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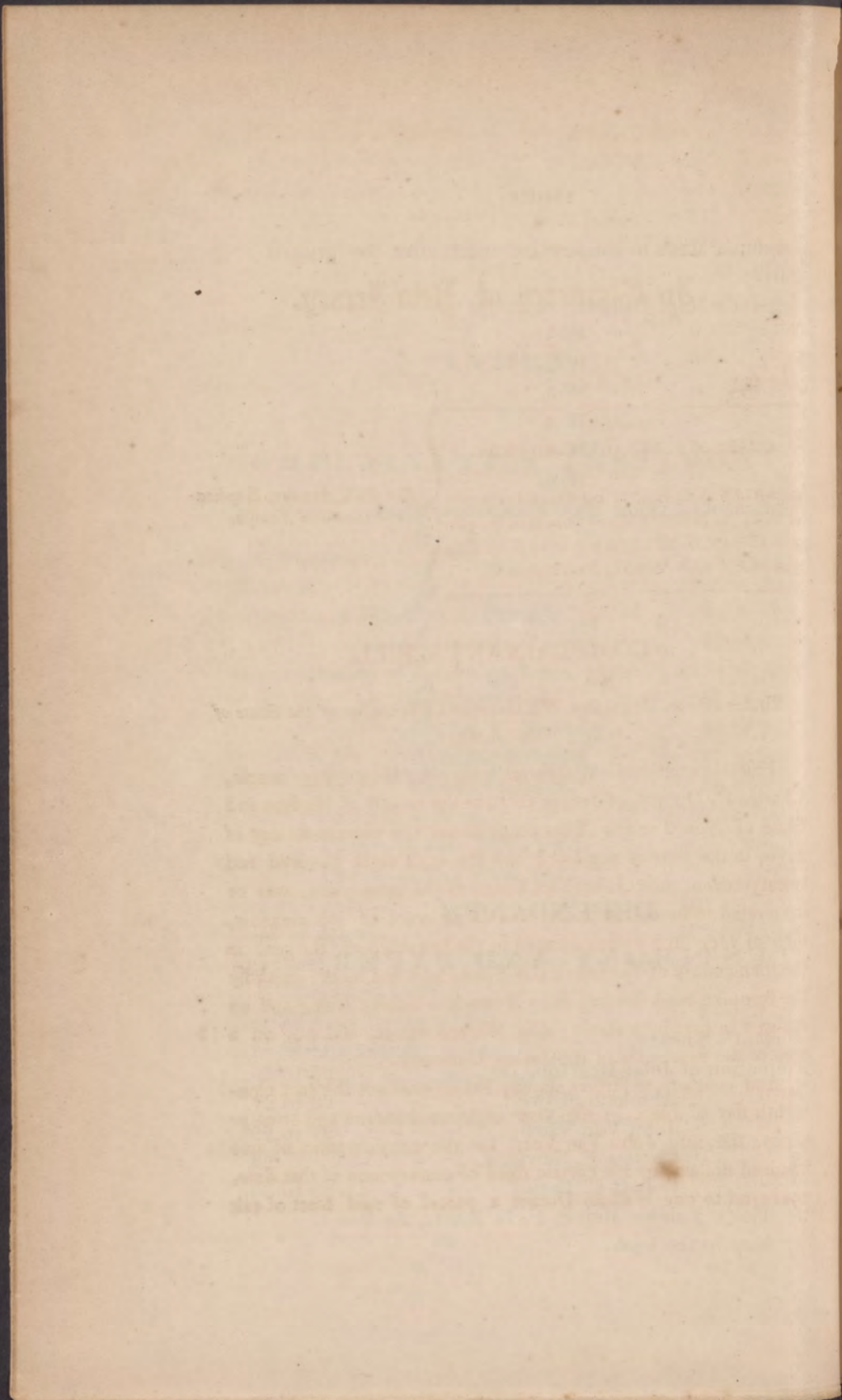
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In Chancery of New Jersey.

BETWEEN

CHARLES F. DURANT, COMPLAINANT,

AND

CHARLES B. C. BACOT and SARAH F. his wife,

HENRY A. BOORAEM and CORNELIA his wife,

JONATHAN D. MILLER and ANNA E. his wife,

And JOHN VAN VORST, DEFENDANTS.

On Bill, Answer, Replication and Proofs.

COMPLAINANT'S BILL.

To his Honor BENJAMIN WILLIAMSON, *Chancellor of the State of*
New Jersey.

Humbly complaining, sheweth unto your Honor your orator, Charles F. Durant, of Jersey City, in the county of Hudson and State of New Jersey, That on or about the nineteenth day of June, in the year of our Lord one thousand eight hundred and twenty-seven, one John Van Vorst, of the same place, was or pretended to be seized in fee of a large tract of salt meadow, then of very little value, situated in the township of Bergen, in the then county of Bergen in this State, bounded on the south by the turnpike road leading from Newark to Jersey City, and on the east in part by a street called Warren street, laid out on a 10 map of the associates of the Jersey Company.

And your orator further shews, that on or about the said nineteenth day of June, in the year eighteen hundred and twenty-seven, the said John Van Vorst for the consideration of one hundred dollars, by his certain deed of conveyance of that date, conveyed to one William Durant a parcel of said tract of salt

meadow, being fifty feet front and rear and one hundred feet deep, fronting on said turnpike road at the intersection of said Warren street, which said parcel is described in the said deed of conveyance for the same, as follows : " All that certain tract of land situate, lying, and being in the township of Bergen, in the county of Bergen and State of New Jersey, between the village of Harsimus and the town of Jersey hereinafter mentioned, Beginning at the north side of the turnpike road leading from the town of Jersey to Newark, where Warren street in the map of

10 the Jersey Company would intersect the said turnpike road, and on the west side of said street ; thence west along the turnpike fifty feet ; thence north and parallel with the said street one hundred feet ; thence east and parallel with the turnpike fifty feet ; thence one hundred feet along where the said route of the street of said Jersey Company would cross the salt meadow; the afore-said premises are not to interfere with any right or possession of said Company;" as in and by the said deed of conveyance in the possession of your orator and ready to be produced and proven as this honorable Court may direct, or a record thereof in the

20 office of the Clerk of the county of Bergen, will, on reference thereto, more fully and at large appear.

And your orator further shews, that at the date of said conveyance the said turnpike road leading from the town of Jersey to Newark, was laid out and used as a public highway, but that the said Warren street had no visible existence, and was not made, opened or laid out, except on the said map belonging to the associates of the Jersey Company, and that although it was supposed that said streets intersected at or about right angles, yet that no person at that time knew accurately and distinctly at

30 what angle the said Warren street would intersect the said turnpike road, nor could it be known without an actual survey and examination, and the said conveyance was made under the supposition and impression that Warren street intersected said turnpike road at or about at right angles.

And your orator further shews unto your Honor, that after the said conveyance the said William Durant entered into the possession of the said lot of salt meadow, and under the impression that the said Warren street would intersect said turnpike road at right angles, proceeded to improve the same by erecting

two frame buildings occupying the whole of said front, and situated perpendicular to or nearly perpendicular to said turnpike road.

And your orator further shews, that some time after the erection of said buildings, although it was not definitely ascertained at what precise angle the said Warren street when opened would intersect said turnpike road, yet the said William Durant became aware that the said street would intersect said road in a way and direction that would form a very acute angle at said intersection, instead of by a perpendicular line or at a right angle, as the said 10 William Durant had supposed and believed; and that in consequence thereof the said buildings occupying the whole of the front of said lot, erected with the sides perpendicular to the said road, could not be and were not contained on a lot of fifty feet front running at acute and obtuse angles to the said road, and on the contrary thereof, that a considerable portion of said building projected over upon and covered other lands of said John Van Vorst, and that the said lot in that situation was comparatively valueless, the said building having as aforesaid been by mistake erected in part on the lands of John Van Vorst. 20.

And your orator further shews, that in order to remedy this difficulty, and also for the purpose and with the intent of making the land conveyed to said William Durant as aforesaid square on said turnpike road and his westerly line perpendicular to said turnpike road, upon the application of the said William Durant, the said John Van Vorst, for the consideration of twenty-five dollars agreed to be paid to him therefor by said William Durant, agreed to convey to said Durant sufficient land on the westerly side of the west line of the lot hereinbefore described, to make the said land of said Durant square with the said turnpike road 30 and the westerly line thereof perpendicular thereto.

And your orator further shews unto your honor, that in pursuance of the said agreement, and with the intention and for the purposes above mentioned, the said John Van Vorst by deed dated the twelfth day of October, in the year of our Lord one thousand eight hundred and thirty, for the consideration of twenty-five dollars did convey to the said William Durant, his heirs and assigns, a certain gore piece on the westerly side of the said lot hereinbefore described, which gore piece was more particularly described in the deed of conveyance

for the same, as follows : “ All that certain half lot gore piece or parcel of land situate, lying and being in the town of Jersey in the township county and State aforesaid and lying on the north side of the turnpike road leading from and through the town of Jersey aforesaid to the town of Bergen butted and bounded on the northwestwardly line of Charles F. Durant’s lot fronting on the said turnpike road twenty-six feet from the line of said Charles’ lot and thence running diagonally to the rear of said Charles’ lot forming a triangle the base of which
 10 lying along the line of said Charles’ lot is one hundred feet deep from said turnpike road and the perpendicular along said road twenty-six feet”. As in and by the said deed of conveyance now in the possession of your orator, or the record thereof remaining in the office of the Clerk of the county of Hudson, in Book B, of Deeds for Jersey, in pages 702 and 703, will, on reference thereto, more fully and at large appear.

And your orator avers, that the true intent and object of said conveyance was to convey to said William Durant as much land as was necessary for the purpose of giving to said William Du-
 20 rant a lot fronting square upon said turnpike road, and to make the westerly line thereof perpendicular with said road, and that such was the agreement, object and intention of the parties to said conveyance.

And your orator further shews, that immediately after the conveyance last named, the said William Durant entered into the possession of the land meant and intended to be conveyed by said deed last mentioned, that is to say, of so much land as was contained between the westerly line of the lot first named and a line which drawn from the rear of said westerly line would
 30 be perpendicular to said turnpike road, and that the said William Durant and your orator possessed and enjoyed the same up to the time of his death and until at or about the time of the commencement of the action of ejectment hereinafter mentioned without any let, interference or hindrance on the part of the said John Van Vorst (or any person claiming under him).

And your orator further shews unto your Honor, that on or about the twentieth day of November, eighteen hundred and twenty-eight, the said William Durant conveyed the said first mentioned lot of land to your orator, his heirs and assigns, and the said Wil-

liam Durant having before then departed this life, James Narine and Abby his wife, Jonathan J. Durant, William D. Garrison and Lorana his wife, and William V. Van Arsdale and Abby his wife, (the said Abby Narine, Jonathan J. Durant, William D. Garrison and Abby Van Arsdale, together with your orator, being the heirs at law of said William Durant, and to whom said land had descended on the death of said William Durant), by deed of conveyance bearing date the first day of November, in the year of our Lord one thousand eight hundred and fifty-two, conveyed the said lot and premises by said second deed of conveyance made by 10 said John Van Vorst to said William Durant before mentioned, intended to be conveyed, and by the description therein contained to your orator, his heirs and assigns ; as by reference to said deeds may more fully and at large appear.

And your orator further shews, that on or about the month of January, A. D. 1842, the said John Van Vorst departed this life, leaving him surviving his daughters the said Sarah F. Bacot who is married to said Charles B. C. Bacot, Cornelia Booraem who is married to Henry A. Booraem, Anna E. Miller who is married to Jonathan D. Miller, and his son John Van Vorst, who are 20 his only heirs at law, and to whom the land and real estate of said John Van Vorst, deceased, at his death descended.

And your orator further shews unto your Honor, that subsequently and at some time in the year eighteen hundred and forty-three, the real estate of said John Van Vorst, dec'd, was divided by commissioners duly appointed for that purpose, between the heirs at law of John Van Vorst and the said commissioners, assigned to said Sarah F., wife of Charles B. C. Bacot, a certain portion of the said salt marsh or meadow land which had belonged to said John Van Vorst in his life time, and the said 30 Charles B. C. Bacot and Sarah F. his wife claim and insist that the part so assigned to said Sarah F. comprises a portion of the lands which your orator avers was intended to be conveyed by said John Van Vorst to said William Durant by said last mentioned given by said John Van Vorst, and so possessed by the said William Durant and your orator as aforesaid.

And your orator further shews unto your Honor, that the said William Durant in his life time, and until his death, and your orator always supposed and believed until at or about the com-

mencement of said action of ejectment, that the said last mentioned deed (as it was intended by the parties thereto that it should do) described the premises or lot of land in such manner as to make the same square with said turnpike road and the westerly line perpendicular to said road ; and your orator states and charges the truth to be, that the distance of twenty-six feet along the turnpike road was inserted upon the supposition that the same would reach a point that would make said lot square as aforesaid, and the western line perpendicular with said road; that

10 in point of fact it requires a distance of fifty-five feet along said road to make said lot square as aforesaid ; that no actual measurement was made nor any map or diagram used at the time of making said deed, and the insertion of said distance of twenty-six feet was by mistake and misapprehension.

And your orator further sheweth unto your Honor, that in the month of April, in the year eighteen hundred and forty-six, the said Charles B. C. Bacot and Sarah F. his wife, unjustly intending to take advantage of the inartificial manner in which the lot of meadow intended to be conveyed by said deed is described

20 therein, commenced an action of ejectment in the Supreme Court of Judicature of the State of New Jersey, against John Carrol, tenant in possession under your orator, to recover from him the possession of a portion of the premises so as aforesaid conveyed or intended to be conveyed to said William Durant by said John Van Vorst, and that your orator was made defendant in the place of the tenant in possession, and entered into the consent rule in said cause ; that the portion of said premises to recover which said action was brought is described in said consent rule as follows, to wit :—

30 “ All that triangular lot, piece or parcel of land situate lying and being in Jersey City in the county of Hudson in the State of New Jersey on the northerly side of the turnpike road leading from Jersey City to Newark Beginning at a stake standing seventy-six feet distant westerly from Warren street ; thence to run 1st. westerly along said turnpike road thirty feet three inches ; thence 2d. north fifty degrees east eighty-three feet ten inches, and thence 3d. south thirty and a quarter degrees west eighty-nine feet six inches to the turnpike road aforesaid and the place of beginning in the said county of Hudson.”

That upon the trial of the said cause at the December term of the Hudson Circuit of the said Supreme Court, in the year one thousand eight hundred and fifty-three, the said Circuit Court being held by the Hon. Daniel Haines, one of the Judges of the said Supreme Court, the said Judge gave his opinion and instructed the jury empannelled to try said cause, that according to the description contained in the said deed from John Van Vorst to said William Durant secondly above described, the westerly line of the gore piece thereby conveyed commenced on the said turnpike road at a point only twenty-six feet westerly 10 from the west line of the lot conveyed to said Durant by said Van Vorst herein before firstly described, and that thereupon the verdict of the jury in the said cause was rendered against your orator, and judgment was entered against your orator accordingly, but that no execution has been issued thereon, and your orator is still in possession of said land.

And your orator further shows unto your Honor, that such construction of said description is contrary to the agreement of the parties thereto, and defeats the object and intention of said parties and of said deed of conveyance, and would deprive your 20 orator of the square front on the said turnpike road or a perpendicular line to said lot on the westerly side thereof, and of the principal benefit and advantage which it was intended by the said John Van Vorst and said William Durant should accrue from said conveyance to said William Durant, and which chiefly induced the said William Durant to purchase the said gore piece.

And your orator further shows unto your Honor, that the said description is inartistically drawn and is ambiguous in its terms; that the words "twenty-six feet" were inserted in said description by mistake and misapprehension; that it was not known at 30 the time of the execution of said deeds how many feet of land west of the westerly line of said lot originally conveyed, would be necessary in order to make the said lot square or perpendicular with the turnpike road—the said Warren street then existing by imaginary lines, and no measurement or survey being made; and your orator is advised by his counsel, and therefore insists that he is entitled to have the said mistake rectified and to have the said description contained in said deed amended and reformed so as to conform to the said agreement between said John Van

Vorst and William Durant, and the object and intent of the said parties and of said deed carried into effect, or otherwise to have a deed of conveyance from said Charles B. C. Bacot and Sarah F. his wife, Henry A. Booraem and Cornelia his wife, Jonathan D. Miller and Anna E. his wife and John Van Vorst, being the heirs at law of said John Van Vorst, of so much land as will be necessary to make the said lot square or perpendicular with said turnpike road on the westerly side thereof.

And your orator further shews unto your Honor that he has
 10 frequently and in a friendly manner applied to the said Charles B. C. Bacot and Sarah F. his wife, Henry A. Booraem and Cornelia his wife, Jonathan D. Miller and Anna E. his wife and John Van Vorst, and requested them to rectify said mistake and to reform the said description, and to convey to your orator the land intended to be conveyed from said John Van Vorst to said William Durant by the deed secondly above mentioned, and he has also applied to the said Charles B. C. Bacot and Sarah F. his wife and requested them to discontinue the proceedings in said action and said judgment in ejectment against your orator, and
 20 your orator well hoped that they would have complied with such reasonable request.

But now so it is, may it please your Honor, that the said Charles B. C. Bacot and Sarah F. his wife, Henry A. Booraem and Cornelia his wife, Jonathan D. Miller and Anna E. his wife and John Van Vorst, combining and confederating to and with divers other persons at present to your orator unknown, and whose names when discovered your orator prays may be inserted herein, with proper and apt words to charge them, and intending and contriving fraudulently and unjustly to defraud your orator
 30 of that portion of the lands so as aforesaid conveyed or intended to be conveyed to said William Durant by said John Van Vorst mentioned in said consent rule, and to deprive him of the chief benefits and advantages of the said purchase; sometimes give out and pretend that it was not the intention of the said John Van Vorst to convey to said William Durant so much land as would be necessary to make his lot square with the said turnpike road, and the westerly line thereof perpendicular thereto; whereas your orator charges the truth to be that such was the expressed intention of the said John Van Vorst at the time of executing

and delivering the deed of conveyance herein before secondly mentioned ; and at other times said defendants give out and pretend, that although it may have been the intention of the said John Van Vorst, by said conveyance, to make said Durant's lot square with the turnpike road, yet that the said deed is to be construed strictly, and that the land conveyed thereby according to the description contained therein, only includes a tract of land the westerly line whereof commences on the turnpike road at a point only twenty-six feet westerly from the west line of the lot conveyed to said Wm. Durant by said John Van Vorst, by the 10 deed herein before first mentioned ; whereas your orator charges, that the description in said deed is inartistically drawn, and that such construction is contrary to the agreement before mentioned made between said John Van Vorst and said William Durant, and to the expressed intention of said John Van Vorst in executing and delivering said deed, and would deprive your orator of a piece of land now become valuable and of the particular benefits and advantages arising from having a square front on said turnpike road, and which was a principal inducement to said William Durant to make said purchase. 20

All which actings and doings and pretences are contrary to equity and good conscience, and tend to the manifest wrong, injury and fraud and oppression of your orator.

In tender consideration whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law, nor can obtain the relief to which he is entitled, except in this honorable Court, where matters of this sort are properly cognizable, and the complainant is entitled to relief.

To the end therefore that the said Charles B. C. Bacot and Sarah F. his wife, Henry A. Booraem and Cornelia his wife, 30 Jonathan D. Miller and Anna E. his wife, and John Van Vorst, and their confederates when discovered, may upon their several and respective corporal oaths true, full and perfect answer make to all and singular the premises, as fully and particularly as if the same were herein again repeated and they thereto particularly interrogated, paragraph by paragraph, and that the said mistake in the said deed may be corrected and reformed by the order and decree of this honorable Court, or otherwise that the said Charles B. C. Bacot and Sarah F. his wife, Henry A. Booraem

and Cornelia his wife, Jonathan D. Miller and Eliza E. his wife, and John Van Voorst, may be decreed to convey to your orator so much land as will be necessary to make his said lot square with said turnpike road, and the westerly line thereof perpendicular thereto, according to the aforesaid agreement between said John Van Voorst and William Durant, and the intent of the parties to said deed of conveyance secondly mentioned, and that the said Charles B. C. Bacot and Sarah F. his wife may be en-
 10 joined and restrained by the order or decree and writ of injunction of this honorable Court from further proceeding in the suit of ejectment against your orator hereinbefore mentioned, and from prosecuting any execution or writ of habere facias possessionem upon the judgment entered in said cause; and that your orator may have such other and such further relief as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant, your Honor, the writ of injunction of this honorable Court,
 20 enjoining and restraining the said Charles B. C. Bacot and Sarah F. his wife, their attorneys, agents and servants, as aforesaid, and also the most gracious writ of subpoena of the State of New Jersey, issuing out of and under the seal of this honorable Court, to be directed to the said Charles B. C. Bacot and Sarah F. his wife, Henry A. Booraem and Cornelia his wife, Jonathan D. Miller and Eliza E. his wife, and John Van Voorst, therein and thereby commanding them and each of them on a certain day and under a certain penalty, therein to be inserted, personally to be and appear before your Honor in this honorable Court, then
 30 and there to answer all and singular the said premises, and to stand to and abide by such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

ASA WHITEHEAD,

Sol'r for Complint. and of Counsel with him.

State of New Jersey, ss.: Charles F. Durant, the complainant in the foregoing bill of complaint named, being duly sworn on his oath saith, that the facts, matters and things in said bill mentioned and set forth, so far as relates to the actings and doings of this de-

ponent are true of his own knowledge, and that so far as the same relates to the actings and doings of any other person or persons, he verily believes the same to be true. CHARLES F. DURANT.

Sworn and subscribed before me at Newark, this fifth day of November, A. D. 1857.

WM. SILAS WHITEHEAD, Master in Chancery of New Jersey.

DEFENDANTS' ANSWER.

The joint and several answers of SARAH F. BACOT, HENRY A. BOORAEM and CORNELIA his wife, JONATHAN D. MILLER and ANNA ELIZA his wife, and JOHN VAN VORST, the Defendants, to the Bill of Complaint of CHARLES F. DURANT, Complainant.

These defendants, reserving unto themselves all advantage of exception to the many insufficiencies in the complainant's bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as they are advised is material for them to make answer unto, answering, say :—

That they admit it to be true as charged in said bill, that John Van Vorst, now deceased, was at the time in said bill stated seized in fee of a large tract of meadow as therein stated, and are informed and believe that said John Van Vorst conveyed by deed as therein stated a lot of land fifty feet wide and one hundred feet deep, and gave a deed therefor as therein stated, but these defendants have no counterpart or copy of said deed, and for the particulars of said deed and the description of the property conveyed thereby, they refer to said deed when produced and proven by the complainant.

And these defendants, further answering, admit that at the date of said conveyance the turnpike road from town of Jersey to Newark was open, and that Warren street was not opened north of said turnpike, but whether it was opened south of said turnpike is not known to these defendants, but it was laid out and designated on the map of the associates of the Jersey Company, which was a public record, and as these defendants believe was well and familiarly known both to said William Durant and to said John Van Vorst, and that by said map it was very evident that Warren street did not cross said turnpike at right angles, but at an angle very much variant therefrom.

And these defendants, further answering, admit that said William Durant entered upon the possession of said lot and erected buildings thereon, but under what impressions and how much of said lot they occupied is unknown to these defendants, and these defendants do not know at what angle to said turnpike said William Durant erected his said buildings, but they aver that the angle formed by the said turnpike and Warren street, north of said turnpike and west of Warren street, where said lot was situated, was a very acute angle, and that buildings erected on the whole of the front of said lot, at right angles to said turnpike, would not project on the other lands of said Van Vorst, but on Warren street only.

And these defendants, further answering, say, that they do not know what the object of said John Van Vorst in conveying to said William Durant a gore of twenty-six feet in front on said turnpike was, but it was not and could not have been to remedy the projection of the buildings of said William Durant on the land of said John Van Vorst, by reason of their having been built on said lot occupying the whole front thereof at right angles with said turnpike, because said buildings would not by reason thereof project on the other lands of said John Van Vorst.

And these defendants, further answering, admit that said John Van Vorst did by deed dated on or about the time in said bill stated, convey to the said William Durant a gore of twenty-six feet front on said turnpike adjoining said lot, but as these defendants have no counterpart of said deed, they refer for the exact contents of the same to the deed when produced and proved by the complainant.

And these defendants, further answering, say, that they are ignorant of the object of said William Durant in purchasing said lot, or of said John Van Vorst in selling it to him, but inasmuch as said William Durant had before that time conveyed the first lot above described to the complainant, who still holds it, and the said lot is mentioned in the deed for said gore as the lot of the complainant, they do not believe that it was the object of either party to give said William Durant a lot running at right angles from said turnpike road.

And these defendants, further answering, admit that after said conveyance said William Durant or Charles F. Durant took pos-

session of a gore of land on said turnpike greater than twenty-six feet in front from said lot first conveyed, and with its west line at right angles to said road, but such possession was not taken until about or just before the commencement of the ejectment suit in said bill mentioned, which suit was commenced as soon as such possession became known to the defendant Sarah F. Bacot.

And these defendants, further answering, admit that they believe it to be true as in said bill stated that said William Durant in his life time conveyed said first mentioned lot to the complainant as in said bill stated, and that after his death his heirs at law in said bill named conveyed the said gore of twenty-six feet on said turnpike to the complainant as in said bill stated, but of the contents or execution of said conveyances, these defendants have no knowledge, and therefore leave the complainant to prove and produce the same.

And these defendants, further answering, admit that said John Van Vorst died intestate on or about the ninth day of January, 20 in the year eighteen hundred and thirty-two, and that he left surviving him the children and heirs at law in said bill stated, and that after his death a partition was made of his property among his heirs at law as in said bill stated, and that in said partition the lands adjoining said gore on the west and which the complainant in said bill alleges were intended to be conveyed to the said William Durant, were assigned and set off to the defendant Sarah F. Bacot, wife of Charles B. C. Bacot, as part of her share of said property.

And these defendants, further answering, say that it is not known to them whether the distance of twenty-six feet was inserted in said second deed from John Van Vorst, deceased, to William Durant, upon a supposition that it would make the westerly line of said lot square with or at right angles to the turnpike or not. But these defendants insist that if either or both of said parties had supposed that said twenty-six feet front would have given a line at right angles with said turnpike, yet as said William Durant only bought and paid for twenty-six feet, he is not entitled to have a conveyance for fifty-five feet or any other number of feet which may be requisite to make said side at right angles to said turnpike.

And these defendants, further answering, say that they admit that an action of ejectment was brought, and that the same was tried and determined as in said bill stated.

And these defendants, further answering, deny that there was any mistake or misapprehension in the drawing of said second deed to William Durant, or any ambiguity in the terms thereof, or that there ever was any understanding, agreement or intention
10 on the part of said John Van Vorst to convey any more than twenty-six feet front on said turnpike, but that said deed was executed with a clear understanding of both parties that it conveyed twenty-six feet front only, and that it contained no call or requirement for such front as would make the west line at right angles to the front line.

And these defendants deny all and all manner of unlawful combination and confederacy in said bill charged, without this, that any other matter or thing therein charged and not herein
20 and hereby well and sufficiently answered, confessed and avoided, traversed or denied, is true to the knowledge or belief of these defendants; and they pray to be hence dismissed, with all their lawful costs and charges in this behalf most wrongfully sustained.

A. O. ZABRISKIE,

Sol'r and of Counsel with Defendants.

State of New Jersey, ss.: Sarah F. Bacot, Henry A. Booraem, Cornelia Booraem, Jonathan D. Miller and Anna Eliza his wife, and John Van Vorst, being duly sworn each upon his oath saith, that the matters set forth in the above answer so far as relate to his own acts are true, and so far as relate to the acts of others, he believes them to be true.

SARAH F. BACOT,
HENRY A. BOORAEM,
CORNELIA BOORAEM,
J. D. MILLER,
A. E. MILLER,
JNO. VAN VORST.

Sworn and subscribed by J. D. Miller, A. E. Miller, and John Van Vorst, this 22d day of January, A. D. 1858, before me,

G. M. OLMSTEAD, Master in Chancery.

Sworn and subscribed before me by Henry A. Booraem and Cornelia his wife, and by Sarah F. Bacot, on the 25th day of January, A. D. 1858, at Jersey City.

ROBT. GILCHRIST, Jr., Master in Ch'y, N. J.

A true copy.

W. W. BABBITT, Cl'k.

REPLICATION.

The Replication of CHARLES F. DURANT, Complainant, to the answer of SARAH F. BACOT, wife of Charles B. C. Bacot, HENRY A. BOORMAN and CORNELIA his wife, JONATHAN D. MILLER and ELIZA E. his wife, and JOHN VAN VORST, Defendants.

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto saith, that he doth and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer is very uncertain, evasive and insufficient in the law to be replied unto by the repliant, without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and herein and 10 hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain and prove, as this honorable Court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

ASA WHITEHEAD,
Sol'r of Complainant.

COMPLAINANT'S PROOFS.

Examination of witnesses, in the above entitled cause, before me, at the office of George W. Cassedy at Jersey City, on the twenty-fourth day of June, eighteen hundred and fifty-eight, at ten o'clock in the forenoon, in pursuance to notice given by solicitor of complainant to solicitor of defendants, service whereof is admitted, in the presence of Asa Whitehead, solicitor of complainant, and Abraham S. Jackson in behalf of Abraham O. Zabriskie, solicitor of defendants.

A paper writing purporting to be a deed from John Van Vorst and wife to William Durant, dated June 19, 1829, was offered in evidence by the complainant, and is marked Exhibit number one on the part of the complainant.

Another paper writing purporting to be made by John Van Vorst to William Durant, dated October 12, 1830, is offered in evidence by the complainant, and is marked Exhibit number two on the part of the complainant.

Another paper writing purporting to be a deed of conveyance from William Durant and wife to Charles F. Durant, dated November 20, 1828, is offered in evidence by complainant and is marked Exhibit number three on part of complainant.

20 Another paper writing purporting to be a deed of conveyance made by James Narine and Abby his wife and others to Charles F. Durant, dated November 1st, 1852, is offered in evidence by complainant, and is marked Exhibit number four on part of the complainant.

JONATHAN J. DURANT, sworn on behalf of complainant, says :—I reside in Jersey City ; do not know how long I have lived in Jersey City, think as much as forty years ; am a son of William Durant and a brother of Charles F. Durant ; I am about

forty-six years of age, and am a baker by occupation. I knew John Van Vorst, late of Harsimus; he is dead; do not know how long, but for many years; I know a lot of land on the corner of Newark avenue and Warren street, conveyed by John Van Vorst to my father; I knew of the purchase of that lot at the time the purchase was made; the lot was understood to be fifty feet by one hundred feet, the size of two ordinary building lots, such as they sell in Jersey City; I knew of my father buying the lot, by conversations between my father and Mr. Van Vorst, and being with him, my father, almost daily; I do not 10 know at what time the purchase was made, I suppose as much as thirty years ago. Paper No. 1, being shown to the witness, he says, that is the deed for the lot; at the time of that conveyance and before it, I lived in my father's family, and engaged in his business; about this time I saw my father and Mr. Van Vorst together frequently, almost daily; I heard the agreement that was made for this fifty foot lot, as in Exhibit number one; I understood from these conversations that the price was to be fifty dollars a lot, and the lot was to bind on Newark turnpike and where Warren street would come if it should ever be opened; 20 this lot laid where there was an old ditch, part of it lay in an old ditch; it laid west of the line of Jersey City and outside of it; the township in which it lay was called Bergen, and in the village of Harsimus; Warren street had not then been opened; this land was salt marsh, the land adjacent was all salt marsh; there was nothing there to designate the lines except the Newark turnpike and the ditch; that ditch was said to be the boundary line between Jersey City and Harsimus; the ditch crossed the turnpike diagonally, I think; I cannot now tell satisfactorily to myself whether the ditch crossed the turnpike at right angles 30 or not; do not know that I had an idea how Warren street would cross the turnpike, I did not look far ahead in those days; the ideas of the parties were that the lots were supposed to be at right angles to the turnpike, they purchased them for that purpose; these lots were to be the same sized lots as sold in Jersey City; I supposed the lots were to be regular right angle lots, never heard anything to the contrary; these lots could not have been used or built on in the condition they were, they were very soft, and a regular quagmire; Jersey City at that time was small,

very small ; in Montgomery street there was one house only,
 which I now own ; I think there was also a blacksmith shop and
 a stable and a slaughter house on Montgomery street ; my father
 afterwards conveyed this lot to my brother Charles ; I don't
 know that I can tell how long after he purchased it that he con-
 veyed it to my brother. Being shown Exhibit number three the
 witness, he says, that is the deed ; before this deed was given
 by my father to my brother, my father had built on the lot three
 small houses, two or three, just as you please ; two were built
 10 together ; these houses I believe were built at right angles to
 Newark turnpike, two of them were, one was built in the rear
 of the one on the corner and adjoined to it ; these houses were
 built apparently with reference to a lot at right angles on Newark
 turnpike, as nearly as could be told without a surveyor ; these
 were small wooden buildings, one was two stories and two one
 story high ; they set on blocks which were set in the mire, one
 block under each corner, built up crib fashion ; these buildings
 covered upon the turnpike road probably forty feet, it may have
 been fifty feet ; I think his intention was to cover the front on
 20 Newark avenue ; there was a vacant space between the two
 buildings, don't know how much ; there is a space there yet
 partially filled ; I suppose there was space for another small
 house, after my father built these buildings, my father kept an
 oyster stand there ; I know of a subsequent agreement between
 my father and Mr. Van Vorst for the conveyance of a lot ad-
 joining ; this was some few years after that (the first convey-
 ance), they began to find that the line of Warren street would
 get the buildings in the street, and the buildings on Newark ave-
 nue would be on Mr. Van Vorst's land. I mean portions of the
 30 buildings on Warren street, and the westerly portion would be
 on Mr. Van Vorst's grounds. The lot turned out not to be
 square ; Mr. Van Vorst was willing to make it square, and my
 father was anxious to have it square ; I heard them speak about
 making the westerly end of the lots square more than half a dozen
 times ; I heard an agreement made between them, in reference
 to making the lot square ; Mr. Van Vorst said he would sell
 land enough to make it square, and my father said he would buy
 enough to make it square, and he did buy ; Van Vorst agreed to
 sell to my father enough to make the west end of the lot square

with the turnpike, and he did sell enough for that purpose; there was more of an angle in the lot than they supposed there would be; they did not suppose the lot would be so crooked; at this time Warren street had not been opened; we were dumping oyster shells where Warren street would be. The land adjacent still remained flats, salt meadow; there was no visible mark which would tell where Warren street would be, if it were opened. In reference to having square lines, Mr. Van Vorst said he preferred to have that line square, it would suit him better for the rest of his lots; Mr. Van Vorst said he would rather the 10 skew would be all in the corner, if there was to be a skew about it. It was thought at this time that fifty dollars a lot was all this land was worth. I suppose this was a high valuation for a regular lot twenty-five feet by one hundred feet. Van Vorst was a large owner of this kind of land there; I didn't know at that time of any lots in that marsh being sold at that time by John Van Vorst; I don't know that he sold any lots there up to the time of his death. This place of my father's was the extreme end of the population on the meadows, toward Bergen hill. The plot 20 on map being shown to witness, I think this represents the lot first purchased by my father from Mr. Van Vorst, as it is since ascertained to be, if the westerly line of this triangular lot on this map is at right angles to the turnpike, then it represents the lot agreed by Mr. Van Vorst to be sold to my father. Which map is offered in evidence, and marked Exhibit number five on part of complainant.

I think this lot has been enclosed by a fence at or nearly at right angles to the turnpike, but a part of this fence has been stolen. I never heard Mr. Van Vorst claim that this westerly line was not at right angles with the turnpike road. My father con- 30 tinued to reside upon this land until his death; he died in eighteen hundred and thirty-four. This land I suppose has been in the possession of my father and brother from the time it was purchased until this time. I was absent for about four years, from 1849 to 1853; when I came back things had changed considerable. The part of these lots that had not been built on, remain vacant still. My brother has raised the houses up, put better foundations under them, repaired and enlarged them, made one of them nearly twice the size it was. My brother has filled up

this triangular lot to the westerly line, partially, some four years ago ; I think this filling up extended to the westerly line as marked in Exhibit number five.

Exhibit number two being shown the witness—This is the second deed executed by Mr. Van Vorst to my father, intended to convey the lot before agreed to be sold to him. This deed was prepared under the direction of lawyer Cassedy.

Exhibit number one being shown the witness—I am subscribing witness to this deed, saw it executed by John Van Vorst ; I continued to live in my father's family up to the time of his death ; was well acquainted with his business.

Exhibit four of complainant shown to witness—This is the deed by which I and my sister and her husband, and the children of a sister who is dead, conveyed our interest in the triangular lot. Before this conveyance, the interest of William Durant, my brother, had been conveyed to me.

Being cross-examined by Mr. Zabriskie, for defendant, he says—These buildings cover on Newark avenue from Warren street, about forty or fifty feet ; think the whole about fifty feet. I think there are no buildings on the gore purchased of Van Vorst. I think a part of the buildings on the first lot projected over on the gore, and before Mr. Van Vorst conveyed the second lot to my father, a part of his building was on Van Vorst's lands ; I think this was the reason of his purchasing the gore ; I think it was ascertained before the second purchase, that my father's building projected over on Van Vorst's lands ; I do not recollect that this was one of the reasons that my father gave for the purchase of the gore. The particular reason was to get it square.

The counsel for the defendants objects to the last sentence as not being in answer to his question, which was—Do you not recollect that your father assigned it to Mr. Van Vorst as one of the reasons why he should sell him this lot, that these buildings projected on it ?

The buildings which he put up before he purchased the second lot, were at right angles to the turnpike, or intended so to be ; they were at right angles as near as I could judge by the eye. The front of those buildings are not where they were ; they have slid a little ; they are nearly where they were, they

have not been moved except by their own sliding, except that they have been raised. The front occupies the same place it did when they were put up. There are no buildings now on the gore except parts of those my father put up before he bought the gore. The front of the westerly building I think projected over on the gore, and the rear of the other building projected over on Warren street, which has been pulled down; this was the one built in the rear of the one built on the corner of Warren street. The east building now standing, fronting on the turnpike, I think the front does reach as far as Warren street. 10

Re-examined by Mr. Whitehead.

Question.—State whether your brother in making additions to the buildings on the property, extended the front of the easterly building further towards Warren street, than it was when built by your father.

Ans.—I think he has; I cannot say to what extent; I think a point of that corner next to Warren street on Newark avenue is not covered now. When I speak of forty or fifty feet covered by buildings, I mean the houses built by my father, including the blank spaces between them, independent of the additions 20 made by my brother.

JONATHAN J. DURANT.

Sworn to and subscribed before me, }
June 24, 1858. }

C. H. WINFIELD,

Master in Chancery, N. J.

SAMUEL CASSEDY, sworn for complainant, says—I believe I have practiced law in Jersey City over forty-two years. I knew John Van Vorst now deceased; I knew him from the time I commenced business here until his death; I do not know how long he has been dead, has been dead about twenty-five years or twenty-six years; I did business for him in his life time; I believe I did all his business; we were together two or three times a week; I was on intimate terms with him, particularly so; he was a large owner of marsh or salt lands, in what is now Jersey City, on Newark turnpike; in eighteen hundred and twenty- 30 seven, we did not consider salt meadow worth anything, it could

not be cultivated nor built upon, from the time I came here in 1816 to 1831 or 1832, it was thought that salt meadow could not be built upon, and I would not have given ten dollars for an acre of it; the purchase of Mr. Durant was laughed at.

Question.—In 1827 what was Jersey City in point of wealth and population? This question was objected to by counsel of defendants as irrelevant to the issue.

Answer.—The property here at that time was a drug, and the population was about twenty-five hundred.

- 10 Exhibit number one being shown to the witness—A part of that is in my handwriting; it was prepared by me for Mr. Van Vorst. My opinion is, that one hundred dollars for two regular lots in that place, at that time, was a large price, more than I would have given; at the time of that conveyance the turnpike was rather sunken; it has been filled up several times, and I think it has now found bottom and become permanent; on both sides of the turnpike the land was a quagmire, and east of Warren street it was a quagmire; by the term quagmire I mean land which could not be walked on; if I walked on it I would lose
- 20 my shoes in the mud; before the turnpike was laid it must have been all one mass of salt meadow. After I had prepared the first deed, I was applied to by both parties to make another deed; they came into my office together; they came in, Billy was a great swearer; Van Vorst said, Billy wants some more land; he wanted to square his lot out, he wanted some more land; I don't recollect what Mr. Van Vorst said; he and Billy had made a bargain before they came in; I don't recollect the words he used; Mr. Van Vorst appeared to be willing to let him have any thing he wanted in the way of salt marsh; the way I understood
- 30 and from the direction they gave me, I drew the deed under their order intending it should carry a straight line from the turnpike in a northerly direction, so as to make the western boundary of the lot at right angles with the turnpike; those were the instructions I got from both of them; they both understood that; they were talking together; I do not remember the words; when I wrote the deed I intended it should be so; I recollect Van Vorst asked Durant how many feet it would take to square it, Durant said about twenty-six feet, the number of feet in the deed; I judge that he said that; I do not recollect he said

twenty-six feet; I drew it from the orders I got from them both; we all three believed, as I now recollect, that that would make the western line of the lot at right angles with the turnpike; they both told me that it would make such a line.

Question.—State when the parties came to you, whether they stated that Mr. Van Vorst had agreed to convey so much of the salt marsh as would make the westerly line at right angles or perpendicular with the turnpike road. This was objected to by Mr. Zabriskie, as a leading question.

Ans.—I cannot say that the words were used, but that was 10 the intention as expressed by them; when I drew the deed I thought I made it so—twenty, thirty or forty feet were not considered of any consequence; they talked about it as of little value; Van Vorst did not appear to care how much he gave.

Exhibit number two being shown to the witness, he says— This deed was prepared under my direction; I think Bently wrote this at my dictation; it is bunglingly expressed; I meant that the westerly line should be at right angles to the turnpike; Van Vorst and I went over to New York that day and spent the most of the twenty-five dollars. 20

Question.—State whether or not you intended by this description, that the westerly line of the lot conveyed should be perpendicular with the turnpike road.

Answer.—Yes, we had no map of property beyond the ditch; we had to describe it as well as we could; I referred to no map at that time; Warren street had not then been opened in any way; I did not then know as there was a place called Warren street; I might have heard it, but don't recollect it.

Question.—Did Mr. Van Vorst say anything at the time as to whether he would like or prefer to have the westerly line perpendicular or at right angles with the turnpike road, in reference to the lots he had got to sell? 30

Ans.—I don't recollect anything about that; I know he was a great hand for straightening lines; I did not know till after Warren street was filled up, that it was diagonal with the turnpike, till now lately. This land lies beyond the limits of old Jersey City, beyond the ditch and Warren street.

Exhibit number five being shown to witness, he is asked whether the triangular described upon that map or plot corresponds

with the instructions given by Van Vorst and Durant to the witness for preparing the deed last mentioned.

Answer.—It corresponds with what I understood to be their bargain and the instructions they gave me.

Cross-examined by Mr. Zabriskie for defendants, he says—
 I do not recollect anything which either of them told me, except so far as I have stated in my testimony ; at that time a lot was considered to be twenty-five feet by one hundred feet ; when I say half, I mean nearly half a lot ; it is a random expression, and
 10 may mean a little over or a little under half a lot ; Mr. Durant said it would take twenty-six feet along the turnpike to square it out ; I think both parties said that would square it out ; I think Van Vorst said to Billy, how much do you want ? Billy said twenty-six feet, I think that will square it out ; when I say twenty-six feet, I don't mean that I recollect that he said those words, but I mean to say he called for the quantity named in the deed ; I don't know which said it, but I mean to say that both meant that, that would square it out as they wanted it, and make a perpendicular line ; I do not recollect the words that either of
 20 them used, it is so long ago ; I recollect the substance and the meaning of what they said ; I think at that time I was deputy clerk, at that time I was deputy clerk ; the Jersey Records were in my office, records of deeds and mortgages ; in those records there was no copy of Mangin's map of Powles Hook ; there was a copy hanging in my office, belonging to the associates ; I don't know whether that copy has Warren street and the turnpike laid down on it or not ; my opinion is that it had, but I don't know ; the lithograph copy of that map, called Dummer's lithograph copy, now here, has Warren street laid down on it ;
 30 I see two marks on the map, I don't know what they are intended for.

Re-examined by Mr. Whitehead.

Question.—In point of fact, does the property in question in this cause lie in that part of the town of Jersey, commonly called Powles Hook, or in Harsimus ?

Answer.—It lies outside of the line of Jersey City proper, at that time, in the township of Bergen.

It was no part of the property purchased by and belonging to the associates. The old ditch was always held to be boundary line between Jersey City and Bergen, the westerly line of the associates' purchase. Mangin's map was made under the directions and for the associates, and intended to include the island of Powles Hook only. I consider a lot in Jersey City of twenty-five feet by one hundred feet a full lot, with right angles. In common parlance when a person speaks of a lot twenty feet by one hundred feet, he is always understood to mean a lot with right angular lines, I mean in this part of this city; it is so at 10 Harsimus and in the city.

SAM. CASSEDY.

Sworn to and subscribed before me, }
June 24, 1858. }

C. H. WINFIELD,

Master in Chancery, New Jersey.

DEFENDANTS' PROOFS.

Examination of witnesses taken before me, Jacob Weart, one of the Masters and Examiners of the Court of Chancery in said State, at the office of A. O. Zabriskie, Esquire, in Jersey City, on the fourth day of September, eighteen hundred and fifty-eight, in the presence of A. O. Zabriskie, Esquire, solicitor of the defendants, commencing at 11 o'clock, A. M., no one appearing for the complainant, although it appeared before me that notice had been duly served upon Asa Whitehead, Esq., as appears by the notice hereunto annexed.

September 4th, 1858.

JACOB WEART, 20
Master in Chancery, N. J.

JOHN DRAYTON, being duly sworn according to law, upon his oath doth depose and say—That he is in his sixty-ninth year of his age, and that he resides at No. 15 Newark avenue, Jersey City. I have resided in Jersey City from thirty-five to forty

years. I know the property at the corner of Newark avenue and Warren street, Jersey City, that William Durant purchased of John Van Vorst, deceased ; I knew it before William Durant bought and built there ; it was meadow land ; the tide ebbed and flowed over it at very high tides. Mr. John Van Vorst was in the habit of cutting the grass on it, and after William Durant bought and built, there was a fence running from Newark avenue up to a point that Mr. Van Vorst owned. That fence I understood to be on the west side of Mr. Durant's lot. On or about 10 the year 1845, Mr. John Van Vorst, junior, hired me to fill in the sidewalk of the disputed lot ; I filled it in, and he paid me for it. I believe that there was then a fence standing on the west side of Durant's lot ; there was a fence then standing, commencing at the west side of the small house that Durant owns, and running northerly to Newham's lot, to a point. The disputed lot, as I understand it, lies west of this fence. John Van Vorst during his lifetime, and his family afterwards, had been in the habit of mowing this disputed lot up to the west side of the fence. At the time I filled in the sidewalk there was no fence 20 west of Durant's fence, it was all open.

JOHN DRAYTON.

Taken, sworn and subscribed before }
me, at the city of Jersey City, }
September 4th, 1858.

JACOB WEART,

Master in Chancery.

ABRAHAM STILWELL, being duly sworn according to law, upon his oath doth depose and say—That I am in my fifty-sixth year of age ; I reside now at West Hoboken ; I used to live on 30 Mrs. Bacot's farm, near the Bergen reservoir. I was a tenant on the Van Vorst farm, under Sarah Van Vorst, the widow of John Van Vorst. I knew the property that William Durant purchased of John Van Vorst, deceased. I did not know it before he bought it. I moved there on the Van Vorst farm in May, as Mr. Van Vorst died in January previous ; I think he died in eighteen hundred and thirty-two ; I remained on the farm for about eighteen years, until about 1850 ; during that time we used to cut the salt meadows, and take the hay up on the farm ; we

cut the hay both before and after the railroad went through; we used to cut up to a ditch that was called the line between Van Vorst line and Durant's; that ditch was on the west side of Durant's property; I can't say how near this ditch went to Durant's house standing on Newark avenue, but back on Durant's lot there was a privy standing on four posts right by the ditch, and from this out to Newark avenue there was a row of posts set along the ditch, and to the best of my recollection there was a rough spar nailed up along on the top of these posts. That fence was so when I first went there, and continued so until the railroad was built. I have no recollection of the fence after the railroad was built. 10

A. STILWELL.

Taken, sworn and subscribed before
me, at the city of Jersey City,
September 4th, 1858. }

JACOB WEART,

Master and Examiner in Chancery.

JOHN VAN VORST, being duly sworn according to law, upon his oath doth depose and say—That I am a brother of Mrs. Ba- 20
cot, residing in Jersey City, and have always lived where I now live; I am now in my thirty-seventh year of age; I was between nine and ten years old when my father died. I remember this property of Durant's from the time my father died, and before. My father, John Van Vorst, died in January, 1832. I was frequently along with my father along this property in his lifetime. I have a very indistinct recollection of a fence along the west side of Durant's lot, in my father's lifetime. I think there was one, there was a rail from the turnpike running down to and nail- 30
ed on the west side of the Durant house; I recollect this distinctly, because my father often stopped there and leaned on the rail, in consequence of a disease of the heart. The meadow was open on the west side of, and ran up to the Durant house. As long as I remember my father in his lifetime, up to the time of his death, used to mow this meadow up to Mr. Durant's line, and burned them at the proper season regularly every year; this meadow was then a matter of importance to my father, on account of the amount of grass it produced. My mother after my father's death was in

the habit of mowing the meadow regularly for a series of years. She mowed up to Durant's line. I managed for my sister the ejectment suit between her and Charles F. Durant. I very well know the triangular lot which was in dispute at that trial, and for which the bill in this case is filed. This lot was lying in common with the rest of the meadow, and not enclosed with any fence with Durant's lot from the time of my father's death up to the time of the partition of my father's estate in 1843. I had never heard of any claim of Durant's to it, until after the parti-

10 tion in 1843; we never dreamed of such a thing. After this lot in dispute was set off to my sister Sarah with her part of the estate, I took charge of it for her; I had the sidewalk filled up to the west side of Durant's little house and paid for the paving, guttering and curbing; this was in front of the lot in dispute; this was several years after the partition, I cannot recollect the year without referring to the bills. I first heard of Mr. Durant's claim to this lot about the year 1845 or 1846; I think he then took possession and run a fence along the front and the west side of the lot. At the time he took possession of the lot there was

20 a fence running on the west side of Durant's line from the north-west corner of the little house, and run northerly to his rear line, it was a zig-zag fence, built of old materials; there was a ditch running along the west side of the fence, and sods to make it tight put under it. That fence had been there for a long time, but frequently out of repair and partly down. I may be mistaken about the time as to whether Mr. Durant put up the front fence at the time he took possession, or afterwards; he put up the fence at the west side at the time he took possession, and the lot was at one time all fenced up tight.

30 Witness being shown map marked Exhibit S. F. B. No. 1, on the part of the defendants, he says, that this map according to the best of my belief, makes a fair representation of the property, the green part or flat represents the lot in question, the lots enclosed in red lines and colored brown represents the property sold by my father to William Durant, the part east of the dotted red line represents the lot first conveyed by my father to William Durant, and the lot west of the dotted red line is the second lot or gore. The red line along Newark avenue is what

we claim to be the true line of Newark avenue, the blue line is the line established by the Common Council.

JNO. VAN VORST.

Taken, sworn and subscribed before }
me, at the City of Jersey City, }
September 4th, 1858. }

JACOB WEART,
Master in Chancery.

CHARLES E. NEWHAM, being duly sworn according to law, upon his oath doth depose and say—That I now reside at Hud- 10
son City ; I came to Jersey City in 1842 and resided here until
1853. I first knew this property in controversy about 1845.
My uncle then bought of Mrs. Bacot a lot adjoining Mr. Du-
rant's lot ; there was no fence on the meadows then or sign of a
fence, except the fence running from the west side of Mr. Du-
rant's west house northerly to his rear line ; the disputed lot lies
west of this fence. My uncle bought a lot of which a portion of
the disputed lot forms a part, and took a deed for it from Mrs.
Bacot and her husband. The fence was what is called a board 20
fence, it was a dilapidated fence. Mr. John Van Vorst filled up
the front part of this disputed lot to where there was formerly a
ditch.

CHARLES E. NEWHAM.

Taken, sworn and subscribed before }
me, at the city of Jersey City, }
September 4th, A. D. 1858. }

JACOB WEART,
Master in Chancery.

ROBERT C. BACOT, being duly sworn according to law upon
his oath doth depose and say—That I reside in the city of Jer- 30
sey City, and that I am between thirty and forty years of age,
and am a surveyor and civil engineer by profession ; and witness
being shown a map marked Exhibit S. F. B. No. 1, on the part
of the defendants, says, that I made that map ; I made it from
actual survey, it correctly represents the buildings of Mr. Durant
situate on the premises ; the blue line represents the north line
of Newark avenue as established by the Common Council ; the
red line on Newark avenue represents it as laid out as sixty-six

feet from the other side ; the lots as represented in the red lines, colored brown, are the lots described in the two deeds from John Van Vorst to William Durant. Warren street is correctly laid down, according to the continuation of the lines on Mangin's map.

ROBT. C. BACOT.

Taken, sworn and subscribed before }
me, at the city of Jersey City, }
September 4th, 1858.

JACOB WEART,

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Master in Chancery, N. J.

JOHN VAN VORST having been recalled and cross-examined on the part of the complainant by Mr. Whitehead—

I am a son of John Van Vorst, deceased, and brother of Mrs. Sarah F. Bacot, one of the defendants ; I am party defendant to this cause ; I am not interested one penny in the event of this suit. This lot was assigned to Mrs. Bacot in the division of the estate of John Van Vorst ; lands were assigned to me in the same division. My father died without a will, and this partition was made for the purpose of making an equal division of his estate
20 among his children.

Ques.—Suppose a part of the land assigned to your sister Mrs. Bacot, should turn out not to have belonged to your father, do you not understand that the other heirs would have to contribute so as to make her share equal ?

Objected to as being a question of law and as irrelevant.

Ans.—Not one penny.

I know of the conveyance made by Mr. and Mrs. Bacot to Newham.

Ques.—Will you explain on this map Exhibit S. F. B. No.
30 1, how the lot purported to be conveyed to Mr. Newham by Mrs. Bacot, will lie with reference to the lot of fifty feet front conveyed by your father to Mr. Durant ?

Ans.—Newham's lot begins on the front line of Newark avenue, west of the black lines running from the avenue northerly ; it then runs northerly, at right angles to Newark avenue, until it strikes the west side of Mr. Durant's lot, as mentioned in the second deed, and then continues over the lot conveyed to Mr. Durant, taking in from his lot from six to eight or ten feet at the

widest point ; I mean the actual location of the ground, without reference to any map ; it continues over a part of the lot embraced in the first deed.

Ques.—Is not the distance that you have mentioned of six or eight or ten feet, taken in or included in Newham's deed, on the rear of Durant's lot, the whole of it from the lot first conveyed by your father to Mr. Durant ? Ans.—Yes, it is.

Map shown to witness, he says, it appears to be a copy of our partition map apparently.

I understand the lot running around from Newark avenue to 10 Warren street as lot No. 37, being the L lot around Durant's lot.

Ques.—Is there land enough to account for all the lots laid down on this map fronting on Newark avenue, and if not is there any such lot as No. 36 ?

Ans.—There is such a lot as No. 36, but not as laid down on that map ; there is not land enough to make a full lot as laid down on that map, 25 by 100.

Ques.—What kind of a lot does it make ?

Ans.—It makes a full lot with the exception of the part taken out by Mr. Durant's lot, which is a small part. 20

And by reason of there not being land enough, this lot No. 36 falls short, or is shoved over upon the rear part of Durant's lot.

The copy of the above partition map among the heirs of John Van Vorst, deceased, is marked Exhibit W. No. 2, on the part of the complainant.

Ques.—Is the line of Newark avenue on this map W. No. 2, laid down according to the line of that street said to be established by the Common Council, or according to the line of that street as it was formerly understood to be ?

Ans.—I have always supposed that the line on map W. 2, was 30 the old line of that street as shown I believe on Mangin's map. I understand that the red line on map S. F. B. No. 1, on Newark avenue, is the old line of the street, but I do not know positively. I do not know whether that line is the same line as laid down on the division map or not.

Ques.—As near as you can tell, what is the distance from the line of Newark avenue to the point where the easterly line of Newham's lot would strike the red line laid down on map S. F. B. No. 1, as Mr. Durant's westerly line ?

Ans.—I should think about 80 feet more or less, as near as I can recollect—it may be seventy or seventy-five feet.

My impression is that I paid the assessment for paving Newark avenue in front of this disputed lot ; I have not the bill ; it was many years ago ; I think the assessment was made to Mrs. S. F. Bacot for lot No. 37, and I paid the bill—that is my impression.

Ques.—If you paid the assessment, to whom did you pay it ?

Ans.—I do not know to whom; the assessor is changed every 10 year. If I paid it, I got a bill of it. I cannot say whether I put it in Mrs. Bacot's bill ; I was in the habit of charging Mrs. Bacot when I paid money for her ; my idea is that I paid about thirty or forty dollars for this assessment for Mrs. Bacot. I have looked for my receipt ; I have examined my bills and receipts, and could not find it. I destroy my old receipts. This assessment is marked paid in the assessment book, and the receipt is of no value. I think I have paid some of the city taxes on this lot for Mrs. Bacot. I think I did at the same time that I looked for the assessment receipt, examined for the receipts 20 for taxes on this lot No. 37, and I do not think that I found any receipt for the taxes on this lot No. 37. This property was assessed to Mrs. Bacot, until Mr. Durant laid claim to it and then it was assessed to Mr. Durant, and when I went to pay the taxes I found them paid. I have not examined my accounts with Mrs. Bacot for the purpose of ascertaining whether I had charged her with the taxes or assessment paid on lot No. 37. I am her agent ; she had other numerous taxes and assessments to pay, but not at the time the assessment was laid on this lot, not many assessments at the time the assessment on Newark avenue was 30 made, there were not many improvements in Jersey City at that time.

Previous to making the assessment map of Jersey City in 1847, I had the means of knowing what property was assessed to Mrs. Bacot by our map.

The examination of John Van Vorst was adjourned to Saturday morning, October 9th, at 9½ o'clock, A. M., to be proceeded in, if convenient for all the parties.

December 24th, A. D. 1858, at 10 o'clock, A. M., Mr. Whitehead and Mr. Durant appeared, and A. S. Jackson, Esq., appeared for A. O. Zabriskie, Esq., counsel for the defendants, and by consent of all the parties the cross-examination of Mr. John Van Vorst was continued. Mr. Whitehead stayed but a short time, and the examination was conducted by Mr. Durant, the complainant, personally.

The cross-examination of John Van Vorst continued by Mr. Durant, December 24th, 1858.

Ques.—Have your studies in law, literature and science, 10 your extensive practice in conveying by maps and deeds your own town and city lots, your agency in the care and sale of your sister's lots, together with the knowledge you may have acquired as commissioner of tax appeal, made you somewhat expert in understanding, plotting and describing maps with town and city lots? Ans.—Yes.

Ques.—Do you understand the turnpike road or Newark avenue, with all its crooks and turns, to be a continuation westerly of Montgomery street? Ans.—Yes.

Ques.—Look on Exhibit W. 2, known as block B, of the 20 Van Vorst commissioners' map: is Newark avenue there laid down with a straight line for the whole block, and is there a more northerly parallel line distant 100 feet, and are there lots laid down in that parallel 25 feet wide, perpendicular with said road, and containing each 2500 square feet? Ans.—Yes.

Ques.—Look on Exhibit W. 5, known as block 47 of Jersey City assessors' map: is it in all respects similar to and copied from the Van Vorst's commissioners' map, except that a slight turn is made in the avenue at the middle of 9, 37, the foot or L of 37 is cut off and forms a distinct lot numbered 7, and marked 30 20 instead of 25 feet, lot 36 has the number 10 added to it, and the number 8 is there substituted for C. F. Durant?

Ans.—It is like the map marked Exhibit W. 2, except the above exceptions.

Ques.—Look on Exhibit W. 4, known as the Mangin map: are there lots laid down in parallels of 100 feet, and is each lot supposed to be 25 feet wide and to contain 2500 square feet?

Ans.—They appear to be so.

Ques.—Is there at least two of such right angular lots there laid down on the corner of Warren street and a westerly continuation of Montgomery street, and will those two lots together make a right angular lot 50 feet front, 100 feet deep, and contain 5000 square feet? Ans.—Yes.

Ques.—Is there laid down a creek or water course some 20 feet wide, that may receive the water from a westerly continuation of Montgomery street, thence coursing around on the west 10 and north of the 50 feet lot, and thence connecting with another creek and terminating at the north cove?

Ans.—There is on this map W. 4.

Ques.—Have you heard or do you know that that creek at and for some years subsequent to the lease or sale of Powles Hook from Cornelius Van Vorst to Dey and others, represented the boundary line between the lands of the parties?

Ans.—Never in my life as represented here on this map.

Ques.—Do you know that what is now called the “old boundary ditch,” was a straight artificial ditch 8 feet wide, made by 20 agreement of parties at least ten years after the sale, and that although the new line was an approximate of the old one, yet that the 8 feet boundary ditch crossed Montgomery street about one hundred feet east of the old 20 feet creek, and left this 50 feet lot between the two lines or water courses?

Ans.—I only know the fact that there was a straight ditch which was called the “old boundary ditch,” and that that ditch was eight feet wide, and I also recollect that that ditch crossed the turnpike road a little east of the corner of Warren and Montgomery street.

30 Ques.—Do the words “the aforesaid premises are not to interfere with any right, or possession of said Company,” in the deed for 50 feet lot, Exhibit No. 1, seem to show that John Van Vorst, as heir at law to Van Vorst, had some doubt whether he ever owned the 50 feet lot, and whether it had not been conveyed to said Company by the fact of its lying east of the first line creek?

Ans.—No; he was not certain as to where the line of Warren street would strike, as I suppose; I do not know the fact; he certainly would not give a warrantee deed for lands he did not own.

Ques.—Do the words “where Warren street in the map of the Jersey Company would intersect the said turnpike road” in the deed for 50 feet lot, Exhibit No. 1, seem to show that Warren street had no existence at that time? Ans.—I suppose so.

Ques.—Do the words “along where the said route of the street of said Jersey Company would cross the salt meadow” seem to show that it was then doubtful whether Warren street would ever be made or laid out to cross the salt meadow?

Ans.—I do not know.

Ques.—Are the lots in Jersey City generally 100 feet deep, 10 and are their sides at right angles with the street? Ans.—Yes.

Ques.—If Warren street was laid out while a westerly continuation of Montgomery street was not laid out or defined, would you infer from all your present knowledge that lots in that vicinity had square or perpendicular sides?

Ans.—I suppose that is a fair inference.

Ques.—If a crooked westerly continuation of Montgomery street was laid out while Warren street was not laid out, and there was no street line of any kind within sight from the premises, would you infer that lots in that locality had square or perpendicular sides, especially when the only map of that locality, Exhibit W. No. 4, had all its lots perpendicular on every side?

Ans.—I should suppose the lines run perpendicular on Newark avenue, it being a leading street.

Ques.—Look on Exhibit illustration blank: it is intended to represent a state of facts that existed about the year of our Lord 1828, and we desire to know how far and to what extent your own recollections of the past compared with your present knowledge, may confirm or establish those facts. Warren street is there represented as crossing the turnpike road at or about a right 30 angle; the lot is 50 feet wide fronting on road, and is 100 feet deep; it is in a 100 feet parallel, and therefore contains 5000 square feet; the lot is exactly similar to the two lots lying together in the same locality on Exhibit W. No. 4, and the western line of creek is also similar, lying on the west and north of the 50 feet lot; the road is straight and precisely similar to the Douglass road line on Van Vorst commissioners' map, Exhibit W. No. 2; the buildings front on the road, and their sides are perpendicular to that line; Warren street forms the eastern bound-

dary, and a zig-zag fence running from the northwest corner of small westerly house northerly forms the western boundary of the 50 feet lot; the small westerly building is marked 21 feet front and 15.4 feet deep; the corner house or double house on corner has the rear portion marked rear house and the front portion is marked 18.4 feet deep; the front width is unmarked or unknown; all the buildings stand on and cover the whole front of said 50 feet lot. Have I stated correctly all of the general characteristics on said illustration blank?

10 Ans.—The description appears to be correct and corresponds with the illustration; the illustration does not represent the facts, and the line of Newark avenue is not laid down the same as on the Douglass map.

Ques.—What facts are not represented on that illustration?

Ans.—No facts are illustrated on it, not one.

Ques.—Is the fact of a straight avenue line represented on this illustration?

Ans.—The line of Newark avenue appears to be laid down on this illustration straight.

20 Ques.—Is the avenue line on the illustration a fact?

Ans.—I do not understand the question.

Ques.—Do you know whether there is one fact on the Van Vorst's commissioners' map, Exhibit No. 2?

Ans.—If he means whether the property on this map is properly described, I answer Yes, that a part of it is correctly described.

Ques.—I repeat my former question.

Ans.—The answer is the same as before.

30 Ques.—Is the avenue on Exhibit W. No. 2, there represented as a straight line? Ans.—Yes, it is.

Ques.—Is the avenue on Exhibit No. blank, represented by a straight line? Ans.—Yes.

Ques.—Is the map illustration No. —, and map W. No. 2, similar in having the avenue represented by a straight line?

Ans.—The line on Newark avenue appears to be straight.

Ques.—Are the two maps similar in that particular?

Ans.—Yes, the same answer as before.

Ques.—What part of the property on Van Vorst's commissioners' map do you know to be correctly described?

Ans.—The position of the lots on Railroad avenue and a part on Newark avenue are correct as far as I know.

Ques.—Do you know if any lot on Newark avenue, and if yea, what lot is laid down correctly with regard to its distance from Warren street?

Ans.—As far as I know the lots on Newark avenue are all laid down correctly, with the exception of the property of Cha's F. Durant.

Ques.—Will not incorrectness in Mr. Durant's property lying on the corner of Warren street, make incorrect the distance of every lot on said avenue from Warren street?

Ans.—It will; but not alter the position of the lots.

Ques.—Look on Exhibit illustration No. 1, does it show precisely the same state of facts as Exhibit illustration blank, except that the creek is omitted and the 100 feet parallel is now marked block B, Van Vorst's commissioners' map, block 47, Jersey City assessors' map, and lots are laid down in the parallel and marked 10, 36, 11, 35, 10, 34, and there is added a measurement marked "55 feet, Bacot," from N. W. corner of small house to the N. W. corner of lot 10, 36. 20

Ans.—It differs in these particulars, as far as I can see.

Ques.—If you draw the Douglass or straight avenue line on Exhibit S. F. B. No. 1, then will the small westerly building there laid down, together with all that part of the long or double corner house lying within 50 feet of west side of small westerly building, correspond in every particular with the two front buildings on Exhibit illustration No. 1?

Ans.—I cannot say.

Ques.—Exhibit W. No. 1 $\frac{1}{2}$, is a card of the same dimensions as the long or double house on S. F. B. No. 1, and it is cut in 30 two at the hall or middle of house to illustrate the inverse order of changes or additions to the east end of corner building since 1828. If we now remove the east end of long house and place it in the rear, its sides perpendicular with Douglass line, and the northeast corner touching Warren street, then are the buildings in dimensions and location on S. F. B. No. 1, similar in all particulars to the buildings on Exhibit illustration No. 1?

Ans.—They look somewhat similar.

Ques.—Keep your eyes still on Exhibit S. F. B. No. 1; it

is a map from your side by your surveyor Mr. Bacot : if on a pivot fixed at the northeast corner of the rear card house, we swing the Warren street line to about a perpendicular with the Douglass avenue line, and also if at a fixed pivot at the south end of oblique line from small westerly house, northerly we swing that oblique line to correspond with the exact course of the zig-zag fence line, then, is the lot thus formed a 50 feet lot fronting on the turnpike road, is it a right angular lot, is the west side of the small westerly house the western boundary of that lot, do
 10 the buildings cover the whole front of said lot, and are said lot and buildings exactly and precisely similar to the lot and buildings on Exhibit illustration No. 1, except that the lot in the former lies in a parallel of about 83 feet, while the lot in the latter lies in a parallel of precisely 100 feet ?

Ans.—Yes, it appears to be so.

Ques.—Is it thereby apparent that the small westerly house in its present position was originally and is now on the southwest corner of the 50 feet right angular lot, and is it also thereby apparent that the west side of said small house, together with the
 20 zig-zag fence line, always formed the west boundary of said lot ?

Ans.—Yes, that is my impression that it did always form the west boundary.

Ques.—Direct your attention to the boundary lines of the 50 feet right angular lot on Exhibit illustration No. 1. Is the following description a sensible, accurate and artistic description of said lot, viz. :—

Beginning at the corner of Warren street and the turnpike road, thence running northerly on the line of Warren street to a point distant one hundred feet perpendicular from the turnpike
 30 road ; thence running westerly and parallel with said road fifty feet ; thence running southerly perpendicular with and to said road one hundred feet ; thence running easterly on the line of said road to the place of beginning.

Ans.—Yes it does describe the lot as laid down on this illustration No. 1.

Ques.—Look on Exhibit illustration No. 2 : does it show the same state of facts as Exhibit illustration No. 1, except that there is added a new oblique angled 50 feet lot in the same 100 feet parallel, by swinging the Warren street line on a fixed pivot at

the northeast corner of rear house, to a very acute angle with turnpike road, and thereby extending the road line more than 30 feet easterly? Ans.—Yes.

Ques.—Is the new oblique 50 feet lot there laid down, precisely similar to the oblique 50 feet lot on Exhibit S. F. B. No. 1, except that said lot on S. F. B. No. 1, is in a parallel only 83 feet deep, while said lot on illustration No. 2, is in a parallel 100 feet deep? Ans.—It appears to be so.

Ques.—Look on Exhibit illustration No. 3: does it show the same state of facts as illustration No. 2, except that the zig-zag fence from northwest corner of small house takes a more westerly course towards the northwest corner of the oblique 50 feet lot?

Ans.—Yes.

Ques.—From your best recollection, together with all the measurements and facts now before you, is it apparent to you that the zig-zag fence was originally and always intended for the western boundary of the 50 feet lot?

Ans.—No, never! not the boundary of the fifty foot lot; it ran from the northwest corner of the small house.

Ques.—Look on Exhibit illustration No. 4: does it show 20 precisely the same state of facts as Exhibit illustration No. 3, except that the rear building is removed from the dotted line and an addition is made to the corner house on the east, making it a long house or double house, and marked “corner on street 1 foot?”

Ans.—It is similar, with that exception, as far as I know.

Ques.—Look on Exhibit illustration No. 5, does it show the same state of facts as Exhibit illustration No. 4, except the road line is turned to a sixty feet line, which cuts or passes through all the buildings, leaving the angle of road and street lines less acute, 30 and a new measurement marked “54, 6 Bacot,” is shown from northwest corner of lot 10, 36, parallel with road, to front of shop on Warren street?

Ans.—It appears to be similar, with that exception.

Ques.—Can you tell us the area of the 50 feet lot, on Exhibit illustration No. 5, lying in the new 100 feet parallel?

Ans.—I suppose that the 50 feet lot as laid down on No. 5, contains 5000 square feet.

Ques.—May all quadrilateral figures lying in a parallel, be

converted into triangles of equal bases by drawing a diagonal line from opposite angles? Ans.—Certainly.

Ques.—Is it an axiom in geometrical science, that the areas of triangles lying in the same parallel, are to each other as the length of their bases? Objected to by Mr. Jackson.

Ans.—I do not recollect.

Ques.—If it is an axiom, that is to say, if it is a conceded truth and undisputed, an indisputable and an eternal truth, that the areas of triangles lying in the same parallel are to each other as the length of their bases, then, is it true that the two right angular lots of 25 by 100 feet together, lying on the corner of Warren street and a westerly continuation of Montgomery street, on Exhibit W. No. 4, also the right angular 50 feet lot on Exhibit illustration No. blank, and Exhibit illustration No. 1, and also the acute angled 50 feet lot on Exhibits illustrations Nos. 2 to 5, consecutively, and also all known or unknown 50 feet lots lying in the same 100 feet parallel, are equal to each other, and is each one equal to 5000 square feet?

Objected to by Mr. Jackson as being a question in geometry.

20 Ans.—I suppose so.

Ques.—Look on Exhibit S. F. B. No. 1; there appears to be an oblique 50 feet lot, an oblique triangle, and a right angled triangle, all lying together in a parallel marked $83\frac{10}{100}$ feet deep; for convenience of computation we will omit the small fraction of $\frac{10}{100}$ of a foot, and assume the parallel to be precisely 83 feet deep. If the geometrical axiom before referred to be true, then is the 50 feet lot lying in a parallel of 83 feet on S. F. B. No. 1, equal to $\frac{83}{100}$ of 5000 square feet, and is it equal to only 4150 square feet?

30 Objected to as being a question in geometry.

Ans.—I do not know.

Ques.—Do you know or believe that your surveyor Mr. Bacot, used ordinary good judgment in construing the deed Exhibit No. 1, when he laid down that 50 feet lot in a parallel only 83 feet deep, and thereby giving to said lot an area of only 4150 square feet?

Ans.—I believe that Mr. Bacot made a correct survey of Mr. Durant's property as contained in his two deeds.

Ques.—You are probably familiar with the deed Exhibit 1:

do you believe that yourself or a surveyor in the exercise of sound discretion and good judgment, would so construe this deed as to lay down a lot on the corner of Warren street and the avenue with a square or perpendicular side on the west?

Ans.—No.

Ques.—Do you know or have you heard that Mr. Durant claims to own a lot with the aforesaid characteristics in that locality before named; that is, with the western side square or perpendicular with the turnpike road?

Ans.—I know that Mr. Durant claimed to own a lot some-10 what similar to the lot colored green on S. F. B. No. 1.

Ques.—Do the buildings on illustration blank, 1, 2, 3, &c., being placed perpendicular to road on a 50 feet lot with a square side on the west, seem to show that Mr. Durant believed that he owned a lot with all of the aforesaid characteristics?

Ans.—I do not know.

Ques.—If all the parties to the deed Exhibit 1, meant and intended to convey a lot equal and like two Jersey City lots lying together, a right angular 50 feet lot, a 50 feet lot with a square or perpendicular side on the west, a lot with a square or 20 perpendicular somewhere about it, a 50 feet lot lying in a parallel 100 feet deep and containing 5000 square feet, or a lot with any of the aforesaid characteristics or properties, then is there an evident mistake in the description given in said Exhibit 1?

Objected to by Mr. Jackson, because it is not a proper question.

Ans.—To the best of my belief and knowledge the 50 feet lot is properly described on Exhibit S. F. B. No. 1, as conveyed by the deed Exhibit 1; that is all the answer that I can give, and I decline answering any further to the question. 30

Ques.—If said deed Exhibit 1, was meant to convey a lot with any of the aforesaid characteristics, then is it mistakingly, erroneously and inartistically drawn?

Ans.—The same answer as before.

Ques.—Look on Exhibit illustration No. 6: is the 50 feet lot in precisely the same locality as in Exhibit illustration No. 5?

Ans.—Yes.

Ques.—Do you recognize the plotting in red as correctly

taken from the Van Vorst's commissioners' map Exhibit W. No. 2, and Jersey City assessors' map Exhibit W. No. 5, the dotted lines showing the Douglass lines where they differ from the assessors' map lines ?

Ans.—I do not recognize it.

Ques.—Does the assessors' map there appear to have been compiled or copied from Van Vorst's commissioners' map, and to be similar in all parts except making a bend in avenue at the middle front of lot 9, 37. And in cutting off the L or foot of 10 37, giving it a distinct number 7, and marking it 20 instead of 25 feet wide ?

Ans.—It does appear to be, if these maps are correctly made.

Ques.—Does the 50 feet lot in illustration No. 6 cover all the land in the 100 feet parallel, including the rear of 9, all of the L or foot of 37 marked 7, a triangular piece with base of about 21 feet from northeast corner of 36, and a part of 40, together with nearly all of lot 8 ?

Ans.—It does on this illustration.

Ques.—If true that two matters cannot occupy the same 20 space at the same time, then can the 50 feet lot ; and also the several lots and parts of lots named in last interrogatory have a physical existence ?

Objected to by Mr. Jackson as being a question of geometry.

Ans.—It certainly would run one lot into the other.

Ques.—By aid of the measurement 55 feet from southwest corner of small house to southwest corner of lot 10, 36 ; and also the measurement 54, 6 Bacot, from northwest corner of lot 36 to front of shop on Warren street, we are enabled to connect the several surveys of the 50 feet lot with the plottings on Jersey 30 City assessors' map, and also on Van Vorst's commissioners' map ; does it now appear that the two last named maps contain more lots and more land than ever existed in that locality ?

Ans.—There is more land down in that locality than really exists, that is to say, lot No. 37 is laid down larger than it really is.

Ques.—If by stupidity, or any other cause, a surveyor and commissioner, have planned and plotted lots and parts of lots with neatly painted numbers and figures all lying within the 100 feet parallel and all lying within the boundary lines of the 50

feet lot described in Exhibit one, does that give said lots and parts of lots and painted numbers and figures a tangible existence, such as may be conveyed or presented to Bacot and wife, or to John Van Vorst or any body else ; and can they have a taxable existence, such as may be sold for non-payment of taxes, when the 50 feet lot occupying the same space in the same time, has already paid tax for every existing square foot in the parallel ?

Ans.—I should think not.

Ques.—The assessors' map being used since 1846 for levying the annual tax, is it now evident that when Mr. Durant pays 10 the tax on the 50 feet lot or 5000 square feet lot, he is at the same time paying the tax on nearly all of lot 8, which Mr. Bacot testifies contains 7500 square feet, as well as the rear of 9, 37, all of lot 7, a portion of lot 40, and quite a respectable triangle in lot 10, 36 as illustrated on illustration No. 6 ?

Ans.—He only pays tax for lot No. 8.

Ques.—If you or Mrs. Bacot or your assigns own or claim to own and pay tax for any of the lots or parts of lots named in last interrogatory, is it evident that you are merely duplicating 20 Mr. Durant's payments, in paying for that which has no existence in fact, but which exists only in error created by stupidity in the Van Vorst's commissioners' map, and propagated or perpetuated by something worse than stupidity in the city assessors' map ?

Ans.—We are not duplicating Mr. Durant's payments.

Ques.—Will you please to state why you are not thereby merely duplicating Mr. Durant's payments ?

Ans.—Because Mrs. Bacot's property lies distinct from Mr. Durant's. I mean when I pay tax I pay on Mrs. Bacot's property, and not on Mr. Durant's.

Ques.—Look on Exhibit W. No. 8, is it a conveyance from 30 Bacot and wife to Samuel Newham for lot on exhibit illustration No. 6, marked 10, 36, a part of which is covered by the 50 feet lot on Exhibit illustration No. 6.

Ans.—It is a conveyance from Mrs. Bacot to Newham, and I decline answering any farther than that.

Ques.—Look on Exhibit W. No. 7, is it a conveyance from Bacot and wife to Samuel Newham for all of lot numbered 7, and parts of lots numbered 9, 37 and 6, 40, covered by the 50 feet lot, on Exhibit illustration No. 6 ?

Ans.---No, it is not.

Ques.---Why is it not ?

Ans.---Because lot No. 7 is not laid down correctly, and no lot No. 7 is mentioned in the deed from Bacot to Newham.

Ques.---Wherein is lot No. 7 laid down incorrectly ; and is not lot No. 7 on illustration No. 6, and lot No. 7 in Jersey City assessors' map, a part of the identical lot No. 37 on the Van Vorst's commissioners' map, and referred to in Exhibit W. No. 7 as a part of the lot conveyed by Bacot to Newham ?

10 Ans.---It is incorrect, because to the best of my belief and knowledge lot No. 7 ought to be 13 feet front instead of 20 or 25, and it is a part of the same property so conveyed.

Ques.---Did you act as agent of Bacot and wife in the negotiation, sale and conveyance of the aforesaid two parcels of land ?

Ans.---I did.

Ques.---In conveying lot 10, 36, Exhibit W. No. 8, did you know that you was erroneously conveying a portion of the 50 feet lot conveyed by your father to William Durant in Exhibit No. 1, the identical 50 feet lot, which, lying east of the party line
20 represented by a creek on Mangin's map, was supposed by a previously cited sentence from Exhibit 1, to have been previously sold by Cornelius Van Vorst to the Jersey Company, and thereby making a third time said lot, or a portion of it, was sold by the Van Vorst family ?

Ans.---I did not know when I sold Mr. Newham lot No. 36, that the rear line of Mr. Durant's lot run into it ; when I ascertained the rear line of Mr. Durant's lot ran into said lot No. 36, I surrendered as it were at once all that part of Durant's lot that ran into said lot No. 36, giving Mr. Durant his full 50 feet by
30 100, according to deed marked Exhibit No. 1.

Ques.---What do you mean by surrender to Mr. Durant ? what do you mean by giving to Mr. Durant ? and how and what did you ever surrender to Mr. Durant ? and how and what did you ever give to Mr. Durant ?

Ans.---I mean by surrender, that when I ascertained the fact that the rear line aforesaid of Durant's lot ran into 36, I told Mr. Newham that I could give him no title as to that part so running in, and that I would deduct from his mortgage the value of Durant's lands included by mistake in the sale of lot No. 36.

Ques.—Then do I understand you to mean that a sale and deed from Bacot and wife to Newham for lands owned by Mr. Durant, is a surrender to Mr. Durant, and giving to Mr. Durant?

Ans.—I decline to answer on account of the complete absurdity of the question.

Ques.—In conveying lot 7, described in Exhibit W. 7, as parts of lots 37 and 40, did you at that time know that you was erroneously conveying a portion of the 50 feet lot previously conveyed by your father to William Durant in Exhibit one.

Ans.—I was satisfied I was not selling Mr. Durant's property, 10 as I sold that lot by a survey.

Ques.—The 50 feet lot being by deed, by analogy, and by tradition known to be 50 feet both front and rear, do the words "thence northwesterly along his (C. F. Durant's) line about forty-two feet eight inches more or less to the line of lot numbered thirty-six," in Exhibit W. No. 7, seem to show that you John Van Vorst, agent of Bacot and wife, did at that time know that you had previously (and for the third time by the Van Vorst family) sold and conveyed the whole or a part of the 50 feet lot lying on the corner of Warren street and the turnpike road, and 20 that you was then, 1848, (for the fourth time by the Van Vorst family) conveying a portion of the 50 feet lot for the sum of two hundred and fifty dollars "lawful money of the United States to them in hand paid," by a mortgage on what never belonged to you? Objected to by counsel of defendants.

Ans.—I did not know, and know well that I did not convey to Newham any lands belonging to C. F. Durant.

Ques.—Did you not know that Mr. Durant's lot was 50 feet wide in the rear, and do you not in Exhibit W. No. 7, describe the distance between Warren street and Newham's lot on Mr. 30 Durant's line as only 42 feet?

Ans.—When I sold to Newham, I did not know that Mr. Durant's line was 50 feet in the rear, I having measured the same; and to the second part of question, I say I did, not along the whole length of Durant's line.

Ques.—Do the words "42 feet 8 in. more or less along Durant's line from Warren street to lot 36," show that you knew at that time that you had previously sold a part of the 50 feet lot to Newham in Exhibit W. 8, for lot 36?

Ans.—Certainly it does, that I sold to S. Newham a part.

Ques.—When you sell lots for yourself and for Bacot and wife, is it your practice to add the words “more or less” in all measurement of doubtful or improbable ownership ?

Objected to by Mr. Jackson.

Ans.—No ; only as to the improbability of the length of lines.

Ques.—Did Samuel Newham secure the whole amount of purchase money by mortgage on the land named in the two deeds Exhibits W. 8, and W. 7 ? Ans.—Yes.

10 Did Samuel Newham during life, ever pay the whole or any part of said mortgages ?

Ans.—No, he paid part of the interest.

Ques.—Did Charles E. Newham as executor to estate of Samuel Newham, call on you and decline paying interest on mortgage until you could make title ; and what did you say and do in the premises ?

Ans.—I made some sort of an agreement with C. E. Newham, I think it was, that as soon as this lawsuit was settled with Mr. Durant, that I would deduct from the mortgage the value of the
20 land included in lot No. 36, belonging to Mr. Durant.

Ques.—Did you make an agreement with C. E. Newham or any one else not to charge any interest until you or Bacot could give title ?

Ans.—I told C. E. Newham, I think, that I would not charge any interest on the \$500 mortgage on lot No. 36, until the lawsuit with Durant was settled and the value of Durant’s land deducted from the mortgage, or something of that kind.

Ques.—The estate of Newham having sold the lot 10, 36, to James Soden, subject to the original mortgage, did you as agent
30 of Bacot and wife, sign and deliver to said Soden a writing exempting him from paying any money on said mortgage until he, Soden, may consent or agree to pay ; and is the following an exact copy of that writing, viz :

“Jersey City, April 14th, 1853.

I do hereby agree with Mr. James Soden, who has purchased Newham’s lot on Newark avenue, to charge him no back interest on the bond for \$800, on said lot, held by my sister Mrs. Bacot, and whose agent I am, but to charge him interest on said bond and mortgage when the same has been reduced by taking out the

price of land lost in said lot by reason of the lawsuit now pending between C. F. Durant and my said sister, said interest to commence on said bond and mortgage so reduced from the time said Soden shall agree upon the same.

Witness my hand JOHN VAN VORST."

Ans.—Yes.

Ques.—Can you recall to mind the facts and events that existed and occurred in Powles Hook and Harsimus in the autumn of 1828; you may perhaps recollect that period from its being about three years and two months before your father died; men and boys were then so limited in numbers that if one sickened and died, or departed for foreign lands, or returned after long absence, it was generally talked about and known in the community; you may perhaps recollect that period from the fact that Charles F. Durant, after an absence of several years in Europe and other lands, then returned to his parental home; you may recollect that period from the fact that William Durant had then, within less than two years, erected the buildings on north and south sides of turnpike road, near what was supposed would some future day be Warren street, those buildings being supposed the first and only human habitations on the New Jersey salt meadows, except the Mosquito tavern, then some quarter of a century old? 10 20

Ans.—I never knew anything about the whereabouts of Charles F. Durant in those days or since, except seeing him one day in making a baloon ascension; I have no positive recollection of the time when the buildings were erected, I was only six years old in 1828.

Ques.—Before John Van Vorst or William Durant died, was Charles F. Durant the first of his own countrymen engaged in a somewhat novel and therefore notable profession that occupied 30 much of his time in travel and sojourn in other cities; and did William Durant, as usual, continue to reside on and occupy the premises on the corner of Warren street up to the time of his death?

Ans.—I was not aware of the facts contained in the first part of the question; I remember Mr. William Durant lived at the corner of Warren street and Newark avenue, how long I cannot tell.

Ques.—Can you state the value of building lots in Jersey City

and on the salt meadow at the period referred to ; were all the unsold lots on Montgomery street then offered by the associates at twelve dollars per year, without finding a purchaser ; and except the sale to Durant, had there ever been a sale of salt meadow in New Jersey as high as ten dollars per acre ; do you believe that any man except William Durant, would have accepted as a gift any fifty feet lot or any right angled triangled lot of salt meadow, if he thereby became liable to fence it at his own cost?

Ans.—I do not know, as to the first part of the question, the value of lands in Jersey ; I know that meadow lands were not esteemed of much value, except for the salt hay thereon ; about the fencing of a fifty foot lot for a gift, I cannot say.

Ques.—Do you recollect the high sides to road, made of turf that was cut from the meadow one spade deep, and extending about one hundred feet from road ; do you also recollect that portions of salt meadow, and specially those portions adjacent to the heavy settling road, were always quagmire ?

Ans.—I do not recollect as to the width of 100 feet spoken of, but it was a quagmire adjacent to the road.

20 Ques. Do you know that John Van Vorst or any body else ever mowed on any land in dispute in this cause, or any land within 100 feet of road near Warren street ?

Ans.—I know as a positive fact and remember that the meadow was mowed up to Durant's line, and that along Durant's line it was mirey, and that coarse grass grew there ; I cannot be positive about whether the land in dispute was mowed or not, but I think it was mowed.

Ques.—Look again on Exhibit illustration blank : do you recollect at that period a thatched cottage, a house generally so called and so known from the fact that the roof was thatched with the sedge grass that grew profusely on the partially submerged sod and on the margin of creeks around and about it ; a house that stood precisely where the small westerly 21 by 15.4 feet house now stands, the identical frame, the whole house except the shingled roof now much decayed and more dilapidated, still existing there, though uninhabitable even by bats, cats, rats, roaches or mice ?

30 Ans.—I do not recollect the thatched cottage, but I do recollect the last described house which has been inhabited until within the last two years.

Ques.—Is it evident from all present knowledge and recollection, that the thatched cottage or small westerly 21 by 15.4 feet house, together with the zig-zag fence, always formed the west boundary of a fifty feet lot on a supposed corner of Warren street and the turnpike road?

Ans.—I always supposed the little house and zig-zag fence was the westerly side of the gore piece described in the second deed to Durant.

Ques.—What induced you so to believe?

Ans.—From surveys had along the northerly side of Newark 10 avenue.

Ques.—Has that belief been founded from those surveys?

Ans.—Partially from that, and partially from the fact that that house always stood in the same position from the time it was erected.

Ques.—Do you recollect the time that that house was erected?

Ans.—I do not.

Ques.—Has it been there as far back as your memory goes, or has it always been there since you remember?

Ans.—Yes.

Ques.—Do you recollect these premises for two or three 20 years before your father died?

Ans.—I do.

Ques.—Do you recollect or is it evident that said lot was at or about right angular, and that the buildings thereon covered about the whole front of said lot?

Ans.—I recollect that the zig-zag fence at the west end of the little house did not run at right angles to Newark avenue, and this is as far back as I can recollect. I think the buildings covered the whole front of the lot and stood on the side of the road as then known.

Ques.—At that period, 1828, and for ten years thereafter, 30 was there any house or any fence on the west or north within an eighth or a quarter of a mile of said small house?

Ans.—I cannot be positive.

Ques.—There being no house or fence on the west or north of said small house, do you deem it a fair inference that the occupant or owner of said small house is the lord or owner of all the meadows within a mile or two, or up to the next house or fence?

Objected to as irrelevant by Mr. Jackson.

Ans.—By no means.

Ques.—Look again on Exhibit, illustrations 1 to 6 conclusively, look also on Exhibit S. F. B. No. 1, and also on Exhibit W. 1, and on Exhibit W. 6; does the thatched cottage, the small westerly 21 by 15.4 feet house, in addition to standing on the 50 feet lot, also stand westerly and outside of every fence and every line that is drawn in, around, or about it, notwithstanding S. F. B. No. 1, W. 1 and W. 6, are by defendants' testimony in this case, drawn by expert surveyors, skilled from no less than two grave solemn deeds of conveyance from John Van Vorst to William Durant?

Ans.—It does apparently stand outside of every line drawn on these Exhibits.

Ques.—Please direct your whole attention on to Exhibit W. 6, the black lines thereon are conceded copies from defendants, Exhibit S. F. B. No. 1. Now without questioning the motives of your surveyor or yourself in regard to the testimony relating to said map, do the lines thereon seem to show that the 66 feet line was used, because the established line and the Douglass line would demonstrate more clearly the fact that the small westerly house stands, or projects westerly on to some other lands than are named in any two legally construed deeds from John Van Vorst to William Durant? Ans.—I do not know.

Ques.—Look on Exhibit S. F. B. No. 1, you have testified that "this map according to the best of your belief makes a fair representation of the Durant property;" your surveyor Mr. Bacot has testified "that it correctly represented the buildings of Mr. Durant situate on the premises;" you may see that the small westerly house is there shorn of its northeast corner, and although direct, pointed, and repeated cross-interrogatories were addressed to Mr. Bacot on that point, we failed to elicit the clear and unobscured fact of the building ever having had a northeast corner, or that it ever stood partly on to the 50 feet lot. Now from your frequent daily walk for ten, twenty or thirty years up to the date of your examination in this case passing within five feet of the house, we ask you, has it now and did it always have a northeast corner?

Ans.—I suppose it had, I cannot answer positively.

Ques.—Does the omission to correctly represent a northeast corner on the building, seem to show a designed concealment in

regard to that venerable and most important monument, which with its doors and windows gone, its sides and floor and timbers pilfered and fast disappearing, was still by the omniscient Providence preserved to show its hold and origin upon the 50 feet lot ?

Objected to by Mr. Jackson as irrelevant and for the mocked solemnity of its language. Ans.---I think not.

Ques.---Do you recollect a law suit between Bacot and wife and Durant, in which Durant defended a square or perpendicular line for the west boundary of said 50 feet lot, and was thereby beaten and lost the suit ?

10

Ans.---I recollect the law suit but do not recollect positively as to any particular line. I recollect that the case went against Mr. Durant.

Ques.---Do you know that in addition to the fact that all lots in Jersey city were then right angular and 100 feet deep ; and in addition to the fact that Mangin's map so laid down a right angular lot on the corner of Warren street and a westerly continuation of Montgomery street, and also, in addition to the fact that William Durant had built his houses with their sides perpendicular to the road ; that William Durant and John Van Vorst did set 20 themselves about correcting the errors or mistakes in the 50 feet lot deed, and that they did order and execute a new deed, Exhibit two, for the evident and sole purpose of making a square or perpendicular line to the whole of said 50 feet lot on the west, and do you also know that said reform or new deed, Exhibit two does contain the following words, viz : "and the perpendicular lying along said road" ?

Ans.---I have seen deed marked No. 2, I do not know anything about the agreement mentioned in the first part of the question.

30

Ques.---From all facts now known to you, do you believe that the parties to the deeds Exhibits one and two understood and intended to have the 50 feet lot square or perpendicular on the west ? Ans.---I do not believe that the parties ever intended to make the 50 feet lot a right angular lot.

Ques.---If the parties were living at this day, do you believe that John Van Vorst would hesitate about correcting the mistake or error, until a decree in equity compelled him to square the 50 feet lot ? Objected to by Mr. Jackson as very irrelevant.

Ans.---I do not think there has been any error made, or any doubt ever existed on the part of William Durant that the land conveyed by the second deed took in more than 26 feet front.

Ques.---Do you believe that John Van Vorst and William Durant lived and died under the impression that they had nicely squared up that 50 feet lot by "a perpendicular lying along that road" somewhere? Objected to by Mr. Jackson.

Ans.---I do not believe that there was any square about it.

Ques.---Look on Exhibit illustration 7: does it contain the
10 same state of facts as Exhibit illustration 5, except that a perpendicular is here drawn from the northwest corner of 50 feet lot to turnpike road 100 feet? Ans.---It does.

Ques.---Is the following repeated description, before applied to the 50 feet lot on Exhibit illustration No. 1, also a sensible, accurate and artistic description of the 50 feet lot, together with the right angled triangle, lying together on Exhibit illustration 7, viz: Beginning at the corner of Warren street and the turnpike road, thence running northerly on the line of Warren street to a point distant one hundred feet perpendicular from the turnpike
20 road, thence running westerly and parallel with said road fifty feet, thence running southerly perpendicular with and to said road one hundred feet; thence running easterly on the line of said road to the place of beginning. Ans.---No, it is not.

Ques.---Why is it not a sensible, accurate and artistic description? Ans.---Because the line along Warren street does not run in the same direction.

Ques.---Is that the best answer that you can give.

Ans.---Yes.

Ques.---Look on Exhibit illustration No. 8: it contains pre-
30 cisely the same state of facts as Exhibit illustration No. 7, except that the 50 feet lot is here shown to be within the rectangular part of the 100 feet parallel, and all its angles right angles, while all the skew is thereby thrown in the corner lot; the zig-zag fence line, if continued through small house, cuts the 50 feet lot diagonally into two diagonal half lots, one of which runs diagonally to the rear of said 50 feet lot: are all the lots and parts of lots lying together on this Exhibit, and named in this interrogatory, sensibly, accurately, and artistically bounded by the before cited description? Ans.---It appears to be.

Ques.—Then, is it true that the before recited plain, simple, artistic description of a rectangular lot lying in a 100 feet parallel, is also a sensible, accurate and artistic description of any lot on the corner of Warren street and the avenue 100 feet deep, 50 feet wide in the rear, and the westerly side square or perpendicular with the avenue, whatever line of avenue is assumed, and however acutely Warren street may cross the avenue?

Ans.—Certainly.

Ques.—Look on Exhibit illustration No. 9: does it contain the same state of facts as illustration No. 6, with the addition of 10 a square or perpendicular side to the 50 feet lot; and does it also show, that all the lots, 7, 8, 9, 37, part of 40, and some two-thirds of 10, 36, are covered by and included in the perpendicular sided 50 feet lot, leaving only a small gore piece of lot, 10, 36, lying between the two perpendiculars that arise from the two different lines of parallel?

Ans.—It appears so on this Exhibit.

The examination was here adjourned to a time convenient for the Master to read over the testimony to Mr. Van Vorst.

January 7th, A. D. 1859, Mr. John Van Vorst and Mr. Chs. 20 F. Durant appeared, and the testimony of Mr. Van Vorst was read over to him.

On page No. one hundred and nine, the question and answer was stricken out that commences on the sixteenth line.

JNO. VAN VORST.

Taken, sworn and subscribed before }
me, at the city of Jersey City, this 7th }
day of January, A. D. 1859.

JACOB WEART,

Master in Chancery, N. J.

30

I certify the foregoing to be a true copy of the testimony of John Van Vorst, as taken by me in the case of Durant vs. Bacot and others.

JACOB WEART,

Master in Chn'y.

January 7th, 1859, at eleven o'clock, A. M., the examination was continued at my office in Jersey City, in the presence of Mr. Durant, the complainant, and Abraham S. Jackson, Esq., appearing for A. O. Zabriskie, Esq., counsel for the defendants, by consent.

JOHN DRAYTON, a witness examined on the part of the defendants, being recalled, was cross-examined by Mr. Durant.

Ques.—Do you know that John Van Vorst or any body else, ever mowed on the lot which you understood is in dispute between Mr. Durant and Bacot or Van Vorst?

Ans.—I cannot say that they mowed this disputed spot; I know that they used to mow the meadows, and I believe that I told Mr. Zabriskie so at the time of the examination.

Ques.—Do you know that the disputed lot is square or perpendicular with the turnpike road on the west, and do you know the boundaries of the lot or land in dispute between Mr. Durant and any body else? Ans.—I do not know, sir.

Ques.—Do you know that William Durant bought land of John Van Vorst more than one time?

20 Ans.—I do not.

Ques.—Do you know that William Durant built on the whole front of his lot very soon after the purchase, or within one or two years after he first bought of John Van Vorst?

Ans.—I do not know.

(Signed) JOHN DRAYTON.

Sworn and subscribed before me, }
at the city of Jersey City, this 7th }
day of January, A. D. 1859. }

JACOB WEART,

30

Master in Chancery, N. J.

CHARLES E. NEWHAM, a witness produced and examined on the part of the defendants, being recalled, was cross-examined by Mr. Durant.

Ques.—Look on Exhibit illustration 9: it is a map of property on the corner of Warren street and Newark avenue, and extending westerly as far as lot there numbered 12, 34: do you recognize the lot there numbered 10, 36, and also the lot there numbered 7, all lying within parallel lines and all within 100 feet

of the avenue, as about the location of the two pieces or lots conveyed to your uncle Samuel Newham by Bacot and wife, in Exhibit W. 7 and W. 8 ?

Mr. Jackson objected to the Exhibit being brought and shown to the witness, because it has not been properly proved.

Ans.—The appearance of the lots on this illustration is similar to the appearance of the lots purchased by my uncle Samuel Newham of Bacot, as shown on the map of the property of John Van Vorst, deceased.

Ques.—Since your direct examination in this case, did you 10
in company with, and at the request of Mr. Durant, measure the long building on the corner of Warren street and the avenue, and did you find the east end about 18 feet 10 inches, the west end about 18 feet 4 inches deep, and the northeast corner about 10 or 12 inches on Warren street ?

Ans.—I did in connection with Mr. Durant measure portions of the property shown on illustration No. 9, and remember that in measuring across the street from the northeast corner of Mr. Durant's house, there was a deficiency of 10 inches in the width of the street between that corner and Coyle's fence ; I do not 20
remember measuring the depth of the building standing on Newark avenue.

Ques.—Did you at the same time measure the most westerly and more dilapidated small building, and did you find it about 21 feet front and rear, and about 15 feet 3 or 4 inches deep on both sides ?

Ans.—I do not remember measuring that building.
Ques.—Did you at the same time measure from the southwest corner of that small house to the southwest corner of lot there numbered 10, 36, known as the Newham lot, and did you find the distance about 54 feet 7 inches ?

30

Ans.—I remember measuring the distance, and have a memorandum of it, but have it not with me and believe I have lost it, and do not now recollect the distance.

Ques.—Did you at the same time measure from the northwest corner of lot 10, 36, to the front of the shop on Warren street, on a line about parallel with the avenue, and did you find the distance about 54 feet 4 inches ?

Ans.—I assisted Mr. Durant to measure from the northwest corner of lot No. 36, to the front of my shop on Warren street ;

whether that line is parallel with the avenue or not I do not know ; my impression is that it is not ; to the best of my recollection it was 54 feet 4 inches.

Ques.—Did Mr. Van Vorst who acted as agent for Bacot and wife, tell you or your uncle that besides and in addition to the disputed gore lot referred to in your direct examination, the first undisputed 50 feet lot of Mr. Durant's projected on to and covered the whole or parts of lots 36 and 37 ?

Ans.—No ; I do not remember that he did.

10 Ques.—Did you ever know the boundaries of Mr. Durant's lot, or the boundaries of any lot in controversy or disputed between Mr. Durant and Bacot and wife, or between Mr. Durant and any body else ? if yea, describe the boundaries.

Ans.—I do not know the boundaries.

Ques.—Did you ever know that a ditch existed anywhere in or about the premises laid down on Exhibit illustration 9 ? if yea, please state its location.

20 Ans.—I remember a ditch running along the northerly side of Newark avenue and parallel to Newark avenue, and which extended part or all the way, to the best of my recollection, across the front of lot marked 9, 37, on this illustration, that ditch running parallel to Newark avenue, ran up the avenue nearly to the railroad crossing.

Ques.—Was you one of the heirs at law of, and was you also executor to the estate of your uncle Samuel Newham ?

Ans.—I was not an heir at law, but one of his executors.

Ques.—Did your uncle Samuel Newham secure the whole amount agreed to be paid to Bacot and wife, by two mortgages on the premises named in Exhibits W. 7 and W. 8 ?

30 Ans.—Yes.

Ques.—Did you as executor to the estate of Samuel Newham, tell John Van Vorst, agent of Bacot and wife, that you would not pay any mortgage, interest or principle, and what did he say about it ?

Ans.—I told Mr. Van Vorst that I thought we had no right to pay him interest on the mortgage on No. 36, 10, on illustration 9, until he put us in possession of the whole of it. Mr. Van Vorst told me he thought I was right in the matter, and that he would not demand any further interest until he had put us in possession.

Ques.—Did the heirs at law of Samuel Newham convey to your brother the parcel named in Exhibit W. 7, there known as parts of lots 37 and 40, and principally comprised of the piece numbered 7 on Exhibit illustration 9? Ans.—Yes.

Ques.—Do you now own by purchase from your brother a portion of or interest in the parcel named in Exhibit W. 7?

Ans.—I do.

Ques.—Have you also an interest in the rear or north end of lot 36, in the same way and to the same extent as in the before named parts of 37 and 40? Ans.—Yes.

10

Ques.—If Mr. Durant should recover and take by anterior or superior title deed, the whole or any part of the aforesaid lands in which you have an interest, would you lose thereby, or are you indemnified, guaranteed or secured against loss by Baccot and wife, or by John Van Vorst or other parties?

Ans.—That question I am unable to answer.

CHARLES E. NEWHAM.

Taken, sworn and subscribed before me, }
this 7th day of January, A. D. 1858. }

JACOB WEART,

20

Master in Chancery, N. J.

ABRAHAM STILWELL, being recalled, was cross-examined on the part of the complainant by Mr. Whitehead.

Ques.—You said in your direct examination, that you knew the property that William Durant purchased of John Van Vorst; how do you know that lot?

Ans.—I know that at the time we worked on the meadow, I know that we used to cut up to a ditch that was called Durant's ditch.

30

Ques.—Do you then know the size of Mr. Durant's lot?

Ans.—I did not, I cannot say positively.

Ques.—Did the tide rise to flow that land?

Ans.—At sometimes, at high water.

Ques.—What kind of ditch was it?

Ans.—It was a ditch 4 or 5 feet wide, and it was banked; out of the ditch was thrown up a bank.

Ques.—Did this appear to be a ditch for a water course?

Ans.—The water run off of the Newark avenue down through this ditch into another ditch into the cove.

Ques.—How far from the Newark avenue did this ditch run to the ditch that emptied into the cove?

Ans.—It run down as far as Durant's lot ran north, and then turned east and emptied into the ditch that emptied into the cove. It ran as far as the rear of Durant's lot. There was only one ditch there; there was a low place, but only a ditch that divided Durant's from Van Vorst's property.

10 Ques.—Was that ditch there at the time you first went on the Van Vorst farm?

Ans.—It was there when I first mowed.

Ques.—How long was it after you went on the farm before you mowed? Ans.—The same year.

Ques.—Did you ever mow any east of that ditch?

Ans.—Yes, sir.

Ques.—Did you ever mow east or southeast of that ditch, between where it enters the ditch that runs to the cove and the avenue or turnpike? Ans.—Yes.

20 Ques.—Was it not very much of a quagmire?

Ans.—It was a kind of low place, not a quagmire as I know, but a place where sedge or coarse grass grew.

Ques.—Did you ever mow on the space lying between the ditch that you mentioned and the ditch that emptied into the cove?

Ans.—I never mowed over the line.

Ques.—Did you ever mow over that ditch, and between that and the ditch that you say ran near along where Warren street now runs and emptied into the cove?

30 Ans.—I used to mow up to the ditch that emptied into the cove that ran along what is now called Warren street.

Ques.—Did that ditch that you have mentioned as emptying into the cove ditch, come along down the turnpike road?

Ans.—There was a ditch along the turnpike road, and this ditch that was cut through by Durant's property ran down and emptied into the ditch that ran into the cove.

Ques.—Then the water that came down the ditch along the turnpike road was discharged into the cove ditch by this Durant ditch? Ans.—Yes, sir.

Ques.—Was there any other ditch through which the water

was discharged that came along the turnpike road into the cove ditch, except what you call the Durant ditch? Ans.—No, sir.

A. STILWELL.

Taken, sworn and subscribed before }
me, at the city of Jersey City, Octo- }
ber 4th, 1858.

JACOB WEART,

Master in Chancery, N. J.

A true copy of the original taken before me.

JACOB WEART, Master in Chancery. 10

I certify the foregoing to be a true copy of the testimony of John Drayton, Charles E. Newham and Abraham Stilwell, taken in the case of Durant vs. Bacot and others.

JACOB WEART, Master in Chancery.

Notice having been served by Mr. Zabriskie on Mr. Whitehead of the examination of witnesses on the part of Defendants on Saturday the 4th of September last, and Mr. Whitehead having mistook the day of the examination, and Mr. Zabriskie having examined the witnesses on the part of the defendants in chief, it was agreed that the said witnesses should be cross-examined 20 on the 4th day of October, A. D. 1858, and the examination on that day proceeded in the presence of Mr. Whitehead, solicitor of Complainant, and A. O. Zabriskie, Esq., solicitor of Defendants, by consent.

October 4th, 1858.

JACOB WEART,

Master in Chancery.

ROBERT C. BACOT being recalled, and cross-examined on the part of the complainant, saith—I made the map Exhibit S. F. B. No. 1, on the part of defendants.

Ques.—Since the direct examination in this cause, did Mr. 30 Durant call on you and request you either to draw the Newham lot on Exhibit S. F. B. No. 1, or to make a copy of the map marked S. F. B. No. 1, and to draw the Newham lot thereon to show the exact relative position between the Newham lot and Mr. Durant's property? Ans.—Yes, he did.

Ques.—Did you draw that map, or either of them?

Ans.—I did not.

Ques.—Did you answer Mr. Durant that you would see Mr. Zabriskie about it? Ans.—I did.

Ques.—Have you since seen Mr. Zabriskie about it?

Ans.—I called the next day after Mr. Durant made the request to see Mr. Zabriskie, but he was out; I called three or four times after and found him out, I could not therefore comply with his request.

Ques.—Did Mr. Durant repeat his call on you for that matter? Ans.—He did a day or two ago, sometime last week.

10 Ques.—Why have you not drawn it?

Ans.—I have given you the reason before; I called on Mr. Zabriskie for the map and could not get it. I could not see Mr. Zabriskie to consult him about it; I have other business to attend to as you know.

Ques.—Then do I understand you that the reason why you did not draw the map was because you could not see Mr. Zabriskie to consult him about it?

Ans.—Yes, I could not see Mr. Zabriskie to consult him about it, or to get the map; the map is now before me, and I
20 am willing to draw those lines as near as I can.

Ques.—Will you now draw the lines?

Ans.—Mr. Zabriskie objects to the examination being rested while the witness makes a map; the witness can make the map afterwards, and he will agree that it shall be marked as an Exhibit and be examined in relation thereto.

Ques.—The question is insisted upon.

Ans.—I should not like to draw the lines until I have made the survey; the map before me was made from a survey about
ten years ago.

30 Ques.—Since Mr. Durant called upon you to draw the map, and previous to this present cross-examination, did you understand from Mr. Zabriskie or from any other person that Mr. Zabriskie or any other person did not desire or would not permit the Newham lot to be drawn on this map? Ans.—No.

Ques.—On this map now before us is marked north line of Newark avenue as established by the ordinance of the Common Council; what do you mean by the line established by the ordinance of the Common Council?

Ans.—This north line of the avenue is shown on a map fix-

ing the boundaries of Newark avenue, and established by an ordinance, and I presume the map is on file in the city clerk's office; this line is the same as on that map.

Ques.—When was that ordinance passed, and by whom was that map made?

Ans.—The date of the ordinance I do not know; the map was made by myself and Mr. Clerk I believe, I am not certain.

Ques.—What is the title of that map, or how is it distinguished from all other maps?

Ans.—I suppose the title runs in this way: “Map showing 10 the lines of Newark avenue between Warren st. and Grove st.”

Ques.—As I have no knowledge of any such map, will you be more specific in your description of it, so that I can procure it from the clerk's office?

Ans.—I cannot be any more specific; I refer you to the book of ordinances.

Ques.—Having placed in your hands two books of ordinances of Jersey City, it being all I can find, are you hereby enabled to find that ordinance?

Ans.—I am not able to find the ordinance, because the books 20 do not contain all the ordinances, between the years 1844 to 1852 do not appear to be in.

Ques.—Has it ever been the practice of the Mayor and Common Council, in any published list of ordinances, to leave out of the compilation any ordinance that has not been repealed or is invalid? Ans.—I am not versed in the practice of the Mayor and Common Council of Jersey City at all.

Ques.—Have you not been a surveyor under the Common Council for nearly the whole period of time since you made that 30 map, spoken of in ordinance as made 10 or 12 years ago, and have you not during most of that period assisted in preparing the tax sale by description of property from various maps by which property has been assessed?

Ans.—I have been surveyor for the time stated, and have assisted occasionally in making up assessments from maps in the city clerk's office, I mean city surveyor.

Ques.—Having shown you a complete list of ordinances from the clerk's office, can you now refer to the ordinance and the 30 of the map you have spoken of?

Ans.—If this is a complete copy of the ordinance, the map and ordinance referred to by me in my testimony was passed July 12th, 1847, entitled “A law to repeal chapter 23 of ordinances, passed September 18th, 1840, and to establish the grade of Newark avenue.”

Ques.—On reading the ordinance to which you have referred, I find it refers to only a grade map of Mr. Douglass which appears to have been lost, and to a grade map or book of maps, with profile of the grade of Newark avenue drawn by R. C. Bacot and Andrew Clerk, city surveyors, and does not refer to any street line or road line; and then how is it possible that the map to which you refer, as well as the ordinance, can establish a street line or a road line?

Ans.—The ordinance refers to the map and profile made by R. C. Bacot and Andrew Clerk, and on this map as near as I can recollect, the lines of Newark avenue were delineated, as also a profile was shown of that part of the street referred to above, between Warren street and Grove street.

Ques.—I do not understand that to bear answer to my question, I therefore repeat it.

Ans.—I can give no other answer; the answer I have given meets your question fairly.

Ques.—Does not the ordinance to which you refer, and does not the paragraph from which you began your last answer, refer to the map made by Andrew Clerk and R. C. Bacot, in these words, “shall be hereafter taken and established as the grade of Newark avenue for the distance shown on said map”; and if yea, does that ordinance establish any thing more than a grade line and profile?

Ans.—As the ordinance says the map and profile, and both are distinctly referred to in the ordinance, I should consider that the lines might be established as well as the grade, as far as the Common Council can establish it.

The witness having looked further through the ordinance book, says: I have found the ordinance, and the title is, “An ordinance to ascertain and establish the boundary of that part of the Newark turnpike road lying within the limits of Jersey City,” passed June 16th, 1848.

Ques.—Will you please state the title of the map there refer-

red to ? Ans.—There appears to be no title of the map ; it appears to refer to a map of said road made by Clerk & Bacot, city surveyors, made June 1st, 1848.

Ques.—Can you give any further or sufficient description of said map that will enable the city clerk to point out the district map referred to ? Ans.—I cannot any further than it is described by the ordinance.

Ques.—The city clerk's office is within one minute's walk of this room ; will you now go and point out that map to me ?

Ans.—I should think the city clerk was the proper officer to 10 point out that map ; I have no objection to go as a matter of courtesy ; and the witness went.

Ques.—Having seen the map, can you state by what authority the red and blue lines are drawn on this map S. F. B. No. 1, as the north lines of Newark avenue, both of the former maps having been made by yourself ?

Ans.—The ordinance is the authority for the blue line ; the red line is drawn out because the avenue was originally supposed to be laid out sixty-six feet in width.

Ques.—Have you and others as far as you know always sup- 20 posed that the avenue in front of the Durant property was sixty-six feet wide ?

Ans.—I had always supposed it to be sixty-six feet wide until this ordinance established it otherwise.

Ques.—Does the ordinance of 16th June, 1848, establish it other than sixty-six feet wide ? Ans.—I think it does.

Ques.—How ? Ans.—By showing the width of the street sixty feet on the map instead of sixty-six feet.

Ques.—You having made that map, by what authority did you make the street sixty instead of sixty-six feet wide ? 30

Ans.—By authority of the Common Council.

Ques.—How was that authority given to you ?

Ans.—After the lapse of ten years I cannot state by what particular authority ; whether by committee or not.

Ques.—From recollection can you state that the Common Council, or any committee, or member of the Common Council directed you to make the avenue sixty feet wide at any particular point ?

Ans.—I cannot recollect whether it was by committee, or

how it was, but believe it must have been from an order emanating from the Common Council.

Ques.—Have you any recollection or belief whether any directions either verbal or written, came to you from the Common Council or any member thereof, directing you to make the avenue sixty feet wide at any point?

Ans.—I cannot recollect distinctly as I stated in my former answer, but I presume such an order was given, or I would not have made the lines as shown on the map.

10 Ques.—Is it your best recollection now, that all the lines and figures on that map, were made specially from directions given to you by the Common Council?

Ans.—To the best of my recollection I made the map from the directions of the Common Council.

Ques.—And was that direction specific as to all the lines and figures placed on that map? Ans.—I do not recollect any farther than I have answered before.

Ques.—Did you ever know in Jersey City or elsewhere, that a Common Council or municipal authority in directing a
20 surveyor to ascertain the boundary of any road or street, directed him at the same time to fix such boundaries as they directed, or was it left to the surveyor to ascertain these facts?

Ans.—I cannot state anything about practices of other Common Councils. I cannot state.

Ques.—Can you state the practice of the Common Council in Jersey City in that particular? Ans.—I cannot.

Ques.—Can you state whether the Common Council of Jersey City in the particular map referred to pursued that practice?

Ans.—I cannot.

30 Ques.—Do you know that the Common Council of Jersey City or any agent of theirs, directed you to fix definite and different widths to Newark avenue when they directed you to ascertain the boundaries of Newark avenue.

Ans.—I cannot recollect.

Ques.—Do you believe that they did?

Ans.—I believe that they did, but how or by whom I do not know; I cannot recollect.

Ques.—Does any map show that you have ascertained the boundaries of Newark avenue?

Ans.—This map in the Common Council shows the map as established by ordinance.

Ques.—Does it also show that the only authority for establishing that line is your own judgment in constructing the map, and specific directions from the Common Council as to particular widths at particular points ?

Ans.—My answer to that is, the ordinance explains the purport of the map.

Ques.—Does the ordinance explain why you placed the north line sixty feet from the south line near Warren street, and why 10 at about a hundred feet westerly from that point the width will measure some sixty-five feet ?

Ans.—It explains it by establishing the distances at certain points shown on the map.

Ques.—Is that the best answer you can give ?

Ans.—The ordinance does not explain why it was made sixty feet at one place and more at another.

Ques.—Then will you explain why ?

Ans.—I do not recollect the reason that induced the Common Council to fix the width at different points at that time. 20

Ques.—Please read the former question ; is that the best answer that you can give ? Ans.—It is.

Ques.—I did not ask you why the Common Council ; but why you fixed it so ?

Ans.—I do not recollect further than it was by direction of the Common Council.

Ques.—If the Common Council did direct the particular widths that you have placed on that map ; then can it in fact be a map to ascertain the boundaries of Newark avenue ?

Ans.—I should think it could be. 30

Ques.—If it is a map to ascertain the boundaries of Newark avenue, how were those boundaries ascertained ?

Ans.—I cannot recollect.

Ques.—Were those boundaries ascertained ?

Ans.—I do not recollect.

Ques.—Then you do not know that the boundaries were ascertained ? Ans.—I do not except by that map.

Ques.—Do you know that by that map they were ascertained ? Ans.—I do not.

Ques.—I understand the lines fixing the boundaries on this map Exhibit S. F. B. No. 1, of Mr. Durant's property, are derived from the deeds only; is that so?

Ans.—I do not recollect whether from the deeds only, I cannot say; I presume the lines were taken from the deeds.

Ques.—Will it not make a material difference in the bearing and direction of the lines, if you adopt a sixty-six feet width of street, or whether you take the line established by the Common Council?

10 Ans.—I want to see the deeds before I answer the question. And the witness having examined the deeds says: it will make no difference in the course of the westerly line running parallel with Warren street, it will be the same bearing, the northerly line will be brought more to the south.

Ques.—Does it not change the locality of the entire premises by moving them further north or further south? Ans.—It will change them partially, it will not change them entirely.

Ques.—Which of those two lines did you adopt in laying out those premises? Ans.—The sixty-six foot line apparently.

20 Ques.—Why did you disregard the line which you drew for and which the Common Council established by ordinance?

Ans.—I do not know any further than I suppose that I drew them thinking that at the time this property was conveyed that the street was sixty-six feet wide, and that the property contained in the deed could only be properly shown by a sixty-six foot line.

30 Ques.—Do you know that by adopting the line you supposed to be established by the Common Council, the buildings being permanent monuments, the lines you call the deed lines would by being moved further east cut the buildings in a different direction from what they now do? Ans.—Of course it cuts the buildings different from the blue line shown on the map.

Ques.—Does it not also cut them differently east or west?

Ans.—I should say so.

Ques.—If you had adopted the line which you deem established by the Common Council, would it not cut off a portion of the westernmost end of the most westerly building?

Ans.—It would.

Ques.—Would it not show that the westernmost building pro-

jected westerly of any land which you deem included in the two deeds? Ans.---It would.

Ques.---And did you deem the red line better established than the blue? Objected to as a matter of opinion.

Ans.—Well really I could not say; I do not know how far the Common Council have authority to alter.

Ques.---Do I understand you by this map that these lines have any reference to lands in possession of Mr. Durant?

Ans.—I should think they had some reference to it.

Ques.—Will you state what reference to it as to the possession? Ans.—I do not know particularly.

Ques.—Does it show that Mr. Durant has or has not possession of property south of the blue line covered by buildings?

Ans.—It shows that part of his building there is south of the blue line.

Ques.---Does it show, or do you know that Mr. Durant ever possessed or occupied the space shown between the eastermost building and the line of Warren street?

Ans.---I do not know whether he occupied it or not; it shows a part of it colored brown, but whether he ever occupied it or not I cannot tell.

Ques.---Do you deem the space occupied by the buildings in the possession of Mr. Durant? Ans.---Yes.

Ques.---If you had laid out fifty feet from the easterly line of that building instead of along the line of Warren street, would it not have projected several feet further westerly?

Ans.---It would have projected just as far west as I had commenced west of the line of Warren street.

Ques.---Would that distance amount to several feet?

Ans.---It would be as many feet west as I commenced west 30 of Warren street.

Ques.---On what scale is this map drawn?

Ans.---About seven and a half inches to fifty feet; and the distance from this point of Warren street, from the red line to the building, appears to be about five feet and a half.

Ques.---Witness being shown a map marked Exhibit W. No. 1, on the part of the complainant: Are the black lines and figures marked thereon of about the same scale and dimensions as that of Exhibit S. F. B. No. 1? Ans.---They appear to be.

Ques.---Do you know the distance of the westerly line of lot No. 36 on the assessors' map, and also 36 on Van Vorst's commissioners' map ?

The examination of Mr. Bacot was adjourned, to be proceeded with on Wednesday morning, October sixth, at 10 o'clock, if convenient for the Master to attend ; to be proceeded with in the absence of Mr. Whitehead and Mr. Zabriskie, they having agreed to the above arrangement.

Wednesday, October 6th, 1858, the examination of Mr. Bacon was adjourned to Friday morning, October 8th, at 10 o'clock, A. M.

Friday morning, October 8th, 1858, at 10 o'clock, A. M., Mr. Bacot and Mr. Durant appeared, and the examination was continued.

The cross-examination of ROBERT C. BACOT continued.

Ques.---Do you know the distance of the westerly line of lot No. 36 on the assessors' map, and also 36 on Van Vorst's commissioners' map, from the southwest corner of the small westerly house on the Newark avenue, as shown on the map 20 marked S. F. B. No. 1, and from Warren street to the northwest corner of said lot 36, on a line about parallel with the turnpike road ?

Ans.---The distance from the westerly line of lot No. 36 to the southwest corner of the small house mentioned in the question, is fifty-five feet ; the other line from Warren street to the northwest corner of lot No. 36, on a line about parallel with the turnpike road, is fifty-four feet six inches.

Ques.---Do you know the distance from the east side of Warren street, as represented by Coyle's fence, to the northeast corner of the easterly building laid down on map S. F. B. No. 1 ?

Ans.---Fifty-eight feet ten inches (58.10).

Ques.---Did you take all the three measures now given in company with Mr. Durant ? Ans.---I did.

Ques.---Is Coyle's fence referred to, on a line with his shop in the rear and his house at the corner of Warren and Montgomery street ?

Ans.—I did not notice particularly, but I presume they are on a line.

Map marked Exhibit W. No. 3, on the part of the complainant, was offered in evidence.

Map marked Exhibit W. No. 4, on the part of the complainant, was offered in evidence.

Map marked Exhibit W. No. 5, on the part of the complainant, was offered in evidence.

Map marked Exhibit W. No. 1½, on the part of the complainant, was offered in evidence. 10

Map marked Exhibit W. No. 1, on the part of the complainant, was offered in evidence.

Map marked Exhibit W. No. 2, on the part of the complainant, was offered in evidence.

Ques.—Map marked Exhibit W. No. 4, being shown to witness, your profession and practice renders you expert in topographical and other delineations on maps representing rivers, bays, creeks, and other water courses; do you find such apparent delineations on the map before you? Ans.—I do.

Ques.—Do you find a creek or water course running west 20 and north of the southeast corner of the block of land bounded by Warren street and a continuation of Montgomery street?

Ans.—I find what is represented to be a ditch or water course so laid down.

Ques.—Would that ditch or water course receive any water that might flow from a continuation of Montgomery street west, and carry it north and west from and around the southeast corner before referred to, at a distance of about one hundred feet, and empty into another water course leading to the north cove?

Ans.—It very possibly would do so; the ditch or water 30 course is laid down in that direction.

Ques.—Is Newark avenue with crooks and turns a continuation of Montgomery street? Ans.—Yes.

Ques.—Witness being shown map marked Exhibit W. No. 3, please state the scale on which said map is drawn?

Ans.—About fifty feet to the inch.

Ques.—It appears to be indorsed “Section of sewer and profile of a part of Newark avenue” dated June 1st, 1848, adopted

by Common Council, June 16th, 1848; and it appears to be the map referred to in the ordinance establishing the boundaries of Newark avenue; is it such map? Ans.—It is such map.

Ques.—The north line of Newark avenue appears to be a straight line from about Henderson street to within about fifty feet of Warren street, and to run south of the southeast corner of the building on the corner of Warren street and Newark avenue; is that so? Ans.—It strikes apparently about that corner.

Ques.—Map marked S. F. B. No. 1, being shown the witness. Does the blue line on that map strike a little north and inside of the building on the corner of Warren street, and does it also turn at sixty feet from Warren street, and is it not in those two particulars a small variation from the line established by ordinance?

Ans.—It strikes a trifle north of the southwest corner of the building, and appears to represent the same line as that established by the ordinance of the Common Council; there being a crook about sixty feet from the corner of Warren street.

Ques.—If one line strikes at or south of the corner and the other line strikes a little north of the corner of any building or monument, does not that change the locality of the two lines?

Ans.—It would provided the maps were drawn on the same scale, one map being a very small scale and the other a very large one.

Ques.—Does different scales however large or however small, make any difference in running a line past a monument, and if yea---why?

Ans.—It would make no difference in actual measurement, but shows an apparent difference with regard to the building when delineated on a small or large scale.

Ques.—How? Ans.—The maps show it.

Ques.—Do the two maps show a difference?

Ans.—They do between the line of the street and the line of the building, but a very small difference.

Ques.—Then is it true that the blue line on S. F. B. No. 1, is shown to be a trifle different in location from the north line of the avenue as established by ordinance?

Ans.—If there is any difference, it is merely in the difference in the scale on which the maps are drawn.

Ques.—Then I repeat my former question, how can different scales show different distances in any line passing near or distant from any monument?

Ans.—The difference is merely apparent, as I stated before.

Ques.—Is that the best answer you can give? Ans.—It is.

Ques.—If the established line turns at a point distant about fifty feet from the corner of Warren street, and if the blue line turns at about sixty or seventy feet from the corner of Warren street, will not that make different locations with regard to north and south positions between the established line and the blue line? 10

Ans.—If the question refers to the line as shown on Exhibit W. No. 3, and the turning point on the avenue is different from that shown on S. F. B. No. 1, there would be a difference in regard to the point where it would strike the building, and also in the location of the two lines.

Ques.—Then do I understand you to say that the turn in the two lines being at different points would change the localities of the lines with regard to north and south? Ans.—Yes.

Ques.—Map being shown witness marked Exhibit W. No. 6, on the part of the complainant: are the black lines and figures 20 marked thereon of about the same scale and angles and locality with regard to buildings as those on S. F. B. No. 1?

Ans.—They appear to be so.

Map marked Exhibit W. No. 6, on the part of the complainant, offered in evidence.

Ques.—The buildings being monuments, does it change the localities of all the lines on S. F. B. No. 1, if you adopt the established line instead of the sixty-six foot line?

Ans.—It changes them.

Ques.—The red lines on W. No. 6, are drawn to the same 30 scale as the black lines, and the line marked "S. $30\frac{1}{4}$, W. 9.68," and also the Warren street line, as well as the two 50 feet lines, being drawn of the precise lengths as the black lines; is the difference in locality which must result, shown in the red and black lines on that map? Ans.—The difference is apparently shown.

Ques.—Does it show that if you adopt the north line of the avenue as established by ordinance, the line "S. $30\frac{1}{4}$, W. 9.68" would cut off a large piece from the southwest corner of the small building? Ans.—It appears to show that.

Ques.—Map marked S. F. B. No. 1, being shown to witness: The northeast corner of small building appears to be cut off, or not laid down; did that building so exist, or did it project into the fifty feet lot?

Ans.—It may have existed and may have projected into the fifty feet lot; I do not recollect, the continuation of the lines would show that it did.

Ques.—You have probably passed there almost daily since map S. F. B. No. 1 was made by you; do you know whether
10 those buildings are now existing, and especially that small building on the west, and the building near the corner of Warren street, are now the same in location that they were when you made the survey?

Ans.—I think they are the same in location as when I made the survey; I know nothing to the contrary.

Ques.—Has the building now or the small building now four corners, and must the northeast corner, from the parts of lines shown on S. F. B. No. 1, project over on the fifty foot lot?

Ans.—It is possible that it might; and it has four corners.

20 Ques.—The dotted red lines must then cut across the northeast corner of the small buildings, as shown on S. F. B. No. 1?

Ans.—It is possible that it does.

Ques.—How did you get that dotted red line; could you sight a straight line in that locality for its whole length at the time of your survey?

Ans.—The dotted red line is a parallel line with Warren st.; and although I cannot see through the building if it was in the way, I could still determine the location of it on either side of it. I do not recollect whether the building does not project or not.

30 Ques.—The direction given to the east line of the small house would show that the building projected over on to the fifty foot lot, if continued as far north as the west line, and if it has four corners it extended over into the 50 foot line? Ans.—Yes.

Ques.—Do you know whether the building nearest Warren st. has a brick basement or foundation? Ans.—I believe it has.

Ques.—Does the line marked "S. 30 $\frac{1}{4}$ W" show that if continued to the blue line it would cut off the southwest corner of the small building on map S. F. B. No. 1?

Ans.—It would.

Ques.—And would it then or does it now, show that the southwest corner of the small building projects westerly on that line? Ans.—Yes.

Ques.—You have stated that you are a city surveyor; what is the established width of Warren street? Ans.—Sixty feet.

Ques.—Is it the duty of city surveyors in locating buildings, to locate them on the exact line of the street? Ans.—It is.

Ques.—Did you locate Coyle's building on the corner of Warren and Montgomery street? Ans.—I did not.

Ques.—Is it the practice and duty of city surveyors in the removal of a building and rebuilding to locate it on the line of the street, even if before the rebuilding it had been erroneously located? Ans.—It is.

Ques.—Did you give the lines and direct Patrick Coyle to locate the building now on the corner of Warren and Montgomery streets, at the time it was moved off to build a more permanent one? Ans.—I do not recollect that I did.

Ques.—If you or any other city surveyor did locate said building at that time, is it not fair to infer that you or they located it on the precise line of Warren street? 20

Ans.—It is fair to infer that.

Ques.—Do you now consider Coyle's building to be on the precise east line of Warren street?

Ans.—I cannot say when you come precisely.

Ques.—If Warren street, or the lines thereof, are not correctly laid down on S. F. B. No. 1, will not all the lines on the map necessarily be erroneously located? Ans.—Yes.

Ques.—Is not the west line of Warren street laid down on map S. F. B. No. 1, as touching the northeast corner of the building? 30

Ans.—No, sir; it touches the line of the building, and the corner may project over it, the depth of the building is put down indefinitely on the map.

Ques.—At what part of that building does the apparent northeast corner touch Warren street?

Ans.—If the end of the black line is meant to show the northeast corner of the building, then the line of Warren street would touch it at that point.

Ques.—You having laid down a building as a monument, and

the line of Warren street as having some reference to that monument, will you state the distance of any part of that building to any different point on the line of Warren street?

Ans.—The distance in the red line from the easterly side of the building to the line of Warren street appears to be about five feet.

Ques.—And from that point on Warren street to the corner of Warren street and the avenue, how far is it?

Ans.—It appears about twelve feet, from the scale.

10 Ques.—And from the red line to the front of the building, what is the distance? Ans.—Eight feet four inches.

Ques.—And from the red line to that part of the building that touches Warren street, how far?

Ans.—About ten feet from the scale.

Ques.—Then if that building is about eighteen feet three inches in depth, the northeast corner will just touch the line of Warren street; is that so?

Ans.—It is exactly eighteen feet three inches; it will.

20 street? Ans.—Can you state how you ascertain that line of Warren street? Ans.—I do not recollect at present.

Ques.—Do you know that the line of Warren street just touches that building at a point distant eighteen feet three inches from the front? Ans.—I do not know.

Ques.—Then you do not know that the line of Warren street is there correctly laid down?

Ans.—I believe that the line of Warren street is correctly laid down; I cannot state that the depth of the building is correctly shown.

30 Ques.—Do you know that the line of Warren street is correctly laid down on that map?

Ans.—I believe that it is correctly laid down.

Ques.—What induces you so to believe?

Ans.—Because I surveyed it.

Ques.—Is that the best answer that you can give to my question? Ans.—Yes, sir.

Ques.—What fact in your survey induces you to believe that the line of Warren street is there correctly laid down?

Ans.—I cannot state any particular fact.

Ques.—Do I understand you to say that you have no fact,

and that the only grounds of belief as to the correctness of the line of Warren street there laid down arises from the fact that you made a survey at some time? Ans.—Yes.

Ques.—Do you know that the depth of that building is just eighteen feet, and that the corner as there represented just touches the line of Warren street?

Ans.—I do not know the depth of the building, nor do I know whether it touches the line of Warren street.

Ques.—Do you know that the corner as there represented just touches the line of Warren street? 10

Ans.—If the end of the black line represents the corner, then it touches the line of Warren street.

Ques.—Did you this day measure from Coyle's fence to the northeast corner of that building, and find fifty-eight feet ten inches? Ans.—Yes.

Ques.—If Coyle's line on the east side of Warren street was correctly located by your former partner Andrew Clerk, then does not your measurement of this day show that the northeast corner of that building is one foot two inches on Warren street? 20

Ans.—Yes.

Ques.—Then if that building is just eighteen feet in depth, and the corner projecting one foot two inches over the line of Warren street, does that show that your west line of Warren st. is laid down one foot and two inches too far west? Ans.—No.

Ques.—Why not? Ans.—Because the eastermost line of the building might form more of a right angle with the front of the building and still leave the line of Warren street correctly shown.

Ques.—Did you lay down the easterly line of that building correctly on your map? Ans.—I presume I did.

Ques.—Then supposing the eastern line of that building is cor- 30
rectly laid down, and if that line at a point eighteen feet from the front projects one foot two inches over your Warren street line, does not that show that your Warren street line is laid down one foot two inches too far east?

Ans.—It does not, for the depth of the building is not given; it does not show necessarily that the Warren street line is incorrect, but shows that the direction of the easterly line of the building might be shown more easterly or forming more of a right angle with the front line.

Ques.—Do you think you have answered my question ?

Ans.—Yes.

Ques.—Have you any facts on that map or otherwise, to show where the line of Warren street touches that building at eighteen feet from the front ; and if so, what are those facts ?

Ans.—No, I have no facts.

Ques.—Have you any facts on that map or otherwise to show that Warren street is not laid down on that map S. F. B. No. 1, one foot two inches too far east ?

Ans.—No.

10 Ques.—And then have you any fact that it is laid down correctly on that map ?

Ans.—I have no fact to show, but believe it to be laid down correctly.

Ques.—If your measurement of this day of fifty-eight feet two inches is correct, does not that show that that building is one foot two inches on Warren street ?

Ans.—If the fence of Coyle's is on the line, it does.

Ques.—Then do I understand you to say that those buildings were not put down on map S. F. B. No. 1, as monuments to show the line of Warren street, but only to show the position of those two buildings in front as to the red and blue lines on Newark avenue shown on that map ?

Ans.—The buildings were put down for that purpose, and not as monuments showing the line of Warren street.

Ques.—Have you any monuments on that map or elsewhere to show the line of Warren street ?

Ans.—There are no monuments on that map to show the line of Warren street ; I have no doubt but the lines were taken from monuments, but I cannot tell where they were taken from for
30 the purpose of this survey.

Ques.—What induces you to suppose that you took the line of Warren street from some monument or monuments ?

Ans.—Because it was my practice.

Ques.—Because it was your practice to do what ?

Ans.—To locate by monuments which were buildings acknowledged to be on lines of different streets.

Ques.—Can you now give any monuments by which you can tell whether you have located Warren street too far east or west ?

Ans.—I cannot give you any on the map, and I do not now recollect from what monuments I took them.

Ques.—Do you know whether any monuments exist by which you or I can tell whether you have not located the west line of Warren street ten feet too far east on map S. F. B. No. 1 ?

Ans.—I believe that there are buildings on that street which will show that I have placed that line correctly.

Ques.—Can you name any such building on that street ?

Ans.—I might name Mr. Griffiths, Franklin Hall and others. I do not recollect the names.

10

Ques.—Why might you name Franklin Hall and others.

Ans.—Because I think I have taken them as monuments, and might have done so then.

Ques.—Do you know that the line of Mr. Griffiths, Franklin Hall and others, are not on a line with Coyle's house, all of which were located by yourself and your then partner Andrew Clerk ?

Ans.—I do not know how they stand in reference to Coyle's fence.

Ques.—And do you know that Coyle's house and fence are 20 not on the correct line of Warren street ?

Ans.—I do not know.

Ques.—And do you know that the line of that building on map S. F. B. No. 1, at a point eighteen feet from the front, is fifty-eight feet ten inches from Coyle's line ?

Ans.—I know that it is fifty-eight feet ten inches from Coyle's fence to the northeast corner of the building, but whether that point is eighteen feet from the front of the building I do not know.

Ques.—Do you know where Warren street strikes that building eighteen feet from the front ?

Ans.—I do not.

30

Ques.—Do you know whether the line of Warren street is not ten feet distant easterly from the east end of that building, at a point distant eighteen feet from the front ?

Ans.—I do not believe it is.

Ques.—I did not ask for your belief ; do you know whether the line of Warren street is distant ten feet from the east line of the building eighteen feet from the front ?

Ans.—As far as I know it is not.

Ques.—Do you know anything about it ?

Ans.—As far as I know, the line of Warren street is not ten feet east of that building ; and I do not know anything more about the lines of Warren street than the map shows.

Ques.—Do I understand you correctly to say that the line of Warren street may for aught you know be five feet east or west from where you have laid it down on S. F. B. No. 1 ?

Ans.—No, you do not understand me so.

Ques.—If you have laid down the line of Warren street one foot two inches too far east, will it not show that all the lines on 10 S. F. B. No. 1, except the lines of buildings, are erroneously located ? Ans.—It will, if the line is one foot and two inches too far east.

The examination was adjourned to Wednesday, October 13, 1858, to ten o'clock, A. M.

Wednesday, October 13th, 1858, at ten o'clock, A. M., Mr. Durant appeared ; Mr. Bacot did not appear, but sent word that owing to business engagements he could not attend to-day, and I adjourned the examination to Thursday morning, October 14, at ten o'clock, A. M.

20 Thursday morning, October 14th, 1858, at 10 o'clock, A. M., Mr. Durant appeared, but Mr. Bacot did not appear, but sent word that he could not attend to-day.

Mr. Charles F. Durant, the complainant, offered in evidence various maps or illustrations which were marked as Exhibits, Illustrations, and numbered (1) one, (2) two, (3) three, (4) four, (5) five, (6) six, (7) seven, (8) eight, and (9) nine, on the part of the complainant.

I adjourned the examination without day.

30 Friday morning, October 15th, 1858, it being convenient for myself, Mr. Durant and Mr. Bacot to proceed with the examination, it was proceeded with accordingly.

The cross-examination of Mr. Bacot continued by Mr. Durant.

Ques.—Look upon Exhibit illustration blank : is the north line of turnpike road there laid down in a straight line, and is the westerly line of Warren street there laid down as crossing the road at or about a right angle ? Ans.—Yes, it appears to be so.

Ques.—Is there also marked on that Exhibit a more northerly line running parallel with the road and distant precisely one hundred feet from the road line, and is the space between those lines a parallel? Ans.—It appears to be so.

Ques.—Is there marked a dotted line of ditch or creek at about one hundred feet north and west from the corner of Warren street?

Ans.—On the turnpike road there is a dotted line about seventy-five feet from what is represented as the Warren street corner, running northerly and intersecting what is represented as the 10 Warren street line at a point about 130 feet from the turnpike road.

Ques.—Is that line correctly laid down from Exhibit W. No. 4? Ans.—It appears to be about.

Ques.—Is there a lot fifty feet front and one hundred feet deep, laid down on the corner of Warren street and the turnpike road? Ans.—There is such a lot laid down.

Ques.—Is there a corner house marked 18.4, and also a more westerly small house marked twenty-one by 15.4, and also a rear house? Ans.—Yes. 20

Ques.—Do those buildings cover the whole front of the fifty feet lot there marked on the map?

Ans.—It is so shown on the map.

Ques.—Has that lot an area of precisely five thousand square feet?

Ans.—So represented, fifty by a hundred makes an area of five thousand square feet. 30

Ques.—Do you know that Warren street thirty years ago crossed the turnpike road at a right angle as there laid down?

Ans.—I do not.

Ques.—Do you know that it did not, and if yea, how do you know? Ans.—I do not know anything about it thirty years ago.

Ques.—Look on Exhibit marked illustration No. 1: does it show precisely the same state of facts as illustration No. blank, except that the creek line is omitted, and there is added several lots and numbers in the same parallel on the west, and there is also added a measurement “55 feet Bacot,” from southwest corner of small house to southwest corner of lot No. 10, 36?

Ans.—It appears to be so.

Ques.—Is there also marked on that Exhibit a more northerly line running parallel with the avenue and distant precisely one hundred feet from the road line ?

Ans.—There is.

Ques.—Are those lots laid down in that parallel perpendicular or at right angles with the road line ?

Ans.—They appear to be at about right angles.

Ques.—Is one of those lots numbered 35 ? Ans.—There is.

Ques.—Is the adjoining easterly lot numbered 36 ?

10 Ans.—Yes.

Ques.—Is the line between 35 and 36 the westerly line of lot No. 36 ? Ans.—It appears to be so.

Ques.—And is that line perpendicular with the avenue ?

Ans.—It appears to be so.

Ques.—Is there on the Van Vorst's commissioners' map, block B, Exhibit W. No. 2, a similar straight line running from the corner of Warren street westerly, and representing the north line of the avenue ?

Ans.—There appears to be a straight line so represented.

20 Ques.—Is there also on the Van Vorst's commissioners' map, W. No. 2, a more northerly line running parallel with the avenue, and distant precisely one hundred feet from the road line ?

Ans.—There is.

Ques.—Are lots Nos. 35 and 36 on W. No. 2 laid down in that parallel perpendicular with the road line ?

Ans.—It appears to be so.

Ques.—Are there on block 47 of Jersey City assessment map, Exhibit W. 5, lots Nos. 35 and 36 ? Ans.—Yes.

Ques.—Is lot No. 36 also there No. 10 ? Ans.—Yes.

30 Ques.—Is lot No. 35 also there No. 11 ? Ans.—Yes.

Ques.—Does lot Nos. 11 and 35 represent one and the same lot on Exhibit W. No. 5 ? Ans.—Yes.

Ques.—Does lot 10 and 36 there represent the adjoining easterly lot ? Ans.—Yes.

Ques.—Is there a line between the two lots perpendicular with the avenue, and is it one hundred feet deep ? Ans.—It appears to be perpendicular, and appears to be one hundred feet.

Ques.—Is the lot there numbered 10 and 36, the same lot that is sometimes called Newham lot on this street ?

Ans.—I believe it is.

Ques.—Are lots Nos. 35 and 36, there laid down as twenty-five feet front by one hundred feet deep each, and is each understood to contain twenty-five hundred square feet? Ans.—Yes.

Ques.—Were all the lots in Jersey City at the date of the deed marked Exhibit No. 1, similarly plotted, and similar in dimensions and in area?

Ans.—I do not know anything about it at that time, it was long before my time.

Ques.—Is Exhibit W. No. 4, known as the Mangin map, 10 and is it the only map at the date of the two deeds from John Van Vorst to William Durant, that gives the topography and plotting of the premises at the northwest corner of Warren street, and a continuation of Montgomery street?

Ans.—It appears to be a copy of the Mangin map, and I know of no other map.

Ques.—Is the premises there plotted into right angular lots of twenty-five by one hundred feet, and is each lot equal to twenty-five hundred square feet?

Ans.—There are no dimensions given on the map, but they 20 appear to represent lots 25 by 100, and each is equal to 2500 square feet.

Ques.—Are two of those lots together equal to five thousand square feet. Ans.—Yes.

Ques.—If Warren street was laid out while a continuation of Montgomery street was not defined or laid out, would you infer that lots in that vicinity were at right angles?

Ans.—They might be or might not be; I cannot say beyond the lines that are shown.

Ques.—If Montgomery street and its continuation westerly 30 was laid out varying twenty or even fifty degrees from its present direction, but Warren street and all other crossings in that vicinity were not laid out or defined, would you infer from the map and all surrounding circumstances that the lots in that vicinity were at right angles?

Ans.—I could not make any such inference.

Ques.—Look again on Exhibit marked Illustration No. 1; is there a right angular lot of fifty by one hundred feet laid down on the corner of the avenue and Warren street? Ans.—There is.

Ques.---Does that lot lay within the hundred feet parallel, and does it contain precisely five thousand square feet ?

Ans.—The lot lays within the parallel, and the dimensions given would give 5000 square feet.

Ques.—Is there a small right angular house on the southwest corner of that lot, marked 21 feet front and 15.4 feet deep, with sides perpendicular to road ?

Ans.—There is such an one so represented.

Ques.—At the time of your survey did you find and did you
10 lay down on Exhibit S. F. B. No. 1, a house of similar dimensions fronting on the straight line or Douglass line of avenue ?

Ans.—There is such an one represented.

Ques.—By recent measurement testified to in this case, did you find the distance between southwest corner of said building and the southwest corner of lot No. 36 to be about fifty-five feet?

Ans.—I did.

Ques.—Is said building correctly plotted and laid down on Exhibit illustration No. 1 ?

Ans.—As near as I can judge.

Ques.—Is there a crooked line marked zig-zag fence, running
20 northerly from the northwest corner of said building ?

Ans.—There is such a crooked line shown on the map or illustration.

Ques.—Is there a building marked 18.4 feet deep, shown on the southeast corner of said lot, and are its sides about perpendicular to the road line ?

Ans.—It appears to be so.

Ques.---And is there also laid down a rear house on Warren street ?

Ans.--There is.

Ques.---Are all those buildings placed on said 50 by 100 foot
30 lot ?

Ans.---They are so shown.

Ques.---Are all their sides about perpendicular with the turnpike road ?

Ans.---They appear to be so.

Ques.---Do they reach across and cover the whole front of said lot ?

Ans.---They cover the whole front, with the exception of a space between the two buildings.

Ques.---May the buildings on Warren street on this map be properly called a double house or two houses ?

Ans.—It may be called either.

Ques.—At the time of your survey did you find and lay down on Exhibit S. F. B. No. 1, a long house or a double house on the corner of Warren street and the avenue?

Ans.—It is a long house on the avenue; I do not recollect whether it is a double house.

Ques.—Is said house about 18.4 feet deep, and is the westerly end about perpendicular with the Douglass or Van Vorst's commissioners' line of avenue? Ans.—It appears to be so.

Ques.—Does it front about on that line? Ans.—It does.

Ques.—Does the westerly portion, or so much of that building as comes within fifty feet of the west side of small house correspond in front line and in 18.4 depth with the corner building on Exhibit illustration No. 1? Ans.—Yes.

Ques.—Look upon Exhibit illustration No. 2: does it show the same state of facts as Exhibit illustration No. 1, except that the line of Warren street is changed to a very acute angle with the road line and a new fifty feet lot is laid down fronting on the road and lying within the hundred feet parallel; Warren street line still cutting the northeast corner of rear house at the same point as before, and the road line extended more than thirty 20 feet easterly? Ans.—It appears to be so shown.

Ques.—What is the area of the new acute angled lot so laid down? Ans.—It is about five thousand feet.

Ques.—Is it an axiom in geometrical science that areas of triangles lying within the same parallel are to each other as the lengths of their bases? Ans.—Yes.

Ques.—The whole of the new acute angled lot lying within the same one hundred feet parallel as the right angle lot, and each base being equal to fifty feet, hence by that axiom are they equal to each other, and is each equal to five thousand square feet? 30

Ans.—Yes.

Ques.—Look on Exhibit illustration No. 3: does it show the same state of facts as illustration No. 2, except that the zig-zag fence from the northwest corner of small house is changed in direction, and now runs more westerly to the northwest corner of the new fifty feet lot? Ans.—Yes.

Ques.—Look on Exhibit illustration No. 4: does it show the same state of facts as Exhibit illustration No. 3, except that the rear building is removed from the dotted line and an addition

or new house is placed on the east end of the front 18.4 feet house ; and is it marked, corner on street one foot ?

Ans.---It is so marked.

Ques.---Does the dimensions of the building, and does also their location, correspond with your survey as laid down on Exhibit S. F. B. No. 1 ? Ans.---They appear to be so.

ea/
Ques.---Does the small westerly house of 15.4 by 21 feet, all of it, except the northwest corner, now project westerly off from and beyond the westerly line of the fifty foot lot, on to 10 other lands ?

Ans.---It projects beyond the line of the 50 feet lot, as shown on illustration *W.* No. 4, and extends on other lands.

9/
Ques.---Look on Exhibit illustration No. 5 : does it show the same state of facts as illustration No. 4, except that the road line is changed to a sixty-six feet line, and the rear is carried parallel with road line, making the corner angle of lot less acute than in Exhibit illustration No. 4 ? Ans.---It is so shown.

Ques.---Does the fifty feet lot, thus changed in angle, still lie in a hundred feet parallel, and does the lot contain an area of 20 precisely five thousand square feet ?

Ans.—If the lines are parallel, and dimensions are the same, it contains five thousand square feet.

Ques.---The figures 54.6 Bacot, from the northwest corner of lot 36, on a line parallel with avenue to Warren street, is from your testimony ; is it plotted correct according to the scale ?

Ans.---It appears to be so.

Ques.---Does that show that the fifty feet lot covers all the rear of lot 36, except $4\frac{1}{2}$ feet on northwest corner ?

Ans.—So shown.

30 Ques.---Look on Exhibit illustration No. 6 ; is the fifty feet lot in precisely the same locality as in Exhibit illustration No. 5 ?

Ans.---It appears to be shown the same.

Ques.---Do you recognize the plotting in red as correctly taken from the Van Vorst's commissioners' map, and from Jersey City assessment map, Exhibit W. No. 2 and W. No. 5, the dotted line showing the Douglass lines where they differ from lines on the assessment map ? Ans.—Yes, they appear to do so.

Ques.---Does the assessment map there appear to have been copied from Van Vorst's commissioners' map, and to be similar

in all parts, except making a slight bend in avenue at the middle front of lot 9 37, and in cutting off the L or foot of 37, giving it a distinct number 7, and marking it 20 instead of 25 feet wide ?

Ans.—It appears so.

Ques.—Does the fifty feet lot cover all the land in the 100 feet parallel, including the rear of 9, 37, all of the L or foot of 37, marked 7, a triangular piece with base of $20\frac{1}{2}$ feet from northeast corner of 36, and a part of 40, together with nearly all of lot 8 ?

Ans.—It appears to show that.

Ques.—If true that two matters cannot occupy the same space 10 in the same time, then can the fifty feet lot and also the several lots and parts of lots named in last interrogatory have a physical existence ? Ans.—No, sir.

Ques.—Is the lot there marked 7, and known on Van Vorst's commissioners' map as the L or foot of 37, together with that part of 40 lying within the fifty feet lot, all included in the second deed from Bacot to Newham, Exhibit W. 7 ?

Ans.—It appears to be so shown.

Ques.—The only dimensions on lot 8, assessors' map, appears to be 90, on western line, yourself and partner Andrew 20 Clerk having made or compiled that map; can you state the area of that lot ?

Ans.—About seven thousand five hundred square feet.

Ques.—Does the westerly line of lot 8 cut the small westerly house in two parts, leaving the west end projecting on lot 9, 37, on illustration No. 6 ?

Ans.—It is so represented.

Ques.—Is the small westerly building there shown to stand on the 50 feet lot, on the lot 8, and on the lot 9, 37, as well as on the 66 feet road line, on the assessors' map road line and on 30 the Douglass avenue line ?

Ans.—It is so shown.

Ques.—Now look on Exhibit W. No. 6, the black lines there being copied from your map S. F. B. No. 1 : do the red and black fifty feet lot lines cut through the northeast corner of the small building, and do also the more westerly red and black lines cut through the southwest corner of that building ?

Ans.—It is so shown.

Ques.—Look again on Exhibit illustration No. 6 : is it evi-

dent that some more westerly line than has yet been named or referred to in your cross-examination, is imperatively required to cover the whole of that important monument on the west ?

Ans.—It is required to embrace the whole building.

Ques.—Look again on Exhibit illustration No. 5 : the buildings having been placed about square with the road line, and it being the custom to build houses with square sides, would it not be desirable, proper and wise to guard the whole of that small house by squaring the west side of the fifty feet lot ?

10 Ans.—I suppose it would.

Ques.—Does the Mangin map W. 4, the assessors' map W. 5, the Van Vorst's commissioners' map W. 2, and all maps of city property generally, make the sides of lots square with the streets ?

Ans.—They do generally where streets cross each other at right angles, lots are generally squared with the front line.

Ques.—Exhibit illustration No. 6 now being before you : if we now draw a line from the northwest corner of the fifty feet lot and thence run to and perpendicular with the road line, will
20 that square the west end of the lot and guard the whole of the small building ? Ans.—It will square the line and a great deal more than cover the building.

Ques.—Will such a perpendicular line throw all the skew in the corner lot ?

Ans.—It will make the line of Warren street askew with this perpendicular line.

Ques.—Look on Exhibit illustration No. 7 : is it the same as Exhibit illustration, No. 5, except that a perpendicular line is drawn from the northwest corner of the fifty feet lot to the turn-
30 pike road ? Ans.—It appears so generally.

Ques.—Is that line perpendicular with the road ?

Ans.—It appears to be perpendicular with the line of the turnpike represented in black.

Ques.—Does the triangular lot added to the fifty feet lot, make the fifty feet lot square on the west, square on the avenue, and square on the rear ?

Ans.—Taken as a whole it does ; I mean the triangular lot and the fifty feet lot taken together.

Ques.—Does the perpendicular line, together with the road

line and fifty feet lot line, form a triangle lying within the 100 feet parallel? Ans.—It appears so.

Ques.—Is it a right angled triangle? Ans.—It is.

Ques.—Is it a gore piece or parcel of land? Ans.—It is.

Ques.—Is it half a lot; the diagonal half of a right angular lot?

Ans.—It is the half of a lot formed by a diagonal; I do not mean that it is the half of a lot 25 feet by 100 feet.

Ques.—Does it lay along the line of the fifty feet lot?

Ans.—The diagonal does.

Ques.—Does it lay along the road line?

10

Ans.—The front of it does.

Ques.—Is it bounded on the northwesterly line of the fifty feet lot? Ans.—It is not.

Ques.—Does it run diagonally to the rear of the fifty feet lot?

Ans.—It does.

Ques.—Does it front on the turnpike road?

Ans.—It is so shown on illustration No. 7.

Ques.—Is the line along said road a perpendicular line?

Ans.—It appears to be shown so, it is perpendicular with the westerly line of the triangle.

20

Ques.—Is there also a perpendicular line bisecting along said road; the same line that bisects the rear of the fifty feet lot?

Ans.—Yes.

Ques.—Is it, the line and the whole triangle, precisely 100 feet deep from the turnpike road? Ans.—It is so shown.

Ques.—Does it, the whole triangle, lie in a 100 feet parallel?

Ans.—It does.

Ques.—Is the line along the 50 feet lot known in trigonometrical and geometrical science as the hypotenuse when referring to triangles? Ans.—Yes.

30

Ques.—Is the line or road known as the base line?

Ans.—Yes.

Ques.—By all known science, must the line along the fifty feet lot be equal to the square root of the sum of the squares of the line on road and the perpendicular line; the first being hypotenuse, the others base and perpendicular? Ans.—Yes.

Ques.—If the perpendicular line from northwest corner of 50 feet lot, should bisect the road at a greater or less distance, however small, from the southwest corner of the 50 feet lot, would

there be any perpendicular or any square in any part of the triangle, or in any part of the 50 feet lot?

Ans.—There would be no square and no perpendicular.

Ques.—Do you know the length of that line on road?

Ans.—I do not know the distance as represented on this Exhibit illustration No. 7.

Ques.—Did you ever know its length?

Ans.—I do not know that I ever did.

Ques.—Look again on Exhibit illustration No. 6, and also on 10 No. 9. Now, looking on No. 9, does the precise length of that base line on road, depend on adopting the 66 feet line, the assessors' map line, the Douglass or Van Vorst's commissioners' map line, the by-ordinance established line, and any other assumed line of that road, and does it also depend on the precise angle at which Warren street may intersect either of those lines?

Ans.—It does appear to do so.

Ques.—Do you believe that any or all the surveyors and mathematicians living twenty or thirty years ago, could at that period have ascertained the present precise existing length of that 20 line?

Ans.—They could, provided they knew the angle which Warren street formed with the turnpike.

Ques.—Look on Exhibit illustration No. 8: does it show the same state of facts as Exhibit illustration No. 7, except that a line is drawn across the 100 feet parallel, 50 feet distant easterly from and parallel with the perpendicular line?

Ans.—It appears to be so.

Ques.—Now looking on Exhibit illustration No. 8: does that make a right angular lot fifty feet wide fronting on the road and 30 containing precisely 5000 square feet?

Ans.—It is so shown.

Ques.—Does that throw all the skew in the corner lot?

Ans.—It does.

Ques.—Will the zig-zag fence line, if continued through the small house to the south-east corner of the lot, be a diagonal line, and will it cut the lot into two precise diagonal half lots?

Ans.—If it is straight it will.

Ques.—Does the crooked fence line run diagonally to the rear of the fifty feet lot, and does the diagonal half lot fronting

on the turnpike road, run diagonally to the rear of the fifty feet lot? Ans.—It is so shown.

Ques.—Look on Exhibit illustration No. 9: does that show the same state of facts as is shown in Exhibit illustration No. 6, except a perpendicular is now drawn from the northwest corner of fifty feet lot to and with the road line?

Ans.—It appears to be so, with that exception.

Ques.—Still looking on illustration No. 9: does the triangular lot cover a portion of 8, nearly all of 9, 37, and some two-thirds of lot 10, 36? Ans.—It appears to be so shown. 10

Ques.—Does that show that if the triangular lot exists, then those portions of lots named in last interrogatory have no physical existence? Ans.—It appears so.

Ques.—Does that leave only a gore piece of lot 36 lying on the west of the triangle, and within the same parallel, and is said gore piece 36, about 12 feet front and about $4\frac{1}{2}$ feet wide in the rear? Ans.—It is so represented.

Ques.—Are the Exhibits illustrations from one to nine, both inclusive, correctly drawn on a scale of twenty feet equal to one inch? Ans.—As near as I can judge. 20

The examination was again adjourned without day, and for the convenience of the parties.

Saturday, October 16th, 1858, it was convenient for all the parties to appear, and Mr. Durant and Mr. Bacot appearing at 5 o'clock, P. M.; the cross-examination of Robert C. Bacot was continued by Mr. Durant.

Ques.—Does the following description of a parcel of land, correctly, accurately and artistically describe the right angular 50 feet lot on Exhibit illustration blank and illustration No. 1, viz: “Beginning at a point on the west line of Warren street 30 one hundred feet deep, and perpendicular from the turnpike road, thence running westerly and parallel with said road fifty feet, thence running southerly in a line perpendicular with and to said road one hundred feet, thence running easterly along the line of said road to the corner of Warren street, thence running northerly along the line of said street to the place of beginning”?

Ans.—Yes.

Ques.—Look on Exhibits illustration Nos. 7 and 9: is the

same description a correct mathematical, accurate and artistical description of both the fifty feet lot and the triangular lot, square on the west, lying together—they being in the same 100 feet parallel, and hence precisely 100 feet perpendicular depth from turnpike road. The beginning point being always where a 100 feet perpendicular line bisects the street line?

The last description having been read over to the witness :

Ans.—The description may apply to this, as no distances are given on the turnpike road or Warren street.

- 10 Ques.—Look on Exhibit illustration No. 8 : is the triangular or skew lot, there thrown in the corner, and also the right angular fifty feet lot, and also the two diagonal half lots, all lying together, all correctly, accurately and artistically bounded in and by that before mentioned description?

The first description having been read to witness—

Ans.—The same description may apply to this illustration.

- 20 Ques.—Then is it true, that the before named plain, simple, artistical description of a lot lying in that 100 feet parallel, is also a sensible, accurate and artistical description of any lot on the corner of Warren street and the avenue, one hundred feet deep, fifty feet wide in the rear, and the western side square or perpendicular with avenue, whatever line of avenue is assumed and however acutely Warren street may cross the avenue?

Ans.—The description might apply.

Ques.—In making the map S. F. B. No. 1, did you use your usual good judgment in construing the two deeds from John Van Vorst to William Durant, Exhibits Nos. 1 and 2 on the part of the complainant? Ans.—I surveyed it as nearly as I could, taking a common sense view of the intent or spirit of the deed.

- 30 Ques.—Was you enabled from a careful reading of the first deed, Exhibit No. 1, on the part of the complainant, to lay down a 50 feet front lot in a 100 feet parallel, to lay down a lot 100 feet perpendicular depth from the turnpike road, to survey a lot containing 5000 square feet, a lot equal to two Jersey City lots of 25 by 100 feet, a right angular lot, a lot of land with any one of the aforesaid characteristics or properties? Ans.—The deed does not call for any of the foregoing requisites.

Ques.—Was you enabled from a careful reading of the second deed, Exhibit W. No. 2, on the part of the complainant, to sur-

vey and lay down a half lot, gore piece or parcel of land or diagonal half lot with a perpendicular side, a triangular lot with a perpendicular side on the west, a gore piece with a square side on the west, a piece of land lying in a 100 feet parallel, a piece of land 100 feet perpendicular deep from the turnpike road, a piece of land that added to, would square the fifty feet lot on the west, a piece of land butted and bounded on the northwestwardly line of Charles F. Durant's lot, a triangular lot the base of which was 10 lying along the line of said Charles' lot, a piece of land with a perpendicular along said road 26 feet, a piece of land with a perpendicular any where about it, a piece of land with a square side anywhere about it, a piece of land that would square a side of any lot in that vicinity, a piece of land with any one of the aforesaid characteristics or qualified properties?

Ans.—The deed did not seem to call for such requisite.

Ques.—If either or both of the two deeds Exhibits Nos. 1 and 2, on the part of the complainant, were intended to convey a lot of land with any one of the before mentioned characteristics or 20 properties, were they most bunglingly and inartistically drawn?

Ans.—They were badly drawn, certainly.

The cross-examination was here closed, and the examination adjourned to a time convenient to the parties, for the purpose of reading the same over to the witness.

Wednesday, October 27th, 1858, at 3 o'clock, P. M., Mr. Bacot and Mr. Durant appeared, and the examination was read over to him. No corrections were suggested by the witness.

Deed marked Exhibit W. No. 7, on the part of the complainant, October 15th, 1858, having been omitted to be offered in 30 evidence, it was now offered in evidence.

ROBT. C. BACOT.

Taken, sworn and subscribed before me, commencing October 4th, 1858, and continued by adjournments to October 27th, A. D. 1858, at Jersey City.

JACOB WEART,

Master and Examiner in Chancery, N. J.

I certify the foregoing to be a true copy of the examination of Robert C. Bacot in the above cause.

JACOB WEART, Master in Chancery, N. J.

EXHIBIT 1, on part of Complainant.

JOHN VAN VORST and
SARAH his wife,
TO
WILLIAM DURANT.

Warranty deed, full covenants.
Dated June 19th, A. D. 1827.
Proved June 19th, 1827.
Recorded June 19th, 1827, in Book B, of
Deeds, for Jersey, pages 333 and 334.
Consideration \$100.

Conveying "All that certain tract of land situate lying and being in the township of Bergen in the county of Bergen and State of New Jersey, between the village of Harsimus and the town of Jersey hereinafter mentioned. Beginning at the north side of the turnpike road, leading from the town of Jersey to Newark, where Warren street in the map of the Jersey Company would intersect the said turnpike road, and on the west side of said street, thence west along the turnpike, fifty feet, thence north, and parallel with the said street, one hundred feet, thence 10 east and parallel with the turnpike fifty feet, thence one hundred feet along where the said route of the street of said Jersey Company would cross the salt meadow, the aforesaid premises, are not to interfere, with any right, or possession of said Company."

EXHIBIT 2, on part of Complainant.

JOHN VAN VORST
TO
WILLIAM DURANT.

Warranty deed, full covenants.
Dated October 12th, A. D. 1830.
Acknowledged October 16th, A. D. 1830.
Recorded October 18th, A. D. 1830, in Book
B, of Deeds for Jersey, pages 702 and 703.
Consideration \$25.

Conveying "All that certain half lot gore piece or parcel of land situate, lying and being in the town of Jersey in the township county and State aforesaid and lying on the north side of the turnpike road leading from and through the town of Jersey aforesaid to the town of Bergen butted and bounded on the northwestwardly line of Charles F. Durant's lot fronting on the 20 said turnpike road twenty-six feet from the line of said Charles'

lot and thence running diagonally to the rear of said Charles' lot forming a triangle the base of which lying along the line of said Charles' lot is one hundred feet deep from said turnpike road and the perpendicular along said road twenty-six feet." 27

EXHIBIT 3, on part of Complainant.

WILLIAM DURANT and
BETSEY his wife,
TO
CHARLES F. DURANT.

Warrantee deed, full covenants.
Dated November 20th, A. D. 1823.
Acknowledged November 20th, A. D. 1823.
Recorded in the Clerk's office of Bergen
county, December 21st, 1835, in Liber R,
3, of Deeds, pages 194, 195 and 196.
Consideration \$900.

Conveying "All that tract or parcel of land and premises hereinafter particularly described situate lying and being in the township of Bergen in the county of Bergen and State of New Jersey, being on the south side of the turnpike road leading from Powles Hook to Newark and bounded by a ditch on the east which separates the town of Jersey and the lands owned by the associates of the Jersey Company from the salt meadow of the said parties of the first part—and bounded on the north by the aforesaid turnpike road, which said tract hereby sold and conveyed, is one hundred feet square—and which said ditch and 10 turnpike to where they come in contact are two sides of the said tract, and also all that other certain tract of land situate lying and being in the township of Bergen in the county of Bergen and State of New Jersey—Between the village of Harsimus and the town of Jersey hereinafter mentioned, Beginning at the north side of the turnpike road leading from the town of Jersey to Newark where Warren street in the map of the Jersey Company would intersect the said turnpike road and on the west side of said street thence west along the turnpike fifty feet, thence north, and parallel with the said street, one hundred feet thence east 20 and parallel with the turnpike fifty feet, thence one hundred feet along where the said route of the street of said Jersey Company would cross the salt meadow the aforesaid premises are not to interfere with any right or possession of said Company."

EXHIBIT 4, on the part of Complainant.

JAMES NARINE and Abby his wife,
 JOHNATHAN J. DURANT,
 WILLIAM D. GARRETSON and Lorana
 his wife, of Jersey City, in the State
 of New Jersey, and
 WILLIAM V. VANARSDOLEN and Abby
 his wife, of Boston, in the State of
 Massachusetts,
 TO
 CHARLES F. DURANT.

Deed dated November 1st, A. D. 1852.
 Acknowledged December 11th, A. D. 1852,
 and December 14th, 1852.
 Recorded in the Clerk's office of Hudson
 county, December 20th, 1852, in Liber
 28 of Deeds, pages 137, 138, 139 and
 140.
 Consideration \$1000.

Conveying "All that certain half lot, gore, piece or parcel of land, situate in the town of Jersey in the county of Hudson aforesaid, and lying on the north side of the turnpike road leading from and through the town of Jersey aforesaid to the town of Bergen, butted and bounded on the northwestwardly line of Charles F. Durant's lot fronting on the said turnpike road twenty-six feet from the line of said Charles F. Durant's lot, and thence running diagonally to the rear of said Charles' lot, forming a triangle the base of which, lying along the line of said Charles' lot, is one hundred feet deep from said turnpike road and the perpendicular along said road twenty-six feet. Being the same premises conveyed to said William Durant by John Van Vorst by deed bearing date October 12th, A. D. 1830."

EXHIBIT W. 7, on the part of Complainant.

CHARLES B. C. BACOT and
 SARAH F. his wife,
 TO
 SAMUEL NEWHAM.

Deed dated August 1st, A. D. 1843.
 Acknowledged August 8th, 1843.
 Recorded in the Clerk's office of Hudson
 county, August 16th, 1843, in Liber 12 of
 Deeds, page 283, &c.
 Consideration \$250.

Conveying "All that one certain lot, tract, piece or parcel of land and premises situate lying and being in Jersey City in the county of Hudson and State of New Jersey, which on a map of the estate of John Van Vorst, deceased, duly recorded in the Clerk's office of the county of Hudson aforesaid, May 2d, 1843,

in Liber 4 of Deeds, pages 101 to 146, or may be butted and bounded and defined as follows, to wit: Beginning at a stake standing on the westerly line of Warren street one hundred and eighteen feet distant in a northerly direction from the corner made by the junction of Warren street and Newark avenue, thence running southerly along the line of Warren street eighteen feet to the rear line of property belonging to Charles F. Durant, thence northwesterly along his line about forty-two feet eight inches more or less to the line of lot numbered thirty-six, thence northeasterly along that line about fourteen feet more or less to the rear line of said lot numbered thirty-six, thence along said rear line northwesterly twenty-five feet to a stake, thence southeasterly about fifty-six feet more or less in a direct line to the place of beginning, being parts of lots numbered thirty-seven and forty in block lettered B."

EXHIBIT W. 8, on the part of Complainant.

CHARLES B. C. BACOT and	}	Deed dated May 1st, A. D. 1845.
SARAH F. his wife,		Acknowledged May 3d, A. D. 1845.
TO		Recorded in Liber 7 of Deeds for Hudson
SAMUEL NEWHAM.	}	county, p. 35, &c.
		Consideration \$800.

Conveying "All that one certain lot, tract, piece or parcel of land situate lying and being in Jersey City, in the county of Hudson and State of New Jersey, which (on a map of the estate of John Van Vorst, dec'd, made by L. F. Douglass, and recorded in the Clerk's office of the county of Hudson and State 20 aforesaid) is designated and known as lot numbered 36 (thirty-six) in block lettered B, being twenty-five feet wide in front (on the Newark avenue) and rear, and one hundred feet deep on each side, be the same more or less."

Chancellor's Opinion

The first of these is the fact that the defendant has been found guilty of a crime which is a felony under the laws of this State. It is a well established principle of law that a person who is convicted of a felony is disqualified from holding any office of honor, trust or profit under the laws of this State. This principle is based upon the public policy of the State to protect the integrity of its government and to ensure that those who hold office are of good character and are worthy of the trust placed in them by the people.

The second of these is the fact that the defendant has been found guilty of a crime which is a felony under the laws of this State. It is a well established principle of law that a person who is convicted of a felony is disqualified from holding any office of honor, trust or profit under the laws of this State. This principle is based upon the public policy of the State to protect the integrity of its government and to ensure that those who hold office are of good character and are worthy of the trust placed in them by the people.

The third of these is the fact that the defendant has been found guilty of a crime which is a felony under the laws of this State. It is a well established principle of law that a person who is convicted of a felony is disqualified from holding any office of honor, trust or profit under the laws of this State. This principle is based upon the public policy of the State to protect the integrity of its government and to ensure that those who hold office are of good character and are worthy of the trust placed in them by the people.

McKewen v. Anderson, 2 Brock, 112
 Barwood v. Barker, 2 Brock, 424
 A. Story's Eq. § 121
 Adams Ex. 105, 1 Jackson on Ver. 152

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Chancellor's Opinion.

On the 19th of June, 1827, John Van Vorst, by deed of that date, conveyed to William Durant a lot of salt meadow 50 feet in front and rear, and 100 feet deep at the intersection of Warren street with the turnpike road leading from Newark to Jersey City. The lot is described, as "beginning at the north side of the turnpike road, where Warren street on the map of the Jersey Company would intersect said road, and extending thence west along the turnpike 50 feet, and north and parallel with Warren street one hundred feet."

In the year 1830, a second deed was executed by Van Vorst to Durant for another lot triangular in form adjoining, the first named lot on the west, fronting twenty-six feet on the turnpike and running to the corner of the first lot in the rear.

In November, 1857, the complainant in whom the title to both lots is vested, filed his bill against the heirs of Van Vorst to reform the deed of 1830. It charged that the real design of the parties in making the second conveyance, was to make the west line of the lot strike the turnpike at right angles, that from a misapprehension at the time of the conveyance the parties supposed that a front of 26 feet on the turnpike would accomplish that end, whereas it requires an additional front of 55 feet on the turnpike to accomplish that purpose. It asks that the deed be reformed so as to effectuate the intention of the parties, and that the defendants be decreed to convey an additional front of 29 feet on the turnpike.

Of the power of the Court to reform the contract there is no question.

1. Spence's Eq. Que 633.

Adams Eq. 168, 1 Lugden on Ven, 158. 30

1. Story's Eq. § 152,

Chetwood v. Britton, 1 Green's Ch. 438.

McKelway v. Armour, 2 Stock, 115

Does the complainant by his evidence show a case which

calls for or authorizes the interference of the Court? If so. Is the remedy lost by lapse of time?

The bill charges that the original deed of 1827, was made under the impression that Warren street intersected the turnpike at right angles, and that the deed was intended to convey a rectangular lot. That contrary to such impression, it was found that the roads intersected each other at an acute angle, and that the lines of the lot were consequently so oblique that a house erected on the entire front of the lot, with its
 10 side lines at right angles to the road, would unavoidably project upon the adjoining lands of the grantor, and that the buildings of the grantee had by mistake been erected in part on the lands of the grantor.

To remedy this difficulty, and with a view of making the western line of the lot perpendicular to the road, the bill alleges that the second deed was executed; but that the deed as drawn and executed does not accomplish the object and intention of the parties. This view of the case is not sustained by the evidence. The angle formed by the inter-
 20 section of the street being an acute angle, it is obvious that if the grantee occupied the entire front with his building, and extended it in the rear at right angles to the street, the rear of the building would not occupy the land of Van Vorst on the west line, but would encroach upon Warren street on the east line. To avoid this difficulty, or possibly from a mere mistake of location, Durant located his buildings too far west, so that the front of his building upon the turnpike was 26 feet west of his true line and upon the land of Van Vorst. It became necessary therefore, for him to protect his build-
 30 ing to acquire more front upon the turnpike, and it seems most probable that this was the real design of the second purchase. The difficulty doubtless arose from the lot not being square, but the primary design of the change was not so much to make the lines rectangular, as to acquire title to the ground occupied by the buildings. This I deem a fair result of the evidence in the case. So far from the design of the second conveyance being to make the line of the lot rec-

tangular with the street, it is obviously drawn upon the assumption that the west line of the original lot was at right angles to the street, and that the additional purchase made the west line oblique. It is for a half lot beginning on the turnpike twenty-six feet from the west line of Durant's lot as formerly conveyed, running thence (not at right angles) but diagonally to the rear of said lot forming a triangle, the base of which lying along the line of said Charles' lot is one hundred feet deep from said turnpike road, and the perpendicular along said road twenty-six feet. Now every phrase and expression in that description is applicable, and only applicable to a lot, whose east line being identical with the west line of the old lot, is at right angles to the street, and whose west line is oblique. Every expression is repugnant to the idea of squaring the lot by making the west line intersect the lines at right angles.

But assuming that the real and sole design of the second purchase was to make the lot rectangular, let us see how the case stands upon the evidence. Jonathan J. Durant says, the lot turned out not to be square; Van Vorst was willing to make it square; my father was anxious to have it square; Mr. Van Vorst said he would sell enough to make it square; my father said he would buy enough to make it square. Samuel Cassedy the counsel under whose direction the deed was drawn says, I drew the deed from the orders I got from them, we all three believed, as I now reco'lect, that that would make the western line of the lot at right angles with the turnpike. I recollect Van Vorst asked how many feet it would take to square it. Durant said about 26 feet, the number of feet in the deed. And on cross-examination he says, Durant said it would take 26 feet along the turnpike to square it out. I think both parties said that would square it. I think Van Vorst said how much do you want? Durant said 26 feet, I think that will square it out; when I say 26 feet, I don't mean to say that I recollect that he said those words, but I mean to say he called for the quantity named in the deed. Now it is evident from this testimony

that there is no mistake in drawing the deed. It was drawn strictly in accordance with instructions given. Durant wanted 26 feet. Van Vorst agreed to sell 26 feet. He received pay for 26 feet. He actually conveyed 26 feet. There is no mistake in the deed and no room for the reformation of the instrument. The whole mistake was in the judgment of the parties, or of Mr. Durant himself, as to the effect of the purchase upon the shape of his lot. It is clearly not a case for the interference of the Court.

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The Bill must be dismissed.

Decree of February 13th, 1861.
At a Court of Chancery holden at Trenton on the
first Tuesday of February, 1861.

BETWEEN CHARLES F. DURANT, COMPLAINANT, AND CHARLES B. C. BACOT and SARAH F. his wife, HENRY A. BOORAEM and CORNELIA his wife, JONATHAN D. MILLER and ANNA E. his wife, And JOHN VAN VORST, DEFENDANTS.	}	Final Decree.
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20 This cause coming on to be heard at the last term of this Court, held at Trenton before the Chancellor in presence of Jacob Weart and Joseph P. Bradley, Esquires, of counsel with the complainant and Abraham O. Zabriskie, Esquire, of counsel, with the defendants and the pleadings, proofs, exhibits and depositions being read, and the arguments of the respective counsel being heard and considered, and the Chancellor having taken time to advise thereon, and now on this thirteenth day of February, eighteen hundred and
 30 ant is not entitled to the relief sought and prayed for by him in this said bill of complaint. It is ordered, adjudged and decreed that the complainant's bill be and the same is hereby dismissed with costs.

A true copy,

HENRY W. GREEN, C.

B. GUMMERE, Clerk.

Decree of May 23rd, 1861.
In Chancery of New Jersey

BETWEEN CHARLES F. DURANT, AND SARAH F. BACOT, and others,	}	Compl't. Def'ts.	} On Bill.
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The application made on part of the complainant to amend the bill having been duly argued by the counsel for complainant and defendants and the Chancellor having considered the same.

It is on this twenty-second day of May, eighteen hundred and sixty-one ordered by the Chancellor that said application be denied with costs.

A true copy, HENRY W. GREEN, C.
 B. GUMMERE, Clerk.

Notice of Appeal.
In Chancery of New Jersey.

BETWEEN CHARLES F. DURANT, COMPLAINANT. AND CHARLES B. C. BACOT and SARAH F. his wife, HENRY A. BOORAEM and CORNELIA his wife, JONATHAN D. MILLER and ANNA E. his wife, And JOHN VAN VORST, DEFENDANTS.	}	On Bill for Relief, &c., Notice of Appeal.
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The complainant Charles F. Durant hereby appeals from the whole of the final decree made in this Court, in the above stated cause, dismissing the said complainant's said bill of complaint, and adjudging and declaring in effect that the said complainant is not entitled to the relief prayed for in his said bill of complaint, to the Court of Errors and Appeals in the last resort in all cases.

And the complainant also hereby appeals from the whole of the interlocutory decree, made in this Court in the above stated cause, denying with costs the application made on the part of the complainant for leave to amend his said bill of complaint in the said cause, to the said Court of Errors and Appeals in the last resort in all cases.

JACOB WEART,

Sol'r and of Counsel with Compl't.

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

JACOB WEART,

of Counsel with Compl't.

Petition of Appeal.

*New Jersey Court of Errors and Appeals in
the last resort in all cases.*

BETWEEN CHARLES F. DURANT, APPELLANT, AND CHARLES B. C. BACOT, and SARAH F. his wife, HENRY A. BOORAEM. and CORNELIA his wife. JONATHAN D. MILLER and ANNA E. his wife. And JOHN VAN VORST, APPELLEES.	}	On Bill for Relief. Petition of Appeal.
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20 To the Honorable the Court of Errors and Appeals in the last resort in all cases.

The humble petition of Charles F. Durant, the Appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree, made in the Court of Chancery, by his Honor Henry W. Green Chancellor of the State of New Jersey, bearing date the thirteenth day of February, in the year of our Lord eighteen hundred and sixty one, in a cause wherein your petitioner was complainant, and the said Charles B. C. Bacot and Sarah F. Bacot, his wife, Henry A. Booraem and Cornelia Booraem, his wife, Jonathan D. Miller and Anna E. Miller, his wife, and
30 John Van Vorst were defendants, in this respect, to wit: that the said decree adjudges that your petitioner is not entitled to the relief sought and prayed for by him in his bill

of complaint, and decrees that your petitioner's said bill of complaint be dismissed with costs : Whereas, your petitioner is advised and submits that his said bill ought not to have been so dismissed ; but that according to the case made by your petitioner at the hearing of the said cause, your petitioner ought to have been declared by the said decree to be entitled to the relief sought by the said bill against the said defendants. Your petitioner therefore humbly appeals from the said decree of the Chancellor which decrees as aforesaid 10 upon the ground that the same is erroneous in the following particulars, to wit :

FIRST.—For that your petitioner is entitled to the relief sought and prayed for by him in his said bill of complaint upon the case made by your petitioner at the hearing of the said cause.

SECOND.—For that your petitioner is entitled to have the description of the premises in his deeds mentioned and set forth, in his bill of complaint amended and reformed so as to carry out the intention and agreement of the parties to the 20 said deeds ; as prayed for in his said bill of complaint.

THIRD.—For that the said decree in affect adjudges that the said deeds of your petitioner of June 19th, 1827, and of October 12th, 1830, were not intended to convey a rectangular lot ; whereas in truth and in fact the said deeds were intended to convey such rectangular lot ; yet they do not in fact convey such a rectangular lot, all which fully appears by the proofs taken in said cause.

FOURTH.—For that the said decree denies the granting of an injunction to your petitioner to restrain the said Charles 30 B. C. Bacot and Sarah F., his wife, from proceeding at law in an action of ejectment brought by them and now pending in the Supreme Court of Judicature, of the State of New Jersey, to recover possession of the premises mentioned in the bill of your petitioner ; whereas upon the case made by your petitioner in his said bill and at the hearing of the cause such injunction ought to have been granted and made perpetual, as prayed for in the bill of your petitioner.

FIFTH.—For that the said decree is in various other respects erroneous.

And your petitioner further respectfully shows that he finds himself aggrieved by a certain interlocutory decree, made in the Court of Chancery, in the said cause by his Honor Henry W. Green, Chancellor of the State of New Jersey, bearing date the twenty-second day of May, in the year of our Lord one thousand eight hundred and sixty-one, in this respect, to wit: that the said interlocutory
 10 decree adjudges and denies with costs the application made in the said Court of Chancery, on the part of your petitioner for leave to amend his said bill of complaint. And your petitioner humbly appeals from the said interlocutory decree, which decrees as aforesaid, on the ground that the same is erroneous on the following ground, to wit: For that your petitioner is entitled to leave to amend his said bill of complaint and have his said cause re-heard upon such amended bill. Your petitioner therefore humbly prays that both the
 20 said final and interlocutory decrees of the said Chancellor may be in the particulars and for the reasons aforesaid reversed, set aside and for nothing holden: and that your petitioner may be declared to be entitled to relief against the said defendants and appellees in the manner sought in his said bill, and that such further and other order may be made touching the premises as may be right, and to this Honorable Court shall seem meet.

JACOB WEART,
 Sol'r and of Counsel with Appellant

IN CHANCERY OF NEW JERSEY.

BETWEEN
CHARLES F. DURANT, COMPLAINANT,
AND
CHARLES B. C. BACOT and SARAH F. his wife,
HENRY A. BOORAEM and CORNELIA his wife,
JONATHAN D. MILLER and ANNA E. his wife,
And JOHN VAN VORST, DEFENDANTS. } On Bill, Answer, Repl-
cation and Proofs.

COMPLAINANT'S AMENDED BILL.

The bill is amended by the addition of Italicised words only.

To his Honor BENJAMIN WILLIAMSON, Chancellor of the State
of New Jersey.

Humbly complaining, sheweth unto your Honor your ora-
tor, Charles F. Durant, of Jersey City, in the county of Hud-
son and State of New Jersey, That on or about the nineteenth
day of June, in the year of our Lord one thousand eight hun-
dred and twenty-seven, one John Van Vorst, of the same
place, was or pretended to be seized in fee of a large tract
of salt meadow, then of very little value, situated in the
township of Bergen, in the then county of Bergen in this
State, bounded on the south *in part* by the *westerly contin-*
uation of Montgomery street, known as the turnpike road leading
from Newark to Jersey City, and on the east in part by a 10
street called Warren street, laid out on a map of the asso-
ciates of the Jersey company: *all the land and salt meadow and*
submerged land in Jersey City was laid out on said map, and was all
divided into Blocks and Streets and into regular right angled lots of
twenty-five feet wide by one hundred feet deep; all of said lots lying in
parallels of one hundred feet deep from said streets, and their sides
parallel with said streets; several of said streets including Mont-

gomery and Warren Street, were laid out and extended westerly and northerly on said map, in part over and upon the said salt meadow belonging to the said John Van Vorst; several of said lots covering all the salt meadow hereinafter mentioned as conveyed or intended to be conveyed by John Van Vorst to William Durant, were laid out and extended westerly on said map over and upon the said salt meadow belonging to said John Van Vorst; although Warren street was not a boundary line between the land of said associates and said John Van Vorst yet it was supposed and it in
 10 fact is true that Warren street at the intersection with Montgomery street the westerly continuation of which is known as the turnpike road, occupies the identical line and covers more than the whole of said boundary line; and your orator avers and charges the truth to be, that at the date of a certain hereinafter mentioned agreement and deed of conveyance between certain hereinafter named parties named therein, the normal figure of all known building lots on all known maps of land and salt meadow and submerged land at and within a considerable distance of Warren street and its intersection with a westerly
 20 continuation of Montgomery street known as the turnpike road, was in parallels one hundred feet deep and rectangular parallels, twenty-five feet or consecutive twenty-five feet wide, and that each of said normal lots contained strictly twenty-five hundred square feet, or consecutively twenty-five hundred square feet.

And your orator further shews and avers and charges the truth to be; that on or about the said nineteenth day of June, in the year eighteen hundred and twenty-seven, or before that time, one William Durant desirous of having two of said regular lots, together forming one regular right angled lot, fifty feet wide in front and rear and one hundred feet deep, containing five
 30 thousand square feet, fronting on the turnpike road at the corner of Warren street, for the purpose of improving the same by erecting buildings thereon to cover the whole lot, applied to said John Van Vorst who agreed to sell said lot to said William Durant for the sum of one hundred dollars, and in pursuance of said agreement between said John Van Vorst and said William Durant as aforesaid, the said John Van Vorst for the consideration of one hundred dollars, by his certain deed of conveyance of that date, conveyed, or agreed and intended thereby to convey to one said William Durant a parcel of said tract of salt meadow being, or was intended to be the aforesaid regular right

angled lot fifty feet front and rear and one hundred feet deep, fronting on said turnpike road at the intersection of said Warren street, which said parcel is described in the said deed of conveyance for the same, as follows; "All that certain tract of land situate, lying, and being in the township of Bergen, in the county of Bergen and State of New Jersey, between the village of Harsimus and the town of Jersey hereinafter mentioned, Beginning at the north side of the turnpike road leading from the town of Jersey to Newark, where Warren street in the map of the Jersey Com- 10
pany would intersect the said turnpike road, and on the west side of said street; thence west along the turnpike fifty feet; thence north and parallel with the said street one hundred feet; thence east and parallel with the turupike fifty feet; thence one hundred feet along where the said route of the street of said Jersey Company would cross the salt meadow; the aforesaid premises are not to interfere with any right or possession of said Company;" as in and by the said deed of conveyance in the possession of your orator and ready to be produced and proven as this honorable Court may direct, or 20
a record thereof in the office of the Clerk of the county of Berge.a, will, on reference thereto, more fully and at large appear.

And your orator further shews *and avers*, that the true intent of said John Van Vorst in said conveyance, was to convey to said William Durant the said rectangular regular fifty by one hundred feet lot, for the purpose of erecting rectangular buildings on the whole of said lot, and that such was the agreement, object and intention of the parties to said deed of conveyance, and that at the date of said conveyance the said turnpike road leading 30
from the town of Jersey to Newark, was laid out and used as a public highway, though not laid out on said map or named on any known map of building lots, but that the said Warren street, although in fact laid out on said map, had no visible existence elsewhere, and was not made, opened or laid out, except on the said map belonging to the associates of the Jersey Company, and that although it was supposed that said streets intersected at or about right angles, yet that no person at that time knew accurately and distinctly at what angle the said Warren street would intersect the said turnpike

road or westerly continuation of *Montgomery street*, nor could it be known without an actual survey and examination; and it was supposed that the usual and proper way to describe said lot or similar lots, in said deed, was to name the feet and course northerly for depth, and to name the consecutive lot widths in feet westerly from and parallel with *Warren street*, which then and there actually existed on said map parallel with the same and parallel with similar lots, and perpendicular with the front line of lots or westerly continuation of *Montgomery street* on the said map, and the said conveyance was made under the supposition and impression that *Warren street* intersected said turnpike road or westerly continuation of *Montgomery street*, at or about at right angles.

And your orator further shews and avers unto your Honor, that after the said conveyance the said *William Durant* entered into the possession of the said lot of salt meadow, and under the impression that the said *Warren street* would intersect said turnpike road at right angles, proceeded to improve the same by erecting two frame buildings occupying the whole of said front, and situated perpendicular to or nearly perpendicular to said turpike road, and under the impression that said lot was a regular rectangle of fifty by one hundred feet, containing precisely five thousand square feet, said *William Durant* erected his said buildings rectangular and so covered and occupied in part the whole of said lot, and said *William Durant* and your orator always believed until afterwards, as hereinafter mentioned, that said lot so conveyed as aforesaid, was rectangular fifty by one hundred feet, and contained, five thousand square feet, and the said buildings were erected under the aforesaid impression, as near as could be ascertained without a survey, on the identical said lot fronting on the turnpike road and with their sides perpendicular to said road.

And your orator further shews and avers and charges the truth to be, that some time after the erection of said buildings, although it was not definitely ascertained at what precise angle the said *Warren street* when opened would intersect said turnpike road, yet the said *William Durant* became aware that the said street would intersect said road in a way and direction that would form a very acute angle at said intersection, instead of by a perpendicular line or at a right angle, as the said *William Durant* had supposed and believed;

and although it was not definitely ascertained precisely where Warren street, or where the regular rectangular lot, parallel with and adjacent to Warren street on said map, was located in reference to any known monument, westerly or easterly, nor did any one know how far the west line of the regular lot might be from said strictly unknown Warren street monument, yet William Durant became aware that Warren street and the regular lot lines parallel therewith, would in strict truth cross and cover over the strictly unknown regular lot and at a very acute angle, and would cross it somewhere near the middle of the lot, leaving the south front of the regular lot many feet too far west- 10
erly, and the north rear upon Warren street many feet too far easterly, upon land strictly owned by somebody other than William Durant, and that in consequence thereof, contrary to what he had supposed and believed at the time of the conveyance, the word "parallel" used in describing the boundary of said lot in said deed, through misapprehension of angle in intersecting street, would become erroneous mistaken and inartistic for conveying a regular or right angular lot, and would make the whole lot askew with the turnpike road, and that the description did not and could not convey a regular lot, and did not and could not convey a perpendicular line, or a 20
right angle or a square side any where about the lot, and that the said buildings occupying the whole of the front of said regular lot, erected with the sides perpendicular to the said road, could not be and were not contained on a skewed lot of fifty feet front running at acute and obtuse angles to the said road, and on the contrary thereof, that if the words "parallel with the said street," contained in said deed of conveyance, were construed strictly by the common law, then a considerable portion of said building projected over upon and covered other lands of said John Van Vorst, and that it would not be and could not be pos- 30
sible to locate and maintain the whole of his said buildings on said strictly construed skew lot, and that the said lot in that situation was comparatively valueless, the said building having as aforesaid been by mistake erected in part on the lands of John Van Vorst; and that the words "parallel with the said street," is inartistic and is a mistake arising from misapprehension of intersecting angle with Warren street and the turnpike road or westerly continuation of Montgomery street, that the said mistake throws the whole lot askew with the turnpike road, that it makes the whole lot askew with the buildings, that thereby the lot is not regular,

is not rectangular, is not fifty feet wide, is not one hundred feet deep, does not contain the buildings, does not contain five thousand square feet, has not a square side, and the buildings are on other lands; it is a mistake in said deed to describe an acute and obtuse angled skew lot, where no such lot ever before existed, or was known or described, or bought or sold or given away, it is a mistake to describe a lot with an oblique line on the west side where no skew line was ever before known or contemplated to exist; it is a mistake in said deed to make the westerly line "parallel with the said street," when by possibility, said street or monument may not be and is not known to be perpendicular with the turnpike road, it is a mistake to run "thence west along the turnpike, fifty feet from where Warren street in the map of the Jersey Company would intersect the said turnpike road, and on the west side of said street," when the monument from which the fifty feet are running, is there declared to be prospective in the future only, and may never exist, and which existing, may intersect the fifty feet line at an unknown angle, leaving the distance required to reach the west side of a rectangular lot, unknown; the angle of intersecting street and road being unknown, it is inartistic to add to, or to omit in description of said lot, any one word in the only true strict artistic description, Beginning on the corner of Warren street and the turnpike road, at the intersection of the west line of Warren street with the north line of the turnpike road; thence running northerly along the line of Warren street to a point distant one hundred feet perpendicular from the turnpike road, thence running westerly and parallel with the turnpike road fifty feet, thence running southerly perpendicular with and to the turnpike road one hundred feet, thence running easterly along the line of the turnpike road to its intersection with Warren street, the place of beginning; and your orator is advised by his counsel and therefore insists, that he is entitled to have the said mistake rectified, and to have the said description contained in said deed, amended and reformed, so as to conform to the said agreement between said John VanVorst and William Durant, and to have the object and intent of the said parties and of the said deed, carried into effect, or otherwise to have a deed of conveyance from the hereinafter mentioned heirs at law of John Van Vorst, for so much land as will be necessary to make the said lot regular right angled, fifty feet wide in front and in rear, and one hundred feet deep, fronting on the turnpike road: and your orator avers that said William Durant

has frequently and in a friendly manner, some time in the year 1830,
 applied to said John VanVorst and requested him to rectify said mis-
 take, and to reform the said description, and to convey to said William
 Durant the land intended to be conveyed by said John VanVorst to
 said William Durant by the deed before mentioned, and said William
 Durant also applied to Sally the wife of said John VanVorst, and
 requested her to rectify said mistake and to reform the said description
 and to convey to said William Durant her right of dower to the land
 intended to be conveyed by said John VanVorst to said William
 Durant by the said deed before mentioned, and William Durant well 10
 hoped that they would have complied with such reasonable request;
 but now so it is, may it please your Honor, that Sally the wife of said
 John VanVorst, having signed the first deed, refused to sign a certain
 supplement agreement dated Oct. 12, 1830, hereinafter referred to
 and fully set forth, and which supplement was meant and intended to
 reform said description by a supplemental description, conveying or
 meant to convey by John VanVorst to said William Durant, the com-
 plement parts only, that might project over on to other lands, when the
 strict normal fifty feet lot should be described over upon and covering 20
 the abnormal skew lot, and thereby throw the skew from the west side
 into the corner, and so refused to comply with said reasonable request,
 and so always perversely refusing to comply with said reasonable
 request, departed this life; and the said John Van Vorst although
 signing said supplemental agreement and pretending to comply, and in a
 way and manner hereinafter more particularly mentioned and de-
 scribed, consenting to comply, and seemingly intending to comply with
 said reasonable request, also departed this life without complying with
 said reasonable request; and your orator further shews unto your
 Honor, that he has frequently and in a friendly manner applied to cer- 30
 tain hereinafter mentioned heirs at law of said John VanVorst, and
 requested them to rectify said mistake, and to reform the said descrip-
 tion and to convey to your orator the land intended to be conveyed
 from John VanVorst to said William Durant by the afore mentioned
 deed, and your orator has also applied to certain hereinafter mentioned
 heirs at law of said John VanVorst, and requested them to discontinue
 the proceedings in a certain hereinafter mentioned action and judg-
 ment in ejectment against your orator, and your orator well hoped that
 they would have complied with such reasonable request.

And your orator further shews, and avers charges the truth
 to be, that in order to remedy all of this difficulty, and also for 40
 the purpose and with the intent of correcting all the former mis-
 takes, and thereby reforming the inartistic description in said deed
 of conveyance, and of making all the land strictly conveyed to

and

said William Durant as aforesaid, square on said turnpike road, and his westerly line perpendicular to said turnpike road, upon the application *aforesaid* of the said William Durant, the said John Van Vorst, for the consideration of twenty-five dollars agreed to be paid to him therefor by said William Durant, agreed to convey to said Durant *the projecting parts only, of a normal lot, which, when described in and over and covering up the abnormal lot, would be the strict complement of said normal lot only, and which would throw all the skew in the corner,*

10 *and make sufficient land on the westerly side of the west line of the strict abnormal lot hereinbefore described, to make the said strictly skewed land of said Durant, square with the said turnpike road, and the westerly line thereof perpendicular thereto; agreeing, meaning and intending thereby, to correct the said mistake only, in said first deed of conveyance only, and in that way and manner only, to reform said first deed of conveyance only, and thereby to remedy all of the aforesaid difficulties as well as all of the hereinafter mentioned difficulties as well as to prevent all subsequent difficult law and equity strife.*

20 And your orator further shews unto your Honor, *and avers and charges the truth to be,* that in pursuance of the said second agreement, and with the intention and for the purposes above mentioned, the said John Van Vorst by *a certain supplement deed dated the twelfth day of October, in the year of our Lord one thousand eight hundred and thirty, for the consideration of twenty-five dollars, did convey or pretended thereby to convey* to the said William Durant, his heirs and assigns, a certain gore piece, *meant to be a complement parcel to the skewed lot, and on the westerly side of the said skewed lot*

30 *hereinbefore described, which gore piece or complement parcel, was more particular described in the supplement deed of conveyance for the same, as follows: "All that certain half lot gore piece or parcel of land situate, lying and being in the town of Jersey in the township county and State aforesaid and lying on the north side of the turnpike road leading from and through the town of Jersey aforesaid to the town of Bergen butted and bounded on the northwestwardly line of Charles F. Durant's lot fronting on the said turnpike road twenty-six feet from the line of said Charles' lot and thence running diagonally to the rear of said Charles' lot forming a*

triangle the base of which lying along the line of said Charles' lot is one hundred feet deep from said turnpike road and the perpendicular along said road twenty-six feet." As in and by said *supplement* deed of conveyance now in possession of your orator, or the record thereof remaining in the office of the Clerk of the county of Hudson, in Book B, of Deeds for Jersey, in pages 702 and 703, will, on reference thereto, more fully and at large appear.

And your orator avers, that the true intent and object of said *supplement* conveyance, was to convey to said William Du- 10
 Durant the complement or projecting parts of a normal lot, which, described and located upon and over the abnormal lot, would make as much land as was necessary for the purpose of giving to said William Durant a normal lot fronting square upon said turnpike road, and to throw the skew in the corner and make the westerly line thereof perpendicular with said road, and that such was the agreement, object and intention of the parties to said supplement conveyance.

And your orator futher shews, *and avers and charges the truth to be,* that immediately after the *supplement* conveyance 20
 last named, the said William Durant entered into the possession of the land meant and intended to be conveyed by said *supplement* deed last mentioned, *unless, as your orator believes, by previously erecting buildings thereon, he was already before that time in actual and in equitable or adverse possession,* that is to say, of so much land as was contained between the westerly line of the *strict abnormal* lot first named, and a line which drawn from the rear of said westerly line would be perpendicular to said turnpike road, and that the said William Durant and your orator possessed and enjoyed the same up to 30
 the time of his death and until at or about the time of the commencement of the action of ejectment hereinafter mentioned, without any let, interference or hindrance on the part of the said John Van Vorst (or any person claiming under him).

And your orator further shews unto your Honor, that on or about the twentieth day of November, eighteen hundred and twenty-eight, the said William Durant conveyed *and, conveyed by the first description in said first deed contained,* the said first mentioned lot of land to your orator, his heirs and

assigns, and the said William Durant having before then departed this life, James Narine and Abby his wife, Jonathan J. Durant, William D. Garrison and Lorana his wife, and William V. Van Arsdale and Abby his wife, (the said Abby Narine, Jonathan J. Durant, William D. Garrison and Abby Van Arsdale, together with your orator, being the heirs at law of said William Durant, and to whom said *complement parcel of* land had *by the strict common law* descended on the death of said William Durant), by deed of conveyance bearing date the first day of November, in the year of our Lord one thousand eight hundred and fifty-two, conveyed *all their legal rights* to the said *complement* lot and premises by said second *or supplement* deed of conveyance made by said John Van Vorst to said William Durant before mentioned, intended to be conveyed, and by the description therein contained, to your orator, his heirs and assigns; as by reference to said deeds may more fully and at large appear.

And your orator further shews, that on or about the month of January, A. D. 1832, the said John Van Vorst departed this life, leaving him surviving his daughters the said Sarah F. Bacot who is married to Charles B. C. Bacot, Cornelia Booraem who is married to Henry A. Booraem, Anna E. Miller who is married to Jonathan D. Miller, and his son John Van Vorst, who are his only heirs at law, and to whom the land and real estate of said John Van Vorst, deceased, at his death descended.

And your orator further shews unto your Honor, that subsequently and at some time in the year eighteen hundred and forty-three, the real estate of said John Van Vorst, dec'd. was divided by commissioners duly appointed for that purpose, between the heirs at law of John Van Vorst, and the said commissioners assigned to Sarah F., wife of Charles B. C. Bacot, a certain portion of the said salt marsh or meadow land which had belonged to said John Van Vorst in his life time, and the said Charles B. C. Bacot and Sarah F. his wife claim and insist that the part so assigned to said Sarah F. comprises a portion of the lands which your orator avers was intended to be conveyed by said John Van Vorst to said William Durant by said *first mentioned deed of conveyance*, and which *said first deed had been reformed and corrected or meant so to be*, by

the said supplement deed last mentioned given by said John Van Vorst, and so possessed by the said William Durant and your orator since the year 1827, as aforesaid, and your orator further avers, that said supplement deed was not intended to convey a separate or independent gore piece or triangle or lot of land, other than as a complement part of and attached to a strict abnormal lot, so as to combine and to make a strict normal lot.

And your orator further shews unto your Honor, that the said William Durant in his life time, and until his death, and your orator always supposed and believed, until at or 10 about the commencement of said action of ejectment, that the said last mentioned *supplement deed* (as it was intended by the parties thereto that it should do) described the premises or complement lot of land in such manner as to connect two whole parts of a normal lot and make the same square with said turnpike road, and the westerly line perpendicular to said road; and your orator states and charges the truth to be, that the distance of twenty-six feet along the turnpike road, was inserted upon the supposition that the same would make the perpendicular line of a right angled triangle, the base of which 20 would intersect the perpendicular or road line, westerly, and reach a point westerly along the road, that would make said skewed lot square as aforesaid, and the western line of the reformed regular fifty feet lot, perpendicular with said road; that in point of fact, the intersecting angle of street and road being unknown, it requires a distance of fifty-five feet more or less along said road, to make said skewed lot square as aforesaid; that no actual measurement was made nor any map or diagram used at the time of making said *supplement deed*, and the insertion of said distance of twenty-six feet, was by mistake and mis- 30 apprehension, and your orator further avers, that the description in said *supplement deed*, does not strictly locate any complement or gore piece, or other lot, or any part of any complement or other lot, and that it does not in any way strictly correct or reform any part of the first artistic mistake, and that it does not in any strict way change or affect the abnormal description in the original deed of 1827, and that the intersecting angle of Warren street with the road line, being unknown, the length of perpendicular line on turnpike road, required to square the skew lot, is also still unknown, and the depth of northwest corner of skew lot, is also still un-

known, and that therefore, there is no known strict monument on the west side of the skew lot, by which a complement parcel or gore piece of land of any kind can be located.

And your orator further sheweth unto your Honor, that in the month of April, in the year eighteen hundred and forty-six, the said Charles B. C. Bacot and Sarah F. his wife, unjustly intending to take advantage of the inartificial manner in which the *complement* lot of salt meadow intended to be conveyed by said *supplement* deed, is described therein, *and also,*
 10 *intending to take advantage of the inartificial reformation of the first abnormal description,* commenced an action of ejectment in the Supreme Court of Judicature, of the State of New Jersey, against John Carroll, tenant, in possession under your orator, to recover from him the possession of a portion of the *regular fifty feet lot,* and premises so as aforesaid conveyed, or intended to be conveyed, to said William Durant by said John Van Vorst, and that your orator was made defendant in the place of the tenant in possession, and entered into the consent rule, *although he did not strictly advise or consent to the*
 20 *ambiguous description in said consent rule,* in said cause; that the portion of said premises to recover which, said action was brought, is described in said *ambiguous* consent rule, as follows, to wit:

“All that triangular lot, piece or parcel of land situate lying and being in Jersey City in the county of Hudson in the State of New Jersey on the northerly side of the turnpike road leading from Jersey City to Newark Beginning at a stake standing seventy-six feet distant westerly from Warren street; thence to run 1st. westerly along said turnpike road thirty
 30 feet three inches; thence 2d. north fifty degrees east eighty-three feet ten inches, and thence 3d. south thirty and a quarter degrees west eighty-nine feet six inches to the turnpike road aforesaid and the place of beginning in the said county of Hudson.” That upon the trial of the said cause at the December term of the Hudson Circuit of the said Supreme Court, in the year one thousand eight hundred and fifty-three, the said Circuit Court being held by the Hon. Daniel Haines, one of the Judges of the said Supreme Court, the said Judge gave his opinion and instructed the jury empannelled to try said cause, that according to the description

contained in the said *supplement* deed from John Van Vorst to said William Durant secondly above described, the westerly line of the gore piece thereby *strictly* conveyed, commenced on the said turnpike road at a point only twenty-six feet westerly from the west line of the *strictly skewed* lot conveyed to said Durant by said Van Vorst herein before firstly described, and that thereupon the verdict of the jury in the said cause was rendered against your orator, and judgment was entered against your orator accordingly, but that no execution has been issued thereon, and your orator is still in 10 possession of said land, *that is to say, your orator is still in possession of all the land supposed to be, or intended to be described in said ambiguous consent rule.*

And your orator further shews unto your Honor, that such construction of said *supplement second* description, is contrary to the agreement of the parties thereto, and defeats the object and intention of said parties and of said *supplement* deed of conveyance, and would deprive your orator of the square front on the said turnpike road or a perpendicular line to said *abnormally skewed* lot on the westerly side thereof, and 20 *would deprive your orator of correcting the mistake in first deed of 1827, and, of remedying all the difficulties that existed in 1830, and would deprive your orator of a square westerly side to said skewed lot, and of protecting the valuable buildings in part erected thereon, and would deprive your orator of a regular five thousand square feet lot now imperatively required to protect the whole of said buildings, and of the principal benefit and advantage which it was intended by the said John Van Vorst and said William Durant should accrue from said second conveyance to* 30 *said William Durant, and which chiefly induced the said* William Durant *to repeatedly purchase the said complement gore piece; and that such construction, would also deprive your orator of a regular five thousand square feet lot, suitable for erecting regular square buildings on the whole front of and on the whole of said lot, "fronting on the turnpike road, where Warren street in the map of the Jersey Company would cross the salt meadow, and on the west side of said street," and of the principal benefit and advantage which it was intended by the said John Van Vorst and said William Durant, should accrue from said first original conveyance to said William Durant, and which chiefly induced the said Wil-*

liam Durant to purchase said regular normal lot in 1827.

And your orator further shews unto your Honor, that the said *supplement* description, is inartistically drawn and is ambiguous in its terms; that the words "twenty-six feet" were inserted in said *supplement* description by mistake and misapprehension; that it was not known at the time of the execution of said *supplement* or other deeds, how many feet of land west of the westerly line of said *abnormal* lot originally strictly conveyed, would be necessary in order to make the

10 said *skewed* lot square or perpendicular with the turnpike road—the said Warren street then existing by imaginary lines, and no measurement or survey being made; and your orator avers and charges the truth to be, that the entire of said *supplement* description is strictly an artistic mistake and is strictly also a perversion; that all the words and terms therein, are inartistically and mistakingly used; that "twenty-six feet from the line of said Charles' lot," is inartistic and mistaken; that "the base of which lying along the line of said Charles' lot," is inartistic and mistaken; that all the lines therein named, are inartistically and mistakingly located;

20 *the description* locates the whole of a triangle, twenty-six feet off "from the line of said Charles' lot," after having previously "butted and bounded" the same parcel of land, "on the northwestwardly line of Charles F. Durant's lot;" that the description does not strictly make a gore piece with a perpendicular or other line twenty-six feet long; that the description does strictly and mistakingly locate the whole gore piece twenty-six feet off from said Charles' lot, and then locates the perpendicular along said road, twenty-six feet off from the gore piece; that it inartistically locates the base of a right angled triangle,

30 *as a complement, on the supplement obtuse angle of said Charles' lot, where said two angles cannot together physically exist; that it fails strictly to locate or to convey the complement part of a normal lot; that it strictly omits to reform the inartistic use of the word parallel in first description; that it mistakingly and inartistically omits to convey or to do any thing, or to convey or to do any part of any one thing that was meant thereby to be conveyed or to be done by the artist who drew it, or by John VanVorst, or by William Durant, the parties named in it; that it is strictly inartistic in that, it entirely and strictly omits each and all artistic words and terms imperatively required to correct and reform the first*

abnormal description, in describing a normal lot, from the only known strict monument, over upon and projecting beyond the abnormal lot, Beginning on the corner of Warren street and the turnpike road, at the intersection of the west line of Warren street with the north line of the turnpike road; thence running northerly along the line of Warren street to a point distant one hundred feet perpendicular from the turnpike road, thence running westerly and parallel with the turnpike road fifty feet, thence running southerly perpendicular with and to the turnpike road one hundred feet, thence running easterly along the line of the turnpike road 10

to its intersection with Warren street, the place of beginning; and your orator is advised by his counsel, and therefore insists that he is entitled to have the said second mistake rectified, and to have the said supplement description contained in said supplement deed amended and reformed, so as to conform to the said second agreement between said John Van Vorst and William Durant, and the object and intent of the said parties and of said supplement deed carried into effect, or otherwise to have a deed of conveyance from said Charles B. C. Bacot and Sarah F. his wife, Henry A. 20

Booraem and Cornelia his wife, Jonathan D. Miller and Anna E. his wife and John VanVorst, being the heirs at law of said John Van Vorst, for a complement parcel of land which when added to the strictly abnormal lot, shall make the whole a normal lot containing five thousand square feet, or of so much land as will be necessary to make the said abnormal skew lot square or perpendicular with said turnpike road on the westerly side thereof, and your orator further shews unto your Honor; that Sally, the wife of said John VanVorst, a party in interest of title to the said gore piece of land, so as aforesaid conveyed or pretended 30

to be conveyed from said John VanVorst to said William Durant in said supplement second deed of conveyance, perversely refused to subscribe to, or to execute the said supplement second description and deed of conveyance; and your orator is advised by his counsel, and therefore insists, that he is entitled to have the said perverse omission of subscription and execution in said supplement deed, amended, corrected, reformed and legalised, so as to conform to the said supplement second agreement between said John VanVorst and William Durant, and to have the avowed object and intent of said parties, carried into effect, or otherwise to have a legal deed of con-

veyance from said Charles B. C. Bacot and Sarah F. his wife, Henry A. Booraem and Cornelia his wife, Jonathan D. Miller and Anna E. his wife, and John VanVorst, for "a half lot gore piece or parcel of land," so as aforesaid pretended to be conveyed by said John Van Vorst to said William Durant, as aforesaid: and your orator is advised by his counsel, and therefore insists, that he is entitled to have all of the aforesaid mistakes, perversions, ambiguities and uncertainties rectified and reformed; and your orator is also advised by his counsel and therefore insists, that he is also

10 entitled to have all of the aforesaid perverse omissions, perverse frauds constructive frauds, legal frauds and strict frauds, repented of, atoned for, corrected and reformed; and your orator is also advised by his counsel and therefore insists, that he is also entitled to have all of said mistakes, and to have all of said frauds atoned for, corrected and reformed, although all of said mistakes, and all of said frauds, may not be herein specifically, technically, artistically and legally set forth, and that, any omission herein, to technically, specifically strictly legally set forth all of said mistakes omissions and frauds, may be amply atoned for and supplied, by and in the verbal argument

20 of his said counsel on final hearing, in this your orator's complaint and prayer, before your Honor.

And your orator further shews unto your Honor, that he has frequently and in a friendly manner applied to the said Charles B. C. Bacot and Sarah F., his wife, Henry A. Booraem and Cornelia his wife, Jonathan D. Miller and Anna E., his wife, and John Van Vorst, and requested them to rectify said second or supplemental mistake and to reform the said supplemental description, and to convey to your orator the complement parcel of land intended to be conveyed

30 from John VanVorst to said William Durant by the supplement deed secondly above mentioned; and he has also frequently and in a friendly manner, requested them to rectify the mistaken use of the words "parallel with the said street," in the said original or first deed first mentioned, and he has also frequently requested them to reform the said first description, and to convey to your orator, the normal lot of land intended to be conveyed from said John Van Vorst to said William Durant by the said original first deed first mentioned; and he has also frequently and in a friendly manner, requested them to correct the perverse defect of title in omission to execute the perverse second or supplement deed of conveyance by said

Sally, a party in interest and the wife of said John Van Vorst, and he has also frequently requested them to reform the said perverse defect of title, and to convey to your orator, by strict legal form and terms, the said gore piece or other parcel of land, that was pretended to be conveyed by said John Van Vorst to said William Durant by the said perverse title in said perverse second or supplement deed of conveyance last mentioned; and he has also frequently and in a friendly manner, requested them to correct atone for and reform all of the aforesaid mistakes omissions and frauds, in all of the aforesaid agreements, descriptions and deeds of conveyance of 10 and by the said John Van Vorst, with and to the said William Durant, although all or a part of said mistakes omissions and frauds, may not then and there have been, and may not now be herein technically, specifically and strictly set forth; and he has also applied to the said Charles B. C. Bacot and Sarah F. his wife and requested them to discontinue the proceedings in said action and said judgment in ejectment against your orator, and your orator well hoped that they would have complied with such reasonable request.

But now so it is, may it please your Honor, that the said 20 Charles B. C. Bacot and Sarah F. his wife, Henry A. Booraem and Cornelia his wife, Jonathan D. Miller and Anna E. his wife and John Van Vorst, combining and confederating to and with divers other persons at present to your orator unknown, and whose names when discovered your orator prays may be inserted herein, with proper and apt words to charge them, and intending and contriving fraudulently and unjustly to defraud your orator of that portion of the lands so as aforesaid repeatedly for the second time conveyed or intended to be conveyed to said William Durant by said John Van 30 Vorst and mentioned or supposed to be described in said ambiguous consent rule, and to deprive him of the chief benefits and advantages of the said second purchase; sometimes give out and pretend that it was not the intention of the said John Van Vorst in the second or supplement deed, to convey to said William Durant so much land as would be necessary to make his skewed abnormal lot square with the said turnpike road, and the westerly line thereof perpendicular thereto; whereas your orator charges the truth to be that such was the expressed intention of the said John Van Vorst at the time of

executing and delivering the *supplement or second* deed of conveyance herein before secondly mentioned ; and at other times said defendants give out and pretend, that although it may have been the intention of the said John Van Vorst by said *supplement or second* conveyance to *correct and reform the inartistic description in said first deed, by conveying only the projecting parts of a normal lot, which, when described over upon and projecting beyond the abnormal lot, would be a complement parcel* and to make said Durant's *abnormally skewed* lot square with

10 the turnpike road, yet that the said *supplement* deed is to be construed strictly, and that *if there is any strict description of any land therein, the land conveyed thereby according to the description contained therein, only includes a tract of land the westerly line whereof commences on the turnpike road at a point only twenty-six feet westerly from the west line of the strictly skewed lot conveyed to said William Durant by said John Van Vorst, by the original first deed herein before first mentioned ; whereas your orator charges, that the description in said supplement deed is inartistically drawn, and*

20 that such construction is contrary to the *supplement or second* agreement before *secondly* mentioned made between said John Van Vorst and said William Durant, and to the expressed intention of said John Van Vorst in executing and delivering said *supplement second* deed, and would deprive your orator of a *complement parcel or gore* piece of land now become valuable and of the particular benefits and advantages arising from having a *regular five thousand square feet lot, with a square front on said turnpike road. and of the particular benefit and advantage of remedying all of the before mentioned*

30 *existing and prospective difficulties, and which was a principal inducement to said William Durant to make said repeated purchase ; and may it please your Honor, said heirs at law of said John Van Vorst, are also combining and confederating to and with divers other persons at present to your orator unknown, and whose names when discovered, your orator prays may be inserted herein, with proper and apt words to charge them, and intending and contriving fraudulently and unjustly to defraud your orator of that portion of the lands so as aforesaid conveyed, or intended, in and by the said first mentioned deed of conveyance, to be conveyed to said William Durant, by said*

John Van Vorst, and mentioned or intended to be described in said ambiguous consent rule, and to deprive him of the chief benefit and advantages of the said original and first purchase of a normal five thousand square feet lot; sometimes give out and pretend, that it was not the intention of the said John Van Vorst to convey to said William Durant a regular fifty by one hundred feet lot; whereas your orator charges the truth to be, that such was the expressed intention of the said John Van Vorst, at the time of executing and delivering the original or first deed of conveyance hereinbefore mentioned and set forth; and at other times, the said defendants give 10 out and pretend, that although it may have been the intention of the said John Van Vorst by said original first deed of conveyance, to convey to said William Durant, a normal right angled fifty by one hundred feet lot, containing five thousand square feet of salt meadow, to be improved by buildings covering the whole front of said lot, fronting on the turnpike road where Warren street in the map of the Jersey Company would cross the salt meadow, yet that the said original deed is to be construed strictly and that the land and salt meadow conveyed thereby according to the strict description contained therein, includes only an abnormal or irregular acute 20 and obtuse angled lot, lying in acute parallels of about forty by eighty feet, and containing only about three thousand five hundred square feet of land or salt meadow the westerly line whereof does not extend to or within twenty-six feet more or less of the land ambiguously described, or that was intended to be described in said ambiguous consent rule; whereas your orator avers and charges, that the description in said original first deed is inartistically drawn, and that such construction is contrary to the original first agreement before mentioned, made between John Van Vorst and said 30 William Durant, and is contrary to the expressed intention of said John Van Vorst, at the time of executing and delivering said original first deed, and would deprive your orator of a normal lot containing five thousand square feet of land, now become valuable, and of the benefits and advantages of having a regular fifty feet lot containing five thousand square feet, and to improve the same with valuable buildings covering the whole front of said regular lot, "fronting on the turnpike road, where Warren street in the map of the Jersey Company would cross the salt meadow, and not to interfere with any right or possession of said company," and which was a principal inducement to said William Durant to make said original

first purchase hereinbefore first mentioned: and now so it is, also, may it please your Honor: that the said heirs at law of said John Van Vorst, and their confederates, combining, intending and contriving fraudulently and unjustly to defraud your orator of a gore piece of land, so as aforesaid conveyed, or pretended to be conveyed to said William Durant by said John Van Vorst, by said supplement second deed of conveyance; sometimes give out and pretend, that the entire description in said second or supplement deed, is fraudulent and void, and that it does not strictly convey any gore piece of land,

10 *inasmuch as Sally, the wife of said John Van Vorst, a party in interest in said gore piece of land, did not strictly subscribe to or consent to the description of said gore piece of land, and did not strictly subscribe to or strictly consent to said supplement second agreement and deed of conveyance, that therefore the whole of said supplement second agreement and deed of conveyance, is a legal fraud, or a strict fraud, and that it was not the intention of the said John Van Vorst to convey to said William Durant, a gore piece of land, and that, although it may have been the intention of said John Van Vorst by said supplement second conveyance, to convey a gore piece of land, yet that the said supplement second agreement and deed of conveyance, is constructively or strictly a fraud, or a legal fraud, and that it does not strictly convey title to any gore piece of land the title to which was in part owned by said Sally the wife of said John Van Vorst; whereas your orator avers and charges, that although the whole of said supplement second deed of conveyance, is strictly a perverse omission, and although it may be also a legal or constructive fraud, or a strict fraud, yet, that such construction and pretence, is contrary to the expressed intention of said John Van Vorst, at the time of executing and delivering the said*

20 *fraudulently construed second agreement and deed of conveyance hereinbefore mentioned, made between said John Van Vorst and said William Durant, and is contrary to the expressed intent of said John Van Vorst at the time of executing and delivering said construed fraudulent supplement deed of conveyance, and would deprive your orator of a gore piece of land, now become valuable, and of the particular advantage of having a perfect legal title to the same, which was a principal inducement to said William Durant to purchase said gore piece of land repeatedly a second time as hereinbefore stated: and again also, may it please your Honor, the said heirs at law of the said John Van Vorst are also*

combining and confederating with others, and are also contriving
 and intending fraudulently and unjustly to defraud your orator of all
 the land and premises so as aforesaid conveyed or pretended to be con-
 veyed by all of the aforesaid deeds to said William Durant by said
 John VanVorst, and to deprive your orator of the chief benefits and
 advantages of all of the aforesaid purchases and payments of money;
 and they sometimes give out and pretend, that the said John Van
 Vorst well knew on or about June 19th, 1827, that a lot the
 west side of which was "parallel with the said street," would be
 a skewed lot, and would contain only about thirty-five hundred 10
 square feet of salt meadow, and that he, John Van Vorst, well knew
 at that time that the said perverse description "parallel with the said
 street," would cheat and defraud the said William Durant out of
 about fifteen hundred square feet of salt meadow, and would cheat
 and defraud the said William Durant out of a regular lot, and
 would cheat and defraud the said William Durant out of a lot on
 which he could locate and maintain the whole of a right angled
 fifty by one hundred feet building, and would cheat and defraud the
 said William Durant out of the principal advantages for which the
 said William Durant had paid him the said John Van Vorst 20
 the sum of one hundred dollars, in June 19th, 1827; and they some-
 times give out and pretend, that on or about October 12th, 1830,
 the said John Van Vorst well knew that the entire description in
 said supplement deed, was perverse, that he knew the perverse
 terms in said description would not add twenty-six feet to the west
 front of the skew lot, that he well knew twenty-six feet added to
 the skew lot would not square it out and make a perpendicular line
 on the west side, that he knew twenty-six feet would not square
 the skew lot out, that he well knew a right angle was not a comple-
 ment of and could not exist with an obtuse angle, that he well knew 30
 a gore piece twenty-six feet from the skew lot, was not a gore piece
 added to or onto the skew lot, that he knew a right angled triangle
 with a perpendicular twenty-six feet from the gore lot, was not a
 right angled triangle bounded on the skew lot, that he well knew the
 strict location of northwest corner of skew lot, was unknown, and that
 the said northwest corner could not be a strict monument, although he
 knew it was not one hundred feet deep, that he knew the base of a
 right angled triangle one hundred feet deep from the turnpike road,
 would reach beyond and not coincide with northwest corner of skew lot,
 and that he the said John Van Vorst well knew each and all of the

said perverse terms in said perverse description, would cheat and defraud said William Durant out of correcting the perverse description of 1827, and would cheat and defraud said William Durant out of a complement parcel of land by which to square out the skew lot, and would cheat and defraud the said William Durant out of about fifteen hundred square feet of salt meadow that was imperatively required to protect the whole of his said buildings, and would cheat and defraud said William Durant out of a right angled "triangle, one hundred feet deep from said turnpike road," and defraud him

10 out of remedying all of the before mentioned existing and prospective difficulties, and that he the said John Van Vorst intended by said perverse description and deed of conveyance, to cheat and defraud the said William Durant out of "a half lot gore piece or parcel of land forming a triangle one hundred feet deep from said turnpike road and the perpendicular along said road," somewhere, and that he the said John Van Vorst thereby intended to defraud William Durant out of the principal prospective advantages which had induced the said William Durant to pay him the said John Van Vorst, twenty-five dollars on or about October 12th, 1830; whereas your orator

20 charges, that all of said perverse constructions and perverse pretences are contrary to the agreement, and are contrary to the expressed intentions of the said John Van Vorst at the time of executing and delivering the said first mentioned deed of conveyance in 1827, and are also contrary to the agreement and the expressed intentions of the said John Van Vorst at the time of executing the before mentioned supplement deed of conveyance in 1830, and would deprive your orator of a normal lot of land with a square side on the west, containing five thousand square feet, with buildings erected thereon, and which have now become valuable.

30 All which actings and doings and pretences are contrary to equity and good conscience, and tend to the manifest wrong, injury and fraud and oppression of your orator.

In tender consideration whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law, nor can obtain the relief to which he is entitled, except in this honorable Court, where matters of this sort are properly cognizable, and the complainant is entitled to relief.

To the end therefore that the said Charles B. C. Bacot and Sarah F. his wife, Henry A. Booraem and Cornelia his

wife, Jonathan D. Miller and Anna E. his wife, and John Van Vorst, and their confederates when discovered, may upon their several and respective corporal oath, true, full and perfect answer make to all and singular the premises, as fully and particularly as if the same were herein again repeated and they thereto particularly interrogated, paragraph by paragraph, *the letter and meaning thereof, by the letter and meaning thereof*, and that the said *supplement second* mistake in the said *supplement second* deed, may be corrected and reformed by the order and decree of this honorable Court, or otherwise, that the said Charles B. C. Bacot and Sarah F. his wife, Henry A. Booraem and Cornelia his wife, Jonathan D. Miller and Anna E. his wife, and John Van Vorst, may be decreed to convey to your orator so much or such complement parcel of land, as will be necessary to throw all the skew in the corner, and to add to the skew lot the complement part only, of a regular fifty feet lot, so as to make his said skew lot, equal to a regular five thousand square feet lot, and to make his said lot square with said turnpike road, and the westerly line thereof perpendicular thereto, and that they may be decreed to describe said complement parcel of land, in strict artistic terms, and to locate the same from the only known strict monument; Beginning on the corner of Warren street and the turnpike road, at the intersection of the west line of Warren street with the north line of the turnpike road; thence running northerly along the line of Warren street to a point distant one hundred feet perpendicular from the turnpike road, thence running westerly and parallel with the turnpike road fifty feet, thence running southerly perpendicular with and to the turnpike road one hundred feet, thence running easterly along the line of the turnpike road to its intersection with Warren street, the place of beginning; according to the aforesaid supplement second agreement between said John Van Vorst and William Durant, and the intent of the parties to said supplement second deed of conveyance secondly mentioned, and that the said heirs at law of the said John Van Vorst, and their confederates, may upon their several and respective corporal oaths, full true and perfect answer make, to all and singular the premises, as fully and particularly as if the same were herein again repeated, and they thereto particularly interrogated, paragraph by paragraph, and that the said first mistake in the said first deed, may be corrected and

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reformed by the order and decree of this honorable Court, or other wise, that the said heirs at law of said John Van Vorst, may be decreed to convey to your orator, a normal lot of land, fifty feet wide one hundred feet deep and containing five thousand square feet, fronting on the turnpike road, "where Warren street in the map of the Jersey Company, would intersect the said turnpike road, and on the west side of said street;" and that, they be decreed to locate said normal lot from the only strict monument and by the only strict artistic terms, Beginning on the corner of Warren street and the

10 turnpike road, at the intersection of the west line of Warren street with the north line of the turnpike road; thence running northerly along the line of Warren street to a point distant one hundred feet perpendicular from the turnpike road, thence running westerly and parallel with the turnpike road fifty feet, thence running southerly perpendicular with and to the turnpike road one hundred feet, thence running easterly along the line of the turnpike road to its intersection with Warren street, the place of beginning; according to the aforesaid first agreement, made between said John Van Vorst and William Durant, and according to the intent of the

20 parties to said first deed of conveyance first mentioned: and also that the said heirs at law of the said John Van Vorst, and their confederates, may upon their several and respective corporal oaths, full, true and perfect answer make, to all and singular the premises, as fully and particularly as if the same were herein again repeated, and they thereunto particularly interrogated, paragraph by paragraph, sentence by sentence, word by word, and the letter and meaning thereof, by the letter and meaning thereof, and that the said perverse omission, or the said legal fraud, or the said constructive fraud, or the said strict fraud in the said supplement second deed of conveyance, may be

30 changed, corrected, reformed or legalised by the order and decree of this honorable Court, or otherwise, that the said heirs at law of the said John Van Vorst, may be decreed to convey to your orator, "a half lot gore piece or parcel of land forming a triangle, the base of which is one hundred feet deep from said turnpike road and the perpendicular along said road" somewhere, and that the said heirs at law of said John Van Vorst, may be decreed to locate said "half lot gore piece or parcel of land forming a triangle one hundred feet deep from said turnpike road and the perpendicular along said road" more or less feet, by some known strict legal monument, and by the only, and

40 by only the strict legal terms, Beginning on the corner of Warren street and the turnpike road, at the intersection of the west line of Warren street with the north line of the turnpike road; thence running northerly along

the line of Warren street to a point distant one hundred feet perpendicular
 from the turnpike road, thence running westerly and parallel with the
 turnpike road fifty feet, thence running southerly perpendicular with and
 to the turnpike road one hundred feet, thence running easterly along the
 line of the turnpike road to its intersection with Warren street, the place of
 beginning: according to the aforesaid second agreement made be-
 tween said John Van Vorst and William Durant, and according to
 the avowed intent of the parties to said fraudulent second pretended
 deed of conveyance, last mentioned; and again, to the end therefore
 that the said heirs at law of the said John Van Vorst, and their con- 10
 federates, when discovered, may upon their several and respective cor-
 poral oaths, true, full and perfect answer make to all singular the
 premises, as fully and particularly as if the same were herein again
 repeated and they thereto particularly interrogated, paragraph by para-
 graph, in like tenor and meaning thereof, and that the said perverse
 and fraudulent description in the said perverse and fraudulent first
 deed of conveyance, may be corrected, changed substituted and re-
 formed by the order and decree of this honorable Court; or otherwise
 that the said heirs at law of the said John Van Vorst, may be decreed to
 convey to your orator the regular lot of salt meadow containing five 20
 thousand square feet of land, according to the aforesaid first agree-
 ment between said John Van Vorst and William Durant, and accord-
 ing to the avowed intent of the parties to said first perverse and
 fraudulent deed of conveyance first mentioned: and again also to the
 end therefore that the said heirs at law of the said John Van Vorst,
 and their confederates, may upon their several and respective cor-
 poral oaths, full, true and perfect answer make to all and singular
 the premises, as fully and particularly as if the same were herein
 again reported, and they thereunto particularly interrogated, para-
 graph by paragraph, and that the said perverse and fraudulent 30
 description in the said fraudulent supplement second deed of convey-
 ance, may be atoned, corrected, substituted and reformed by the
 order and decree of this honorable Court, or otherwise, that the said
 heirs at law of said John Van Vorst, may be decreed to restore and
 convey to your orator, the said right angled triangle of land, "one
 hundred feet deep from said turnpike road and the perpendicular
 along said road" according to the aforesaid second agreement be-
 tween said John Van Vorst and William Durant, and according
 the avowed intent of the parties to said supplement second fraudu-
 lent deed of conveyance secondly mentioned, and that the said

and

Charles B. C. Bacot and Sarah F. his wife, may be enjoined and restrained by the order or decree and writ of injunction of this honorable Court, from further proceeding in the suit of ejectment against your orator, hereinbefore mentioned, and from prosecuting any execution or writ of habere facias possessionem upon the judgment entered in said cause; and that your orator may have such other and such further relief as to your honor shall seem meet and shall be agreeable to equity and good conscience.

- 10 May it please your Honor, the premises considered, to grant, your Honor, the writ of injunction of this honorable Court, enjoining and restraining the said Charles B. C. Bacot and Sarah F. his wife, their attorneys, agents and servants, as aforesaid, and also the most gracious writ of subpoena of the State of New Jersey, issuing out of and under the seal of this honorable Court, to be directed to the said Charles B. C. Bacot and Sarah F. his wife, Henry A. Booraem and Cornelia his wife, Jonathan D. Miller and Anna E. his wife, and John Van Vorst, therein and thereby commanding them
- 20 and each of them on a certain day and under a certain penalty, therein to be inserted, personally to be and appear before your Honor in this honorable Court, then and there to answer all and singular the said premises and to stand to and abide by such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

ASA WHITEHEAD,

Sol'r for Compl't- and of Counsel with him.

- 30 State of New Jersey, ss.: Charles F. Durant, the complainant in the foregoing bill of complaint named, being duly sworn on his oath saith, that the facts, matters and things in said bill mentioned and set forth, so far as relates to the actings and doings of this deponent, are true of his own knowledge, and that so far as the same relates to the actings and doings of any other person or persons, he verily believes the same to be true.

CHARLES F. DURANT.

Sworn and subscribed before me at Newark, this fifth day of November A. D. 1857.

WM. SILAS WHITEHEAD, Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

BETWEEN
CHARLES F. DURANT, COMPLAINANT,

AND

CHARLES B. C. BACOT and SARAH F his wife,
HENRY A. BOORAEM and CORNELIA his wife,
JONATHAN D. MILLER and ANNA E. his wife,
And JOHN VAN VORST, DEFENDANTS.

On motion for leave to
amend bill.

State of New Jersey, ss: Charles F. Durant, the complainant in the above cause being duly sworn on his oath says: That Mr. Whitehead was solicitor and counsel in the above cause from the beginning thereof until the period of Mr. Whitehead's death, and that his said counsel drew the bill of complainant with a full knowledge of all the explanatory matters and things now more fully set forth in the amended bill, and that deponent, at the date of the original bill, also knew all of the facts, matters and things that are now more fully set forth in the amended bill; deponent further says, that at the date of the original bill, and ever afterwards, he was dissatisfied with the obscure and seeming ambiguous manner in which some of the important matters were therein set forth, and that he frequently requested his said solicitor and counsel to amend the bill, by adding such further terms of description, as to deponent seemed imperatively required, to place all of the important and intricate facts, matters and things therein, more full, explicit and clear before the Court; deponent further says, that since the death of Mr. Whitehead, Mr. Weart and Mr. Bradley have been substituted solicitor and counsel in said cause and deponent has frequently, before the argument on final hearing, repeatedly requested Mr. Weart and Mr. Bradley to amend said bill of complaint, by removing or explaining the ambiguities that seemingly pervaded and obscured the whole case; deponent further says, that in the argument on

final hearing, his said counsel misunderstood the true tenor of the bill, and argued against the true tenor and prayer of the bill, and asked the Court to do, that which the bill avered should not and could not be done and was never intended to be done, and asked the Court to do that which was a physical impossibility, and asked the Court to pervert physical law, to pervert an eternal truth of Nature; deponent further says, that the Court in fully comprehending the argument of deponent's counsel, misconceived and misunderstood

10 the true tenor of the complaint and prayer and testimony, all of which showed or vaguely showed a mistake in the instructions given, and a mistake in drawing the deeds, and all of which showed or vaguely showed, that at the date of supplement deed, William Durant did not want twenty-six feet and did not want a lot of land, and that John Van Vorst did not agree to sell twenty-six feet, and did not strictly convey twenty-six feet, and did not strictly convey a lot or any part of a lot of land. Deponent further says, that since the denial and dismissal of his said bill of complaint, himself, unad-

25 vised and unassisted by solicitor or counsel, has amended his said bill of complaint, and that the amendment does not comprise any new fact, matter or thing, except so far as additional italicised words and terms, they may explain and elucidate the ambiguous narrative of facts, matters and things therein, that were originally obscured by omissions and ambiguities, and which amended explanations, were always deemed indispensable, to bring the whole of this important and intricate case, in a full clear and comprehensive form before the Court.

C. F. DURANT,

Sworn and subscribed before me at Jersey City, March 4th, 1861.

CHARLES H. VOORHIS,
Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

BETWEEN

CHARLES F. DURANT, COMPLAINANT,

AND

CHARLES B. C. BACOT and SARAH F. his wife,
 HENRY A. BOORAEM and CORNELIA his wife,
 JONATHAN D. MILLER and ANNA E. his wife,
 And JOHN VAN VORST, DEFENDANTS.

} On motion for injunction.

State of New Jersey, ss. Charles F. Durant, the complainant in the above cause, being duly sworn on his oath says; he verily believes that Charles B. C. Bacot and Sarah F. his wife, obtained judgment in ejectment in the Supreme Court of New Jersey, against this deponent to take possession of part of a normal lot of land containing precisely five thousand square feet, that deponent and the father of deponent purchased the whole of said normal lot of land in 1827, and again for a second time repurchased the whole or a part of said identical normal lot in 1830, that deponent and his 10 father have held quiet and undisputed possession of the whole of said normal lot from 1827 up to the commencement of said action in ejectment in 1846, a period of nineteen years, and deponent has consecutively held possession of the whole up to the present time, a period in all of thirty-four years and has erected thereon six buildings at a cost of ten thousand dollars; deponent further says, he verily believes that by mistakes and constructive frauds in the said conveyance and supplement second conveyance of said normal lot, the 20 land strictly conveyed becomes an abnormal lot, and strictly contains only about thirty-five hundred square feet, and strictly and wholly protects only two of said six buildings; deponent further says, he verily believes that he has filed a bill in equity to recover title to the whole of said normal lot of land only, on which the whole of said six buildings are erected, praying that said mistakes and constructive frauds may be corrected and attoned, and that execution on said judgment in ejectment may be stayed and barred;

deponent further says, he verily believes that said bill of complaint has been denied and dismissed, and that deponent is now applying to have said bill amended by removing therefrom manifold ambiguities and uncertainties, and has also directed his solicitor and counsel, that as soon as said bill is amended, to remove the cause with all reasonable speed into the Court of Errors and Appeals, then and there to have the erroneous denial and dismissal, reviewed, corrected and reformed, and deponent further says, he verily believes that

10 although the premises are ambiguously described in the consent rule in said ejectment suit, yet that the description strictly includes parts of two buildings, and constructively may include parts of four of said buildings erected at a cost of five thousand dollars ; deponent further says, he believes that Charles B. C. Bacot a plaintiff in said judgment, is a lunatic and that Sarah F. his wife, also plaintiff in said judgment, is since married or pretends to be married in some western State or territory, to some one other than said lunatic, and

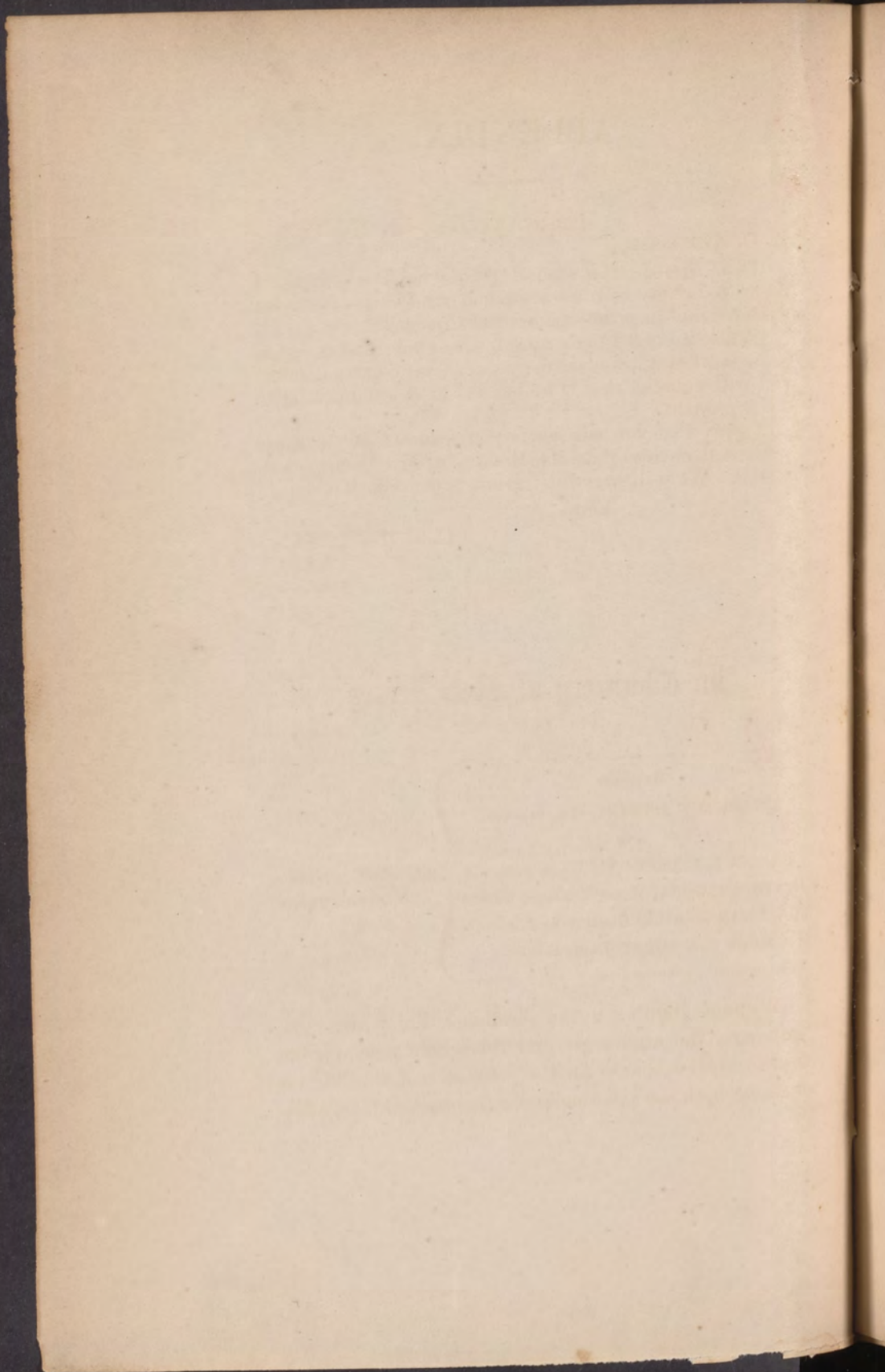
20 deponent verily believes that neither the said Charles B. C. Bacot, lunatic, or Sarah E. alias Sarah Bacot, can, at the present time, be legally served with summons from any Court of law in this State ; and deponent also verily believes that any petty agents or under tenants, that may come into possession by writ of habere facias possessionem, upon the judgment in said ejectment, would not be able to respond in damages for unlawful occupancy of parts of said two buildings now renting for eight hundred dollars, or to respond in damages for parts of said four buildings now rented for two thousand dollars per annum.

C. F. DURANT.

Sworn and subscribed before me at Jersey City, March
4th 1861.

CHARLES H. VORHIS,
Master in Chancery of New Jersey.

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APPENDIX.

JERSEY CITY, October 23d, 1860.

A. O. ZABRISKIE,

Dear Sir—In the case of Durant vs. Bacot et al., I desire to lay my own views on one point only—herewith enclosed and in print—before the Chancellor.

Without consulting counsel, I suppose that it must come in, if at all, under re-argument, on motion; unless you will consent that it be handed in as an appendix to the argument.

I pray that you will write your consent on the same sheet and enclose it to Mr. Bradley or Mr. Weart, or to myself. We will cheerfully grant you similar favors.

Yours, &c.,

C. F. DURANT.

In Chancery of New Jersey.

BETWEEN

CHARLES F. DURANT, COMPLAINANT,

AND

CHARLES B. C. BACOT and SARAH F. his wife,

HENRY A. BOORAEM and CORNELIA his wife,

JONATHAN D. MILLER and ANNA E. his wife,

And JOHN VAN VORST, DEFENDANTS.

*On Bill, Answer,
Replication and
Proofs.*

Without alluding to the pleadings, the parties, the testimony, the arguments and the whole case, further than to express thanks for the justness and the fairness of all, on both sides;—thanks for the marked legal abili-

ties shown by solicitors and counsel, both for complainant and defendants, and thanks for the patient care devoted to the hearing; as well as to express implicit confidence in the justness of a final decision, whatever that decision may be, and whether it be to grant or deny the complainant's prayer. Disavowing a desire to add to or take from, or to change or alter words, letters, the tenor or the spirit of the case, we desire to say that—

We came into Court complaining that an error or mistake had been committed; and praying that the said error or mistake may be corrected.

We came into Court complaining that an error or mistake had been committed; and also complaining that the parties, with all reasonable diligence and care and honesty of purpose, had tried and had failed to correct the said error or mistake.

We came here complaining, that by a want of, or by a deficiency in human knowledge, a lot of land fifty feet wide and one hundred feet deep, had been so described in a certain deed, that when the surrounding monumental or mathematical facts were afterwards developed, it became apparent or known that said lot would be erroneously or mistakingly changed from a supposed right angle, to an unknown though very acute angle, and even now unknown angle.

We came complaining also, that although the parties had honestly agreed and diligently tried to correct the error or mistake by a certain new or supplemental deed, yet that through deficiency of knowledge or through inartistic skill, the new or supplemental deed had failed to correct the error or mistake.

We are here praying that the Court will correct the error or mistake.

Now, this case, the whole case, shows that men, learned men, counsellors at law, expert in all the science pertaining to that profession, have failed, twice notably

failed to describe one certain lot on the corner of an intersecting street and road, in such clear and exact terms as would convey or conform to the clearly expressed intentions of all the parties to the deed or deeds. That deficiency in artistic skill caused, first, the making of a supplemental deed, and then, suits to be prosecuted in law and in equity.

We do not now in this place complain of cost and time incident to supplemental deeds, suits at law and supplemental suits in equity. Those mental and pecuniary taxes are borne, if not with cheerfulness, at least, without complaint; because they necessarily arose from misapprehension, from a limited, or a lack of, physical knowledge. But, we do desire that the past may serve as a monitor, if not for profit, at least for economy in the future. With that view—with a view to economy of time in the future only—we now desire to say:

It is a physical impossibility to locate artistically certain, any definite piece of land adjoining the first lot on the west. Because, the location of northwest corner of first lot is physically unknown, and therefore uncertain.

The location of northwest corner is physically uncertain. Because, the precise angle of first lot is uncertain, although known to be more acute than parties supposed that it would be. A line, beginning at a monument on a road line, and running precisely one hundred feet at an uncertain angle with the road line, must extend to an uncertain distance from the road line. The northwest corner is moved precisely fifty feet from Warren street, on a line parallel with, though of uncertain distance from road line.

The parties may have intended to locate the northwest corner at some definite distance. A suit at law may locate the northwest corner by a judicial construction of the terms used and the known monuments named. Equity may locate the northwest corner by certain dis-

tance and course from known monuments, by first ascertaining the certain distance and the known monuments from parole or from documentary evidence. The monument and the distance are imperative, before the northwest corner can have a physical location.

A decree in equity giving title to land at an uncertain distance from road line, is no relief in ejectment at law for land at a certain distance from road line. The law is strict; is restricted to certainties. Equity can relieve only by decreeing certainties. And hence,

The supplemental deed failed to carry out the agreement of parties—first, because it was inartistically drawn, and second, because, however expert, the artist could not physically locate the northwest corner by a supplemental deed until the northwest corner referred to had been previously artistically located. The northwest corner was a named monument; it imperatively required a certain location.

There was no necessity for a supplemental deed. The interests of the parties did not require a supplemental deed. Both parties had enough of salt meadow; Van Vorst did not seem to care how much land he gave; Durant did not seem to care how little land he got; both seemed indifferent in regard to quantity; both entered into agreement for the dimension and the figure or the fashion only; both agreed and intended to correct the misapprehension or mistake in the first deed only; both agreed and intended to restore as far as possible the known or supposed dimension, figure or fashion of first lot, that had been distorted through misapprehension.

The first deed was not artistically drawn. The parties agreed and understood the lot should be one hundred feet deep, fifty feet wide, and fashionably shaped with a square side; its uses required it to be fashionable. The parties may or may not have known its area or ag-

P. 91, line 17.
P. 88, lines 3, 8, 16.

P. 42, lines 24, 33, 34.

P. 50, line 11.

P. 63, line 31.

P. 66, line 33.

P. 71, lines 11 to 15, 18, }
29, 35, 39 }

P. 72, line 39.

P. 76, lines 6, 9, 12.

P. 77, line 30.

P. 78, lines 2, 3, 11.

P. 82, line 18.

P. 83, line 9.

P. 84, lines 11, 12, 16.

P. 85, lines 9, 12, 38.

P. 89, lines 13, 20.

Ex. W. 1. Ex. W. 6.

Ex. III. 6 Ex. III. 9.

P. 18, lines 32, 33.

" " " 34, 38.

P. 19, lines 9, 11, 23.

P. 20, line 28.

P. 22, lines 25, 33, 37.

P. 23, lines 3, 12.

P. 24, lines 4, 12, 18, 19.

P. 48, line 12.

P. 80, lines 26, 36, 37.

P. 86, lines 10, 37, 38.

P. 87, lines 2, 3 to 39.

P. 88, lines 31, 33, 37.

P. 89, line 2.

P. 3, lines 10, 22, 30, 33.

gregate feet; they may or may not have cared whether the area was five hundred or fifty thousand feet. The fashion in depth and side was imperative. The fashion was arbitrary; all the then known lots were of that particular fashion (Exhibit W. 4). All unknown lots were intended to follow that particular fashion, and they did follow it. See Exhibit W. 2. If any unfashionable lot was to be tolerated in the community, it must move into the corner. See page 19, line 10; Illustrations 3, 4, 5; page 17, lines 7, 35, 36; page 25, lines 6 to 11; page 34, line 6; page 40, line 20. The fashion was to be maintained strictly "one hundred feet deep," and with a "perpendicular" or square side somewhere about it. See Exhibit 2. The parties knew the fashion and intended to follow it strictly.

When it became known that the artist had failed to describe a fashionable lot, the parties directed him to renewed efforts to make it fashionable. We relied upon the artist's skill. We slept under a belief that the lot had been finally made fashionable. When scanned by the strict rules of law, we learned that the lot was out of fashion; that it was abnormal, distorted, shorn of its graceful outline proportions, and could not stand by the side of, or amidst the reigning fashion.

The legal and equitable strife in this case, covering a period of some fourteen years, aided by counsel who when here had no superior among his peers, has stricken, bent and led the mind to scan the cause which brings us to the Court of Equity. We have become expert, not in the principles and rules of civil law—that part we have confided to the most learned and able in the State. But, we believe that we have become expert in all that pertains to artistic description of lots like or similar to the lots described in this case. We believe that the first lot could originally have been, and can be now, described in apt and artistic terms, so that under

P. 90, line 37.
P. 2, lines 1, 2, 14, 28, }
33, 34, 37, 39. }
P. 4, line 17 to 35.
P. 6, line 1 to 5.
P. 7, line 17 to 34.
P. 17, lines 6, 7, 8, 33 to 36
P. 18, lines 10, 11, 32 to 39
P. 19, lines 1, 8 to 11, 20 }
to 24, 29 to 31. }
P. 20, line 28.
P. 22, lines 10, 12, 13, 25 }
31 to 39. }
P. 23, lines 2-4, 10, 11 }
18, 21 to 24, 34-36. }
P. 24, lines 3, 4, 7, 8, 12 }
14, 18, 19, 20, 21. }
P. 25, lines 6, 7, 8, 9 10.
P. 34, line 6.
P. 35, lines 10, 11, 23, 24.
P. 81, line 21.
P. 82, lines 3, 4.
P. 86, line 16.

P. 7, line 10
P. 88, lines 3, 8, 16, 22.
P. 90, line 37
P. 91, line 17, 22

all conceivable circumstances and changes of angle, changes of road and changes of street, the description will always show the precise meaning of the parties to the first deed. Such description is in the following words:—

“Beginning on the northwest corner of Warren street and the Turnpike road, at the intersection of the west line of Warren street with the north line of the Turnpike road; thence running northerly along the west line of Warren street to a point distant one hundred feet perpendicular from said Turnpike road, thence running westerly and parallel with said Turnpike road fifty feet, thence running southerly perpendicular with and to said Turnpike road one hundred feet, thence running easterly along the north line of said Turnpike road to its intersection with Warren street, the place of beginning.”

By the foregoing description, said lot must always be precisely one hundred feet deep, precisely fifty feet wide in the rear, and precisely square or perpendicular on the west side, with any and every conceivable angle which Warren street and the Turnpike road may form, and with every conceivable width of the Turnpike road.

Said description will express the whole agreement; will express both agreements together; will express the intent and meaning of the first deed and of the supplemental deed, both together; will locate the northwest corner; will locate the whole lot by fixed monuments; will make a square side; will make a perpendicular side; will make the lot one hundred feet deep; will locate the lot in a parallel of one hundred feet, similar and precisely like the parallels on Exhibits W 2 and W 4; will throw all the skew in the corner; will make a lot like and similar to all then known lots; will make a lot similar to ninety-nine hundredths of all lots now known in Jersey City.

The first deed, though in different words, was intended to convey a lot of that precise figure and dimensions. The second deed, though in different words, was intend-

P. 33, line 20 to 25.

P. 34, line 1.

P. 38, line 23 to 35

P. 52, line 39.

P. 53, line 8.

P. 81, line 3.

P. 82, line 4.

P. 83, line 31.

P. 84, lines 21, 22.

P. 86, line 34 to 38.

P. 88, line 33.

P. 89, lines 20, 38.

P. 90, line 10 to 24.

Exhibit 5.

Exhibit W 2, W 4, W 5.

Exhibit Illustration blank

1, 2, 3, 4, 5, 6, 7, 8, 9.

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ed as a supplement, which, together with the first deed, should convey a lot of that precise figure and dimension.

All the errors, mistakes, misapprehensions, ambiguities and uncertainties, in both the first deed, and also in the second or supplemental deed, are by the terms of the foregoing description, reformed and corrected in full, ample and artistic form.

Respectfully submitted.

C. F. DURANT.

J. P. BRADLEY,

JERSEY CITY, October 23d, 1860.

Dear Sir—Enclosed please find copy of paper mailed to Mr. Zabriskie to-day. If Mr. Zabriskie gives his consent, and if you deem it advisable, I desire that you will hand it to the Chancellor as part of our case. If Mr. Zabriskie declines consent, then I desire that you will in some proper way bring it before the Chancellor.

I deem it important to have my own theory of the case before the Court; more particularly on account of the idea seemingly pervading the whole case, that the proper relief would be a supplemental or third parcel deed. That is, to consider the first and the second deeds each carrying out correctly, certain parts of the agreement, though still deficient, and requiring a third parcel to complete the agreement by the addition of parcels; which is the same manner and way pursued by the parties when they attempted to correct the mistake or misapprehension in first deed.

Another prominent and somewhat similar idea running through the case is, to throw the first agreement and first parcel deed entirely out of the case; that is, to ignore the whole agreement and the whole deed; to consider the supplemental agreement and the supplemental deed as the originals, and the only agreement and the only deed ever existing between the parties; to reform it, the assumed original, by re-writing it, or else, to assume that it contains a certain part of the original agreement which is to be made perfect by a supplement.

In the printed address, I have endeavored to show that all of these theoretical reforms are physically impossible, because they cannot be made physically certain. Besides, if they could be made certain, they would leave the first lot uncertain, and send us back to law to ascertain the certainties, and then again to equity to reconcile legal certainties with equitable agreements or intentions.

Yours, &c.,

C. F. DURANT.

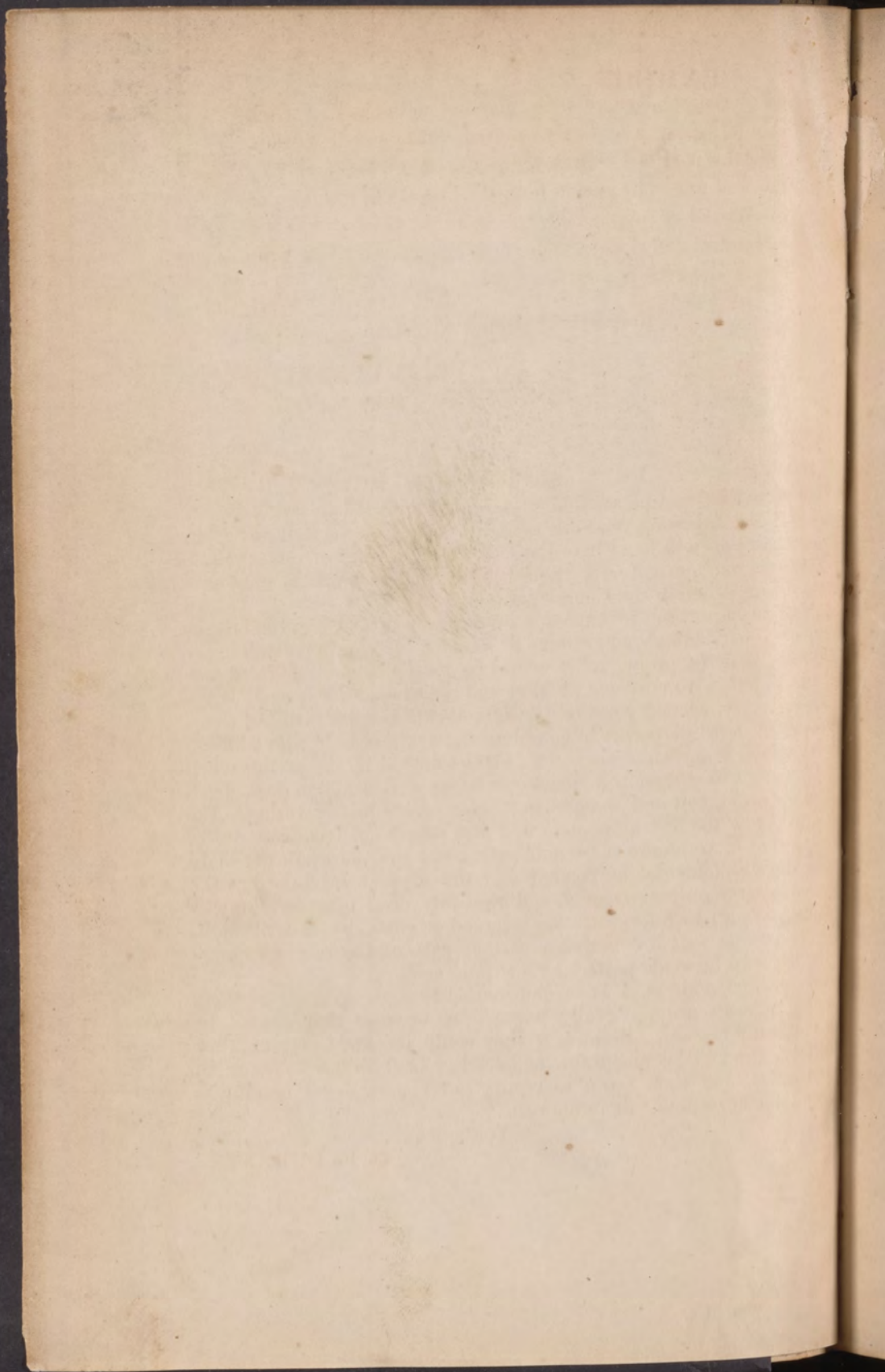


EXHIBIT 5

On the part of Complainant.

Complainant's Exhibit 5.

Turnpike Road

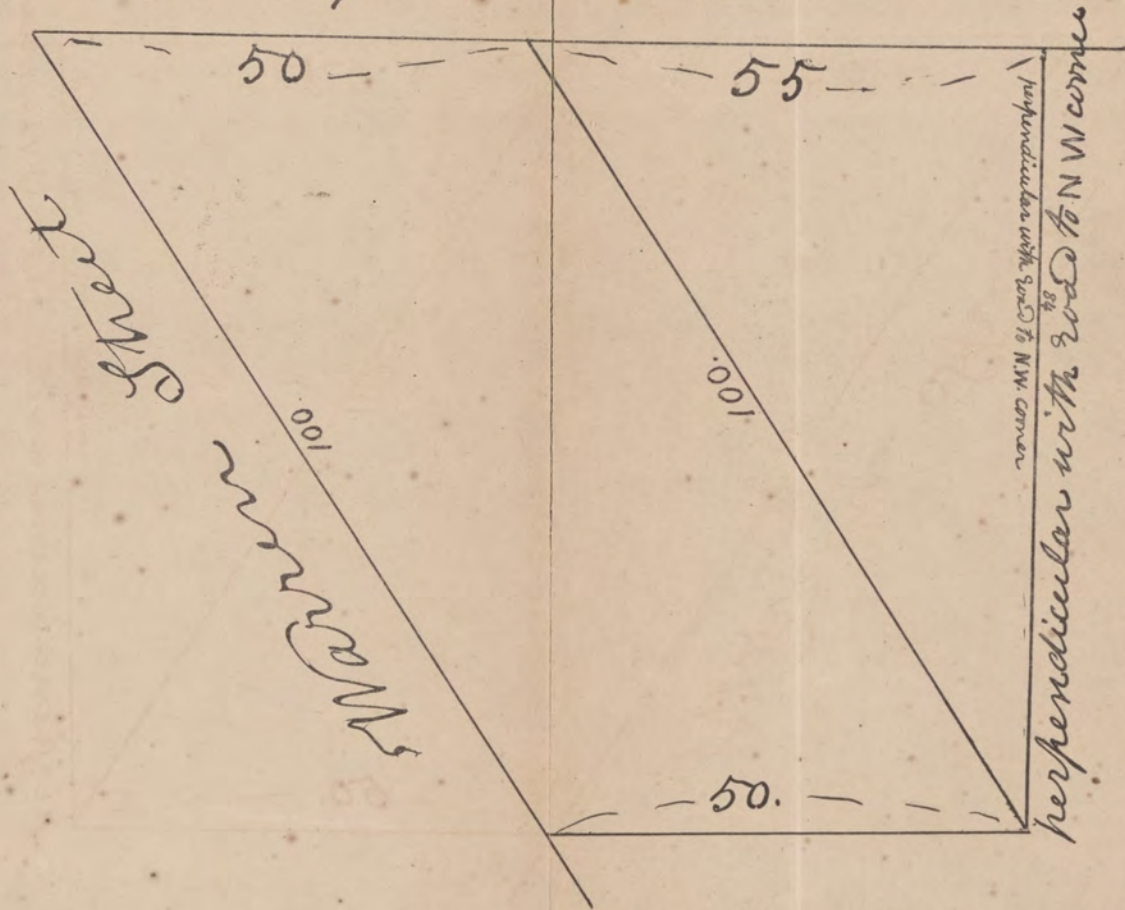
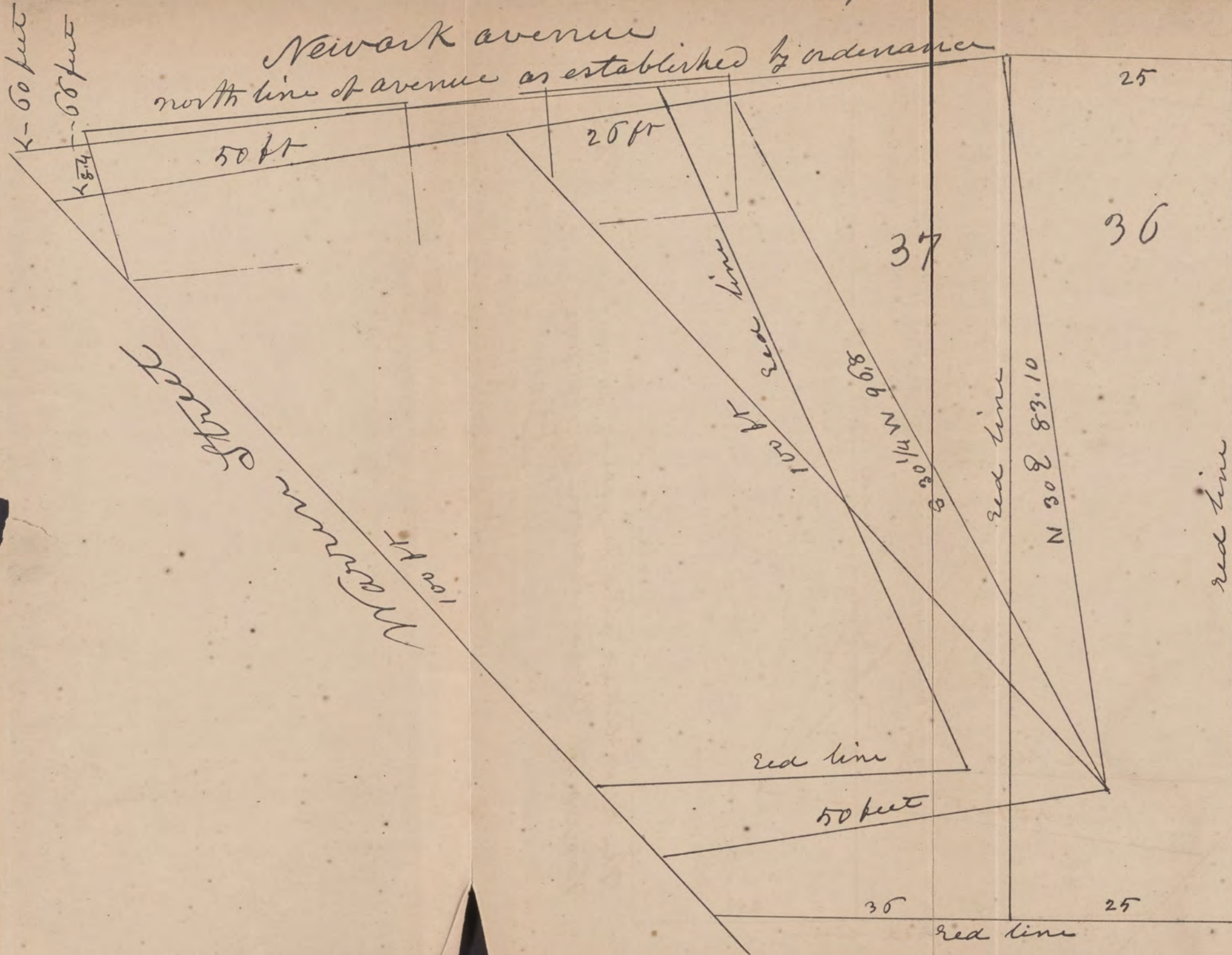


EXHIBIT W. 1

On the part of Complainant.

Complainant's Exhibit W.1.

Newark Avenue
north line of avenue as established by ordinance



The red lines and figures are from the
Newport Commissioners' map. B

EXHIBIT W. 2

On the part of Complainant.

Complainant's Exhibit

W-2

Newark Avenue

N.J. Rail Road

Montgomery St

Mercer St

MONTGOMERY ST

Complainant

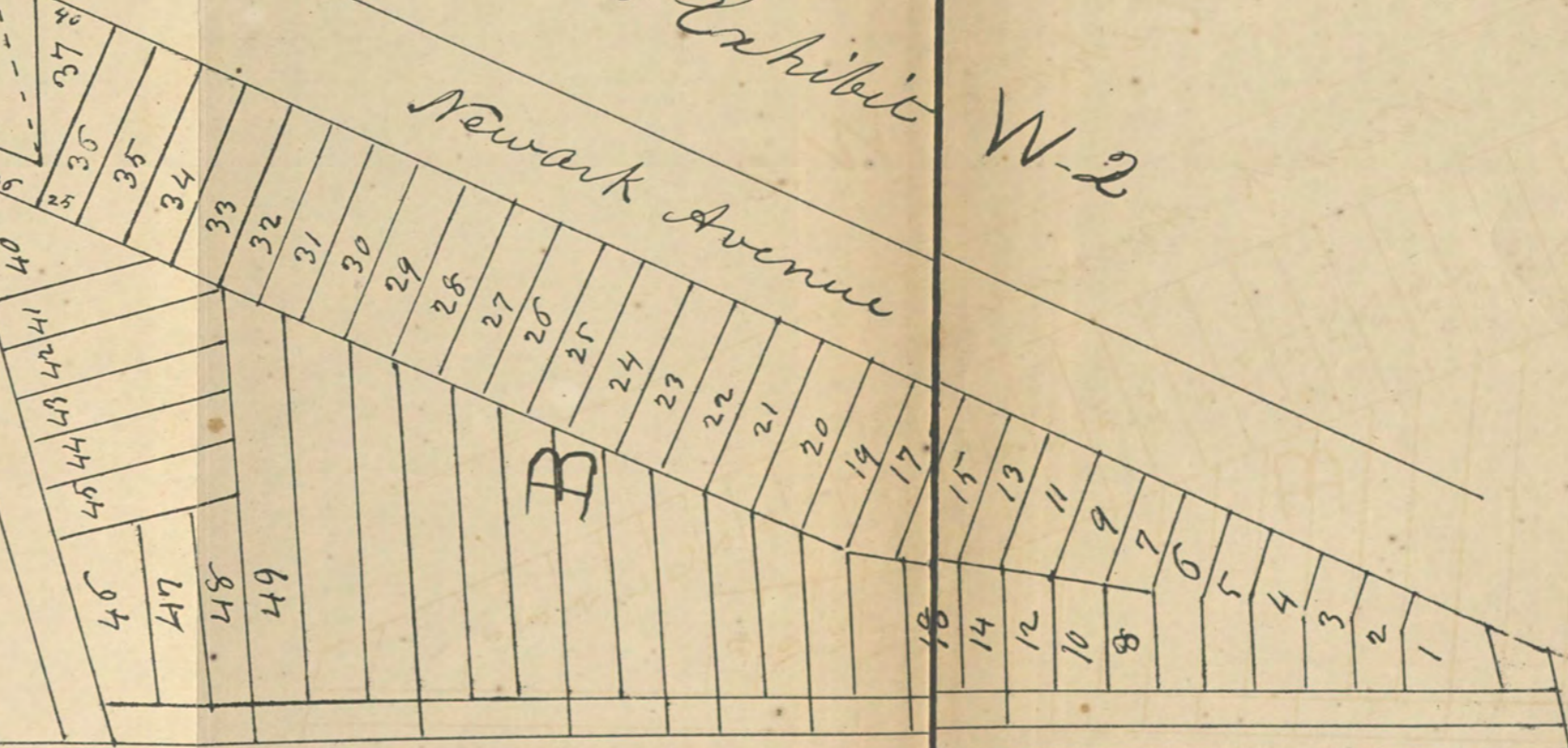


EXHIBIT W. 3

On the part of Complainant.

Complainant's Exhibit W 3

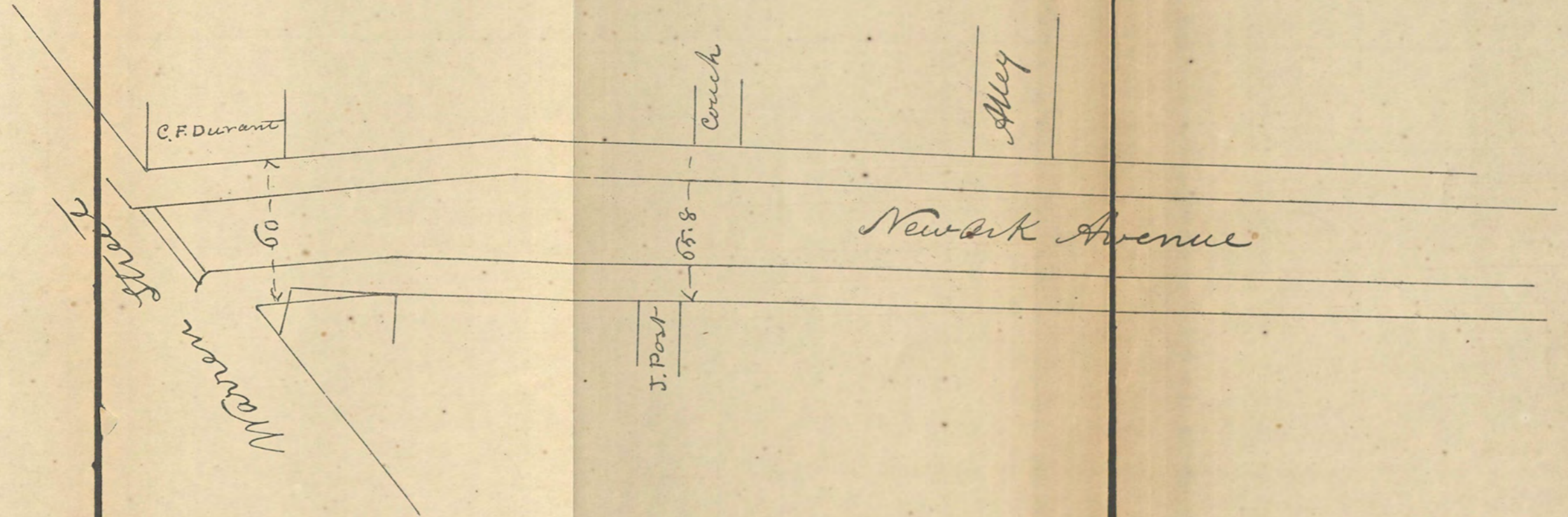


EXHIBIT W. 4

On the part of Complainant.

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Exhibit W-4
on the part of complainant

A map of that part of the town of Jersey
commonly called Powles Hook

Surveyed New York April 15th 1804
Joseph F. Mangin City Surveyor

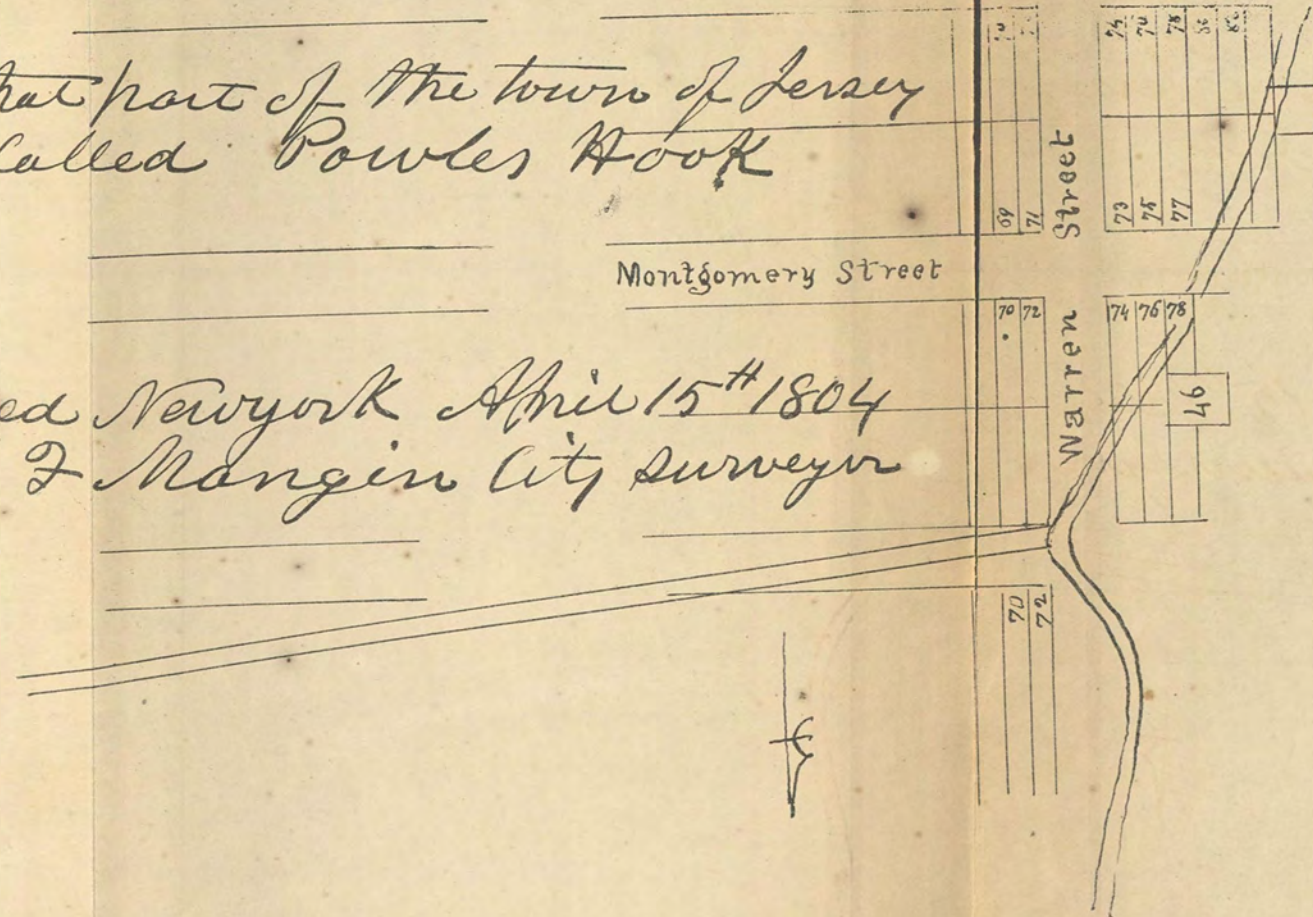


EXHIBIT W. 5

On the part of Complainant.

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EXHIBIT W. 6

On the part of Complainant.

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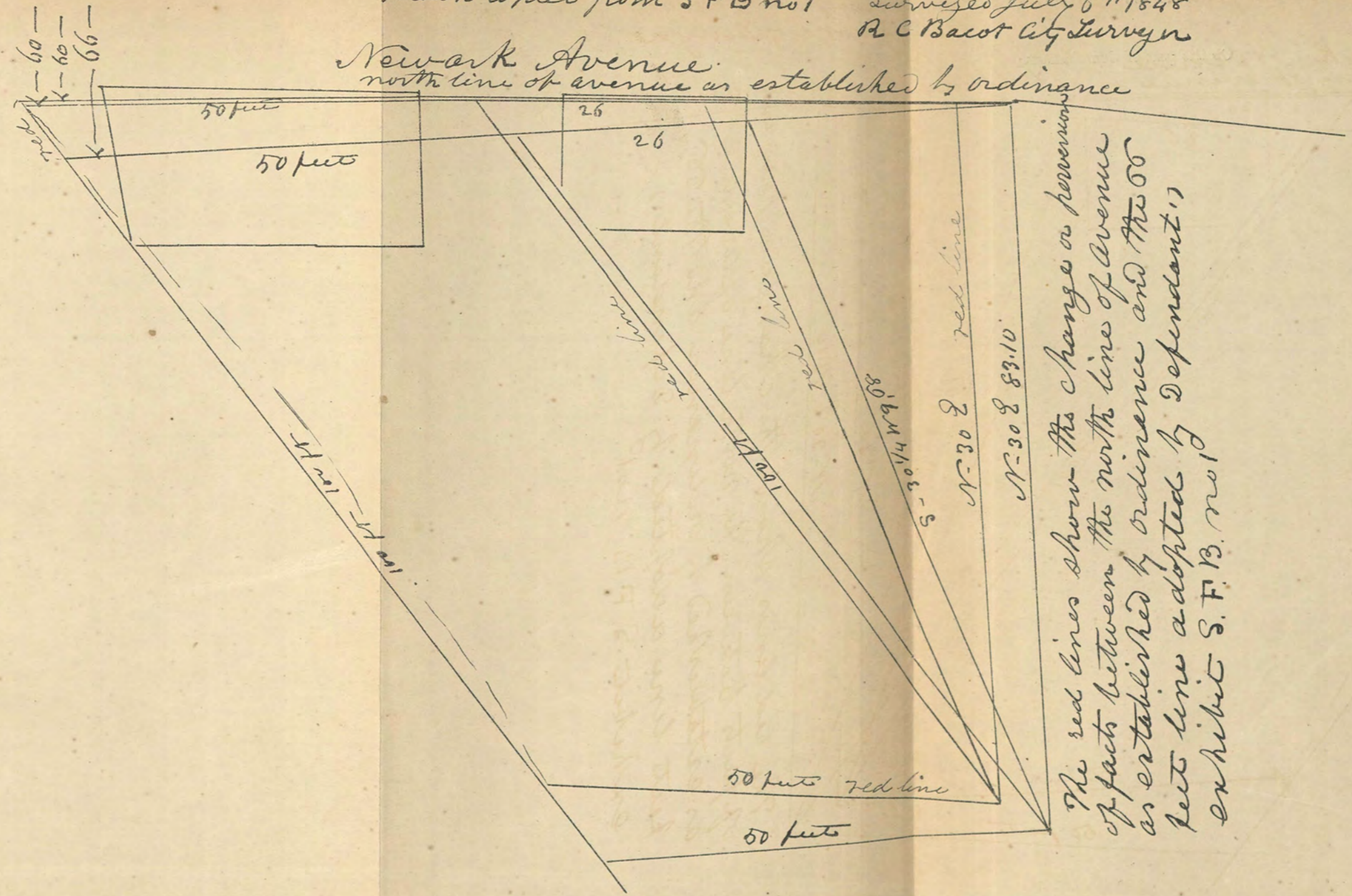
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Compliments Exhibit W 6.

Black copied from S.F.B. no 1

Surveyed July 6th 1848
R. C. Bacon City Surveyor

Newark Avenue
north line of avenue as established by ordinance



The red lines show the change or pervening
of facts between the north line of avenue
as established by ordinance and the 50
feet line adopted by defendant's
exhibit S.F.B. no 1

EXHIBIT ILLUSTRATION BLANK

On the part of Complainant.

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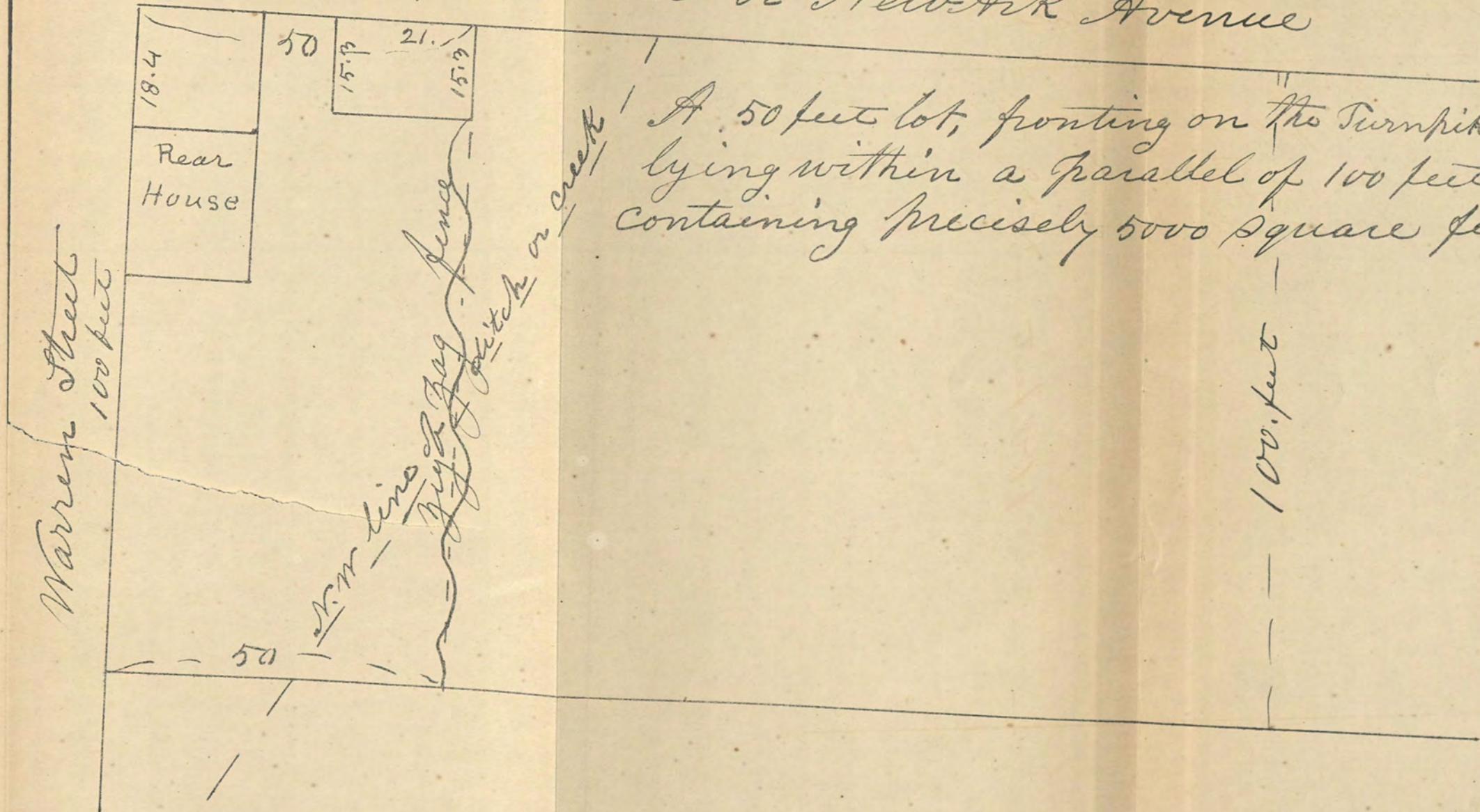
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Complainant's Exhibit Illustration Blank.

Scale 20 feet = 1 inch

Turnpike Road or Newark Avenue



A 50 feet lot, fronting on the Turnpike Road; lying within a parallel of 100 feet, and, containing precisely 5000 square feet.

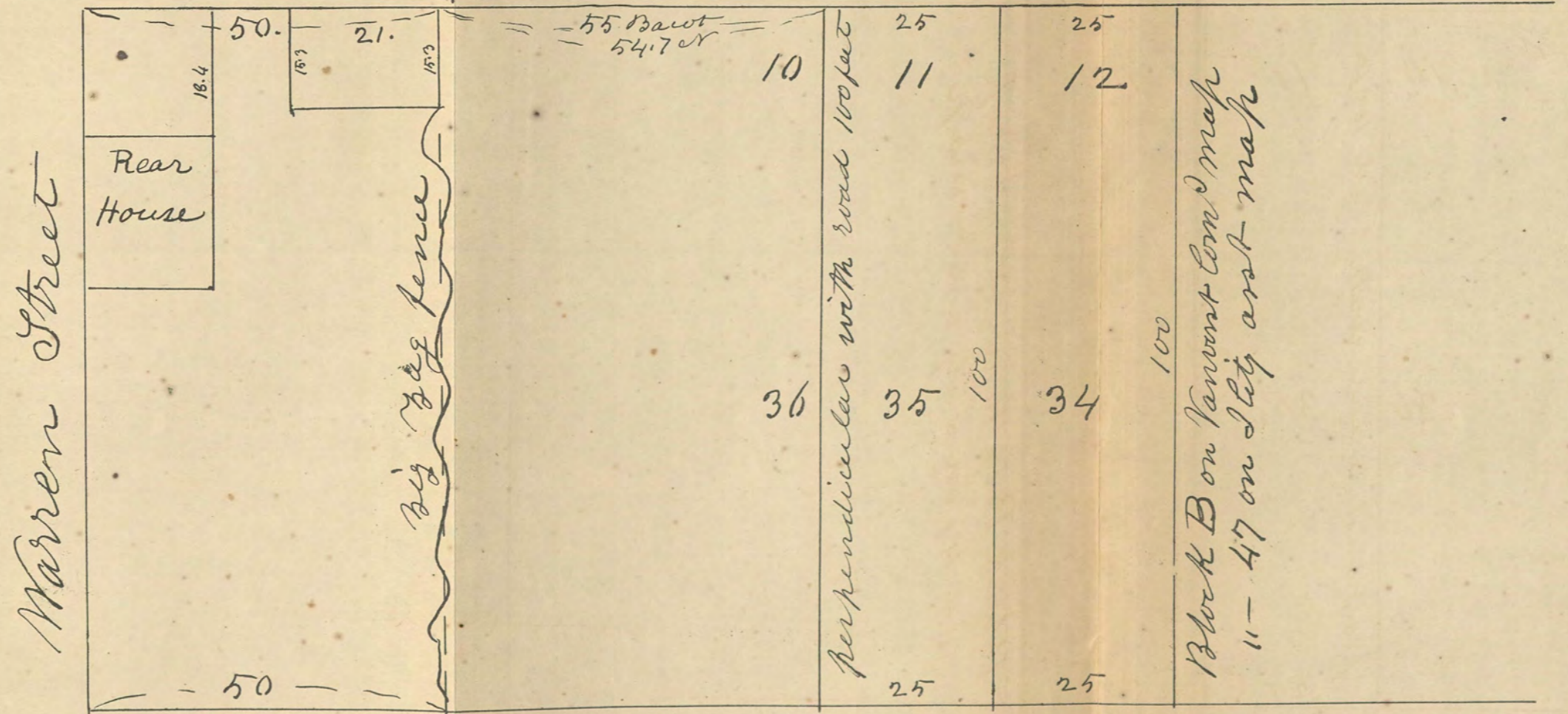
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EXHIBIT ILLUSTRATION 1

On the part of Complainant.

Complainant's Exhibit - Illustration 1.

Scale - 20ft = 1 inch

Turnpike Road or Newark Avenue



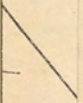
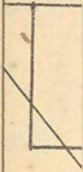
perpendiculars with road 100 feet

Block B on Vanvost Com's map
 " - 47 on City asst map

EXHIBIT ILLUSTRATION 2

On the part of Complainant.

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Scale 20 feet = 1 inch
 Exhibit Illustration 2
 on the part of complainants
 Turnpike road or Newark Avenue

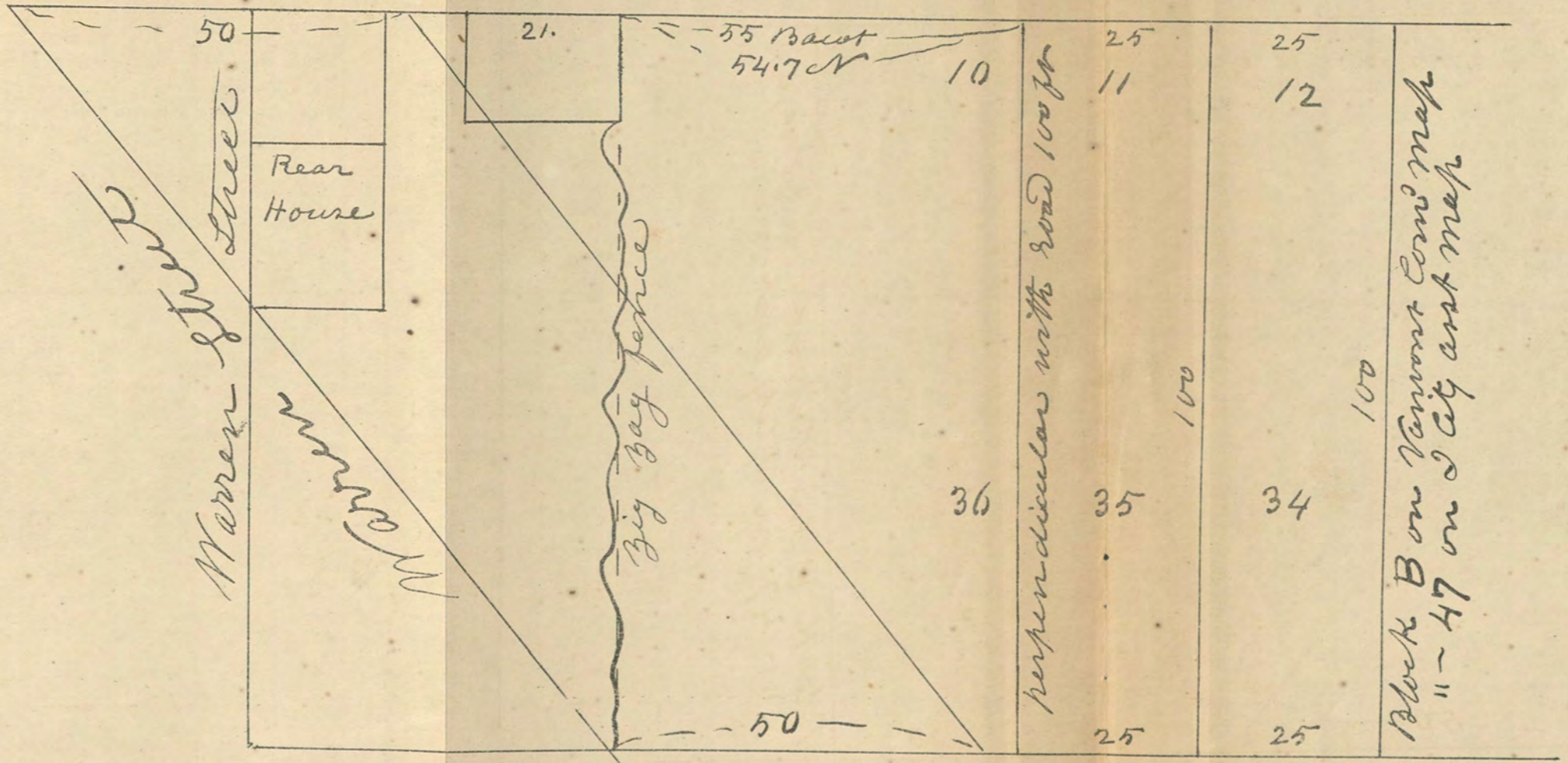


EXHIBIT ILLUSTRATION 3

On the part of Complainant.

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EXHIBIT ILLUSTRATION 4

On the part of Complainant.

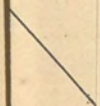
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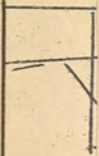
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EXHIBIT ILLUSTRATION 5

On the part of Complainant.

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Scale 20ft = 1 inch - Exhibit Illustration 5

66. Turnpike Road or Newark Avenue

55 Feet

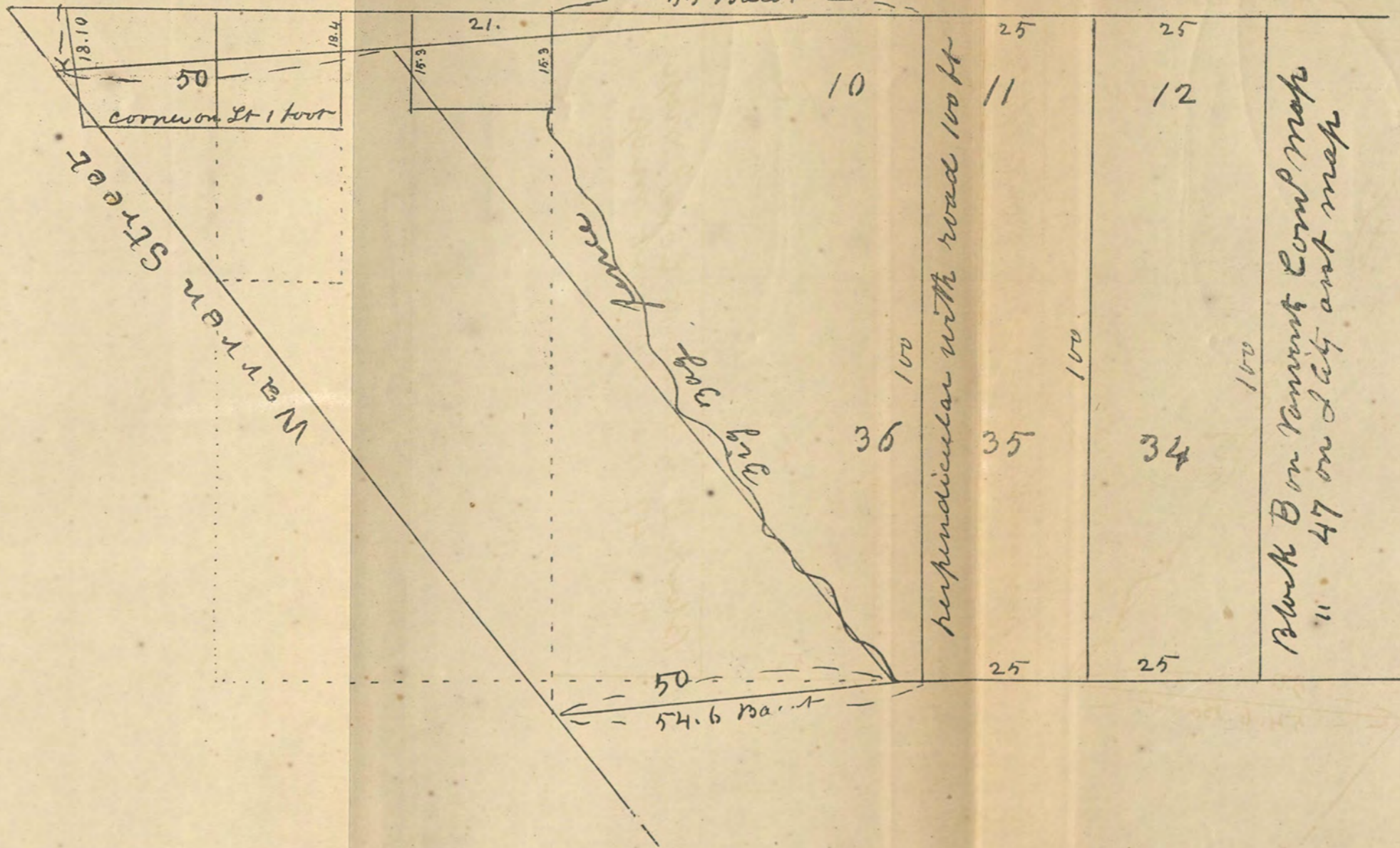


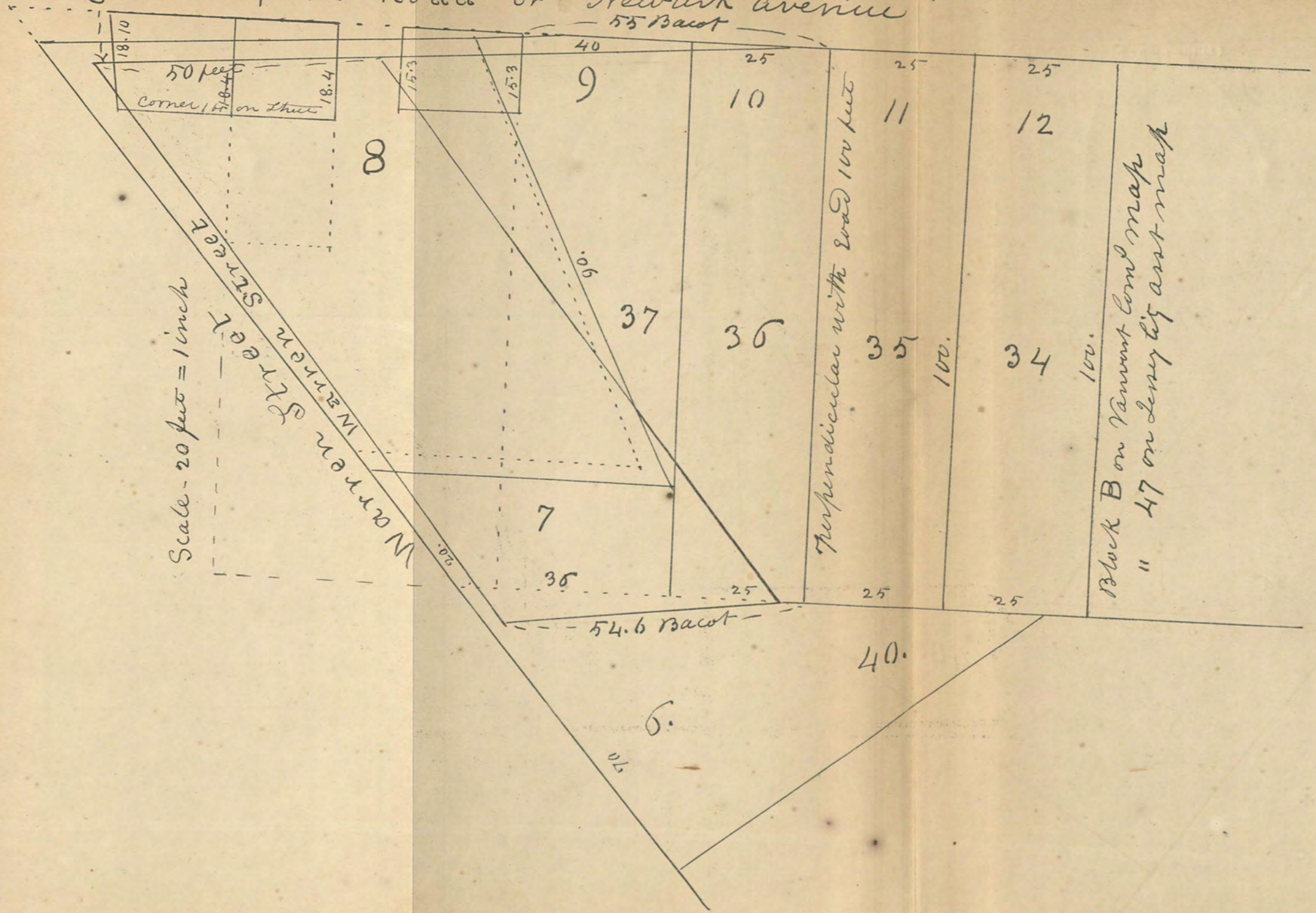
EXHIBIT ILLUSTRATION 6

On the part of Complainant.

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Exhibit Illustration 6.
 on the part of Complainant
 Newark Avenue
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Scale - 20 feet = 1 inch

Warren Street

Perpendicular with road 100 feet

Block B on Vanvorst Comd map
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EXHIBIT ILLUSTRATION 7

On the part of Complainant.

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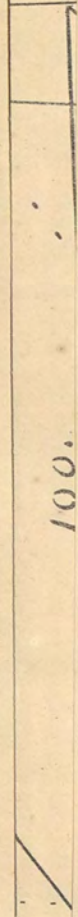
EXHIBIT ILLUSTRATION 8

On the part of Complainant.

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Scale - 20 ft = 1 inch

Exhibit - Illustration 8
on the part of Complainant

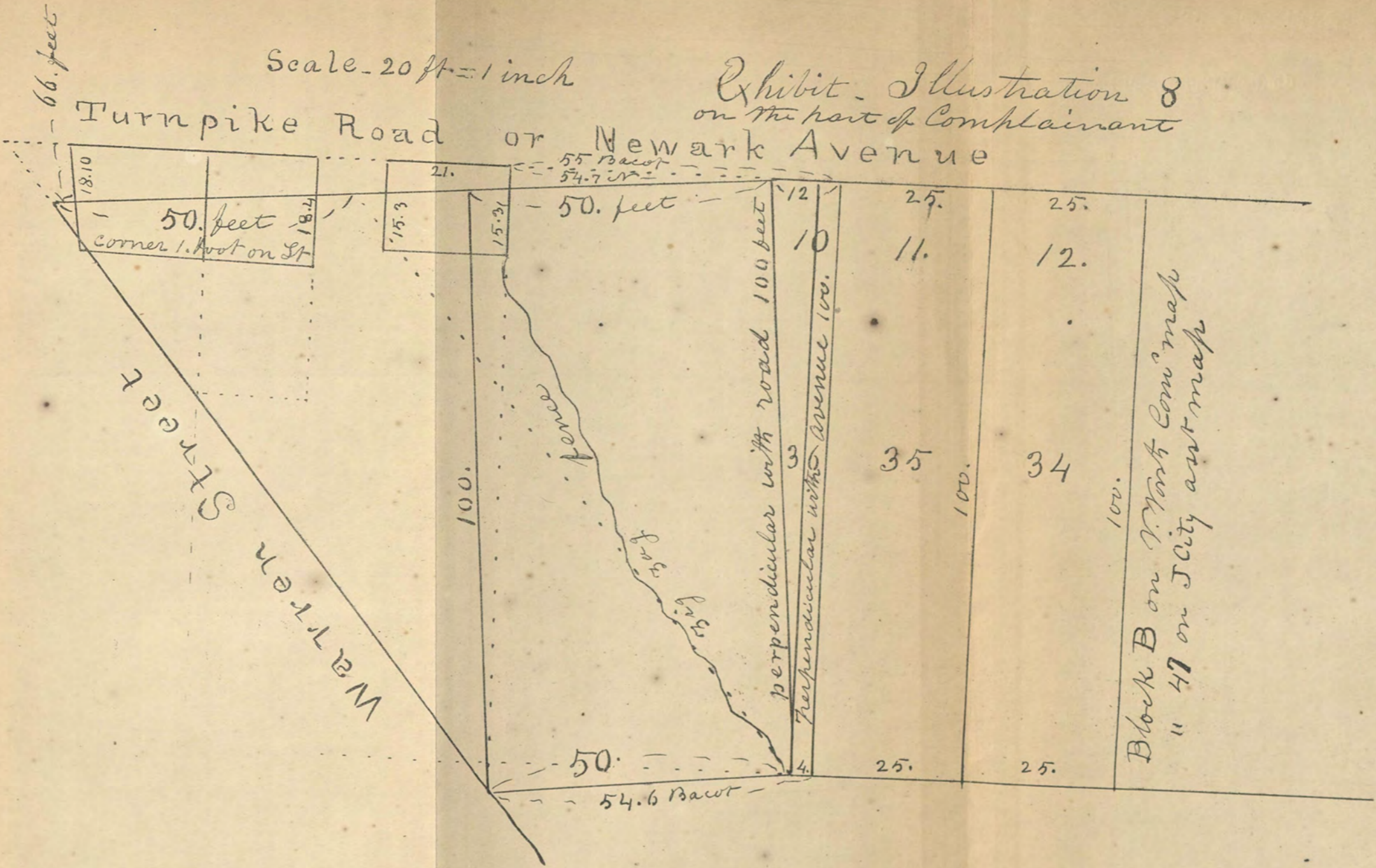
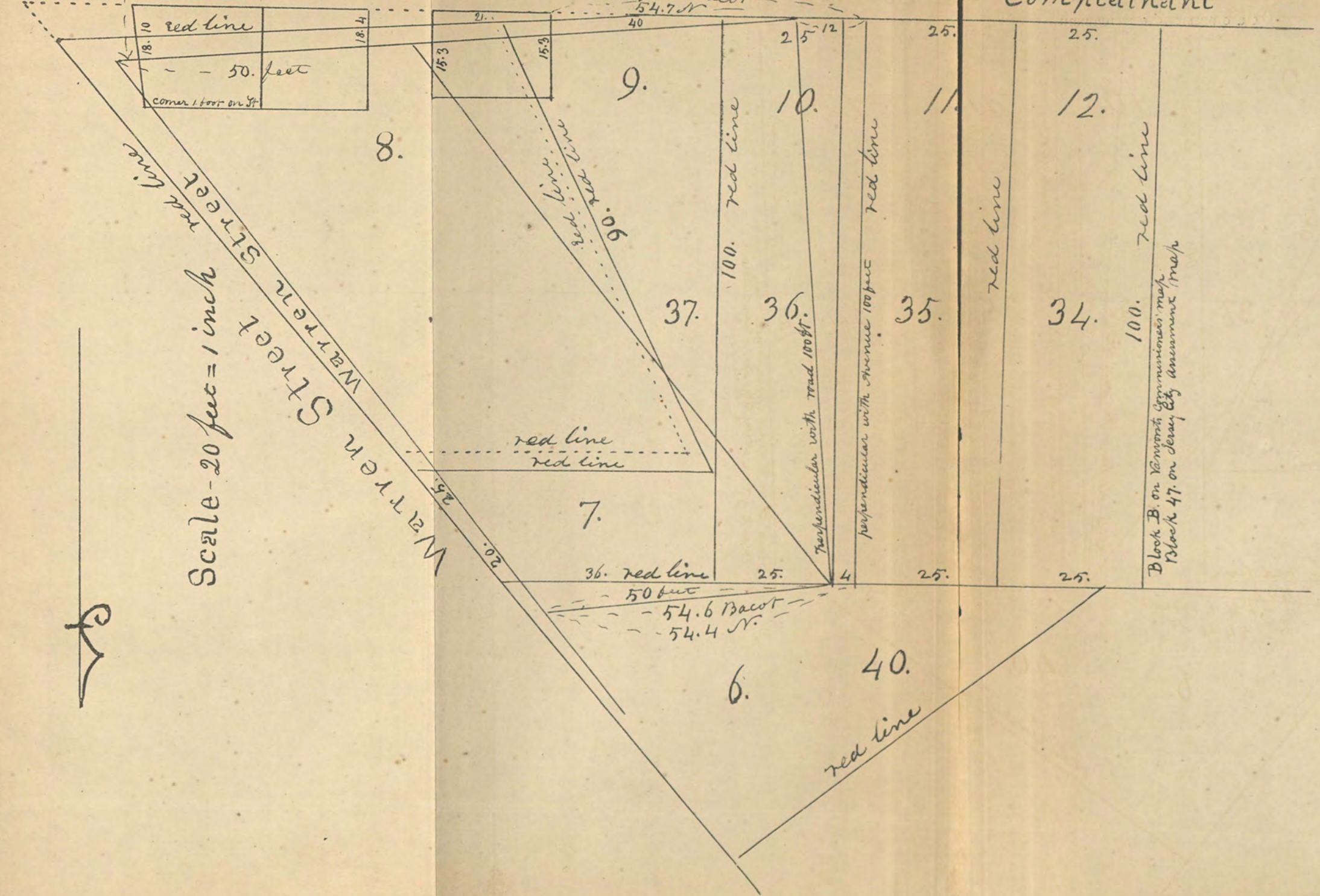


EXHIBIT ILLUSTRATION 9

On the part of Complainant.



Turnpike Road or Newark Avenue Exhibit Illustration 9
on the part of
Complainant



[Handwritten signature]

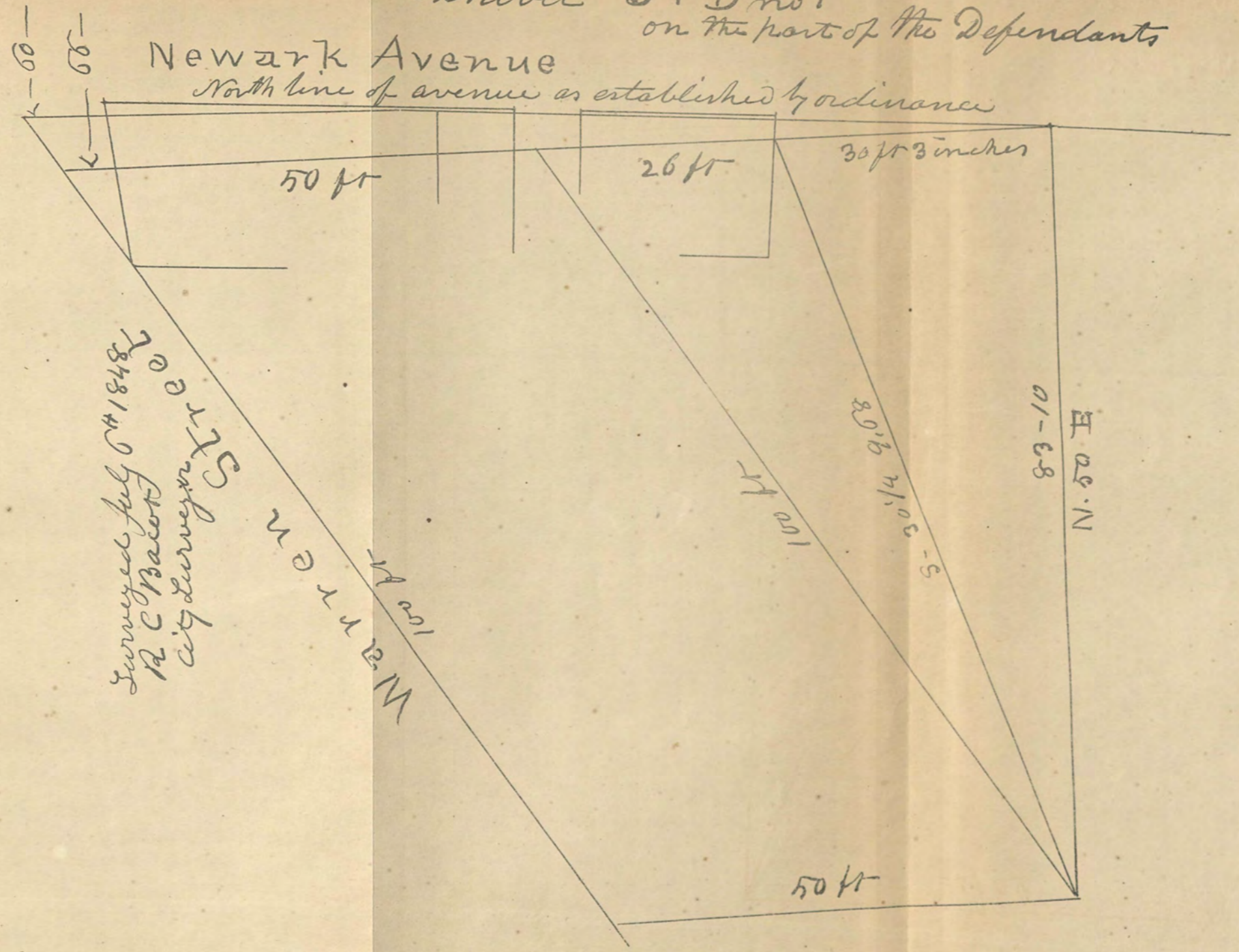
EXHIBIT S. F. B. No 1,

On the part of the Defendants.

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Exhibit STB no 1
 on the part of the Defendants



Surveyed July 6th 1848
 R. C. Bacon
 City Surveyor

STB
 100 ft