New Jersey Court of Errors and Appeals.

THE MAYOR AND ALDERMEN OF JERSEY CITY,
Pl'ffs in Error,
and
GEORGE H. SACKETT *et al.* (who sues, &c.),
Def'ts in Error.

Points for Appellants.

Statement of Facts.

This litigation is the result of the decision of the Chancellor, in Gardner *vs.* Jersey City, 5 Stewart, 586, and the case of The Mayor, &c., Jersey City *vs.* Gardner, 6 Stewart, p. 622, reversing the Chancellor. The attempt there was to enjoin the city from using Jackson avenue extension, unless it first paid the award for opening that street. Having failed in that litigation, Sackett, Davis & Co. (who sue for the use of Gardner) bring this suit on the award made by the City of Bergen, July 20, 1868, for $\$966\frac{76}{100}$. Justice Knapp gave judgment against the city for the full amount, with interest from *July*, 1868. He held, substantially, that there was no dedication such as would prevent the recovery, and that the Statute of Limitation did not apply to a suit on an award.

POINTS.

I.

This suit is barred by the Statute.

Revision, p. 594, secs. 1 and 21.

This suit is either *an action of debt* without specialty, within sec. 1, p. 594, or, possibly, *an action upon a Statute*, the benefit and suit whereof is given to the party aggrieved within sec. 22, pp. 597–8.

II.

The Court must rule that there is no Statute of Limitation whatever in the case of an award by a city for taking land under the charter of the city of Bergen, if they refuse to apply one of the above sections to this case. Did the Legislature intend to bar all those actions embraced in the language of the various sections of the act for the limitation of actions, and yet mean to leave out this particular action? I submit, that the intention of the Legislature was to fix a limitation for every cause of action by that act, and that, as this particular action can be brought within the general language of one or more of the subdivisions, the Court ought to hold it within the statute, in order to carry out the fair intention of that act. If it is good policy to fix a Legislative limitation of years for actions on notes, bonds, sealed instruments, judgments and actions on statutes and other matters embraced within the statute, is it fair to except from the general language of the act, a suit against Jersey City on an award made by Bergen City, before consolidation, and which was made over 13 years before suit brought?

III.

Is not a fair distinction between some of the cases cited in the opinion of the Court below and the present case, that there is a difference in the Statute of Limitations of the States cited and our own statute? Do not some of those other statutes provide a limitation of 20 years or some other fixed period for such a case as this? Does not a reason exist in those cases where there is a longer period named to which the limitation may apply, of holding that the longer period applies, which does not exist, where, unless the Court applies the State period of limitation, they must hold that the case is one *not provided for in any way* by our statute?

IV.

Another question at issue between the parties is, whether or not there was a dedication of the land in question for the purposes of a public street. If so, the dedication having been since the award, there ought to be no recovery on the award, as the dedication destroys the award and takes away all consideration as a basis thereof.

V.

The city claims that this street was dedicated to public use under the authority of the case of Clark *vs.* City of Elizabeth, 11 Vr., 172. The city also calls attention to the case of The State, Kiernan, Pros., *vs.* Jersey City, 11 Vr., 483. The city also refers to the case of Price *vs.* The Inhabitants of Plainfield, 11 Vr., 608, for the purpose of showing that the word street written on a map

and the sale of lands by it operate conclusively as a dedication. In that case it was the dedication of a park by the word being written on the block on a map of said property.

VI.

The testimony upon which the city relies to establish the dedication is the following:

A deed, March 3, 1879, made by George H. Sackett and wife to Henry W. Gardner and others, which is shown as Schedule "B" on page 10 of the case. On line 35, page 24, Jackson avenue is recognized by the following exception: "Excepting therefrom so much of the said lots and premises as have been taken by the city of Jersey City for the opening of Jackson avenue."

On line 20, page 25, Jackson avenue is again named and recognized. On line 38, page 27, Jackson avenue is again recognized. In Schedule "D" Francis S. Emmons, agent for the trustees, on page 30, line 26, recognizes Jackson avenue and its extension, and on page 31, line 13, he again recognizes Jackson avenue.

In the testimony of George H. Sackett, page 44, lines 37 to 41, it is shown that they had an agent, Garret Vreeland, who acted for them at the time of the opening of the road (this was in 1868) and that he made a report to the trustees at that time in regard to a settlement with the city.

In September, 1879, a map of the property in question, on which Jackson avenue was shown as an open public street, was made and land sold to various parties by reference to that map, some of the lots fronting directly on Jackson avenue, and that ten per cent was paid down on the day of the sale. Numerous copies of the map were distributed to parties desirous of bidding, prior to the sale, and also at the time of the

sale. One of the trustees was present at the sale and had one of the maps. The maps were used by the purchasers at the time of the sale. The terms of sale, which were signed by the auctioneer, were made up with reference to that map. After the sale, the trustees refused to deliver deeds according to the map, because the point was raised by the city, that the making of such a map and selling by it, was conclusive dedication of the street. Under the advice of their counsel, as soon as this point was made, they refused to execute deeds in accordance with the map.

Lewis E. Wood, page 46, line 3, &c., testifies that he was an auctioneer, and as such, had charge of the sale, and produces the map which was used at the time of the sale, which map shows Jackson avenue as an open street. His testimony shows, also, that certain of the lots on the map fronting on this avenue or adjoining it, were sold to certain parties at the sale, and that he stood on the southwesterly corner of Jackson and Ege avenues when he made the sale. He testifies, also, that the map was shown to Mr. Emmons, the agent of the complainants, prior to the day of the sale.

Francis S. Emmons, testifies, page 47, &c., that he instructed Mr. Wood to make the sale, and that the map was made by the order of his firm for the purposes of the auction sale; that all the details were left by the complainants to him. On page 48 he testifies that the property was advertised by these maps and by hand-bills, by notices on the premises, and by advertisement in the newspapers for about two weeks, and that it was *not until after the sale*, and after the question had been raised by counsel for the city, that the complainants stated that they did not intend to dedicate the street. He testifies also that he had been for some time trying to collect the award for the opening of Jackson avenue, and that one of the complainants attended on the day of the sale and saw the map there. On page 49, on cross-examination, he says

that lots were sold by lot and block numbers, as shown on this map, and that the reason why the deeds were executed without reference to the lot and block numbers in the way they were sold was because Mr. Collins, complainants' counsel, suggested that this be done after the counsel for the city claimed that the making of the map and the sale were a dedication. He testifies, also, that 250 or 500 maps were printed, and that all those that were sold on the day of the sale were sold by lot and block numbers, as shown on the map, and that Jackson avenue had been an open avenue and sewered for ten or twelve years prior to the sale; that the map had been sent out prior to the day of the sale to all prospective bidders, and that copies were given at the sale to those present, and that nothing was said at the time of the sale to anybody about complainants' claiming that the extension of Jackson avenue was not dedicated; that the trustee who was present made no remark about the extension, and that the condition of Jackson avenue and other streets on the map, as open, graded, paved, flagged and sewered streets, was correctly shown on the map. On page 38, he testifies that he had full authority to make the sales, and that he made returns of the sales to the trustees; that he employed the auctioneer; that the contracts of sale were drawn by counsel for complainants; that the contracts were signed by the purchasers, and that the property was described therein by the lot and block numbers on the map. One of these terms of sale is shown at pages 52 and 53. He testifies, also, that he received ten per cent of the money on the day of the sale, and was to receive forty per cent additional in thirty days, the balance to remain on bond and mortgage; that the complainants paid him for his services since the sale, and that the question raised by the counsel for the city, that the street was open and dedicated, was raised after the sale.

On pages 50–51, he testifies that the manner in

which the deeds were to be drawn, was not considered until after the sale, and that he has no idea how the deeds would have been drawn if counsel for the city had not raised this point; that after if was raised, particular pains were taken to draw the deeds so as not to have the deeds to the purchasers make a dedication.

If the Court will examine the map, which is Schedule "E," annexed to the bill of complaint in the Chancery suit, they will see that Jackson avenue is there shown as an open, dedicated street.

VII.

The city claims that the complainants and the owners of the property have, for the last twelve years, assented to the opening of the street which has existed as an open street all that time; that they could have brought suit at any time within six years after the award for the payment of the award; that in 1879, even if they never had done so before, the complainants in the chancery suit made a conclusive dedication of the street to the public by the making of the map, selling lands by reference to it, and receiving ten per cent of the purchase money on such sales; and that this action of theirs, in connection with the recognition of Jackson avenue in the deed (shown as Schedule "B," pages 12, 13 and 15) settles the case as a dedication against the plaintiffs. That if a suit had been brought in ejectment, for the land taken, the city could have pleaded the dedication successfully, and that an attempt to compel the city to pay the award is an attempt to get rid of the effect of the dedication, and to recover the money after a lapse of 13 years.

LEON ABBETT,
Corporation Counsel
of Jersey City.

New Jersey Court of Errors and Appeals.

THE MAYOR AND ALDERMEN OF JERSEY CITY,
Plffs. in Error,

vs.

GEORGE H. SACKETT *& als,*
Defts. in Error.

On Writ of Error.

Argument of Defendants in Error.

I.

An action of debt lies to recover this award.

That a suit to recover the award will lie was adjudged in this Court between these parties in the case of Jersey City *v.* Gardner, 6 Stew., 628, 629.

The amount being a sum certain, debt is clearly a proper form of action. "Nothing can be better settled than that an action of debt lies for a duty created by common law, *a fortiori* it must lie where the duty is created by statute," Story, *J.*, in Bullard *v.* Beal, 1 Mason, 243.

See also 1 Chitty Pl., 112, note 5.
Bigelow *v.* Cambridge Turnpike, 7 Mass., 202.
Jeffrey *v.* Blue Hill Turnpike, 10 Mass., 368.
Rice *v.* Barre Turnpike, 4 Pick., 130.
Adams *v.* Woods, 2 Cranch., 341.
Cowenhoven *v.* Freeholders of Middlesex, Sup. Ct., June T., 1882.

II.

The debt is not barred by the statute of limitations.

That statute bars only "actions of debt founded upon any lending or contract without specialty."

Rev., pg. 594, Sec. 1.

a—This action is not grounded upon any lending or contract. The debt is created by statute without any lending or contract, and therefore is not limited. In the absence of that statute there would be no right of action.

The charter under which the award was made (Laws 1868, p. 342), provides that upon completing the report of the commissioners assessing the value of the lands taken "the City Treasurer shall tender and pay to the owners of said lands the amount of such assessment due him."

Cro. Car. p. 513.

b—This action is debt on a specialty, namely, statute law, and therefore is expressly excluded from the Statute of Limitations.

In Jones *v.* Pope, 1 Saund., 36, the action was debt for an escape under a statute. The common law remedy was case. Held, that the action was founded on the statute and was, therefore, not on a lending or contract, but was on specialty and was not barred.

In Cork, &c., Railway Co. *vs.* Goode, 13 C. B., 826 (76 E. C. L. R.), the action was debt for calls made under the charter. It was decided that the Statute of Limitations did not apply. Jervis, *C. J.*, says: "But for the Act of Parliament, no action could be brought by the company against one of its own members. This, therefore, is an action brought in respect of a liability created by statute and, therefore, is an action founded upon the statute, and the plea which relies upon six years' limitation is no answer to it."

In Shepherd *v.* Hills, 32 Eng. Com. L. and Eq., 532 (Exchequer, 1855), the Court said: "There is no doubt that wherever an act of Parliament creates a duty or obligation to pay money, an action will lie for its recovery." "According to the case of Cork, &c., Railway *v.* Goode, this being an action on a statute, there is the same period of limitation as in an action on a record or specialty."

Since writing the above the decision has been rendered by the Supreme Court, in Cowenhoven *vs.* Freeholders of Middlesex, fully sustaining our proposition. We refer to the reasoning of the Court in that case.

III.

It is not material whether the defendants in error have dedicated the street in question.

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This, we think, was substantially adjudged in Jersey City *vs.* Gardner, 6 Stew., 629, where this Court said: "Upon payment made, whether voluntary or by force of a judgment, the lands will, for the purposes intended, vest in the corporation. The provision deferring the vesting of legal title until the award be actually paid was intended to save the interest of the land-owner, and it would be a perversion of the legislative intent to allow it to operate as an impediment to or deprivation of his legal right to compensation by suit."

IV.

There has been no dedication of the street by the owners.

The plaintiff in error claims dedication:

1st.—By the deed (Schedule B, Case p. 22) by Sackett and wife to the trustees, wherein the property across which Jackson Avenue was extended is particularly described, and these words added (Case p. 24, line 35): "Excepting therefrom so much of the said lots and premises as have been taken by the city of Jersey City for the opening of Jackson Avenue."

2d.—By the making of the map referred to in the case, and by the auction sale of the trustees.

It is manifest that there is no ground for the first claim, for that deed was not made until March 3, 1879, and on December 5, 1878, Sackett and his partners had conveyed to the trustees *all* the lands of the partnership (this was partnership property) and of each partner by the deed Schedule "A" (Case p. 18). The second deed was confirmatory of the first, and intended to bar Mrs. Sackett's dower, if she had any, in the New Jersey lands.

One cannot dedicate what he does not own.

Washburn on Easements, p. 186.

Moreover, the language used excludes the idea of dedication, for the land excepted is land *taken by* (not *given to*) the city and it implies adverse proceedings.

Nor is there any more tenable ground for the second claim.

Dedication is always a question of intention. No one can believe that these trustees meant to give up both land and award. The most which can be claimed is an acquiescence in a street opened in compensation, and that of course implies that they should have the compensation.

The rights of the owners of the lands taken by the extension of Jackson avenue had been settled by two decisions in the Fitzpatrick case (7th V room, 120, and 3 Stew., 97). The trustees had petitioned for the award, reciting the later Fitzpatrick decision as the basis of their petition.

The map and sale were at most an acquiescence in the existing state of affairs. The avenue was practically opened. They could not prevent its use if tendered the award. They acquiesced and asked for the money. What right could they waive in showing on a sketch for the convenience of bidders the street, as for all practical purposes it existed? Must they wait till they should actually get their money until they could have their auction sale?

A dedication is a grant of an easement, and like other grants its extent is determined by the grantor's intent, and the intent must be found from all the circumstances and must be unequivocally proved to constitute a dedication.

Washburn on Easements, p. 133.

There is a plain distinction between an owner's recognition of a street after the city has taken it and before. The filing of a map or delivery of a deed by an owner of the land calling for a street where one did not exist before is clear evidence of an intent to create such street, because otherwise the deed or map would be meaningless. But where as in this case the City has in fact taken and graded a street and built a sewer in it without the owner's consent and has made him an award, in such case a recognition by him of the street is simply a recognition of existing facts, not a creation of new rights.

The existing facts in this case were that the city had title *contingent on payment of the award.*

Counsel for the city says that the making of the map gives title to the street and waives the condition that the award must be first paid. We say that it merely recognizes that the city has possession and can have title by paying the award.

As a matter of fact the owners of the land never did dedicate the street.

They have neither made, authorized or filed a map calling for the extension of the street.

They have made no deed calling for Jackson Avenue as extended or referring to any map on which it is shown. No contract of sale was signed in their behalf. The contract signed by the purchasers (page 50) referred to no map.

An agent to sell lands has no more authority to dedicate than he has to convey. The making of a map by such agent could not operate as a grant to the city, unless clearly ratified by the owners, and in this case they did not ratify it. On the contrary they took care by their deeds not to ratify any attempt to dedicate by their agent if the making of the map can be considered such attempt. To suppose that the defendants in error have intended by a map of which they knew nothing to sacrifice the interests of the estate, and surrender this property to the city without just compensation is to disregard all the circumstances which throw light on intent.

The fact that one of the Trustees saw the map on the day of sale does not amount to a ratification of it. Even if he had distinctly ratified it, that would not have amounted to a dedication, not only because of the peculiar circumstances of the case, but also because one of two or more co-tenants cannot dedicate the common lands.

Washburn on Easements, pages 9 & 186.

In Bailey *vs.* Copeland, Wright (Ohio), p. 150, it was held that "making a plot, *with intent to record the same*, does not of itself work a dedication of the way shown on it to public use."

In United States *vs.* Chicago, 7 How., 185, the true rule is laid down: "If one makes a map (showing streets, etc.) and *sells accordingly*, it may *generally* be presumed that he thus dedicates, etc," and as strong a case on the subject as any that can be found—Clark *vs.* City of Elizabeth, 11 Vroom, 174, decided in this Court—is to the same effect.

Now, we submit that *sales* by a map which will work a dedication must be something more than mere striking

off the land at auction. At least, a binding contract must be proved.

Some person must acquire rights under such a sale before the public will acquire any. In every reported case that we have seen there was a *deed.*

In the case now before the Court all the purchasers that have taken deeds were content to have them drawn without referring to any map on which Jackson Avenue as extended is shown. There is no proof of any consummated sale by this map.

In conclusion, the city has taken part of a tract of land for a street, has assessed the benefit of the street to the residue of the tract, and has awarded the owners the excess of damages. It is using the land and keeping the money. Common justice demands relief against such a course. Public necessity requires the street. Let the public have it on payment of the just compensation awarded.

The judgment should be affirmed.

COLLINS & CORBIN,
Of Counsel with Defdts. in Error.

Court of Errors and Appeals.

In the Last Resort in All Causes.

The Mayor and Aldermen of Jersey City,
Plaintiffs in Error,
vs.
George H. Sackett, et al. (who sue, etc.),
Defendants in Error.

Writ of Error.

New Jersey, *ss:* The State of New Jersey to our Justices of our Supreme Court, greeting: Because [L. S.] in the records and proceedings, and also in the giving of judgment in a certain plaint which was in our Supreme Court before the Justices thereof, between George H. Sackett and others (who sue for the use of Henry D. Gardner and others), plaintiffs, and "the Mayor and Aldermen of Jersey City," defendants, on a plea of debt, manifest error hath intervened, as is said, to the great damage of the said "the Mayor and Aldermen of Jersey City," as by their complaint we are informed, we being willing that the error, if any there be, should in due manner be corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you that if judgment be given thereupon, then you send distinctly and openly, under your seal, the record and proceedings aforesaid, with all things touching and concern-

ing the same, to our Court of Errors and Appeals, before the Judges thereof, on the third Tuesday of May next, together with this writ, that the record and proceedings aforesaid being inspected we may further cause to be done thereupon what of right and according to law ought to be done.

Witness, Theodore Runyon, Esquire, President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and eighty-two.

HENRY C. KELSEY,
Clerk.

ALLAN L. McDERMOTT,
Attorney of Plaintiffs in Error.

LEON ABBETT,
of Counsel.

The answer of the Justices of the Supreme Court of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same. We do certify to the Court of Errors and Appeals in a certain schedule to this writ annexed as within we are commanded.

[L. S.] M. BEASLEY,
Chief Justice.

NEW JERSEY SUPREME COURT.

GEORGE H. SACKETT, THOMAS DAVIS, LAURISTON TOWNE, and GEORGE P. TEW, who sue, etc., *vs.* THE MAYOR AND ALDERMEN OF JERSEY CITY.	*In debt on postea, etc.*

COLLINS & CORBIN,
Attorneys.

As yet of the first day of August, A. D. eighteen hundred and eighty-one.

[Witness] MERCER BEASLEY, Esquire,
Chief Justice.

BENJ. F. LEE,
Clerk.

HUDSON COUNTY, *ss:*

The Mayor and Aldermen of Jersey City, the defendants in this suit, were summoned to answer unto George H. Sackett, Thomas Davis, Lauriston Towne, and George P. Tew, lately partners as Sackett, Davis, & Co. (who sue for the use of Henry W. Gardner, Lodewick Dayton, and Joseph D. Mathewson), of a plea that they render unto them the sum of four thousand dollars, which they owe to and unjustly detain from them. And thereupon, the said plaintiffs, by Collins and Corbin, their attorneys, complain. For that, whereas heretofore, to wit, on the first day of January, A. D., eighteen hundred and sixty-eight, and at

the time of proceedings and award hereinafter mentioned, the plaintiffs were seized in fee simple of the title to certain lands in the City of Bergen (now Jersey City), Hudson County, New Jersey, described as lots 9, 10, 11, 12, 13, 14, 15 and 16, in block 17, on the "new map of Claremont, Bergen Heights, Hudson County, N. J.," filed in County Clerk's (now Register's) Office of said County, and the Town of Bergen, in County of Hudson, a Municipal Corporation of this State, and its legal successor, "the Mayor and Board of Aldermen of the City of Bergen," a Municipal Corporation of this State, in the years eighteen hundred and sixty-seven and eighteen hundred and sixty-eight, to wit, on the day and year last aforesaid, at the County aforesaid, took the necessary lawful measure to extend a public street or highway then existing, called Jackson Avenue, over and across the said lands, their whole depth, a width of sixty feet, and on the first day of July, A. D., eighteen hundred and sixty-eight, the Commissioners duly appointed by ordinance to assess the damages of the owners of lands to be taken for such extension, made their report in writing, whereby they assessed the damages of said plaintiffs or owners of the said lots by their firm names of "Sackett, Davis, & Co.," for the taking of said lands as would be taken for such extension over and above their assessments on the remaining lands of said plaintiffs, as such owners for benefits conferred by said extension at the sum of nine hundred and sixty dollars and seventy-six cents, and awarded that sum to the said plaintiffs as such of said lots, which assessment and award were duly confirmed by the Board of Aldermen of said City of Bergen, on the twentieth day of July, A. D. eighteen hundred and sixty-eight, on which day Jackson Avenue was by said Board declared so extended as a public street, and thereafter, to wit, on the first day of August, A. D. eighteen hundred and sixty-eight, the defendant took possession of such extension of Jackson Avenue, and laid it out and improved it as a public street, and built a sewer therein. And whereas, by Act of the Legislature of New Jersey, approved the 17th day of March, A. D. eighteen hundred and seventy, the said City of Bergen became consolidated with

Jersey City, and on the thirty-first day of March, eighteen hundred and seventy-one, an act to recognize the local government of Jersey City was passed, whereby the defendants succeeded to the rights and liabilities of the former Town and City of Bergen, and has always since such consolidation used and occupied the portion of said lands, which were taken for such extension of Jackson Avenue for a public street and highway, and the sewer so built therein as a public sewer.

Whereby and by reason of the premises the defendants became liable to pay unto the plaintiffs the amount of said award with interest, to wit, the sum or four thousand dollars.

Yet the defendant, though requested so to do, has not as yet paid into the plaintiffs the said award, or any part thereof, and to pay the same have wholly refused, and still refuses to the plaintiffs damage one thousad dollars. And, therefore, they bring their suit, etc.

And the said defendant by Allan L. McDermott, its Attorney, comes and defends the wrong and injury when, etc., and says that it does not owe the said sum of money above demanded, or any part thereof, in manner and form, as the said plaintiff hath above thereof complained against it; and of this the defeudant puts itself upon the country, and the said plaintiffs do the like.

And for a further plea in this behalf the said defendant, by leave of the Court here for this purpose first had and obtained according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action against it, because it says that the said declaration mentioned did not, nor did any other of them accrue to the said plaintiff at any time within six years next before the commencement of this suit in manner and form, as the said plaintiff hath above thereof complained.

And the said plaintiffs by Collins and Corbin, their attorneys, as to the plea of the said defendants by them first above pleaded, and whereof they have put themselves upon the country do the like.

And as to the said plea of the said defendants by them

secondly above pleaded, the plaintiffs say that they ought not by reason of anything in that plea alleged to be barred from having and maintaining their aforesaid action against the defendants, because they say that said several causes of action in said declaration mentioned, and each and every of them did accrue to the plaintiffs within six years next before the commencement of this suit in manner and form, as the said plaintiff has above thereof complained against the said defendant, and this the plaintiffs pray may be inquired of by the country. And the said plaintiffs do the like.

Therefore, let a jury thereupon come before the Chief Justice, or some other Justice, of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Jersey City, in and for the County of Hudson, on the first Tuesday of September, in the year of our Lord one thousand eight hundred and eighty one, by whom, etc. And the same day is given to parties aforesaid there, etc.

And now, at this day, to wit, the twenty-first day of February, A. D. eighteen hundred and eighty-two, before our said Supreme Court at Trenton, come the said plaintiffs (who sue, etc., as aforesaid) by their attorneys aforesaid, and the Justice before whom, etc., having sent hither his record, had before him in these words, to wit:

"Afterwards, to wit, at the September term of the Hudson County Circuit Court, holden at Jersey City in and for the County of Hudson, before Hon. M. M. Knapp, one of the Justices of the Supreme Court of the State of New Jersey, come the above-named plaintiffs, as well as the above-named defendant by their respective attorneys above mentioned, and both parties waiving a jury and consenting that the issue be tried by the said Justice, without a jury, and the cause having been tried and counsel heard, and having taken time to consider.

"Now, at this December Term of said Court, the said Justices says that the said defendant does owe unto the plaintiffs the full sum of nine hundred and sixty dollars and seventy-six cents upon the award in the plaintiff's declaration mentioned, besides interest thereon, in manner and form, as the said plaintiff hath above in that behalf

alleged, and finds that there is due to the said plaintiff the said sum of nine hundred and sixty dollars and seventy-six cents ($960.76), and assesses the damages of said plaintiffs on the occasion of the detaining the said debt over and above their costs and charges by them about their suit in this behalf expended at eight hundred and eighty dollars, and for those costs and charges six cents.

"Therefore, it is considered that the said plaintiffs (who sue, etc., as aforesaid) do recover against the said defendant their said debt to nine hundred and sixty dollars and seventy-six cents, so as aforesaid found, and also eight hundred and eighty dollars damages which they had sustained by the occasion of the detention of that debt, and also forty dollars and sixty-seven cents for their costs and charges aforesaid by the Court now here adjudged to them and with their assent, which said debt, damages, and costs in the whole amount to one thousand eight hundred and eighty-one dollars and forty-three cents.

"Judgment signed this twenty-first day of February, A. D. eighteen hundred and eighty-two.

"M. BEASLEY,

"*Chief Justice.*"

NEW JERSEY SUPREME COURT—HUDSON.

GEORGE H. SACKETT, (who sues, &c.),

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY.

In Debt.

For Plaintiff, Gilbert Collins.

For Defendants, Leon Abbett and Allan L. McDermott.

On September twelfth, A. D. 1881, this cause was argued at the Hudson Circuit on the facts as proven in the case of *Gardner* vs. *The Mayor and Aldermen of Jersey City*, it being agreed between the counsel of the respective parties that the printed book in the Gardner case shall be taken as the state of the case here.

BILL OF EXCEPTIONS.

And thereupon the counsel for the defendants requested the said Justice to find upon the state of facts agreed upon, that the plaintiffs were not entitled to recover from the defendants the amount of their bill presented, or any part thereof; and his Honor, the Justice, refused so to hold or find, but on the contrary held and found that as a matter of law the plaintiffs were entitled to recover the sum of one thousand eight hundred and eighty dollars and eighty-three cents.

And thereupon the said defendants, by their counsel, pray a bill of exceptions to the aforesaid ruling of said Court, and ask that this, their bill of exceptions, may be sealed and it is sealed accordingly.

M. M. KNAPP, [L. S.]
S. C. J.

OPINION.

KNAPP, *S. J.*—This action was to recover the amount of an award made for lands taken in opening a street.

There are but two questions in the case calling for consideration, and the one primarily discussed by counsel, namely, whether the statute limiting the time within which actions may be brought on simple contract applies to this claim, is of the utmost importance.

The question is not by any means free from difficulty. On the one hand it seems to be settled that where money is expressly ordered paid by statute, the right to be paid rests upon specialty, and is not so limited. The limitation act referred to applies to contracts made by the acts of the parties, and not to those obligations expressly imposed by statute. But when the statute, on the other hand, prescribes a remedy only, and defining the mode by which rights are enforced or wrongs redressed, the limitation may be pleaded in bar. The charter of Jersey City provides for taking lands for public highways and streets, and directs that the value of the lands and damages shall be determined in a definitely ascertained manner, and it directs in express terms that the amount of the value and damages as determined shall be paid by the city to the land owner. The Legislature could have required under the power of eminent domain, that the land proprietor should surrender to the public use such of his lands as were required for public highways, without any compensation. The constitutional provision against condemning private property for public uses expressly excepts lands for public highways, and permits condemnation for such purposes without pay, unless the Legislature see fit to provide for it. Here the Legislature provided for it, and thus created the duty of the city to pay and the right of the owner to be paid. The right rests upon no bargain or promise of the parties, nor does the public duty. In adopting legal methods for the enforcement of these rights the plaintiff may sue upon im-

plied assumpsit, but debt is certainly as appropriate a remedy. The statute does not, nor could it, in such case express the certain sum to be paid to the land owner. But it prescribes a mode for rendering certain the sum to be paid. If the Legislatue should direct the State Treasurer to pay to a person a certain sum or an amount to be ascertained in a certain way, the statute of limitation as to simple contracts could have no applicability against a claim for payment. I cannot find what seems to me to be solid ground for distinguishing this from such a case in that respect. I have, therefore, concluded on this branch of the case that the claim rests upon specialty, and that the issue made on the plea of the statute of limitations is an immaterial one in this case. The following cases cited bear upon this subject :

Angel on Lim., §§ 79–80, and cases in notes.
Hodsden *v.* Harridge, 2 Saund. 66.
Jones *vs.* Pope, 1 Sand. 37 and 38.
Shepherd *v.* Hill, 32 Eng., L. and Eq. 533.
Corm *v.* Goode, 13 C. B. 826.
Smith *v.* Lockwood, 7 Wend. 244.
Ward *v.* Reeder, 2 Har. and McH. (Md.) 157.
Lane *v.* Morris, 10 Georgia 162.
Bullan *vs.* Bell, 1 Mason, C. C. 287.
Cowenhoven *vs.* Cole, 14 V. 117.
Pease *v.* Howard, 14 John. 480; 17 John. 479.
Jordan *v.* Robinson, 15 Maine 167.
Kuth *v.* Estell, 9 Porter (Ala.) 669.

The other question discussed is whether the plaintiffs right to be paid for the land is not absolutely lost by acts of dedication to the uses made of them by the city.

It is out of place here to give any attention to the extent or character of the rights which a purchaser of lands on the line of a street, for which the vendors lands were taken and which is called for as a boundary, acquires by such purchase. We have to do with the public rights, if any, which the public acquired by the alleged acts of dedication. The city had exercised its power to take the lands, and had proceeded so far therein as to preclude the right of with-

drawal before any act which could be considered as a dedication issued from the plaintiff or their grantors. The public right of way was then established, and the easement in the lands secured to the public. After that it seems to me there remained in the owner of the fee nothing to further grant. The city's action was equivalent to an acquisition of the public right of way by grant upon condition of payment of the value of the right to the grantor. After that it was not his to grant anew; at most it was but a recognition of the title which the public had acquired in this land. In this view I assume what I am far from thinking the fact to be, that the owner had performed some act which in law would have bound him as a dedication had the city not already been invested with the title. It seems to me the facts relied upon by defendant to show a dedication that shall be conclusive upon the plaintiff, are far from established. I think the plaintiff on the whole case is entitled to recover.

ASSIGNMENTS OF ERROR.

Afterwards, that is to say, on the tenth day of May, one thousand eight hundred and eighty-two, in the Court of Errors and Appeals, in the last resort in all causes, in the State of New Jersey, come the said, "The Mayor and Aldermen of Jersey City," by Allan L. McDermott, their attorney, and say that in the record and proceedings aforesaid, and also in the matters recited and contained in the bill of exceptions, and in the judgment aforesaid there is manifest error in this, to wit:

Because the Justice, before whom said cause was tried without a jury, held and ruled, as a matter of law, that the defendants in error were entitled to recover from the plaintiff in error the amount of an award made by the Board of Aldermen of the city of Bergen on the twentieth day of July, eighteen hundred and sixty-eight.

There is also manifest error in this, to wit: That the said Justice ruled and held, as a matter of law, that the statute of limitations did not run against the claim of the defendant in error from the time of the making of the award, and that the plea of the statute of limitations could not be maintained.

There is also manifest error in this, to wit: That the said Justice ruled and held, as a matter of law, that the facts shown by the case agreed upon, did not constitute a dedication by the defendants in error.

Therefore, the said plaintiffs in error pray that the judgment aforesaid, by reason of the aforesaid errors, and of other errors appearing in the record and proceedings aforesaid, be reversed, annulled and for nothing holden, and that the said plaintiffs in error may be restored in all things they have lost on occasion of said judgment.

ALLAN L. McDERMOTT,
Attorney.

Joinder in error duly filed.

PRINTED BOOK IN GARDNER CASE.

IN CHANCERY OF NEW JERSEY.

To his Honor THEODORE RUNYON, *Chancellor of the State of New Jersey:*

Humbly complaining showeth unto your Honor your orators, Henry W. Gardner, Lodowick Brayton and Joseph B. Mathewson, all of the city of Providence, in the State of Rhode Island, that

1. Prior to the proceedings hereinafter mentioned, George H. Sackett, of the city of Brooklyn, in the State of New York, was seized in fee simple of the legal title to certain unoccupied lands in that part of Jersey City, formerly the City of Bergen, in the County of Hudson, and State of New Jersey, described as follows, viz: All that certain tract piece or parcel of land and premises situate, lying and being in the town of Bergen, in the County of Hudson, and State of New Jersey, and described as follows, to wit: Beginning at a point in the westerly line of Columbia street, now called Ege avenue, distant seventy-five feet northwesterly from the northwest corner of Ege avenue and Vine street, now called Hart street, said point being also the northwesterly line of the lot known and designated as number eight (8), in block seventeen (17), on the new map of Claremont, Bergen Heights, Hudson County, N. J., and filed in the Clerk's office of Hudson County, N. J., and from said line running northwesterly along the westerly line of Ege avenue one hundred and ninety-nine feet, ten inches, more or less, to the southeasterly line of the lot known and designated as number seventeen (17), on the map aforesaid, from thence running southwesterly along the said line of lot seventeen

aforesaid, ninety-seven feet, ten inches to the line dividing the rear of lots on Ege avenue and Kearney avenue; thence along the said dividing line southeasterly one hundred and ninety-nine feet, ten inches, more or less, to the aforesaid line of lot number eight, (8); thence along the aforesaid line of lot number eight (8), northeasterly one hundred feet to Ege avenue an the place of beginning, being the lots numbered and designated on the map aforesaid as number nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15) and sixteen (16), in block seventeen (17).

2. The said property was really owned by said George H. Sackett and Thomas Davis, Lauriston Towne and George P. Tew, (all of Providence aforesaid), copartners doing business under the firm name and style of Sackett, Davis & Co.," in the said city of Providence, the legal title being vested in the name of one partner only for convenience. The town of Bergen, in the County of Hudson, a municipal corporation of this State, and its legal successor, "The Mayor and Board of Aldermen of the City of Bergen," a municipal corporation of this State, in the years eighteen hundred and sixty-seven and eighteen hundred and sixty-eight, took the necessary lawful measures to extend a public street or highway then existing called Jackson avenue, over and across the said lands their whole depth, a width of sixty feet. On the first day of July, A. D. eighteen hundred and sixty-eight, the Commissioners duly appointed by ordinance to access the damage of the owners of lands to be taken for such extension, made their report is writing whereby they assessed the damage of the said owners of the land hereinbefore particularly described by the name of "Sackett, Davis & Co.," for the taking of so much of said lands as would be taken for such extension, over and above their assessment on the remaining lands of said owners for benefits conferred by the said extension, at the sum of nine hundred and sixty dollars and seventy-six cents, and awarded to them that sum which assessment and award were duly confirmed by the Board of Aldermen of said City of Bergen on the twentieth day of July, A. D. eighteen hundred and sixty-eight, on which day Jackson avenue was by said Board declared so extended as a public street.

4. Soon after the confirmation of such award the city authorities took possession of such attempted extension of Jackson avenue, and laid it out and improved it as a public street, and built a sewer therein.

5. In A. D. eighteen hundred and seventy, the said City of Bergen was consolidated with Jersey City, and on March 31st, A. D. eighteen hundred and seventy-one, an act to reorganize the local government of Jersey City was passed whereby the present municipal corporation called "The Mayor and Aldermen of Jersey City," succeeded to the rights and liabilities of the former town and City of Bergen, and has always since such consolidation used and occupied the portion of said lands which were intended to be taken for such extension of Jackson avenue for a public street and highway and the sewer so built therein as a public sewer.

6. On September 14th, A. D. eighteen hundred and seventy-five, the said George H. Sackett petitioned the Board of Public Works of Jersey City for payment of said award and interest, but payment was not made.

7. On December 5th, A. D. 1878, the said Sackett, Davis & Co., executed and delivered to your orators the deed, a copy whereof is hereunto annexed, marked Schedule A, to which your orators refer for greater certainty, and pray that it may be considered as a part of this their bill of complaint, and your orators accepted and entered on the trust thereby created.

8. On the third day of March, A. D. 1879, the said George H. Sackett and Sarah S., his wife, executed and delivered to your orators the deed, a copy whereof is hereunto annexed, marked Schedule B, to which your orators refer for greater certainty, and pray that it may be considered as a part of this their bill of complaint.

9. On the twenty-first day of March, A. D. 1879, the said Sackett, Davis, Towne and Tew executed and delivered to your orators the deed, a copy whereof is hereunto annexed, marked Schedule C, to which your orators refer for greater certainty, and pray that it may be considered as a part of this their bill of complaint.

10. On July 21st, A. D. eighteen hundred and seventy-nine, your orators presented to the Board of Public Works

of Jersey City the petition, a copy whereof is hereunto annexed, marked Schedule D, to which your orators refer for greater certainty, and pray that it may be considered as a part of this their bill of complaint.

11. No part of said award has ever been paid, and the said municipal corporation, "The Mayor and Aldermen of Jersey City," now refuses to pay the same, alleging for excuse the premises and the following facts: shortly before September 24th, A. D. 1879, your orators desiring to sell said premises and other lands held on the same trust, employed Emmons & Co., Real Estate Agents in Jersey City, to arrange for an auction sale thereof, and directed a map of the property to be made for the purpose of advertisement and sale. A map was made by said agents, and on it Jackson avenue is shown as attempted to be extended by said municipal corporation, which map is hereto annexed, marked Schedule E, and on the day last named the lots shown on said map were put up for sale at public auction and struck off to bidders in the presence of one of your orators, but your orators show that they gave no instructions to show the extension of Jackson avenue on said map, and while it is true that they saw said map, and one of them attended the said sale, they never intended said map as anything more than a convenience for the auction and advertisement thereof; that no deed has been delivered referring to said map, or any map, on which such extension of Jackson avenue is shown or referring to such extension in any way, nor has such map been filed in any public office, that it is not the intention of your orators to file said map nor to execute any deed referring thereto, or referring to any map on which such extension of Jackson avenue is shown or referring to such extension in any way; that your orators have never intended to and do not intend to dedicate any of the land conveyed to them as aforesaid to public use; that your orators have signed no contract of sale, and that such auction sale was not advertised as lands are directed to be advertised for sale by the act of the Legislature of this State, entitled "An act to secure to creditors an equal and just division of the estates of debtors who convey to assignees for the benefit of creditors," (Revision) approved March 27, 1874, and your

orators claim that no lawful excuse exists for the non-payment to them of the said award and interest; your orators, therefore, pray that the said municipal corporation. The Mayor and Aldermen of Jersey City may answer the premises, and that your Honor will enjoin and restrain it from using or occuping any of the land attempted to be taken from the premises hereinbefore particularly described for the extension of Jackson avenue as a public street or highway or for sewerage purposes unless it first pays unto your orators in such short time as your Honor shall fix the said sum of nine hundred and sixty dollars and seventy-six cents, awarded as aforesaid together with lawful interest thereon from July 20th, A. D., 1868, and that your orators may have such other or further relief in the premises as may be agreeable to equity and good concience.

May it please your Honor the premises considered to grant unto your orators not only the State's most gracious writ of injunction issuing out of and under the seal of this Honorable Court enjoining and restraining the said The Mayor and Alderman of Jersey City from using or occupying any of the lands so attempted to be taken from the premises hereinbefore particularly described for the extension of Jackson avenue as a public street or highway or for sewerage purposes, unless it first pays unto your orators in such short time as your Honor shall fix the said sum of nine hundred and sixty dollars and seventy-six cents, awarded as aforesaid with lawful interest thereon from July 20th, A. D. 1868, but also the State's writ of subœna issuing out of and under the seal of this Honorable Court to be directed to the said The Mayor and Aldermen of Jersey City therein and thereby commanding it on a certain day and under a certain penalty therein to be expressed personally to be and appear before your Honor in this Honorable Court then and there to answer the premises and to stand, to abide by and perform such decree in the premises as your Honor shall seem meet and as shall be agreeable to equity and good conscience, and your orators will ever pray, &c.

COLLINS & CORBIN,

Solicitors and of Counsel with Complainants.

STATE OF NEW JERSEY, COUNTY OF HUDSON, *ss.*

Francis S. Emmons, of full age, being duly sworn according to law on his oath says, that he is agent for the complainants in the within bill of complaint, all of which live in Providence, Rhode Island, that the facts, matters and things in the said bill of complaint set forth are true.

F. S. EMMONS.

Subscribed and sworn to before me, at Jersey City, November 10th, A. D. 1879.

THOMAS J. MANN,
Notary Public of New Jersey.

SCHEDULE A.

This indenture made and entered into this fifth day of December, A. D. 1878, by and between Thomas Davis, Lauriston Towne, George P. Tew, all of the city and County of Providence, in the State of Rhode Island, and George H. Sackett, of Brooklyn, in the County of Kings, and State of New York, all copartners doing business in the said city of Providence under the firm name or style of Sackett, Davis & Co., partners, of the first part, and Henry W. Gardner, Lodowick Brayton and Joseph B. Matthewson, all of said Providence, of the second part, witnesseth:

Whereas, The said Sackett, Davis & Co., are indebted and under liability to divers persons in divers sums of money and their assets, although amounting in value to about three times their said indebtedness, cannot immediately be made available for the payment of the same as their said indebtedness shall from time to time mature; and whereas, the said parties of the first part are desirous of equally securing and paying all their said indebtedness and liabilities by the conveyance of all their property to the said parties of the second part in trust, as hereinafter provided, which trust the said parties of the second part do by these presents accept; and whereas, the best interests of the

creditors may require that the jewelry business in which the said Sackett, Davis & Co. have been hitherto engaged should be for some period continued by the said trustees, and by them gradually discontinued and closed out. Now, therefore, the said parties of the first part in consideration of the premises and of the trusts hereinafter set forth, and of the sum of one dollar to them paid by the said parties of the second part, the receipt whereof is acknowledged, do give, grant, bargain, sell, assign, transfer, set over and convey unto the said Gardner, Brayton, and Matthewson, and the survivors and survivor of them, their heirs, executors, administrators and assigns, all and singular the real and personal estate of every name, nature and description, wherever the same may be situated and however described, of which the said parties of the first part, or any or either of them, are seized or possessed, or to which they or any of them are entitled or have any interest in, either as copartners or otherwise, except such property as is exempt from attachment by law, to have and to hold the same, with the appurtenances thereof, unto the said Gardner, Brayton and Matthewson, and the survivors and survivor of them, their heirs, executors, administrators and assigns, upon the following trust, that is to say:

They shall take possession of all the property hereby conveyed, and shall have power to invest, reinvest and change investments of the same, and to manage, act and deal with said property absolutely in their uncontrolled discretion as they may judge for the best interests of all the creditors. They shall have free, full and uncontrolled power in their discretion to carry on the said jewelry business of the said parties of the first part, for such time as the said trustees may deem for the best interests of the creditors, and necessary for the purpose of preventing shrinkage and loss, and of closing out and liquidating the same to the best advantage, and therein to draw, make, sign, indorse and guarantee any and all bills of exchange, promisory notes or other commercial paper, as well in renewal or extension of any commercial paper on which the said parties of the first part are now liable in any form, or for any other existing debt or liability of the said parties of the first part, as for any new in-

debtedness or liabilities which may be contracted in so carrying on said business ; provided, however, that the foregoing authority to carry on said jewelry business for the purposes above declared shall forthwith cease and determine, whenever a majority in amount of the creditors of the said parties of the first part shall so direct the said trustees. They shall have free, full and uncontrolled power in their discretion to sell any and all of the real property hereby conveyed, and to sign, seal, acknowledge and deliver any deed or deeds, conveyance or conveyances, of such real property from time to time, as they may judge best, and so as to pass the fee thereof, and with or without warranties, as they may deem best, and in like manner to lease the same upon such terms as they may seem fit, or to mortgage any and all of said real property ; and to sell and transfer, pledge or mortgage any and all of the personal property hereby conveyed, to settle and compound for any debt or other choses in action held in trust under this indenture, and to give good and sufficient receipts, acquittances and discharges for the same; and the said parties of the first part hereby declare that the receipt of the said trustees for any rent, interest, dividends or other moneys whatsoever shall be a full acquittance and discharge of the same, and the said parties of the first part hereby order and direct that no purchaser, mortgagee or pledge of any real or personal property held in trust under this indenture or other person dealing with or paying money to said trustees, shall be under any obligation to enquire as to the necessity, regularity or propriety of any sale, mortgage, pledge or other act or transaction whatever made, done or entered into by said trustees, or to see to the application of any purchase money or other moneys raised or realized from any such sale, mortgage, pledge or other act or transaction, or any moneys paid to said trustees, or be bound or liable for the malapplication, misapplication or non-application thereof, and the said parties of the first part hereby direct the said trustees, after paying all taxes rnd assessments upon said trust properties, and for all repairs and improvements, they may make or cause to be made of or upon the same, and all expenses of managing said property, including the premiums

for such insurance upon the insurable property hereby conveyed as the said trustees may keep and maintain, and after reserving to themselves a reasonable compensation for their services hereunder, and paying in full the wages due from the said parties of the first part to all persons who have performed labor within six months previous to the date hereof, not exceeding one hundred dollars to any one person, to retire all of the said indebtedness and liabilities of the said parties of the first part, including such as may be contracted by said trustees in carrying on the said jewelry business or otherwise in carrying out the provisions of this indenture, as rapidly as in their opinion it can judiciously be done, out of the profits, income and revenue, of the said jewelry business, and any investments of said trust property, and by the sale, pledge or mortgage of such of the real and personal property held in trust under this deed, as they may think desirable, and in so doing to make such dividends or *pro rata* payments on account of all said indebtedness and liabilities from time to time, as the said trustees may deem prudent and for the best interest of all the creditors, and as rapidly as in the opinion of said trustees it can judiciously be done, to convert the whole of the property hereby conveyed, or so much thereof as may be necessary into money, and apply and appropriate the same to the payment in full, if sufficient, otherwise ratably, of all claims and demands against the said parties of the first part, accounting to them, their heirs, executors, administrators and assigns, for any surplus that may remain after applying the same to the purposes aforesaid.

It being the true intent and meaning hereof to convey all of the property and estate of the said parties of the first part to the said parties of the second part, for the equal benefit of all the creditors of the said parties of the first part in proportion to their respective claims (excepting as a preference is hereinbefore given to the claims for labor above described), and that as soon as may be, having regard to the best interests of the creditors and avoiding needless sacrifice of the property hereby conveyed (in order that, if possible, all of said claims may be paid in full), the said trustees shall convert said propeety or so much thereof as

may be necessary into money, and apply the same to the equal payment of all of said claims, without preference, other than the wages of labor aforementioned, the said parties of the first part not intending, however, by this declaration to limit or restrict any of the powers hereinbefore given to said trustees, and which they may deem it for the best interests of the creditors to exercise, and it is hereby further declared that in case any one or two of the trustees hereinbefore mentioned shall die, resign or become incapable of acting as such trustee or trustees, the said trust property and the trusts and powers herein declared and conferred shall thereupon and thereby vest in, and the trusts and powers thenceforth be executed and exercised by the survivor or survivors of said trustees.

In witness whereof the parties to this indenture have hereunto set their hands and seals, the day and year above mentioned.

GEORGE H. SACKETT, [L. S.]
THOMAS DAVIS, [L. S.]
LAURISTON TOWNE, [L. S.]
GEORGE P. TEW, [L. S.]
HENRY W. GARDNER, [L. S.]
LODOWICK BRAYTON, [L. S.]
J. B. MATTHEWSON, [L. S.]

In the presence of George Fuller as to George H. Sackett, Thomas Davis, Lauriston Towne and George P. Tew; and in presence of C. H. Parkhurst as to H. W. Gardner, L. Brayton and J. B. Matthewson.

SCHEDULE B.

Know all men by these presents, That whereas by an indenture made and entered into on the fifth day of December, A. D. 1878, by and between Thomas Davis, Lauriston Towne, George P. Tew, all of the city and County of Providence, in the State of Rhode Island, and George H. Sackett, of Brooklyn, in the County of Kings, and State of New York, all co-partners doing business in the said city of

Providence under the firm name or style of Sackett, Davis & Co., parties of the first part, and Henry W. Gardner, Lodowick Brayton and Joseph B. Matthewson, all of said Providence, of the second part, the said Sackett, Davis & Co., did grant, assign and convey to the said Gardner, Brayton and Matthewson, and the survivors and survivor of them, their heirs and assigns all and singular the property, real and personal, of the said Sackett, Davis & Co., and of each of the aforenamed members of said firm, not exempt by law from attachment, upon trust as therein specified for the equal benefit of the creditors of the said firm of Sackett, Davis & Co., as by the said indenture of trust, reference being thereto had, will more fully and at large appear.

And whereas certain parcels of the real property of the said Sackett, Davis & Co., have been held in trust for said firm by individual members thereof, from whom, for the purpose of assuming the title thereto, in the said Gardner, Brayton and Matthewson, trustees, as aforesaid, it is desired to take conveyances thereof to the said trustees.

Now therefore I, the said George H. Sackett, in consideration of the premises, and of the sum of one dollar to me paid by the said Henry W. Gardner, Lodowick Brayton and Joseph B. Matthewson, the receipt whereof is acknowledged, do grant, bargain, sell and convey unto the said Henry W. Gardner, Lodowick Brayton and Joseph B. Matthewson, and the survivors and survivor of them, their heirs and assigns, all that certain lot, piece or parcel of land situate, lying and being in the town of Bergen, in the County of Hudson, and State of New Jersey, and described as follows, to wit:

Beginning at the northeasterly corner of Monticello avenue and the Newark plank road, thence running along the easterly line of the Newark plank road southeasterly ninety-one feet five inches, more or less, thence northeasterly eighty-four feet seven inches, more or less, to the westerly line of Communipaw avenue, thence northwesterly along the westerly line of said Communipaw avenue one hundred and six feet four inches, more or less, to the corner of Monticello avenue, thence southwesterly along the southerly line of Monticello avenue ninety-five feet, more or less, to the

place of beginning, being the lots known and designated as numbers sixteen (16), fifteen (15), fourteen (14), and three feet of lot number thirteen (13), as laid out on a map of property of Jeremiah Jackson, formerly in the town of Bergen, Hudson County, New Jersey, and part of the second tract of land conveyed to the said George H. Sackett by John Raymond and wife by deed dated May 26th, A. D. 1858, and recorded in Liber 67 of Deeds of Hudson County, pages 185, &c., and also all that certain tract, piece or parcel of land situate, lying and being in the town of Bergen, in the County of Hudson, and State of New Jersey, and described as follows, to wit: Beginning at a point in the westerly line of Columbia street, now called Ege avenue, distant seventy-five feet northwesterly from the northwest corner of Ege avenue and Vine, now called Hart street, said point being also the northwesterly line of the lot known and designated as number eight, in block seventeen, on the new map of Claremont, Bergen Heights, Hudson County, N. J., and filed in the Clerk's office of Hudson County, N. J., and from said line running northwesterly along the westerly line of Ege avenue one hundred and ninety-nine feet ten inches, more or less, to the southeasterly line of the lot known and designated as number seventeen on the map aforesaid, from thence running southwesterly along the said line of lot seventeen aforesaid ninety-seven feet two inches to the line dividing the rear of lots on Ege avenue and Kearney avenue, thence along the said dividing line southeasterly one hundred and ninety-nine feet ten inches, more or less, to the aforesaid line of lot number eight, thence along the aforesaid line of lot number eight northeasterly one hundred feet to Ege avenue and the place of beginning, being the lots numbered and designated on the map, aforesaid, as number nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), in block seventeen (17), excepting therefrom so much of the said lots and premises as have been taken by the city of Jersey City for the opening of Jackson avenue.

And also all that certain tract, piece or parcel of land situate, lying and being in said town of Bergen, and described as follows, to wit: Beginning at the northeasterly corner of

Kearney avenue and Vine, now called Hart street, thence running northeasterly along the northerly line of Hart street one hundred feet, thence northwesterly at right angles with Hart street one hundred and twenty feet, thence southwesterly and parallel with said Hart street one hundred feet to the easterly line of Kearney avenue, thence southeasterly along said line of Kearney avenue one hundred and twenty feet to the place of beginning, being the lots known and designated on the new map of Claremont, Bergen Heights, Hudson County, N. J., as number one (1), two (2), three (3), four (4), and five (5), in block seventeen (17). The two tracks of land last above described being part of the premises conveyed to the said George H. Sackett by Isaac S. Holbrook, by deed dated May 24th, A. D. 1858, and recorded in Liber 67 of Deeds for Hudson County, pages 188, &c., and also all that certain tract, piece or parcel of land situate lying and being in said town of Bergen, and described as follows, to wit: Beginning at a point in the westerly line of Kearney avenue, distant southeasterly fifty feet, more or less, from the southwest corner of Jackson avenue and Kearney avenue, said point being also the northerly line of the lot known as number thirty on the aforementioned new map of Claremont, Bergen Heights, Hudson County, N. J., thence running along said westerly line of Kearney avenue southeasterly one hundred and seventy feet to the southerly line of the lot numbered and known as lot number twenty-four, of block number thirteen (13), as designated on said map, thence running southwesterly along the said southerly line of lot number twenty-four one hundred and four feet three inches, thence northwesterly along the line dividing the rear of lots on Kearney avenue and Clifton, now Orient avenue, one hundred and seventy feet to the northerly line of lot number thirty on map aforesaid, thence along said northerly line of lot thirty, ninety-three feet five inches to Kearney avenue and the place of beginning, being lots known and designated as number twenty four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), in block numbered thirteen (13), on the aforesaid map, and being part of the premises conveyed to the said George

H. Sackett by the said Isaac S. Holbrook, by the aforementioned deed dated May 24th, A. D. 1858, and recorded in Liber 67 of Deeds for Hudson County, pages 188 &c., and also all those thirty-one lots, pieces or parcels of land and premises hereinafter more particularly described, situate, lying and being in East Newark, formerly in the township of Lodi, County of Bergen, but now in the township of Harrison, County of Hudson and State of New Jersey, and being a part and parcel of certain premises formerly owned by the trustees of the East Newark Company, and the premises hereby intended to be conveyed, may be located on a map or chart of East Newark, entitled "Map of lots in East Newark for Hiram Gilbert," now on file in the Clerk's office of the County of Hudson, and may be known and described as follows, namely: Twenty of the said lots are designated on block numbered thirteen (13) on the map above referred to, and are therein distinguished by the numbers nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), and twenty-eight (28), and the said twenty lots collectively are b unded as follows, viz.: Beginning at the southwest corner formed by the intersection of Seventh or Gilbert street with Essex street, and from thence running westerly along the southerly side of said Essex street two hundred and fifty feet, thence southerly at right angles with Essex street two hundred feet to the northerly side of Railroad avenue, thence easterly along the northerly side of said Railroad avenue, two hundred and fifty feet to the corner formed by the intersection of Railroad avenue with Seventh or Gilbert street, thence northerly along the westerly side of Seventh or Gilbert street two hundred feet to the place of beginning. Two others of said lots are designated on block numbered five (5), on the said map above referred to as lots numbers six (6) and seven (7), and together are bounded as follows, viz.: Commencing at a point on the northerly side of Railroad avenue, one hundred and twenty-five feet distant in an easterly direction from the northeast corner of Second street

and Railroad avenue, from thence running northerly at right angles with Railroad avenue one hundred feet; thence easterly parallel with said Railroad avenue fifty feet; thence southerly at right angles with and running to Railroad avenue one hundred feet; thence westerly along the northerly side of said Railroad avenue fifty feet to the place of beginning, and the remaining nine of the said lots are designated on block numbered sixteen (16) on the map before mentioned, and are thereon distinguished by the numbers twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty two (32), thirty-three (33), thirty-four (34), thirty-five (35) and thirty-six (36), and collectively are bounded as follows, viz: Beginning at the southeast corner of First and Bergen streets, from thence running easterly along the southerly side of Bergen street two hundred and twenty-five feet; thence southerly at right angles with said Bergen street and parallel with First street one hundred feet; thence westerly parallel with Bergen street two hundred and twenty-five feet to the easterly side of First street; thence northerly along the easterly side of First street one hundred feet to the place of beginning.

And also all those six lots of land situate in the township of Bergen, in the County of Hudson and State of New Jersey, at a place called Sherwood, which on a "map of Sherwood, Hudson County, N. J., surveyed and laid out by Clerk & Bacot, City Surveyors, 13 Montgomery street, Jersey City," and filed in the Clerk's office of Hudson County, December 4, 1857, are known and distinguished as lots numbered fifty-five, (55), fifty-seven (57) and fifty-nine (59), fronting on Oak street and lying on the southerly side thereof, and lots numbered fifty-four (54), fifty-six, (56) and fifty-eight (58), lying on the northerly side of and fronting on Front street, all of which lie contiguous and are bounded as follows: Beginning on the southerly side of Oak street, which runs almost due northwest and southeast, at a point distant two hundred and twenty-five feet, in a northwesterly direction from the most westerly or southwesterly corner of Jackson avenue and Oak street; thence southwesterly at right angles with Oak street two hundred feet to Front street; thence northwesterly along Front street seventy-five

feet; thence northeasterly at right angles with Front and Oak streets two hundred feet to Oak street; thence southeasterly along the said southerly line of Oak street seventy-five feet to the place of beginning, to have and to hold the same with the appurtenances unto them the said Henry W. Gardner, Lodowick Brayton and Joseph B. Matthewson, and the survivors and survivor of them, their heirs and assigns, upon the same trusts as are set forth and declared in the indenture between the said Sackett, Davis & Co., and the said trustees hereinbefore mentioned and referred to, and I, the said George H. Sackett, for myself, my heirs, executors and administrators, do covenant with the said Gardner, Brayton and Matthewson, their heirs and assigns, that I will warrant and defend the aforedescribed premises to them, the said Gardner, Brayton and Matthewson, their heirs and assigns forever against the lawful claims and demands of all persons claiming by, through or under me, and I, Sarah S. Sackett, for and in consideration of the premises do hereby remise, release and forever quit claim unto them, the said Gardner, Brayton and Matthewson, and to the survivors and survivor of them, their heirs and assigns forever, all my right of dower in and to the hereinbefore granted premises.

In witness whereof we have hereunto set our hands and seals the third day of March, in the year one thousand eight hundred and seventy-nine (A. D. 1879).

GEORGE H. SACKETT, [L. S.]
SARAH. S. SACKETT. [L. S.]

Signed, sealed and delivered in the presence of W. H. Macomber.

SCHEDULE C.

THOMAS DAVIS ET AL., PARTNERS AS SACKETT, DAVIS & CO., *to* HENRY W. GARDNER ET AL., *Trustees.*	*Deed of Assignment Dated March* 21*st*, *A. D.*, 1879.

Know all men by these presents, That we, Thomas Davis, Lauriston Towne, George P. Tew, all of the city and County of Providence, in the State of Rhode Island, and George H. Sackett, of Brooklyn, in the County of Kings, and State of New York, all copartners doing business in the said city of Providence under the firm name or style of Sackett, Davis & Co., for and in consideration of the sum of one dollar, to us paid by Henry W. Gardner, Lodowick Brayton and Joseph B. Matthewson, all of said city of Providence, the receipt whereof is acknowledged, do hereby grant, bargain, sell, assign, transfer, set over and convey unto the said Henry W. Gardner, Lodowick Brayton and Joseph B. Matthewson, and the survivors and survivor of them, their heirs, executors, administrators and assigns, all and singular the real and personal estate of every nature and description wherein the same may be situated and however described, of which we are as partners as aforesaid are seized or possessed, or to which as copartners as aforesaid we are entitled or in which as such copartners we have any interest, excepting such property as is exempt from attachment by law, to have and to hold the same with the appurtenances thereof unto them, the said Henry W. Gardner, Lodowick Brayton and Joseph B. Matthewson, and the

survivors and survivor of them, their heirs, executors, administrators and assigns forever, in trust nevertheless for the equal benefit of all the creditors of said copartnership in proportion to their respective claims.

In witness whereof we have hereunto set our hands and seals the twenty-first day of March, in the year eighteen hundred and seventy-nine, (A. D. 1879).

GEO. H. SACKETT, [L.S.]
THOMAS DAVIS, [L.S.]
GEORGE P. TEW, [L.S.]
LAURISTON TOWNE, [L.S.]

In presence of George Fuller.

SCHEDULE D.

To the Honorable the Board of Public Works of Jersey City :

GENTLEMEN :—The undersigned would respectfully represent that he is the duly authorized agent of the trustees of the estate of George H. Sackett ; that on the 14th of September, 1875, Mr. Sackett petitioned your Board for the payment of $960\frac{76}{100}$, with interest, being the amount of an award for lands taken in 1868 for the extension of Jackson avenue, which was referred to the Corporation Counsel, (Manual 1875–6, page 56) ; November 29th, 1875, the Corporation Counsel asked the Board to appoint a committee to make an investigation and report the facts in writing relating to the said claim (page 77) ; December 14th, 1875, the Committee on Streets and Sewers, to whom had been referred the claim of Mr. Sackett, made a report showing that lands belonging to Mr. Sackett had been taken, and the reason why the award had not been paid was that the matter of the said extension of Jackson avenue had been before the Court, etc., (page 80), which report was referred to the Corporation Counsel ; on February 5th, 1876, Mr. Wm. A. Lewis, Corporation Counsel, submitted an opinion to your Board, in which he advised the payment of the

claim, without interest, also that the title to the lands taken be referred to the Corporation Attorney for examination (page 96); at a meeting of your Board held February 8th, 1876, a resolution was adopted instructing the Corporation Attorney to make the necessary search against the property in question (page 77), but I have been unable to find any report from that officer from February 8th, 1876, to the present time. I would respectfully call your attention to the recent decision of the Chancellor in the case of Fitzpatrick *vs.* The Mayor and Aldermen of Jersey City (3 Stewart, 97), in which it was held that land owners are entitled to the payment of the awards made them for lands taken for the opening of Jackson avenue, together with legal interest thereon from July 20th, 1868, and your petitioner would respectfully ask to have a warrant drawn for the said amount of $960 $\frac{76}{100}$ and interest, in accordance with the above decision.

Very respectfully,

FRANCIS S. EMMONS,

Agent for the Trustees of the Estate of George H. Sackett.

Jersey City, July 21st, 1879.

Schedule E is a map.

ANSWER.

The answer of the defendants to the bill of complaint of Henry W. Gardner, Lodowick Brayton and Joseph B Matthewson, complainants. These defendants now and at all times hereafter saving and reserving to themselves all and all manner of benefit and advantage of exception or otherwise to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto and to so much thereof as these defendants are advised it is material or necessarry for them to make answer unto, answering say :

I. They have no knowledge or information sufficient to form a belief as to whether George H. Sackett, of the city of Brooklyn, in the State of New York, was at the times mentioned in the said bill of complaint, seized in fee simple of the legal title to certain unoccupied lands in that part of Jersey City, formerly the City of Bergen, County of Hudson, State of New Jersey, described as lots 9, 10, 11, 12, 13, 14, 15 and 16, in block 17, new map of Claremont, Bergen Heights, Hudson County, N. J., and they leave the complainants to make such proof thereof as they are advised.

II. They have no knowledge or information sufficient to form a belief as to whether or not said property was really owned by George H. Sackett and Thomas Davis, Lauriston Towne and George P. Tew, all of Providence, Rhode Island, co-partners, doing business under the firm name and style of Sackett, Davis & Co., in the said city of Providence, or whether the legal title to said lands was vested in the name of one party only, for convenience, and they leave the complainants to make such proof thereof as they are advised.

III. They admit the *third* allegation in the bill of complaint.

IV. They admit the *fourth* allegation in the bill of complaint.

V. They admit the *fifth* allegation in the bill of complaint.

VI. They admit the *sixth* allegation in the bill of complaint, and pray reference to the petition therein referred to, the same as if annexed hereto, as a part of this answer.

VII. They have no knowledge or information sufficient to form a belief as to whether or not on the 5th of September, 1878, the said Sackett, Davis, Towne and Tew executed and delivered the deed, copy of which is annexed to the bill of complaint as Schedule A, or as to whether or not said parties accepted and entered into the trust created by said deed, and they leave the complainants to make such proof thereof as they are advised.

VIII. They have no knowledge or information sufficient to form a belief as to whether or not on the 3d of March, 1879, said George H. Sackett and Sarah, his wife, executed and delivered to the complainants the deed, a copy of which is annexed to the bill of complaint as Schedule B, and they leave the complainants to make such proof thereof as they may be advised. The defendants desire to call particular attention to the following words in the deed set forth in Schedule B, in which, after conveyance of the land, are these words, "excepting therefrom so much of the said lots and premises as has been taken by the city of Jersey City for the opening of Jackson avenue," which words, together with the delivery of the deed, if as alleged by the complainants, and the subsequent mapping out of the premises showing Jackson avenue as an open avenue and the sale thereof, as hereinafter referred to by the complainants, these defendants claim to be a dedication of that portion of Jackson avenue in question to the public as a street.

IX. They have no knowledge or information sufficient to form a belief as to whether or not on the 21st of March, 1879, said Sackett, Davis, Towne and Tew executed and delivered to the complainants a deed, a copy of which is annexed to the bill of complaint as Schedule C.

X. They admit that July 21st, 1879, the complainants presented to the Board of Public Works the petition, a

copy of which is annexed to the bill of complaint as Schedule D.

XI. They admit that no part of said award has ever been paid, and that the defendants now refuse to pay the same, but they deny that they refuse to pay the same for the excuses set out in paragraph XI of the bill of complaint, save and except as the same may hereinafter be admitted and stated, and the defendants allege that the reason why the award has not been paid is that the same is barred by the statute of limitations, over six years having elapsed since the cause of action accrued, which would enable the owners of the property to have recovered said award, and the defendants further allege that they have been in exclusive and undisturbed possession of said premises since the year 1868, either by themselves or by the City of Bergen, which latter city opened said street in that year, and these defendants allege that they are informed and believe that previous to September 24th, 1879, the complainants desired to sell the premises described in the bill of complaint and other lands held by them, and that they employed Emmons & Co., real estate agents in Jersey City, to take charge of and make said sale, and also, that they did employ Soper & Blaw, City Surveyors, to make a map of the premises, dividing the same into building lots, with streets and avenues thereon, and that said surveyors did make said map, and place thereon statements, and delineated streets and lots thereon by direction of the complainants, all of which is particularly shown on a printed copy of said map, which was caused to be made on the 24th of September, 1879, and printed, and which was used at said sale, a copy of which map is hereto annexed and made a part of this answer. That the sale was made by Lewis E. Wood, auctioneer, by reference to said map, and that the premises in question are situated on Jackson avenue, being that portion which lies between the sides of lots 11 and 14, as said lots are shown, fronting on Ege avenue; and said map says as to Jackson avenue, Jackson avenue sewered, and as to Ege avenue, graded, flagged and sewered; the map also says that the property is located within two minutes' walk of the Jackson avenue station; the map also says, that this is a sale of

valuable building lots ; also that the sale will take place on the corner of Jackson and Kearney avenues ; and the lots on said map, and particularly lots 11 and 14 aforesaid, were sold with reference to said map, and by said map, and the purchasers so purchased the same and are entitled to a deed for said lots. That after said sale the Corporation Counsel of Jersey City claimed that Jackson avenue was dedicated by said sale made by said map, and that defendants are informed and believe that this claim was communicated to the complainants, and that this claim and no other reason, has restrained the complainants from the delivery of deeds made in accordance with said map, and in accordance with said sale, and these defendants claim that the making of said map, as shown in Exhibit, Schedule E, of the bill of complaint and the sale of the lots by said map was in itself a dedication of the streets shown thereon to the public and particularly all such portions of such streets as are shown on said map ; that the knowledge of one of the complainants of all matters relating to said map and said sale, and his presence at said sale, estop the complainants from alleging that there was no dedication intended by the said sale and by said map, and these defendants aver that a Court of Equity would compel the complainants upon the bill filed for specific performance, to make a deed of said lots which would show Jackson street, and that especially would they compel the execution of such a deed as would dedicate Jackson avenue after the sale by the complainants of lots 11 and 14, as shown on said map with Jackson avenue running between them. These defendants aver that whether the complainants signed a contract of sale or not, or whether the sale was advertised in accordance with "An act to secure to creditors an equal and just division of the estates of debtors who convey to assignees for the benefit of creditors," (Revision approved March 27th, 1874,) or not, in no way affects the question of the dedication of these streets by said city. They aver and insist that such a sale under such circumstances is a dedication of the streets shown on said map, which dedication once having been made by this act cannot be recalled, and they insist and aver that whatever claim, if any, the complainants had after

said sale was a claim for the amount of the award, and not for the land, and that the statute of limitations was a bar to this claim for the award.

XII. These defendants submit that all and every the matter in said complainants' bill mentioned and complained of, are matters that can be tried and determined at law; that if the complainants are entitled to the land on the ground that the award has not been paid, and that the city was not entitled to enter into possession until the award had been paid, then they can bring an action of ejectment against the city, and the defence can be alleged therein that it was dedicated to the public. If the complainants desire to secure the award, they can bring an action for the amount of the award and interest, waving their claim for the land, and to this the defendants can plead the statute of limitations. These defendants aver and insist that the attempt to bring this case into a Court of Equity is to avoid the defences which at law defendants could interpose to the claim of the complainants. And the defendants aver and insist that no ground of equitable jurisdiction is shown in the complaint to give this Court authority to act.

XIII. These defendants further submit, that the Court cannot grant a writ of injunction to restrain the defendants from using the land in question, because they and the City of Bergen have been in undisturbed and undisputed possession thereof ever since the year 1868; that a public sewer has been put in said street and paid for by the assessment upon the property owners living on the line of Jackson avenue; that it would be inequitable and unjust to all other persons interested in Jackson avenue to restrain and enjoin the use of that avenue by the public. These defendants aver and insist, that to make such an injunction dependent upon the payment of the amount of the award and interest, would be in effect to abrogate the statute of limitations, of which the defendants now have a right to avail themselves as against this claim. And these defendants hope that they will have the same benefit of the defences set forth in this paragraph of the answer as though they had demurred to the complainants' said bill.

These defendants deny that there is any other matter,

cause or thing in the said complainants' said bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, traversed and avoided or denied is true, to the knowledge or belief of these defendants, and which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HENRY J. HOPPER,
Mayor of Jersey City.

[L. S.]

JOHN E. SCOTT,
City Clerk.

ALLAN L. McDERMOTT,
Solicitor of Defendants.
LEON ABBETT,
Of Counsel with Defendants.

STATE OF NEW JERSEY, COUNTY OF HUDSON, *ss.*

The answer of the defendants, The Mayor and Aldermen of Jersey City, was taken this 22d day of November, in the year 1879, before me under the corporate seal of the said corporation, as by their said seal hereto affixed appears.

RANDOLPH PARMLY,
Master in Chancery of N. J.

IN CHANCERY OF NEW JERSEY.

Between

HENRY W. GARDNER AND OTHERS,
Complainants,

and

THE MAYOR AND ALDERMEN OF JERSEY CITY,
Defendants.

On Bill, &c.,

Stipulation.

It is hereby mutually agreed between counsel that the depositions and proofs on the part of the complainants in the above entitled suit be taken before Willard C. Fisk, Notary Public of New Jersey, at the office of Abbett & Fuller, No. 229 Broadway, in the city of New York, on Wednesday, the 28th day of January, 1880, at 2:30 o'clock in the afternoon of that day.

COLLINS & CORBIN,
Counsel for Complainants.

LEON ABBETT,
Counsel for Defendants.

Dated January 17, 1880.

IN CHANCERY OF NEW JERSEY.

Between

HENRY W. GARDNER AND OTHERS,
Complainants,
and
THE MAYOR AND ALDERMEN OF JERSEY CITY,
Defendants.

On Bill.

Deposition on the part of complainants taken this 28th day of January, 1880, before me, Williard C. Fisk, in the city of New York, in pursuance of the annexed consent, in presence of Charles L. Corbin, of counsel for complainants, and Leon Abbett, counsel for defendants.

WILLIARD C. FISK,
Notary Public, N. J.

George H. Sackett, a witness produced on the part of the complainants, being duly sworn on his oath, says:

Q. (By Mr. Corbin). You are one of the firm of Sackett, Davis & Co.?

A. I am.

Q. Who are the other members of the firm?

A. Thomas Davis, George P. Tew, Lauriston Towne.

Q. Did you have standing in your name certain property in Jersey City?

A. I did.

Q. Is that the deed by which you got title? (Showing witness a paper.)

A. It is.

Counsel for complainants offers in evidence deed marked Exhibit C 1.

Q. By whom was that property paid for?
A. By the firm of Sackett, Davis & Co.
Q. It was bought for their benefit?
A. It was.
Q. Why was the title taken in your name?
A. As a matter of convenience in reconveying.
Q. Did you also take title to other property in Bergen about the same time?
A. I did, about the same time.
Q. Did that stand in the same situation!
A. Exactly.
Q. Did you own any of it in your own right?
A. No.
Q. It was all held for the benefit of the firm?
A. Yes, sir.
Q. Is that the property which you afterwards conveyed to Gardner and the other trustees?
A. It is.
Q. What was the first deed you made to the trustees, who signed it?
A. It was a deed of trust signed by all the partners of the firm.

Counsel for complainants offers in evidence deed made by George H. Sackett and the other members of the firm of Sackett, Davis & Co., to the complainants, Henry W. Gardner, Lodowick Brayton and Joseph B. Matthewson, Trustees, dated December 5, 1878, and recorded in Hudson County Register's office, in book of deeds, page , a copy of which deed is annexed to the bill of complaint and marked Schedule A.

Q. Did the trustees accept that trust?
A. They did.
Q. They took charge of the property and acted under it?
A. They did.

Q. They still have possession of the property mentioned in that deed?

A. Yes.

Q. That covered property in several places, did it not?

A. Yes.

Counsel for complainants offers in evidence deed made by George H. Sackett and wife to the said trustees, dated March 3, 1879, and recorded in Hudson County Registrar's office, in book 333 of deeds, pages 214, &c., marked Exhibit C 2.

Q. Why did you make that deed?

A. To strengthen and confirm the title in the first deed.

Q. Who asked you to make it?

A. Either some of the members of the firm or our counsel.

Q. Your wife did not sign the first deed, did she?

A. No.

Q. You joined with her in making this deed?

A. I did.

Q. When you signed this deed was your attention called to a clause in the deed excepting lands taken by the city from Jackson avenue?

Objected to as an attempt to vary or change by parole testimony this deed.

A. It was not.

Q. Did you read the deed?

Same objection.

A. Not fully.

Q. Was that deed made with any intention of dedicating Jackson avenue?

Same objection.

A. Not at all.

Q. At the time you made that deed did you claim that you had any title in that land?

Same objection.

A. No, sir; except as a part of the firm.

Q. You had already conveyed your interest as a partner to the trustees?

A. Yes.

Q. And at the time you made this last deed you claimed no interest in it whatever?

A. None.

Counsel for complainants offers in evidence general assignment for the benefit of creditors made by the said firm of Sackett, Davis & Co., to the said Gardner, Brayton and Matthewson, dated March 21, 1879, and recorded in Hudson County Register's office in book 333, page 316, marked Exhibit C 3.

Cross-examination by Mr. Abbett:

Q. Mr. Sackett, did you own any property in the old town or city of Bergen except that which you say belonged to the firm of Sackett, Davis & Co.?

A. No, sir; I did not.

Q. You never purchased any property in Jersey City or in the old town of Bergen for yourself?

A. I think not.

Q. What was the business of the firm of Sackett, Davis & Co.?

A. Manufacturing jewelers.

Q. How did the firm come to get this property in Bergen?

A. It was bought in the regular course of business.

Q. For the business of the firm as manufacturing jewelers?

A. Yes, sir.

Q. How did it come to be dealing in real estate?

A. It was taken in trade for surplus stock.

Q. You bought it out of surplus stock and took this property in trade?

A. No, we sold some of our own and took the property in exchange for it.

Q. Then all the property which was in Bergen, in your name, was property which was paid for by the firm assets being conveyed to the party that gave you the property?

A. Yes, sir.

Q. You used none of your own money then in making this purchase of property in Bergen?

A. None.

Q. How does the title come to be taken in your name instead of the firm?

A. It was thought to be more convenient in case of selling the property and to convey it to have it in the name of one party.

Q. Did any of the partners live in New Jersey?

A. No, sir.

Q. Was any of this property sold before the firm became insolvent?

A. Oh, yes.

Q. And the proceeds of these sales, what became of them?

A. They went to the firm.

Q. You retained no part of them for your own personal use?

A. None at all.

Q. Do you know from whom you bought the property in question, for which the award was made for the extensions of Jackson avenue?

A. No.

Q. The bill of complaint states that the tracts of land which embrace the property for which the award was made for the opening of Jackson avenue came through a deed from Isaac L. Holbrook to you, dated May 34, 1858, and recorded in liber 67 of deeds, Hudson County, page 188. Is this the deed, as you understand it, that conveyed that property to you?

A. I can only say that it was one of two deeds, one from Barrows and one Holbrook. I could tell by referring to memorandums of old matters.

Q. The bill states that it is the Holbrook deed. According to your best recollection is that the deed?

A. According to my best recollection it is.

Q. And the property that came under the Holbrook deed was bought, you say, with money or property belonging to the firm of Sackett, Davis & Co.?

A. Yes, sir.

Q. And not with any money that belonged to you?

A. Not at all.

Q. You had no money of any kind invested in that purchase?

A. No, sir.

Q. There was no assignment for the benefit of creditors, was there, prior to this one of March 21, 1879?

A. No assignment; nothing but the trust deed.

Q. The only trust deed that you made, as I understand, was December 5, 1878?

A. Yes; that's the only deed.

Q. What do you know about the acceptance of the trust by Gardner, Brayton and Matthewson?

A. I know that they took possession of all our property and business, and have had charge of it since.

Q. Since what date?

A. Since December 5, 1878.

Q. Since that date the firm of Sackett, Davis & Co. have had no possession whatever of the assets of the firm?

A. None.

Q. And it has all been in the hands of these trustees?

A. Yes, sir.

Q. Why was not this award asked for previously by the firm? Why did they not apply for it?

A. They did.

Q. Was it in writing—the applicatien?

A. I don't know about that. It had been made in some form and some sort of a settlement with some agent of the city or some attorney made some years ago. We supposed it was settled and that the money would come in due time.

Q. Is the application for the money which you refer to as being made by you, the one that is referred to in the bill and answer as being made September 14, 1875. Is that the one?

A. I suppose it is.

Q. Do you know of any other except that one?

A. Years before that Garret Vreeland acted as our agent and managed the matter for us. I don't know what steps he took. He was our agent at the time of the opening of the road, and made some sort of a report to us in regard to the settlement with the city.

Q. The only one you know of, of your own knowledge, is this one of 1875?

A. Yes, sir.

Re-direct by Mr. Corbin:

Q. Where do your partners live?

A. In Providence.

Q. Where do you live?

A. In Brooklyn.

Q. Was that so at the time you bought this property?

A. We have not changed our residences since that time.

Q. Where did these persons live?

A. In Providence.

Q. That is where your factory was, where it is now?

A. Yes, and where it is now.

Q. That is where the most important business was carried on?

A. Yes.

Q. You sell the property here?

A. Yes, we sell the property here.

Q. You had charge of it?

A. I had charge of it.

It is agreed, by consent, that the testimony need not be signed by this witness.

Complainants rest.

Sworn to before me, this 28th day of January, A. D. 1880.

WILLARD C. FISK,
Notary Public, New Jersey.

Examination of witnesses in the above entitled cause on the part of the defendants taken before me, Willard C. Fisk, Notary Public of New Jersey, at my office, No. 254 Washington street, Jersey City, on April 17, 1880, in pursuance with the annexed consent in presence of Charles L. Corbin, Esq., counsel with complainants, and Allan L. McDermott, solicitor of defendants.

Lewis E. Wood, a witness produced on part of the defendants, being duly sworn, deposes as follows:

I am an auctioneer, and as such had charge of a sale of lots on Monticello, Kearney and Ege avenues, Jersey City, sold Wednesday, September 24, 1879. (Shown map). That is a map of the property and was used by me on the sale.

Map offered in evidence and marked Exhibit D 1.

There are 28 lots marked on the map for sale. Lots 14, 15 and 16, block 661, were sold to Charles Seidler. The sale to Mr. Siedler did not embrace any other property than is shown by lots marked 14, 15 and 16.

Lots 9, 10 and 11 on Ege avenue were sold to L. H. Cummings. The sale to him did not include any other property than the lots 9, 10 and 11. The space between lots 11 and 14, on which the word "Jackson" is printed, was not sold. The property was sold either from both or from one corner. I think I stood on the southwesterly corner of Jackson and Ege avenues and sold the property across the street.

Cross-examined:

I do not know whether Mr. Seidler ever carried out the purchase of lots 14 to 16. I do not know if L. H. Cummiags ever carried out the purchase of lots 9 to 11. I was employed by Mr. Emmons to make the sale.

Re-examined:

This map (Exhibit D 1) was shown to Mr. Emmons prior to the date of sale.

LEWIS E. WOOD.

Sworn and subscribed to before me, this 17th day of April, A. D. 1880.

WILLARD C. FISK,
Notary Public, N. J.

The defendants offer in evidence a petition by Francis S. Emmons to the Board of Public Works of Jersey City and the opinion of the Corporation Counsel thereon (marked Exhibit D 2).

The defendants rest.

WILLARD C. FISK,
Notary Public, N. J.

Deposition of witnesses on the part of the complainants, taken before me, Willard C. Fisk, a Notary Public of New Jersey, in pursuance of the annexed consent, at the office of Collins & Corbin, Jersey City, May 3, 1880, at 10 o'clock A. M., in rebuttal. Present, Mr. Gilbert Collins, counsel with complainants, and Mr. Leon Abbett, counsel with defendants.

Francis S. Emmons, a witness produced on the part of the complainants, being duly sworn according to law on his oath, deposes and says:

I am a resident of Jersey City and am a real estate agent; I instructed Mr. Lewis E. Wood to make the auction sale mentioned in the bill of complaint; the map mentioned in the bill and annexed thereto was made by the order of Emmons & Co., of which firm I am a member, for the purposes of the auction sale; I—

Q. Did your firm have any instructions from the complainants, or either of them or from any one in their behalf to show the extension of Jackson avenue on this map?

Question objected to as leading, defendant insisting that the question should be "what instructions, if any, witness had in reference to the map."

A. I had no instructions of any kind from the complainants. I never was instructed to show Jackson avenue by any one. Mr. George P. Tew, one of the firm of Sackett, Davis & Co., came on and said we had better go on and make all arrangements for an auction sale. He left all the details to us—

Q. Did you give any special instructions as to how the map should be made?

A. I did not, except that I said I wanted railroad stations, horse railroads and street improvements shown.

Q. Was the matter of the extension of Jackson avenue in your mind at all?

A. Not at all.

Q. Has that map ever been filed in any public office?

A. Not as I know of. I attended to the execution and preparing of the deeds which the trustees of the property have executed. No deed has been executed referring to this or any other map showing the extension of Jackson avenue, or referring to Jackson avenue as extended. The complainants have not signed any contract of sale. The property was advertised by these maps, by hand bills, notices on the premises and by advertisement in the newspapers for about two weeks. It was not advertised for the statutory time as in case of legal sales. The complainants have never given an assignment bond or in any way complied with the assignment law. They have not treated their trust as within that case.

Q. Have the complainants, or either of them, or any one for them, ever expressed to your knowledge any intention to dedicate this extension of Jackson avenue to the public?

Objected to as to form, defendants insisting that question should be "what if anything complainants said in reference to the dedication of Jackson avenue."

A. They never have. On the contrary since the question was raised by Mr. Abbett Mr. Gardner and Mr. Tew said they never intended to dedicate the street, and Mr. Gardner expressed surprise that we had not collected the award for the extension of Jackson avenue. I had been for some time trying to collect the award for opening of Jackson avenue on behalf of the complainants and by their authority. Neither one of the complainants saw this map before the day of sale. On that day Mr. Matthewson, one of the complainants, and he only, attended the sale, and he saw the maps there.

Cross-examined by Mr. Abbett:

Lots 14, 15 and 16, block 661, on the map were sold to Charles Siedler. They were sold to him by the lot and block numbers on this map. Lots 11, 10 and 9, block between Jackson avenue and Hart street, were sold to Luther H. Cummings, but his wife took the title.

Q. After the question as to the dedication of the extension of Jackson avenue had been raised by me (Mr. Abbett) with Mr. Collins, and I had claimed that the statute of limitations prevented the payment of the award, were the directions then given by you or the complainants to draft the deeds without reference to the map?

A. No directions were given by me or the complainants. It was Mr. Collins's idea (counsel for complainants). So far as I know that was the reason that the deeds were executed without reference to the lot and block numbers in the way they were sold. I think 250 or 500 maps were printed. All the property was not sold on the day of sale. Lots 57 and 59, block 604, and 5 lots in block 654 were not sold on the day of sale, but have since been sold. All the others were sold on the day of sale by the lot and block numbers as shown on the map. Jackson avenue was an open avenue and sewered, and has been for about 10 to 12 years. The map we had printed we sent out before the day of sale to prospective buyers. They were at the sale and given out to those present. Nothing was said at the sale to any one that the complainants claimed that the extension of Jackson avenue was not dedicated; the question was not thought of.

Q. Did Mr. Matthewson make any objection on the day of sale to the extension of Jackson avenue, as shown on that map?

A. He made no remark about the extension of Jackson avenue. The condition of the other streets as to being opened, graded, paved, flagged and sewered are correctly set out on the map. Mr. Tew, of the old firm, first spoke to me about the sale. I did not see any of the trustees until the day of sale, where Mr. Matthewson appeared and was introduced to me by Mr. Tew. There was no restriction as to price or anything placed upon me up to and including

the sale. I had full authority to make the sale. I have made the returns of the sale to the trustees of Sackett, Davis & Co. I employed the auctioneer, Mr. Wood, to make the sale. The contracts of the sale were drawn by Mr. Gilbert Collins. These contracts were signed by the purchasers and the property was described therein by the lot and block numbers on the map. Mr. Siedler was tendered a deed for lots 14, 15 and 16, block 661, but refused to receive it, and also tendered a deed and refused to take title to lots 24, 25, 26 and 27, in block 664. I have the deeds which were tendered.

(A copy of the terms of sale produced and marked Exhibit D 3 for defendants. The deed for lots 14, 15 and 16, block 661, from trustees to Siedler produced and marked Exhibit D 4 for the defendants. The deed for lots 24, 25, 26 and 27, in block 664, from the trustees to Siedler, produced and marked Exhibit D 5 for the defendants.)

Ten per cent of the purchase money was to be paid on day of sale, 40 per cent. additional in thirty days, balance to remain on bond and mortgage. Complainants paid me about $250 and expenses for my services in making the sale. The payment was made to me since the sale. There have been two petitions to obtain the award for the opening of Jackson avenue, one dated September 14, 1875, by A. P. Chapman, agent for George H. Sackatt, and the other by myself, in July last (1879). The question raised by you (Mr. Abbett) referred to in my direct examination was raised after the sale.

Re-direct by Mr. Collins:

The map annexed to the bill was compiled from the official map of that part of Jersey City, so far as to the location of streets, lots and blocks numbers. The map is really two maps. The plot in the left hand lower corner is a quarter of a mile northeast from the remainder and does not lie in the relative position as to the other property. It was never contemplated to file one of these maps. The

manner in which the deeds were to be drawn was not considered until after sale.

Q. Would they in any case have referred to that map?

Objected to as hypothetical, and upon the further ground that it is an attempt to vary the terms of sale as made upon the day of sale and signed by the purchasers, said sale being made according to this map, and the lot and block numbers on it.

A. No.

Q. Have you any idea how they would have been drawn if Mr. Abbett had not made the point in relation to dedication?

Same objection.

A. No; all I mean to say is after the question was raised particular pains were taken not to dedicate in drawing the deeds. The deeds to Siedler were so drawn as not to refer to Jackson avenue, or any map, upon which it was shown.

Q. Was his refusal to take the title because of the manner in which the deeds were drawn, or for another reason?

Objected to as to form, and the defendant insists that the witness should state the conversation, if any, with Mr. Siedler.

A. I saw Mr. Brinkerhoff, Mr. Siedler's counsel. I did not show him the deeds, but told him they were ready. He said he should advise Mr. Siedler not to take the title, as the property had not been advertised long enough, and the trustees had not given bonds under the assignment law. I saw Siedler afterwards, and he said he would do whatever Brinkerhoff said. Jackson avenue was extended from the Newark and New York Railroad south. It had been an open and public street north of that for many years. No one signed the conditions of sale on the part of the complainants. Neither Mr. Brinkerhoff, Mr. Siedler, nor any one of them have ever seen the deeds for the property pur-

chased by Mr. Siedler, as the deeds were prepared by Mr. Collins. The matter came before Mr. Abbett, as Corporation Counsel, on the reference from the Board of Works of my petition for the award before the sale. The answer was given after the sale by Mr. Abbett.

FRANCIS S. EMMONS.

Subscribed and sworn to before me, this 3d day of May, 1880, at Jersey City.

WILLARD C. FISK,
Notary Public, N. J.

Complainants offer in evidence the assessment map and proceedings for the opening of Jackson avenue extension. A copy of the map is marked "Exhibit Map 1" by me.

Complainant also offers "New Map of Claremont," marked "Exhibit Map 2" by me.

The complainants rest.

The defendants having no further testimony to offer, the case is closed.

WILLARD C. FISK,
Notary Public, N. J

The Exhibits necessary to be printed are set forth in the pleadings, except the following Exhibit D 3:

Terms of sale of lots at public auction, on Wednesday, September 24th, 1879, by Lewis E. Wood, Auctioneer, for account of Henry W. Gardner, Lodowick Brayton and Joseph B. Matthewson, Trustees for the Creditors of Sackett, Davis & Co., owners and vendors:

1. The property will be sold to the highest bidder.

2. Ten per cent. of the purchase money, and an Auctioneer's fee of five dollars per lot, shall be paid when the property offered is struck off, and the purchaser shall sign the conditions of sale.

3. Forty per cent. of the purchase money shall be paid on delivery of the deed, and a bond and mortgage shall be given for the balance, viz.: fifty per cent. which shall bear even date with the deed, payable three years after the date thereof, with interest at six per cent., payable semi-annually, with the usual thirty day interest, insurance and tax clauses.

4. The property will be sold free and clear of all encumbrances.

5. The deed shall be delivered and received at the office of Emmons & Co., "junction" of Grand street and Communipaw avenue, on the 24th day of October, A. D. 1879, between the hours of one and three P. M., on compliance by the purchaser with these conditions, time being of the essence of the contract.

I, ———, of ———, agree to purchase lot No. ——— , in block No. ———, fronting on the ——— side of ———. Jersey City, for the sum of ——— dollars, and to comply with the above conditions of sale.

Jersey City, September ——, 1879.