are talking about fifty-two feet.

A. Only at this particular point here (indicating). There was a little break in the fence, a little jog back.

Q. That was at the corner of the Crowell property?

A. Crowell tract and the Colwell tract.

Q. On the Crowell side of it? A. On the Crowell side of it; yes, sir; but not on the Colwell side

By the Court.

Q. How far did that jog extend? *A.* Why, the fourty-four foot line ran clear to the other line on the east.

Q. How did that fit in with your ten hundred and eighty-nine feet? *A.* Well, if I should measure off the Colwell ten hundred and eighty-nine feet from the same point that I measured Crowell, of course, I would bring the Colwell fence back, but there was an old line that had been established so long, that I couldn't change it, nor Mr. Quien couldn't change it. I don't think anybody could change it. Nobody could change it. 10

Q. I don't understand whether you mean to say that the street in front of the Colwell property is fifty-two feet, and was at that time, or forty-four feet?

A. No, sir; forty-four feet in front of the Colwell property, all along the Colwell property between fences.

Q. What was the jog that you speak of as extending it eight feet into the street? *A.* The jog commenced on the Crowell property, that is the Houghwort property. 20

Q. Yes. *A.* And extended westerly from the Colwell property.

Q. I understood it to extend easterly before.

A. No, sir; never easterly; westerly.

By Mr. Strong.

Q. The ten hundred and eighty-nine feet that you measured up to the line, did it or not come out to the front of the Colwell property? *A.* No, sir; it did not; if I had been locating the line that way I would measure from the Colwell line down. It was pure coincidence that it measured what it did measure. 30

Q. What is your experience with regards to surveys of one hundred years ago, as to how far they can be depended on for the distances given? *A.* They are very unreliable.

Q. And in which way generally?

Mr. Silzer: I object.

The Court: He went all through that before.

Mr. Strong: I don't think so. I don't remember asking him. I didn't call him whatever as a surveyor.

The Court: If there is any doubt about it go on.

A. I don't think I have ever met; taking lines of possession, and taking deeds, I don't think that I ever, except in one instance, in all my life, ever agreed with a measure as given in a deed.

10 *Q.* I am referring to ancient deeds. *A.* That is, I mean, ancient farms. Of course, lines are even in city surveying.

Q. Is it more common to find an excess of land over the measurements, or otherwise? *A.* I never found in my life an under statement. Always over. Invariably over. That has been my experience.

Q. That is, when you say over, tell what you mean?

A. I mean to say it always contains a greater quantity of land than there is expressed in the deed.

20 *Q.* A greater measurement? *A.* Yes, sir; and it is very seldom that you ever can take a close survey and make it close by the meets and courses. Usually allow an error of one in three hundred, and now we have to make an error of one in twenty thousand, or it isn't a survey.

Q. What have you to say as to the accuracy of instruments used at that time to determine angles?

30 *A.* Well, the truest way to survey that according to deeds would be to take a compass, not from the deflection of the angle, but actually determine the courses with a compass, and sight it as such.

Q. How do the present means of determining angles by compass correspond, or how do they compare with those which were in use one hundred years ago?

A. Well, they were certainly very crude. I didn't live one hundred year ago, I don't know exactly what they did use, but they certainly didn't use as fine instrument as we use now, or as accurate instruments.

Re-Cross Examination, by Mr. Silzer.

Q. Mr. Marsh, the difference between a sixty and forty-four foot road is sixteen feet? *A.* Yes.

Q. That would require this line on the Colwell tract to run out sixteen feet into the road, wouldn't it?

A. How is that?

Q. That would require this line on the west side of the Colwell, running up from the worm, would have to be sixteen feet longer on the Colwell side than on the Houghwort side, to come to the forty-four feet? 10

A. Yes.

Q. Can you point out to the jury any deed in which that line made on the Colwell side ten hundred and eighty-nine plus sixteen, which is eleven hundred and five feet, or a map? *A.* Eleven hundred and five feet.

Q. Yes. *A.* I didn't make that survey.

Q. You had ten hundred and eighty-nine and sixteen would make eleven hundred and five. Can you point me out any deed or map which makes this line that runs from the worm to the southerly side of Rahway avenue eleven hundred and five feet, instead of ten hundred and eighty-nine? *A.* Why, no. 20

Q. What? *A.* Please state that again. Why, no; if I come eight feet this side of the Colwell tract, as it is, of course, I couldn't come out without making some addition.

Q. I want to know whether you can point out any deed which makes that line on the Colwell side, instead of ten hundred and eighty-nine feet, as you have shown it on Crowell, make it eleven hundred and five on the other side? *A.* I don't know. Mr. Colwell's deed probably calls for a greater distance there than that. 30

Q. I want to know whether you can point out to this jury any deed you have come across, or any map, which makes that line on the Colwell property running from the worm to the southerly side of Rahway avenue eleven hundred and five feet, and therefore making the road forty-four feet wide? Can you point out any deed or map which shows that?

A. Yes, I can point out a map that shows it forty-four feet.

Q. Which makes that line from the head of the worm to the southerly side of Rahway avenue eleven hundred and five feet? *A.* No, I never saw a map with eleven hundred and five feet on it.

Q. The only map you have ever seen, or the only deeds you have ever seen, made that line from the head of the worm to the southerly side of Rahway avenue
10 ten hundred and eighty-nine feet, isn't that so?

A. Oh, no.

Q. What one did you see where it didn't make it ten hundred and eighty-nine?

Mr. Strong: What map are you referring to now?

A. Mr. Colwell's map.

Q. His deed calls for eleven hundred and sixty-three feet, is that what you mean? *A.* Yes. I could go
20 back to eleven hundred and sixty-six feet, or eleven hundred and sixty-three.

Q. If you take eleven hundred and sixty-three feet—

A. I can't account for the bounding.

Q. Just a minute. That is according to the Colwell map? *A.* Yes, sir.

Q. And the Colwell map makes it forty-four foot road, doesn't it? *A.* Yes, sir.

Q. And in running from the head of the worm to the middle of the road is eleven hundred and sixty-
30 three feet, isn't it, according to this map?

A. The other points might have come further back on the worm, I don't know.

Q. According to this map it is eleven hundred and sixty-three feet, isn't it? *A.* Yes.

Q. And that would take you, according to your finding of the worm, away across the other side of the road, wouldn't it? *A.* I don't know. I never measured it

Q. If you take eleven hundred and sixty-three feet from the place where you found the head of the worm,

you would run all the way across to the other side of the street, wouldn't you?

Mr. Strong: Just a moment.

A. I don't know.

Mr. Strong: Why argue with this witness about it? You asked him to show you a map that called for eleven hundred and five feet, and he tells you here is the map. Now he is not saying whether it is right or not. No reason to pitch into him like that. 10

Q. Isn't it a fact that taking the head of the worm as you found it, and measuring eleven hundred and sixty-three feet, according to Mr. Colwell's map, that you have called for, would take you away over the other side of Rahway avenue, wouldn't it?

A. Possibly it would.

Q. It would, wouldn't it? A. I don't know. I never measured it and never scaled it. 20

Q. You know ten hundred and eighty-nine and forty-four and sixty is how much?

A. Ten hundred and eighty-nine and fifty, eleven hundred and thirty-nine.

Q. You still have got thirty feet?

A. That would go into the other property.

Q. According to the way you found the head of the worm, that measurement would be wrong on this map that you called for, wouldn't it?

A. It would, Yes, but you asked me if there was a map showing that. 30

Q. But the one you produce is one that you consider wrong isn't it?

A. I don't know whether it is wrong or not. I never heard the explanation of the surveyor who did it.

By Mr. Strong.

Q. You did surveying in 1903? A. 1903; yes, sir.

Q. The date of this map you have been referring to is some years earlier, isn't it? A. Yes, sir.

Q. That would seem to indicate that there might have been a change in the creek? *A.* Could have been a change. Mr. Quien is a good surveyor. None better.

Q. The map that you have been referring to is this map of 1892, isn't it?

A. Yes, sir; that is undoubtedly the course put on by Mr. Quien; yes, sir. I don't know that he makes that the absolute length of that line. That line extended down here to a post on the edge of the creek. In that case he would be very much short. I never asked him what the occasion for the discrepancy was. He probably could tell me.

Q. What line extended down to a post on the creek?

A. The line as extended there, and this other line here extended down to the creek, (indicating).

Q. Is that that line of the measurement from the head of the creek? *A.* Yes, sir; it used to be fenced to keep cattle from going on either side.

20 *Q.* Down which side of the creek?

A. On the north side of the creek.

Q. On the worm, do you mean?

A. Yes, sir; on the north side of the worm there was a post on the edge of the creek there, on the bank of the creek.

By Mr. Silzer.

Q. Just take that map Mr. Strong holds there and let me know how far it is from the mouth of the creek to the head of the worm, as shown on that map?

30 *A.* I can't reconcile that.

Q. Isn't it two hundred and sixty feet on this very map that you called for, from the mouth of the creek to the head of the worm? *A.* Well, he doesn't mark any head of the worm there at all.

Q. Isn't there some place where the line starts?

Q. I should start on the bank of the creek at the last post myself, disregarding the worm.

Q. That would be two hundred and sixty-four feet according to this map? *A.* Only from the fact that

the map made a worm. I don't know what it is. About two hundred and sixty-four.

Q. So that the man who made this map started two hundred and sixty-four feet from the creek, and took that as the head of the worm? *A.* No, I don't understand that according to this map.

Q. Scale it? *A.* I know, but that course—

The Court: The witness said taking the bank of the creek.

10

By the Court.

Q. Mr. Marsh, if you don't know what points were taken, how does that enable you to give an authority for a line which is eleven hundred feet on the Colwell side? *A.* I could commence to measure that line from here (indicating).

Q. Does it give you any assistance then in coming to that conclusion? *A.* No, sir; it doesn't.

By Mr. Silzer.

Q. Don't you remember in the deed to Mr. Colwell it said starting two hundred and sixty-four feet from the creek? *A.* No, I don't think so. I think he began at the mouth of the creek, down on the sound.

20

By Mr. Strong.

Q. On Noe's Creek, he means. *A.* On Noe's Creek.

Mr. Strong: We rest.

Mr. Silzer: We rest.

Mr. Strong sums up the case for Mr. White and Mr. Shapiro.

30

Mr. Silzer sums up the case for the Borough of Roosevelt.

Mr. Silzer: I say that Mr. Strong has said this is a case of taking Mr. Shapiro's property without compensating him. I say that there is no such danger in this case, and there should not be any such thought, because Mr. Shapiro, if he has purchased from Mr. Colwell one hundred feet, he is entitled to ask Mr. Colwell to give him the one hundred feet, and if Colwell

stuck him out into the road under a warranty deed, he he can ask Mr. Colwell to make compensation for the land that he didn't give him.

Mr. Strong: I desire an exception to that.

Exception allowed—sealed accordingly.

Judge.

Mr. Strong: I ask your Honor to direct the jury to
10 disregard that language, and to say to them that the question of Shapiro's recovery against his grantor, or any grantor, is immaterial in the case, and should not be considered by them.

Mr. Silzer: Not in view of your summing up, in which you argued that Mr. Shapiro's property would be taken away without compensation. And the point of this is that if he didn't have the property, it couldn't be taken away from him.

Mr. Strong: I have my exception. I only want to
20 get your Honor's ruling. I think you did rule against me, and I want it to appear, and my exception to appear. I have it, as I understand it.

The Court: Yes.

Mr. Silzer: The real man was the man sitting there. You heard him go on the stand.

Mr. Strong: I ask an exception to this.

The Court: Is this a warranty deed?

Mr. Silzer: Yes, sir.

The Court: Very good.

30 Mr. Silzer: Who went upon the stand? The very first witness in this case for the other side was who? Augustus W. Colwell. Who is Augustus W. Colwell? Why, it is the man who laid out this property. Well, up to the time that Augustus W. Colwell took hold of this, gentlemen, was there any dispute about that road? Why, we find that apparently this road was sixty feet up here, and nobody says anything else except it was sixty feet, up to here where Mr. Colwell started.

Mr. Strong: Fifty-two is the width stated. Do you mean nobody says fifty-two?

Mr. Silzer: Nobody that amounts to anything.

(Continues summing up).

CHARGE TO THE JURY,

By Hon. Frank T. Lloyd, Circuit Court Judge, as follows: 10

Gentlemen of the Jury:

There are two actions being tried by you, and adding somewhat to the complication resulting from the fact that two are before you, is the fact that in the one case the Borough is the plaintiff, and in the other case one of the individual parties is the plaintiff and the Borough the defendant. The question, however, is a single one, and it will control your action in both cases. 20

White is bringing an action against the Borough to recover a piece of ground which he alleges is his, and which the Borough says is in the line of a street. The Borough, on the other hand, is seeking to recover from Shapiro and Levinson a strip of ground which the Borough says is in the body of the street, and which Shapiro says belongs to him. The northerly boundary of this street is not in question. It seems to be defined and clear. The real question in the case turns upon the width of the street from the northerly boundary down. You are, perhaps, familiar with the formation of roads in this State, in a way. Many of them were formed by simply a user coming into existence, and then the public using it for a long period of time. Some of them had exact boundaries, some of them did not, but you can see as value increases along the line of those highways, the question becomes of great importance what the width of the highway is, were the right of the owner ends and where the right 30

of use in the public begins. The single question presented to you is the true width of Rahway avenue. That it has been a highway of some dimensions for practically one hundred years there can be no question. The problem that you must deal with is to ascertain what was and what is its legal width. It is unfortunate in this case that you have been deprived, or not given the benefit—I have no doubt because it does not exist, but it is unfortunate that eye witnesses

10 who knew this road thirty, forty or fifty years ago were not here to tell us just what its boundaries in use were, but the testimony along that line is exceedingly limited. There have been two or three witnesses called upon either side with the object of throwing light upon what were the used boundaries, what were its boundaries, but the verbal testimony as to actual conditions is meagre, and reliance has been laid largely upon descriptions in deeds, and maps, all of which will go out to you, either in original forms, or in copies of

20 the records. There is scarcely a point in the line of this street where there is not dispute. The particular portion of it which the plaintiffs insist most strenuously is the width, that is, I mean the individuals insist strenuously is of a width of forty-four feet, is that portion of it which lies in front of what is known as the Colwell tract. Witnesses have differed as to the width of the highway to the westward of that point, and there is some difference, perhaps, as to the eastward.

30 There is very little that the Court can give you to aid you in coming to a conclusion on it. I do not care to discuss the arguments made about the deed, the ancient deed which was put in evidence; I do not care to impress the view of the Court upon you in that respect in either way. You will remember that it turns upon the construction of a deed, and the accuracy of distances and directions from what is called a worm, or the side of a worm, which empties into a small creek. There are other references in the deed, which the surveyors in the case have dealt with, and which counsel

have argued to you with earnestness, as to the true location of this highway as indicated by those lines and distances and directions, and the Court feels it would be better to let you take the question and determine it upon such conclusion as you shall reach as to all of the record testimony in the case, plus so much as appears to have been brought in by recollection of witnesses, and the opinion of the expert surveyors.

You will understand that the verdict in the case of the Borough, if the Borough is entitled to the ground 10 upon the theory that it is part of the highway, then a verdict would be rendered for the Borough for such property. That is in the case of Shapiro and Levinson. If you find that the Shapiro and Levinson property is on their own ground, and is their own ground, not in the highway, then obviously the Borough has no cause of action.

In regard to the case of White against the Borough the situation is reversed as to the individual and the corporation, but in that case White is the plaintiff, and 20 claims that he is the owner of the soil, that it is not a part of the highway, and that he is entitled to recover the body because it is his own property.

Some requests have been handed to me; the first is by the defendant,

1. "An encroachment on a street cannot be legalized by mere lapse of time."

That is true.

2. "The enclosure and occupation of lands within 30 the limits of the highway creates no rights as against the public."

That is true.

3. "Lapse of time, however long the public right in the street is suspended, though coupled with a user by the owner, which would otherwise be adverse, will not make title by prescription against the public."

That is true.

4. "If Shapiro and White or Colwell, or any of their predecessors in the title, enclosed, used or occupied any portion of what was or had formerly been Rahway avenue, without authorization by the municipal authorities, such user, enclosure or occupation would not give them title to such part of Rahway avenue as against the municipality, no matter how long continued."

10 That is true, assuming that it is in the part of Rahway avenue that is a public highway, and that I understand to be what is intended.

5. "The designation of the northerly or northeasterly boundary of the tract known as the Colwell tract, in the several deeds of conveyance, as Rahway avenue, means the line of Rahway avenue"—I will modify that—"means the true line of Rahway avenue, and not any lines of fence which may have been erected by abutting owners, encroaching upon the highway."

20 I do not think these other requests call for charge in this case.

Counsel have agreed in this case that your verdict, so as to simplify the matter to you, shall be rendered either for or against the Borough in the respective cases. That will relieve you from the complicated situation of the status of the individual cases.

Mr. Silzer: And then the clerk will enter it accordingly?

The Court: Yes.

30 Mr. Silzer: I except to your Honor's statement that there is scarcely a point along this road where there is not a dispute.

Exception allowed—sealed accordingly.

Judge.

Mr. Silzer: I except to the Court's failure to charge our requests.

Exception allowed—sealed accordingly.

Judge.

Mr. Strong: I desire to except to so much of the charge as permits the jury to consider, for the purpose of determining the southerly line of Rahway avenue, a measurement from the head of the worm.

Exception allowed—sealed accordingly.

Judge.

10

REQUESTS TO CHARGE.

(1)

“An encroachment on a street cannot be legalized by mere lapse of time.”

(2)

“The enclosure and occupation of lands within the limits of the highway creates no right as against the public.” 20

(3)

“Lapse of time, however long the public right in the street is suspended, though coupled with a user by the owner, which would otherwise be adverse, will not make title by prescription against the public.”

(4)

“If Herman Shapiro, James T. White or Augustus Colwell, or any other of their predecessors in the title, 30 enclosed, used or occupied any portion of what was or had formerly been Rahway avenue, without authorization by the municipal authorities, such user, enclosure or occupation would not give them title to such part of Rahway avenue as against the municipality, no matter how long continued.”

(5)

“The designation of the northerly or northeasterly boundary of the tract known as the Colwell tract in the

several deeds of conveyance as Rahway avenue, means the line of Rahway avenue as originally laid out and dedicated, and not any lines of fence which may have been erected by abutting owners, encroaching upon Rahway avenue."

(6)

10 "If the true line of Rahway avenue makes Mr. Shapiro move his buildings back sixteen feet to make Rahway avenue sixty feet wide, his remedy is to compel his grantor to give him the amount of land called for by his deed, or damages for such shortage."

(7)

20 "This is not a case of taking away Mr. Shapiro's and Mr. White's land without compensation. If the land of Shapiro and White is, (and you so find it) in the sixty feet of the highway, they must give it up. They would not be entitled to compensation. If they do not then have all the land they bought they must then look to the person who sold to them either for the land they bought or compensation therefor."

I hereby certify that the above is a transcript of the entire proceedings upon the trial of said cause.

FRANK T. LLOYD, Judge.

Lizzie Colwell & Augustus
W. Colwell, her husband,
to
Morris Steinberg.

Warranty Deed.
Consideration \$250.
Dated July 5, 1893.
Ackd. Sept. 27, 1893.
Recorded Feb. 16, 1894.
Book 265, page 341.

Conveys in fee lot 33 in block 2 on the Colwell map.

Lizzie Colwell & Augustus
W. Colwell, her husband,
to
Morris Steinberg.

Warranty Deed.
Consideration \$275.
Dated October 8, 1896.
Ackd. October 16, 1896.

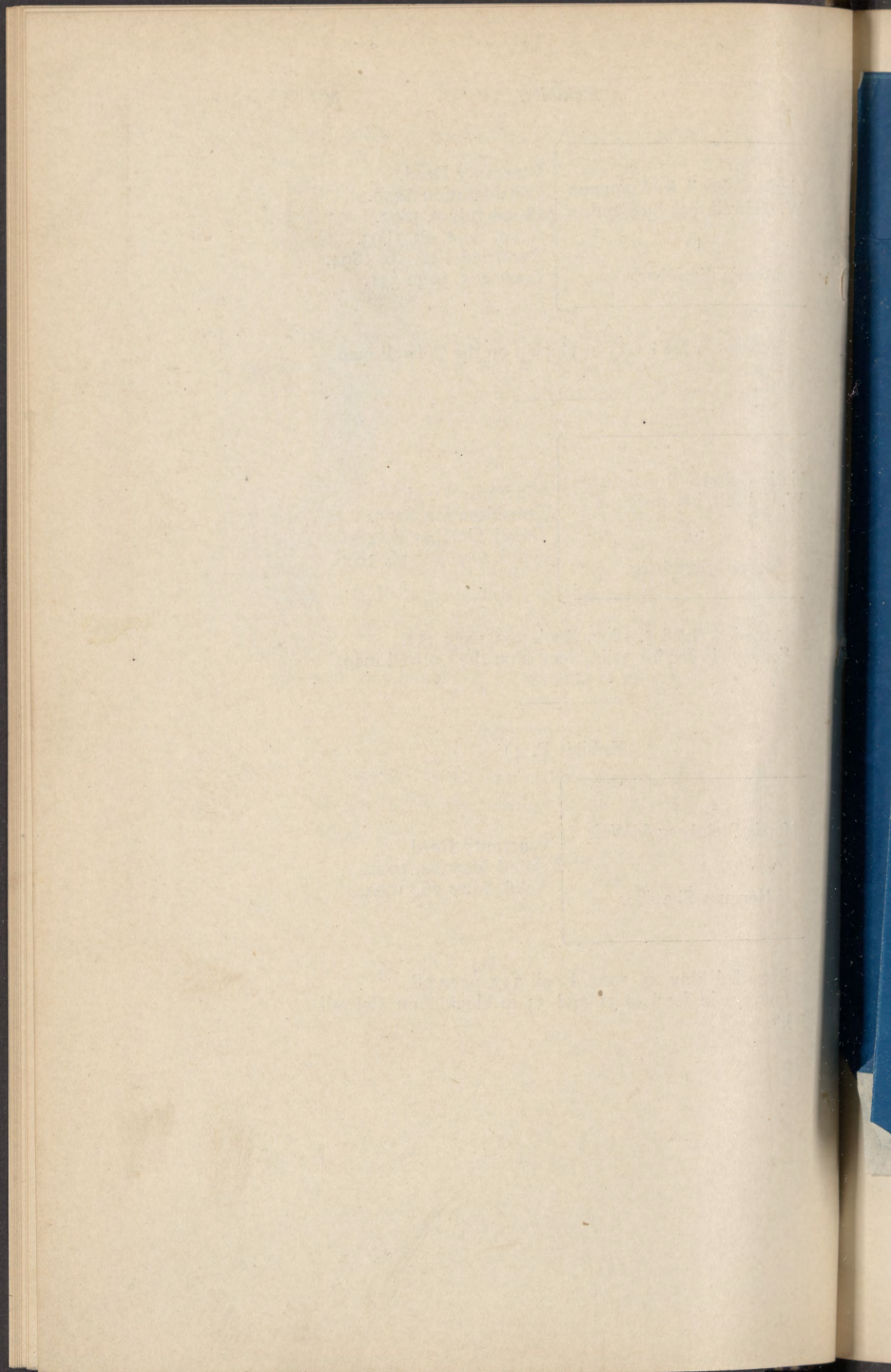
Recorded April 5, 1897, Book 290, page 433.
Conveys in fee lot 31 in block 2 on the Colwell map.

(Exhibit P. 4)

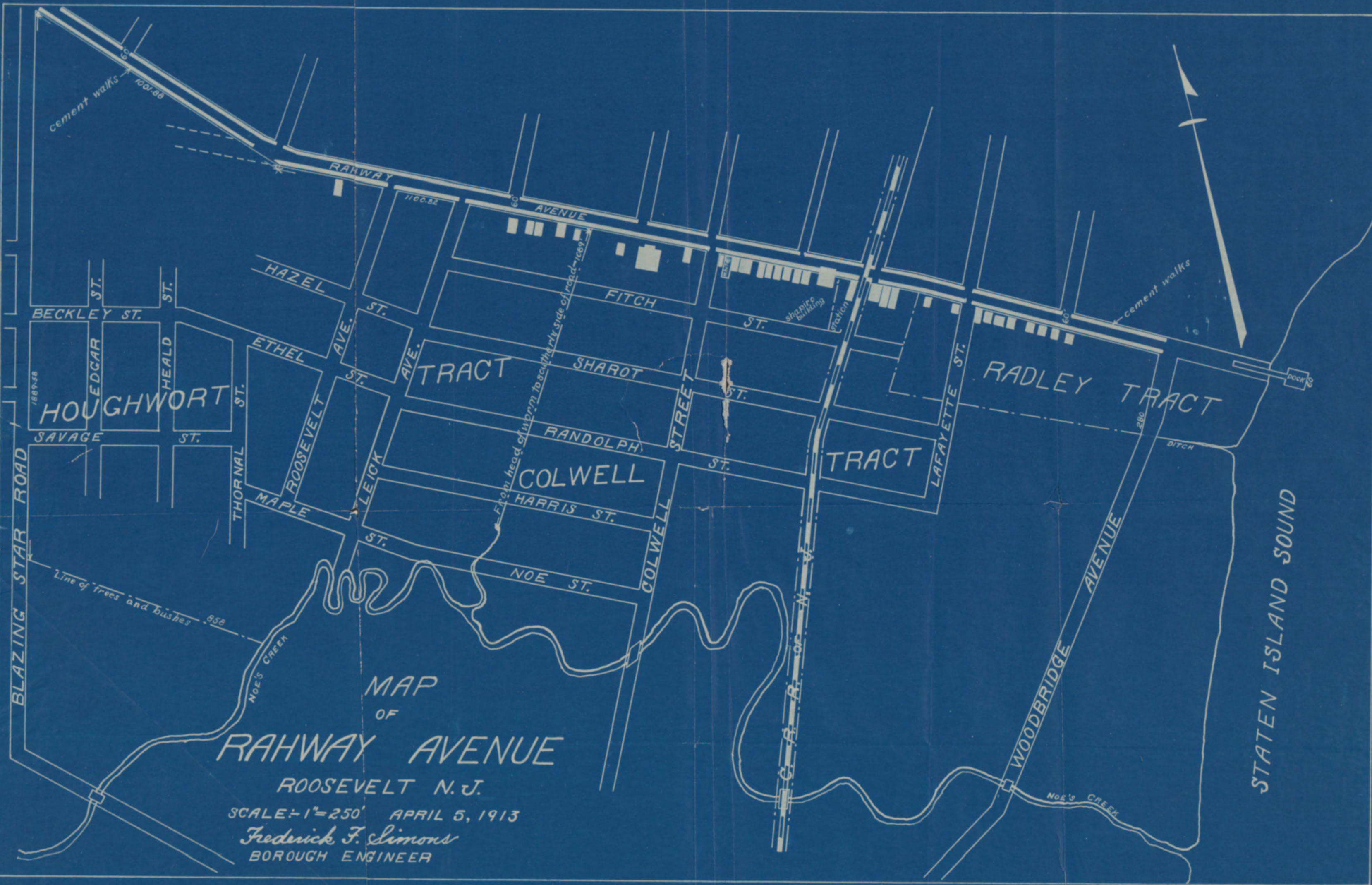
Morris Steinberg & Wife
to
Herman Shapiro.

Warranty Deed.
Dated May 22, 1902.
Ackd. May 26, 1902.

Recorded May 27, 1902, Book 337, page 98.
Conveys in fee lots 31 and 33 in block 2 on Colwell
map.







MAP
OF
RAHWAY AVENUE

ROOSEVELT N. J.

SCALE: 1" = 250' APRIL 5, 1913

Frederick F. Simons
BOROUGH ENGINEER

BLAZING STAR ROAD

cement walks 100.00

cement walks

From head of worm to south side of road 100.00

Line of trees and bushes 856

NOE'S CREEK

NOE'S CREEK

STATEN ISLAND SOUND

DITCH

DOCK

C. & N. R.

1889-58
EDGAR ST.

HEALD ST.

BECKLEY ST.

SAVAGE ST.

THORNAL ST.

MAPLE ST.

ROOSEVELT ST.

ETHEL ST.

RAHWAY AVE.

HAZEL AVE.

ST.

TRACT

COLWELL TRACT

NOE ST.

HARRIS ST.

ST.

ST.

ST.

FITCH ST.

SHAROT ST.

ST.

ST.

shaping building

grain

LAFAYETTE ST.

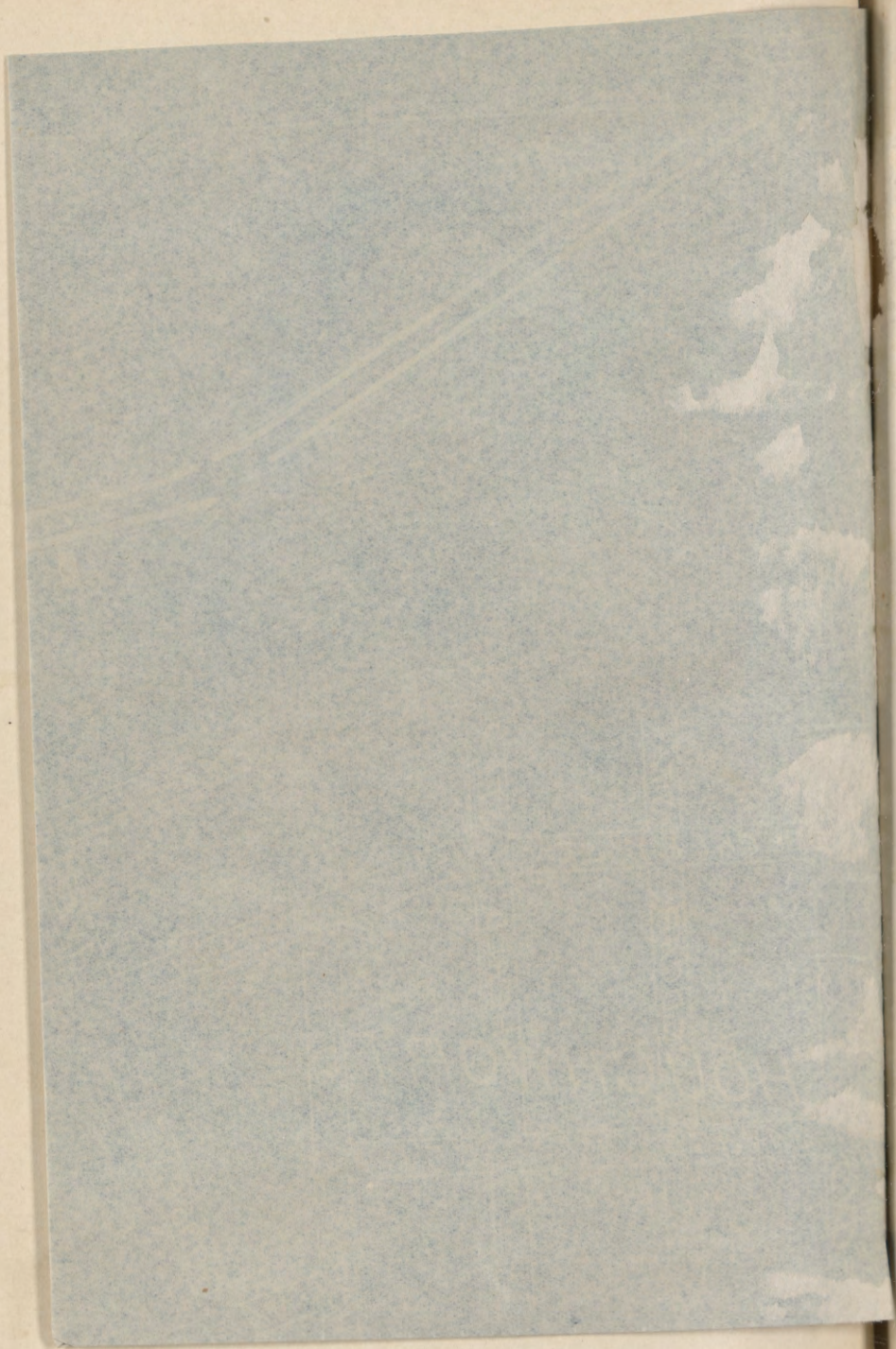
RADLEY TRACT

TRACT

WOODBRIDGE AVENUE

RAHWAY

AVENUE



NEW JERSEY
Court of Errors and Appeals

BOROUGH OF ROOSEVELT,

(*Plaintiff*) *Respondent*,

vs.

HERMAN SHAPIRO ET ALS,

(*Defendants*) *Appellants*.

} On Appeal from
Middlesex
County Circuit
Court.

BRIEF FOR PLAINTIFF

STATEMENT OF FACTS.

The location of the northerly line of Rahway Avenue is not disputed (*p.* 235, *l.* 36). The plaintiff contends that the southerly line of Rahway Avenue is sixty feet south of the northerly line; the defendant that the southerly line is forty-four feet south of the northerly line. The dispute is over this sixteen feet.

The plaintiff offered in evidence at the trial, for the purpose of illustration, a map showing the location of Rahway Avenue, as contended by it, and of the *Colwell* tract, of which the property of the defendant is a part. This map was admitted in evidence, and marked *D 8*. A reduced blueprint of this map is attached to this brief. As shown by that map the *Colwell* tract is bounded on the north by Rahway Avenue; on the east by the *Radley* tract and *Staten Island Sound*; on the south by *Noe's Creek*, and on the west by the *Houghwart* tract.

Originally both the *Colwell* and *Houghwart* tracts were owned by *Peter Noe* (*p.* 197, *l.* 17; *p.* 135, *l.* 38). The *Houghwart* tract was conveyed by *Peter Noe*

New Jersey State Library

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Originally both the Colwell and Houghwart tracts were owned by Peter Noe (*p. 197, l. 17; p. 135, l. 38*). The Houghwart tract was conveyed by Peter Noe

to Benjamin Noe in 1811 (*p.* 112, *l.* 7), by description reading as follows:

Beginning at a stake planted on the east side of the mill pond creek, on the north side of a small worm putting out of said creek, and from thence, running north twenty-five degrees, fifteen minutes east, sixteen chains and fifty links to the southwest side of the road leading from the New Blazing Ferry to Bridgetown; thence along the same north seventy degrees thirty minutes west, sixteen chains and sixty-seven links to a large white oak; thence north fifty minutes east fifteen chains and eighteen links to the corner of said road; thence along another road south nine degrees west twenty-eight chains and sixty-three links to a stake; thence south sixty-two degrees east thirteen chains to the aforesaid creek; thence down along said creek as it runs the several courses thereof to the place of beginning. Containing seventy-five acres, more or less, bounded easterly by lands of Peter Noe, northerly and westerly by highways, southwesterly by land of Peter Noe and southeasterly by his mill pond creek.

And by Benjamin Noe to Peter D. Houghwart in 1817 (*p.* 112, *l.* 37).

The Colwell tract was conveyed by Peter Noe to John C. and Benjamin Noe in 1817, and by the latter to Stuart T. Randolph and John F. Randolph in 1820 (*p.* 137, *l.* 23). The description of the two deeds are by boundaries only, and differ slightly, "southerly" in the first reading "southeasterly" in the second; "westerly" in the first reading, "southwesterly" in the second, etc.

The description in the second deed is as follows:

"Bounded southeasterly by the Sound; southwest-erly by the creek, called Noe's Creek; northwesterly by a tract of land conveyed by Benjamin M. Noe to Houghwart, and northeasterly by the road leading

from the New Blazing Star to Bridgetown, and part by land of Daniel D. Thompkins and part by a lot of two acres which Peter Noe conveyed to James Runyon." The road leading from the New Blazing Star to Bridgetown, is now known as Rahway Avenue, in dispute (*p.* —; *l.* —), and the Thompkins land is the Radley or Vidall tract (*p.* 215; *l.* 30).

The plaintiff located the Houghwart and the Colwell tracts from the descriptions in the above-mentioned deeds of Noe, made in 1811 and 1817, in the most positive and indisputable manner.

The surveyors started at the point indicated in the deed, being "on the east side of the mill pond creek and on the north side of a small worm putting out from said creek, and thence running north 25 degrees, 15 minutes east, 16 chains and 50 links to the southwest side of the road leading from the New Blazing Ferry to Bridgetown." This took them to Rahway Avenue at a point 60 feet south from the northerly line of Rahway Avenue.

Along this first course were a line of old fences, posts and a pile of rocks (*p.* 114, *l.* 7; 217, *l.* 23).

The surveyors then took the second course of the deed, which ran 16 chains and 67 links to a large white oak. This white oak was located at the very point where it was described as being in the deed (*p.* 249, 250 and 251). The surveyors then took the third course north 50 minutes, east 15 chains and 18 links to the corner of said road. It was necessary, as will be seen, to produce an angle starting at the white oak stump and carrying it the proper distance to the corner of the road. This angle at the white oak stump corresponds exactly with what was called for by the deed (*p.* 144, *l.* 18; *p.* 220, *l.* 23), and brought the surveyors in the third course to the road called for (*p.* 145, *l.* 3; 220, *l.* 32).

Then taking the fourth course of the deed along the road south 9 degrees, west 28 chains and 63 links to a stake, we find that the proper angle is made to correspond with the well defined road

marked on the map as the Blazing Star Road. We also find along this road a line of trees and bushes corresponding exactly with their location (*p.* 145, *l.* 11; *p.* 220, *l.* 83).

Then taking the fifth course of the deed south 62 degrees, east 13 chains to the aforesaid creek we find that by turning the angle exactly as called for by the deed the course follows along a line of trees and bushes are established along that boundary (*p.* 145, *l.* 28; 221, *l.* 3), and in the next course "along said creek as it runs its several courses to the point of beginning," carries us along said creek and worm to the beginning point.

Thus by physical objects upon the ground, the turning of the proper angles and everything that could possibly corroborate a description, plaintiff established positively the location of the head of the worm, as the beginning point as well as every other boundary mentioned in the deed.

It will be observed that the boundary line running from the worm to Rahway Avenue, which is the easterly boundary of the Houghwart tract, is also the westerly boundary of the *Colwell* tract, in which is located the property in dispute.

The *Colwell* tract is described in the second description above set forth. It will be observed that this is not set out by metes, but simply by boundaries; being bounded northwesterly by the tract of land conveyed by Benjamin Noe to Houghwart, and northeasterly by the road. Having then definitely established the Houghwart boundary as commencing from the head of the worm and running to the road and corroborating it by the other matters already set forth, we have then the correct location of the *Colwell* tract.

This property is also bounded on the east or northeast by "land of Daniel D. Tompkins" (this is the Vidal or Radley tract) (*p.* 215, *l.* 30; 229, *l.* 16). The Tompkins-Radley tract was laid out in 1828 by the then owner, Vidal, who filed his map in the

County Clerk's office and which map was offered in evidence (*Exhibit D 3*).

This Vidall tract was not only located as shown by the map on file, but the plaintiff's surveyors also corroborated that location by the angles required by the Radley deed; also by a line of trees and the location of Woodbridge Avenue and other physical objects (*pp.* 149-150-229-230).

By means of the location of the boundaries of the Colwell tract that property is definitely located and is as shown on the map.

With reference to the road we get the location of the southerly side of Rahway Avenue at the *west-erly* side of the Colwell tract to be at the point located by the Houghwart deed, and on the *east-erly* end of the Colwell tract we find the road as located by the Vidal-Radley deed and map. Projecting a line between these points we find Rahway Avenue to be 60 feet in width in front of the Colwell property.

Not only this, the Vidal map shows that Rahway Avenue in front of the Vidal-Radley property is 60 feet in width; the Houghwart deed shows that Rahway Avenue in front of the Houghwart tract is 60 feet in width and the location of the Colwell property between the Houghwart and Radley tract shows that Rahway Avenue was 60 feet in front of that tract.

It will be observed *first* that this made Rahway Avenue of a uniform width of 60 feet throughout its length; and *second*, that it is extremely unlikely that Noe, who was the owner of both the Houghwart and Colwell tracts at a time (1811) when land was not very valuable, would make Rahway Avenue 60 feet in front of part of his property and 44 along another part.

The testimony of the surveyors was corroborated by witnesses who testified as to the location of the various physical objects.

Mrs. Coachinbarry testified to the existence of a line of elm trees which the surveyors used in establishing the second boundary of the Houghwart deed, being the southerly line of Rahway Avenue (*p.* 224).

Witnesses Crane and Simons also testified to the location of these elm trees (*p.* 203-159).

It will be observed also that the defendant did not and could not dispute the location of the various objects along the different boundaries testified to by plaintiff's surveyors. Neither did the defendants call any surveyor to dispute the accuracy of the plaintiff's surveyors.

It is curious indeed that the defendant could not secure a surveyor to testify in support of his contention.

II.

The Location of the Beginning Point Was a Question for the Jury.

The defendant contends that the location of the head of the worm was so clear that it was the duty of the court to direct the jury to find the head of the worm to be located as he contends. The words used are as follows: "Beginning at a stake planted in the *east side* of the mill pond creek on the *north side* of a small worm putting out of said creek."

The plaintiff's surveyors have so located the head of the worm, *i. e.*, on the "*east side* of the mill pond creek and on the *north side* of the small worm," and having so placed it, it fits in with every other means of corroboration. If this is so and not in dispute, then if the court was bound to give any direction, it should have been in favor of the plaintiff who located it in the way the deed calls for, and which makes the land fit in with the adjoining property.

The defendant, however, contends that the words mean that the stake was at the *junction* of the creek

and the worm. There is nothing in these words which would indicate that the junction is meant; but if the defendants' contention was carried out by practical location and practical application, the head of the worm or beginning point would be brought south 265 feet, and Rahway Avenue instead of being 60 feet wide would be 265 feet wide (p. 125, l. 27).

The defendant did not reconcile his theory with this plain conclusion nor attempt to explain it by one word of testimony. He did not explain how he could harmonize his theory with a 265-foot street.

The only thing that the defendants could hang an argument on were the closing words of the description, which read as follows: "Thence down along said creek as it runs the several courses thereof to the beginning." His contention being that in order to get to the beginning you could not leave the creek, and that the surveyor had no right to turn up the worm in order to get to the beginning point.

We have already pointed out that if defendants' contention is correct the road would be 265 feet wide, and the Houghwart tract would encroach on all the surrounding property in one form or another.

The more sensible conclusion is, that the draughtsman or surveyor in using this description, treated the worm as a part of the creek because it was a part of the same body of water, and so said, "along the creek," in going back to the beginning point.

Furthermore, it is well established in this State, that where the exact measurements are not given, that the description carries to the beginning point.

The plaintiff relies particularly upon the case of *Opdyke vs. Stevens*, 28 N. J. Law, 83. This case turns upon the construction of the eleventh course in the disputed deed, which reads as follows: "11th. North, sixty-four degrees east, twenty-two chains and fifty links."

The defendant contended that the termination of this course was the northwesterly corner of Samuel Prior's lot, a fixed monument. The plaintiff opposed this view. On its face there was nothing in the reading of the course to indicate any intention that its termination should be the northwesterly corner of Prior's lot, but the defendant produced considerable testimony *aliunde*, tending to show that such was the grantor's intention and the effect of the deed. The court held this to be a latent ambiguity, and therefore not a question of construction, but one of boundary and location—not a question of law for the court to decide, but a question of fact for the determination of the jury upon the evidence before them.

In the case at bar the language of the deed in fixing the beginning point, is by no means plain and unambiguous as averred by counsel for the defendant, but even were it so, it is on its face standing alone no more plain and precise than is the eleventh course in the Opdyke case. As in that case, so in the case at bar, the plaintiff presented evidence *aliunde* which rendered the location of the beginning point, and the first course in the Houghwart deed a question for the jury, which the jury decided in favor of the plaintiff.

In the other case, relied upon by the defendants—*Curtis vs. Aaronson*, 49 *N. J. Law*, page 68—a similar situation is presented. Other evidence and circumstances tended to throw much doubt upon the plain and lucid statement of the direction and distance called for by the course in the disputed deed, and the court held the question to be one of fact and not of law. The following language is used:

“Whenever the location of the premises is doubtful, through uncertain, inconsistent or conflicting terms of description in the deed, the proper location of the premises becomes a question of fact to be determined by the jury on all the evidence. The question in

the case is whether there appears a well-grounded doubt as to the true location of these premises, arising out of either an uncertain, insufficient or inaccurate description in the deed, as should have carried the whole matter of location as a question of fact to the jury."

Assuming that the description of the beginning point in the Houghwart deed is a plain and unambiguous statement, which, however, is not admitted, the testimony presented by the plaintiff, above outlined, presents well-grounded doubts, and showed that this description is uncertain, insufficient and inaccurate, and therefore, following the authority of these cases submitted by the defendant, the question was very properly left to the jury.

III.

The Vidal Map Was Admissible.

This exception deals with the admission of the Vidal map, and is found on page 124. The tract in question, the *Colwell* tract, was bounded on the east in part by the Vidal tract, afterwards known as the Radley tract. This tract was laid out in lots in 1828, a map made of it, as well as of the street in front of it, known as Rahway Avenue.

The surveyors who testified for the borough, took all of the boundaries and all of the landmarks they could find in order to establish the southerly boundary of Rahway Avenue in front of the Colwell tract and thus fix the width of the road in dispute. The northerly line of the road being undisputed.

The Vidal map then was admissible for the purpose of identification, and corroborating the testimony of the surveyors, and also for the purpose of showing what they had relied upon in locating the Colwell tract.

If it was admissible for any purpose it went in for all purposes.

Witnesses also testified that Rahway Avenue was sixty feet in width throughout its entire length. The Vidal map showed sixty feet in front of that property which adjoins Colwell, and was therefore corroboration of the claim that the road was sixty feet in width, the road having been uniform throughout.

It was certainly for the jury to consider whether a road would be so laid out that each property owner would make it of a different width and permit jogs to remain in it.

What the abutting property owners did in locating land by filing a map and fencing, and establishing other physical objects, would certainly be evidence against them. It is also evidence of the location of the abutting property for the purpose of establishing the Colwell boundaries.

It was also evidence to be used in establishing the public boundary along a public road which all of the authorities agree is permissible.

Jones on Evidence, 2d Edition, pages 305, 307.

Curtis vs. Aaronson, 49 N. J. Law, 68.

Witnesses had also testified that Rahway Avenue was uniform throughout its entire length, and the Vidal map was admissible as evidence to establish that the uniform width was 60 feet.

IV.

The Crowell Map Was Admissible in Evidence.

Franklin Marsh had been called by the defendant and testified that he had been making surveys in this locality (*p. 44, l. 39*). That from the knowledge thus gained he found the road to be 44 feet wide (*p. 46, l. 18*).

On cross-examination he was asked whether he had not made maps which were in contradiction of his testimony that the road was 44 feet wide (p. 60, 61, 62, 63).

When he denied this the John B. Crowell map itself was offered in evidence (p. 183).

This is one of the grounds upon which the court admitted the map (p. 181, l. 28; 183, l. 22). This map was also in contradiction of Mr. Marsh's testimony that the road was 44 feet wide, for Marsh had made the Crowell map and had thereon located the worm exactly as the plaintiff's engineers located it. Mr. Marsh admitted that he made the map, and that it bore his signature, so that it could be used for contradiction whether proved as an ancient map or not.

It was proved, however, that the owner had adopted the map and was selling lots according to it. The borough engineer, Simons, swore to this. Mr. Strong, however, insisted that the deeds should be offered, which was done (p. 164, l. 30).

See the discussion between counsel and the court, pages 160 to 164, inclusive.

Defendant was not injured by the admission of the deeds, because it clearly appeared that the purpose of the deeds was only to show that Colwell, the owner of the land, had sold according to the map, and that this was necessary in order to meet Mr. Strong's objections that the map could not be admitted until this was proven. Nobody could be nor was misled by the deeds.

V.

There Was No Error in the Summing Up of Counsel.

The exception is found on pages 299 and 300, and deals with the statement made by Mr. Silzer in summing up after Mr. Strong had already addressed the jury.

In Mr. Strong's summing up he argued that if the verdict was against Mr. Shapiro, that Shapiro's property would be taken from him without compensation. This was an unfair argument and one which was intended to mislead the jury.

If Mr. Shapiro never owned the land which was included in the public street he was not having taken away from him anything which belonged to him. His lot was supposed to be one hundred feet deep. If Mr. Colwell included in that one hundred feet, sixteen feet of the street and only gave him eighty-four feet, then it was not taking Shapiro's property without compensation if the borough recovered the sixteen feet that neither Colwell or Shapiro owned.

In that case Mr. Shapiro's remedy was to recover the other sixteen feet and tack it on the rear of his lot or to ask his grantor to reimburse him for failure to give him what he had contracted for and failed to do.

It was in answer to this statement of Mr. Strong's that Mr. Silzer said: "I say that Mr. Strong has said this is a case of taking Mr. Shapiro's property without compensating him. I say that there is no such danger in this case and there should not be any such thought, because Mr. Shapiro, if he has purchased from Mr. Colwell one hundred feet, he is entitled to ask Mr. Colwell to give him the one hundred feet, and if Mr. Colwell stuck him out into the road under his warranty deed he can ask Mr. Colwell to make compensation for the land that he did not give him."

Mr. Silzer further said, page 300, line 15: "Not Mr. Strong, in view of your summing up in which you argue that Mr. Shapiro's property would be taken away without compensation. And the point of this is that if he didn't have the property, it couldn't be taken away from him."

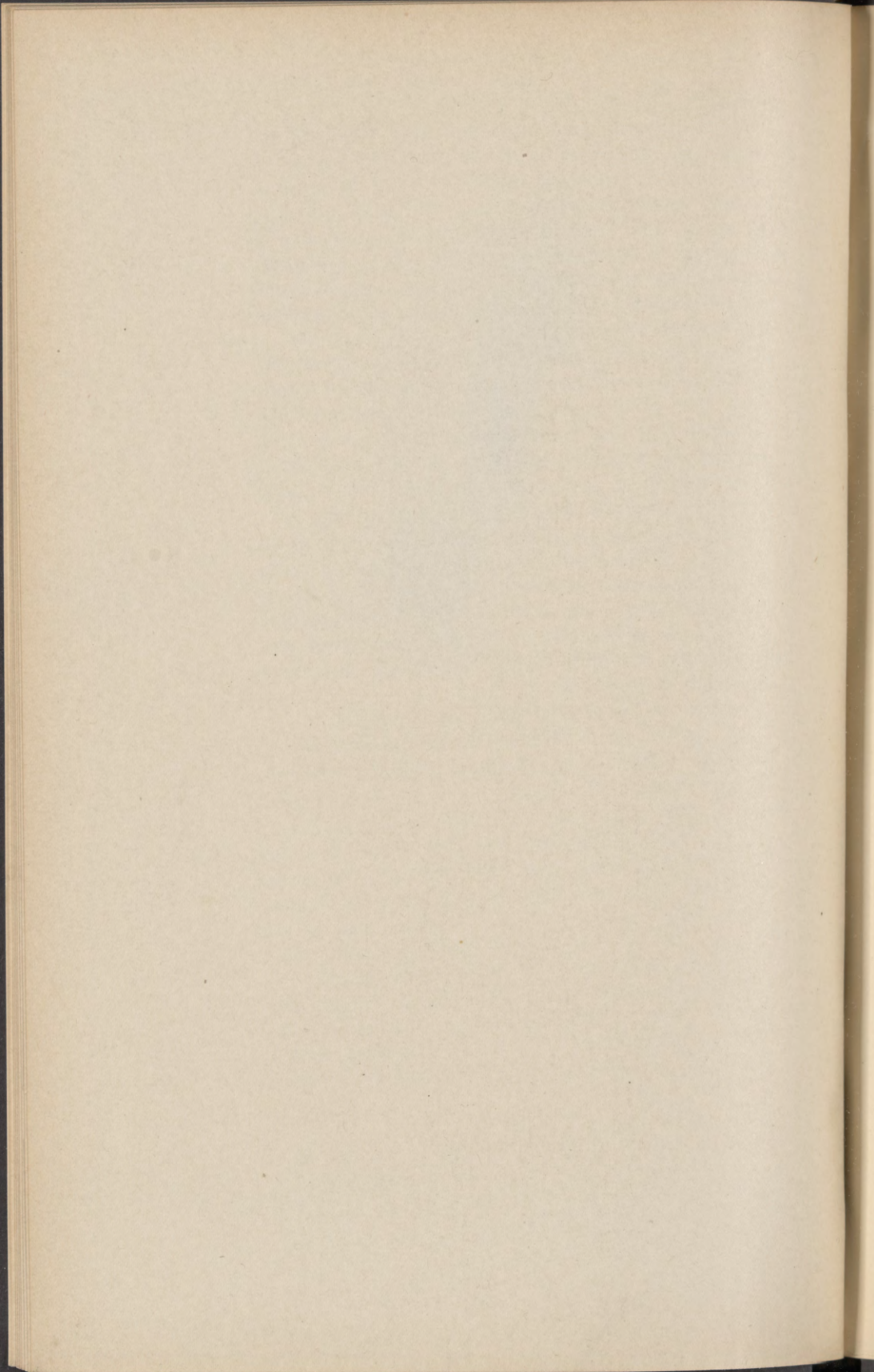
The citations of counsel do not meet the situation in this case, for counsel did not introduce facts not in evidence, but merely argued on the facts that had been admitted in evidence, and only met the misleading argument of defendant's counsel. It was purely comment and argument, which is proper.

The defendant could not have been injured by it because the court very clearly pointed out the issue and properly directed the jury.

It was, however, true *as a matter of argument* that if Shapiro did not own the property it would not be taken away from him without compensation. It was also true, as a matter of argument in answer to Mr. Strong's contention, that Mr. Shapiro could ask Mr. Colwell to give him what he purchased, and if Colwell had stuck him out into the road under a warranty deed he could ask Colwell to make compensation. Whether that compensation was adequate or not would be another matter.

It is, therefore, respectfully submitted that since the case was fully tried on its merits without any injury to the defendants that the appeal should be dismissed.

GEORGE S. SILZER,
RUSSELL E. WATSON,
Counsel with Respondent.



New Jersey Court of Errors and Appeals.

THE BOROUGH OF ROOSEVELT,
(Plaintiff) *Respondent*,
v.
HERMAN SHAPIRO, ET AL.
(Defendants) *Appellants*.

} On Appeal
} from Middlesex
} Circuit Court.

Brief for Appellants.

This is an appeal from a judgment in favor of the plaintiff in an action of ejectment brought by the Borough of Roosevelt against Herman Shapiro and Jacob Levinson. The land in controversy is sixteen feet in depth of the entire front of fifty feet on Rahway avenue (or Union Landing Road) of two lots belonging to defendant Shapiro.

The matter in dispute and upon which the case turns is the true width of the highway, which is claimed by the borough to be sixty feet and by the defendants to be only forty-four feet wide.

The road is an ancient one and there is no return laying it out (p. 216, l. 8) nor any record giving its width (p. 274), which as defined by fences varied greatly in different places.

The Borough of Roosevelt was incorporated by special act approved April 11, 1906 (*P. L.* 1906, 161), which was adopted at the election provided for in section 3 of the act on the first day of May in said year.

A year or two prior to the incorporation of the borough the question of the width of Rahway avenue had been agitated by the Township of Woodbridge, in which it then was (p. 194). After the incorporation the borough authorities proceeded to open the road to a width of sixty feet throughout (for that purpose cutting down a row of very large trees) and graded and laid a cement sidewalk.

The width so established by the borough required a setting back of the southerly line of the road at Shapiro's property of sixteen feet and cutting off that much of the building which occupied the whole front of his lots and was used by him as a dwelling house and store (p. 82; p. 16, l. 12 and 30).

To prevent this Shapiro filed a bill in Chancery and that court restrained further action by the borough pending a trial at law (p. 81, l. 30, &c.), whereupon the present action was brought in 1909.

I.

THE COURT ERRED IN PERMITTING THE JURY TO CONSIDER A MEASUREMENT FROM THE HEAD OF THE WORM FOR THE PURPOSE OF FIXING THE LINE OF RAHWAY AVENUE.

A principal reliance on the part of the Borough as sustaining its claim as to the true width of the road was the alleged correspondence of the southerly line of Rahway avenue as fixed by the Borough with a measurement from a so-called "worm" putting out of Mill Pond Creek as mentioned in a deed from Peter Noe to Benjamin Noe, March 29, 1811 (recorded in Middlesex Clerk's Office, Book 9 of Deeds, p. 164).

This deed conveyed land *adjoining* the Colwell tract, of which the Shapiro lots are part, and the description is fully and accurately set forth in the case at page 112, except that the word "*jutting*" at the end of line 11 should be "*putting*," as it appears in Mr. Silzer's reading, page 120, line 3.

The "worm" extends northerly from the creek some 260 feet, and it was testified that taking the first course of the description, namely, N. 25 degrees 15 minutes east 16 chains 50 links from the *head or northerly end* of the worm the measurement comes exactly to the southerly line of Rahway avenue as fixed by allowing sixty feet from the northerly line, the northerly line not being in dispute.

This corroboration of the plaintiff's claim, however, is obtained only by doing violence to the plain language of the deed.

The point from which the measurement of the first course is to be taken is the *junction of the creek and the worm*, while the plaintiff measures not from the creek but from the other end of the worm—a distance of about 260 feet from the creek.

The question of the construction of the description in this respect was much discussed during the progress of the case, defendant's counsel insisting that it was a matter for the Court as a question of law (p. 116, l. 20).

In charging the jury (pp. 302-303) the Court, after saying that the single question presented to the jury is the true width of Rahway avenue, &c., &c., proceeded as follows:

"There is very little that the Court can give you to aid you in coming to a conclusion on it. I do not care to discuss the arguments made about the deed, the ancient deed which was put in evidence; I do not care to impress the view of the Court upon you in that respect in either way. *You will remember that it turns upon the construction of a deed, and the accuracy of distances and directions from what is called a worm, or the side of a worm, which empties into a small creek.* There are other references in the deed, which the surveyors in the case have dealt with, and which counsel have argued to you with earnestness, as to the true location of this highway as indicated by those lines and distances and directions, and the Court feels it would be *better to let you take the question and determine*

it upon such conclusion as you shall reach as to all of the record testimony in the case, plus so much as appears to have been brought in by recollection of witnesses, and the opinion of the expert surveyors."

Defendant's counsel (p. 305, top) excepted "to so much of the charge as permitted the jury to consider, for the purpose of determining the southerly line of Rahway avenue, a measurement from the head of the worm," and this part of the charge is made the 15th ground of appeal (p. 6).

The beginning point from which the measurement of 16 chains 50 links (or 1089 feet) is to be taken is fixed in the description (p. 112) in three different ways:— (1) It is defined at the outset as being "at a stake planted on the east side of the millpond creek, on the north side of a small worm putting out of said creek," thus plainly indicating the junction of the creek and worm; (2) The closing course is "thence down said creek as it runs the several courses thereof to the place of beginning," which again fixes the beginning point as being on the creek; (3) The tract conveyed is bounded "easterly by lands of Peter Noe, northerly and westerly by highways, southwesterly by lands of Peter Noe, and southeasterly by his millpond creek," no boundary on the worm being given.

The jury therefore should have been told that the measurement *from the head or northerly end* of the worm could not be considered in fixing the true line of Rahway avenue, for the reason that no measurement from that point is recognized by the deed.

Instead of so instructing them the Court left the whole matter to the jury, so that they were obliged to determine for themselves from what point the 1089 feet should be measured and at liberty to make such use of that measurement as they might think proper. This was error.

The question involved was not as to the land conveyed by the Noe deed, but whether this particular part of the description could be used in fixing the line of the

highway opposite an adjoining tract.

If the object had been to determine what land was embraced in the Noe deed, *taking the whole description together* it is evident that the distance called for in the first course is an error. This, however, would not vitiate the description, because other parts of the description would be sufficient without this measurement to locate the property. This measurement, therefore, would simply be rejected; but it could not be used for any purpose as an accurate measurement *from a different point* from what the language itself calls for. There is no ambiguity, latent or otherwise. The language is plain, and nothing in the application of the language to the land described creates any doubt as to the location of the point from which the measurement is to be taken. It is a mere question of *construction* as distinguished from one of *location*.

The distinction is clearly pointed out by Chief Justice Green in *Opdyke v. Stephens*, 4 *Dutch*. 83, quoted in *Curtis v. Aaronson*, 20 *Vroom*, 68.

II.

THE COURT ERRED IN ADMITTING IN EVIDENCE THE VIDAL MAP.

The so-called Vidal map is a map filed in the Middlesex County Clerk's Office purporting to have been made in 1826 by Francis Vidal, laying out the property adjoining the Colwell tract (p. 122, l. 10).

This map showed Rahway avenue in front of the property therein delineated (not the Colwell tract of which Shapiro's lots are part) as sixty feet in width. Shapiro did not claim title under the owner of the tract in the Vidal map, so that he was not in any way privy to it.

The admission of the map was objected to as not evidence against the defendant, and because so far as appears the width of sixty feet on the Vidal map may have originated in a dedication by the owner of that

tract (pp. 122-123). The map was admitted, however (p. 124), and its admission is complained of as the 3d ground of appeal (p. 4).

III.

THE COURT ERRED ALSO IN ADMITTING IN EVIDENCE THE CROWELL MAP.

This was a map of the tract formerly owned by Dr. Crowell adjoining the Colwell tract on the side opposite to the tract in the Vidal map. The Crowell map was dated in 1903 and filed March 27, 1905. It was not proved to be an accurate survey of the property at the time it was made. It was objected to as irrelevant and not admissible against the defendants, and as not proved (pp. 163-165), and as having originated since the controversy as to the width of the road had arisen (p. 162), but was admitted (p. 181) upon proof that Dr. Crowell in 1905 had made conveyances by reference to it (p. 179). It was claimed that this map also showed a width of sixty feet for Rahway avenue.

The admission of this map was clear error. It was not even an ancient map, being not more than ten years old at the time of the trial.

It did not purport to relate to the land in question.

The Court seemed to think the map admissible as a recognition of the highway by the owner. But any such recognition was *res inter alios acta*, and could not be urged as against these defendants. It was so urged, and doubtless to their injury.

It was claimed on the part of the plaintiff that the Vidal map showed a width for the highway of sixty feet for the length delineated on that map on that side of the Colwell tract and that the Crowell map (made as recently as 1903) showed a similar width of the highway on the other side of the Colwell tract, and that the same width must be inferred in front of the intermediate Colwell tract, although the Colwell tract had been mapped in 1892 showing a width of only forty-four feet

for the avenue throughout the entire frontage of this tract, about 1150 feet (pp. 9-16).

Defendant's title was derived from Colwell, who conveyed the two lots by separate deeds to Morris Steinberg, July 25, 1893, and October 8, 1896 (pp. 104-105, 307). Steinberg conveyed both lots by one deed to Shapiro, May 22, 1902 (pp. 74, 307).

IV.

THERE WAS ERROR ALSO IN ADMITTING THE TWO DEEDS FROM CROWELL TO WINCHELL.

These two deeds were admitted as showing that Crowell had made conveyances according to the map which had been filed in his name (pp. 163-164), and as an adoption of the map (p. 180, l. 30), and on these deeds the Crowell map was admitted (p. 181, l. 12).

It cannot be claimed that the admission of these deeds was immaterial and harmless, for the remarks of the Court naturally gave the jury to understand that the action of Crowell in making the map and making deeds with reference to it was of some significance and was some evidence of "what the street actually was" (p. 179, l. 15; p. 160, l. 30; p. 161, bottom).

The 10th and 11th grounds of appeal are based on the admission of these deeds respectively.

V.

THE COURT ERRED ALSO IN PERMITTING COUNSEL FOR PLAINTIFF TO URGE MATTERS BEFORE THE JURY IN SUMMING UP WHICH WERE NOT PROPER FOR THEM TO CONSIDER, AND NOT INTERPOSING WHEN REQUESTED SO TO DO ON THE PART OF DEFENDANTS.

In the course of Mr. Silzer's summing up the following occurred (pp. 299-300):

"Mr. Silzer: I say that Mr. Strong has said this is a case of taking Mr. Shapiro's property without compensating him. *I say that there is no such danger in this case, and there should not be any such thought, because Mr. Shapiro, if he has purchased from Mr. Colwell one hundred feet, he is entitled to ask Mr. Colwell to give him the one hundred feet, and if Colwell stuck him out into the road under a warranty deed, he can ask Mr. Colwell to make compensation for the land that he didn't give him.*

"Mr. Strong: I desire an exception to that.

"Exception allowed—sealed accordingly.

"Judge.

"Mr. Strong: I ask your Honor to direct the jury to disregard that language, and to say to them that the question of Shapiro's recovery against his grantor, or any grantor, is immaterial in the case, and should not be considered by them.

"Mr. Silzer: Not in view of your summing up, in which you argued that Mr. Shapiro's property would be taken away without compensation. And the point of this is that if he didn't have the property, it couldn't be taken away from him.

"Mr. Strong: I have my exception. I only want to get your Honor's ruling. I think you did rule against me, and I want it to appear, and my exception to appear. I have it, as I understand it.

"The Court: Yes.

"Mr. Silzer: The real man was the man sitting there. You heard him go on the stand.

"Mr. Strong: I ask an exception to this.

"The Court: Is this a warranty deed?

"Mr. Silzer: Yes, sir.

"The Court: *Very good.*"

This is the 13th ground of appeal (p. 5).

Counsel was thus permitted without restraint or correction, though against timely protest on the part of the defendants, to argue to the jury that there would be no

loss to Shapiro in the event of a verdict against him, because Mr. Colwell would be obliged to compensate him under his warranty deed.

That such an argument was wholly illegitimate and improper hardly needs to be pointed out.

If Shapiro had had a complete remedy on Colwell's warranty that would have had nothing to do with the question of the true width of Rahway avenue, and would have afforded no reason for a verdict against him.

But in fact Shapiro had not an adequate remedy on Colwell's covenant. Colwell conveyed the lots in 1893 and 1896, when they had no buildings on them, the consideration of one deed being \$250 and of the other \$275 (p. 307). In the event that Shapiro should be evicted from sixteen feet of the one hundred feet depth called for by the deeds, the extent of his recovery against Colwell would be a proportionate part of \$525, the aggregate consideration of the two deeds. Colwell could not be required to make good any part of the injury to the valuable buildings which at the time of the trial covered the entire front of the lots, and which would either be ruined or would have to be moved back at large expense, if the Borough should be successful.

In *Blackman v. West Jersey and Seashore R. R. Co.* 39 *Vroom*, 1, counsel in summing up made a statement of a fact which was not in evidence to which the opposing counsel excepted. The trial Judge declined to rule on the exception and permitted counsel to reiterate the statement. The Supreme Court set aside the verdict, in an opinion by the present Chief Justice, saying: "The proper administration of justice in civil as well as in criminal actions, requires that counsel be allowed the widest scope in his discussion of the evidence in a cause, but when he travels outside of the evidence, bases arguments on facts which have not been proved, and appeals to the prejudice of the jury, he not only far exceeds his privilege, but by his conduct vitiates a verdict in his

client's favor, if exception is taken by his adversary to such statements." The Chief Justice also quoted the language of Judge Andrews in *Williams v. Brooklyn Elevated R. R. Co.* 126 N. Y. 96, as clearly and admirably defining the privilege of counsel in summing up and the limitations of that privilege, the language so quoted being in part, "where counsel in summing up, proceeds to dilate upon facts not in evidence, or to press upon the jury considerations which the jury have no right to regard, it is the plain duty of the Court upon objection made to interpose; and a refusal of the Court to interpose, where otherwise the right of the party would be prejudiced, would be legal error."

Upon all the grounds above stated the judgment should be reversed.

ALAN H. STRONG,
Of Counsel with Appellants.

