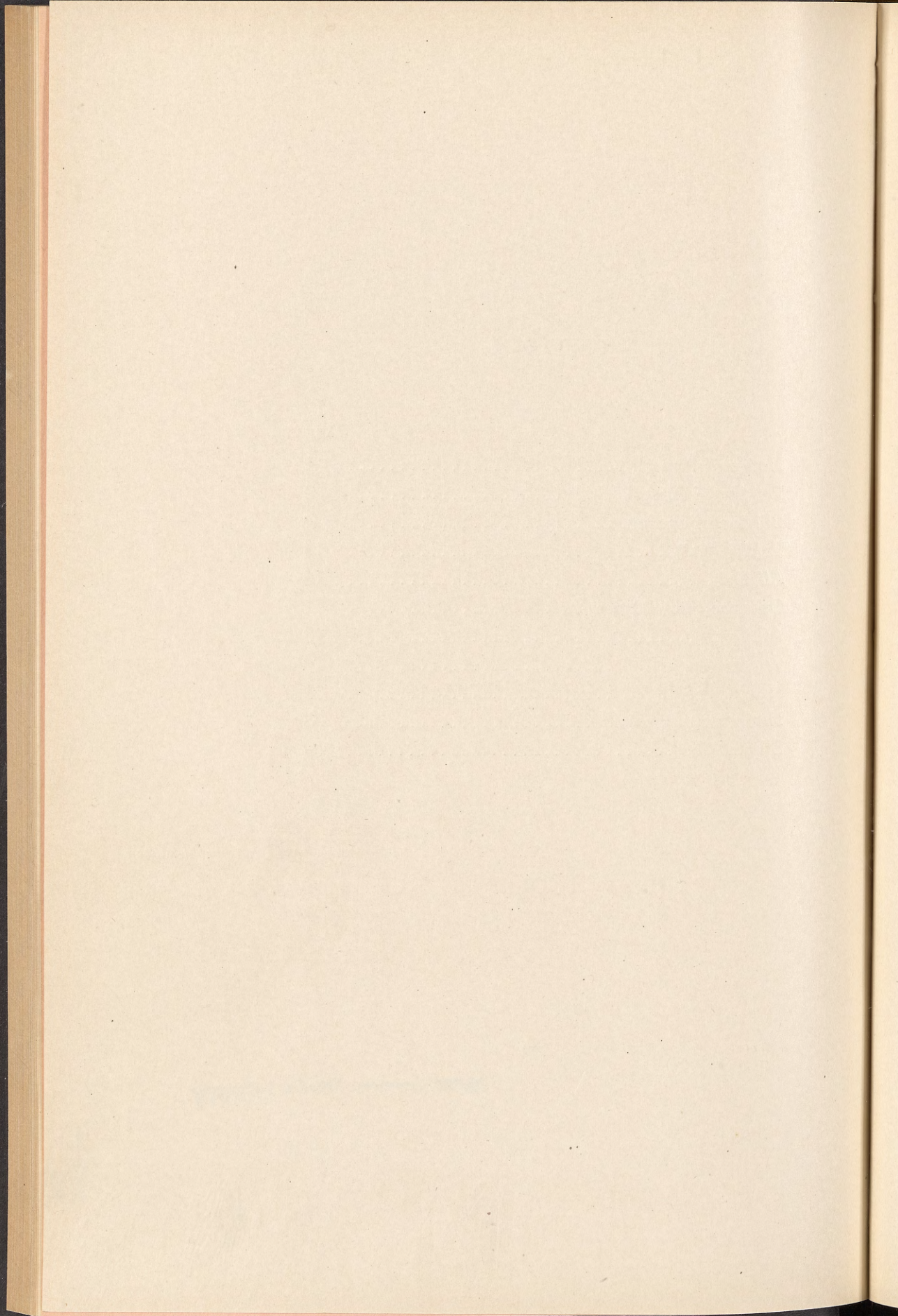


INDEX.

	PAGE
Notice of Appeal,	1
Petition of Appeal,	2
Bill for Injunction,	4
Exhibit "A",	15
Affidavit,	16
Order to Show Cause,	21
Affidavit,	23
Conclusions,	28
Restraining Order,	37
Notice of Argument,	38
Stipulation,	39

New Jersey State Library



In Chancery of New Jersey

Between

STATE HIGHWAY COMMISSION
acting for and in the name
of the State of New Jersey,
Complainant,

and

CITY OF ELIZABETH, a Mu-
nicipal Corporation of New
Jersey,

Defendant.

10

On Bill for
Injunction.

20

NOTICE OF APPEAL.

(Filed May 11, 1928.)

The defendant hereby appeals from that portion of the final decree or restraining order made herein upon the 24th day of January, 1928, as orders, adjudges and decrees, that the City of Elizabeth, a municipal corporation, be restrained from interfering in any manner with the State Highway Commission entering in and upon lands and premises as described in said bill of complaint, and from interfering in any manner with the building and construction of Route No. 25 of the State Highway System, dated February 15, 1928.

30

EDWARD NUGENT,
Solicitor of Defendant.

I conceive that there is good cause for appeal in the above-stated cause.

EDWARD NUGENT,
Of Counsel with Appellant.

A true copy.

THOMAS BARBER,
Clerk.

Service of the within notice of appeal is hereby acknowledged as within time, this sixteenth day of February, 1928.

EDWARD L. KATZENBACH,
Attorney-General of New Jersey.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
CITY OF ELIZABETH, a municipal corporation of New Jersey,
20 *Complainant-Appellant,*

and

THE STATE HIGHWAY COMMISSION, acting for and in the name of the State of New Jersey,
30 *Defendant-Appellee.*

PETITION OF APPEAL.

To Honorable the Court of Errors and Appeals and a Last Resort of All Causes:

The petition of the City of Elizabeth, a municipal corporation of the State of New Jersey, the appellant in the above-entitled cause respectfully shows:

1. Petitioner finds itself aggrieved by a final decree made in the Court of Chancery by His Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date January 24, 1928, in a certain cause in said Court of Chancery wherein the said City of Elizabeth,

a municipal corporation was defendant, and the said The State Highway Commission acting for and in the name of the State of New Jersey was complainant, in this respect to wit: That the said decree adjudges, orders and directs the said defendant to desist and refrain from interfering in any manner with the complainant entering in and upon certain lands and premises as described in said bill of complaint, belonging to the defendant, and further enjoins and restrains the defendant, its agents, servants and employees from interfering in any manner with the building and construction of what is known as Route No. 25 of the State Highway System. 10

Petitioner appeals from the decree of the Chancellor upon the ground that the same is erroneous in that,

1. The relief prayed for in the complainant's bill should not have been granted.

2. The relief prayed for in the defendant's answer should have been granted.

3. It adjudges that the City of Elizabeth, its agents, servants and employees do and they are each and every one of them enjoined and restrained from interfering in any manner with the State Highway Commission entering in and upon the lands and premises as described in said bill of complaint, and the said City of Elizabeth, its agents, servants and employees are enjoined and restrained from interfering in any manner with the building and construction of Route No. 25 of the State Highway System. 20

Petitioner therefore prays that the said decree of the said Chancellor may be wholly set aside, and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper. 30

EDWARD NUGENT,

Solicitor and of Counsel for Appellant.

Service of the within petition of appeal is duly acknowledged as within time, this 16th day of February, 1928.

EDWARD L. KATZENBACH,
Attorney-General of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between

STATE HIGHWAY COMMISSION
 acting for and in the name
 of the State of New Jersey,
Complainant,

and

10 CITY OF ELIZABETH, a Mu-
 nicipal Corporation of New
 Jersey,

Defendant.

BILL FOR INJUNCTION.

(Filed January 20, 1928.)

*To His Honor, Edwin Robert Walker, Chancellor of
 the State of New Jersey:*

20 The complainant, the State Highway Commission,
 acting for and in the name of the State of New Jersey,
 respectfully shows that:

1. Complainant was created and exists by virtue of
 an act of the Legislature of the State of New Jersey
 entitled "An act to establish a State Highway Depart-
 ment and to define its powers and duties, and vesting
 therein all the powers and duties now devolved by law
 upon the Commissioner of Public Roads and the existing
 State Highway Commission and Highway Commis-
 sion," approved March 13, 1917 (Chapter 15, Laws of
 30 1917), and the several acts supplementary thereto and
 amendatory thereof;

2. In and by the act aforesaid, and the said several
 supplements thereto and amendments thereof, it is pro-
 vided as follows:

(a) "A State Highway Department is hereby estab-
 lished and the same shall be governed by a board to
 be known as the State of Highway Commission, which
 shall consist of four members, no more than two of

whom shall belong to the same political party. They shall be residents of the State."

3. In and by a further act of the Legislature of the State of New Jersey entitled "An act to establish a State Highway System, and to provide for the improvement, betterment, reconstruction, resurfacing, maintenance, repair and regulation of the use thereof" (Revision of 1927), approved March 30, 1927 (Chapter 319, Laws of 1927), and the several acts supplementary thereto and amendatory thereof, it is provided as follows: 10

1. A State Highway System is hereby established to consist of the following routes:

Route No. 25. Jersey City to Camden, via Jersey City, Kearny, via present Lincoln Highway crossing the Hackensack and Passaic rivers, then by way of Newark, Elizabeth, Rahway, Woodbridge, crossing Raritan river, near Weston Mills at New Brunswick, thence southerly, intersecting Cranbury turnpike near Bodines Corner, thence via Cranbury Turnpike through Deans, Dayton, Cranbury, Hightstown, Bordentown, Burlington and Camden. 20

4. In furtherance of the purposes for which it was created, the complainant has laid out and established said Route No. 25 from Jersey City to Camden, as a part of the State Highway System, as appears by the resolution unanimously adopted by the State Highway Commission on November 22, 1927, a copy of which is as follows:

"Be it resolved, That the State Highway Commission does hereby designate and take over for the purpose of construction and maintenance following construction that part of State Highway Route 1 Extension beginning at the point at which the Commission has previously taken over the said State Highway Route 1 Extension at or near Haines Avenue and Peddie Street, Newark; thence by way of Haines Avenue and Carnegie Avenue extended, to Humboldt Avenue, Elizabeth; thence by way of Spring Street to East Jersey Street; thence by way of private right of way and existing streets to a 30

connection with Exgar Road at a point in the vicinity of Bayway."

5. In and by the act of 1927 aforesaid, being Chapter 319, Laws of 1927, and the several acts supplementary thereto and amendatory thereof, it is provided as follows:

10 "To widen, straighten and regrade any State highway, and to acquire any lands or rights therein by gift, devise, purchase, or by condemnation, according to the procedure
20 as contained in an act entitled "An act to regulate the ascertainment and payment of compensation for property condemned or taken for public use" (Revision of 1900), approved March twentieth, one thousand nine hundred, and vacate any State highway or any part thereof. The State Highway Commission shall have the right and power to enter upon and take property in advance of making compensation therefor in any case where it cannot acquire land or other property by agreement with the owner, whether by reason of disagreement as to the
30 price, or the legal incapacity or absence of the owner, or his inability to convey valid title, or by reason of any other cause. In any cause case, upon the said Highway Commission exercising this right and entering upon and taking land in advance of making compensation therefor, it shall present a petition, and proceedings shall be had to fix the compensation to be paid to the owner, as provided in the said act entitled "An act to regulate the ascertainment and payment of compensation for property condemned or taken for public use" (Revision of 1900), approved March twentieth, one thousand nine hundred.
30 To do and perform whatever may be necessary or desirable to effectuate the object and purposes of this act. To do and perform all acts now required by law to be done and performed by the State Commissioner of Public Roads, the State Highway Commission and the Highway Commission. These powers are to be liberally construed.

6. In connection therewith it was found necessary to acquire, by purchase or otherwise, certain lands and

premises located in the City of Elizabeth, County of Union and State of New Jersey, and being the property of the City of Elizabeth, a municipal corporation of the State of New Jersey. Efforts were made by your complainant to acquire the said lands and premises by agreement with the owners, but were unsuccessful because of disagreement as to price and also for the reason that the City of Elizabeth has denied the right of the State Highway Commission to acquire said lands and premises for the purposes aforesaid. 10

7. The said lands and premises are more particularly described as Plot A, consisting of 20,000 square feet and located on Elizabeth Avenue in the said City of Elizabeth; and also Plot B, comprising 11,755 square feet, located on South Street in the said City of Elizabeth, all more particularly described and shown on the map and plans of the State Highway Commission which are now tendered to this Court.

8. The record title to the said lands and premises is in the City of Elizabeth, New Jersey, as the owner in fee thereof. 20

9. On January 18, 1928, your complainant offered the said City of Elizabeth the sum of \$20,400.00 for said lands and premises, which offer was made by letter, forwarded, by registered mail, under date of January 18, 1928, a copy of which letter is attached hereto, made a part hereof, and marked "Exhibit A."

10. The said registered letter was addressed to the City Clerk of the City of Elizabeth and received by him on January 19, 1928, as evidenced by a signed return receipt of said registered letter, the original of which receipt is now tendered to this Court. 30

11. Upon receipt from the City of Elizabeth of a formal refusal of the offer of complainant to acquire said lands and premises for the sum of \$20,400.00 your complainant will forthwith file a petition of condemnation seeking to condemn the said lands and premises according to the provisions of the Act of 1927 as hereintofore set forth.

12. In 1923 an advisory board, appointed by the State Highway Commission, made a survey of that portion of the State of New Jersey lying between the southerly boundary of the City of Elizabeth and the plaza of the Holland Tunnel for the purpose of determining the best location of the necessary highways as approaches to and entrances to the Holland Tunnel. A report was received from said advisory board and extensive engineering studies were completed, with the result that it
10 was determined that the best alignment in the City of Elizabeth would be through a southerly portion thereof. The so-called Spring Street Route, which is the route finally adopted, was then decided upon as the best alignment. Following these reports and studies, in 1925, a hearing was held in the City of Elizabeth attended by officials of the City of Elizabeth and the complainant and many other parties in interest, at which time the proposed Spring Street Route was fully explained. Objections were immediately made by the City of Elizabeth
20 for the reason that the officials of the City of Elizabeth asserted that the best interests of the City of Elizabeth would be served if the route was established on the Division Street line. Complainant immediately made engineering studies of the Division Street line, which studies were submitted at a subsequent conference between complainant and the City of Elizabeth. Complainant, through its engineers, determined that the Division Street line involved additional costs of construction and additional difficulties of many kinds. The City of Elizabeth offered to make certain changes in their city streets
30 which would decrease the cost of construction and facilitate the movement of traffic on the Division Street line. These conditions, as offered by the City of Elizabeth, were reduced to writing, but the said proposed agreement was never entered into for the reason that it was determined that the terms thereof could not be legally complied with. Regardless thereof, further consideration thereof by the City of Elizabeth determined that the City of Elizabeth would not, of itself, agree to

the proposed conditions and enter into the proposed agreement. Throughout the entire five years that this question has been before complainant the City of Elizabeth has always presented objections to the plan of the State Highway Commission and has never shown any willingness to co-operate with complainant in establishing State Highway Route No. 25 through the City of Elizabeth. Complainant has determined that the Spring Street Route, as finally decided upon, is less objectionable and can be built at a less cost and also best serve the interests of the State and the City of Elizabeth than any other route which may be suggested through the City of Elizabeth. Complainant has found that traffic conditions at the Holland Tunnel, since the opening of the tunnel, have become alarming and the traffic through the tunnel is of far greater volume than had been anticipated by any advocate of the tunnel. Complainant has determined and believes that the interest of the State of New Jersey can only be best served by the rapid completion of State Highway Route No. 25 and all other entrance roads and approaches to the tunnel to the end that traffic may proceed quickly into and away from the tunnel.

13. Under the authority given to it by the Legislature complainant has the right and power to enter upon and take the said lands and premises of the City of Elizabeth, New Jersey, as hereinbefore described, in advance of making compensation therefor.

14. Under the authority so given to it by the Legislature the State Highway Commission, by their servants, agents and employees, entered in and upon the said lands and premises of the City of Elizabeth, New Jersey, as hereinbefore described, on January 20, 1928.

15. On January 20, 1928, the State Highway Commission, by its servants, agents and employees, entered in and upon the said lands and premises of the City of Elizabeth, New Jersey, as hereinbefore described, for the purpose of "work" thereon and especially for the purpose of constructing and building said State Highway Route No. 25.

16. On January 20, 1928, John J. Stanley, Supervisor of Maintenance, and an agent and employee of the State Highway Commission, for the purpose thereof was in and upon the said lands and premises, hereinbefore described, directing a force of servants, agents and employees of the State Highway Commission, then at work in the constructing and building of said State Highway Route No. 25. Thereupon the said John J. Stanley was arrested by a policeman of the said City of Elizabeth and remanded to the police station in the City of Elizabeth and arraigned before the recorder of the said city on the charge of destroying city property. The said recorder of the said city thereupon parolled the said John J. Stanley in the custody of an agent of the State Highway Commission, to return for further hearing before the said recorder in the said city to be held at 10:30 o'clock Wednesday morning, January 25, 1928, at the police station in the said City of Elizabeth, New Jersey, to make further answer to said charge of destroying city property.

17. Upon the arrest of the said John J. Stanley the work which he was supervising for complainant was stopped because of the threats made by the police officials of the City of Elizabeth to the other servants, agents and employees of complainant, and complainant is unable to proceed with the work at this time because of the attitude of the officials of the City of Elizabeth.

18. Your complainant is expending several millions of dollars in the construction of State Highway Route No. 25, embracing not only the work in the City of Elizabeth, but in the City of Newark, and that portion of the State of New Jersey which is south of the City of Elizabeth. The cost of the construction of State Highway Route No. 25 in the City of Elizabeth is approximately six million dollars.

19. The attitude of the City of Elizabeth, as reflected by the arrest of the said John J. Stanley and the threats of the officials of the City of Elizabeth to arrest any other servants, agents and employees of complainant

who enter upon the said lands and premises, estops the complainant from constructing and building that portion of State Highway Route No. 25 located in the City of Elizabeth. Also, it estops the State Highway Commission from constructing and building that portion of State Highway Route No. 25 which is not located in the City of Elizabeth for the reason that, if such portion is constructed and built, it will be valueless because of the lack of the connecting link in the said City of Elizabeth. Complainant has already constructed portions of State Highway Route No. 25 at the expenditure of many millions of dollars, which is rendered valueless without the connecting link through Elizabeth. 10

20. That portion of State Highway Route No. 25 which is located in the City of Elizabeth is not only a very important link in the said State Highway Route No. 25, but State Highway Route No. 25 as and when completed is, as a matter of fact, the entrance road to the State highways leading into the Holland Tunnels, connecting New Jersey and New York, which entrance roads have been and are now being constructed by your complainant at an estimated cost of forty million dollars and of which sixteen million two hundred thousand dollars has already been expended and contracted to be expended during the present year. 20

21. Therefore, the refusal of the City of Elizabeth to allow complainant to enter in and upon the said lands and premises, as hereinbefore described, will delay the extensive program of the State Highway Commission and will render valueless to the people of the State the network of roads now completed or now being constructed by complainant as aforesaid, and is causing complainant irreparable damage and injury, and the continuance of the City of Elizabeth to dispute the right of the State Highway Commission to enter upon the lands and premises, as hereinbefore described, will cause irreparable damage and injury to the public of this State and to the complainant in this cause. 30

Your complainant is without adequate remedy in the Courts of Law and therefore prays:

1. That the City of Elizabeth, who is the defendant to this suit, may answer this bill of complaint and each statement therein made.
2. That the said City of Elizabeth, its servants, agents and employees, may be enjoined and restrained from interfering in any manner with the State Highway Commission entering in and upon the lands and premises
10 hereinbefore described and from interfering in any manner with the building and construction of State Highway Route No. 25, of the State Highway System.
3. That the State's writ of injunction may issue, directed to the said City of Elizabeth, its agents, servants and employees, enjoining and restraining them and each of them, from interfering in any manner with the State Highway Commission entering in and upon the lands and premises as hereinbefore described, and from interfering in any manner with the building and construction
20 of State Highway Route No. 25, of the State Highway System.
4. That the State's writ of subpoena may issue, commanding the said defendant, and each of them, to answer this bill of complaint and to abide by such decree as this Court may make in the premises.
5. That your complainant may have such further relief as the nature and circumstances of the case may require, and as shall be agreeable to equity and good conscience.

30

EDWARD L. KATZENBACH,
Attorney-General of New Jersey.

FRED W. DEVOE,
Counsel to State Highway Commission.
Solicitors for and of Counsel with Complainant.

Dated January 20, 1928.

IN CHANCERY OF NEW JERSEY.

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

William G. Sloan, being duly sworn, according to law, on his oath deposes and says that :

1. I am the State Highway Engineer of the State of New Jersey, duly appointed as such by the State Highway Commission, the complainant named in the foregoing bill of complaint. I have read the said bill of complaint and the contents thereof are true. Efforts were made by the complainant to acquire the said property owned by the said City of Elizabeth, but were unsuccessful because of disagreement as to price, and for the further reason that the said City of Elizabeth has continually, for the past four years, and now disputes the right of the State Highway Commission to enter the said City of Elizabeth for the purpose of constructing State Highway Route No. 25. Proceedings seeking the condemnation of said lands and premises were duly authorized by the State Highway Commission by resolution passed on January 17, 1928, offering the sum of twenty thousand four hundred (\$20,400.00) dollars to the said City of Elizabeth for the said lands and premises. This offer was made by formal letter bearing date of January 18, 1928, and forwarded by registered mail on that day to the city clerk of the said City of Elizabeth.

2. The State Highway Commission, has laid out and established that part of State Highway Route No. 25, lying between the City of Jersey City and the City of Trenton and including that part of State Highway Route No. 25, located in the said City of Elizabeth; that the lands and premises in the City of Elizabeth, as described in the foregoing bill of complaint are necessary for the proper completion thereof; sixteen million two hundred thousand (\$16,200,000.00) dollars' worth of work has been done on State Highway Route No. 25, or contracted to be expended during the next few months,

between the City of Elizabeth and the approaches to the Holland Tunnel, connecting New Jersey and New York; the said City of Elizabeth has refused and continues to refuse to allow the said State Highway Commission to enter in and upon the said lands and premises for the purposes of constructing and building that portion of State Highway Route No. 25, located in the said City of Elizabeth; repeated efforts have been made to have them agree to allow this great undertaking to go forward, but they have continually refused and continue to refuse to allow complainant to enter upon the said lands and premises for the purposes aforesaid. I have examined the map and plans of the State Highway Commission as referred to and offered with the said bill of complaint and the same gives a true and detailed location of the property located in the said City of Elizabeth.

10
20
3. The letter attached to the said bill of complaint and marked "Exhibit A" is a true copy of the letter sent by me to the said City of Elizabeth, containing the official offer of the State Highway Commission to the said City of Elizabeth for the said lands and premises.

4. The complainant is spending millions of dollars in the construction of State Highway Route No. 25, of which sixteen million, two hundred thousand (\$16,200,000.00) dollars have already been expended or contracted on State Highway Route No. 25; that the said Route No. 25 is in a sense the entrance road to the approaches of the Holland Tunnel, on which approaches there has been expended and contracted the sum of forty million (\$40,000,000.00) dollars.

30
5. The refusal of the said City of Elizabeth to allow the State Highway Commission to enter in and upon the said lands and premises will practically render valueless those portions of State Highway Route No. 25, adjoining the said City of Elizabeth, and will practically render valueless, as main arteries of travel, the approaches to the Holland Tunnel and will cause irreparable damage and injury to the people of this State and to the complainant in this cause.

6. That John J. Stanley, Supervisor of Maintenance of the State Highway Commission, was arrested on January 20, 1928, by a policeman of the City of Elizabeth on complaint by the Supervisor of Streets of the said City of Elizabeth and held by the Recorder of the City of Elizabeth for hearing on Wednesday morning, January 25, 1928, on the charge of destroying said city property. The said John J. Stanley, at the time of his arrest was in and upon the lands and premises described in said bill of complaint and was acting as agent for the State Highway Commission in the constructing and building of State Highway Route No. 25, and was acting upon my order and under my direction at the time of his arrest. 10

WILLIAM G. SLOAN.

Sworn and subscribed before me this twentieth day of January, 1928.

FRED W. DEVOE,

Master in Chancery of New Jersey. 20

EXHIBIT "A."

Right-of-way

FV:AD

January 18, 1928.

To "The City of Elizabeth", a municipal corporation of the State of New Jersey

The State of New Jersey proposes to acquire for its use in the construction of Route No. 1 Extension of the State Highway System certain lands and premises situate, lying and being in the City of Elizabeth, in the County of Union, as outlined in red on the enclosed blueprints, lettered respectively Parcel A. and Parcel B. 20

The records in the Office of the Register of Deeds of Union County indicate that "The City of Elizabeth" is the owner of the premises in question. There is, therefore, submitted to said owner, on behalf of the State of New Jersey, an offer to pay the sums of Fifteen thousand, six hundred (\$15,600.00) Dollars, and Four thou-

sand, eight hundred (\$4,800.00) Dollars respectively, for the conveyance to said State, free and clear of all encumbrances, of Parcel A and B. This offer is made without prejudice and in a spirit of compromise, in an effort to acquire the premises in question by amicable means. However, unless this Department is advised within the next ten (10) days of the acceptance of this offer it will be taken as rejected on the part of the City of Elizabeth and condemnation proceedings for the
10 acquisition of the premises in question will, as a matter of necessity, be instituted.

Respectfully yours,

W. G. SLOAN,
State Highway Engineer.

A true copy.

THOMAS BARBER,
Clerk.

IN CHANCERY OF NEW JERSEY.

20

Between

STATE HIGHWAY COMMISSION
 acting for and in the name
 of the State of New Jersey,
Complainant,

and

CITY OF ELIZABETH, a Mu-
 nicipal Corporation of New
 Jersey,

Defendant.

On, Bill, Etc.

30

AFFIDAVIT.

(Filed January 24, 1928.)

STATE OF NEW JERSEY, {
 COUNTY OF MERCER, } *ss.*

William G. Sloan, being duly sworn, according to law on his oath deposes and says that:

1. I am the State Highway Engineer of the State of New Jersey, duly appointed as such by the State High-

way Commission, the complainant named herein. The 1917 Act, creating the State Highway System, designated Route No. 1 to extend from Elizabeth to Trenton and, under these conditions, no highway providing for the heavy traffic reaching the Philadelphia district and the shore points was carried closer to Jersey City than the southerly line of the City of Elizabeth over State highways. In 1921 this law was amended providing for the extension of State Highway Route No. 1, to the Hudson River vehicular tunnels, by Chapter 322, Laws 10 of 1921, which provided as follows:

“Route No. 1 of the State Highway System as described and designated in section one of the act to which this act is a supplement shall begin at the entrance of the vehicular tunnel under the Hudson River in Jersey City, County of Hudson, proposed to be constructed by the States of New Jersey and New York, instead of the point of beginning as described in section one of the act to which this act is a supplement, and shall run 20 from thence through the City of Jersey City and the County of Hudson, to, through and beyond the City of Newark in the County of Essex, to and through the City of Elizabeth in the County of Union, to the point of beginning of said Route No. 1 as described or designated in the act to which this act is a supplement, and from thence shall continue as described in said act.”

2. At the time of the appointment of the present State Highway Commission in 1923 the construction of the Hudson River vehicular tunnel was definitely decided on and work was under way and this State Highway Commission appreciated the necessity for the completion of the work provided for in the supplement above referred to; that is, the construction of a highway from the mouth of the vehicular tunnel to a connection with State Highway Route No. 1 at Elizabeth was of prime importance, and that the completion of such route should 30

be effected at the same time as the completion of the tunnels under the river if possible.

3. This State Highway Commission, therefore, appointed an advisory board, under date of May 11, 1923, to study the problems presenting themselves. This advisory board rendered a report to the State Highway Commission under date of August 8, 1923, and, in such report, recommended the alignment and type of construction of a route to meet the above conditions. The
10 alignment recommended by the advisory board in the vicinity of Elizabeth passed to the north of the city.

4. The State Highway Commission never definitely adopted the alignment recommended by the advisory board for the reason that certain objections were made by the residents of Elizabeth when the alignment was recommended and the State Highway Commission felt that a further study of the situation was justified. The alignments of other parts of the route, particularly that through Jersey City and through the City of Newark,
20 were, with minor modifications, adopted, placed under construction and are nearing completion under contracts which total, to date, in excess of \$16,000,000. These portions of the line through the City of Jersey City and through the City of Newark have been constructed with the utmost co-operation of the municipalities through which they have passed.

5. In the case of the alignment through Elizabeth further studies by the State Highway Commission have indicated that a line more desirable than that recommended by the advisory board can be obtained and, in
30 the spring of 1925 at a public hearing held in the City of Elizabeth which was largely attended, submitted a line occupying, for a considerable part of its length, an existing street through the City of Elizabeth known as Spring Street. At that meeting considerable dissatisfaction to this line was expressed and a request was made by the City of Elizabeth that study be given to a line passing further to the east and following the line of Division Street. Such a study was made with the result

that, due to its longer length and the fact that three lines of railroad tracks must be crossed and for other reasons, it was considered by the State Highway Commission that the Spring Street line was more desirable.

6. My recommendation to the State Highway Commission that the Spring Street line be adopted as the route for State Highway Route No. 1 Extension was made, therefore, only after a most careful study of all available routes and I am convinced that, in the selection and construction of the route for Spring Street, the best interests of the State and of the City of Elizabeth will be served. 10

7. It is to be noted that more than four years of time have been consumed in studying this situation and in trying to reach a settlement in connection with same which would best serve the interests of the State and, at the same time, meet the views of the authorities of the City of Elizabeth.

8. The Hudson River vehicular tunnels have now been opened to traffic and a very considerable congestion occurs on the highways leading therefrom which requires that these facilities be provided without further delay. The many millions of dollars being expended on that portion of the route through Jersey City and through Newark do not materially help the situation until this link through the City of Elizabeth shall have been provided, and the delay in proceeding with the construction of this link involves a large monetary loss to the State for the reasons that large sums have been expended on the construction of the other portions which cannot be used to their capacity until this link through Elizabeth is provided. The delay to the construction of the link through Elizabeth is now occasioned by the refusal, by the authorities of the City of Elizabeth, to permit the State to proceed with this construction. The State is now prepared to proceed vigorously with the construction of this portion of the route, the funds having been provided and now available 20 30

to do so, by reason of the adoption of the bond issue in November, 1927.

9. In the immediate vicinity of the City of Elizabeth are a number of State Highway routes leading to the various parts of the State and traffic carried by this main artery is distributed to the several State Highway routes. The effect of this unimproved section of the main artery leading to these several routes which serve the State, therefore, is to affect traffic reaching all parts
10 of the State of New Jersey on account of the delay occasioned by the congestion occurring at the point where this route has not been improved. The construction of this link of the main highway will involve the expenditure in excess of \$5,000,000. Its construction involves the acquisition, by the State of the property necessary for rights of way from a large number of owners. Its construction involves design of bridges and other structures and the time necessarily involved in carrying out such construction is very considerable. The time necessary
20 for carrying out construction projects of this kind is largely dependent on the season of the year in which construction is started. Much of the work involved in such construction cannot be carried on during the winter months. The preliminary work of securing necessary rights of way and design of structures can, however, be carried out during the winter months. In this particular case, if the preliminary work could be carried out during the winter and the contracts let in the spring of this year, it would be possible to complete the work so the highway could be put in service in the fall of
30 1929, whereas, if, due to the action of the City of Elizabeth, the preliminary work is delayed at this time, it would throw the completion of the work into the year 1930, or beyond, imposing that further burden upon the users of the highways of the State.

10. The actual contracts for the building and construction of this highway must be entered into at the earliest possible moment, and the attitude adopted by the City of Elizabeth makes it impossible to award such con-

tracts without involving the State Highway Commission in many suits for damages on account of injuries caused to the interests of third parties.

Sworn and subscribed before me this twentieth day of January, 1928.

WILLIAM G. SLOAN.

CHARLES FISHBERG,
Notary Public of New Jersey.

A true copy.

THOMAS BARBER,
Clerk.

10

Service acknowledged January 21, 1928.

EDWARD NUGENT,
City Attorney, Elizabeth, N. J.

IN CHANCERY OF NEW JERSEY.

20

Between

STATE HIGHWAY COMMISSION
acting for and in the name
of the State of New Jersey,
Complainant,

and

CITY OF ELIZABETH, a Mu-
nicipal Corporation of New
Jersey,

Defendant.

On Bill, Etc.

ORDER TO SHOW CAUSE.

30

(Filed January 20, 1928.)

This matter being opened to the Court by Fred W. DeVoe, Esq., of counsel with the complainant, and the Court having read the bill of complaint in the above entitled cause and the affidavit or affidavits thereunto annexed;

It is, on this twentieth day of January one thousand nine hundred and twenty-eight, ordered that the defendant, City of Elizabeth, a municipal corporation of New Jersey, show cause before the Chancellor, at the Chancery Chambers, at the Industrial Building, in the City of Newark, on Tuesday, the twenty-fourth day of January, one thousand nine hundred and twenty-eight, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the said defendant, City of
10 Elizabeth, a municipal corporation of New Jersey, should not be restrained and enjoined in accordance with the prayer of said bill.

It is further ordered that a true copy of said bill of complaint and the affidavit or affidavits thereunto annexed, certified by complainant's solicitor, and a true copy of this order, certified by complainant's solicitor, be served on said defendant within one day from the date thereof.

And it is further ordered that the complainant may
20 read additional affidavits on return hereof provided the same are served one day in advance thereof.

E. R. WALKER,
Chancellor.

A true copy.

THOMAS BARBER,
Clerk.

IN CHANCERY OF NEW JERSEY.

Between

STATE HIGHWAY COMMISSION
acting for and in the name
of the State of New Jersey,
Complainant,

and

CITY OF ELIZABETH, a Mu-
nicipal Corporation of New
Jersey,

Defendant.

On Bill, &c.

10

AFFIDAVIT

(Filed May 10, 1928.)

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

Dennis F. Hennessy, being duly sworn, according to
law on his oath deposes and says that:

20

1. I am a member of the Board of Public Works of
the City of Elizabeth, County of Union and State of
New Jersey, the legally authorized body in charge of the
public property of said city, which includes certain tracts
of land more fully described in paragraph 7 of the bill
of complaint in the above-entitled cause; plot A and
buildings thereon being used by the city as a corporation
yard by the Street Department.

2. In connection with Mayor John F. Kenah and
other city officials I have attended practically every ses-
sion and conference had with the State Highway Com-
mission in reference to the designation of the proposed
highway route through the City of Elizabeth, and sought,
as a city official, to protect the best interests of the city
and the State of New Jersey, and then and at the present
time, after most careful investigation of the entire ques-
tion, believe that the plan of constructing a highway
route over and along Spring Street in said city is a

30

willful waste of public funds, injurious alike to the State of New Jersey and the City of Elizabeth.

3. I have read the bill of complaint and the affidavit of William G. Sloan, State Highway Engineer, annexed thereto, and answering allege as a fact, that the State Highway Commission has entirely disregarded the mandate of the Legislature expressed in Chapter 285, P. L. 1916, section 2 (which although repealed by Chapter 75, P. L. 1917), directed that,

10 “The built-up and business portions of cities or towns shall be avoided wherever it is practicable to do so without materially lengthening the route.”

4. The State Highway Commission between January 24, 1924, and October 8, 1925, or for a period of approximately twenty months, sent no communication of any kind whatsoever to the City of Elizabeth, although the necessity of providing against congestion of traffic from the Holland Tube when opened, was known to
20 officials of the city entrusted with the care and management of streets and highways, but after repeated urging to provide speedily for relief, the State Highway Commission, as will appear from an inspection of its minutes, dated November 22, 1927, tentatively agreed to construct Route 1 Extension, Elizabeth, over and along Division Street, which was satisfactory to the officials of the City of Elizabeth.

5. On or about November 25, 1927, the State Highway Commission changed its mind and the proposed route, thereby confirming its original findings to lay out
30 said highway over and along Spring Street, and a formal letter with detailed description was promised by the Secretary of the said Commission, and accordingly a map was received by the Clerk of the Board of Public Works, showing the proposed route and its continuation through the city at what is known as South Elizabeth.

6. Thereafter a conference was held at Trenton, New Jersey, attended by officials of the city, including myself, and on or about January 19, 1928, a letter more fully

described in Exhibit A annexed to the bill of complaint was received from a Mr. William G. Sloan, State Highway Engineer, purporting to represent the State of New Jersey, wherein he, on behalf of said Sovereign State, offered \$15,600.00 for Parcel A, and \$4,800.00 for Parcel B, or a total of \$20,400.00 for property of the City of Elizabeth, then and now in use for city purposes held and possessed by the Board of Public Works for the City of Elizabeth in accordance with the provisions of Chapter 326, P. L. 1913, and supplements thereto. 10

7. Upon receipt of the letter from Mr. Sloan an investigation was made by the City Attorney as to the right or authority of Mr. William G. Sloan, State Highway Engineer, to condemn city property as threatened by him in his communication, and the Board of Public Works was advised that the right and authority of Mr. William G. Sloan, State Highway Engineer, to condemn city property was very doubtful and that the letter received from him threatening condemnation proceedings be disregarded. 20

8. I am familiar with all of the proceedings relative to the negotiations with the State Highway Commission as to the designation of its proposed route through the said city, and deny the statements made in paragraph 6 of the bill of complaint, that efforts were made

“To acquire the lands and premises (in question) by agreement with the owner, the City of Elizabeth,”

or that the State Highway Commission ever negotiated or attempted to negotiate as to price or property belonging to the City of Elizabeth. Furthermore a careful investigation by myself shows that the statements contained in paragraph 9 of the bill of complaint as to an offer or tender by the State Highway Commission to the City of Elizabeth of the sum of \$20,400.00 for the said lands and premises, is untrue. 30

9. The Board of Public Works of which I am a member has the care and custody of the city property described in the bill of complaint, and in view of the

lack of authority of Mr. William G. Sloan to acquire or condemn city lands and buildings, it became and was the duty of the members of the Board of Public Works to prevent damage or injury to the buildings entrusted to cur care; therefore, when Mr. John J. Stanley, Supervisor of Maintenance and an agent and an employee of the State Highway Commission went upon the lands and buildings of said city for the avowed purpose of taking possession thereof, he was arrested, re-
10 manded and arraigned before the police justice of said city on the charge of destroying city property, and it is true as stated in the bill of complaint that a further hearing thereon will take place, unless prevented by order of this Honorable Court, at 10:30 o'clock Wednesday morning, January 25, 1928, to make further answer to the charge of destroying city property.

10. As to the allegations contained in the bill of complaint and affidavit annexed thereto, that the officials of the City of Elizabeth have prevented the State Highway
20 Commission from proceeding with its work admittedly of great magnitude and importance, I deny the statements to that effect, and allege that an inspection of the minutes of the State Highway Commission if made, will clearly show that delay, increased costs, and the failure to relieve congestion of vehicular traffic, is chargeable to said Commission, primarily due to a disregard of the original mandate of the Legislature to avoid wherever practicable the business portions of cities and towns, which necessarily included the City of Elizabeth.

11. The alleged urgency for the taking of city prop-
30 erty for the proposed route will be shown on examination of maps filed, to be an illusion, as the route clearly indicates the necessary bridging of the Elizabeth River, a navigable stream without consent shown or permission obtained from the War Department or the United States Government, and if city streets are taken over and city property used for housing city equipment be diverted at the present time and in midwinter, it will work great hardship upon the municipality.

12. It must be noted that while more than four years of time, as stated by Mr. Sloan, has been taken up in trying to reach a settlement, and millions of dollars expended; that the record fails to show a petition filed or consent granted by the United States authorities to allow the said Elizabeth River to be bridged or any leave obtained to straighten and divert the channel of said stream, and it is my contention that if the proposed highway is completed up to the north and south side of the Elizabeth River without permission to construct a bridge, with due provision made for its maintenance, that the proposed highway will be of no worth or value either to the City of Elizabeth or the State of New Jersey.

10

DENNIS F. HENNESSY.

Sworn and subscribed before me this 24th day of January, 1928.

GEORGE F. CUMMINGS,
Notary Public of N. J.

A true copy.

THOMAS BARBER,

Clerk.

20

Service of a true copy of the within affidavit is acknowledged this twenty-fourth day of January, 1928.

FRED W. DEVOE,
Attorney for State Highway Commission.

IN CHANCERY OF NEW JERSEY.

Between STATE HIGHWAY COMMISSION acting for and in the name of the State of New Jersey, <i>Complainant,</i> <i>and</i> CITY OF ELIZABETH, a Mu- 10 nicipal Corporation of New Jersey, <i>Defendant.</i>	}	On Bill for Injunc- tion. On Order to Show Cause.
---	---	---

CONCLUSIONS.

(Filed February 1, 1928.)

EDWARD L. KATZENBACH, Esq., Attorney-General of
 New Jersey, and

FRED W. DEVOE, Esq., for Complainants.

20 EDWARD NUGENT, Esq., for Defendant.

BERRY, V. C.

The complainant seeks to enjoin the defendant from interfering with the building and construction of State Highway Route No. 25 of the State Highway System through the City of Elizabeth, and from interfering with that Commission's entry upon certain lands of the city which the Commission desires to take for the purposes of said highway. The matter comes before me on the return of an order to show cause issued by the Chancellor.

30 State Highway Route No. 25 extends from Jersey City to Camden by way of Elizabeth, but the State Highway Act (Chapter 319, P. L. 1927, page 712) does not specify the course of the route through the city, that matter being left to the discretion of the Commission itself. The Commission has chosen what is known as "Spring Street Route" and this route is opposed by the city. For the purpose of constructing this route through

the City of Elizabeth on the course selected, it is necessary for the State to acquire certain lands located in and owned in fee by the city, consisting of two plots designated as Plots "A" and "B", and consisting of 20,000 square feet and 11,755 square feet respectively. The State Highway Commission has offered the city the sum of \$20,400 for said lands, which offer has been refused. Upon such refusal, John J. Stanley, Supervisor of Maintenance in the employ of the State Highway Commission, and by direction of that Commission, entered upon the lands in question with a force of men and took possession thereof and began the work of construction of said highway at that point, whereupon he was arrested by a city policeman on the charge of destroying city property and the work so begun was stopped under threat of further arrests. This bill was immediately thereafter filed. 10

It is claimed by the defendant that no formal offer or tender of compensation was made by the Commission; but that fact, if it be a fact, is immaterial in view of the case of *Goodavage v. State Highway Commission*, 96 N. J. Eq. 424. It is quite apparent, however, that further negotiations with the city would have been useless and that the Commission, under the circumstances, was justified in concluding that an agreement with the city was impossible. 20

The only question involved here is whether or not lands of a municipal corporation used for public purposes are subject to condemnation by the State Highway Commission for State highway purposes to the same extent as lands owned by private individuals or corporations. The question is apparently an open one in this State. The only reported case in which the question has been noticed, and to which my attention has been called, is that of *Everett W. Cox Company v. State Highway Commission*, 4 N. J. Misc. Repts. 510, and there the Supreme Court refused to pass on the question as it had not been raised by the municipality concerned. 30

The State Highway Commission undoubtedly has power to take private property for public use. The general power to condemn was given in the original State Highway Act (Chapter 15, P. L. 1917). See also Section 111(e), Chapter 319, P. L. 1927. And such property may be taken and occupied by the commission without first instituting proceedings to condemn. *Haycock v. Jannarone*, 99 N. J. L. 183; and even before any negotiations for the purchase or acquisition of such lands are had with the owner. *Goodavage v. State Highway Commission, supra*. It is the duty of the Commission to condemn in order that proper compensation may be fixed and paid to the owner, but this duty is a ministerial one for the performance of which mandamus will lie at the suit of the property owner. *Haycock v. Jannarone*, and *Goodavage v. State Highway Commission, supra*.

On behalf of the defendant it is contended that the lands owned by a municipality and already appropriated by it to public use cannot be taken by the State under its power of eminent domain for some other public use unless the authority therefore appears by express terms in legislative enactment or by necessary implication; and that such power is not expressly conferred upon the State Highway Commission by the act creating it; nor is it necessarily implied.

As a general rule of law "it is well established that property previously devoted to a public use may, by the exercise of the power of eminent domain, be taken for a different public use whenever the interests of the public require." 37 L. R. A. (N. S.) 101, note.

"The chief difficulty arises when authority to condemn property for any purpose is given in general terms, as is usually the case in these latter years. In such case the presumption is against the right to take property which is already devoted to public use. This presumption may be overcome by showing a reasonable necessity for the property desired as compared with

its necessity and importance to the use to which it is already devoted.

"* * * As to the degree of necessity which must exist * * * the better opinion is that it must be a reasonable one. Whether any general rule can be laid down as to what will constitute a reasonable necessity may be doubted. But we should say that there was a reasonable necessity for the taking where the public interests would be better subserved thereby, or where the advantages to the condemnor will largely exceed the disadvantages to the condemnee." 10

Lewis Eminent Domain, p. 794, Sec. 440.

In this connection, it should be borne in mind that the State Highway System is "for the benefit of all the citizens, not merely in or for the benefit of any particular locality or the citizens thereof." *Curtis & Hall Gravel & Sand Co. v. State Highway Commission*, 91 N. J. Eq. 421.

In this state the right to take property already devoted 20 to public use must be given in express terms or by necessary implication. *New Jersey Southern Railroad Company v. Long Branch*, 39 N. J. L. 28; *State v. Montclair Railroad Company*, 35 N. J. L. 328; *Van Reipen v. Jersey City*, 58 N. J. L. 262; *Plainfield Water Company v. Plainfield*, 84 N. J. L. 634. But there is no doubt that the right may be granted by the State and that fact is not here questioned; but the State cannot grant what it has not, and to concede the power to confer the right on its creatures is to acknowledge the right in the State itself. But the power of eminent domain lies dormant in the State until legislative action is had. *Cooley's Constitutional Limitations* (6th Ed.), p. 648. 30

"In the constituted government of this State, the right of exercising it has been confided to the legislature, restricted by only two conditions; one, that compensation shall be made to the owner of property taken; the other, that the use for which property may be taken shall be a public

use. In other respects it is without limit. Whether the purpose to be subserved be necessary or wise, is for the legislature alone." *National Docks R. R. Co. v. Central Railroad Co.*, 32 N. J. Eq. 755, 763.

Prior to 1844 there was no constitutional provision requiring the payment of damages to a land owner for land taken for public highways. *Haycock v. Janmarone*, *supra*. But the power of eminent domain was always
 10 inherent in the State; it was not conferred, but limited by the Constitution. *Dillon, Municipal Corporations* (5th Ed.), Vol. 3, Sec. 1024. It is an inseparable attribute of sovereignty but it may be delegated to a State agency.

The defendant is a municipal corporation and such corporations are simply governmental agencies of the State adopted for reasons of convenience in order to deal with local affairs and subject to legislative control without limitation save such as the Constitution imposes.
 20 *Van Cleve v. Passaic Valley Sewerage Commissioners*, 71 N. J. L. 183 at p. 224; *Milburn v. South Orange*, 55 N. J. L. 254-263; *Hunter v. Pittsburgh*, 207 U. S. 161, 179; 52 L. Ed. 151, 159; *City of Trenton v. New Jersey*, 262 U. S. 186, 67 L. Ed. 927.

"Municipalities are the creatures of the State and the powers given to them are always subject to be abridged or repealed by the sovereign who conferred them." *New Jersey Bridge and Tunnel Commission v. Jersey City*, 93 N. J. Eq. 550. The State is the supreme and sovereign power. "It acknowledges no superior upon earth."
 30 *Id.* All rights and powers of the municipality are derived from the state and all its property is held subject to the inherent right of the State to appropriate it to public use whenever the public good may require it. The State gave and the State may take away.

Property may be held by a municipal corporation either in its governmental or in its private or proprietary capacity. If the former, it is held as an agency of the State, and property so held may be reclaimed by the

State at any time without compensation. 10 R. C. L. Title "Eminent Domain," Section 68; *Jersey City v. Jersey City and Bergen Railway Company*, 20 N. J. Eq. 360; *Milburn v. South Orange*, *supra*; *Newark v. Watson*, 56 N. J. L. 667; *City of Trenton v. State of New Jersey*, *supra*; *Hunter v. Pittsburgh*, *supra*. But if the latter, the municipality stands upon the same footing as any other property owner (20 *Corpus Juris*, 620), and such property may be appropriated to public use the same as any other privately-owned property upon just compensation being made therefor. It does not appear from the papers filed herein in which capacity the defendant claims to hold the property sought to be taken, the answering affidavit stating merely that the lands are used "by the city as a corporation yard by the street department;" but as the State Highway Commission has offered to pay the defendant for the property it is to be assumed that it is held by the municipality in its private or proprietary capacity. The distinction, however, is not universally recognized (*Hunter v. Pittsburgh*, *supra*), and is of little moment so far as the State is concerned, as either class of property may be taken by the State in the exercise of its sovereign powers. The point is that as to this property the municipality stands in the same position as any private individual or corporation; and, except for the question of present public user, nothing more is required of the complainant to accomplish the taking than if the property were privately owned.

As to the objection that the property in question is already devoted to a public use, if this be a fact, it is not controlling. While undoubtedly the doctrine of prior public use is applicable as between corporations having equal right of eminent domain under grant from the state, it has no application as between the State and one of its political sub-divisions. This is because the State is the sovereign power. But aside from this fact, I am convinced that the State highway act confers complete power on the Commission to acquire the lands here involved by the method proposed.

Specific power of condemnation was given to the State Highway Commission in the original State Highway Act, *supra*, and that act further provides that "the work of the department shall be performed under the State Highway Commission, which shall have all powers necessary therefor without recital in detail." P. L. 1917, Chap. 15, p. 38, Sec. 10. The more recent powers of the State Highway Commission in connection with the appropriation of lands for public use are recited in

10 Section 111 (e), Chapter 319, P. L. 1927, as follows:

"To acquire any lands or rights therein by gift, devise, purchase or by condemnation, according to the procedure as contained in 'the eminent domain' act. * * * 'The State Highway Commission shall have the right and power to enter upon and take property in advance of making compensation therefor in any case where it cannot acquire land or other property by agreement with the owner, whether by reason of disagreement as to the price, or the legal incapacity or absence of the owner, or his inability to convey valid title, or by reason of any other cause. * * * To do and perform whatever may be necessary or desirable to effectuate the object and purposes of this act. * * * These powers are to be liberally construed."

20

In considering the powers of the State Highway Commission as conferred by the above quoted language, it must be borne in mind that the State Highway Commission "is an *alter ego* of the State itself." *Curtis &*
 30 *Hill Gravel & Sand Company v. State Highway Commission, supra*. It is, for the purposes of this suit, the State itself, and "not a mere subordinate." *Ibid*. And if the positions of complainant and defendant were reversed this suit could not be maintained without the consent of the State. Therefore, when the State of New Jersey through its Legislature says that the State Highway Commission shall have power "to do and perform whatever may be necessary or desirable to effectuate the

object and purposes" of the act of its creation, it is but another way of saying "You are our agent and representative; and we invest you with all of our powers in furtherance of the objects and purposes for which you are created and this declaration of authority shall be liberally construed." What more could be asked? By what language could broader powers be given? Under these terms the State Highway Commission might well say, in the words of a famous French monarch, "*L'État c'est moi.*" The State Highway Commission is not a 10
separate and distinct entity upon which the power of eminent domain has been conferred, but it is to all intents and purposes, and within the scope of its authority, the State itself; and its powers within the sphere of its activities are limited only by the powers of the State.

"It is immaterial whether the grant of power is contained in the express words of the statute or arise by necessary implication. Its force and value when established, are no more potent in the one case than in the other." *Van Reipen v. Jersey City, supra.* 20

It is suggested that a comparison of the language of Section 111(e) of the State Highway Act, above recited, and that of the Port Authority Act (Chapter 149, P. L. 1924, Sec. 5), will indicate that when the Legislature intends to confer authority to appropriate property already devoted to public use to a new public use it will say so in unmistakable terms. The language of the latter act does undoubtedly confer such power in express terms; but it does not follow that less explicit language might not have conferred the same power. *Delaware River Transportation Company v. Trenton*, 85 N. J. L. 479, affirmed 86 N. J. L. 680. My study of the various State highway acts and the most recent revision leads me to the conclusion that the Legislature intended to confer complete power and the widest discretion upon the Commission, in order that the construction of the State Highway System might be facilitated in the greatest degree. 30

Absolute discretionary power in the determination of

the course of a State highway route through a city resulting in the taking of city property already devoted to a public use, may be a dangerous power in the hands of an arbitrary State agency; but that is a matter for consideration by the Legislature and not by the courts.

In *New Jersey Interstate Bridge and Tunnel Commission v. Jersey City*, *supra*, the Chancellor said:

10 "This great work of constructing tunnels under the Hudson River is the work of the State itself, for the State, wherever it prosecutes any great governmental purpose either in its own name or by and in the name of its appropriate agent, is the actor in carrying the particular purposes into execution,"

and further:

"As already seen, this tunnel project is an extension of the State Highway System and the control of highways by municipalities is always subject to paramount control by the State itself."

20 For the purpose of this decision the Port Authority stands in the same position as the Bridges and Tunnels Commission in the case last cited.

It is not to be presumed that the Legislature would confer less authority upon the State Highway Commission, charged, as it is, with the duty of laying out and completing the main project, the State Highway System, than it would confer upon an agency charged merely with the duty of building and completing an extension of that system.

30 I will advise an order restraining the defendant in accordance with the prayer of the bill.

Decided January 28, 1928.

A true copy.

THOMAS BARBER,

Clerk.

IN CHANCERY OF NEW JERSEY.

Between

STATE HIGHWAY COMMISSION
acting for and in the name
of the State of New Jersey,
Complainant,

and

CITY OF ELIZABETH, a Mu-
nicipal Corporation of New
Jersey,

Defendant.

On Bill, Etc.

10

RESTRAINING ORDER.

(Filed February 1, 1928.)

This matter being opened to the Court by Fred W. DeVoe, Esq., of counsel with the complainant, and the Court having considered the bill of complaint and affidavits filed herein, and the defendant having appeared by counsel and the Court having heard and considered the arguments of the Counsel for the defendant and Counsel for complainant and being satisfied that the complainant is entitled to an order restraining said defendants, the City of Elizabeth, its agents, servants and employees, and each of them, from interfering in any manner with the State Highway Commission entering in and upon the lands and premises as ascribed in said bill of complaint and from interfering in any manner with the building and construction of Route No. 25 of the State Highway System.

20

30

And it appearing that the order to show cause made in this matter on the twentieth day of January, A. D. 1928, has been duly served in the manner therein directed;

It is on this twenty-fourth day of January, A. D. 1928, ordered that the said defendants, the City of Elizabeth, its agents, servants and employees do and they

are each and every one of them hereby enjoined and restrained from interfering in any manner with the State Highway Commission entering in and upon the lands and premises as described in said bill of complaint and the said City of Elizabeth, its agents, servants and employees are enjoined and restrained from interfering in any manner with the building and construction of Route No. 25 of the State Highway System.

10

E. R. WALKER,
Chancellor.

Respectfully advised:
MAJA LEON BERRY,
V. C.

A true copy.

THOMAS BARBER,
Clerk.

20

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

CITY OF ELIZABETH, a municipal corporation of New Jersey,
Complainant-Appellant,

and

THE STATE HIGHWAY COMMISSION, acting for and in the name of the State of New Jersey,

30

Defendant-Appellee.

On Appeal.

NOTICE OF ARGUMENT.

SIR—Take Notice that the argument of the appeal in the above-entitled cause will be brought on at the May term of the Court of Errors and Appeals, to be held at the State House, at Trenton, on Tuesday, the fifteenth

day of May, 1928, at eleven o'clock A. M., or as soon thereafter as counsel can be heard.

EDWARD NUGENT,
Attorney for and of Counsel with Appellant.

Dated April 25, 1928.

TO: HON. EDWARD L. KATZENBACH,
Attorney-General for the State of N. J.
Trenton, N. J.

Service of the within Notice of Argument is hereby
acknowledged this 25th day of April, 1928. 10

EDWARD L. KATZENBACH,
Attorney-General.

NEW JERSEY COURT OF ERRORS AND APPEALS.
May Term, 1928.

Between	}	20
CITY OF ELIZABETH, a municipal corporation of New Jersey, <i>Complainant-Appellant,</i>		
and		On Appeal.
THE STATE HIGHWAY COMMISSION, acting for and in the name of the State of New Jersey, <i>Defendant-Appellee.</i>		

30

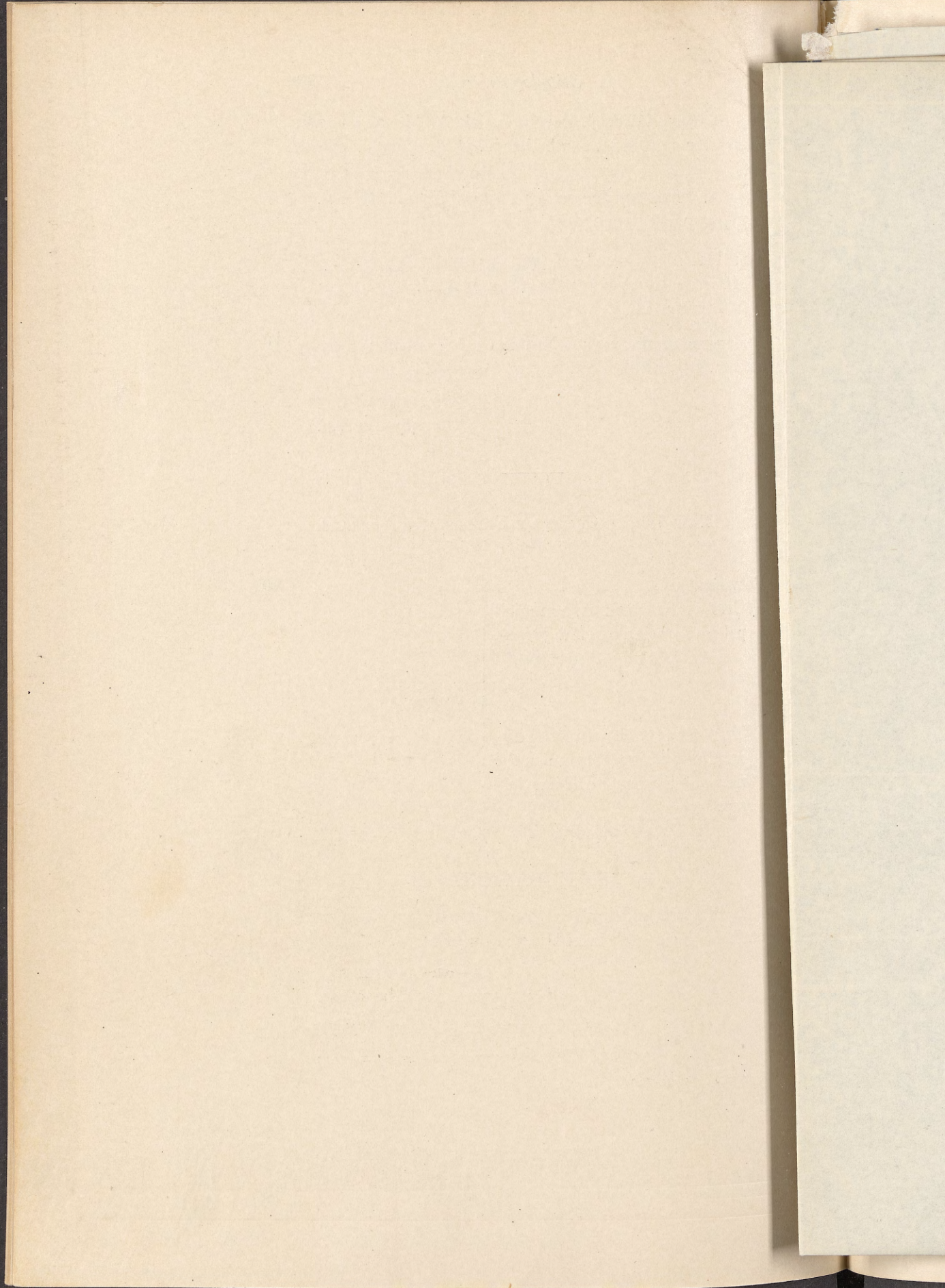
STIPULATION.

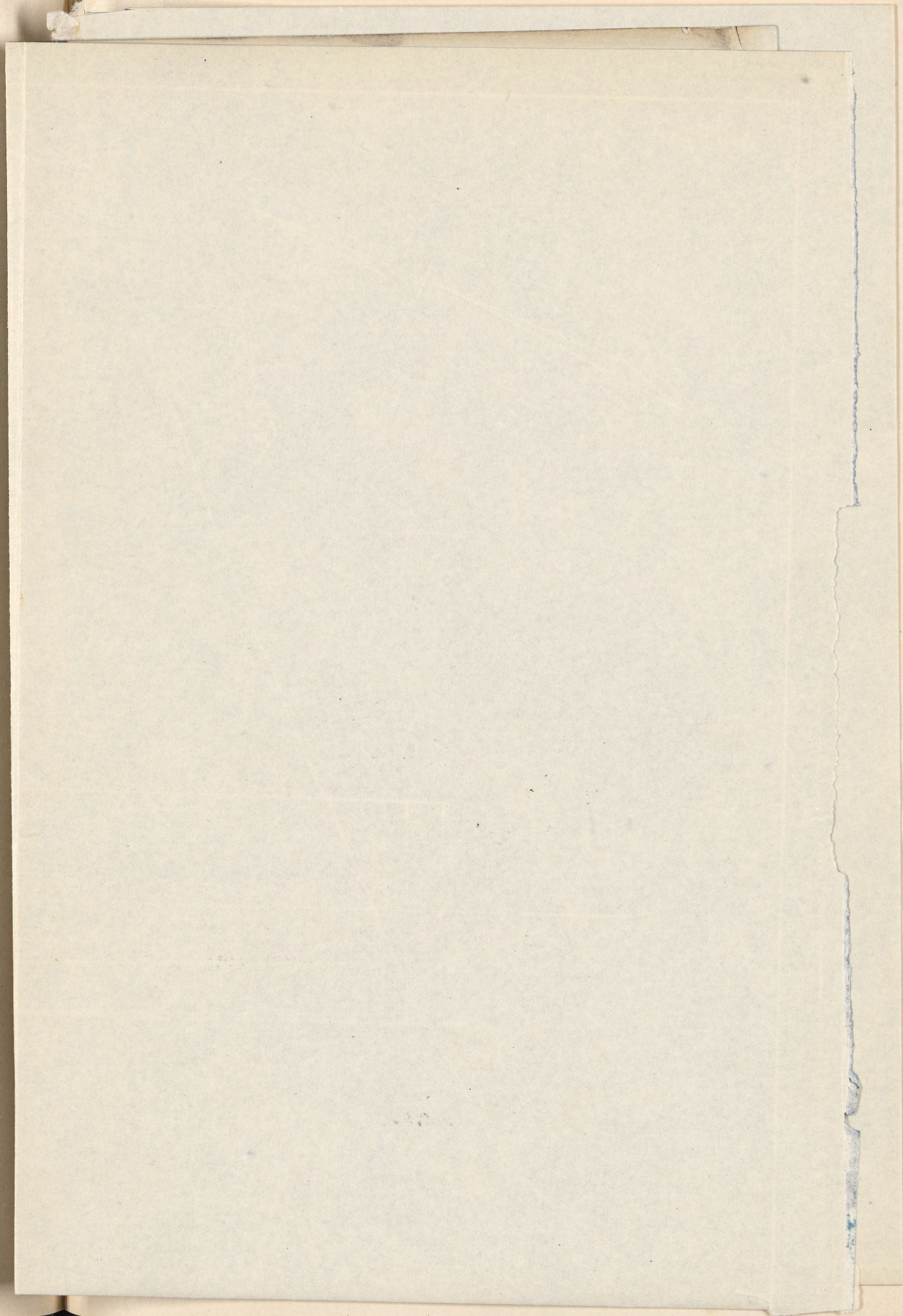
It Is Hereby Stipulated And Agreed, that the above-entitled cause shall be submitted on brief.

EDWARD NUGENT,
Attorney for and of Counsel with Appellant.

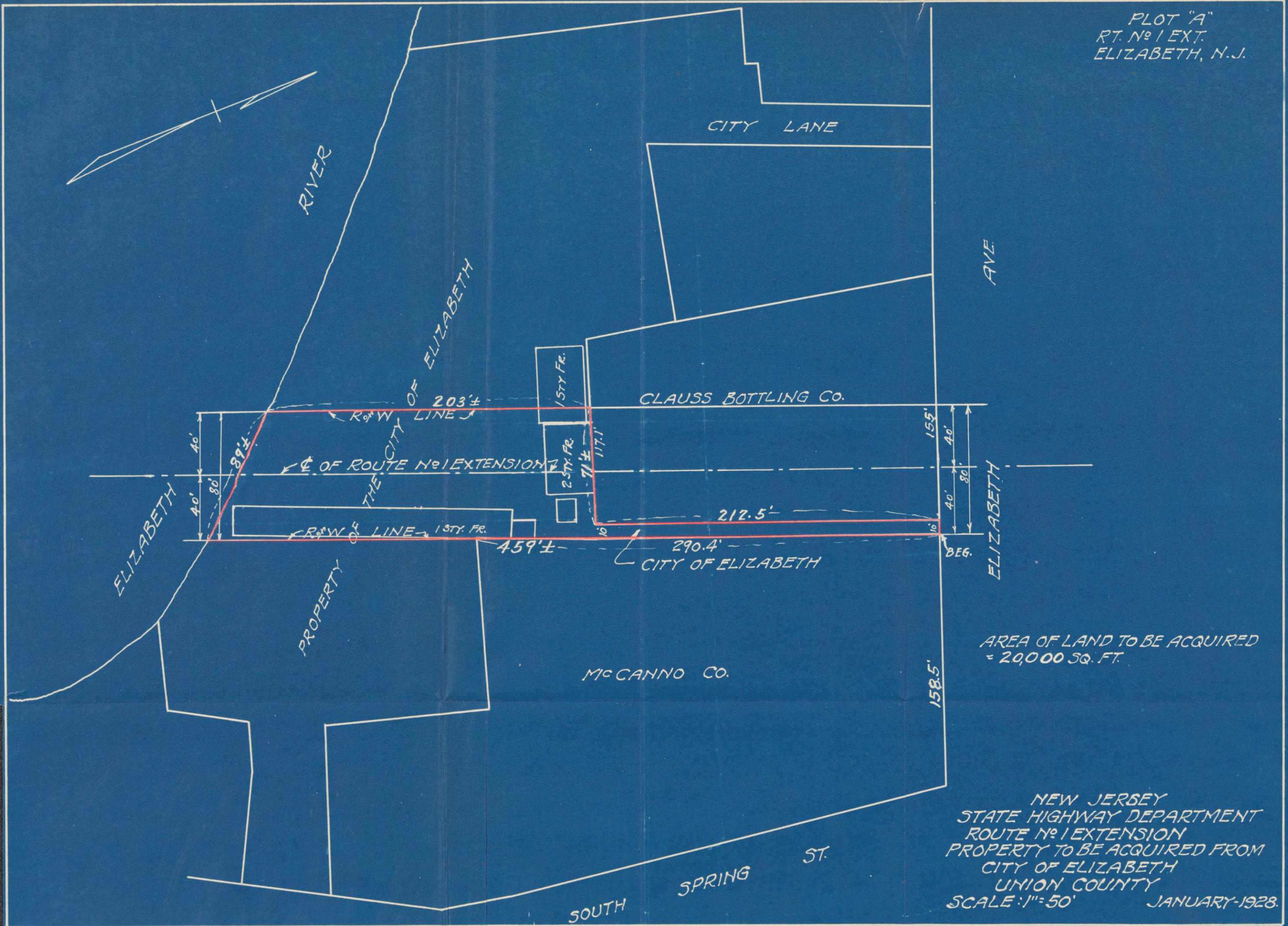
EDWARD L. KATZENBACH,
Attorney for and of Counsel with Appellee.

May 1, 1928.





PLOT "A"
RT. No 1 EXT.
ELIZABETH, N.J.

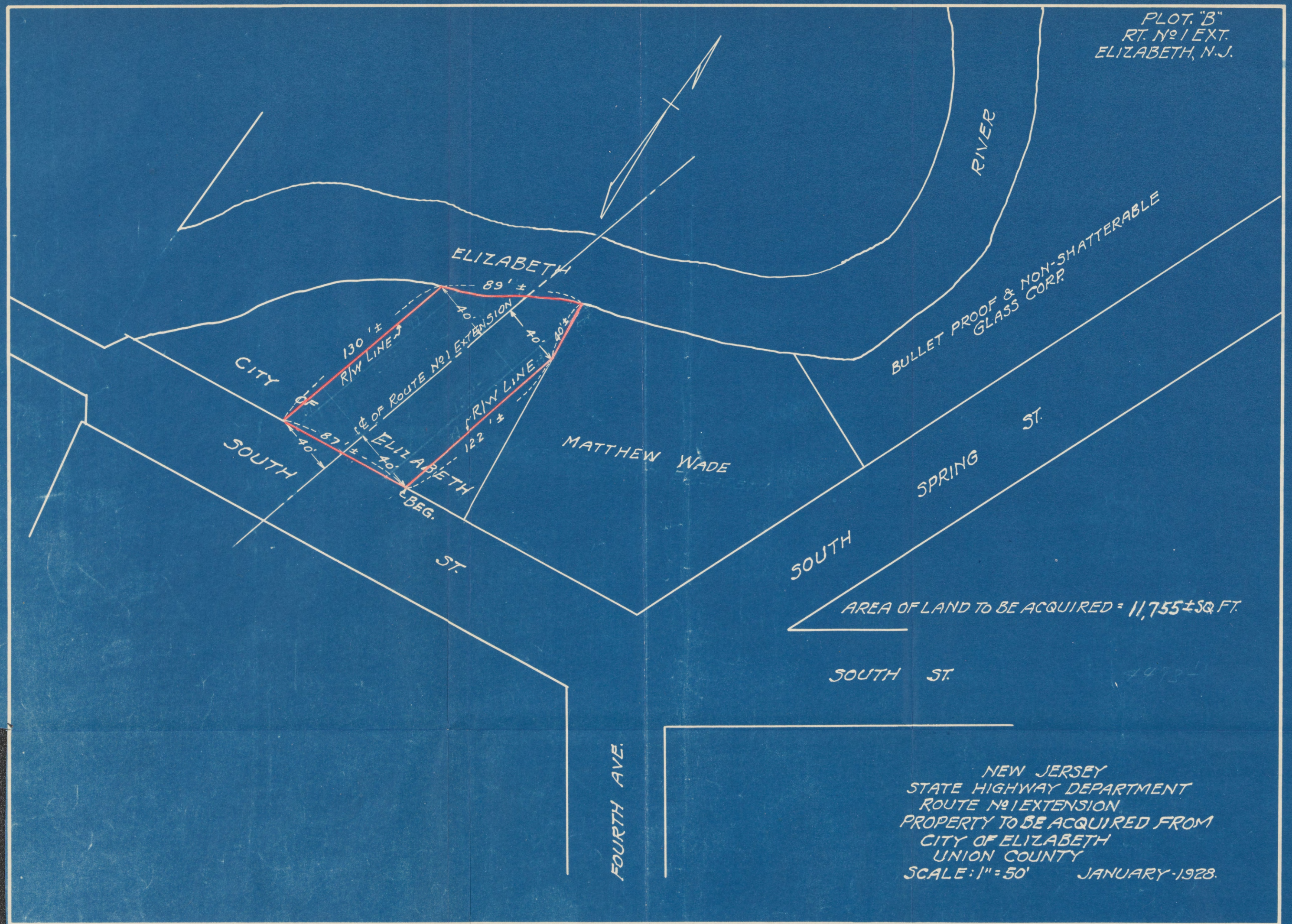


AREA OF LAND TO BE ACQUIRED
= 20,000 SQ. FT.

NEW JERSEY
STATE HIGHWAY DEPARTMENT
ROUTE No 1 EXTENSION
PROPERTY TO BE ACQUIRED FROM
CITY OF ELIZABETH
UNION COUNTY
SCALE: 1"=50' JANUARY-1928.

1.5"

PLOT "B"
RT. No 1 EXT.
ELIZABETH, N.J.

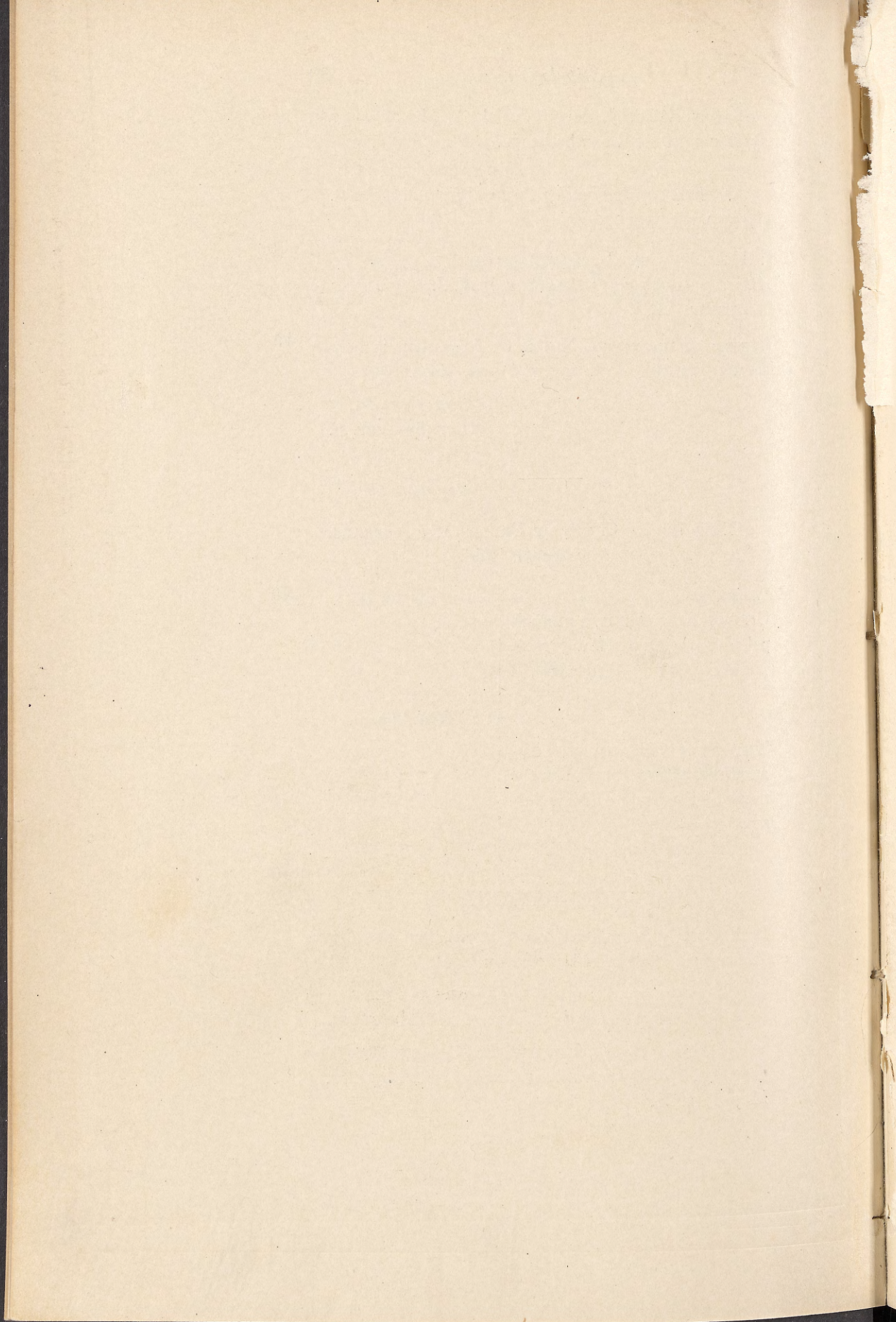


AREA OF LAND TO BE ACQUIRED = 11,755± SQ. FT.

SOUTH ST.

NEW JERSEY
STATE HIGHWAY DEPARTMENT
ROUTE No 1 EXTENSION
PROPERTY TO BE ACQUIRED FROM
CITY OF ELIZABETH
UNION COUNTY
SCALE: 1" = 50' JANUARY-1928.

FOURTH AVE.



New Jersey Court of Errors and Appeals

THE CITY OF ELIZABETH, a municipal corporation of New Jersey,

Complainant-Appellant,

and

THE STATE HIGHWAY COMMISSION, acting for and in the name of the State of New Jersey,

Defendant-Appellee.

On Bill for Injunction.

BRIEF FOR COMPLAINANT-APPELLANT

STATEMENT OF FACTS

William G. Sloan, State Highway Engineer, on January 18, 1928, offered by registered letter to the City of Elizabeth, a municipal corporation, \$20,400.00 for two pieces of city property described on maps on last page of the State of Case, being Parcels "A" and "B"; on January 20, 1928, and before any representative of the municipality could submit the offer to the officials authorized by law to consider the same, an employee of the State Highway Commission forcibly entered the city property and committed an overt act by removing part of a building; he was arrested and held for trial.

The State Highway Commission filed a bill for an injunction the following day, January 21, 1928, and a temporary restraining order was issued against the city; and upon the return day, after hearing affidavits, a restraining order was signed by the Chancellor in accordance with the conclusions of the Honorable Court.

LAW

The owner of private property is entitled to a considerable period of time to consider an offer to purchase;

also, to reasonable time to inquire as to whether or not the authority to condemn property is vested in a public official.

The City of Elizabeth actually using and possessing lands for city purposes should have had a reasonable opportunity of submitting an offer to acquire public lands to the officials charged by law with the duty of deciding such a question in the public interest.

The haste exhibited by the State Highway Engineer in offering the city a price one day, taking possession the next day, and restoring to injunction the following day, can not, under our legal decisions, be considered a *bona fide* attempt to obtain lands by agreement with an owner.

In *Jersey City vs. National Docks Railway Company*, 55 N. J. L., it was HELD:

“That inability to agree with an owner for the use or purchase of lands was a jurisdictional fact necessary to legalize condemnation proceedings.”

In *Beechwood Park Land Co. vs. Summit*, 78 N. J. L. at page 185, it was HELD: That negotiations for the purchase of land was a jurisdictional pre-requisite to the exercise to the right of eminent domain, the Court stating:

“It is conceded that no negotiation was had or attempted, and the evidence shows that prosecutors were both accessible and ready and willing to negotiate. If, therefore, their land was intended to be taken, there is no excuse for not endeavoring to agree upon the price. The proceeding is a condemnation and should be strictly pursued.”

In *Jersey City vs. Bayonne*, 80 N. J. L., at page 132, it was HELD:

“A failure to agree with the owner as to the purchase price, after a *bona fide* reasonable effort is made by the statute relied upon, a condition precedent, to the application for appointment of commissioners, to condemn in all cases, where the owner of the land is accessible and competent to sell.”

In *Specht vs. Atlantic City*, 81 N. J. L., it was HELD:

“In proceedings for condemnation of lands under the statutes relating to eminent domain, especially the Act of 1900 (Pamph. L., page 79), where it appears that the party seeking condemnation has power to agree on a price to be paid for such lands, and the owner was accessible and competent to sell, and no *bona fide* effort to purchase the lands is made, the appointment of commissioners will be set aside on certiorari.”

The remaining question involved in this case is as follows:

Has the State Highway Commission, acting for and in the name of the State of New Jersey, the right to go in and upon lands owned by the City of Elizabeth, in advance of making compensation therefor, the same as in the case of private property?

“The power (Eminent Domain) may be exercised in favor of public uses over any and all property, private and even public, and the property and franchises of corporations as well as of individuals, although dedicated to public uses, may be taken for other public uses. *The rule is subject, however, to the limitation that property devoted to public use cannot be taken to be used for the same purpose in the same manner, as this would amount simply to the taking of property from one and giving it to another without any benefit or advantage whatever to the public.*”

20 C. J., p. 600.

In *Cox vs. State Highway*, 133 Atl. 419, at page 420. The Supreme Court declined to discuss the question now raised in this cause. "Whether or not property already dedicated to the public use may be taken for another public use without legislative authority expressly given or implied."

In *Springfield vs. Connecticut River R. R. Co.*, 4 Cushing, 64 at page 72, the Court HELD:

"When it is the intention of the legislature to grant a power to take land already appropriated to another public use, such intention must be shown by express words or by necessary implication."

In *Norfold vs. Stricklin*, 264 Fed. 546, at page 568, the court says:

"Numerous cases found in the state and federal reports in which conflicts between the exercise of the right of eminent domain by one public corporation over property held by another corporation have arisen, relating to efforts on the part of the railway companies to condemn rights of ways over streets, or where one railroad company seeks to condemn a right of way over property of another company. It is conceded that the legislature has the power to confer such right; it is held that it should be granted in *express terms*."

The Circuit Court of Appeals, 9th Circuit, in discussing the question as to property dedicated to a public use being taken for another public use, uses the following language: The rule may be thus expressed.

"Property dedicated to a public use can not be taken for another public use under the general law conferring the right of eminent domain where the second use will destroy or injure under the use to which the property is already devoted."

Oregon Short Line vs. Postal Telegraph Co.,
110 Fed. 842.

The State Highway Act, revision of 1927, 319, undoubtedly grants broad powers to the State Highway Commission, but a doubt must arise as to the express grant of power to that body to condemn property already devoted to public uses, if we examine carefully the language of another act of the legislature express intent was shown in unmistakable language on the subject. See *Port of Authority Act, P. L. 1924, Chapter 149, Section 5*, which reads as follows:

"If, for any of the purposes hereunder, the Port Authority shall find it necessary or convenient for it to acquire title to or any lesser interest in real property as herein defined, in this state, then the Port Authority may find and determine that such property is required for a public use, and upon such due determination, the said property shall be and shall be deemed to be required for such public use; and with the exceptions hereinafter specifically noted *the said determination or fact shall not be affected by the fact that such property has theretofore been taken for, or is now devoted to, a public use; but the public use in the hands or under the control of the Port Authority shall be deemed superior to the public use in the hands of any other person, association or corporation.* If the Port Authority is unable to agree for the purchase of any such property, or if the owner thereof shall be incapable of selling the same, or if, after diligent search and inquiry, the name and residence of any such owner cannot be ascertained, or if title to any such property has been acquired or attempted to be acquired and has been found to be invalid or defective, the Port Authority may acquire title to all such property by condemnation under and pursuant to the provisions of this act."

It is therefore respectfully submitted, that the decree in the above entitled cause should be reversed.

Dated, May , 1928.

EDWARD NUGENT,

Attorney of the Complainant-Appellant.

123 MAY 1 1928

Court of Errors and Appeals

May Term, 1928

State Highway Commission, acting for and in the name of the State of New Jersey, Complainant-Appellee.	}	ON BILL, ETC.
vs.	}	BRIEF OF COMPLAIN- ANT- APPELLEE
City of Elizabeth, a municipal corporation of New Jersey, Defendant-Appellant.		

This is an appeal by the City of Elizabeth, a municipal corporation of New Jersey, from a restraining order advised in the Court of Chancery by Vice-Chancellor Berry, on bill for injunction, filed by the State Highway Commission, acting for and in the name of the State of New Jersey. Vice-Chancellor Berry's opinion is found in Volume 6, No. 6, N. J. Adv. R. Page 246, (not yet officially reported.) The order restrains the city from interfering in any manner with the building and construction of State Highway Route No. 25, of the State Highway System. By the very nature thereof, the restraining order took on the proportions of a permanent injunction. The facts are not disputed.

STATEMENT OF FACTS

A State Highway System, consisting of a number of routes, was established by "An Act to Establish a State Highway System, etc." (Revision of 1927), approved March 30, 1927, and known as Chapter 319, of the Laws of 1927. One of the routes thereby

established is Route No. 25, running from Jersey City to Camden, via present Lincoln Highway, crossing the Hackensack and Passaic Rivers, thence by way of Newark, Elizabeth, Rahway, etc. The State Highway Commission took over said Route No. 25 by resolution adopted on November 22, 1927 (Case, Page 5). The resolution provided that the said route would go through the City of Elizabeth by way of Spring Street, etc. The "Spring Street route" was decided upon by the Commission after many surveys in the field, exhaustive studies of plans, and numerous and lengthy conferences with the officials of the City.

The construction of the "Spring Street route" necessitates the acquisition of lands owned and occupied by the City. The lands are designated as Parcel "A" and Parcel "B", and are more particularly delineated on the maps accompanying the State of Case. Efforts to acquire the said lands by agreement have been unsuccessful. The Commission offered the City the sum of \$20,400.00 for said lands, and it is obvious that the City has refused. After formal offer the Commission authorized its employees to enter upon said lands and proceed with construction. The City retaliated by arresting John J. Stanley, Supervisor of Maintenance for the Commission, who was held on the charge of destroying City property. The work was stopped under threat of further arrest. The bill seeking an injunction was filed forthwith. The Commission is ready and willing to file a petition in condemnation, seeking to condemn said lands, and has only withheld same pending this suit.

The City denies the right of the Commission to acquire said lands for said purposes, and especially for the reason that the said lands are now owned and occupied by the City, and are now dedicated to public use.

STATEMENT OF LAW

1. The State Highway Commission is the State of New Jersey.

The State Highway Commission is an alter ego of the State itself.

“That the State Highway Commission is an alter ego of the State and not a mere subordinate, is so clear as to need little discussion.”

Curtis & Hill Gravel & Sand Co. vs. State Highway Commission, et. al. 91 N. J. E. 421 (111 Atl. 16.)

2. The State Highway Commission has the right and power of eminent domain.

The right and power of eminent domain was first granted by the Legislature to the State Highway Commission by Chapter 15 (Section 12-e), Laws of 1917; re-enacted by Chapter 226 (Section 12-e), Laws of 1919, and again re-enacted by Chapter 319 (Section 111-e), Laws of 1927, known as the “Revision of 1927.”

The pertinent provision, which is identical in said acts, reads as follows:

“To widen, straighten and regrade any State highway and to acquire any lands or rights therein by gift, devise, purchase, or by condemnation, according to the procedure as contained in an act entitled “An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use” (Revision of 1900), approved March twentieth, one thousand nine hundred.”

3. The State Highway Commission has the right and power to enter upon and take property in advance of making compensation therefor.

The right and power to enter upon and take prop-

erty in advance of making compensation therefor was first granted by the Legislature to the State Highway Commission by Chapter 226 (Section 12-e), Laws of 1919, and re-enacted by Chapter 319 (Section 111-e), Laws of 1927, known as the "Revision of 1927."

The pertinent provision, which is identical in said acts, reads as follows:

"The State Highway Commission shall have the right and power to enter upon and take property in advance of making compensation therefor in any case where it cannot acquire land or other property by agreement with the owner, whether by reason of disagreement as to the price, or the legal incapacity or absence of the owner, or his inability to convey valid title, or by reason of any other cause."

This right and power has been approved and upheld by this Court.

"The State Highway Commission is a State Agency authorized by law to take land for public use in advance of payment of compensation, subject to subsequent condemnation, the fixing of damages, and payment of compensation awarded."

"When the State, by its agent, enters and takes land for a public Highway in advance of compensation, under a statute authorizing such entry, neither the agent nor one acting under its direction is a trespasser, in so entering and devoting the land to public use. The land owner's remedy is to compel the State Highway Commission to condemn the land taken, and to have the damages fixed."

Haycock vs. Jannerone, 99 N. J. L. 183, (122 Atl. 805.)

Chancellor Walker has also approved and upheld this right and power, and declared that the property owner's only remedy is mandamus.

“By P. L. 1919, p. 523, 12 (e), the State Highway Commission has power to acquire any lands or rights therein by condemnation, if necessary, and has the power to enter upon and take property in advance of making compensation therefor in any case where it cannot acquire land or other property by agreement with the owner.”

Goodavage vs. State Highway Commission, 125 Atl. 919.

The only citation of the Haycock case is found in the Goodavage case, and there is no citation of the Goodavage case.

4. The rights of the State are paramount to the rights of any property owner, regardless of whether it is the property of an individual or property of a municipal corporation.

That the King or the State had the right to take any property within its jurisdiction, upon the payment of “just compensation”, was well settled at common law, and remains so to this day.

“Each State, in its right of sovereignty, is deemed to possess the original and ultimate property in all the lands included within its jurisdiction. . . . So the duty of allegiance to the State, and the right of eminent domain, are sometimes said to be of feudal origin; but allegiance does not depend upon the ownership of land, but is obligatory upon every citizen, and eminent domain does not depend upon any form of tenure, but is grounded upon principles of public policy, and results from the sovereignty of the State.”

Chase's Blackstone, 4th ed., Page 287, Note.

Blackstone holds that:

“Upon this principle the great charter has declared that no freeman shall be disseized, or divested, of his freehold, or of his liberties, or free customs, but by the judgment of his peers, or by the law of the land. And by a variety of ancient statutes, it is enacted, that no man's lands or

goods shall be seized into the king's hands, against the great charter, and the law of the land; and that no man shall be disinherited, nor put out of his franchises or freehold, unless he be duly brought to answer, and be forejudged by course of law; and if any thing be done to the contrary, it shall be redressed, and holden for none."

"So great moreover is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. If a new road, for instance, were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man, or set of men, to do this without consent of the owner of the land. In vain may it be urged, that the good of the individual ought to yield to that of the community; for it would be dangerous to allow any private man, or even any public tribunal, to be the judge of this common good, and to decide whether it be expedient or no. Besides, the public good is in nothing more essentially interested, than in the protection of every individual's private rights, as modelled by the municipal law. In this and similar cases the legislature alone can, and indeed frequently does, interpose, and compel the individual to acquiesce. But how does it interpose and compel? Not by absolutely stripping the subject of his property in an arbitrary manner; but by giving him a full indemnification and equivalent for the injury thereby sustained. The public is now considered as an individual, treating with an individual for an exchange. All that the legislature does, is to oblige the owner to alienate his possessions for a reasonable price; and even this is an exertion of power, which the legislature indulges with caution, and which nothing but the legislature can perform."

Blackstone Bk. 1, ch. 1, Pg. 138-139.

The use must be public in its nature.

"The legislature are the sole judges to what extent the public use requires the extinguishment of the owner's title, and their power in this respect is not limited. . . . The use for which the property

is taken must be public in its nature; this rule, however, does not require that the use and benefit to be derived, shall be universal, but only that they shall contribute in some form to the general welfare and progress of the community, or of the particular district in which the right is exercised. The question whether the use is public or private is a judicial one, and therefore for the courts, and not for the legislature, to determine." *Chase's Blackstone, 4th ed., Page 79, Note.*

5. Municipalities are the creatures of the State and their rights and powers may be abridged or repealed by the sovereign state.

All rights and powers of a municipality are derived from the State, and subject to the right of the State. The State can give and likewise it can take away.

"Municipalities are the creatures of the State and the powers given to them are always subject to be abridged or repealed by the sovereign who conferred them."

New Jersey Bridge and Tunnel Commission vs. Jersey City, 93 N. J. E. 550 (118 Atl. 264.)

On this point of law see also the following:

Eastern Tel. & Tel. Co. vs. Board of Public Utility Commissioners 85 N. J. L. 511 (89 Atl. 924.)
City of Trenton vs. New Jersey, 262 U. S. 182.

Chancellor Walker, in the Bridge and Tunnel case, referred to the fact that there is no saving clause in the Bridge and Tunnel act, whereby its powers are to be affected by municipal ordinances. There is no such saving clause in the State Highway act.

6. The right of the State, over the rights and properties held and used for governmental purposes, by municipalities of the State, cannot be questioned.

The leading case on this subject is that of the City of Trenton vs. State of New Jersey, reported in 262 U. S. 182. This case is very definite and decisive, and disposes of the case at bar.

Quoting from *Hunter vs. City of Pittsburgh*, (207 U. S. 161,) the court says:

"The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the State Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. . . . The power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it."

Hunter vs. City of Pittsburgh, (207 U. S. 161.)
City of Trenton vs. State of New Jersey, (262 U.S. 182.)

It has frequently been held that a municipality has the right to condemn property owned by a public utility company.

"The next argument is that the prosecutor is a common carrier, and therefore that the act should not be held to apply to its property unless it does so in clear and unmistakable terms. Counsel cites no authorities in support of this proposition, and we know of none. If correct, it would mean that if a city had general authority to acquire land for a city hall, it would be powerless to condemn property that happened to be owned and used by an express company as its office. We think the proposition answers itself."

Delaware River Transportation Co. vs. City of Trenton, 85 N. J. L. 479 (90 Atl. 5,) and affirmed, 86 N. J. L. 680 (91 Atl. 1068.)

It has been held that one State agency may condemn the property of another State agency.

"That no condemnation suit can be instituted against it (i.e. the Board of Commerce and Navigation) by the bridge commission as it is a state agency, and as such it stands in the shoes of the State of New Jersey, and the lands under its control cannot be taken by condemnation, but can only be acquired by agreement. . . . On the other hand, it does not seem to me that when the state gave to the bridge commission the power to condemn lands, etc., including lands under water, that it intended that the construction of the bridge could be indefinitely held up by withholding against an agency of its own creation the power of condemnation, if that agency insists upon demanding prices for the property under its control which are unreasonable. I am of the opinion that the bridge commission had the power, by the act authorizing the construction of the bridge to take by condemnation proceedings against the board of commerce and navigation such lands of the state as may be necessary for the purposes of the bridge."

In Re: City of Camden, 1 N. J. Mis. R. 623, at Page 641.

7. The rights and powers of the State Highway Commission in the acquisition of land for highway purposes are to be liberally construed.

The right and power of the State Highway Commission, to enter upon and take property in advance of making compensation, is the most sweeping power yet given by our legislature. The section granting this right and power provides, among other things, as follows:

"To do and perform whatever may be necessary or desirable to effectuate the object and purposes of this act. . . . These powers are to be liberally construed."

Chapter 15 (Section 12-e) Laws of 1917.

Chapter 226 (Section 12-e) Laws of 1919.

Chapter 319 (Section 111-e) Laws of 1927.

Surely, the legislature intended that the work of building the great State Highway System could not and would not be impeded by the whim, fancy or displeasure of any property owner. The legislature gave a mandate to the Commission to build Route No. 25 through Elizabeth, and said route must be built, as a legal and practical necessity, through Elizabeth. It also gave the Commission the right and power to enter upon property for the purpose of building said route, and it further said that such powers are to be liberally construed. What more can be asked? Can it be successfully argued that the legislature should have described each particular street, road or way to be routed, or each individual property to be acquired in the City of Elizabeth? These details were left by the legislature in the hands of the State Highway Commission.

As Chancellor Walker said in the Bridge and Tunnel case, "this great work of constructing tunnels under the Hudson River is the work of the State itself" and "is an extension of the State Highway System." It must be presumed that the legislature intended that the State Highway Commission should have the widest latitude and the most liberal powers in determining the character and location of the great highways leading to the equally great tunnel improvement.

The legislature of the State of New Jersey, has decreed that the State Highway Commission shall build a State highway through the City of Elizabeth; the City of Elizabeth stands in the shoes of a citizen of the State; the State now requires the property of its citizen; the State has the right to take such property, upon making payment of "just compensation" to the owner thereof; the State is willing to pay such "just compensation"; the use of such property by the State is a paramount use, and the right of the State must prevail. The greatest good

for the greatest number justifies the taking of such property by the State, in the exercise of its sovereign powers.

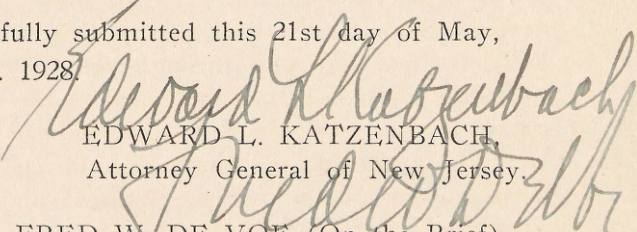
The affidavits submitted with the Bill of Complaint, (Case, Page 14), aver that over sixteen millions of dollars have already been expended, or contracted to be spent, on Route No. 25, and that said route is the entrance road to the approaches to the tunnels, on which approaches there has been expended, or contracted to be spent, the sum of forty million dollars. Has any one property owner of the State the power to stay such a tremendous undertaking, by the State itself?

The "Spring Street route" is one of the most important links of Route No. 25. The work of construction through the City of Elizabeth has been stopped, and the progress of construction over the entire route has been thereby delayed, because the State Highway Commission hesitates to proceed until the disposition of the present suit.

Therefore, the Complainant-Appellee respectfully requests that the consideration of this appeal, by this Honorable Court, be given preference, to the end that an early decision may be made.

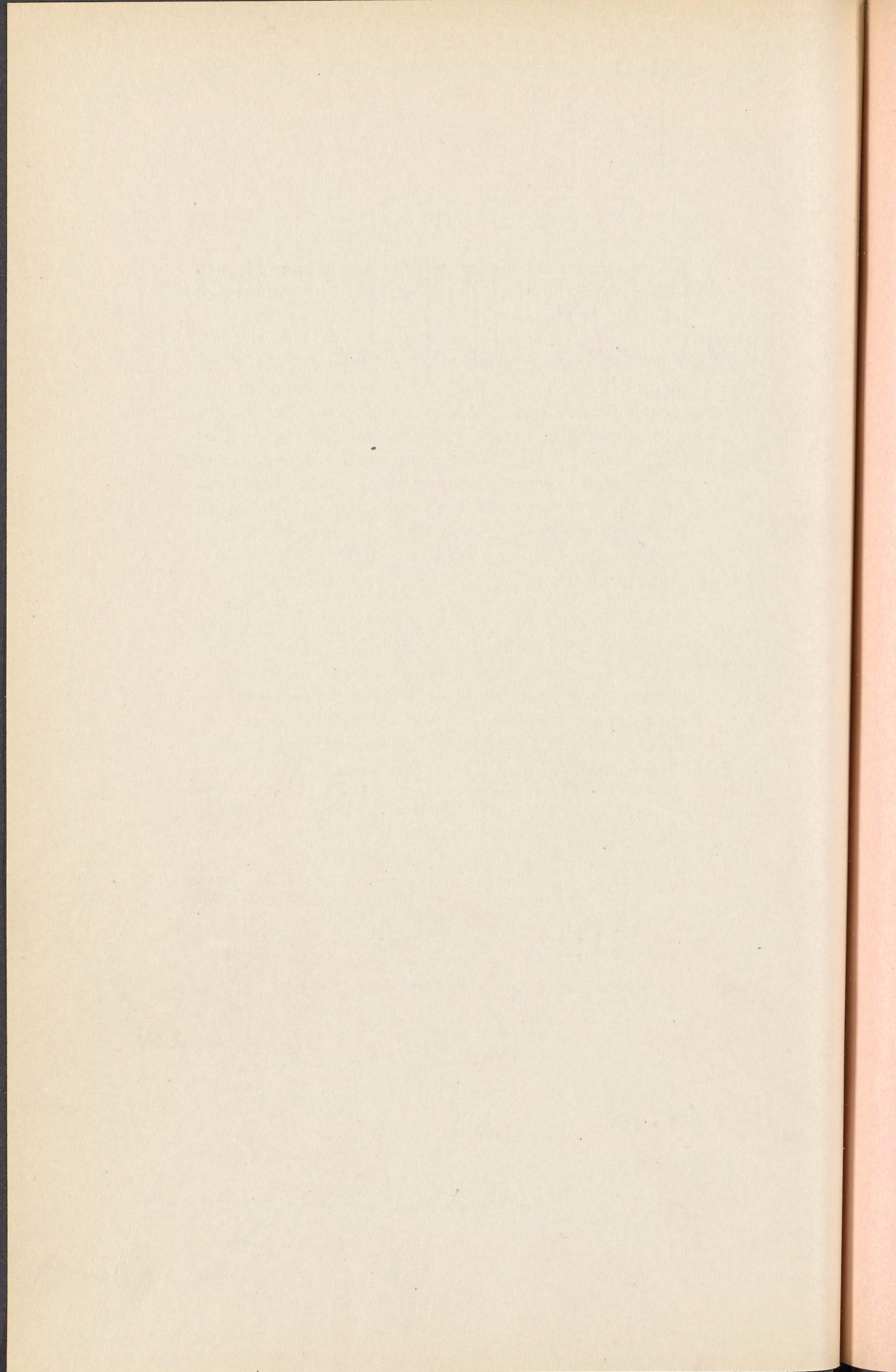
The complainant-appellee also prays that the appeal be dismissed.

Respectfully submitted this 21st day of May,
A. D. 1928.


EDWARD L. KATZENBACH,
Attorney General of New Jersey.

FRED W. DE VOE (On the Brief)
Assistant Attorney General,

Solicitors for Complainant-Appellee.



INDEX

Complaint	1
Answer	3
Reply	4
Motion for Amended Complaint	5
Answer to Complaint as Amended	7
Reply to Amended Complaint	10
Motion	11
Reply to Motion	12
Transcript of Evidence	13
Motion and Grounds of Appeal	17
Answer to Motion for Appeal	18
Motion for New Trial	20
Motion for Dismissal of Verdict	21

TABLE

For the Plaintiff

George B. Matthews	
Clerk	24
Agent	25
Deputy	26
William Harvey J. Lee	
Clerk	27
Agent	28

For the Defendant

Ray L. Felt	
Clerk	29
Agent	30
Deputy	31

