

New-Jersey Court of Errors and Appeals.

CHARLES M. HOLMES, appellant,

and

THE MAYOR AND COMMON COUNCIL OF
JERSEY CITY, respondents,

} *On appeal from
the decree
of the Chancellor.*

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## BILL OF COMPLAINT.

### IN CHANCERY OF NEW JERSEY.

*To his Honor Benjamin Williamson, Chancellor of the State of  
New Jersey.*

Humbly complaining, showeth unto your Honor your orator, Charles M. Holmes, of Jersey City, in the county of Hudson, and state of New Jersey: That Cornelius Van Vorst, deceased, in his lifetime, was seized in fee and possessed of a large tract of land, which is now included within the corporate limits of Jersey City.

That the said tract of land, so owned and possessed by the said Cornelius Van Vorst, was, the greater part of the same, contained within the following boundaries, though some part of the said tract extended outside of the said boundaries, that is to say, on the northerly part thereof, the same was bounded or intersected by 10 the New Jersey Railroad and Transportation Company; on the easterly side, by the old boundary ditch of the Associates of the Jersey Company, which divided the farm of said Cornelius Van Vorst from Powles Hook; on the south, by the Communipaw cove, or bay of New York, and on the west, by Mill creek, or Creek of the woods.

That the said Cornelius Van Vorst, being seized in fee, as afore-said, of the said tract of land and premises, caused the same to be laid out into public streets, blocks, and lots, and dedicated thereon to public use a public square; that the said map was made by the 20 order and under the direction of the said Cornelius Van Vorst, with the express design of dedicating streets for public use, of laying the premises thereon described or delineated into blocks and lots; that the said Cornelius Van Vorst might the better be enabled to sell off to purchasers lots and blocks, as the same were

thereon delineated; that the said map was made on or before the month of June, 1835, and was filed in the clerk's office of the county of Hudson on the 24th day of April, 1847. And your orator further shows unto your Honor, that the said Cornelius Van Vorst sold and conveyed lots during his lifetime, situated within the boundaries aforesaid, to various purchasers, and gave deeds for them as lots described on the said map; that the larger portion of the streets delineated on the said map have been opened and used by the public, and have been paved, graded, curbed, and  
 10 guttered with reference to the plan and width of the same, as delineated on the said map; that the said map was treated and considered, by the said Cornelius Van Vorst, as a dedication of the streets and the public square thereon delineated to public use, and has been so regarded by the public generally; that the said map was made upon a regular scale, the size of the blocks, the width of the streets, and the size of the lots were thereon clearly and accurately delineated; that in the said map there was a street called Grand street, dedicated to the public use, which said street, as so dedicated, extended from the Creek of the woods aforesaid,  
 20 running in an easterly direction to the boundary ditch aforesaid; that Grand street aforesaid was dedicated on the said map of the width of eighty feet, and a greater part of said Grand street has been actually opened and used by the public to the width of eighty feet, in conformity with the map and dedication aforesaid; that the said Grand street, and the dedication thereof by the said map, was never altered or changed from the width of eighty feet, as aforesaid and as dedicated aforesaid, during the lifetime of the said Cornelius Van Vorst, or by his heirs at law since his death; that the said Cornelius Van Vorst departed this life on or about the  
 30 twenty-third day of December, eighteen hundred and fifty-one, and died intestate.

That the said Cornelius Van Vorst, by a deed dated the fifteenth day of April, eighteen hundred and fifty, conveyed to your orator four lots, which were described as follows: "all those certain parts of four lots of land and premises situate, lying, and being in the township of Van Vorst aforesaid, and which, on a map of the farm of the said Cornelius Van Vorst, made for him by Joseph F. Bridges, of the city of New York, surveyor, bearing date June, A. D. eighteen hundred and thirty-five, and filed in the office of the  
 40 clerk of the aforesaid Hudson county the twenty-fourth day of April, A. D. eighteen hundred and forty-seven, are known as parts of lots numbered (41) forty-one, (42) forty-two, (43) forty-three,

and (44) forty-four, on block numbered (33) thirty-three, bounded as follows: beginning at the northeasterly corner of Grand and Barrow streets; thence running (1st) easterly, along the northerly line of Grand street, (100) one hundred feet; thence (2d) northerly, and parallel with Barrow street, (50) fifty feet; thence (3d) through the centre of the said four lots, and parallel with Grand street, in a westerly direction (100) one hundred feet, to Barrow street; thence (4th) southerly, along the easterly line of Barrow street, (50) fifty feet, to the place of beginning, making a lot of land (50) fifty feet wide in front and rear, and (100) one hundred feet deep through- 10  
out, and fronting on Barrow street." Said deed was a conveyance in fee of the said lands and premises above described, and was acknowledged on the sixteenth day of April, eighteen hundred and fifty, and was recorded in the clerk's office of the county of Hudson on the nineteenth day of April, eighteen hundred and fifty, in Book fifteen of deeds for said county, pages six hundred and forty-nine, &c., to which deed, or the record thereof, for greater certainty, reference is made. That the map referred to in the said deed is the map herein before first mentioned; and the said Cornelius Van Vorst, when he conveyed any of the said lots in the said tract 20  
herein before first described contained, conveyed the same by a reference in a similar manner to the said map, as the said Van Vorst referred to the same in your orator's said deed.

That when your orator purchased the said lots of Cornelius Van Vorst aforesaid, the same fronted on the south on Grand street, and Grand street was then open in front of the said lots, and was eighty feet wide, being of the same width as said street was dedicated on the said map. And immediately after the said purchase, Cornelius Van Vorst caused one half of the said street, being forty feet of the same in front of the lots so purchased by your orator, 30  
to be filled in, which was the agreement and understanding between your orator and the said Cornelius Van Vorst when your orator purchased as aforesaid, and the price of such filling in was included in the consideration money of the said deed. And in other parts of the said street, where Cornelius Van Vorst owned the lots on both sides of the same, he caused the said street to be filled in at the width of eighty feet.

That when your orator purchased the said lots, he purchased the same with reference to the width of the said street of eighty feet, and the lots then were and now are more valuable to your 40  
orator, on account of the width of Grand street being eighty feet.

That since the said map and dedication of Cornelius Van Vorst,

and since the said map has been filed in the clerk's office aforesaid, one Abijah Mann, jun., has become the purchaser of certain lands and premises originally included in the map of Cornelius Van Vorst, and which premises, so purchased by the said Abijah Mann, jun., are near to the lots so purchased as aforesaid by your orator; that thereupon the said Abijah Mann, jun., caused a new map to be made of certain property situated upon and near to Grand street aforesaid; that the said Abijah Mann, jun., by his said map, changed the name of that part of Grand street which lies between  
 10 Grove street and Jersey street to the name of Bright street, and laid out the part of Grand street last aforesaid at a width of only sixty feet.

And your orator charges, that Grand street aforesaid was changed to the name of Bright street without any authority of law, and the width of the same was changed, or attempted to be changed, from eighty to sixty feet, without any lawful authority; that such change, so as aforesaid made, is greatly to the prejudice of your orator, and materially injures the value of the lots so purchased as aforesaid by your orator of the said Cornelius Van Vorst, and is  
 20 also of great detriment to the public.

That the whole length of Grand street, as delineated on the map of Cornelius Van Vorst, is about four thousand and twenty-four feet; that the part of Grand street delineated on the map of the said Abijah Mann, jun., as Bright street, and which is in front of the premises now or formerly owned by said Mann, is about two hundred and forty feet, which would leave about three thousand seven hundred and eighty-four feet of Grand street of the width of eighty feet, and which would cause great inequality in the width of Grand street, and materially injure the price and value of property  
 30 thereon situated.

That your orator, about the month of November, in the year of our Lord one thousand eight hundred and fifty-two, caused the street in front of your orator's said lots to be curbed and guttered, and has recently, and within about a week, caused the sidewalks to be laid, which sidewalks your orator caused to be laid at the width of seventy feet, which was the proper and appropriate width, assuming the said street to be eighty feet wide.

That the common council of Jersey City, by their officers and agents, about two years ago caused Barrow street, which intersects  
 40 Grand or Bright street, to be paved, curbed, and guttered, and, where they turned the curb so as to get into Bright street, in front of the lots of your orator, they put the curb twenty feet from the

line of your orator's lots, which is the rule and regulation, assuming Grand or Bright street to be eighty feet wide; and the said corporation caused your orator to be assessed for the said work so done as last aforesaid, and your orator has paid the said assessments.

That on the fifth day of October, eighteen hundred and fifty-two, the following ordinance was passed, which was approved the fourteenth day of October, eighteen hundred and fifty-two. The following is a copy of the said ordinance :

The mayor and common council of Jersey City do ordain as follows :

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Sec. 1. That Bright street, between Jersey avenue and Grove street, be regulated, curbed, guttered, sidewalks flagged four feet wide, and bridge stone crosswalks laid at the intersections of cross streets, except so much thereof as has been contracted for by the owners of property on the line of the improvements, provided the curb and gutter is laid within sixty days after this ordinance takes effect.

Sec. 2. That all the costs, charges, and expenses for doing said work be assessed upon and paid by the real estate benefited thereby, according to the provisions of the city charter.

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Sec. 3. That said work be done under the direction of the street committee, and said street committee be authorized to appoint a superintendent of said work.

That on the ninth day of November, eighteen hundred and fifty-two, the following resolution was passed by the common council of Jersey City.

Ald. Wilson offered the following preamble and resolution, which were adopted: "Whereas it appears that different parties, interested in real estate fronting on Bright street, are now laying down curb and gutter stone on different lines—one upon the sup- 30 position that the street is eighty feet wide, and the other upon the supposition that said street is sixty feet wide, thus rendering said street irregular—therefore

*Resolved*, That the committee on streets be directed to cause the curb and gutter stone on said street to be laid in the same manner as curb and gutters are laid upon streets sixty feet wide, agreeable to the action of the common council heretofore had with regard to the width of said Bright street."

That, on the sixteenth day of November, eighteen hundred and fifty-two, Cornelius Van Vorst, the son and heir at law of the Cor- 40 nelius Van Vorst who was the grantor of your orator, presented

the following petition to the mayor and common council of Jersey City :

“ To the mayor and common council of Jersey City :

Gentlemen,—The undersigned would respectfully beg leave to represent to your honorable body, that an ordinance has been passed for the improvement of Grand, (now called Bright street) between Grove and Jersey streets, and that, by a resolution of your honorable body, the said street is to be curbed, and guttered and improved in the same manner as streets of sixty feet in width.

- 10 Your petitioner would respectfully beg leave to remonstrate against any alteration in the width of said street between Jersey street and a point one hundred feet westerly of Barrow street, as said alteration would very materially injure property in which your petitioner has an interest. Your petitioner would ask that the improvement of said street, between Jersey street and a point one hundred feet westerly of Barrow street, be made in the same manner as streets of eighty feet in width.

Jersey City, Nov. 16th, 1852.

CORN. VAN VORST.”

- 20 That the petition of Cornelius Van Vorst was referred to a committee, who made the following report :

“ To the common council of Jersey City :

The committee on laws and ordinances, to whom was referred the remonstrance of Cornelius Van Vorst against any alteration in the width of Grand, now called Bright street, between Jersey street and a point one hundred feet westerly of Barrow street, respectfully reports : That all the matters referred to have been heretofore passed upon by the common council ; that on the ninth day of November, eighteen hundred and fifty-two, the following

- 30 preamble and resolution were passed, *viz* : Whereas it appears that different parties, interested in real estate fronting on Bright street, are now laying down curb and gutter stone on different lines, one upon the supposition that the street is eighty feet wide, and the other upon the supposition that said street is sixty feet wide, thus rendering said street irregular—therefore

*Resolved*, That the committee on streets be directed to cause the curb and gutter stone in said street to be laid in the same manner as curb and gutters are laid upon streets sixty feet wide, agreeable to the action of the common council heretofore had with regard to

- 40 the width of said Bright street.

This resolution has never been rescinded or altered, but is in full force, and is founded upon prior action of the common council to

the same effect; and the committee see no reason to disturb the lines of a street, when thus settled, and pray to be discharged from the further consideration of the remonstrance, which is respectfully submitted.

April 19, 1853.

J. D. MILLER,  
A. H. WALLIS."

That notwithstanding the facts and circumstances herein before set forth, the mayor and common council of Jersey City, by their officers and agents, are proceeding to pave the intersection of Bar- 10 row street and Bright street, and curb, gutter, and flag the sidewalks in front of the lots of your orator, removing the curbing heretofore set down by your orator and making the sidewalk fifteen feet wide, which is the rule adopted by the common council of Jersey City in cases where a street is sixty feet wide, the rule of the said corporation in cases where a street is eighty feet wide being to make the sidewalk twenty feet wide; and the mayor and common council of Jersey City seek, by the said ordinance, resolution, and proceedings to sanction and establish the width of Grand or Bright street at sixty feet, instead of eighty feet. 20

That your orator has remonstrated with the contractor, agent, or workman who is about to lay down the sidewalk of a width of only fifteen feet, and has desired him to desist therefrom, and has remonstrated to the same effect with the chairman of the street committee of the common council. Notwithstanding such remonstrance, the said agent or workman of the common council threatens to lay the sidewalk of the width of fifteen feet, instead of twenty feet; that the common council, by their resolution, ordinance, acts, and proceedings, seek to establish the said street, called Grand or Bright street, at the width of sixty feet, which 30 your orator is advised by counsel, and humbly insists, is altogether illegal, and will be of great detriment to your orator.

That six houses have been built on Grand or Bright street afore-said, on block forty-four on Van Vorst's map, which is a distance of about one hundred feet west of the lots of your orator, which houses have been built on a line which would be the correct line, assuming the said street to be eighty feet wide; that five of the said houses are frame houses, and one of them a brick house.

That on block fifty-six, as designated on said Van Vorst's map, 40 and about six hundred feet west from the lots of your orator, a person has already built a brick house forty feet square, as near as

your orator can state, on Grand or Bright street, and which has been built on a line which would be the correct line, assuming said street to be eighty feet wide.

And your orator is advised by his counsel, and humbly insists, that the proceedings aforesaid in relation to the width of Grand or Bright street aforesaid of the said common council of Jersey City, and their officers and agents, are illegal, and cannot be warranted by any authority of law; that if the same are sanctioned and permitted to pass without objection, your orator will be subjected to  
 10 great loss and damage, and houses and permanent buildings may be erected on said Grand or Bright street, in some part thereof, upon a line which would be the correct line if the said street was eighty feet wide, and in some part thereof upon a line which would be the correct line assuming the said street to be sixty feet wide; that thereby great, material, and permanent and irreparable injury will be done to your orator and to others owning property on the said street.

And your orator charges and states the fact to be, that owners of lots fronting on Grand or Bright street aforesaid, which lots are  
 20 opposite to the lots of your orator, have fenced in twenty feet of the said street, and claim the right to build houses on such part of the public street so fenced in as aforesaid; that three stables, built of wood, have already been erected on the said street, and if the action of the mayor and common council of Jersey City, their officers and agents, as herein before stated, is acquiesced in, permanent buildings may and probably soon will be erected upon the said street.

And your orator further states, that the charter of Jersey City, by the fifty-fifth section thereof, prescribes the course of proceed-  
 30 ings which shall be had and taken when any application shall be made opening, altering, or widening any streets, and that the mode of proceeding prescribed by the said charter has not been adopted with reference to the said street called Grand or Bright street. And your orator charges that the said resolution of the ninth day of November, eighteen hundred and fifty-two, offered by Alderman Wilson, which indicates that the said street called Bright street, is only sixty feet wide, was wholly without authority of law, and was void.

And your orator well hoped that the said the mayor and com-  
 40 mon council of Jersey City, their workmen, officers, and agents, would have listened to the remonstrances of your orator, so as aforesaid named, and would have desisted and refrained from lay-

ing out the said sidewalk of the width of fifteen feet, and would have caused the same to be laid out of the width of twenty feet, as they lawfully should have done.

And your orator well hoped that after the remonstrance of the said Cornelius Van Vorst, herein before set forth, and after the objections made by your orator as aforesaid, the said the mayor and common council of Jersey City would have repealed any and all ordinances treating the said Grand or Bright street as a street of only sixty feet in width, and would have declared the same to be a street of eighty feet in width, as they lawfully should have done. 10

But now so it is, may it please your Honor, that the said the mayor and common Council of Jersey City, combining and confederating with divers other persons unknown to your orator, whose names, when discovered, your orator prays he may be at liberty to insert herein, with apt words to charge them as parties defendants hereto, absolutely refuse to comply with such requests so as aforesaid made by your orator.

All which actings, doings, pretences, and refusals are contrary to equity and good conscience, and tend to the manifest wrong 20 and injury of your orator in the premises.

In consideration whereof, and forasmuch as your orator can only have adequate relief in the premises in a court of equity, where matters of this nature are properly cognizable and relievable—to the end, therefore, that the said the mayor and common council of Jersey City and their confederates may, under their corporate seal, according to the course and practice of this honourable court, to the best and utmost of their knowledge, remembrance, and information, true, full, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if 30 the same were here repeated, and they distinctly interrogated thereto.

And that all ordinances, resolutions, acts, and proceedings of the said the mayor and common council of Jersey City, the effect and design of which are to change the width of Grand or Bright street from eighty feet to sixty feet, be declared null and void by the judgment and decree of this honorable court; and that all ordinances, resolutions, acts, and proceedings of the said the mayor and common council of Jersey City, which require the sidewalk on said street to be made of the width of fifteen feet, instead of 40 twenty feet, be declared null and void by the judgment and decree of this honorable court; and that the said the mayor and

common council of Jersey City, their officers, workmen, and agents, may be enjoined and restrained from removing the curb heretofore laid down by your orator in front of his said lots, herein before particularly described ; and, further, from curbing and laying down a sidewalk in front of the said lots of your orator of a width of only fifteen feet ; and, further, be enjoined and restrained from doing any official act or taking any proceedings the effect of which would be to declare the said Grand or Bright street to be a street of only sixty feet in width, till the said defendants shall have fully  
 10 answered your orator's bill of complaint, and this honorable court shall make further order to the contrary.

And that your orator may have such further and other relief in the premises as the nature of the case may require and as may be agreeable to equity and good conscience, may it please your Honor to grant unto your orator the writ of injunction of the state of New Jersey, to be issued out of and under the seal of this honorable court, to be directed to the said the mayor and common council of Jersey City, their attorneys, solicitors, officers, workmen, and agents, therein and thereby commanding, enjoining them, and each  
 20 of them, from removing the curbstones heretofore laid down by your orator in front of his said lots, herein before particularly described, and from curbing with curbstones and laying down a sidewalk in front of the said lots of your orator of a width of only fifteen feet, and from doing any official act or taking any proceedings, the effect of which would be to declare Grand or Bright street, in this bill described, to be a street of only sixty feet in width.

And also, that your Honor may grant unto your orator a writ of subpoena of the state of New Jersey to be directed to the said the mayor and common council of Jersey City, therein and thereby  
 30 commanding them, on a certain day and under a certain penalty, to be therein expressed, to be and appear before this honorable court, then and there to answer the premises, and to stand to, abide, and perform such decree as to your Honor shall seem meet. And your orator, as in duty bound, will ever pray.

ISAAC W. SCUDDER,

*Solicitor for and of counsel for complainant.*

State of New Jersey, Hudson county, ss.

Charles M. Holmes, the complainant in the foregoing bill of complaint, alleging himself to be conscientiously scrupulous of taking  
 40 an oath, upon his solemn affirmation saith, that the matters, facts, and things in the foregoing bill of complaint mentioned and set forth,

so far as the same relate to the acts and deeds of this affirmant, are true of his knowledge, and so far as the same relate to the acts and deeds of any other person or persons, this affirmant believes them to be true.

CHAS. M. HOLMES.

Subscribed and affirmed to before me, at Jersey City, this fifteenth day of December, A. D. 1853.

PETER BENTLEY, M. C.

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ANSWER.

IN CHANCERY OF NEW JERSEY. 10

The answer of the Mayor and Common Council of Jersey City to the bill of complaint of Charles M. Holmes.

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say—

That they admit that the said Cornelius Van Vorst, now deceased, in his lifetime was seized and possessed in fee of a large tract 20 of land, and that the same is now included within the corporate limits of Jersey City, and that the said tract of land was bounded as in the said bill of complaint described, and that the said Cornelius Van Vorst caused the same to be laid out into public streets, blocks, and lots, and dedicated them to public use as a public square, and that he caused a map thereof to be made, and, as the said defendants are informed and believe, for the purpose of facilitating the sale of building lots upon the said property, and that the said map was made at or about the time mentioned in the said bill of complaint, and that the same was filed in the clerk's office 30 of the county of Hudson, at or about the time mentioned in the said bill of complaint.

And these defendants further answering say, that they are informed and believe that the said Cornelius Van Vorst, in his lifetime, did sell and convey building lots out of the said described property according to the said map, and that some of the streets, so delineated

ted on the said map, have from time to time been regulated either by himself, or under the direction of the municipal authority of Jersey City, or of the township committee of the township of Van Vorst, before said township was annexed to Jersey City, and that such regulation, in the main, has conformed to the said map, so far as relates to the width of the said streets as having been thus regulated, and that the said map was treated and considered by the said Cornelius Van Vorst as a dedication of the streets and the public square therein dedicated to public use, and has been so regarded by the public generally.

And these defendants further answering admit, that on the said map there was a street, called Grand street, dedicated to the public use, which said street, so dedicated, extended from the Creek of the woods, or Mill creek, easterly, to the boundary line of the property of the said Associates of the Jersey Company, which was the said ditch, as mentioned in the said bill of complaint, and that the said street, so delineated, was eighty feet in width.

And these defendants further answering say, that they expressly deny that the said Grand street and the dedication thereof by the said map, was never altered or changed from the width of eighty feet during the lifetime of the said Cornelius Van Vorst or by his heirs at law since his death.

And these defendants say, that the said Grand street was altered and changed from the width of eighty feet during the lifetime of the said Cornelius Van Vorst, in manner and form as herein after mentioned, and that the said Cornelius Van Vorst had full notice of said alterations, and by making no objections assented to the same.

And these defendants further answering admit, that Cornelius Van Vorst departed this life on or about the twenty-third day of December, one thousand eight hundred and fifty-one, and died intestate.

And these defendants further answering say, that after the said Cornelius Van Vorst caused the said map of his property to be made and published, he, or others for him, continued to occupy the lands included in the said map for farming and garden purposes, and the same was enclosed, as well the streets and public square, as other parts, and so continued for many years subsequent to the making of the said map, and that, as he saw fit, he caused a part of the street, from one to two blocks or squares, of four hundred feet in length, to be opened and graded, and from time to time, as opportunity offered, sold and conveyed lots upon such parts of

streets as he saw fit to open on his farm, and erected some dwelling houses himself therein, and that, for about ten years after the making of the said map, the said property included in the same remained enclosed as a farm, except a very few parts of streets that were opened by him as aforesaid.

And these defendants further answering say, that the streets running easterly and westerly, as laid out on said map of the said Van Vorst, do not meet and conform in a direct line with the streets as laid out, regulated in what was known as the property of the Associates of the Jersey Company, or "old Jersey City," of which the said ditch was the western boundary, but intersected the projection of the streets in old Jersey City, at an angle in the street known in the said Van Vorst map as Kellogg street. This being the case, and there being no wide, broad, straight thoroughfare from the Hudson river westerly laid out upon any of the maps of the vicinity, it was deemed expedient that measures should be taken to lay out such a highway, and with this view application was made by John Griffith, Samuel D. Smith, D. S. Gregory, D. Scott, W. Phaasson, Isaac Edge, junior, Samuel Bidgard, Benjamin O. Edge, James McLaughlin, and P. McMartin to the Court of Common Pleas of the then county of Bergen, for the appointment of surveyors to lay out a road in a direct line with Grand street in old Jersey City, westerly, running towards Bergen Hill, and the said Court of Common Pleas did, in the term of January, one thousand eight hundred and forty, appoint Edo Vreeland Daniel Crane, Garadus Kingsland, Jacob M. Merseles, John Drayton, and Andrew Boyd, surveyors of highways, for this purpose, and after due examination, the said surveyors did lay out a road, as will more fully appear by the proceedings of the said surveyors in relation to said road, now on file with the map attached, in the clerk's office of the county of Bergen, a copy of which proceedings are hereunto annexed, marked *Appendix A*, which these defendants ask to be considered a part of their answer.

And these defendants further answering say, that the road so laid out by these proceedings was a continuation of the street, in a direct line westerly for over a mile of Grand street, in old "Jersey City," as the same had been laid out and dedicated on Mangin's map of the said city.

And these defendants further answering say, that the road so laid by the said surveyors, being in a straight line and a continuation of said Grand street, when it reached the street known as Kellogg street on the map of the said Cornelius Van Vorst, instead

of following the "Grand street" as laid and projected on the said Van Vorst map, diverged to the south of it, and ran diagonally through or across certain blocks or squares of land laid off by the said Cornelius Van Vorst, on his map, for building purposes, until it reached Mill Creek or Creek of the woods.

That the road thus laid, for the whole distance was upon what is called salt meadow land, considered at that time of small value, and intersected blocks, 32, 45, 44, 55, 70, 71, and 18, as laid down on said Van Vorst's map, and also crossed all the streets laid down
10 on said Van Vorst's map, running northerly and southerly at an angle different from the angle formed by the lines of the street, known as Grand street on Van Vorst's map, with the said streets running northerly and southerly as aforesaid.

And these defendants further answering say, that they are informed and believe that the said Cornelius Van Vorst, at the time the said road was so laid by the said surveyors as aforesaid, was fully advised of the application and of the laying of the same, and approved thereof, being at the same time the owner of the property through which it was laid for over a thousand feet, and hold-
20 ing a mortgage claim of a large amount upon another part of the land over which the same was laid for a distance of about one thousand feet more, and that the said Cornelius Van Vorst was fully aware of the diagonal manner in which the said road would intersect the streets and blocks which he had caused to be laid out on his said map.

That at the time the said road was so laid, the property east of Jersey street, as known on the said Van Vorst's map, through which the road passed to Henderson street, was owned by or held for the state of Indiana, Michael G. Bright being the agent or trustee of the said property; and although the laying of the said road,
30 as it was laid, was a serious detriment to the said property known as the Indiana property, yet it was acceded to by the persons acting for the said state, on the ground, that such an avenue in a straight line from the Hudson river was required for the public convenience and accommodation; and, as some sort of recompense to the said state of Indiana for the injury thus done to their property, it was proposed that "Grand street," as originally laid out on the said Van Vorst map, should be narrowed twenty feet on the southerly side, there being at that time no buildings upon
40 the line of either the said road or the said "Grand street," and that the strip of land, twenty feet wide, adjoining the property of the state of Indiana, as well as the strip of like width adjoining

the property of the said Cornelius Van Vorst, should by lawful authority become the private property of the respective owners, nevertheless to be dedicated to public use, as above stated, along the southerly side of "Grand street," as laid down on the said Van Vorst's map, and to this end, and for these purposes, proceedings were instituted to vacate, under the statute of this state relating to roads, twenty feet in width off the southerly side of "Grand street," from the Mill creek, eastwardly, to where the said road, so laid by the said surveyors, diverged from the said Grand street, which was near Kellogg street, as laid down on said map of Cornelius Van 10 Vorst, and accordingly, on the eleventh day of November, Anno Domini one thousand eight hundred and forty-six, at the November term of the Court of Common Pleas of the county of Hudson, in which county the said street was located, a petition was presented to the said court, which proceedings were recorded in the office of the clerk of Hudson county, on the twelfth day of December, one thousand eight hundred and forty-six, a copy of which are hereunto annexed, marked *Appendix B*, which these defendants ask to be considered a part and parcel of their answer.

And these defendants further answering say, that upon the pre- 20 sentation of the said petition and affidavit above set forth, the said Court of Common Pleas, on the said eleventh day of November, made an order appointing Thomas Weldon and James Flemming, of the township of Jersey City, Jesse Hopper, of the township of Van Vorst, Jacob M. Merseles and Mindert Van Horn, of the township of Bergen, and Daniel Smith, of the township of North Bergen, surveyors, for the purpose of vacating the said part of said Grand street, a copy of which order is mentioned and set out in the proceedings hereunto annexed, marked *Appendix B*.

And, in pursuance of the said appointment, the said surveyors 30 proceeded to vacate the part of Grand street, and on the twenty-fifth day of November, A. D. one thousand eight hundred and forty-six, made a report of their proceedings, which said report was recorded on the twelfth day of December, A. D. one thousand eight hundred and forty-six, and is mentioned and set out in the proceedings hereunto annexed, marked *Appendix B*.

And these defendants further answering say, that from the time the said part of Grand street was thus vacated, the same was generally acquiesced in by the owners of property in that neighborhood. 40

And these defendants further answering say, that they admit that the said complainant purchased the lots from Cornelius Van

Vorst, as mentioned in said bill of complaint, but these defendants expressly charge that Grand street, long before the said purchase (nearly four years) had been changed and altered to the width of sixty feet, and that said proceedings were legal and lawful, and, having been recorded in the office of the clerk of Hudson county, were a full notice to all purchasers of land from the said Cornelius Van Vorst.

And these defendants further answering deny that, at the time of the said purchase, Grand street was eighty feet wide, but expressly charge, that at that time Grand or Bright street was only sixty feet wide.

And these defendants further answering say, they have no knowledge or information sufficient to form a belief as to the agreement or understanding between the said complainant and the said Cornelius Van Vorst, as to the filling up said street with dirt or the width of the same, but these defendants expressly deny that any understanding or agreement between the said complainant and the said Cornelius Van Vorst could in any way or manner alter or affirm the width of Grand or Bright street, which had been legally and lawfully established.

And these defendants further answering say, that if the said complainant purchased said lots with reference to the width of Grand or Bright Street (eighty feet wide) purchased the lots in his own wrong, for he had full notice that the said street had been altered to sixty feet.

And these defendants further answering say, that they are informed and believe that, after the map and dedication by Cornelius Van Vorst, Michael G. Bright became the purchaser of a part of said premises mentioned in the map of said Van Vorst; that said Bright caused a new map to be made making Bright street only sixty feet wide, and that before the map was filed Abijah Mann, jun., purchased said premises from Bright, and filed, used, and sold by said map; and these defendants say, that they have been informed and believe that Cornelius Van Vorst expressly assented to said alteration of Grand or Bright street, according to the lawful proceedings herein before mentioned, and that said Cornelius Van Vorst sold twenty feet of land to Bright, in order to conform the matter, and that he told said Abijah Mann, jun., he intended to sanction said alteration.

And these defendants further answering say and insist, that Grand street was legally and properly altered by the proceedings herein before mentioned.

And these defendants further answering say and insist, that if their officers or agents did place the curb so as to get into Bright street in front of the lot of complainant, twenty feet from the line of complainant's lot, they did the same in ignorance and without authority from these defendants; but they had no power in that way or manner to change, alter, or affect the legal width of Bright or Grand street.

And these defendants further answering say, that the ordinance and resolution to the effect as stated in said bill of complaint, and the proceedings mentioned therein, were taken, and also, upon the petition of Cornelius Van Vorst, the same was referred to a committee, who made a report upon the same; but they expressly deny that they seek, or have sought by the said ordinance, resolution, and proceedings, to sanction and establish the width of Grand or Bright street at sixty, instead of eighty feet, but they charge and insist, that the said street was legally and lawfully altered and changed by the proceedings herein before mentioned and set out in the *Appendix A* and *B*, hereunto annexed, and that they, having the municipal authority for that purpose conferred upon them by law, were merely carrying into effect those proceedings.

And these defendants say, that they have taken no proceedings to widen or alter Bright or Grand street under their charter, but they charge and insist that the same were taken according to law, in the township of Van Vorst, before the same was included within the corporate limits of Jersey city.

And these defendants deny all unlawful combinations and confederacy in said bill charged, without that any other matter or thing in said bill charged, material for these defendants to make answer unto, and not herein sufficiently answered or avoided, is true, to the knowledge or belief of these defendants.

All which things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray that the injunction granted in this case may be dissolved, and that they may be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

And the said defendants, the Mayor and Common Council of Jersey City, have hereunto caused their corporate seal to be affixed, attested by the signatures of the mayor and clerk of said city, to this answer, and, also, have caused the same to be verified by the

oath of Selah Hill, who is acquainted with the proceedings mentioned in this answer.

R. D. McCLELLAND,
Solicitor in Chancery.

WALTER RUTHERFURD,
Of counsel.

D. S. MANNERS, *Mayor.*

GEO. W. CASSEDY, *City clerk.*

State of New Jersey, Hudson county, ss.—Selah Hill, being
10 duly sworn according to law, upon his oath deposeth and saith, that
he is one of the members of the Mayor and Common Council of
Jersey City, and that the matters, facts, and things in the foregoing
answer mentioned and set forth, so far as the same relate to the
acts and deeds of the said Mayor and Common Council, are true
of his knowledge, and so far as the same relate to the acts and deeds
of any other person or persons, this deponent believes them to be
true.

SELAH HILL.

Sworn and subscribed, at Jersey City, 4th day of October, 1854,
20 before me.

J. D. MILLER, *M. C.*

Abijah Mann, jun., of Jamaica, in the county of Queens, and
state of New York, being duly sworn upon oath, according to law,
deposeth and saith, that Cornelius Van Vorst, senior, now deceased,
told this deponent, on or about the 29th day of November, 1849,
that he (the said Van Vorst) had consented to the alteration of
Grand or Bright street from eighty to sixty feet wide, and that he
concurred, in the proceedings taken for that purpose, recorded in
the office of the clerk of the county of Hudson, on the 12th day
30 of December, 1846, and that said Cornelius Van Vorst told him that
he (said Van Vorst) consented to and promoted the same, as far as
he could, and that he conveyed to Michael G. Bright, from whom
this deponent purchased) the gores and strip of land, along Bright
and other streets, occasioned by the alteration of said streets, and
which were taken to compensate said Bright on the rear, for what
he lost in front; and that the said Cornelius Van Vorst also said,
that if the said street had not been lawfully altered from eighty to
sixty feet in width, he would join this deponent in a petition to the

legislature of the state of New Jersey for an act to confirm the said alterations, and establish Bright street at sixty feet in width, as designated on the map of this deponent's property filed in the office of the clerk of Hudson county, and the said street was accepted by and deemed by this deponent and all persons who purchased from this deponent, and by the mayor and common council of Jersey City and the citizens of the township of Van Vorst, as a street established at sixty feet in width, as far forth as this deponent ever knew or believed, until the said Cornelius Van Vorst found out that he could compel this defendant to pay him for a portion of land 10 which by mistake had been omitted in his deed to said Bright, when he objected to said street being altered to sixty feet wide, and this deponent paid him \$500 for the conveyance of the strip of land which by mistake had been left out of said deed, although said Van Vorst had repeatedly told this deponent he would correct the said mistake without payment, and convey said strip of land to this deponent without any further payment.

A. MANN, Jr.

Sworn and subscribed, this 5th day of October, 1854, before me,
at the city and state of New York. 20

RICH'D GOODWAY,
Commissioner for New Jersey.

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APPENDIX A.

*To the Judges of the Inferior Court of Common Pleas of the county  
of Bergen.*

The subscribers, freeholders and residents in said county, think a public road to be necessary in the townships of Bergen and Jersey City in said county, beginning at the termination of where Grand street, in Jersey City, is regulated, and running from thence a westerly course, along or near the Morris canal, to the westerly 40 side of the Mill creek; thence a northwesterly course to the upland; and thence along and over the upland to the northeasterly corner of a lot of land belonging to Jacob D. Van Winkle and Garret Vreeland; and thence a westerly course along the line of the lands of Van Winkle and Vreeland and the lands of Brinker-

hoff to the Communipaw road or lane, where the same crosses the Morris canal.

Dated January 17th, 1840.

|                  |                  |
|------------------|------------------|
| D. SCOTT,        | BENJ'N O. EDGE,  |
| W. P. NAASSON,   | JAS. McLAUGHLIN, |
| ISAAC EDGE, Jr., | P. McMARTIN,     |
| JOHN GRIFFITH,   | D. SMITH,        |
| SAMUEL BRIDGART, | D. S. GREGORY.   |

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Notice is hereby given, that the subscribers, freeholders and  
 10 residents in the county of Bergen, intend to make application to  
 the Court of Common Pleas of said county, on the twenty-eighth  
 day of January, instant, (1840) for the appointment of six survey-  
 ors of the highways of said county, to meet at such time and place  
 as the court shall direct, for the purpose of laying out a public  
 road in the township of Bergen and Jersey City, in said county,  
 beginning at the termination of where Grand street, in Jersey City,  
 is regulated, and running from thence a westerly course, along or  
 near the Morris canal, to the westerly side of the Mill creek ;  
 thence a northwesterly course to the upland ; and thence, along  
 20 and over the upland, to the northeasterly corner of a lot of land  
 belonging to Jacob D. Van Winkle and Garret Vreeland ; and  
 thence a westerly course along the line of the lands of Van Winkle  
 and Vreeland and the lands of Brinkerhoff to the Communipaw  
 road or lane, near where the same crosses the Morris canal.

Dated January 17th, 1840.

|                  |                  |
|------------------|------------------|
| D. SCOTT,        | BENJ'N O. EDGE,  |
| W. P. NAASSON,   | JAS. McLAUGHLIN, |
| ISAAC EDGE, Jr., | P. McMARTIN,     |
| SAMUEL BRIDGART, | D. SMITH,        |
| JOHN GRIFFITH,   | D. S. GREGORY.   |

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We the subscribers, six of the surveyors of the highways of the  
 county of Bergen, appointed on the application of John Griffith  
 and others, ten of the freeholders and residents of the said county,  
 by the Inferior Court of Common Pleas of the said county, in the  
 term of January, in the year one thousand eight hundred and forty,  
 to lay out a public road in the townships of Bergen and Jersey City,  
 in said county, as by the order and appointment of the said court,  
 on the minutes of the said court, a certified copy whereof is here-

unto annexed, more fully appears, do hereby certify and return, that having met, agreeably to the order of the said court, on the sixteenth day of March, in the year eighteen hundred and forty, at the house of Adam Danbury, innkeeper in Jersey City, at ten o'clock in the forenoon of that day, in said county, and due proof being made to us that advertisements of our said meeting had been signed and set up according to law, on which we decided, and having viewed the premises and heard what could be said for and against the said road, do think and adjudge the said public road to be necessary, as mentioned in the said order of court, and have 10 laid out, and do accordingly lay out the same as appears to us most for the public and private convenience, and having regard to the best ground for a road and the shortest distance, in such manner as to do the least injury to private property, as follows, to wit— We do lay out a public road in Jersey City and Bergen, in said county, beginning at the point in the middle of Grand street where it is intersected by the easterly line of Henderson street, and running thence, first, north, seventy-five degrees and thirty minutes west, eighty-one chains, to the upland; thence, second, south, seventy-eight degrees west, twenty-nine chains and eighty-four links, to 20 the line of Cornelius Brinkerhoff, Jacob C. Van Winkle, and Garrett Vreeland; thence, third, along said line south, forty-two degrees and fifteen minutes west, seven chains and eighty-six links, to the middle of the road leading to Communipaw; and we do lay out that part of the said road from Henderson street, where it intersects with Grand street, to the upland, eighty-one chains four rods wide, and that part of the said road from the last point to the line of Brinkerhoff, Van Winkle, and Vreeland, a distance of twenty-nine chains and eighty-four links, a road three rods wide; and that the residue of the said road from the last mentioned point 30 to the said road to Communipaw, a distance of seven chains and eighty-six links, a road of two rods and a half wide, which said lines of course are in the centre or middle of the public road now laid out by us, that is to say—the said road is now laid out, for the first course, two rods on each side of said line, the second course, one rod and a half on each side of said line, and one rod and a quarter on each side of the last course herein before expressed, which said road, so by us laid out, we have caused to be marked at proper distances in the line of the same. And we do hereby make return thereof, with a map or draught of the said road so 40 laid out, with the courses and distances and references to the most remarkable places, and the improvements through which the said

road passes, herein before mentioned and described, which map or draught is hereunto annexed. And we do hereby fix the first day of May next as the time when the overseers of the highways of said townships shall open that part of the said public road from the starting point to the upland, and we do further hereby fix the first day of September next as the time when the overseers of the highways of the township of Bergen shall open that part of the road from the last point to Brinkerhoff's line. And we do further hereby fix the first day of November next as the time when the said  
 10 overseers of Bergen township shall open the residue of said road to Communipaw road for public use.

Dated at the house of Adam Danbury, Jersey City, the seventeenth day of March, A. D. one thousand eight hundred and forty. We having regularly adjourned from the sixteenth to this day, to the knowledge of all parties interested.

|                    |                    |
|--------------------|--------------------|
| EDO VREELAND,      | JACOB M. MERSELIS, |
| DANIEL CRANE,      | JOHN DRAYTON,      |
| GARADUS KINGSLAND, | ANDREW BOYD.       |

State of New Jersey, Bergen county, ss.—I, Garret G. Ackerson, clerk of the county of Bergen, and clerk of the Court of Common Pleas in and for said county, do certify the foregoing to be true copies of the map taken and all the other papers on file relating to the said road, in the clerk's office of said county.

Witness my hand and seal of said county and court, this 14th day of April, A. D. 1854.

GARRET G. ACKERSON, *Clerk.*

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APPENDIX B.

*To the Judges of the Inferior Court of Common Pleas of the county of Hudson.*

30 The subscribers, freeholders and residents in said county, think that a part of the public road in the township of Van Vorst, in the said county of Hudson, which on a map of the farm of Cornelius Van Vorst, made for him by Joseph F. Bridge, of the city of New York, surveyor, is known and distinguished as Grand street, is unnecessary, and the part of the said street or road by them unnecessary is twenty feet in width along the southerly side thereof, adjoining to and immediately in front of the blocks of land which on the said map are known and distinguished as blocks numbered ninety-five (95), eighty-three (83), sixty-nine (69), fifty-six (56),

forty-four (44), and thirty-two (32), and extending from the Mill creek or Creek of the woods, in a southerly direction, to the northerly line of a new road, as the said new road was laid out and opened by the surveyors appointed by the court for that purpose, excepting thereout those parts of said Grand street which crossed by Gilbert, Putnam, Varick, Jersey, and Barrow streets, as the same are laid out on the said map. And they do hereby apply to the court for the appointment of six surveyors of the highways of said county, to meet at such time and place as the court shall direct, for the purpose of vacating the said part of the 10 said road.

Dated October 31st, 1846.

|                    |                    |
|--------------------|--------------------|
| JOHN B. MOFFATT,   | THOS. GRAY,        |
| ROBERT McLAUGHLIN, | D. SMITH,          |
| LORENZO JAQUINS,   | W. BROWNE,         |
| GEO. W. EDGE,      | J. WILSON,         |
| DAVID JONES,       | WILLIAM CLAYBROUN, |
| JOHN AUSTIN,       | DAVID BEDFORD.     |

INFERIOR COURT OF COMMON PLEAS OF THE COUNTY OF HUDSON.

Hudson county, ss.—David Bedford, of full age, maketh oath 20 and saith, that the persons whose names are annexed to the within application signed the same in his presence, and are freeholders and residents in the said county of Hudson; and that previous notice, for at least ten days, was given of such intended application, and of the day on which said application was intended to be made, by advertisements under the hands of said applicants, which said advertisements were set up by deponent as follows, viz. one at the house of William Moore, innkeeper, in the township of Van Vorst, in the said county of Hudson, on the 31st day of October, 1846; one at the house of William Hough, innkeeper, in the same town- 30 ship, and on the same day; one at the grocery store of Doyle & Brady, in the same township and on the same day, being three of the most public places in the said township of Van Vorst, the same being the township in which the said road is laid.

D. BEDFORD.

Subscribed and sworn to in open court, this 11th day of November, A. D. 1846.

CORNELIUS VAN WINKLE, *Judge.*

## HUDSON COMMON PLEAS.

*Application of David Bedford and others for the vacation of a part of a road called Grand street, in the township of Van Vorst.*

The within application being made to the court this day, and the court having considered the same, and being satisfied by the annexed affidavit of David Bedford that the notice of the said application has been duly given according to law, do order the said application and affidavit to be filed, and do appoint Thomas Weldon and James Flemming, of the township of Jersey City, Jesse Hop-  
 10 per, of the township of Van Vorst, Jacob M. Merseles and Mindert Van Horn, of the township of Bergen, and Daniel Smith, of the township of North Bergen, six of the surveyors of the said county of Hudson, to meet at the house of William Moore, innkeeper, in the township of Van Vorst, on the twenty-third day of November, instant, at two o'clock in the afternoon, for the purpose of vacating the part of the road within mentioned.

Done in open court, this 11th day of November, 1846.

CORNELIUS VAN WINKLE, *Judge.*

Filed November 11th, 1846.

20

R. GILCHRIST, *Clk.*

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 HUDSON COUNTY COMMON PLEAS.

*In the matter of the application of David Bedford and others for the vacation of a part of a public road, in the township of Van Vorst, called Grand street.—Report of surveyors.*

Whereas the Court of Common Pleas of the county of Hudson, at the term of November, A. D. eighteen hundred and forty-six, did order and appoint as follows, *viz* :

Application being made to the court by David Bedford and  
 30 others, twelve freeholders and residents of the county of Hudson, that they think that a part of the public road in the township of Van Vorst, in the said county of Hudson, which on a map of the farm of Cornelius Van Vorst, made for him by Joseph F. Bridges, of the city of New York, surveyor, is known and distinguished as Grand street, is unnecessary; and the part of the said street or road by them thought unnecessary is twenty feet in width along the southerly side thereof, adjoining to and immediately in front of the blocks of land which on the said map are known and distin-

guished as blocks numbered ninety-five (95), eighty-three (83), sixty-nine (69), fifty-six (56), forty-four (44), and thirty-two (32), and extending from the Mill creek, or Creek of the woods, in a southerly direction, to the northerly line of the new road, as the said new road was laid out and opened by the surveyors appointed by the court for that purpose, excepting thereout those parts of said Grand street which are crossed by Gilbert, Putnam, Varick, Jersey, and Barrow streets, as the same are laid out on the said map; and they having applied to this court for the appointment of six surveyors of the highways of said county of Hudson to meet 10 at such time and place as the court shall direct, for the purpose of vacating the same; and due proof having been made, to the satisfaction of the court, that at least ten days' previous notice was given of such intended application, and of the day when said application was intended to be made, by advertisements, under the hands of said applicants, set up at three of the most public places in the township of Van Vorst, in which township the said road is located.

It is thereupon, on this eleventh day of November, in the year of our Lord one thousand eight hundred and forty-six, ordered by 20 the court that Thomas Weldon and James Flemming, of the township of Jersey City, Jesse Hopper, of the township of Van Vorst, Jacob M. Merseles and Mindert Van Horn, of the township of Bergen, and Daniel Smith, of the township of North Bergen, six surveyors of the highways of the said county, be and they are hereby appointed accordingly, regard having been had to the appointment of surveyors of the township where the said road is applied for to be vacated, which said surveyors shall meet at the house of William Moore, innkeeper, in the said township of Van Vorst, on the twenty-third day of November, A. D. one thousand 30 eight hundred and forty-six, at two o'clock in the afternoon.

Now we, whose names are hereunto subscribed, the surveyors of the highways aforesaid, do hereby certify and return, that the said Thomas Weldon and James Flemming, of the township of Jersey City, Jacob M. Merseles and Mindert Van Horn, of the township of Bergen, and Daniel Smith, of the township of North Bergen, five of the surveyors of the highways of the said county, met at the house of William Moore, innkeeper, in the said township of Van Vorst, on the twenty-third day of November, in the year of our Lord one thousand eight hundred and forty-six, at two o'clock in the afternoon; and due proof having been made to us that the advertisements of our said meeting had been set up ac-

cording to law, on which we decided, and also due proof being made to us that a copy of the said order of the said court, appointing us the said surveyors for the purposes aforesaid, had been served by the said David Bedford, one of the said applicants, on each of the said surveyors named in the said appointment, at least six days prior to the time of our said meeting, and having viewed the premises, we whose names are hereunto subscribed think and adjudge that the said part of the said public road is unnecessary, and do vacate the same in such manner as to do the least injury to private

10 property, that is to say, we vacate all that part of the public road in the township of Van Vorst, in the said county of Hudson, which on a map of the farm of Cornelius Van Vorst, made for him by Joseph F. Bridges, of the city of New York, surveyor, is known and distinguished as Grand street, and the part of the said road or street hereby vacated by us is twenty feet in width along the southerly side thereof, adjoining and immediately in front of the blocks of land which on the said map are known and distinguished as blocks numbered ninety-five (95), eighty-three (83), sixty-nine (69), forty-four (44), and thirty-two (32), and extending from Mill creek,

20 or Creek of the woods, in a southerly direction, to the northerly line of the new road, as the said new road was laid out and opened by the surveyors appointed by the court for that purpose, excepting thereout those parts of said Grand street which are crossed by Gilbert, Putnam, Varick, Jersey, and Barrow streets, as the same are laid out on the said map; and we do herewith return a map or draft of the said road or street, with the courses and distances and references to the most remarkable places, and the improvements through which it passes.

Witness our hands, this twenty-third day of November, in the

30 year one thousand eight hundred and forty-six, at the township of Van Vorst aforesaid. The words "and distinguished" being first interlined on the 3d page of this our report and return before the signing hereof.

THOMAS WELDON,  
 JAMES FLEMMING,  
 Jersey city.

JACOB M. MERSELES,  
 MINDERT VAN HORNE,  
 Bergen township.

DANIEL SMITH, North Bergen,  
*Surveyors of the Highways.*

Received in the office, November 25th, 1846, and recorded the 12th day of December, 1846.

R. GILCHRIST, *Clk.*

State of New Jersey, Hudson county, ss.—I, Robert Gilchrist, clerk of Hudson county aforesaid, and clerk of the Court of Common Pleas in and for said county, do hereby certify the foregoing to be true copies of all the papers on file in my office, and of all the proceedings of record touching the vacation of a certain part of a certain street in the township of Van Vorst, known and distinguished on a map of the farm of Cornelius Van Vorst as Grand 10 street.

In witness whereof, I have hereto set my hand and affixed the seal of said court and county, this 8th day of March, 1854.

R. GILCHRIST, *Clk.*

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ORDER FOR INJUNCTION.

Upon reading the bill of complaint in this cause, and the affidavit thereunto annexed, and on motion of Isaac W. Scudder, of counsel with the complainant, it is ordered, that, upon filing the said bill and affidavit, an injunction do issue, according to the prayer of said bill.

Dated December 16, 1853.

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B. WILLIAMSON, C.

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DECREE.

Application having been made to the Chancellor, by Richard D. McClelland, solicitor of the defendants, to dissolve the injunction granted in the above cause, and arguments of the respective counsel having been heard at chambers, at Elizabethtown, before the Chancellor, in the presence of Isaac W. Scudder, of counsel with the complainants, and Rich'd McClelland, of counsel with the defendants, and the Chancellor having taken time to advise thereon; and now, on this third Tuesday of October, in the year one thousand eight hundred and fifty-five, it appearing to the Chancellor

that the complainant is not entitled to the relief sought and prayed for by him in this said bill of complaint, or to retain the injunction originally granted—It is ordered, adjudged, and decreed, that the injunction must be dissolved with costs.

B. WILLIAMSON, C.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN

CHARLES M. HOLMES, appellant,

and

10 THE MAYOR AND COMMON COUNCIL OF  
JERSEY CITY, respondents,

} On bill and an-  
swer.  
Decree, &c.

*To the Honorable the Court of Appeals in the last resort in all causes.*

The humble petition of Charles M. Holmes, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by a decretal order, made in the Court of Chancery by his Honor Benjamin Williamson, Chancellor of New Jersey, bearing date the third Tuesday of October, in the year of our Lord one thousand eight hundred and fifty-five, wherein your petitioner was complainant, and the Mayor and Common Council of  
20 Jersey City were defendants, in this respect, to wit, that the said decretal order adjudges that the said complainant is not entitled to the relief sought and prayed for by him in the said bill of complaint; that the said order adjudges that the complainant is not entitled to the injunction originally granted; that the said order adjudges that the injunction granted must be dissolved.

And your petitioner humbly appeals from that part of the decretal order which adjudges as aforesaid, upon the ground that the same is erroneous; for that the said complainant was well entitled to the relief sought and prayed for by him in the said bill of com-  
30 plaint; and for that the said complainant was well entitled to the injunction originally granted; and for that the said complainant was well entitled to have his injunction continued and maintained, and not dissolved.

Your petitioner therefore prays that the said decretal order of the said Chancellor may be, in the particulars aforesaid, reversed,

set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

Dated November 19, 1855.

I. W. SCUDDER,

*Solicitor and of counsel with the appellant.*

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CHANCELLOR'S OPINION.

In the year 1835, Cornelius Van Vorst laid out a large tract of land, adjoining Jersey City, in the county of Hudson, into building lots. Streets were run through at convenient distances, and public 10 squares laid out on a map designating the property. Among other streets, one called Grand street was designated on the map, and delineated as a street eighty feet wide. This map was filed in the county clerk's office in the year 1847. These streets are now actually open; the larger portion of them have been paved, graded, curbed, and guttered, with reference to their width, as designated on the Van Vorst map. Grand street has been opened and used of the width of 80 feet, and actually built upon that line. It does not appear, however, by the bill or in any other way in this suit, that any of the streets were actually opened or worked, or any 20 buildings erected, or any lots sold by Cornelius Van Vorst, previous to the month of April, in the year 1850. In that month, Cornelius Van Vorst conveyed to the complainant four lots of land on Grand street. This tract of land is now within the boundaries of Jersey City, and the streets and sidewalks are under the municipal regulations of the city. In November, 1852, the complainant caused the street in front of his lots to be curbed and guttered with reference to the street, as eighty feet wide. About December, 1851, the defendants (the common council of Jersey City) caused Barron street, which intersects Grand street, to be paved, curbed, 30 and guttered, and when they turned the curb, at the intersection of these streets in front of the complainant's lots, his lots being on the corner of the two streets, they run it on a line, assuming Grand street to be eighty feet wide, and assessed the complainant's lots to pay for the work; and the complainant did actually pay for it. Lately the defendants here passed an ordinance directing Grand street to be curbed, paved, and guttered of the width of sixty feet.

Upon these facts appearing by the bill, an injunction was granted to prevent the defendants from taking up the curb and pavement of the complainant, and conforming it to a sixty feet street.

The defendants have answered the bill, and upon their answer here moved a dissolution of the injunction. The answer does not materially vary the facts of the case as the bill states them; but, in addition to those facts, the answer sets up, by way of defence and justification, that, in November, 1846, by virtue of certain proceedings in the Inferior Court of Common Pleas of the county of
 10 Hudson, under the act entitled, "An act concerning roads," a part of Grand street, as it was laid out by Van Vorst, was so vacated and altered as to be made to conform to the width of sixty feet, instead of eighty feet, and that the defendants, by their ordinance, are regulating the street in conformity to this alteration so made by law.

If it is proper, on this motion, to give the defendants the benefit of this defence, and if the court and surveyors had jurisdiction over the matter in question, that is, if under the act entitled, "An act concerning roads," a part of Grand street could be narrowed from
 20 eighty feet to sixty feet wide, then this injunction must be dissolved.

As far as the defendants and the public are interested in this matter, judging from the case as it has been presented, and the circumstances connected with it, it would not be unsatisfactory to any party in interest or to the public if this court could, with a proper regard for the law, make this injunction perpetual, and thus establish Grand street as eighty feet in width. A glance at the map which is exhibited will show the alteration to be a great blemish to the beauty of the street; it makes the street of two widths;
 30 a part of it, and the smaller part of it, and not at either end, it makes sixty feet wide, while it leaves the street at both ends eighty feet wide.

To the motion for dissolution it is objected, that the defence set up is new matter, and that, as to new matter, the rule is, it will not avail the defendant on a motion to dissolve.

The general rule is, that where the answer admits the equity of the bill, but sets up new matter as a defence or in avoidance of the equity, the injunction will not be dissolved. (*Minturn v. Seymour*, 4 J. C. Rep. 497; *Allen v. Crocroft*, *Barnard's Ch. Rep.* 373; 3
 40 *Daniel's Ch. Prac.* 1896-7, notes 1, 2.)

But this rule has its exception, and I think a very prominent one is the following—where the complainant, when he files his bill, has

full knowledge of the matter of defence upon which the defendant relies, and it is the substantial matter in controversy between the parties, the complainant cannot, by purposely keeping that out of view in stating his case, and in order to deprive the defendant of the benefit of a denial, subject his adversary to the application of the rule in question. And further, the rule has lost very much of its application, from the consideration of the change in the practice of the court upon the hearing of motions for dissolution of injunctions. It is one of the rules of this court, that on a motion to dissolve an injunction, the complainant is at liberty to read affidavits 10 in reply to any new matter set up in the answer, and upon which the defendant in any manner relies for the success of his motion. It is true the court ought not to try the case as upon a final hearing or a motion of this kind; but if the defendant sets up new matter, which, if true, constitutes beyond doubt a good defence, the defendant should have the benefit of it, unless the complainant shows to the court that the facts upon which it is founded are controverted, or some reason why it should not avail the defendant on the motion. For instance, the defendant sets up a release of a character to avoid all the complainant's equity. If there is no con- 20 troversy about the release, except as to its legal operation, there can be no good reason why the court should not, on a preliminary motion to dissolve, determine its legal construction and application. Take the case in hand as an illustration. Admit that the fact of the alteration of the street by surveyors under the said act to be new matter, the facts upon which the defence is set up, and not denied, the only question is, as to the jurisdiction of the Court of Common Pleas of Hudson and the surveyors over the matter. Now the legality of the proceedings and construction of the statute have been as fully argued as they would be on the final hear- 30 ing of the cause. The defence was no surprise to the complainant; he was aware of it when he filed his bill. If the defence is a good one, there is no reason why the defendants should not now have the benefit of it to relieve them from this injunction.

If, then, this is new matter such as the general rule contemplates, I do not think the rule should be applied in this case; but I do not think the defence can be justly regarded in the light of new matter, such as was ever contemplated by the rule, as laid down, should embrace. The bill charges the defendants with unlawfully exercising their municipal authority in regulating Grand street. The 40 defendants admit they are regulating the street, and they set up and show their legal authority for doing it.

The question remains, is their defence a good one; had the surveyors legal authority, under the act concerning roads, to alter the width of the street. If they had no such right, this court may interfere by injunction, and protect a party who is about to be injured against any act under their proceedings.

It is insisted that there is no authority given by the act to alter the width of a public road or street, and that when the act speaks of vacating and altering a public road, it means to shut up the road *in toto* from either extremity, or from one point in the line of the road to another point in it, or to vary the *course* of the road.

The 2d section of the act declares, that when ten or more persons, being freeholders, shall think a public road necessary, or any public road which hath been or shall be laid out unnecessary, or *any alteration in such road necessary*, in any part of the county in which they reside, it shall be lawful, &c. The act then provides for the appointment of six surveyors, and their meeting, and then declares they "shall view the premises, and may, if they shall think it necessary, lay out, vacate, or alter the said public or private road, and lay the same as may appear to them to be most
20 for the public and private convenience."

This language is, I think, broad enough to confer the power either to widen or narrow a public road, provided the road shall not be more than four, nor less than two rods wide, as is provided by the first section of the act. And I can see no reason to doubt, from the language used, or in looking at all the various provisions of the road act, but that such an alteration of a public road was in the mind of the law maker at the time the law was made. I believe that this construction has always been given to the road act. I know the authority has frequently been exercised, and without its
30 propriety being questioned. Certainly no good reason can be given why such a power should not have been conferred. The propriety and necessity of such power being lodged somewhere is manifest, and the proper tribunal is that to which is confided the power, in the language of the act, to lay out, vacate, or alter "the public roads of the state."

It is also contended, on behalf of the complainant, that this street comes within the exclusion of the 34th section of the act, and that the court and surveyors had no jurisdiction because this was a street in a town.

40 This section declares "that nothing in this act contained shall be construed to extend to narrowing, widening, or altering any street in any of the cities, towns, or villages in this state, or to pull-

ing down or removing any dwelling house, market house, or other public building heretofore constructed, and which may encroach on any highway."

In giving a construction to this section of the act, some difficulty may occur in defining what the act means by a *town* and *village*. The word *town* is not here used as synonymous with township. The whole state is divided into counties, and the counties subdivided into townships, so that if we construe *town* to mean the township, the whole act would be defeated. It was obviously the intention of the legislature to protect the established streets in the settled 10 towns and villages of the state from the operation of the act.

Certainly no one can contend for a more liberal definition of the term *town* than that of a collection of two or more inhabited dwelling houses. The mere fact of fifty or a hundred acres of land being mapped out into streets and building lots cannot make a town. Although the complainant's counsel argued his case upon the assumption that this was a town, such a case is not made out by his pleadings. He does not allege that at the time the street was altered there was any town. It does not appear, by the case, that there was then a single dwelling erected, or an individual living upon the 20 premises. If the complainant was entitled to the benefit of this section of the act, he should have framed his bill accordingly. He knew the ground upon which the defendants justified the action of which he complained, and should have shown, by his bill, that the public act under which the defendants set up their right and authority is not applicable to the case.

The injunction must be dissolved with costs.

B. WILLIAMSON, C.

