

New Jersey Court of Errors and Appeals.

JAMES B. DEAN, <i>Plaintiff in Error,</i>	}	<i>On Error to Supreme Court.</i>
<i>vs.</i>		
THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,		
<i>Defendants in Error.</i>		

Brief of Counsel for Plaintiff in Error.

This certiorari reviews an assessment made for the pavement of Broadway in the City of Paterson from the Susquehanna Railroad to East Thirty-third street.

The assessment was made under the act of the Legislature, P. L. 1898, chapter 200.

The theory upon which assessments of this character are sustained has been settled.

“The theory upon which such assessments are sustained is that the party assessed is locally and peculiarly benefited over and above the ordinary benefit which, as one of the community, he receives in all public improvements, to the precise extent of the assessment.”

State vs. Newark, 3 Dutcher, 190.

“To compel the owner of property to bear the expense of an improvement except to the extent of his particular advantage is pro tanto to take private property for public use without compensation.”

Tidewater Co. vs. Coster, 3 C. E. Gr., 518.

- While it is established in this state that assessments for benefits may be made upon abutting property owners, this presupposes a benefit, which we claim according to the testimony (Book 56, line 6) does not exist in this particular case. Besides Hammett v. Phil., 65 Pa. St., p. 146, decides that *re-repairing* a street makes no special benefit to property owners. See Elliott on Roads and Streets (2nd Ed) §461. State Sigler vs. Fuller, 5 Vr., p. 232 (*Bk.*, p. 46. l. 20; 55, l. 11.)

This assessment must be considered as affecting the prosecutor in two respects :

1st. As an abutting property owner who has been assessed for special benefits.

2nd. As a general taxpayer of the city at large who will be obliged to contribute to the part of the assessment placed upon the city at large.

The act of the legislature under which this pavement was done does not authorize new curbing. P. L. 1898, Chap. 200. While the title of the act is to authorize the improvement of the streets the body of the first section shows that the improvement is confined to pavement. The

act fails to cover the requirements should new curbing be necessary, and it is a stretch of the power granted to necessitate new curb.

The two distinct assessments, one for curbing and another for paving, and the manner of doing it show the assessments were not made according to benefits, but purely with reference to the cost of the work.

This is true as to street intersections, curbing and pavement.

As to intersections. Book, p. 43, line 11.

“Q. What was the cost of the street intersections ?

“A. Part of that goes to the city and part to the property owner.

“Q. What part ?

“A. About 2-3 to the city and about 1-3 to the property.”

It does not relieve the situation by saying afterwards “We thought they were benefited that way.” Page 44, line 3.

As to the curbing, the assessment was purely arbitrary. 1-3 against the city and 2-3 against the property owners and the twenty cents a foot paid by the city was to pay for the old curb taken out without reference to benefits from the new curb. Book, p. 44, line 12, &c.

“A. If it was sixty cents we put forty cents against the property owner and twenty cents against the city.

“Q. Did you make any allowance for the old curbing ?

“A. Yes, sir ; twenty cents a foot.

“Q. Did you consider that allowance in making this assessment?

“A. Yes, sir; that twenty cents would pay for the old curb” &c.

Again, the price for curbing was fixed by the defendant and no competition allowed so as to obtain the lowest price. Book, p. 94, line 11.

And the cost of curbing was over \$500.

The 2-3 assessed upon property was \$2,680.33, Book, p. 29.

The law, P. L. 1898, page 466, sec. 1, says “all work however shall be given out upon contract to the lowest responsible bidder.”

The city charter (P. L. 1874, page 456) provides that all work requiring an expenditure of more than \$500, shall be awarded by written contract upon sealed proposals made in compliance with public notice.

The specifications fixed arbitrarily the price to be paid for curb. (Book, page 94.) There was competition only on the pavement. (See proposal pages 80 and 81.) The commissioners based their assessment for curb entirely on the price.

State, *Hampson vs. Mayor and Aldermen of the city of Paterson*, 7 Vr., p. 165, decides that, under its charter, Paterson must award contract to lowest bidder, after advertisement. State, *Youngster vs. Paterson*, XI Vr., p. 246, decides it is too late to object to this, after work is finished, but in present case, the advertisement was made and the contract awarded to the lowest bidder, and then the curbing contract given to the contractor for the pavement. Property owners were

plainly misled, and cannot be expected to keep track of secret details. They had good reason to believe the old curb would do. Besides the commissioners did not undertake to assess any benefits for curbing.

THE RAILROAD'S OBLIGATION.

The Railroad company was under an obligation to pave the portion of the street between their rails and two feet on either side thereof.

Had the railroad company paid for this part of the work, or had the company done this portion the property owner could only have been assessed for benefits arising from the remaining portion of the street, which was a small portion of the street, there being double tracks (Bk., p. 38, l. 20.)

The railroad company was obliged to pay for this part of the pavement.

The ordinance on page 75 of Book covers Broadway from Bridge street to East Thirty-third street which includes the part of the street in question. Sec. 3 (Book, page 76) of the ordinance provides that section 3 of the ordinance passed before (Book, 77) shall apply to the railroad company running its tracks through this part of Broadway. It expressly states that said railroad company "shall keep in repair the distance of two feet on the outside of each rail of the track or tracks of said railroad in and through said portion of Broadway."

There is a double track running through this part of Broadway. Bk., p. 38, l. 20.

Sec. 3 of the ordinance of 1868 (Bk., p. 77) says

that "said company shall keep and maintain, &c."

(Gen. Stat., page 3,218, Sec. 43, provides for repair of streets.)

The question arises does this obligation *to keep in repair* and *to keep and maintain* this part of the roadbed cover the expense of a substitution of one kind of a roadbed for another? This part of Broadway for years was paved with macadam. Bk., p. 59, l. 6.

Elliot on Roads and Streets (2nd Ed.) par. 572, describes the effect of a contract with Railroad to improve and it states that :

"The contract takes the duty of making the improvement from the citizens and places it upon the private corporation and the removal of the duty should in justice be deemed a removal of the burden."

Elliott, par. 772, also says :

"Where there is a general undertaking to keep the street in repair, the duty should be regarded as a continuing one and that the company must make repairs to correspond with the changed and improved condition of the street."

Elliott on Roads and Streets 2d l. E1., par. 774. (1900.)

"There is more reason for holding that the company is bound to improve, by repairing or otherwise, the space used by it than there is for holding that the duty to repair extends no fur-

ther than to require the company to keep the space, in the condition it was, at the time it took possession."

See P. & B. R. Co., 51 Pa. St., 41.

Dist. of Col. vs. Wash. & Georgetown R. Co., 1 Mackey, 361, 379.

City of Phila. vs. Ridge Ave. Pass. Ry. Co., 143 Pa. St., 442; 22 Atl. Rep., 695.

Town of Phoenixville vs. Phoenix Iron Co., 45 Pa. St., 135, 137; 46 Pa. St., 223, 224.

City of Oconto vs. Chicago & Q. Co., 44 Wis., 231, 238.

Chicago City Ry. vs. Chicago, 90 Ill., 573.

Chicago vs. Balt., 41 Ill., 306.

City of Columbus vs. Col. St. Ry. Co., Ohio, 32 Am. & Eng. R. Cases, p. 292.

Fort Wayne & C. R. Co. vs. Detroit, 39 Mich., 543.

The railroad company escapes the assessment upon the ground that their property in the street is not real estate as decided by Mayor, &c. of the City of Newark vs. State Board of Taxation, 51 Atlantic Rep., p. 67.

One of the commissioners swears this property receives a special benefit from the improvement. Book, page 39, line 30, &c.

"Q. Did you consider that they were receiving any benefits from this improvement?"

"A. Of course they were receiving benefits."

There are many authorities holding that such property is real estate assessable for local improvements of this character.

Elliott on Roads and Streets, 2nd Edit., Par. 776, and cases cited.

The Railroad company may be permitted to escape also their just share of this expense because as stated in the opinion below the assessments for benefits "are confined to the abutting owners upon the street thus improved." But this cannot affect the point urged, to wit :

That the legislative act authorizing only part of the property benefited to pay and thus leaving a balance for the city at large to pay is unconstitutional, and the Prosecutor as a general tax payer raises this question. According to this act, the city is to be assessed only "in case the costs and expenses of such work shall exceed the amount of said benefits the excess shall be paid by the city at large and raised by general tax." P. L. 1898, page 468, sec. 6.

The city is bound to pay only excess over benefits. If all the benefits are not assessed the city is paying more than it should.

This law also states, sec. 6, page 469, "In no case shall any property *or owner* thereof be assessed beyond the amount of benefit actually derived from said improvement."

A law that does not provide for special benefits to certain property specially benefited and thus increases the burden upon the other owners of property benefited or upon taxpayers at large is unconstitutional.

Starting out with the proposition that the Railroad has received a special benefit, and it being resolved in their favor, 1st, that this railroad property is not real estate, and, in the second place, if it is, it is not a lot or parcel of land bordering on the streets and therefore not within the act, they should be held liable for any special benefit if a legal reason can be offered. Their contract with the City as expressed in the two ordinances should be strictly construed against the company and liberally construed in favor of the City and its taxpayers.

Its duty was as follows :

“It shall keep and maintain so much of the streets or avenues as are inside of and for at least two feet adjoining the outside of said rails in good and sufficient repair, &c.”

These ordinances were passed in 1868 and 1870. For over 30 years the tracks have been built and used, and this obligation has continued all this time. Book, page 46, line 7.

At that time the only pavement used for the best city streets, was macadam. Broadway is the principal street in the City for fine residences, lots costing more here for residences than upon any other street. It has always been Paterson's finest street. Book, page 60, line 17. In the course of time the new pavement came into being, and recently red brick has been used to renew the macadam.

There is not such a great difference in the respective cost of macadam when Broadway was

first macadamized and when this brick was placed there. No doubt if the street had been macadamized again under a similar statute the Railroad would be bound to pay its share.

Why should the company escape because another kind of pavement is used? Macadam is likely to be worn away, so is red brick, and if macadam is laid deep enough and laid well enough, it will outlast poor brick, not well laid.

This distinction made by the Court below is fallacious, especially as to this street, which has been macadamized for many years and upon which many thousands of dollars have been spent for macadam.

The Court below confines its attention to the word *repair*. The language of the ordinance is "shall keep and maintain in good and sufficient repair."

If the City had determined to repair this street with macadam and notified the Railroad company to renew its share of the street, the company undoubtedly would be obliged to do this. The City, however, says, we will renew this street with brick instead of macadam. Shall the company escape because the street is renewed with one kind of pavement instead of another. If blocks, or cobble stones or asphalt had been superseded by brick, would the company then escape its just share of expense? Or if brick was followed with macadam, would the company escape? It seems that a just interpretation of the obligation of the Company would be, that when a pavement was once laid the company should keep this in repair and if this original pavement

is superseded by other pavements, of more or less cost, it should do its part.

The property owners should not have been assessed for the whole improvement from curb to curb.

“When a street railway company is required to keep certain portions of the pavement in repair assessments may not be levied on abutting property for the cost of repaving such portion of a street.”

Gilmore vs. Utica, 55 Hun. (N. Y.) 514.

“Failure to compel a railroad company to pave the part of streets occupied by its tracks, when it was obligated to do so by contract, gives the property owner the right of having his assessment reduced so far as the failure caused its increase.”

Matter of Appleby, 26 Hun. (N. Y.) 427.

The legislature’s definition of “Repairs” See *Gen. Stat.*, p. 602, sec. 702.

The contract in this case provides that the contractor must keep the street in repair for the term of eight years. (See Book, page 92, l. 25.) This item of the contract is not bid upon but a duty which is saddled upon the contractor and so increases the cost of the pavement.

We claim that the commissioners in ascertain-

ing the cost of the improvement should have deducted from the actual cost a sum equal to the cost of keeping the street in repair for that period.

It is not a special benefit to the abutting property to keep the street in repair, because that duty is imposed upon the municipality.

Sec. 111, City Charter, Laws of 1871,
p. —

Elliott on Roads & Sts. (2nd Ed)
par. 477.

24 Am. & Eng. Enc., page 87.

Unless keeping a street in repair is a special benefit to the abutting property this part of the assessment is erroneous.

And further the duty of keeping a portion of the street in repair is imposed upon the Railroad company running through the street by its franchise. (See Book, 75 to 77, and testimony of Tuttle, pages 57 and 58.)

If this railroad company is charged with the duty of repairing a portion of the street it is of no special benefit to the property owners to have the street kept in repair through a contractor.

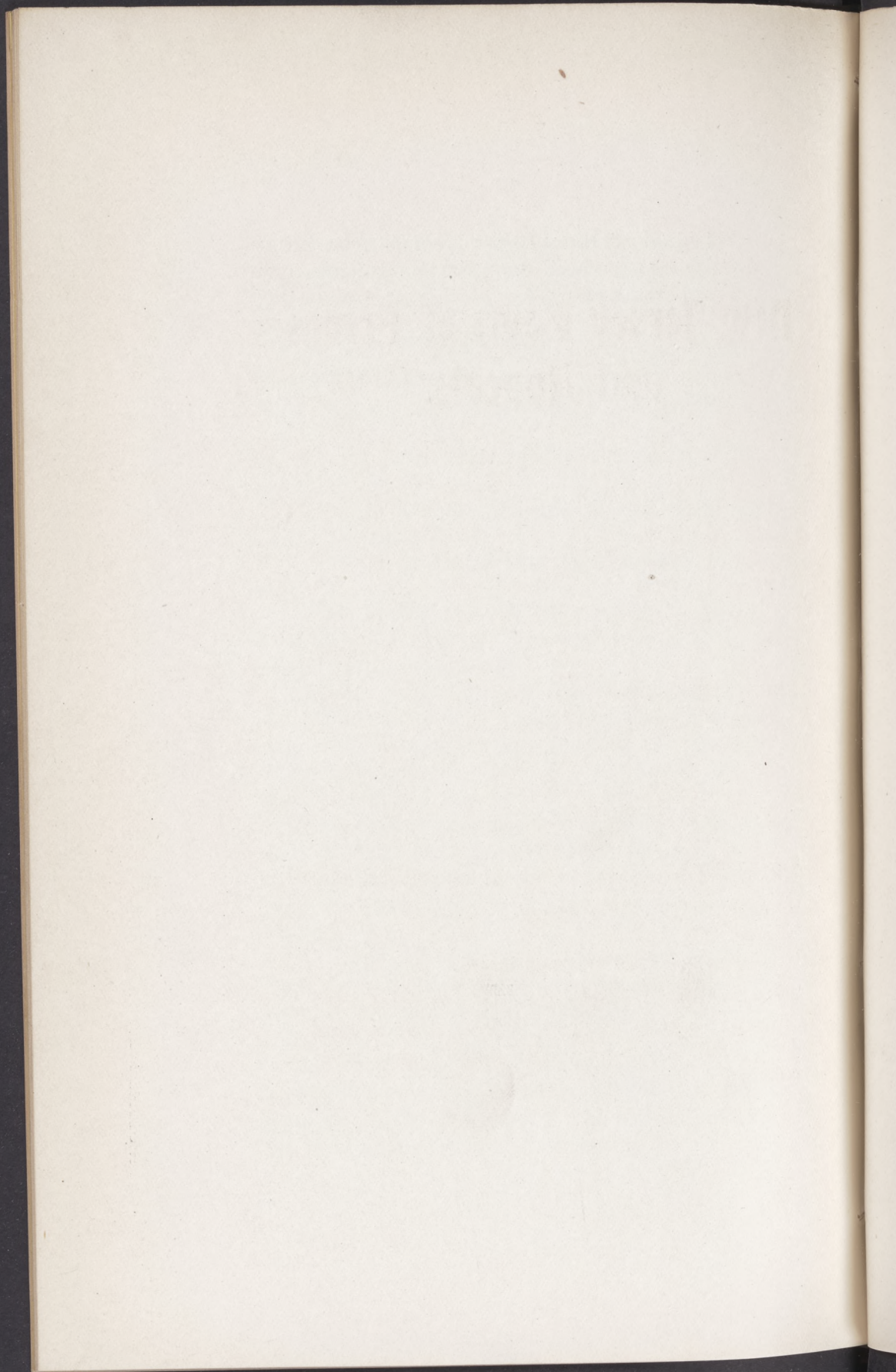
We have a right to assume the railroad company will keep its future obligation. The city has no right as against property owners to relieve the Railroad company of its obligation.

Gen. Stat., page 602, provides a method for collecting the amount for the portion of the street from the Railroad company which it is equitable for the Railroad company to pay.

This amount should have been ascertained by the city and credited upon the assessments upon the property owners.

FRANCIS SCOTT,

Counsel of Prosecutor.



New Jersey Court of Errors and Appeals.

JAMES B. DEAN,

Plaintiff in error,

vs.

THE MAYOR AND ALDERMEN
OF THE CITY OF PATERSON

Defendant

On Writ of Error

to the Supreme

Court.

Brief of Michael Dunn, Counsel for the Defendant
in Error.

Statement of Facts.

The plaintiff in error who was the prosecutor in Certiorari below, brings here for review the judgment of the Supreme Court rendered in the Certiorari proceedings.

The Plaintiff, who is a property-owner and taxpayer on Broadway in the City of Paterson, sued out a writ of certiorari to review an assessment of benefits imposed for the permanent improvement of Broadway with red brick.

This writ brought up for review the proceedings of the Board of Aldermen, and the proceedings of the Court of Common Pleas contained in the records in the office of the Receiver of Taxes, in the said City of Paterson, which pertain to the permanent improvement of Broadway, a public highway in said City, and the assessments for benefits made by the commissioners appointed by the Court of Common Pleas of Passaic County.

The permanent improvement of this street was made under the provisions of an act of the legislature entitled "An Act to Authorize the Improvement of Streets and Highways in Cities of this State and to Provide for the Payment of the Expenses of the same." Approved June 13th, 1898 and the Supplements thereto.

The Street was first excavated to a specified grade, and then the curb was reset, and new curbing was put in where the old curb was not of proper size and unfit for use.

After the work was completed and accepted by the Board of Aldermen, the Court of Common Pleas of Passaic County, upon application on behalf of the City appointed Commissioners to assess benefits, which the lands and premises abutting upon said street had specially acquired by reason of the improvement.

The Commission was composed of James M. Baldwin, Attorney and Counsellor at Law, Ex-Senator

John Mallon and Honorable Robert Williams, Attorney and Counsellor at Law.

They qualified upon May 22nd, 1900, and then gave public notice, as required by the statute of a public hearing of all persons, in reference to the permanent improvement of Broadway, on June 11th, 1900, at the City Hall. This notice was duly published in keeping with the statute and the order of the Court, and a copy of the notice will be found on pages 11 and 13 of the case.

These hearings were had and the Commissioners completed their work and made their report to the court on October 4th, 1900.

The Court then as provided by the statute made an order requiring notice to be given to all the persons whose property had been assessed for benefits.

October 18th, 1900, at 10 A. M. at the Court House, was fixed as the time and place for hearing any objections to the assessment.

The order confirming the report on page 31 of the case, recited the fact that the required notices were given.

No good objections having been made against the Assessments, or any of them, on the day appointed, or at any other time to which the said matter had been adjourned, and no good reason appearing why the said report should not be confirmed; the Court confirmed the report, and the Assessment made thereby on December 13th, 1900.

The Plaintiff in Error was present in court in pursuance of the notice and was heard with others in refer-

ence to the assessment. His objections were then heard and passed upon.

All the requirements of the Statute were observed by the Commissioners and the Court before the Assessments were confirmed.

The Court heard and disposed of objections covering all the matters mentioned in the reasons assigned for the certiorari before the Supreme Court, and the same reasons are now placed before this court as the assignments of error.

There was no objection made before the Court of Common Pleas about the omission to assess the Street Railroad company. The judgment in the Supreme Court confirms the assessment for benefits and error is now assigned here on that judgment.

I.

I contend that the judgment of the Supreme Court in affirming the assessment made by the commissioners should be upheld notwithstanding the objections contained in the first and second assignment of errors.

At the time when this writ was sued out a decision had been rendered in the Supreme Court in *State Board of Taxation vs. Newark* to the effect that the road bed of street railway companies was property in the nature of real estate and could be assessed as such.

49 Atl. Rep. 525.

The plaintiff impressed with the correctness of this opinion started this suit, but the decision which was afterwards rendered by the Court of Errors in that case. *The City of Newark vs. State*

Board of Assessors, 51 Atl. Rep. 67, is to the effect *that a street railway company owns no interest in the soil of the highway over which it passes which may be taxed as real estate*; it is also held that the opinion of the Supreme Court should be reversed for the reasons given in the dissenting opinion delivered by Justice Garrison in that court.

An examination of the opinion of the Supreme Court rendered in the present case (pp. 102-105) when it was before them shows that it is in harmony with the Court of Errors on every question raised.

City of Newark vs. State Board of Assessors, 51 Atl. Rep. 67.

Dean vs. City of Paterson, 50 Atl. Rep. 620.

In Broadway, from the New York, Susquehanna and Western Railroad, to Thirty-third Street, the Paterson Railway Company operates a street railway of double tracks, and it is contended by the prosecutor that the Commissioners should have assessed benefits against the said Railway Company for this improvement. This is probably the main point of the plaintiff's contention in this cause. In support of this proposition the plaintiff cites the existence of two ordinances passed by the Board of Aldermen of the City of Paterson, and to be found on pages 75, 76, 77, 78 and 79 of the case.

At the time of obtaining consent from the Board of Aldermen for the construction of said railway on Broadway between the Susquehanna Railroad and East Thirty-third street, the ordinance granted such permission upon condition that through such portion of Broadway the railway company should keep in re-

pair the surface of the street between their rails, and for at least two feet on the outside of each rail. This ordinance concerning Broadway was passed October 3, 1870, and incorporates into it Sec. 3 or an ordinance passed July 27, 1868; and afterwards, in pursuance of the consent thereby obtained, it appears that the Company began and it and its successors have continued to operate this railway.

A. The first question, therefore, to be determined it, should the Commissioners in discharge of their duty, under their appointment, have assessed the property of the Street Railway Company for benefits for this improvement?

Sec. 6, of the act entitled "An Act authorizing the improvement of streets and highways in cities of this State and to provide for the payment of the cost thereof," P. L. 1898, p. 466, provides that the Commissioners shall make a map to be annexed to their report showing the lots or parcels of land and real estate, and the amount of the assessment of each owner for each of said lots or parcels of land and real estate for the said benefits, and the assessments shall in each case be in proportion as near as may be to an amount as will be equal to the amount of benefits actually acquired by the lands and real estate bordering on any street or highway or portion thereof so improved, by reason of such improvement. It further provides that "in no case shall any property or owner thereof be assessed beyond the amount of benefit actually derived from said improvement."

(1.) *Does the property of a street railway company come within the meaning of the language of the act, to wit, "lands and real estate bordering on any street or highway or portion thereof."*

In considering this question an examination of the authorities indicates that a street railway company cannot be assessed under such a statutory provision.

See *Conway vs. Rochester* 24 App. Div. 489; 49 N. Y. Supp. 244.

In *Davis vs. Newark*, 54 N. J. L. 144, it was held that a strip of land owned by a street railway company whose track is laid thereon but which is dedicated to the public use and flagging the streets as to require it to be assessed the benefit, if any, to the franchise.

King vs. Duryea, 16 Vr. 258, 266; *State vs. Newark*, 3 Dutch 185, 191.

These are the only cases I can find in our state where the question has been raised and considered.

In the case of *St. Paul City Ry. Co. vs. Ramsey County Dist. Ct.* 31 Minn. 354, 17 N. W. 954, the following doctrine was stated:

“The easement of a street railway company in a street is not liable for the expense of paving under a statute providing for that the cost of such paving shall be assessed against the several lots and parcels of land described in the assessment warrants.”

To the same effect is *Oshkosk City Ry. Co. vs. Winnebago County*, 89 Wis. 435, 61 N. W. 1,107.

In *Davidson vs. Gillen*, 126, N. Y. 147, it is held,

“The fact that the rails, ties and tracks of a street surface railroad are property and subject to taxation generally affords no sufficient reason for taxing them for street improvements when the law has not made them specially assessable for such purpose.”

2 Elliott R. R. 787.

O'Reilly vs. City of Kingston 114 N. Y.,
439.

(2) *Is the street railroad company liable to be assessed in consequence of the provisions of the ordinance of the City of Paterson, passed October 3, 1870?*

The provisions of this ordinance require the railroad company to keep and maintain so much of the streets or avenues as are inside of and for two feet on the outside of its rails in good and sufficient repair, under a penalty of \$25.00 for each and every offence.

In examining the authorities as to the effect of such a provision in a franchise, I find some contrariety of opinion, but the greater weight of authority seems to be that the language used in this ordinance will not justify an assessment against the railroad company for benefits for a permanent improvement such as paving a street upon which the tracks are laid.

In Philadelphia vs. Hestonville, M. & F. R. Co., 35 Atl. Rep. 718; 177 Pa. 371, it is held that "A provision in a charter of a street railway company, that it shall keep in perpetual good repair, at its own expense, the streets upon which its tracks are located, does not render it liable for the cost of repaving such streets with a new, different, and more costly material."

In Philadelphia vs. Philadelphia City P. P. R. Co., 35 Atl., Rep. 720, the same doctrine was held. In that case a city determined to repave with asphaltum a street which intersected defendant's street railway tracks, and which was already paved with Belgian block. The contract for paving the street was let as a

whole, without reference to intersecting streets, and the blocks removed were used for paving elsewhere. Held, That a provision in defendant's charter requiring it to keep in repair the street between its tracks did not render it liable for the cost of paving at the intersection of the tracks with the street paved. „

See also to the same effect *City of Philadelphia vs. Empire Passenger R. Co.* 35 Atl. Rep. 721.

To the same effect is *Kansas vs. Corrigan Consol St. R. Co.* 85 Mo. 263, 55 Am. Rep. 361. See also *Kansas vs. Corrigan*, 86 Mo. 67.

In *Binghampton vs. Binghampton & P. D. R. Co.*, 61 Hun 479, and 16 N. Y. Supp. 225, it is held "That a requirement that a street railway company shall keep the space between its tracks in good and proper order and repair, does not require it to repave at the arbitrary will of the city, or make it liable for any part of the expense of such repaving by the city."

See also *Baltimore vs. Scharf*, 54 Md. 499.

A street railway company which is required by the ordinance authorizing its maintenance, as respects the grading, paving and macadamizing of streets, to keep a specified width in "good repair and condition" cannot be compelled to pay for a new pavement. *Chicago vs. Sheldon*, 9 Wall 50.

The trend of these decisions seem to be that a stipulation in the charter or franchise granted to a street railway company requiring it to keep the surface of the road bed between its rails in repair, does not make the company subject to an assessment for repaving. *District of Columbia vs. Washington G. R. Co.* 4 Am. & Eng. R. cases 174 *Fara vs. St. Louis* 80 Mo. 379, 23 Amg. & Eng. Ency. Law 989 note 1.

II.

The plaintiff contends that the assessments should be set aside because the benefit for paving and curbing are stated as separate items, and should have been stated in one lump sum assessed as the benefit arising from the whole improvement, and that such method of separate assessments shows that the assessment was made with reference to the cost of the work and not to the benefit derived from the improvement.

I can conceive of no valid objection to the assessment for this reason. The total amount of the benefit is assessed and stated; and the special benefit from the item of curbing and paving is separately stated, as will be seen from the report (pages 17-29). The curbing is only one of the elements of the total assessment, and it is tabulated separately so that each property owner may ascertain whether or not he has received the proper allowance for any old curb that may have been used in the improvement. The testimony of Mr. Mallon, the commissioner, on page 44, l. 6, shows that this assessment for benefits for curbing was properly made.

The Supreme Court found as a fact from the evidence that the report was properly made and that the evidence showed that the assessments were made for the special benefits acquired by the land from the improvement; they also found that part of the expense of curbing was assessed to the city at large. See 50 Atl. Rep. p. 621. They decided that there was no error in this act of the Commissioners. This finding as to facts is not reviewable in the Court of Errors.

III.

The plaintiff contends in the fourth reason that the specifications having fixed an arbitrary amount to be paid to the contractors for curbing, there was no competition in bidding on the same, and the assessment for curbing was based by the commissioners on this amount.

The contractors in making their bids on the whole work could have bid a lower amount in their estimate on the other work knowing what they would all be allowed for curbing—or they could bid less for curbing. The price mentioned was the maximum.

This reason is not supported by the testimony; (pp. 43 and 44) but, on the contrary, the testimony shows that the assessment for curbing was in proportion to the benefits. The whole work was awarded by contract, and the mere fact that a fixed price was set upon the curbing in the specification did not prevent competition, contemplated and required by the act, and there is no evidence adduced to show that the value of the benefits for curbing was excessive.

In answer to this objection the Supreme Court very properly said (50 Atl. Rep. 621) this objection, coming as it does after the prosecutor, with notice of the improvement, allowed the work to be completed without objection, cannot now be entertained.

Youngster vs. Paterson, 40, N. J. L. 244.

Provident Instu. for Sav. vs. Jersey City, 52
N. J. L. 490.

Woodruff vs. Paterson, 36 N. J. L. 159.

Vanatta vs. Morristown 34 N. J. L. 415.

IV.

The plaintiff contends in the fifth reason that there should be no assessment against the abutting property owners along this street, as there is no special benefit to their property by the improvement, and the whole cost should be assessed against the city at large.

This reason is wholly inconsistent with several of the other reasons assigned. The right of a municipality to assess for special benefits for the improvement of streets is too well settled to need discussion, and the act of 1898 P. L. 466, under which act and its supplements these assessments are made expressly provides for an assessment for benefits.

See *Jelliff vs. Newark*, 19 Vr. 107.

Mc Kevitt. vs. Hoboken, 16 Vr. 482, 485.

V.

The plaintiff contends in the sixth reason that the Supreme Court decided that the act of the Legislature referred to in the first assignment authorizes new curbing, whereas the amount of \$2,680.33 imposed as a benefit arising from said curbing to said abutting owners should have been stricken from said assessment.

An examination of the evidence in the case, and of the specifications for the work, shows that to properly lay a brick pavement of this kind, with concrete foundation, from curb to curb, it is absolutely necessary that there should be a curb of sufficient depth to go below the bed of concrete upon the street to form a binder for the same, and to be below frost. Experience has also shown the advisability of having such curb

about five inches in thickness to be of sufficient weight and strength to serve the purposes intended in the improvement. It is an essential part of the improvement, and the work is given out necessarily in conjunction with the contract for the pavement, as part of the permanent improvement, as will be seen by reference to the specifications.

It appears from the testimony of Mr. Dean, the prosecutor, on p. 48, l. 27, that the old curbing had been down a long time; did not know how long. On page 48, l. 10, that the old curbing was not quite so wide; did not look so well, and that he received all the old curbing that was taken up in front of his place when the curbing was put down; and on p. 53, l. 9 to 12 he says; the present curbing looks better than the old curbing, it looks nicer; it is more in shape; it is wider on the top. It also appears from the evidence that wherever the old curbing could be used it was replaced and an allowance was made for it. Page 64, l. 8. This matter was fully discussed and decided by the Court of Common Pleas before the assessment was confirmed.

VI.

The plaintiff assigns as his seventh reason that the Supreme Court was in error in deciding that there was a benefit accruing to the abutting property owners from the new curbing.

The evidence cited on the previous point shows that the old curbing had been down for a very long time, and in many cases was undoubtedly in bad condition and irregular in size, and not of sufficient width and thickness to be used in this improvement.

The prosecutor himself admits that they were benefitted by it; that it was an improvement.

The old curbing was put down years ago, when the city was a country town; when the object was to prevent the sidewalk from wash and to allow the gutter to carry off the water; but today it has a greater usefulness, and the testimony of Mr. Mallon, one of the commissioners, and the facts stated in the report show that there has been a benefit conferred upon the property by the curbing and the part of the assessment for this item, as stated by Mr. Mallon, page 44, was for the benefit so conferred on the property.

VII.

It is contended that the commissioners assessed the abutting property by an arbitrary system per front foot for curbing without any regard to whether any benefit accrued to the abutting property or not.

This reason is not supported by the evidence, as will be seen on page 44.

It may be that in making assessments for benefits, that the lots similarly situated are equally benefitted by curbing, and in estimating the benefits, it might appear that the commissioners were to some extent guided by the frontage; but, it has been repeatedly held by the courts, that "Assessments for benefits by the lineal feet along the frontage, are not necessarily wrong. There is no rule that condemns such method, without proof of its injustice either apparent on the papers or shown satisfactorily by independent testimony."

Pudney vs. Passaic. 8 Vr. 66, and other cases there cited. In Simon vs. Passaic, 26 Vr. 488, it was held that the report of the Commissioners should not be set aside upon conflicting evidence of said assessments.

VIII.

The ninth reason assigned that the Supreme Court sustained said assessment although it appeared that the commissioners assessed said special benefits arbitrarily without regard to the area of the plot assessed.

This is not supported by the evidence.

Case page 40, John Mallon testifies, "We examined the depth and the frontage; besides after we got through with the whole street we agreed about what was fair to pay on each lot.

See pages 40, 41, 42.

IX.

It is contended by the plaintiff that the Supreme Court erred in sustaining said assessment although the commissioners included therein benefits for the improvement of street intersections.

There was no error in this as it would be impossible in making an assessment for such an improvement as this for the commissioners to ignore and eliminate from their consideration the special benefits acquired by the property by the whole improvement, including

the intersection; and there is no evidence adduced showing that the prosecutor was unjustly assessed.

The law of 1898 P. L. 466, requires the benefits to be assessed to be such as are actually acquired by the lands and real estate on the street, by reason of such improvement. That this is the correct rule is well settled in our state by several cases. See *Moan vs. Hudson City*, 5 Vr. 28.

In *Raymond vs. Rutherford*, 26 Vr. 441, it is held, "The principle of frontage assessment for the special benefits arising from street improvements is not necessarily wrong. If that mode, in any particular case, properly distributes the benefits among the owners benefitted, there can be no objection to its use."

Long Branch Commission vs. Dobbins, 32 Vr. 659.

There is no evidence here to the contrary.

X.

In the eleventh reason the plaintiff claims that the contractors should keep the pavement in repair for a term of years, and in making up the costs of the improvement, nothing was allowed for this and the lot owners were assessed for the benefit derived from this item, it being the duty of the municipality to keep the streets in repair.

There is no evidence to prove this contention. The report of the commissioners shows the total cost of the improvement to be \$45,614.55 and of this amount \$18,790.39 is assessed upon the city at large. This is about 40 per cent. of the whole costs and undoubtedly in making this assessment, the commis-

sioners have taken this whole matter into consideration, otherwise the assessments against the city would not be so large. There is no evidence showing that they did not consider it.

That it is proper that a provision of this kind should be incorporated into these contracts has been decided by this court in *Wilson vs. Trenton*, 32 Vr. 601, in which case the judgment of the Supreme Court is affirmed.

XI.

The twelfth reason for reversal is because the Supreme Court sustained said assessment although nothing was deducted from the cost of the contract for keeping in repair the portion of the street the railway company was under obligation to keep in repair.

In answer to this I contend :

(1) That there is no evidence to support it.

The amount assessed for the improvement upon the city at large was undoubtedly fixed after giving due consideration to the duty imposed upon the commissioners in deciding this matter, and what arrangement or understanding there may be between the city and the Railway Company as to these repairs does not appear.

(2) It does not appear that the assessment against the Plaintiff would be any less by reason of any arrangement between the city and the railway company in regard to these repairs; that is a matter between the city and the railway company, and it is created

by virtue of an ordinance and wholly independent of the law under which the benefits are assessed, and there is no provision under that statute of 1898, requiring any statement concerning this matter to appear in the report of the commissioners. The judgment cannot be reversed for this reason.

XII.

The thirteenth reason assigned is because the Supreme Court decided that the rule of measurement of special benefits prescribed by said law mentioned in assignment one above is proper.

It is difficult to understand just what point the prosecutor is attempting to make. The method of assessment prescribed in the act in question does not differ from that which has been prescribed by the Legislature and approved of by the court in numerous cases. The act says, "The assessments shall in each case be in proportion as near as may be to an amount as will be equal to the amount of benefits actually acquired by the lands and real estate bordering upon the street by reason of such improvement." P. L. 1898, p. 468.

XIII.

The assessment has been properly made, the statute has been strictly complied with, the Supreme Court has found no facts to support a single objection and their judgment should be affirmed.

On behalf of the city I contend in this case that the Commissioners have properly and honestly discharged the duty imposed upon them, and that the plaintiff has failed to adduce any evidence from which it can be inferred that the assessment is unjust or unreasonable. It is a well settled rule of law in these cases that the assessment will not be set aside unless it clearly appears that some injustice has been done.

In *Simmons vs Passaic*, 26 Vr. 488, Justice Lippincott, in rendering the opinion of the court, says: "The assessment of the Commissioners for benefits and street improvements, where they have been on the ground and examined the premises, and made their report of estimate, according to the principles prescribed in the charter, will not be set aside upon conflicting evidence of the justice or sufficiency of said assessment. The judgment of the Commissioners as to the amount of benefits received by the property owners from an improvement is conclusive unless clearly shown to be erroneous."

Pudney vs Passaic, 8 Vr. 66.

Coward vs Plainfield, 34 Vr. 61.

Hagerman vs Passaic, 22 Vr. 109.

In *Humphreys vs Bayonne*, 31 Vr. 406, it is held "An assessment for benefits will not be disturbed on account of the failure of the commissioners to assess all the property benefitted by the improvement, unless it is made to appear that such failure has operated to injure the party complaining thereof, by imposing on his land an assessment greater than they would otherwise have been called upon to bear."

REMARKS.

If in this case it was proper to assess the railway company how can it be said that the plaintiff has been injured by the omission to do so?

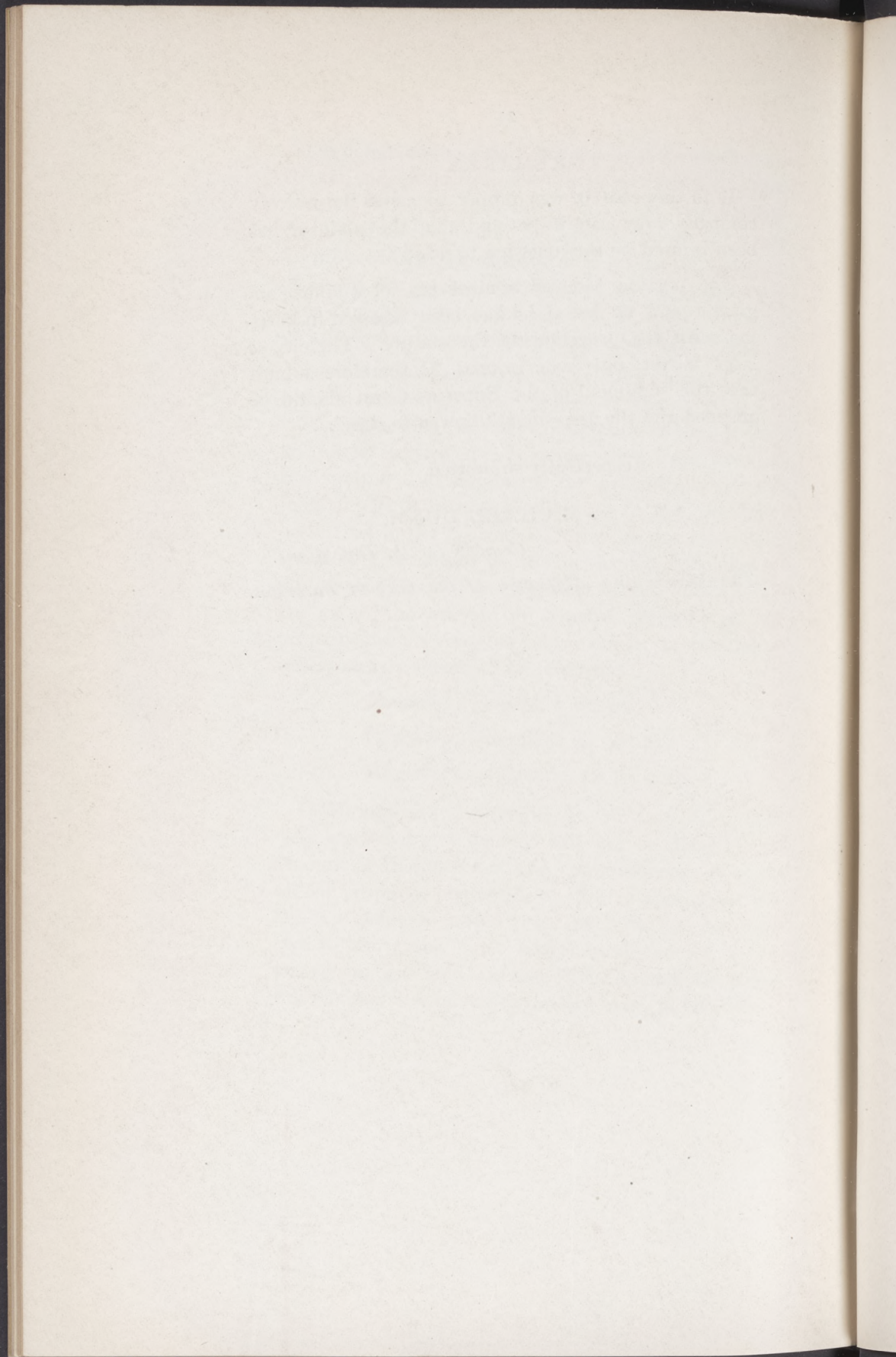
The portion assessed against his lot would be no greater and no less if he has been assessed in keeping with the provisions of the statute. The city at large is the only one injured. I therefore submit that the judgment of the Supreme Court should be affirmed and the assessment allowed to stand.

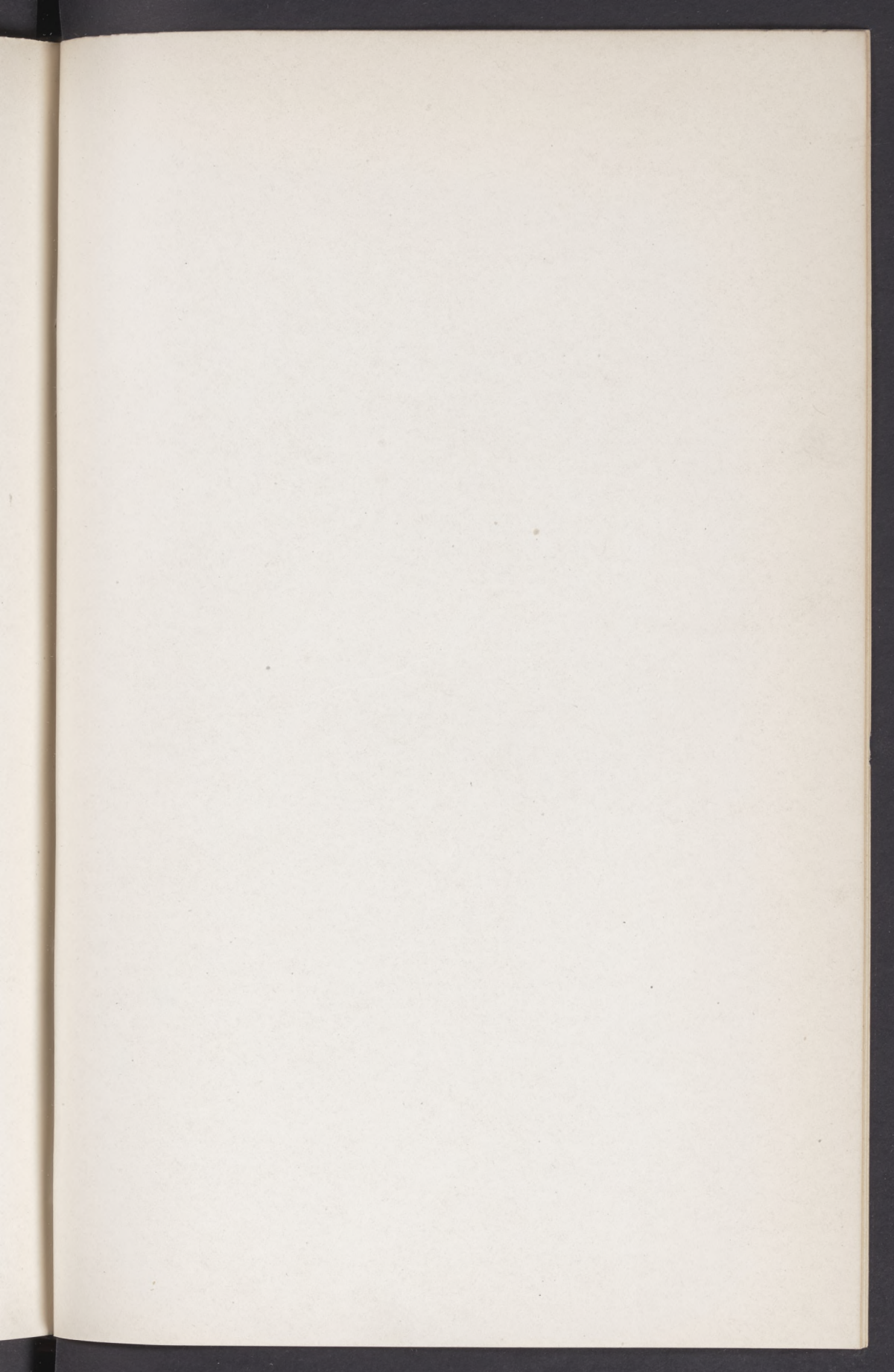
Respectfully submitted.

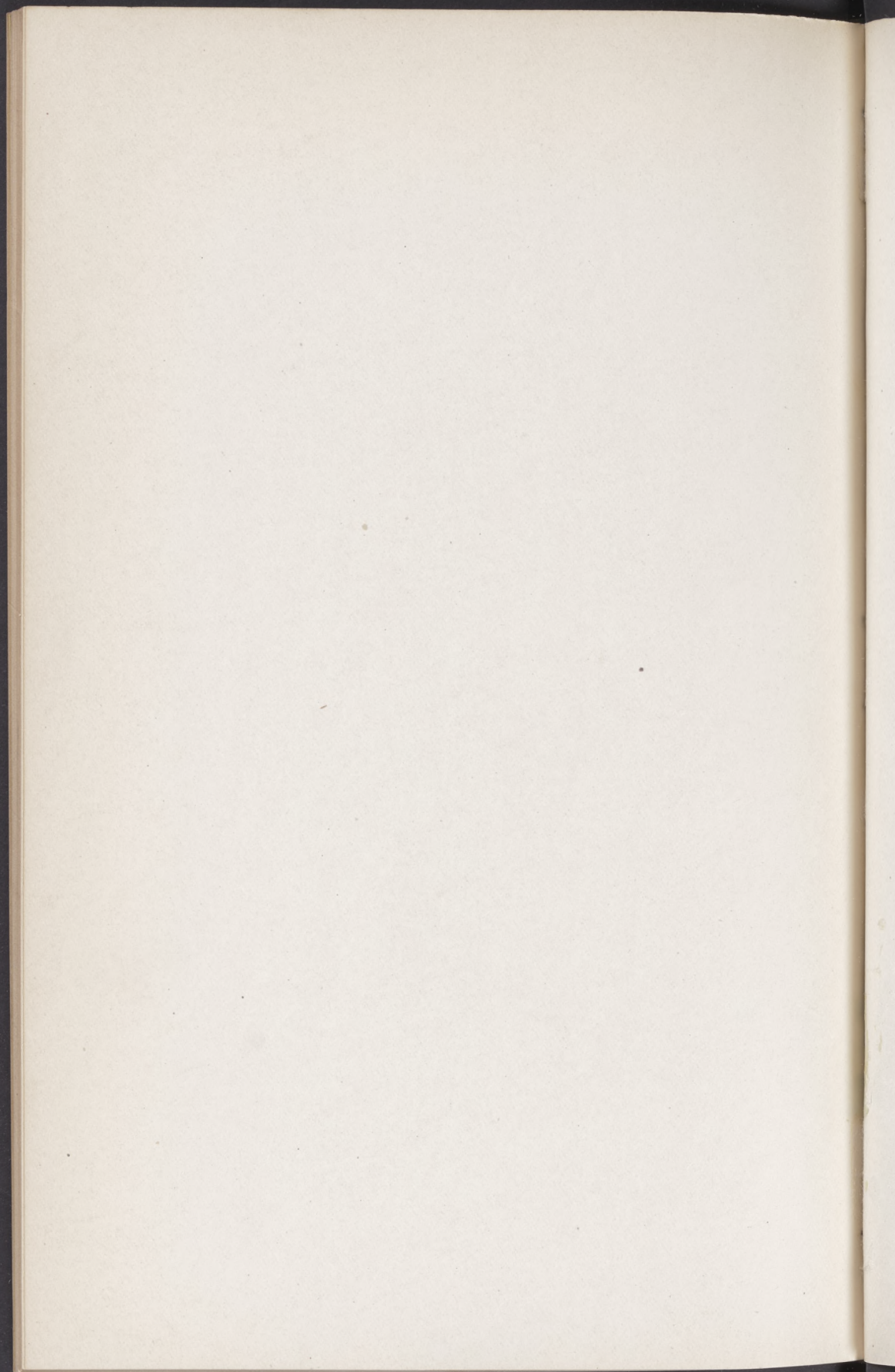
MICHAEL DUNN,

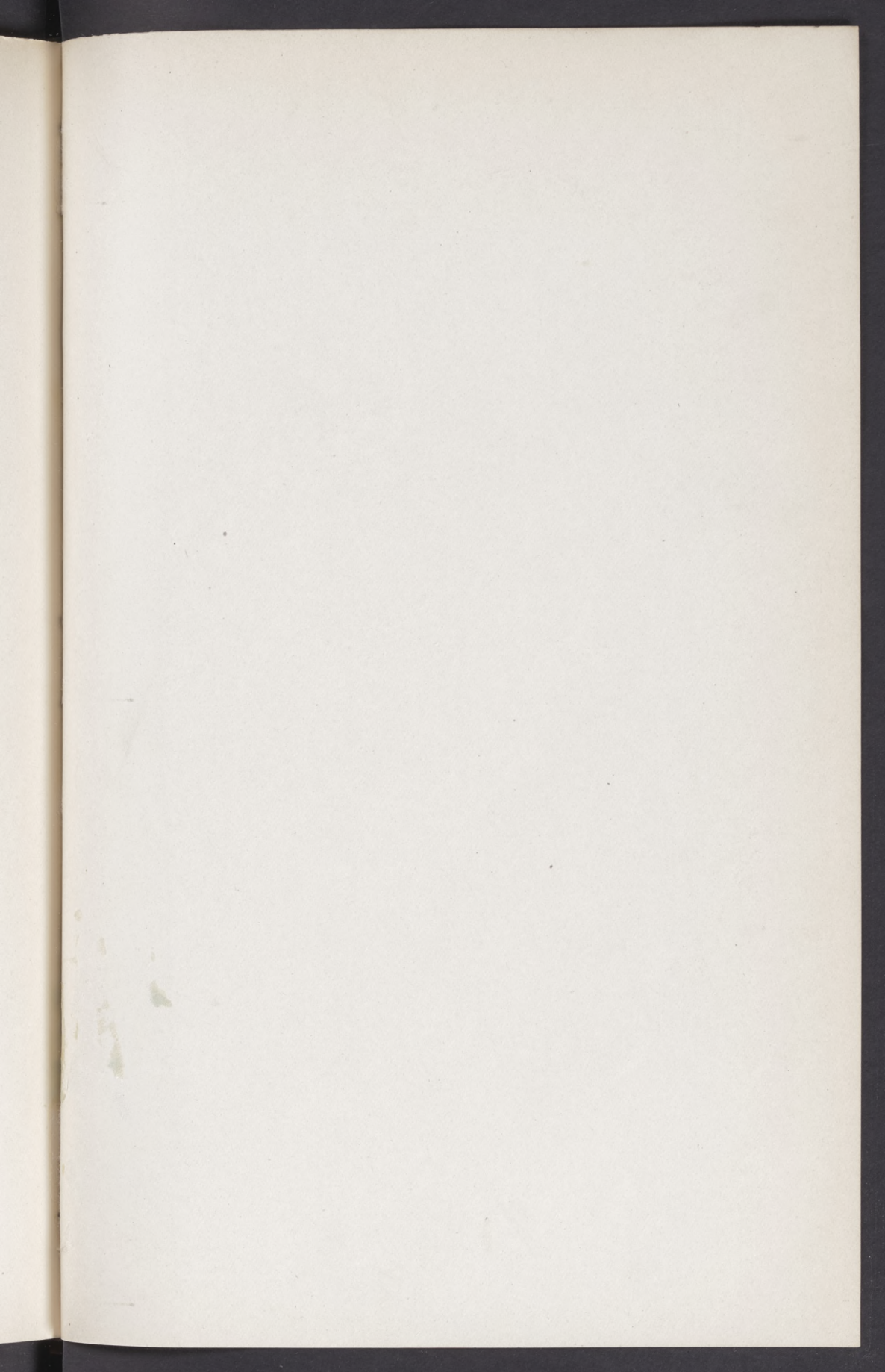
Counsel for the Defendant.

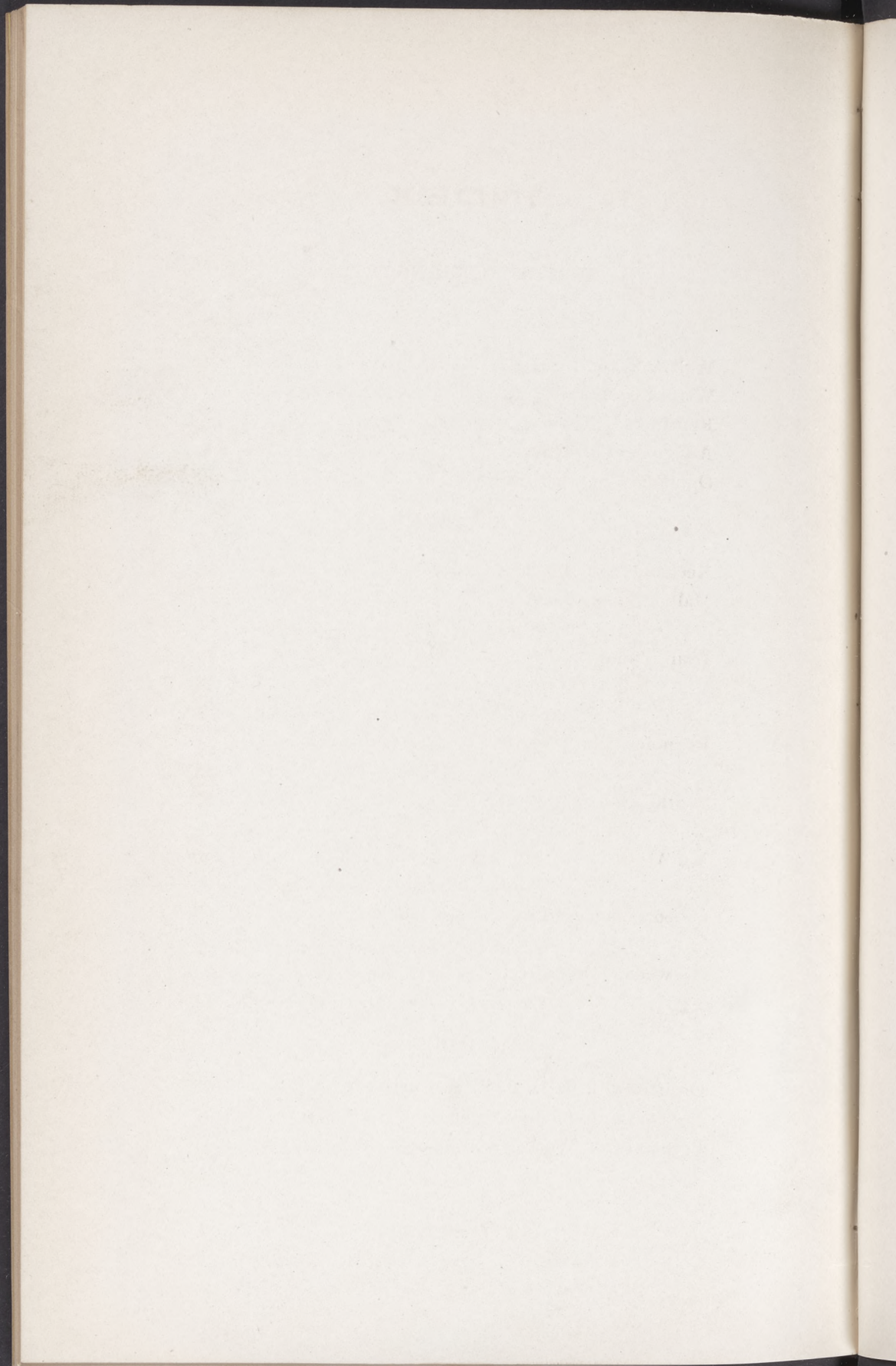
The Mayor and Aldermen of the City of Paterson.











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New Jersey Court of Errors and Appeals

JAMES B. DEAN, <i>Plaintiff in Error,</i> <i>vs.</i> THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, <i>Defendant.</i>	}	<i>Error to</i> <i>Supreme Court.</i>	10
---	---	--	----

Writ of Error.

NEW JERSEY, SS.

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

Because in the records and proceedings and also in
the giving of the judgment in a *plaint*, which was in 20
our said Supreme Court before you between James B.
Dean, Prosecutor, and the Mayor and Aldermen of
the City of Paterson, defendant on a certiorari issued
out of our said Supreme Court to the said Mayor and
Aldermen of the City of Paterson, defendant, manifest
error has intervened to the great damage of the said
James B. Dean, plaintiff as aforesaid, as by his com-
plaint we are informed, we being willing that the
error, if any there be, should in due manner be correc-
ted, and full and speedy justice be done to the parties
aforesaid in this behalf, do command you that if judg- 30
ment be thereupon given then you send distinctly and
openly, under your seal, the record and proceedings

and plaint aforesaid, with all things touching and concerning the same to our Court of Errors and Appeals, before the judges thereof, on the fifth day of February next, and this writ, and that the records and proceedings aforesaid being inspected we may cause to be further done thereupon what of right and according to law ought to be done.

Witness William J. Magie, our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton, this 16th day of January nineteen hundred and two.

GEORGE WURTS,

Clerk.

FRANCIS SCOTT,
EDWARD F. MERREY } *Attorneys.*

20

Endorsement.

The answer of William J. Gummere, Chief Justice within named. The record and proceedings of the plea whereof mention is within named and all things concerning the same, to the Court of Errors and Appeals in the last resort in all cases, within specified, at the place and day within contained, I hereby certify in a certain schedule to this writ annexed, as I am within commanded,

WILLIAM J. GUMMERE,

Chief Justice,

30

Writ of Certiorari.

THE STATE OF NEW JERSEY, ss.
(Seal)

The State of New Jersey to the
Mayor and Aldermen of the City of
Paterson, Greeting :

We being willing, for certain reasons, appearing 10
by the affidavit of James B. Dean, filed in this cause,
to be certified of a certain assessment for alleged
benefits caused by the alleged permanent improve-
ments of Broadway, in said City of Paterson, with red
brick, from the New York, Susquehanna and Western
Railroad to East Thirty-Third street, pretended to
have been done under and by virtue of a certain act
of the legislature of the State of New Jersey, entitled
"An Act to authorize the improvement of streets
and highways in cities of this state, and to provide
for the payment of the expense of the same," ap- 20
proved June 13, 1898, chapter 200, laws ses-
sion 1898, to the owners of the abutting property
on either side of said Broadway, from said New York,
Susquehanna and Western Railroad to said East
Thirty-third street, in said City of Paterson, it being
alleged that said assessment in each case is in propor-
tion to the special advantage which each of said
owners has acquired by the improvement of said
street, and all things touching and concerning the
said assessment for the said improvement on said por-
tions of said street, as fully as they remain before the 30
said Mayor and Aldermen of the City of Paterson,
however the said assessment may have been made or
may be called.

We command you, that the said assessment, together with the ordinance, the records of the meetings of the said Mayor and Aldermen in which said paving was authorized, and all matters touching and concerning the said assessment for the said improvement in said portion of said street, to our Supreme Court of Judicature, at Trenton, on the fourth Tuesday of April next, you certify and send together with this writ, that therein may be done what of right and
 10 according to the laws of the State of New Jersey ought to be done.

Witness, David A. Depue, Esq., Chief Justice of our said Supreme Court, at Trenton, this thirtieth day of March, ninteen hundred and one.

WM. RIKER, JR.,

FRANCIS SCOTT,

Clerk of Supreme Court.

Attorney.

Return to Writ.

The answer of the Mayor and Aldermen, of the City of Paterson, within named, in response to the annexed writ, do hereby by its clerk, under the seal of the said city, return the said assessment with the ordinance and the records of the meetings in which said paving was authorized, and all other matters touching and concerning the said assessments for the said improvements in such portion of the said street; and the same will be found in the schedule hereto 10 annexed.

In witness whereof, I, John Keegan, City Clerk, have hereunto set my hand and affixed the seal of the said city, to said return, by order of the said Mayor and Board of Alderman.

JOHN KEEGAN,

City Clerk.

(corporate seal)

Adjourned meeting of the Board of Aldermen, January 4, 1899. Present, William W. Stalter, Esquire, President, and all the other members except- 20 ing Alderman Ryan.

NEW BUSINESS.

An ordinance to provide for the Permanent Improvement of portions of certain streets in the City of Paterson was presented and read. Alderman Lang moved to pass the ordinance to a second reading. Alderman Boylan moved to amend that the ordinance be laid upon the table, and the amendment was by the Chair declared carried by the following vote: Yeas, Boylan, Bogert, Delaney, Durget, Kamerling, Miller, Wright Thomas C., and Wiley, 8; Nays, 30 Brogan, Condon, Close, Lang, Post, Wright John, and Stalter, 7.

PROCEEDINGS OF THE BOARD OF ALDERMEN, JANU-
ARY 16, 1899.

Present at roll call, William W. Stalter, Esquire, President, and all the other members excepting Alderman Condon, who appeared shortly after roll call.

10 The minutes of the meeting of the Board of January 2, 1899, and the adjourned meeting of January 4, 1899, were proceeded with, when upon motions of Alderman Miller and Thomas C. Wright the further reading was dispensed with and the minutes approved as printed.

NEW BUSINESS.

An ordinance to provide for the Permanent Improvement of portions of certain streets in this city was presented and read once, and upon motion of
20 Alderman Durget was passed to a second reading.

PROCEEDINGS OF THE BOARD OF ALDERMEN, FEBRU-
ARY 6th, 1899.

Present at roll call: William W. Stalter, Esquire, President, and all the other members excepting Aldermen Post and Wiley, they appearing shortly after.

30 The reading of the minutes of the previous meeting was proceeded with when upon motion of Alderman Close the further reading was dispensed with and the same approved as printed.

UNFINISHED BUSINESS.

An ordinance to Provide for the Permanent Improvement of portions of certain streets in this city was read a second time, when Alderman Durget moved as follows: To amend by striking out the following from Section 1; "Straight St. from Market St. to Erie Railroad crossing," "Grand St. from Main St. to Spruce St.," "Oliver St., from Main to Spruce St.," "North Main St. from Temple St. to East Main St.," "Water St. from Temple St. to Hamburg Avenue," "Prince St. from Ward St. to Grand St.," "Clark Street from Market St. to Ward Street," and by inserting in Section 1, after the words "to 33rd Street" the following, "Paterson St. from Market St. to River St.," Grand Street from Erie Railway to Spruce St. be paved with brick, and Prospect Street from Market Street to Van Houten St., Washington Street from Broadway to River Street, Church Street from Broadway to Market Street, and Ellison Street from Church Street to Straight Street with asphalt." Also to amend Section 2 by inserting after the word "contract" the following: "in accordance with specifications to be prepared by the City Engineer and City Counsel."

A further amendment was submitted by Alderman Lang, that Van Houten St. from Main to Prospect St. be paved with brick, and the same was agreed to.

Before putting the question upon Alderman Durget's amendment to strike out and insert as above mentioned, Alderman Delaney moved to amend, that Prospect St. be paved with brick instead of asphalt as provided in Alderman Durget's amendment and the same was agreed to. The question was put upon a motion by Alderman Durget to adopt the amend-

ment of Alderman Durget as further amended by Alderman Delaney, and the Chair declared the motion carried.

The ordinance was again read, when Alderman Durget moved to pass the ordinance to a third reading, which was declared carried, and the ordinance was read a third time. Alderman Durget moved to finally pass the said ordinance, and upon call of the
 10 Board the result was: Yeas, Aldermen Boylan, Brogan, Bogert, Condon, Close, Delaney, Durget, Kamerling, Lang, Miller, Ryan, Wright John, Wright Thomas C., Wiley and Stalter, 15; Nays, Alderman Post, 1; and the Chair declared the ordinance finally passed.

An ordinance to Provide for the Permanent Improvements of portions of certain street in this city.

The Board of Aldermen of the City of Paterson do ordain as follows:

Section 1. That Broadway from East Eighteenth Street to East Thirty-third Street, Van Houten
 20 Street from Prospect Street to Main Street, Prospect Street from Market Street to Van Houten Street, Paterson Street from Market Street to River Street, and Grand Street from Erie Railroad to Spruce Street shall be paved with brick. And that Mill Street from Market Street to Grand Street, Washington Street from Broadway to Market Street, and Ellison Street from Church Street to Straight Street shall be paved with asphalt. And that such portions of each of said streets which are provided to be improved with asphalt, the grade of which exceeds four
 30 per centum, shall be paved with granite blocks.

Section 2. That all of said work shall be done by contract and in accordance with specifications to be prepared by the City Engineer and Counsel, and pur-

suant to the act of the Legislature of this State entitled, "An Act to authorize the Improvement of Streets and Highways in cities of this state and to provide for the expenses of the same," approved June 13th, 1898.

Section 3. The Board of Aldermen shall apply through the City Council to the Court of Common Pleas of Passaic County for the appointment of commissioners to estimate and assess the benefits which may be caused by the said improvements, upon the lands benefitted thereby in accordance with the provisions of the said act. 10

Passed February 6th, 1899. Wm. W. Stalter, President of the Board of Aldermen.

Approved February 14th, 1899, Jno. Hinchliffe, Mayor.

Attest: George Boyd, City Clerk.

I, John Keegan, City Clerk of the City of Paterson, New Jersey, do hereby certify that the foregoing is a copy of the minutes of the proceedings of the Board of Aldermen of said City of Paterson at their meetings held respectively, January 4th, 1899, January 16th, 1899, and February 6th, 1899, had with reference to the passage of an ordinance entitled, "An ordinance to provide for the permanent improvement of portions of certain streets in this city," and of all the records of the meetings of said Board of Aldermen at which the paving with brick pavement of Broadway from the New York, Susquehanna and Western Railroad to East Thirty-third street was authorized, as the same now remain of record in my office in Book "I" of Minutes of Board of Aldermen pages 478, 484 and 490, and of the ordinance entitled, "An ordinance to pro- 30

vide for the permanent improvement of portions of certain streets in this city," as it remains of record in my office in Book "B" of Ordinances page 436.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the City of Paterson the twenty-second day of April, A. D., nineteen hundred and one.

JOHN KEEGAN,
City Clerk.

10 (Corporate Seal)

REPORT OF COMMISSIONERS.

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

James M. Baldwin, John Mallon and Robert Williams being duly sworn on their respective oaths according to law say (and each of them says) that they and each of them are freeholders and residents of the City of Paterson, said County and State, and that
20 having been appointed May 17th, 1900, by order of the Judge of the Court of Common Pleas of Passaic County, commissioners to estimate and assess the benefits conferred upon lands and real estate in the City of Paterson bordering on Broadway from the New York, S. & W. Railroad to East Thirty-third Street, in said City, by the permanent improvement of said street, between said points, pursuant to the provisions of an act of the Legislature, entitled, "An Act to authorize the improvement of streets and highways in cities of this State, and to provide for the payment of
30 the expense of the same," approved June 13, 1898, and the supplements thereto, they and each of them will make all estimates and assessments required of them, and each of them in the above matter, fairly,

legally and equitable, according to the best of their skill and understanding and the skill and understanding of each of them.

JAMES M. BALDWIN,
JOHN MALLON,
ROBERT WILLIAMS,

Sworn and subscribed before me this Twenty-second day of May, 1900.

JOHN RAINEY,
Notary Public,
N. J.

10

Endorsed:—

COURT OF COMMON PLEAS OF THE COUNTY OF PASSAIC

In the matter of assessments for benefits caused by the permanent improvement of Broadway with red brick pavement from New York, Susquehanna and Western Railroad to East Thirty-third Street, Paterson, New Jersey.

20

REPORT OF COMMISSIONERS.

Filed, Oct. 4, 1900,

A. D. WINFIELD,
Clerk.

BROADWAY PERMANENT STREET IMPROVEMENT
NOTICE.

The undersigned Commissioners, having been duly appointed by order of the Judge of the Court of Common Pleas of Passaic County to estimate and assess the benefits conferred upon the lands and real estate in the

30

City of Paterson, bordering on Broadway from East
 Thirty-third street to the New York, Susquehanna &
 Western Railway, which was permanently improved
 between said points by the improvement of said street,
 and the said court having ordered said Commissioners
 to give two weeks notice by publication in two desig-
 nated newspapers of said city, of the time and place
 when and where they will give a public hearing to
 any person or persons in interest who may present
 10 themselves to be heard touching the matter committed
 to the charge of the undersigned.

Therefore, in accordance with said order and with
 an act of the legislature, entitled, "An act to authorize
 the improvements of streets and highways in the
 Cities of this state, and to provide for the payment of
 the expenses of the same," approved June 13th, 1898,
 and the supplement thereto, the undersigned hereby
 give notice that they will hear any and all persons in
 interest who may present themselves to be heard in
 20 reference to the permanent improvement above de-
 scribed on Monday, June 11th, 1900, at Ten o'clock
 in the forenoon, in Room 15, in the City Hall, in the
 City of Paterson.

Dated May 22d, 1900.

JAMES M. BALDWIN,
 JOHN MALLON,
 ROBERT WILLIAMS.

STATE OF NEW JERSEY, }
 PASSAIC COUNTY } ss.

30 James M. Holt, of full age, being duly sworn, on
 his oath saith that he is the Superintendent of The
 Call Printing and Publishing Company, and that the

annexed notice was published on the 25th and 31st days of May, 1900, in the Morning Call, a newspaper printed and published at Paterson, in this State.

JAMES M. HOLT.

Sworn and subscribed before me this 1st day of June, 1900.

JOHN TOOLE,
Notary Public of N. J.

10

BROADWAY PERMANENT IMPROVEMENT NOTICE.

The undersigned Commissioners, having been duly appointed by order of the Judge of the Court of Common Pleas of Passaic County to estimate and assess the benefits conferred upon the lands and real estate in the City of Paterson, bordering on Broadway, from East Thirty-third Street to the New York, Susquehanna and Western Railway, which was permanently improved between said points by the said improvement of said street, and said court having ordered said Commissioners to give two weeks' notice by publication in two designated newspapers of said city, of the time and place when and where they will give a public hearing to any person or persons in interest who may present themselves to be heard touching the matter committed to the charge of the undersigned :

Therefore, in accordance with said order and with an act of the legislature, entitled "An act to authorize the improvement of streets and highways in the cities of this state, and to provide for the payment of the expense of the same," approved June 13th, 1898, and the supplement thereto, the undersigned hereby give notice that they will hear any and all persons in interest who may present themselves to be heard in ref-

30

erence to the permanent improvement above described on Monday, June 11th, 1900, at Ten o'clock in the forenoon, in Room 15, in the City Hall, in the City of Paterson.

Dated May 22d, 1900.

JAMES M. BALDWIN,
JOHN MALLON,
ROBERT WILLIAMS.

10 STATE OF NEW JERSEY, }
PASSAIC COUNTY } ss.

Edward B. Haines, of full age, being duly sworn, on his oath says that he is the manager of the News Printing Co., and that the annexed notice was published on the 23rd day of May, 1900, in The Evening News, a newspaper of general circulation printed and published at Paterson, in this State, and designated by law for the publication of the laws of this State, and was continued therein for two weeks successively
20 at least once in each week, viz., on May 23 and 31.

E. B. HAINES.

Sworn and subscribed before me this 3rd day of Aug., 1900.

JOHN B. SPEAR,
Notary Public of N. J.

COURT OF COMMON PLEAS OF THE COUNTY OF PAS-
SAIC.

<p>In the matter of assessments for benefits caused by the perma- nent improvement of Broadway with red brick pavement from New York, Susquehanna and Western Railroad to East Thirty-third Street, Paterson, New Jersey.</p>	}	<p><i>Report of Commissioners.</i></p>	<p>10</p>
---	---	--	-----------

We, the undersigned, having been appointed by the above Court Commissioners to estimate and assess the benefits to the lands and real estate bordering on said street, peculiarly benefitted by said improvement by reason thereof, on the seventeenth day of May, nineteen hundred, do report that having first taken the oath required by law, which is hereto attached, 20 we met and organized at the City Hall, Paterson, New Jersey, on the twenty-second day of May, nineteen hundred; that it was resolved to insert in the Paterson Morning Call and Paterson Evening News, in obedience to the order of the above court, a notice to persons in interest to present themselves to be heard in reference to the improvement of the street before described on the eleventh day of June, nineteen hundred, which was accordingly done; that copies of said notice and the affidavits of the publication thereof in said newspapers for the required time are hereto an- 30 nexed; that on said day and at the time and place mentioned in said notice, we met and heard all parties in interest who presented themselves.

And we further report that we entered upon and viewed the premises in any way affected or benefitted by the improvement of said street, and we did cause to be made by the City Surveyor, under our direction, a map and survey showing the lots or parcels of land and real estate peculiarly benefitted by said improvement, which map and survey is presented with and forms a part of this report.

10 And we further report that we met on the tenth day of July, nineteen hundred, and proceeded to ascertain the entire cost of the improvement of the said street, which we find to be forty-five thousand six hundred and fourteen dollars and fifty-five cents (\$45,614.55) of which amount eighteen thousand seven hundred and ninety dollars and thirty-nine cents (\$18,790.39) has been assessed against the city at large.

20 And we have ascertained all the names of the owners of the said lands and real estate especially benefitted by the improvement of the said street, which are appended thereto, and have placed opposite their names the amount that each of them has been assessed for special benefits derived, which assessments or amounts are in each case in proportion to the special advantage which each of said owners has acquired by the improvement of said street; and that said assessments were determined in pursuance of the requirements of our oaths aforesaid, and in no case is any property assessed beyond the amount of special benefits actually derived from the permanent improvement of said street.

BROADWAY.

Lot No.	Owner.	Size of Lot.	Assess. for pav.	Assess. for curb.	Total.
460	N. Y. S. & W. R. R. }	35x100	150 85	14 00	164 85
462	" " }				
464	John Norwood }	180x113	775 80	53 35	829 15
466	" " }				
468	" " }				
470	" " }				
472	" " }				
474	" " }	15x100	64 65	5 00	69 65
476	" " }				
Part of 478	Unknown				
Part of 478	Est. Stoutenborough }	60x100	258 60	5 00	263 60
480	" " }				
482	" " }				
484	Edwin E. Swift }	78.50x100	338 33	41 40	79 733
486	" " }				
488	" " }				
494	Edward Flitcroft	25.23x109	108 74	20 42	129 16
496	J. W. Hennion	25.23x109	108 74	10 09	118 83

498	H. B. Crosby }				
500	" " }	50.46x109	217 48	20 18	237 66
502	C. D. Cadmus	25.23x98	108 74	10 09	118 83
504	Mrs. P. R. Loveland	25.23x98	108 74	10 09	118 83
506	Edwin C. Morse }				
508	" " }	50.46x110	217 48	30 78	248 26
514	Ewd. Mather }				
516	" " }	50.46x100	217 48	30 37	247 84
518	D. H. Howd }				
1-3 of 520	" " }	33.64x100	144 98	13 45	158 43
2-3 of 520	C. E. McNeil }				
2-3 of 522	" " }	33.64x100	144 98	13 45	158 43
1-3 of 522	Henry T. Moffett }				
524	" " }	33.64x100	144 98	13 45	158 43
526	H. B. Crosby }				
528	" " }	50.46x122	217 48	30 00	247 48
534	Annie C. Newton }				
538	" " }	5.46x105	217 48	30 22	247 70

538	H. B. Crosby	25.23x100	108 74	10 09	118 83
540	" "	25.23x100	108 74	10 09	118 83
542	" "	25.23x100	108 74	10 09	118 83
544	" "	25.23x100	108 74	10 09	118 83
546	" "	25.23x100	108 74	10 09	118 83
548	" "	25.23x100	108 74	19 96	128 70
554	Louis A. Walder				
556	" "	50.46x116	217 48	30 80	248 38
558	Cath. Storms				
560	" "	50.46x129	217 48	20 13	237 66
562	Mrs. M. E. Morrison				
Part of 564	" " "	28x104	120 68	11 20	131 88
Part of 564	Mrs. Wm. Graham				
Part of 566	" " "	36.46x88	157 14	14 53	171 72
Part of 566	J. R. Graham				
568	" "	36.46x88	157 14	25 00	182 14
574	Samuel B. Thompson				
576	" "	50.46x101	217 48	30 58	248 06
578	C. E. McNeil				
11 ft. of 580	" "	36x101	155 16	14 40	169 56

Lot No.	Owner.	Size of Lot.	Assess. for pav.	Assess. for curb.	Total.
14 ft. of 580	Henry Cowan }				
582	" " }	64.46x101	277 82	25 78	303 60
584	" " }				
586	Cowan & Swift }	50.46x128	217 48	28 78	246 26
588	" " }				
594	Louis Dreyer }	50.46x111	217 48	28 61	246 09
596	" " }				
598	E. E. Swift }	50.46x125	217 48	20 18	237 66
600	" " }				
602	Mrs. L. F. Parsons }	50.46x100	217 48	20 18	237 66
604	" " " }				
606	Est O. W. Mills }	50.46x114	217 43	28 89	246 37
608	" " " }				
614	James B. Dean }	25.23x97	108 74	18 78	127 52
616	" " }	25.23x100	108 74	10 09	118 83
618	" " }	25.23x100	108 74	10 09	118 83
620	" " }	25.23x100	108 74	10 09	118 83
622	" " }	25.23x100	108 74	10 09	118 83
624	" " }	25.23x100	108 74	10 09	118 83

626	H. L. Berdan	}	50.46x124	217 48	28 18	245 66
628	" "					
634	Otto Haenichen	}	50.46x107	217 48	28 77	246 25
636	" "					
638	M. E. Strange	}	25.23x107	108 74	10 09	118 83
640	" "		25.23x121	108 74	10 09	118 83
642	" "		25.23 x 96	108 74	10 09	118 83
644	" "		25.23x100	108 74	10 09	118 83
646	" "		25.23x100	108 74	10 09	118 83
648	" "		25.23x109	108 74	19 25	127 99
654	Est. Wm. Strange	}	25.23x118	108 74	20 53	129 27
656	" " "		25.23x118	108 74	10 09	118 83
658	" " "		25.23x118	108 74	10 09	118 83
660	" " "		25.23x118	108 74	10 09	118 83
662	G. W. I. Landau & E. T. Bell, Jr.	}	25.23x118	108 74	10 09	118 83
664	" " " "		25.23x118	108 74	10 09	118 83
666	" " " "		25.23x118	108 74	10 09	118 83
668	" " " "		25.23x118	108 74	19 26	128 00
674	Nathan Barnert	}	25.23 x 83	108 74	20 38	129 12
676	" "		25.23 x 86	108 74	10 09	118 83
678	" "		25.23 x 39	108 74	10 09	118 83

Lot No.	Owner.	Size of Lot.	Assess. for pav.	Assess. for curb.	Total.
680	Nathan Barnert				
682	" "	25.23x92	108 74	10 09	118 83
684	" "	25.23x95	108 74	10 09	118 83
686	" "	25.23x98	108 74	10 09	118 83
638	" "	25.23x101	108 74	10 09	118 83
		25.23x110	108 74	19 08	127 82
694	W. A. Leather				
696	" "	50.46x93	217 48	30 30	247 78
698	Alfred Van Riper				
700	" "	50.46x100	217 48	20 18	237 66
702	Peter O'Blenis				
704	" "	25.23x100	108 74	10 09	118 83
706	" "	25.23x100	108 74	10 09	118 83
708	" "	25.23x100	108 74	10 09	118 83
		25.23x120	108 74	18 14	126 88
714	William Denton	25.23x104	108 74	18 16	126 90
716	William Denton				
718	" "	25.23x104	108 74	10 09	118 83
720	" "	25.23x104	108 74	10 09	118 83
722	" "	25.23x104	108 74	10 09	118 83
		25.23x104	108 74	10 09	118 83

724	Est. A. L. Schwarz }				
726	" " " }	50.46x96	217 48	20 18	237 66
728	A. Naundorf }				
730	" " " }	75.69x113	326 22	40 44	366 66
732	" " " }				
459	N. Y. S. & W. R. R.	24x100	103 44	9 60	113 04
461	Wm. B. Clark }				
463	" " " }	50x100	215 50	20 00	235 50
465	Est. Dickerson & Gould }				
467	" " " }	50x100	215 50	20 00	235 50
469	Edward Van Valen }				
471	" " " }	25x100	107 75	10 00	117 75
473	" " " }				
475	Est. Dickerson & Gould }				
¾ of 477	" " " }	37x100	159 47	26 63	186 10
Lot No.	Owner.	Size of lot.	Assess. for pav.	Assess. for curb.	Total.
485	Est. Dickerson & Gould }				
487	" " " }	75x100	323 25	42 00	365 25
489	" " " }				

491 E. N. Dickerson } ¾ of 493 " " }	43.75x100	188 56	17 50	206 06
493 Est. J. N. Gould } 495 " " }	44.65x100	192 44	17 86	210 30
¾ of 497 " " }				
¾ of 497 Mary E. Stinson } 499 " " }	70x100	301 70	28 00	329 70
501 " " }				
503 Jennie N. Mills } 505 " " }	63x100	271 53	25 20	296 73
½ of 507 " " }				
½ of 507 Mrs. H. W. Mills } 509 " " " }	37.50x100	161 63	25 40	187 03
513 Mrs. C. W. Mills } ½ of 515 " " " }	38x116	163 78	25 88	189 66
½ of 515 George B. Stinson } 517 " " " }	45x100	193 95	24 85	218 80
½ of 523 Eugene W. Paige } 525 " " }	90x100	387 90	54 03	441 93
527 " " }				
529 " " }				

535	Fourth Baptist Ch.	}	100.92x100	434 96	49 74	484 70
537	" " " "					
539	" " " "					
541	" " " "					
543	William C. Ennis	}	50.46x100	217 48	20 18	237 66
545	" " " "					
Lot No.	Owner.		Size of lot.	Assess. for pav.	Assess. for curb.	Total.
547	Mrs. M. F. LaForge	}	50.46x100	217 48	31 02	248 50
549	" " " "					
555	Mrs. Frank Groocock	}	50.46x100	217 48	30 68	248 16
557	" " " "					
559	Alpheus S. Allen	}	75.69x100	326 22	30 27	356 49
561	" " " "					
563	" " " "					
565	Jennie Goetschius		25.23x100	108 74	10 09	118 83
567	Mary Goetschius		25.23x100	108 74	10 09	118 83
569	J. A. Lydecker		25.23x100	108 74	20 19	128 93
575	Jos. I. Rusling	}	50.46x100	217 48	29 84	247 32
577	" " " "					

579 Alfred Gartner }				
1/3 of 581 " " }	33.64x100	144 98	13 45	158 43
2/3 of 581 John C. Dowell }				
2/3 of 583 " " }	33.46x100	144 98	13 45	158 43
1/3 of 583 Mrs. J. Walder }				
585 " " }	33.64x100	114 98	13 45	158 43
587 Est. Jacob Walder }				
589 " " " }	50.46x100	217 43	20 87	238 35
595 C. N. Sterrett }				
597 " " }				
599 " " }	75.69x100	326 22	34 77	360 99
601 Jas. A. Morrisse }				
603 " " }				
605 " " }				
607 " " }	126.15x100	543 70	56 18	599 88
609 " " }				
615 Mr. Schafer }				
617 " " }				
619 " " }	100.92x100	434 96	49 86	484 82
621 " " }				

Lot No.	Owner.	Size of lot.	Assess. for pav.	Assess. for curb.	Total.
623	Jas. C. Hinchliffe	100.92x100	434 96	50 93	485 89
625	" "				
627	" "				
629	" "				
635	Mrs. N. E. Ellenbogen	100.92x100	434 96	50 62	485 58
637	" " "				
639	" " "				
641	" " "				
643	Lewis Levi	100.92x100	434 96	50 12	485 08
645	" "				
647	" "				
649	" "				
655	A. A. Lydecker	100.92x100	434 96	49 54	484 50
657	" "				
659	" "				
661	" "				
663	Roger W. Borden	100.92x100	434 96	49 64	484 60
665	" " "				
667	" " "				
669	" " "				

675	Geo. H. A. Myers	}	100.92x100	434 96	50 68	485 64
677	" " "					
679	" " "					
681	" " "					
683	A. A. Lydecker	}	50 46x100	217 48	20 18	237 66
685	" "					
687	J. W. Deyoe	}	50.46x100	217 48	31 06	248 54
989	" "					
695	John Habben	}	50.46x100	217 48	29 42	246 90
697	" "					
Lot No.	Owner.		Size of lot.	Assess. for pav.	Assess. for curb.	Total.
699	Mrs. Annie Habben	}	75.69x100	326 22	20 92	347 14
701	" " "					
703	" " "					
703	Fred R. Reynolds		25.23x100	108 74	10 09	118 83
707	John Kershaw	}	50.46x100	217 48	30 09	247 57
709	" "					
715	A. Blauvelt	}	50.46x100	217 43	30 05	247 53
717	" "					

719	A. A. Lydecker	}	50.46x100	217 43	20 13	237 66
721	" "					
723	P. H. Van Wagoner	}	100.92x100	434 96	50 59	485 55
725	" "					
727	" "					
729	" "					
	City of Paterson					18,790 39
						<u>18,790 39</u>
						\$42,934 22 \$26,80 33 \$45,614 55

JAMES M. BALDWIN, }
 JOHN MALLON, } *Commissioners.*
 ROBERT WILLIAMS. }

Dated Sept. 25, 1900.

PASSAIC COUNTY CLERK'S OFFICE.

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

I, Albert D. Winfield, Clerk of said County and Clerk of the County Courts thereof, do hereby certify that the foregoing is a true copy of the Report of the Commissioners in the matter of assessments for benefits caused by the permanent improvement of Broadway with red brick pavement from New York, Susquehanna and Western Railroad to East Thirty-third Street, Paterson, New Jersey, as the same is taken from and compared with the original report, filed, Oct. 4, 1900, now remaining in file in my office.

In testimony whereof, I have hereunto
 [L. s.] set my hand and affixed my official seal,
 at Paterson, this 15th day of December,
 A. D. 1900.

A. D. WINFIELD,
Clerk.

Endorsed:—

20

Certified Copy.

PASSAIC COUNTY CLERK'S OFFICE.

REPORT OF COMMISSIONERS.

Court of Common Pleas of Passaic County.

In the matter of assessments for benefits caused by the permanent improvement of Broadway with red brick pavement from N. Y., S. & W. R. R. to E. 33rd St., Paterson, N. J.

30 Confirmed, Dec. 13, 1900.

Received, Dec. 15, 1900.

Entered Book D, Folio 47.

COURT OF COMMON PLEAS OF THE COUNTY OF PASSAIC.

In the matter of assessments for benefits caused by the permanent improvement of Broadway with red brick pavement from New York Susquehanna and Western Railroad to East Thirty-third Street, Paterson, New Jersey.

Order Confirming report of Commissioners.

10

The Commissioners appointed by the above court to estimate and assess the benefits conferred upon the lands and real estate in the city of Paterson, New Jersey, bordering on the above named street and peculiarly benefitted by said improvement, having made their report accompanied by a map showing the lots and parcels of land and real estate peculiarly benefitted by said improvement, and this court having heretofore ordered upon the coming in of said report and map, that the same should be filed in the office of the County Clerk of the County of Passaic and that five days' notice be given that said Court would hear on any objection that should be made against the assessments made and contained in said report, on the eighteenth day of October, A. D., Nineteen hundred, at ten o'clock in the forenoon at the Court House in the City of Paterson, New Jersey.

20

And it appearing that said notices were served as directed in said order and no good objection having been made against the assessments or any of them on the day appointed or at any other time to which

30

the said matter has been adjourned, and no good reason appearing why the said report shall not be confirmed.

It is on this thirteenth day of December A. D., nineteen hundred, ordered that the said report be confirmed and that the said lands and real estate set forth on said map and mentioned in said report shall be liable for the amount assessed against them as directed by law.

10 It is further ordered that the Clerk of this Court shall make or cause to be made a certified copy of said report and map and also of this order, all of which he shall forthwith deliver to the City Clerk of the Mayor and Aldermen of the City of Paterson, New Jersey.

JOHN S. BARKALOW,
President Judge.

Endorsed:—

20 COURT OF COMMON PLEAS OF THE COUNTY OF PAS-
SAIC.

In the matter of assessments for benefits caused by the permanent improvement of Broadway with red brick pavement from New York, Susquehanna and Western Railroad to East Thirty-third streets, Paterson, N. J.

ORDER CONFIRMING REPORT OF COMMIS-
SIONERS.

30 Filed Dec. 13, 1900.

A. D. WINFIELD,
Clerk.

PASSAIC COUNTY CLERK'S OFFICE.

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

I, Albert D. Winfield, Clerk of said County and Clerk of the County Courts thereof, do hereby certify that the foregoing is a true copy of the Order Confirming the Report of Commissioners in the matter of assessments for benefits caused by the permanent improvement of Broadway with red brick pavement from New York, Susquehanna and Western Railroad to East Thirty-third street, Paterson, N. J., as the same is taken from and compared with the original Order filed Dec. 13, 1900, now remaining on file in my office. 10

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Paterson, this 14th day of December, A. D., 1900.

A. D. WINFIELD,

Clerk. 20

I, Chester D. Ely, Receiver of Taxes and Assessments of the City of Paterson, New Jersey, do hereby certify that the foregoing is a true copy of the order made by the Court of Common Pleas of the County of Passaic confirming the report of commissioners in the matter of assessments for benefits caused by the permanent improvement of Broadway with red brick pavement from New York, Susquehanna and Western Railroad to East Thirty-third street, Paterson, New Jersey, and of the report of the commissioners appointed in said matter, as taken from a certified copy thereof made by A. D. Winfield, Clerk of the County 30

of Passaic and of the County Courts thereof, as the same now remain on file in my office.

In testimony whereof, I have hereunto set my hand the twenty-second day of April, A. D., nineteen hundred and one.

CHESTER D. ELY,

Receiver of Taxes and Assessments.

I, John Keegan, City Clerk of the City of Paterson,
 10 New Jersey, do hereby certify that Chester D. Ely, the person who signed the foregoing certificate, was at and before the signing thereof the Receiver of Taxes and Assessments of said City of Paterson, and as such has authority to make said certificate; and that the signature subscribed to said certificate is the signature of said Chester D. Ely.

In testimony whereof, I have hereunto set my hand and affixed the seal of the City of Paterson, New Jersey, the twenty-second day of April, A. D. nineteen hundred and one.

20

JOHN KEEGAN,

City Clerk.

(Corporate Seal.)

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">JAMES B. DEAN, <i>Prosecutor,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON.</p> <p style="text-align: center;"><i>Defendants.</i></p>	}	<i>On Certiorari</i>
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APPEARANCES:

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FRANCIS SCOTT, ESQ., and EDWARD F. MERRY, ESQ., for the Prosecutor;
MICHAEL DUNN, ESQ., for the defendants.

Depositions taken in the above stated cause before me William Hughes, Supreme Court examiner, at the Paterson Savings Institution building, Paterson, N. J. on Saturday, the twenty-seventh day of April, 1901, at ten o'clock in the forenoon.

It is agreed by and between the counsel of the respective parties that the depositions shall be taken in shorthand by the Examiner and when transcribed by him the said transcript shall for the depositions in this case, the signatures of the witnesses being waived. 20

It is admitted by the attorney of the defendants that a certain paper presented and marked "Exhibit A" for the prosecutor, is the contract made between the defendants and the contractor, Mr. John R. Lee, for the permanent improvement of the roadway on Broadway, between East 18th street and East 33rd street in the city of Paterson, New Jersey.

JOHN KEEGAN, a witness produced on the part of the prosecutor, being duly sworn according to law, testified as follows: 30

Direct Examination by Judge Scott :

Q. You are the City Clerk of the Mayor and Aldermen of the City of Paterson?

A. Yes sir.

Q. You have in the records of the minutes of the Board of Aldermen two ordinances, one entitled, "An Ordinance to regulate and control the Paterson and Little Falls Horse Railroad through the City of Paterson," which was passed July 27th, 1868, and approved
10 the same date; and another ordinance entitled, "An Ordinance concerning the Paterson and Little Falls Horse Railway Company," which was passed and approved Monday, October 3rd, 1870; have you not?

A. Yes, sir.

Q. Can you state the book and page where these ordinances are recorded—I show you a copy of each of these ordinances. Have you compared them with the original?

A. Yes sir.

Q. These copies are exact copies of the original
20 taken from the books on file in your office?

A. Yes sir.

Q. Compared copies?

A. Yes sir.

*By Judge Scott :—*I offer the copies of the ordinances in evidence.

The copies of the ordinances are admitted in evidence and marked Exhibits A 1, and A 2, on the part of the prosecu-
30 tor.

It is agreed by and between the counsel that the copies of the ordinances of-

ferred in evidence may be copied into the Examiner's transcript of the depositions.

JOHN MALLON, a witness produced on the part of the prosecutor, being duly sworn according to law, testified as follows:

Direct Examination by Judge Scott :

Q. You were one of the Commissioners appointed by the Court of Common Pleas of this County to assess benefits in relation to the improvement of Broadway between East 33d street and the Susquehanna Railroad. 10

A. Yes, sir.

Q. You did not assess any benefits between the Susquehanna Railroad and East 18th street?

A. No, sir ; not under that appointment.

Q. This part of Broadway between East 18th street and the railroad is mentioned in the contract, is it not ?

A. I never looked at the contract. 20

Q. Did you make the assessments between E. 18th street and the railroad under some other appointment ?

A. We made that assessment under the appointment from Main street to the railroad.

Q. To the Susquehanna railroad ?

A. Yes, sir.

Q. The part of Broadway between East 18th street and the Susquehanna railroad is about how many feet in length ?

A. I don't know. 30

Q. Describe that part of Broadway, this little piece between East 18th street and the railroad?

A. It is the little piece between the railroad and East 18th street.

Q. It is about 200 feet long.

A. Somewhere in that neighborhood, one side is a little longer than the other.

Q. Your fellow examiners in the matter were who?

A. James M. Baldwin and Robert Williams.

Q. Mr. Baldwin is dead?

A. Yes, sir.

10 Q. He died after this assessment was made?

A. Yes, sir.

Q. Before it was approved?

A. After.

Q. I mean the assessment that you actually made between the railroad and East 33rd street?

A. Yes, sir; he died after that was approved.

Q. What street railways run through Broadway between East 18th and East 33rd streets?

A. There are two tracks run through, The Jersey City and Hoboken.

20 Q. A double track?

A. Yes, sir.

Q. Of the Paterson Railway company?

A. Yes, sir.

Q. That has since come into the ownership of the Jersey City and Hoboken?

A. I don't know.

Q. Do you know whether the Paterson Railway company which is running and operating these tracks on Broadway is the successor of the Paterson and Little Falls Railway company?

30 A. Only what I hear on the streets. I hear outsiders say that they operate them now.

Q. These four tracks have been running through this part of Broadway for a great many years?

A. Quite some time.

Q. Before this improvement was made what was the condition of the roadway on Broadway between these points?

A. Very poor condition. The macadam was in very poor condition.

Q. The macadam was laid by the City of Paterson?

A. Yes, sir.

Q. When you made your assessment you did not know of any ordinances that the city had passed in reference to the Railway company? 10

A. No, sir; I did not.

Q. So that when your assessments for special benefits were made the railroad company was not included?

A. No, sir; it was not.

Q. No assessments were made against the railway company?

A. No, sir.

Q. You assessed for special benefits only those who owned real estate? 20

A. Yes, sir.

Q. How was the real estate regarded?

A. We were given to understand that we could not assess the railway company because they had not made any agreement with the city to pay it.

Q. Because they did not own real estate?

A. We did not consider that was real estate—road bed. There was nothing in the law specifying railroads.

Q. Did you consider that they were receiving any benefits from this improvement? 30

A. Of course they were receiving benefits.

Q. Will you describe the benefits they were receiving?

A. We never considered the amount of benefit but they received some benefit. We never took the benefit into consideration.

Q. In assessing special benefits against the property owners what was the method that you pursued?

A. We went along and viewed each property and got the size of the plot.

Q. The depth.

A. We examined the depth and the frontage. Besides after we got through with the whole street we agreed about what was fair to pay on each lot.

Q. Did you reckon the benefits as to the whole area or frontage.

A. It made a big difference whether the plot was 100 feet or 10 feet deep in our assessment.

Q. Did you make different assessments as to the different depths?

A. Not if they were equally benefitted, not if they had a large enough plot to build a good sized house on.

Q. The purpose of my question is: In reckoning the special benefits to the abutting property owners you regarded the entire improvement from curb to curb?

A. Yes, sir; the whole width of the street.

Q. That is, the special benefit to the property owners on one side was reckoned to the middle of the street?

A. The whole street was taken as a benefit.

Q. I find in your report that there are a great many properties with equal frontage and different depths assessed at the same amount. How can you explain that?

A. If it was deep enough to build a good sized house on we would not consider the benefits. If it was large enough say, from 75 to 100 feet deep, we

would take that in ; if it was 25 feet deep we consider it was not benefitted as much.

Q. If it ran back half a mile you would not take it in ?

A. No, sir. If it went back 100 feet about or 75 feet it would be just as good as 100 feet as far as putting the building on. If we had a narrow strip 10 or 15 feet fronting on the street we would have to make a big difference. It would not be benefitted as much as the other.

10

Q. As a matter of fact was there any difference made at all in any case for the reason that you have just mentioned ?

A. The lots all on that street front equally and all have a depth of 100 feet or 75 feet so that no difference was made on that account. They all had enough to put a house on.

Q. Where you were assessing special benefits against the abutting lots with houses on did you make any difference as to the depth ?

A. Not if they had room enough to put a good sized house on. 20

Q. Where the house was actually on the lot did you make any difference as to the question of depth ?

A. Not if they were large enough to put a fair sized building on.

Q. Well, suppose the house was actually on. Take the case where you have a lot on which there is a house ; did you consider the depth in that case ?

A. Yes, sir ; in all cases.

Q. Where there was a house actually built did you make any difference in the assessment where the frontage was the same and the depth different ? Suppose the property was 25 feet in depth. 30

A. Not if the plot was large enough to put a fair sized house on.

Q. If the house was on the lot?

A. If the house was a good fair size it would not make any difference.

Q. Did you make a difference where there was some small sized house?

A. Where the plot was small we would make a difference.

10 Q. Did you make any difference in your assessment according to the respective values of the property?

A. No, sir.

Q. None whatsoever?

A. No, sir.

Q. It is a fact that the property on Broadway between the railroad and East 33rd Street is of different values along the railway company's tracks?

A. Yes, sir; I should think it was.

20 Q. The proportion assessed against the city and against the property owners is about one-third to two-thirds?

A. More than one-third; 18,000 is more than one-third of 45,000.

Q. How did you arrive at the assessment against the city on each?

A. After we got through assessing the property we put the balance against the city.

Cross Examination by Mr. Dunn:

30 Q. Will you please look at the report and tell us what is the total cost of that improvement from the railroad to East Thirty-third street as stated in the report of the examiners?

A. The total cost is \$45,614.55.

Q. What part of that was assessed upon the city?

A. \$18,739.39.

Q. In making the assessments upon the different properties along the street did you assess the different lots and plots in proportion to the benefits that you considered the property had actually received by the improvement?

A. We did.

By Judge Scott:

10

Q. What was the cost of the street intersections?

A. Part of that goes to the city and part to the property owners?

Q. What part?

A. About two-thirds to the city and about one-third to the property.

Q. The part of the roadway running along the face of the property the figures were reversed, about two-thirds to the property owners and one-third to the city?

20

A. It would show nearly that.

Q. These street intersections were assessed all along in that way.

A. All the intersections.

Q. Did you observe any different rule as to the intersections on the roadway?

A. What do you mean?

Q. I mean by that when you were considering the intersections you said that you assessed against the city about two-thirds, and against the property owners one-third?

30

A. We thought the property owners ought to pay some part.

Q. How did you arrive at that, two-thirds against one and one-third against the other?

A. We thought they were benefitted that way.

Q. You thought the city was benefitted two-thirds and the property owners one-third?

A. Yes, sir.

Q. Did you make an assessment for curbing?

A. Yes, sir.

Q. Did you assess any of the cost of the curbing against the city?

10 A. Yes, sir; we did.

Q. How much?

A. Twenty cents a foot in some cases. One-third of whatever the cost was; two-thirds against the owner and one-third against the city. If it was sixty cents we put twenty cents against the property owner and forty cents against the city.

Q. Did you make any allowance for the old curbing?

A. Yes, sir; twenty cents a foot.

Q. Did you consider that allowance in making this assessment?

20 A. Yes, sir; that twenty cents would pay for the curb, and the property owners had the old curb besides.

Q. How do you know that?

A. I seen some of them get it. I knew Mr. Dean got it. I seen it lying on his property.

Q. Did the city take any of the curbing at all?

A. I don't know. I don't think so. I understood that the property owners were all notified to take it if they wanted it.

30 Q. You understood that?

A. Yes, sir; I was not present but I heard the different contractors say that on the street.

Q. You have described your assessment as to the curbing; two-thirds against the property owner and one-third against the city; as to the pavement itself you reverse the figures, two-thirds against the property and one-third against the city?

A. No, sir; it did not figure out that way?

Q. Now, did not you adopt that method?

A. No, sir.

Q. That is all.

JAMES B. DEAN, the prosecutor in the above stated cause, being duly sworn according to law, testified as follows: 10

Direct Examination by Judge Scott:

Q. You are the prosecutor in this case?

A. Yes, sir.

Q. You have lived on Broadway between East Eighteenth and East Thirty-third streets, how many years? 20

A. Thirty-five years.

Q. You own property—for how long?

A. Since 1861.

Q. You still own it?

A. Yes, sir.

Q. And you still live up there?

A. Yes, sir.

Q. You own the place where you live?

A. Yes, sir.

Q. Do you own property in any other part of the city? 30

A. No, sir; not now.

Q. How many feet front on Broadway have you?

A. 150 feet.

Q. How deep is it?

A. I own up to Fourteenth avenue.

Q. How many feet is that?

A. I don't know; I never measured it up. I never looked on the map to see how many feet it was.

Q. How long has the Railway Company been running past your house through Broadway?

A. I guess pretty near thirty years.

Q. It was then the Paterson and Little Falls Horse Railway company.

A. Yes, sir.

Q. It has since become what?

A. It is changed. I don't know what the name is now.

Q. Have they double tracks now?

A. Yes, sir.

Q. They have had them for how long?

A. Quite a good while; ever since this electric road got in operation. It was only single tracks before that.

20 Q. Before this permanent improvement was made of red brick had Broadway been improved?

A. Macadamized.

Q. By the city?

A. Yes, sir.

Q. For how many years?

A. I think it was macadamized a year or two after the horse railway got in operation.

Q. It had been kept up by the city until this permanent improvement was made?

A. Yes, sir.

30 Q. Was it kept in fair condition?

A. Middling. It wore out pretty well about three feet out from the railroad track. The track stuck up in some places 3 or 4 inches.

- Q. Did the railway make any improvements?
 A. Not that I know of.
 Q. Did the railway repair it at all?
 A. No sir; not that I know of.
 Q. Whatever repairs or improvements were made was done by the city?
 A. Yes, sir.
 Q. At the time this permanent improvement was made, Mr. Dean, describe what the railroad property consisted of, the two tracks and what else? 10
 A. The tracks and ties.
 Q. Do you know the size of rails they had?
 A. No, sir.
 Q. Where they heavy rails?
 A. No, sir; not very heavy.
 Q. I mean the rails that were on since the improvement was made?
 A. Yes, sir; quite heavy. I think the rails were made of 3 inch may be 4 inch.
 Q. How?
 A. In width. A rail is from three to four inches. 20
 I did measure it then but I forget.
 Q. Do you know of anything special that was done for the benefit of the railway as to the paving of the street?
 A. I think it is a great thing for the railway company.
 Q. In the actual performance of this contract was anything special done for the railway company?
 A. It was done for the streets and I am satisfied that the company got a benefit.
 Q. Your property was curbed before this assessment was made? 30
 A. Yes, sir.
 Q. Was it a good curb?

A. Yes, sir; it was done by the city.

Q. Paid for by you?

A. Yes, sir.

Q. Was it as good a curb as has been since put there?

A. It was at the time. I know the other curb sits up three or four inches above the railroad now. The other curbing sat up as high as that before.

Q. As far as curbing was concerned it was as good as the present curbing?

10 A. The old curbing was not quite so wide; it did not look so well.

Q. Did it not serve the purpose just as well?

A. Just as well in my estimation. I did not see anything different.

Q. What was done with the old curbing?

A. It was threw up on the bank; it laid there a couple of weeks and I hired Clark to cart it back on to one of my lots and it lays there yet.

Q. They simply dumped there upon the property?

20 A. Yes, sir.

Q. You received no notice about it?

A. No, sir.

Cross Examination by Mr. Dunn:

Q. How long had this old curbing of yours been down?

A. A good while. I don't know how long, it had not rotted any.

30 Q. How many years had it been down?

A. Maybe fifteen or twenty years. I could not tell you exactly.

Q. Was it down before the street car tracks were put in the street ?

A. Yes, sir.

Q. How many years is it since they were put in the street in front of your property ?

A. I don't recollect.

Q. Can't you give us your best recollection on the subject ?

A. I don't think that there were any tracks out in front of my house until after the electric cars ; they had ties laid in front. They agreed to go through Thirty-third street and they went through Twenty-fourth street and they had these ties laying there on the ground and they took them up. I don't think there was any cars running up there before the electric cars were run up. 10

Q. At the time that the car tracks were first laid up through Twenty-fourth street past your house, did they lay a double track ?

A. I don't know whether they did at that time or not ? 20

Q. When they were first laid past your property how far did they extend ?

A. They went to Thirty-third street.

Q. Was that then the terminus of the road ?

A. They went down Vreeland avenue ?

Q. And then where did the road go after going to Vreeland avenue ?

A. To Cedar Lawn.

Q. How did they get back from Cedar Lawn ?

A. Down Park Avenue. The cars that went up Park Avenue came back, the others went around and came down Park Avenue. There was no Cedar Lawn cars went around Park Avenue. 30

Q. When Broadway was improved by this perma-

ment improvement—the brick pavement; was there any portion of the surface excavated below the surface of the road as it before existed?

A. I do not understand you.

Q. Was there any part of the roadway as it existed before the brick improvement taken out and removed to make way for the improvement?

A. It was dug out when they came to lay the brick down.

10 Q. That is what I am asking; was it dug out for this improvement?

A. For the roadbed to lay the brick in of course.

Q. How deep did they excavate to reach the proper grade for the improvement along in front of your property and down towards 33rd Street, you know?

A. No, sir.

Q. About how deep?

A. I can't tell you for I don't know; I did not measure.

Q. Was it six inches or a foot?

20 A. Yes, sir; it was six inches.

Q. Was it a foot?

A. I don't know whether it was a foot or not.

Q. Prior to the making of that improvement was not Broadway in a very bad condition?

A. Some parts of the street were in bad condition.

Q. Between the railroad and East Thirty-third street?

A. That was in bad condition.

Q. The macadam had become pretty well worn out?

30 A. Yes, sir; more so alongside the railroad tracks than anywhere else.

Q. The property owners along there were quite desirous of having the street improved, were they not?

A. Some of them in one sense of the word. I said I would rather have macadam than to have the brick or anything else, and would rather have it today. The cars we have go along there now—
(interrupted)

Q. The majority of the people between the railroad and East Thirty-third street were in favor of having the improvements?

A. Yes, sir ; I suppose they were.

Q. There is no doubt about that ?

A. They wanted the road-bed fixed in some shape
or other. 10

Q. You spoke about the curb that you had there. Do you know what the width of your old curb was ?

A. I measured some of it. Some of it was $4\frac{1}{2}$ inches and some $4\frac{1}{4}$ inches.

Q. What is the depth ?

A. $17\frac{1}{2}$ inches. Some you could not tell much about. When they tore it up they broke it all to pieces, curbs and gutters.

Q. Was not some of it 13 or 14 inches and some
only 3 inches in width on the top ? 20

A. No, sir ; not that I measured.

Q. Was not some of it in front of your place 3
inches in width on the top ?

A. No, sir ; not that I measured.

Q. Was not some of it in front of your place 3
inches in width on the top ?

A. No, sir.

Q. And was not the greater part of it 13 or 14
inches wide on the side ?

A. It all broke off with prying it out. Some of
it measured 17 inches. 30

Q. I am talking about the others.

A. I don't know.

Q. Did not the curb along there become out of plumb and out of line?

A. Not mine.

Q. Was not there a difference in width on the top in some of the curbing in front of your property?

A. I did not measure that.

Q. I am speaking now of the thickness?

A. Yes, sir; I understand.

Q. Did not you receive a notice from the street
10 department that the curbing that would be used for the improvement would be five inches thick on the top and twenty inches wide?

A. No, sir; I did not.

Q. Did you receive any notice from the department that all curb belonging to property owners if they wanted it, would be at their disposal?

A. No, sir; I did not.

Q. You were home when the curb was taken up?

A. No, sir; I was not in altogether.

Q. Where were you?

A. Down town; I would go back to my dinner
20 and go down town again.

Q. You saw the contractor working there?

A. Yes, sir.

Q. You saw him take it up?

A. Yes, sir; I saw him at different times when I was home.

Q. Did you ever say anything to him about it?

A. No, sir.

Q. Did you ever ask him about leaving it up on your land?

A. No, sir.
30

Q. You had it placed where you wanted it by Mr. Clark—you got Mr. Clark to place it?

A. It laid for about two weeks and I hired Mr. Clark with his team to put it up on one of my lots.

Q. It is there yet?

A. Yes, sir; the curb and the gutters both.

Q. You got both?

A. Yes, sir; and the cobble stones were taken up too.

Q. You say the present curb looks better than the old curb?

A. Yes, sir. 10

Q. It is all uniform?

A. It looks nicer; a little more in shape and a little wider on the top.

Q. It had to be a deep curb in order to go along with the improvement, did it not?

A. I don't know anything about that. I don't know whether those bricks could not have been laid there with the old curb.

Q. If some of the curb was three inches thick on the top and some of the neighbors' curb four inches thick on the top, and some of the neighbors again three inches thick on the top, and the next five inches thick on the top, would you consider that a better way to have it curbed in order to make a good job of it? 20

A. Yes, sir.

Q. How do you claim, Mr. Dean, that the street railroad is specially benefitted by reason of the improvement?

A. They have a good solid bed now which they did not have before; which these concrete people put down there. Their ties have been placed into this concrete which is so dry that they can't rot, and it is a big improvement and a big benefit to the street railway company in my estimation. 30

Q. Is it no benefit to the property owners to have the railroad laid on such an improvement?

A. I don't think it is. I think it is a big nuisance. If it was asphalt it would be different. You can't hardly sleep at nights with these cars going along.

Q. How late do they run?

A. Nearly one o'clock.

Q. That is all.

10

CHARLES REYNOLDS, a witness produced on the part of the prosecutor, being duly sworn according to law, testified as follows:

Direct Examination by Judge Scott:

Q. You own a couple of the lots on Broadway between East Eighteenth and Thirty-third street where this permanent improvement has been made?

20 A. Yes, sir.

Q. When was it made?

A. I should judge a year ago last winter or last fall; 1899.

Q. At that time the Paterson Railway company had its tracks through the streets?

A. Some company had four parallel rails.

Q. Can you tell me what the railway did with its tracks at that time?

A. I saw the old tracks taken up, a trench dug and new ties and new rails put down, and the trench left open.

30 Q. By the railway company?

A. Yes, sir.

Q. What did the city do?

A. I saw the contractor of the city, Mr. John R. Lee, fill in between the ties with concrete up to the regulation depth, corresponding to the rest of the street, and put a sand layer on top of the concrete and then lay the tracks on top, cementing the bricks in the trench that the railway company had left open.

Cross Examination by Mr. Dunn :

Q. Prior to this improvement Broadway was in quite a bad condition and in need of repair? 10

A. No, sir ; it was a good macadamed bed. All it needed was a good top dressing. There were some holes, about one to a block, the holes where put six inches in drain ; simply depressions in the roadway, and a little top dressing would have made them all right, and it would be better for the convenience of the property owners than the present road.

Q. Are you one of the persons that went around with the petition seeking to get a different kind of brick used ; white brick ?

A. Yes, sir ; we preferred white to red brick. 20

By Mr. Scott :

Q. That was because they were going to put down some brick ?

A. Yes, sir ; not because we wanted brick, but because we did not want the red brick.

Q. You had to take brick and you preferred the white brick ?

A. Yes, sir. 30

By Mr. Dunn :

Q. And the property owners could not come to an

understanding about it owing to a difference in the price?

A. Not in the time which was allowed for that purpose.

By Fudge Scott :

Q. The permanent road-bed is not a benefit to your property?

A. I do not consider it so.

10 Q. Is it an injury?

A. I think so, so far as my comfort and the enjoyment of my property is concerned.

By Mr. Dunn :

Q. Why?

A. Because it is so noisy. Formerly we would sit on the porch and enjoy our conversation in the evening, but now if we are conversing and a car comes up or an approaching horse and wagon, we have to wait
20 until they get opposite to and pass our house and out of sound; and by that time we have lost the thread of our conversation and we flounder frequently. The cars are more noisy than formerly. There is a reverberation that comes from the pavement that did not come before when cars and horses and wagons are passing over it.

Q. That reverberation is due to the solidity of the pavement and the roadbed?

A. It is due to the pavement.

Q. To the solidity of it?

30 A. I could not testify as to that; there might be an air chamber underneath which causes a rumble, or an echo, or a volcano. It might be, I don't know,

Q. That is all,

HOBART TUTTLE, ESQ., a witness produced on the part of the prosecutor, being duly sworn according to law, testified as follows :

Direct Examination by Judge Scott :

Q. What office do you hold with the Paterson Railway company?

A. Treasurer.

Q. Is that the name of the corporation now, "The Paterson Railway Company?" 10

A. Yes, sir.

Q. That is the company that operates the railways?

A. Yes, sir; outside of the line which runs to Hoboken, and what was the old Paterson Central Electric Railway Company which was merged in the Jersey City, Hoboken and Paterson Company.

Q. The line running from East 18th Street to East 33rd Street is operated by the Paterson Railway Company? 20

A. Yes, sir.

Q. Is that company the successor to the Paterson and Little Falls Horse Railway Company?

A. Yes, sir; the Little Falls Company was chartered in 1866, Laws of 1866, page 1068. They issued two mortgages which were subsequently foreclosed, and the road sold to Helmas Romaine, Garret A. Hobart, E. T. Bell and Gerrit Planten in 1877. It was then reorganized into the Paterson and Passaic Railway Company in 1888, with a number of other roads including the Paterson and Passaic Railway which was the old Cedar Lawn road, and the Paterson and Haledon Horse Railroad, and the Passaic, 30

Garfield and Clifton Company, into the Paterson Railway Company which is the present organization.

Cross Examination by Mr. Dunn ;

Q. The Cedar Lawn road was called what ?

A. The Paterson and Passaic Horse Railway Company. That was sold out and reorganized into the Paterson and Passaic Railway Company.

10 Q. Where did the Paterson and Haledon road run ?

A. To Haledon.

Q. From what point ?

A. I don't know that exactly ; I presume somewhere down around lower Broadway. West street I think they used to start from.

By Mr. Merrey :

Q. You speak about the railroad company being sold out. Do you mean the entire franchises, roads, tracks, and rails, the entire property of the company ?

20

A. Yes, sir.

By Judge Scott :

Q. How long have you been treasurer of this company ?

A. Ever since it was electrically equipped ; about that time ; I think it was since 1892.

Q. Ever since it has been run by electricity ?

A. Yes, sir.

30 Q. Since you have been such, has the company running through this part of Broadway between East Eighteenth street and East Thirty-third street been accustomed to repair the street ?

A. That I cannot say. That is always left to the manager of the road.

Q. That part of Broadway had been macadamized for a good many years up to the time this improvement was put in?

A. I remember from observation of its being macadamized some years ago from the railroad up to Thirty-third street.

Q. That was the condition of the road; it was macadamized until this brick improvement was made about a year and a half ago? 10

A. Do you mean in good condition?

Q. I mean that is the kind of pavement; it was a macadamized road?

A. Yes, sir; a macadamized street.

By Mr. Dunn :

Q. What condition was it in from the Susquehanna Railroad to Thirty-third street at the time this improvement was made? 20

A. My recollection is that it was in pretty bad condition. I used to ride a bicycle over it occasionally.

Q. The macadam was about worn out, was it not?

A. Yes, sir.

By Mr. Scott :

Q. It had been macadamed by the city and renewed now and again, had it not?

A. Now, you are getting me into matters I do not know anything about; all I know is from observation. I don't live in that locality and only saw it as I passed it. 30

Q. Was that true of Broadway from Main street up?

A. I think the lower part was macadamized at a later period. It seems to me that it was in better shape than the part above the Susquehanna.

Q. Was not Broadway one of the best kept streets in Paterson as far as its road-bed was concerned?

A. I don't know, I can't answer that question. That question is outside of my line. If I was going to say anything I would say that I considered the brick pavement was a great improvement to the street.

10 Q. You don't live on Broadway?

A. No, sir.

Q. You never did?

A. Yes, sir; I lived there all last year, and this past winter in a house owned by Mr. Muzzy.

Q. On the lower part?

A. Yes, sir.

Q. Broadway is the principal residence street in Paterson for fine residences?

A. Yes, sir.

20 *By Mr. Dunn:*

Q. They all have been built there since the street railroad cars went through; the finer residences?

A. Yes, sir.

Q. That is all.

At this point adjournment was taken until Saturday at one o'clock in the afternoon at the same place.

NEW JERSEY SUPREME COURT.

JAMES B. DEAN, <i>Prosecutor,</i> <i>vs.</i> THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON. <i>Defendants.</i>	}	<i>On Certiorari</i>	10
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On Saturday, May 4th, counsel met pursuant to adjournment and the taking of depositions was adjourned until Saturday, May 11th.

On Saturday, May 11th, counsel met pursuant to adjournment at ten o'clock in the forenoon.

APPEARANCES:

MICHAEL DUNN, ESQ., for the Mayor and Aldermen. 20

EDWARD F. MERREY, ESQ., for the Prosecutor.

By Mr. Dunn.—On the part of the defendant I offer in evidence the minutes of the meeting of the Board of Aldermen of the City of Paterson, held June 5th, 1899, and read the following extract showing that the original contract for the paving of Broadway from Main Street to East Eighteenth street was enlarged and extended by resolution of the Board and the consent of the 30

contractor from East Eighteenth street to the New York, Susquehanna and Western Railroad and that that contract under consideration in this case was afterwards modified so that the part between East Eighteenth street and the railroad is omitted and is not included under the "Lee" contract, and the same is admitted in evidence and is marked Exhibit D. 1., by the Examiner.

10

JOHN VAN WYCK, a witness produced on the part of the defendant, being duly sworn according to law, testified as follows :

Direct Examination by Mr. Dunn :

Q. Where do you reside?

A. I reside in the first ward in the city of Paterson, 70 Holsman street.

Q. What is your trade?

20 A. Mason and builder.

Q. Did you have anything to do with the work in the improvement of Broadway between the Susquehanna railroad and Thirty-third street?

A. Yes, sir.

Q. What did you have to do with that improvement?

A. I had to do all the improvement, that is from the—I was Inspector.

Q. Appointed by the City Engineer?

A. Yes, sir.

30 Q. You had charge of the inspection of what?

A. The curb stones and the headers across the street ; the intersections and concrete and the brick and the grouting.

Q. Between what points?

A. Between the Susquehanna railroad and Thirty-third street.

Q. Who was assisting you there?

A. Mr. Gibbon.

Q. What part did he have?

A. Up as far as twenty-seventh street from the Susquehanna.

Q. You went from Twenty-seventh street alone?

A. Yes, sir; on the curb stone. 10

Q. While inspecting there on that street what did you do in regard to informing the property owners about the taking of their curb?

A. That they could take them wherever they pleased; that they could take them away when they pleased and the sooner the better.

Q. Did you notify in your district from Twenty-seventh street to Thirty-third street all the property owners on both sides of the street?

A. Most every one.

Q. What was done in regard to using any of the old curb that was in there? 20

A. Some that were the regular size—we used them.

Q. Did you make an allowance for that?

A. Yes, sir.

Q. To the property owners?

A. Yes, sir.

Q. Those that were not the regular size—what was done with them?

A. We put them to one side and the property owners took them away or sold them.

Q. Did some of them take them away and some sell them? 30

A. Yes, sir; some sold them.

Q. And some took them away?

A. Yes, sir.

Q. Were all used that could be used?

A. Yes, sir.

Q. And in every instance where the curb was used you made an allowance?

A. Yes, sir; we measured it and only charged them for the work that had to be done to it. We did not charge them for the stone.

10 *By Mr. Merrey:*

Q. Did you say that you notified the property owners that they could take the curb?

A. Those that we could find home—we notified them, and we left word at their houses.

Q. Did you tell Mr. Dean?

A. He was told.

Q. Who told Mr. Dean?

A. Mr. Gibbons.

Q. You don't know about that?

20 A. No, sir; that is Mr. Gibbons.

By Mr. Dunn:

Q. Did you afterwards see Mr. Dean take the curb stone himself?

A. I seen him put them just on the other side of the sidewalk and leave them for a while until the job was finished.

Q. The city did not take them?

A. No, sir; he was well prepared; he was using them himself, he had plenty of property around.

30

Cross Examination by Mr. Merrey:

Q. Who said what curb was to be used again?

A. Those that were the full size.

Q. Who decided that?

A. The engineer.

Q. Did you measure any of the old curb?

A. Yes, sir.

Q. Did you measure Mr. Dean's

A. We did not use any old curb stone in his. They were not of the size.

Q. Did you measure it?

A. Yes, sir: we measured it. 10

Q. Did you?

A. Yes, sir.

Q. How much did it measure?

A. Some 16 inches wide by 4 inches and 3 inches thick.

Q. How long ago was that?

A. I think it was a year ago last Fall.

Q. How do you remember so long the width of Mr. Dean's curb?

A. Because it laid on the sidewalk and Mr. Dean did not take that away. They were a bother to the contractors, they lay there so long. 20

Q. Did you measure all the curb yourself?

A. All the curb that was to the full extent, about 20 inches. Those that were less than 19 inches we did not use.

Q. Did you do that?

A. I did measure some of them.

Q. Did you measure the new curb?

A. Yes, sir.

Q. Do you know that some of that is only $4\frac{1}{2}$ and $4\frac{3}{4}$ inches on top? 30

A. None whatsoever $4\frac{1}{4}$ inches.

Q. When did you measure that?

A. When I was there ; I would not allow that to go in.

Q. If there is a curb there now 4 1-4 inches, how did it get there ?

A. My recollection—Mr. Gibbons was there ; it is not there with my recollection.

Q. It is possible that it is there now ?

A. Impossible in my estimation ; because it was not allowed to go in 4 1-4 inches.

10 Q. With regard to the gutter paving, the cobble stones in the gutter, what became of them ?

A. The owners could have them provided they took them away. If not they were put on the cart with the dirt.

Q. Who took that away ?

A. It went to the dump I suppose.

Q. What did you do with curb along there that you took away that the property owners did not take ?

A. I did not see anybody taking that away unless it was sold to somebody by the property owners.

20 Q. You do not know whether any was sold or not ?

A. Yes sir ; good ones, too, for the size.

Q. That is all.

JAMES GIBBONS, witness produced on the part of the defendant, being duly sworn according to law, testified as follows :

Direct examination by Mr. Dunn :

30 Q. Where do you live ?

A. Main street.

Q. What is your trade ?

A. Mason,

Q. Were you inspector on part of Broadway between the Susquehanna and East Thirty-third street ?

A. Yes, sir.

Q. How far down from the Susquehanna did you have charge ?

A. From the railroad up.

Q. How far ?

A. To Twenty-seventh street.

Q. What were you inspector of ?

A. Curbing.

10

Q. Alone.

A. Yes, sir.

Q. Did you have the inspection in front of Mr. Dean's place ?

A. I don't know the man at all.

Q. This gentleman here ?

A. I don't know him. I never saw him before to my knowledge.

Q. What did you do in regard to informing the property owners along there about taking their old curb that was not fit for use ?

20

A. I went and asked if they wanted the old curb ; they were in our way. Some said they wanted them and some said they did not. Them that wanted them came with wagons and took them away. I don't know who they were.

Q. The city took none of them ?

A. Not as I know of.

Q. All those that said they wanted them, they were left there for them ?

A. Yes, sir.

Q. And those that said they did not want them ?

30

A. The contractor took them up and removed them out of the way. They were in the way.

Q. How did you inform the people about what they could do with the curb. Did you go into their respective houses ?

A. Yes, sir ; I would ask them.

Q. You don't remember Mr. Dean's house. It sets off back from the street ?

A. No, sir.

Q. The curb was an old curb that was not used. Why wasn't it used ?

10 A. They were not the regular size. They were not according to what was called for.

Q. What was the specification ?

A. Five by twenty.

Q. Did you use some four and a half ?

A. Not of the old curbing.

Q. Was it necessary that it should be twenty inches about ?

A. Yes sir.

Q. Why was it necessary that it should be so wide ?

20 A. They had to go down so deep in the ground.

Q. Why was that necessary ?

A. It was called for in the specification. That is all I know of it.

Q. What can you say as to its being necessary in order to make a good job with the concrete bottom ?

A. It had to go down in the concrete.

Q. It made it more firm ?

A. Yes, sir ; it made a better job of it.

30 Q. What was the advantage of having it five inches thick on the top in respect to making a better job ?

A. It is very few curbing that goes in less than five inches.

Q. Experience has demonstrated that that is about the size.

A. Yes, sir.

Q. So that the curbing is exactly uniform in thickness ?

A. Yes, sir ; all uniform.

Cross Examination by Mr. Merrey :

Q. You don't know whether Mr. Dean got any notice to take his old curb away ? 10

A. No, sir.

Q. You don't know whether any of the property owners got any notice ?

A. No, sir.

Q. You simply told anybody you saw in the house ?

A. I would ring the bell and ask them if they wanted the old curbing. Some said "yes," and some said "no." The contractor came—Johnnie Cramer, and took them up. I don't know what happened after that. 20

Q. You don't know whether the people took them ; whether people took them or whether the city took them, or whether they were stolen or whether the property owners took them ?

A. No, sir ; it was none of my business.

Q. Do you know that the curb in front of Mr. Dean's place is only 4 1-4 and 4 1-2 inches ?

A. I don't know.

Q. You don't know whether that is true or not ?

A. No, sir ; I did not measure it.

Q. Why is not curbing that is only four inches on the top just as good as five inches for the purpose of this street ? 30

A. It is not what is called for.

Q. That is the only reason?

A. Yes, sir.

Q. It would hold the sidewalk up just as well?

A. I don't know, there is more strength there. It is sure to be more solid; if you had a two inch curb it would not be as good as six or four or three.

Q. Isn't it a fact that the new curbing varies in width from one to one and a half inches?

10 A. Yes, sir.

Q. It is not any more uniform than the old?

A. Yes, sir; the old curbing was no good. It was not worth carrying from here to across the street.

Q. That was taken out?

A. Yes, sir; it was rotten.

Q. It was broken in taking it out?

A. Yes, sir.

Q. Why would not curbing seventeen inches deep do as well as twenty inches?

A. It was not called for in the specification.

20

By Mr. Dunn:

Q. You could not get the surface required above the ground, could you?

A. We had to go down to the same depth as the concrete.

Q. You had to have the curbing how high above the surface of the paving?

A. Six inches from the brick.

30 Q. If the curbing was only 17 inches wide you could not get the required height?

A. No, sir.

Q. Did you pass and accept any curbing that was not the required size, 5 by 20?

- A. We marked it all off.
- Q. So that in your section there was no curbing that was not 5 by 20?
- A. No, sir; five inches thick and twenty inches wide.
- Q. You had from the railroad up to the point that Mr. Van Wyk took?
- A. Yes, sir.
- Q. Did you use any old curb that belonged to the property owners in that section? 10
- A. No, sir.
- Q. Why?
- A. It was not fit to go in; three and a quarter and four inches, and some of it three inches.

By Mr. Merrey:

- Q. There is a railroad through the street?
- A. Yes, sir.
- Q. When the street was concreted the tracks were lowered, were they not? 20
- A. I don't know about the tracks; we had nothing to do with that.
- Q. You were there?
- A. Yes, sir.
- Q. You know the tracks were lowered?
- A. I don't know.
- Q. Don't you know that the crown of the old macadam was at least a foot higher than the crown of the present brick?
- A. It looked that way in some parts.
- Q. The tracks were lowered, were they not? 30
- A. I would not be positive.
- Q. You know that they were?

A. Some places they were lowered and some places they were not. The contractor that had the brick did that.

Q. The contractor that had the brick did that, did he not ?

A. I don't know ; I had nothing to do with that.

Q. Mr. Lee was the contractor.

A. Yes, sir.

10 Q. You knew the same man that took the street down lowered the tracks ?

A. I suppose they had to lower the tracks to get the concrete.

Q. The concrete was all rammed in under the ties ?

A. There is a man can tell you about that.

Q. Were not you there when the concrete was put in ?

A. Yes, sir ; it was not my place to look after it.

20 Q. That makes the tracks quite solid, doesn't it ?

A. Yes, sir.

Q. It makes them so that they won't move any ?

A. Yes, sir.

Q. And make them noisier ?

A. I don't know.

Q. Don't you know that it would ? Wouldn't a sandy bottom make less noise ?

A. I don't know ; two irons coming together will make a noise.

30 Q. Suppose one has a spring under it ?

A. If it was a piece of wire it would be just the same.

Q. That is all.

JAMES B. DEAN, the prosecutor in the above stated cause, being duly sworn according to law, testified as follows :

Direct Examination by Mr. Merrey :

Q. Since the last hearing have you measured the new curbing in front of your place ?

A. Yes, sir.

Q. How wide is it ?

A. Some of them are 4 1-4, and some a little less, 10 and some 4 1-2.

Q. Is it uniform ?

A. No, sir ; not according to the specification that was sworn to five inches. Some measures four inches and one-fourth and four inches and a half.

By Mr. Dunn :

Q. You haven't any that measure five inches thick and twenty inches wide ?

A. No, sir ; some in front of my house aint that width. 20

Q. That is all.

JOHN NORWOOD, a witness produced on the part of the prosecutor, being duly sworn according to law, testified as follows :

Direct Examination by Mr. Merrey :

Q. You own property on Broadway and were assessed for this street improvement ?

A. Yes, sir.

Q. Were you ever notified to remove that curb ? 30

A. No, sir.

Q. In any way ?

A. No, sir.

Q. You have not measured the curb in front of your place ?

A. They have used all my curb with the exception of about ten or twelve ; it may be fifteen feet. I am assessed for 180 feet there I believe. My curbing is all used excepting one of them that broke or they could have used that. My curb was a regulation curb when I put it down.

10 *Cross Examination by Mr. Dunn :*

Q. Five by twenty ?

A. Yes, sir ; about that.

Q. You were allowed for it in the assessment ?

A. I don't think so. I haven't got my bill. I was to pay for the dressing.

Q. That was by arrangement with Mr. Lee.

A. Yes, sir.

Q. You don't know whether you were allowed for it or not in the assessment ?

20 A. I don't think so according to the amount of the assessment.

Q. That is all.

30

Exhibits.

AN ORDINANCE CONCERNING THE PATERSON AND
LITTLE FALLS RAILROAD COMPANY.

Whereas a majority of the owners of lands in front of the same have consented to the construction of a Horse Railroad through Broadway from Bridge street to East Thirty-third Street in the City of Paterson, by Paterson and Little Falls Horse Railroad company, therefore, 10

The Board of Aldermen of the City of Paterson do ordain as follows :

Section 1. That the said Board of Aldermen do hereby consent to the construction of the said horse railroad through said portion of said Broadway by said company, provided that the rails for the track or tracks of said horse railroad shall be of such style and width as are laid and used for horse railroad between the Pavonia avenue and Cortlandt street ferries in the City of Jersey City in the State of New Jersey. 20
And provided, further, that such rails, track or tracks, shall be laid, built and constructed so that when completed and finished the same may be flush or even with the surface of the said Broadway when the same may be laid, built or constructed. And provided further that the said rails shall be laid so as to have at least ten feet of space in width between the outside of each of said rails or tracks and the line of the curbstone next to the same on either side of said Broadway, except that such place or places as may be established by said Company as places of turnout and passage of cars by each other on said track or tracks ; and provided further, that 30

no car or cars other than for the transportation of passengers shall be run or drawn over said track or tracks; and provided further that this consent shall not be construed as releasing any right which the city may now have to hereafter obtain, or require the said company to pay for any license for or tax upon the cars run or drawn over their said railroad.

Section 2. That in case of neglect or refusal of said company to perform or comply with the provisions of
 10 the first section of this ordinance, they shall be liable to a penalty of twenty-five dollars for every day they shall so neglect or refuse so to do, after receiving written notice from the Mayor, Street Superintendent or Street Committee.

Section 3. That the provisions of sections three, four, five, six, seven, eight and nine, of the ordinance—entitled, “An ordinance to regulate and control the Paterson and Little Falls Horse Railroad, through the city of Paterson,” passed July 27th, 1868, be and the
 20 same are hereby extended, and shall hereafter apply to said railroad in and through said portion of said Broadway, excepting that said company shall keep in repair the distance of two feet on the outside of each rail of the track or tracks of said railroad in and through said portion of said Broadway, instead of 12 inches as provided for in the third section of said ordinance.

Section 4. That all ordinances and parts of ordinances heretofore passed so far as the same are inconsistent with the provisions of this ordinance, be and
 30 the same are hereby repealed.

Section 5. That this ordinance shall take effect immediately.

Passed Monday, October 3rd, 1870.

PETER DOREMUS—President Board of Aldermen.

Attest—ARCHIE HENDERSON, City Clerk.

Approved, JOHN RYLE, Mayor.

AN ORDINANCE TO REGULATE AND CONTROL THE
 PATERSON AND LITTLE FALLS HORSE RAILROAD
 THROUGH THE CITY OF PATERSON. 10

The Mayor and Aldermen of the City of Paterson do ordain as follows :

Sec. I. It shall be lawful for the Paterson and Little Falls Horse Railroad Company to construct and lay in said city from the Van Winkle Street bridge in Van Winkle Street, through Van Winkle Street to Bridge Street and through Bridge Street to Broadway, and through Broadway to West Street, through to West Street to Hamburg Avenue, to Union Avenue and through Union Avenue to the line dividing the 20
 city of Paterson from the Township of Manchester such rail or rails for a horse railroad track or tracks and of such style and width as are constructed, laid and used for horse railroads between the Pavonia Avenue and Courtland Street ferries in the city of Jersey City in the State of New Jersey.

Sec. II. That such rail or rails, track or tracks, shall be laid and constructed so as when completed and finished, the same may be flush or even with the surface of the streets, highways, avenues through which the same may run. 30

Sec. III The said horse railroad company shall keep and maintain so much of the streets or ave-

nues as are inside of and for at least twelve inches adjoining the outside of said rails in good and sufficient repair under a penalty of \$25.00 for each and every offence.

Sec. IV. That whenever any public sewer or sewers, drain or drains are being constructed under or in the vicinity of such rails or tracks, the said horse railroad company shall take charge of and remove such rails or tracks from the line of such sewer, and
10 replace the same when such sewer is complete and finished along the line of such track at their own cost and expense.

Sec. V. That no car or horse or horses attached thereto shall encumber or obstruct any sidewalk or crossing of any street in said city of Paterson for a longer period than is absolutely necessary for the safe and expeditious discharge of passengers only, under the penalty of \$25.00 for each and every offence.

Sec. VI. That it shall not be lawful for the said
20 horse railroad company to scatter, put or place any salt upon any such rails in said streets or tracks or in the vicinity thereof for the purpose of melting the snow or ice on such rails or tracks or adjacent thereto unless upon first obtaining permission for that purpose in writing from the City Physician or Chairman of the Committee on Health of said City under penalty of \$50.00 for each and every offence.

Sec. VII. That the said company shall at no time put, pile or place the snow in, upon or near such rails or tracks so as to impede or interfere with the public
30 travel through the said streets or avenues mentioned in the first section of this Ordinance under a penalty of \$25.00 for each and every offence.

Sec. VIII. That upon completing the construction and laying of said rails or tracks through the streets and avenues mentioned in said first section, the said streets and avenues shall each be put and placed in as good condition as the same were in at the time of laying of such rails or tracks under a penalty of \$25.00 for each and every offense.

Sec. IX. That the said track shall not turn any corner of any street at a radius of more than twenty-five feet under a penalty of \$25.00 for each and every TO
offence.

Sec. X. That the said rails shall be laid so as to leave at least ten feet of space between the outside of each of the said rails or tracks and the line of the curbstone in each of the said streets and avenues, except at such place or places as may be established by such company as places of turnout and passages of cars with each others on such track or turnouts.

Sec. XI. This ordinance to take effect immediately. 20

Passed July 27, 1868.

NATHANIEL TOWNSEND, *Mayor*.

Attest:—A. BELCHER,

City Clerk.

CITY OF PATERSON.

DEPARTMENT OF STREETS AND SEWERS, 1899.

Proposal, Agreement and Specifications for Regulating and paving with Brick Pavement, on a Six-inch Concrete Foundation, the Roadbed, from Curb to Curb of Broadway from East Eighteenth street to East Thirty-third street.

10

The undersigned proposes to supply all material as required by the specifications, and execute the work on the above mentioned street, at the following prices and in accordance with the specifications, etc.

Name of Brick, REPRESSED.

Brick (paving,) about 21,000 sq. yds. at \$.
per sq. yd.

20 Mack Mfg Co. repressed brick (paving) two dollars and thirty-five cents per sq. yd. \$2.35.

The Eastern Paving Brick Co., repressed brick (paving) two dollars and twenty-five cents per sq. yd. (2.25.)

The Clearfield Clay Working Co., repressed brick (paving) two dollars and twenty-five cents per sq. yd. \$2.25

Johnsonburg Vitrified Brick Co., repressed brick (paving) one dollar and ninety cents per sq. yd. \$1.90.

30

Brick, Terra Cotta Supply Co., repressed brick (paving) the sum of one dollar and eighty-five cents per sq. yd. \$1.85.

Work to commence not later than thirty days after execution of contract. Time allowed to complete work one hundred (100) days.

Paterson April 3, 1899.

Signature: JOHN R. LEE.

Witness J. A. COURTADE.

Sealed Bids or Estimates for the above work will be received at the office of the City Street Commissioner, City Hall, until Monday April 3rd at 8 o'clock at which time the bids will be publicly opened by The Board of Aldermen and read, and the proper action taken thereon. 10

(By agreement of counsel parts of the specifications which are deemed immaterial in this investigation are omitted.)

CITY OF PATERSON.

SPECIFICATIONS FOR BRICK PAVEMENT. 20

Time.

The work shall be commenced by the contractor on or before the expiration of thirty days from the day of the filing of the contract with the City Comptroller, and completed within one hundred consecutive working days from the day of commencement aforesaid.

Work Subject to Directions and Modifications. 30

The work is to be carried on at as many different points along the line of the streets or avenues

as the Mayor and Board of Aldermen may determine ;
and be subject to such modifications as may be deemed
necessary during the execution of the contract.

Clearing the Street.

In case there should be any earth, rubbish, trees,
stumps on the line of curb, or other encumbrance on
the line of the work at the time stipulated for the
10 commencement of the same, it shall be removed by
the contractor at his own expense.

Disposal of old material.

All the old curbing, bridging and paving material
of all kinds, which is not ordered by the city engineer
to be used again or is not claimed by the property
owners shall be the property of the city, and the
contractor must remove it from the line of the work
to where directed by the City Street Commissioner,
20 free of charge.

Repairing the Roadbed.

The subsoil or other material (be it earth, rock or
any other substance), shall be excavated and removed
by the contractor to the depth of eleven and a half
(11½) inches below the top line of the proposed
pavement when rammed. The excavation of the last
six (6) inches to be done with the pick only.

The road-bed must be graded for a distance of two
30 hundred (200) feet in advance of the concrete founda-
tion.

Should there be any spongy material, vegetable or
objectionable matter in the bed thus prepared, all

such material shall be removed, and the space filled in with clean sharp sand or gravel, which is to be thoroughly rammed or rolled, so as to make it compact or solid.

Should any filling be necessary in the street or avenue to lay the pavement to the required grade, the contractor shall provide the material without extra compensation therefor; said filling to be composed of good, sound earth, free from foreign matters, and placed upon the roadbed in layers of not more than six inches in depth, which are to be thoroughly compacted or rolled. 10

Old Trenches, How Treated.

If there is a sewer, water, gas main or telephone conduit laid in the street or avenue about to be paved, the contractor must, at his own expense, prepare the top of the trench, and its full width, into an unyielding condition, also the trenches of the connections with the several mains, if necessary, by removing the loose material on the top to a depth of two feet from the bed for paving, and replacing the same or other sound material in layers of six inches, each of which is to be thoroughly rammed. The contractor will be held responsible for any settlement of the paving over any trench which may be made before or during the progress of his work until the completion of the contract. 20

Shaping the Roadbed.

The road bed shall be truly shaped and trimmed to the required grade and crown as directed by the City Engineer and rolled with a steam roller weighing 30

not less than five (5) tons, until the surface is firm and compact.

Upon the foundation thus prepared shall be laid a bed of hydraulic cement concrete six inches in thickness, which is to be made as follows :

Concrete.

10 One measure of American hydraulic cement equal to the best quality of freshly burned Rosendale cement and two measures of clean sharp sand (free from loam) are to be thoroughly mixed while dry, and then made into mortar ; to this shall be added five measures of sound broken stone (broken in a crusher,) of a size not larger in any dimension than will pass through a two-inch ring. The broken stone must be clean ; they must be drenched with water, but not so as to contain an excess of water in the heap. The whole mass shall then be shoveled over until it is thoroughly mixed before being put in place.

20 The cement must be kept in good condition, protected from the weather and free from moisture until it is used. The contractor must furnish the engineer with the name of the brand and manufacture. The cement must be evenly ground, and tested with the following sieves must pass at least these percentages :

No 50 sieve, having 50 meshes per lineal inch 90 per cent.

TENSILE STRENGTH PER SQ. INCH. One day in air and water 60lbs.

30 No. 74 sieve, having 74 meshes per lineal inch 80 per cent.

TENSILE STRENGTH PER SQ. INCH. Seven days (one in air) 130 lbs.

Concrete. How Laid.

When put in place the concrete must be rammed and thoroughly compacted until it has a clean mortar surface. The surface must be exactly parrallel with that of the pavement when laid. No concrete will be permitted to be used, which has been mixed more than thirty minutes. All working, wheeling and travel over the concrete must be prevented until it has thoroughly set *and then only on planks laid over it for that purpose.* If necessary it must be protected 10
from the action of the sun and wind until it has set.

Sand Cushion.

Upon the concrete when thoroughly set and the surface entirely cleaned from gravel, rubbish or covering of any description, shall be spread a bed of clean sharp, screened sand, to a uniform depth of one and one half ($1\frac{1}{2}$) inches. The sand cushion shall be sprinkled, if so ordered by the engineer, in order that it may settle into all crevices in the surface of the concrete. The sprinkling to be done with a rose attached 20
to a hose or sprinkling can. The surface must be shaped to the true grade and crown before the laying of the pavement by the use of proper templates and scrapers, which must be furnished by the contractor free of charge. The prepared sand foundation must be kept at least sixty (60) feet ahead of the paving.

Bricks.

Bricks must be tough and especially burned for street paving, and of the very best quality, free from 30
cracks and blisters and all defects, uniform in color and size, and must measure not less than ordinary brick

size (8 1-2x4x2 1-2.) Bids will be informal on any other size. The contractor to whom contract is awarded will be required to deposit with the city engineer by the time of executing the contract a new set of at least six samples of the kind of brick proposed to be used in this work.

Absorption Test.

10 * * *
Abrasion Test

 * * *
Must Furnish Rumbler and Power.

 * * *
Bricks Delivered to Conform to Sample.

 * * *
Piling Bricks on Sidewalk.

 * * *
20 *How Laid.*

 * * *
Grouting.

 * * *
Cement Grout.

 * * *
Filling With Paving Pitch.

 * * *
Street to be Kept Closed.

30 * * *
Filling Joints With Paving Pitch if Required.

 * * *

New Curb.

The new curb stone shall be *blue* stone equal in quality to the best North River blue stone, sound throughout and not off color. It must be not less than twenty (20) inches in depth, five inches thick, and no stone to be less than three and one-half (3 1-2) feet in length, to be cut or hammer dressed smooth on top, and shall have a uniform thickness of five (5) inches. Stones to be out of wind eight (8) inches down on the face ; the top to be cut to a true line and with a bevel of 3-4 inch. The curb on the top edge must be neatly squared and pointed the full thickness of five (5) inches, and to be close jointed not to exceed 1-4 inch from top to fourteen (14) inches down at right angles to the line and set with a batter of two (2) inches in its height. No curb spalled off will be allowed, and the inner line of the curb must be pitched off to a true line. The curb when dressed shall not measure less than nineteen (19) inches in depth nor less than five (5) inches in thickness.

10

20

When directed by the City Engineer, curb corners will be cut to radius of six (6) feet, with true and radial joints of the same quality as the straight curb, and set in like manner. No extra allowance will be made for special radius.

A standard sample of curb in conformity with the above requirements may be seen at the office of the City Engineer.

Curb Set in Concrete.

30

When ordered by the City Engineer, all curb stones, including corners, must be set in a bed of hydraulic

10 cement concrete, mixed in the same manner as the concrete placed on the roadbed, 12 inches in width and 6 inches in depth under the curb, and at least 6 inches in thickness behind and extending 12 inches up from the bottom of the curb. Concrete must be thoroughly compacted. No extra allowance will be made for setting 20-inch curb in concrete. For all curbing the concrete must be carried to the bottom of the curb when the roadbed concrete is being laid, and all joints must be concreted in the rear 12 inches on each side of joint, six inches wide, and from the bottom of the curb to 4 inches from the top.

No extra allowance will be made for thus concreting the curb joints and carrying the roadbed concrete to the bottom of the curb.

16-inch curb.

20 Should 16-inch curb be used it must be dressed, and curbed in the same manner as the 20-inch curb, and must be laid in concrete in all cases in the manner required for 20-inch curb ; old 16-inch curb if relaid must be redressed as the new curb and laid in concrete as required for 20-inch curb.

Grade of Intersecting Streets.

All intersecting streets must be regraded, if necessary, to correspond with the new pavement, and a sufficient length taken up and regarded to make an easy and proper approach. No extra allowance will be made for this work.

30 *Header Curb.*

Where the new pavement adjoins private driveways,

crossing the sidewalk, the curb stones shall be dropped to within one inch of the grade of the finished pavement. At street intersections, protection curb shall be set across the street ; the top of the curb must be even with the pavement when finished. All protection curb, or header curb, must be set in concrete the same as the line curb ; it must be at least 16 inches deep and 4 inches thick, and smooth at the top. It must be close jointed not to exceed 1/4 inch to a depth of 6 inches down at right angles to the line. Old curb stone, if suitable, must be used, to be dressed as required for new header curb.

10

New Bridge-Stone for Crosswalks.

New bridge-stone for crosswalks must be equal to the best quality of North River blue stone, two feet wide and not less than three nor more than five feet long, and not less than five (5) inches thick ; they must be smooth on the top surface. The sides and ends must be cut square to the face, so as to form close joints from top to botom ; if they are undercut or feather-edged the bridge stones will be rejected.

20

The bridge stones must be imbedded in sand, spread on six (6) inches of concrete, and set to the general level of the paving ; the courses must be laid so that the transverse joints will be broken by a lap of at least one foot. The contractor shall lay one row of oblong paving blocks between the courses of the bridge-stone ; the price allowed or bid per square foot the bridge-stone will include and cover the furnishing and laying of granite blocks as well as the concrete foundation under all.

30

Old Bridge-stone for Crosswalks.

If any of the old bridge-stones should be ordered used, it must have the sides and ends squared, and not feather-edged, and be laid in the manner required for new bridge-stone.

Concrete between Car Tracks.

The concrete between all car tracks and rails must
 10 be carried to the bottom of the cross-ties, between the ties, and beneath and around girders and stringers, and under each rail to end of tie. No extra allowance will be given or claimed for such work, but it is understood that no deduction will be made for the area occupied by the rails or other fixtures when computing the area of the paving.

All flagging at the crosswalk approaches, which must be temporarily removed to readjust the curb, must be trimmed and properly relaid by the contractor at his own expense.

20

Sidewalks to be Restored to Line and Grade.

If any flag-stones are broken or damage done to other property, by dumping or storing material upon the sidewalk, the Contractor must replace the broken flag-stones with new ones and compensate for other damages before the final estimate is made by the Engineer ; if he fails to do so, then the Engineer will deduct the estimated cost of such damage from the amount due upon his final estimate. All sidewalks.
 30 flagging or cement or other kinds of sidewalk that have to be removed, or whose grade is changed in setting curb, must be replaced and trimmed to the proper line and grade, if necessary

for the whole width of the sidewalk, by the Contractor without extra compensation.

Resetting Manhole Heads and Sills.

The Contractor must readjust all manhole tops, basin heads, sills and frames to proper grade and line without extra compensation.

New Manhole Frames and Catch Basins.

10

All new manhole frames and covers, new catch basin flags and gratings, and catch basin traps and plans, must be of the same pattern, weight and size as those now in use by the city.

Making Connections.

The Contractor shall not interfere with or place any impediment in the way of any person or persons who may be engaged in making any sewer connections, or in resting any frame or heads for water and gas stop-cocks in the street at any time prior to the laying of the new pavement over the line of the same.

20

Clearing Up.

All surplus material, earth, refuse, stone and rubbish to be removed from the line of the work, block by block, as rapidly as the work progresses. Thirty days after the completion of the work the covering sand shall be swept into heaps and immediately removed from the line of work, and if this is not done within forty-eight hours thereafter to the satisfaction of the City Street Commissioner, he will then have the authority to proceed to do

30

the work himself. The cost for such work shall be deducted from the 10 per cent. reserve fund.

Repairs.

* * *

Payment of Amount Retained.

* * *

Guarantee.

10 The Contractor shall have charge of and be responsible for the entire work until its completion and acceptance. In addition to the bond for faithful performance of the work and execution of the contract, and also in addition to the retention of 10 per cent, for the first year and 5 per cent. for the second year after acceptance, he shall immediately execute upon the award of the contract a guarantee bond, with at least two responsible and satisfactory sureties, residents of the State of New Jersey, in the penal sum of

20 50 per cent. of the total amount of the contract, said bond to be satisfactory to the Board of Aldermen and Mayor. The conditions of said bond shall be such that the contractor binds himself under said obligation to the City of Paterson to maintain the pavement for a period of eight (8) years from a date commencing with the acceptance of the work by the city to a date eight (8) years subsequent thereto; and conditioned that he will from time to time during the said term promptly make and execute, free of charge, any and all repairs to the pavement that may become necessary through ordinary and legitimate wear and tear,

30 or from natural causes, and that he will take up all soft broken, disintergrated or defective bricks and replace them with sound ones, and will also restore the

pavement to the proper grade, and all such defects which may arise or disclose themselves towards the end of eight years must be remedied, even if the repairs are not or cannot be made during the said term owing to the expiration thereof. In case of the failure of said party so to do, the Board of Aldermen may have the work done and the Contractor's bondsmen shall make good the cost of the same. If required by the Mayor or Board of Aldermen, the above bond or guarantee must be executed by an approved guarantee company. 10

Sustaining of Loss.

* * *

Discharge of Employees.

* * *

Suspending and Resuming Work.

* * *

Placing of Material During Suspension.

* * *

Approval of Work.

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The whole work shall be completed in a workmanlike manner and to the satisfaction and approval of the Mayor and Board of Aldermen.

Time of Final Acceptance.

Final acceptance of the work under this contract will not be made between the fifteenth day of November and the fifteenth day of April next succeeding.

30

Inspection.

The pavement shall be laid under proper official

inspection; but such inspection shall not release or relieve the contractor from any obligation to perform said work strictly in accordance with these specifications, and work not so constructed shall be removed and made good by the Contractor whenever so ordered by the Board of Aldermen or the Mayor, without any reference to any previous oversight or inspection. The Contractor must give all reasonable assistance required of him to the engineer in charge of the work.

10 The following prices will be allowed the Contractor for supplying and setting curb, resetting same, &c.:

Supplying and setting new 16-inch curb, in concrete, forty-five (45) cents per lin. foot.

Supplying and setting new 20-inch curb, sixty (60) cents per lin. foot.

Resetting and redressing old 20-inch curb, ten (10) cents per lin. foot.

20 New manhole frames and covers (square or round) ten dollars (\$10) each.

New catch basins and connections, with traps, complete, thirty-eight (\$38) dollars each.

Receiving basins changed to catch basins, with traps, forty dollars (\$40) each.

Traps placed in old catch basins, thirteen dollars (\$13) each.

New header curb set in concrete, forty-five (45) cents per lin. foot.

Old curb redressed as header curb, ten (10) cents per lin. foot.

30 Resetting and redressing old 16-inch curb, in concrete, ten (10) cents per lin. foot.

Supplying and setting new crosswalks, seventy (70) cents per sq. foot.

Resetting and redressing old crosswalks ten (10) cents per sq. foot.

GENERAL SECTIONS.

Removal of Improper Material by City Engineer or City Street Commissioner.

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Engineer of Board to Determine Quantity of Work, etc. 10

* * *

Right of City to Execute Work Provided For by this Contract.

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When Inspectors to be Paid by Contractors.

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Rights of City to Increase or Decrease Material, etc.

The right is expressly reserved to the Board of Aldermen to order the omission of any portion of the work or materials called for by the plans and specifications, or to order any addition thereto, or to make any alterations whatever in the nature of the work or materials called for therein, provided the said order be in writing, and the amount of compensation to be added to or deducted from the contract price, for such addition or omission, shall be determined and fixed by a written agreement between the Contractor and the said Board of Aldermen and in case they fail to agree upon the amount, then it shall be determined by the City Engineer of said Board, whose decision, in writing, shall be accepted as final and binding upon both parties. And it is expressly agreed and understood

that such alteration, addition or omission shall not in any way violate or annul this contract.

Penalty for not Completing in Time.

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Penalties to be Deducted from Payments for Contract.

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10 *Contract not to be Sub-let.*

* * *

Amounts Paid.

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NEW JERSEY COURT OF ERRORS
AND APPEALS.

JAMES B. DEAN,

Prosecutor,

Plaintiff in Error, } *On Error to the*

AND

THE MAYOR AND ALDERMEN OF
THE CITY OF PATERSON.

Supreme Court. 10

Defendants in Error.

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

1. Because the Supreme Court decided that from the language of the act of June 13th, 1898 (P. L. 1898, page 466), entitled "An act to authorize the improvement of streets and highways in cities of this State, and to provide for the payment of the expense of the same," and the several supplements thereto, the assessments imposed for alleged benefits arising from the repaving of a certain portion of Broadway, in the City of Paterson, should be confined to the abutting owners upon the street thus improved, and nothing should be assessed against the Paterson Railway Company, a corporation engaged in operating by electric power a double tracked street railway upon the street in question, namely Broadway, Paterson, New Jersey. 20
2. Because the Supreme Court decided, that although The Paterson Street Railway Company operated a double track street railway through the 30

said Broadway, Paterson, under an ordinance granting it a franchise which provided as follows, "it (said street railway company) shall keep and maintain so much of the streets or avenues as are inside of and for at least two feet adjoining, at outside of said rails, in good and sufficient repair, etc.", and that there was evidence tending to show that after the railway tracks were laid the City of Paterson paved the street in question with macadam, which had become worn and
 10 out of repair, particularly in that part about three feet out from the railway track; and the repaving for which the assessment was imposed was done with red brick laid in concrete, the abutting property owners might be assessed for benefits arising or accruing from that portion of Broadway as are inside of and for at least two feet adjoining the outside of the rails of the said railway.

3. Because the Supreme Court decided that the supposed benefits assessed for said improvements were properly assessed in one sum for paving and another
 20 for curbing, and need not be assessed in one sum for the benefit arising from the whole improvement, the objection of the plaintiff in error being that the method of separate assessment shows that it was made with reference to the cost of the work.

4. Because the Supreme Court decided that in the contract for the improvement of the said Broadway, Paterson, the City of Paterson might properly fix the price of curbing the said street without submitting the same to competition and letting the same to the lowest bidder.

30 5. Because the said Supreme Court decided upon the evidence that the assessment against the owners of property abutting on said Broadway, Paterson, of \$26,924.16 was proper, whereas there should be no

assessment against said abutting property owners as there is no special benefit to their property by reason of said improvement and the whole cost should have been assessed against the city at large.

6. Because the Supreme Court decided that the act of the Legislature referred to in the first assignment above authorizes new curbing, whereas the amount of \$2,680.33 imposed as a benefit arising from said curbing to said abutting owners should have been stricken from said assessment.

10

7. Because the Supreme Court decided that there was a benefit accruing to the abutting property owners from the new curbing.

8. Because the said Supreme Court sustained the said assessment of benefits although it appeared that the commissioners assessed the same by an arbitrary system per front foot without regard to the property assessed.

9. Because the Supreme Court sustained said assessment although it appeared that the commissioners assessed said special benefits arbitrarily without regard to the area of the plot assessed.

20

10. Because the Supreme Court sustained said assessment although the commissioners included therein benefits for the improvement of street intersections.

11. Because the Supreme Court sustained said assessment although the contract provided that the contractors should keep the pavement in repair for a term of years, in making up the cost of the improvement nothing was allowed for this and the lot owners were assessed for the benefit derived from this item, as the municipality is under a duty to keep its streets in repair.

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12. Because the Supreme Court sustained said assessment although nothing was deducted from the cost of the contract for keeping in repair the portion of the street, the railway company was under obligation to keep in repair.

13. Because the Supreme Court decided that the rule of measurement of special benefits prescribed by said law mentioned in assignment one above is proper.

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FRANCIS SCOTT &
EDWARD F. MERREY,

Attorneys of Counsel with Plaintiff in Error.

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SUPREME COURT OF NEW JERSEY.

<p style="text-align: center;">JAMES B. DEAN, <i>Plaintiff in Error,</i> <i>vs.</i> THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, <i>Defendant.</i></p>	}	<p><i>Error to</i> <i>Supreme Court.</i></p>	10
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SUPREME COURT OF NEW JERSEY, NOV. 29, 1901.

STREET RAILWAY IMPROVEMENT LIABILITY FOR ASSESSMENTS—REPAVING.

1. A street railway exercising its franchise within a city street, although having a property in its ties, rails and other necessary equipment, is not liable to be assessed for benefits of a street improvement made by the city under the act of June 13, 1898 (P. L. 1898, p. 466), which directs the assessment to be made in proportion to the benefits acquired by lands and real estate bordering on such street. 20

2. Under the provisions of an ordinance requiring street railway to keep and maintain the portion of a street inside its rails and for two feet outside of them in good and sufficient repair, the company is not bound to repave within those limits with a new and different material selected by the city, nor is it liable to the expense of such repaving when laid down by the city. 30

3. When the report of the commissioners making such assessment for benefits is in regular and proper form, the fact that the schedule annexed thereto shows the assessment for pavement and curb in separate columns, with the total carried out opposite, will not invalidate the assessment.

(Syllabus by the Court.)

10 Certiorari by the state, on the prosecution of James B. Dean, against the Mayor and Aldermen of the City of Paterson, to review an assessment. Assessment affirmed.

Argued June term, 1901, before GUMMERE and HENDRICKSON, JJ.

Francis Scott and Edward F. Merrey, for prosecutor.

Michael Dunn, for defendant.

HENDRICKSON, J. The prosecutor is the owner of several lots of land bordering on Broadway, one of the streets of Paterson which have been assessed for alleged benefits arising from the repaving of a portion
20 of the street pursuant to the act of June 13, 1898 (P. L. 1898, p. 466), and the supplements thereto. He challenges the validity of the assessment on several grounds. The first of these to which I will call attention, is that the commissioners failed to assess benefits against the Paterson Railway Company, a corporation engaged in operating by electric power a double-track street railway upon the street in question. While the ties, rails, and other equipments of a street railway may partake of the nature of real estate, and be liable to general taxation as such, and may
30 be benefitted by a street improvement like this, still, whether it is liable to assessment for such benefits must depend upon the fair meaning of the governing stat-

ute. We think it is clear that, under the statute above referred to, an assessment upon a street railway for benefits would be without authority. The statute, in defining the mode and manner of the assessments, says they "shall in each case be in proportion as near as may be, to an amount as will be equal to the amount of benefits actually acquired by the lands and real estate bordering on any street or highway or a portion thereof, so improved, by reason of such improvement." In other parts of the statute the property to be thus reached is described as the "lots or parcels of land and real estate." From this language we think it is clear that the assessments for benefits are confined to the abutting owners upon the street thus improved. This view is sustained by the authorities. *Davis v. City of Newark*, 54 N. J. Law, 144, 23 Atl. 276; *King v. Duryea*, 45 N. J. Law 258; 2 *Elliott, R. R.* 787; *O'Reilly v. City of Kingston*, 114 N. Y. 439, 21 N. E. 1004; *State v. District court*, 31 Minn. 354, 17 N. W. 954; *Oshkosh City Ry. Co. v. Winnebago Co.*, 89 Wis. 435, 61 N. W. 1107; *People v. Gilon*, 126 N. Y. 147, 27 N. E. 282. 10

Another ground urged is that the street railway was under a duty to pave inside the rails of its tracks, and for two feet outside, according to the provisions of the ordinance conferring its franchise, and that the property owners should only have been assessed for benefits accruing from the remaining portion of the street. The ordinance in question expressed the duty of the company with regard to the surface of streets to be occupied by it in these words: It "shall keep and maintain so much of the streets or avenues as are inside of and for at least two feet adjoining the outside of said rails in good and sufficient repair," etc. 30

There was evidence tending to show that after the railway tracks were laid the city paved the street in question with macadam, which had become worn and out of repair, particularly in that part about three feet out from the railroad track. The repaving was done with red brick laid in concrete, and was recognized as an improvement of a permanent and substantial character. We think this ground of the prosecutor cannot be maintained. To do as, we must give a meaning to the word "repair" which does not ordinary attach to it, and we would have to depart from the line of legal precedent. In the leading case of *City of Chicago v. Sheldon*, 9 Wall. 50, 19 L. Ed. 954, it was held that a stipulation on the part of the Street Railway company to keep the street in constant good order and repair did not require it to pay a proportion of the expense of paving. And generally it is held that an obligation to repair a street is not an obligation to construct thereon a new pavement. *District of Columbia v. Washington & G. R. Co.*, 4 Am. & Eng. R. Cas. 174 ; *Farrar v. City of St. Louis*, 80 Mo. 379 ; *City of Philadelphia v. Hestonville, M. & F. P. R. Co.*, 35 Atl. 718, 177 Pa. 371 ; *Same v. Philadelphia City Pass. R. Co. (Pa.)* 35 Atl. 720 ; *City of Binghamton v. Binghamton & P. D. Ry. Co.*, 61 Hun, 479, 16 N. Y. Supp. 225 ; 23 Am. & Eng. Enc. Law, 989, and note 1.

Another objection urged against the assessment is that the commissioners have, in the schedule attached to their report, divided the amounts of total benefits assessed against the owners into two parts, one for the pavement and the other for the curb. It is argued from this that the assessments were made with reference to the cost of the work, and not to the benefit de-

rived from the improvement. But the report distinctly states that the assessments so made are for special benefits acquired by the improvement, and that in no case are they beyond the amount of special benefits derived from the permanent improvement of the street. The evidence taken supports the report in this particular, and shows that part of the expense of the curbing was assessed upon the city at large. We are unable to say that the action of the commissioners in this respect is in violation of any legal principle, and hence 10 we cannot interfere.

The objection that the price for curbing was fixed by the city in the contract for the improvement, and that in this particular the work was not submitted to competitive bidding, as required by the statute, cannot fail. It appears that all the other work was so submitted, but that a maximum price was fixed for the curbing, and was part of the contract and specifications upon which bids were invited. This objection, coming as it does after the prosecutor, with notice of the improvement, allowed the work to be completed 20 without objection, cannot now be entertained. *Youngster v. City of Paterson*, 40 N. J. Law, 244; *Provident Inst. for Sav. v. City of Jersey City*, 52 N. J. Law, 490, 19 Atl. 1096; *Woodriff v. City of Paterson*, 36 N. J. Law, 159; *Vanatta v. Town of Morristown*, 34 N. J. Law, 445.

The other reasons were not pressed at the argument, and, not finding in them any valid ground for interference with the assessment, the same is affirmed, and the certiorari will be dismissed.

