

INDEX.

NORTH JERSEY UTILIZATION AND SEWERAGE DISPOSAL PLANT, INC., *Prosecutor*—

	PAGE
Writ of Certiorari	1
Return	2
Petition	3
Order Fixing Time and Place	25
Notice	29
Order Appointing Commissioners	31

TOWNSHIP OF PALISADES, *Prosecutor*—

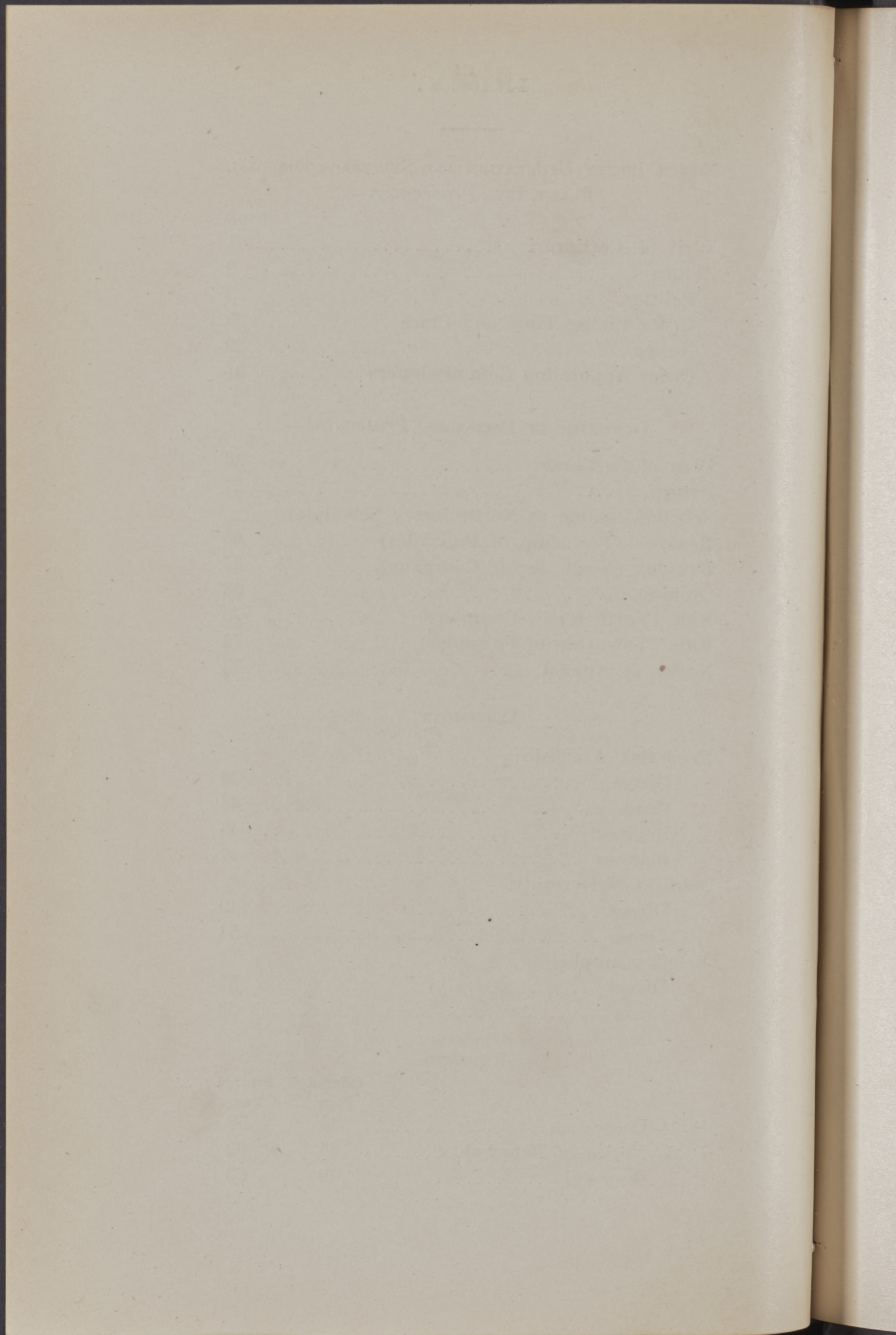
Writ of Certiorari	36
Return	37
Schedule (same as North Jersey Schedule)	
Reasons (Township of Palisades)	66
Reasons (North Jersey Company)	67
Opinion	68
Rule (North Jersey Company)	73
Rule (Township of Palisades)	74
Notice of Appeal	75

TESTIMONY.

Frederick Atanasio:	
Direct	38
Cross	43
Redirect	45
Recross	47
John L. McDermott:	
Direct	49
Cross	54
Frank Campbell:	
Direct	57
Cross	58

EXHIBITS.

	Offered Page	Printed Page
P. 1—Lease	48	59
P. 2—Notice of Renewal	48	62
P. 2—Renewal	49	63



Writ of Certiorari.

Returnable October 13, 1920.

New Jersey Supreme Court.

New Jersey, to wit:

10

(SEAL) The State of New Jersey to George
Van Buskirk, Clerk of the County of
Bergen,

GREETING:

We being willing, for certain reasons, to be certified of a certain order made by the Honorable Francis J. Swayze, a Justice of the New Jersey Supreme Court, in the matter of the petition of the Borough of Dumont and Bergenfield for the condemnation of lands within the Township of Palisades of Charlotte A. Brobston, *et al.*, and unknown heirs and said lands, on or about the 11th day of September, 1920, appointng commissioners in condemnation:

20

We do command you, that the said order together with all things touching and concerning the same, as fully and entirely as before you they remain, to our Supreme Court of Judicature, at Trenton, on Wednesday, the 13th day of October, 1920, you certify and send, together with this writ, that therein may be done what of right and according to the laws of this State ought to be done.

30

Witness, the Honorable William S. Gummere,

40

Return.

Chief Justice of our said Supreme Court, at Trenton, the 27th day of September, 1920.

ENOCH L. JOHNSON,
Clerk.

MERRITT LANE,
Attorney for Prosecutors.

10

This writ is allowed. Let it be sealed. It is not to act as a stay. Application may, however, be made on three days' notice for a stay. Depositions may be taken on two days' notice.

F. J. SWAYZE,
Justice Supreme Court.

Dated, September 27, 1920.

20

Return.

To the Honorable, The Justices of the Supreme Court of Judicature of the State of New Jersey.

30

In obedience to the command of this writ to me directed I, George Van Buskirk, Clerk of the County of Bergen, do send unto the Honorable The Justices of the Supreme Court of Judicature of the State of New Jersey, the order mentioned in said writ made on the 11th day of September, 1920, together with all things touching and concerning the same as fully and entirely as before me they remain as appears in a certain schedule hereto annexed as by the said writ I am commanded.

In witness whereof I have hereunto set my hand and seal this 13th day of October, 1920.

40

(Seal)

GEORGE VAN BUSKIRK
Clerk.

Schedule.

PETITION.

New Jersey Supreme Court.

To his Honor, Francis J. Swayze, one of the Justices of the Supreme Court of New Jersey.

The petition of the Borough of Dumont and the Borough of Bergenfield respectfully show unto your Honor:

10

1. That your petitioners were created by an act of the Legislature of the State of New Jersey entitled, "A General Act Relating to Boroughs (Revision, 1897) approved April 24th one thousand, eight hundred and ninety-seven, and the acts amendatory thereof and supplementary thereto.

That by an act of the Legislature known as Chapter 152 of the Public Laws of 1917 entitled, "An Act Concerning Municipalities," it is provided as follows:

20

Article 1, Section 1: Definitions: The term Municipality, or Municipal Corporation where used in this Act shall be construed to mean, "city," "town," "township," "village," "borough" and any municipality governed by a Board of Commissioners or Improvement Commission.

Article 21, page 397, Section 1, provides: "The Governing Body of every municipality, may, by ordinance, provide for and cause to be constructed within or without the municipality any main sewer or sewers, lateral sewer or sewers, intercepting sewer or sewers, storm sewer or sewers, underground drain or drains, system of sewers, system of drains, system of sewers and drains, sewer outlets, drain outlets, filtration beds, sewerage dispos-

30

40

Return—Petition.

al works, sewage receptacles, pumping stations, or any or all such improvements, and such other erections, works, establishments and fixtures as may be required to provide proper sewerage and drainage for the municipality; and may use and occupy any streets, roads, avenues, alleys and other public places, within or without the municipality, for such purpose or purposes, or any tide water creek or water course, or portion thereof, and may acquire by purchase, gift or condemnation, and take and appropriate in the name of and for the municipality any land or interest in land that may be needed therefor, within or without the municipality; Provided, however that no work shall be undertaken, or any street, road, alley or other public place occupied, or land acquired under this article in any other municipality, without the consent of the governing body and the Board of Health of such other municipality, upon written application being made therefor, and in case of the refusal of the municipality authorities and local boards of health to grant such permission, then the municipality making the application may within thirty days after such refusal apply to the Department of Health of the State of New Jersey which shall have power to reverse the decision of the local authorities and grant the application for the erection of said disposal works, upon being satisfied that the topographical and other physical conditions existing in the applying municipality are such to make the erection of a disposal works within its boundaries impracticable as an improvement for the benefit of the entire municipality; and in case the local authorities grant the permit to locate such disposal works, and the same shall be deemed objectionable by the inhabitants of

Return—Petition.

the municipality where it is proposed to locate such works then ten citizen freeholders thereof, may, within thirty days after the granting of such permit, apply to the Department of Health of the State of New Jersey which shall have like power to reverse the decision of the local authorities and to prohibit the location of such disposal works upon being satisfied that the topographical and other physical conditions existing in the applying municipality do not make the erection of its disposal works within its boundaries impracticable as an improvement for the benefit of the entire municipality; And it is further Provided, that all municipalities making application as aforesaid for the location of any such disposal works shall accompany the same with a descriptive map of the premises they propose to occupy, a copy of which shall also be filed in the office of the Department of Health of the State of New Jersey.”

10

20

2. Your petitioners further show that on or about May 19th, 1920, they entered into an agreement as follows:

Agreement made and entered into this 19th day of May, one thousand nine hundred and twenty by and between the Borough of Dumont, in the County of Bergen, and the Borough of Bergenfield, in the County of Bergen, which said Boroughs are hereinafter designated as “Joint Municipalities.”

30

Whereas, the United States of America has heretofore constructed or caused to be constructed a system of sewers and drains, sewer outlets, drain outlets, filtration beds, sewage receptacles, sewage

40

Return—Petition.

disposal works, and other erections, works, establishments and fixtures to provide for the sewerage and drainage of Camp Merritt, in the County of Bergen and State of New Jersey, which said works and establishments lie within the Boroughs of Dumont, Bergenfield, Tenafly, Cresskill, Demarest, Haworth and the Township of Palisades; and

10

Whereas, the United States has or is about to abandon Camp Merritt, and the "Joint Municipalities" are desirous of acquiring the aforesaid system of sewers and drains, sewer outlets, drain outlets, filtration beds, sewage receptacles, sewage disposal works, and other erections, works, establishments and fixtures as aforesaid, and to provide for the extension thereof, and the operation and maintenance thereof.

20

Now, therefore, this Agreement witnesseth: That the "Joint Municipalities" do each severally agree with the other for the following purposes, to wit:

30

1. To purchase or acquire by condemnation or otherwise the system of sewers and drains, sewer outlets, drain outlets, filtration beds, sewage receptacles, sewage disposal works and other erections, works, establishments and fixtures heretofore constructed, maintained and operated by the United States of America, for the sewerage and drainage of Camp Merritt, including the necessary lands and real estate therefor, and the necessary easements and rights, in, through, under, over and across lands and real estate, as tenants in common for the joint use of each of the "Joint Municipalities."

40

2. That the cost of the purchase or acquisition of the aforesaid property, including lands and real

Return—Petition.

estate or easements or rights in lands and real estate, as aforesaid, and including the expense thereof as well as moneys paid for services of engineers, counsel, cost and expense of condemnation proceedings, if any, shall be paid by each of the "Joint Municipalities" proportionately, in the proportion that the population of each municipality as established by the last State or Federal census bears to the total population of both or each of the said "Joint Municipalities," as determined by the said last State or Federal census. 10

3. That for the purpose of carrying out the provisions of this agreement, each of the "Joint Municipalities," shall create the office of "Joint Sewer Commissioner" and cause such office to be filled by the appointment of two residents and citizens thereof, who shall be and hereby are authorized to act as the sole representative of such municipality. The "Joint Sewer Commissioner" from each of the municipalities shall constitute a "Joint Sewer Commission." Immediately after the approval and execution of this agreement by each of the "Joint Municipalities," they shall proceed to appoint two "Joint Sewer Commissioners" and shall cause the Clerk to notify the Borough Clerk of the Borough of Dumont of the name and address of such "Joint Sewer Commissioners." 20 30

The Borough Clerk of the Borough of Dumont shall, immediately after the Joint Sewer Commissioners" have been appointed by each of the "Joint Municipalities" call a meeting of such "Joint Sewer Commissioners" to meet at the Council Chamber in the Borough of Dumont, at a time to be designated by said Borough Clerk. Each "Joint Sewer Commissioner" shall have at least three days' notice of such meeting. At such meeting the 40

Return—Petition.

“Joint Sewer Commissioners” shall organize as a “Joint Sewer Commission,” and shall elect one of their number as Chairman, and also shall appoint a Secretary and Treasurer and may also appoint such other officers and employees as they may determine to be necessary, and fix the salaries of such officers and employees.

10

The “Joint Sewer Commission” organized as hereinbefore provided, shall continue until the second Monday of January, 1921. On the second Monday of January, 1921, and the second Monday of January in each year hereafter, the “Joint Sewer Commissioners” of the respective municipalities shall meet at the same place, unless some other place shall have been fixed by a majority vote of the “Joint Sewer Commission” at the hour of 8 P. M. or such other time as may be fixed by a majority vote of the “Joint Sewer Commission” at which time such “Joint Sewer Commission” shall be reorganized in the manner hereinbefore provided.

20

The Chairman of the “Joint Sewer Commission” and the Secretary and Treasurer thereof shall hold office until the second Monday of January in each year. All officers appointed shall be appointed at the pleasure of the “Joint Sewer Commission” and may be removed by majority vote of such “Joint Sewer Commission” at any time. The “Joint Sewer Commission” shall fix the time and place for future meeting and may adopt rules of procedure and shall have the power to appoint or employ engineers, counsel, superintendents, and employ such other employees as may be deemed necessary or advisable, and provide rules and regulations for their conduct. A quorum of said “Joint Sewer Commission” shall consist of a ma-

30

40

Return—Petition.

majority of the "Joint Sewer Commissioners." The "Joint Sewer Commission" shall have no power to make any appointment or incur any indebtedness or do any act other than adjourn, except pursuant to the affirmative vote of a majority of all the members of such "Joint Sewer Commission."

It is understood and agreed that the creation or appointment of "Joint Sewer Commissioners" or the organization of the "Joint Sewer Commission" shall not be a condition precedent to the purchase or acquisition of the property described in the first paragraph hereof, but that necessary steps to purchase or acquire said property shall be taken immediately upon the execution hereof by each of the "Joint Municipalities."

4. The "Joint Municipalities" shall, through the "Joint Sewer Commission" aforesaid, own as tenants in common; maintain, control and operate the "Joint Sewer System" and may by a majority vote of the "Joint Sewer Commission" extend and enlarge such "Joint Sewer System" in such manner as may be deemed necessary or advisable for the collection and disposal of the sewage of each of the "Joint Municipalities." All costs of such extensions, enlargements or new construction shall be paid by the "Joint Municipalities" in the said proportion as provided in Section "2" hereof.

5. For the purpose of extending or enlarging the said "Joint Sewer System" or for any other purpose necessary or advisable in connection with the maintenance, operation, extension, enlargement of such "Joint Sewer System" the "Joint Municipalities" agree to purchase or acquire by condemnation or otherwise as tenants in common any and all lands and real estate or interest in lands or real estate which may be necessary, ad-

10

20

30

40

Return—Petition.

visable or convenient therefore, and each agree that upon the request of the "Joint Sewer Commission" they will each join in any proceeding or action which may be necessary or advisable for the acquisition of any such lands or real estate, or any interests in lands or real estate.

10 6. This contract shall not become effective until the same is approved and executed by each of the "Joint Municipalities."

7. This contract may be amended from time to time by a written agreement approved and executed by each of the governing bodies of each of the "Joint Municipalities."

20 And that subsequently an ordinance was duly adopted and passed according to law by the respective governing bodies, which ordinance ratified the terms and conditions and execution of the contract aforesaid, and is as follows:

30 "An ordinance to provide for the establishment of sewage disposal works and the works appurtenant thereto, including sewers, jointly by the Boroughs of Bergenfield and Dumont, and for the acquisition by gift, purchase or condemnation of existing disposal works, sewers, or property necessary therefor, including lands and real estate and the interest in lands and real estate, and providing for the joint acquisition, extension, operation and maintenance thereof, and creating a joint sewerage commission for the administration thereof."

40 Whereas, the Borough Councils of the Boroughs of Bergenfield and Dumont have approved and executed a contract bearing date the 19th day

Return—Petition.

of May, 1920, for the joint acquisition, extension, operation and maintenance of the sewerage and drainage system and sewage disposal works constructed by or for the United States of America in connection with Camp Merritt, the same to be acquired, held, owned, enlarged, extended and operated by the said Boroughs as tenants in common,

10

Be it ordained by the Borough Council of the Borough of

1. That the said joint contract dated May 19th, 1920, authorized and executed pursuant to resolution of the Borough Councils of each of the said Boroughs, be and the same hereby is ratified and approved and adopted, and that in accordance with the provisions thereof there hereby is established a joint sewage disposal plant and a joint system of sewers connecting said disposal plant with the said Boroughs in the manner in and by said contract provided.

20

2. That the said sewage disposal plant, works and sewers and drains shall be acquired by gift, purchase or by condemnation by the said Boroughs as tenants in common that there shall also be acquired by gift, purchase or condemnation such lands and real estate or interest in lands or real estate as may be necessary or advisable for the acquisition, ownership, enjoyment, operation and maintenance of the said sewage disposal plant, sewers, and works appurtenant thereto, and also for such extensions and enlargements thereof as may hereafter be made in pursuance of the terms of the aforesaid contract.

30

3. That the cost of the acquisition of the said sewerage disposal plant, sewers and works appur-

40

Return—Petition.

tenant thereto including lands and real estate, or interest in lands and real estate, and of any enlargements or extensions thereof, made in pursuance of the aforesaid contract shall be paid for by the aforesaid Boroughs in the proportion that the population of each Borough bears to the total population of all of the said Boroughs.

10

4. That such joint sewage disposal plant and joint sewerage system shall be maintained and operated jointly by the said Boroughs and that the cost of such maintenance and operation shall be paid by each of the said Boroughs in the proportion and manner provided by the Joint Sewer Commission, now or hereafter to be appointed.

20

5. That for the purpose of the acquisition, enlargement, extension, maintenance and operation of such joint sewage disposal works and joint system of sewers, there is hereby created and established a joint sewerage commission to consist of two representatives, to be known as Joint Sewerage Commissioners, from each of the said Boroughs. Such Joint Sewerage Commission shall elect one of its members as chairman and shall elect a secretary and treasurer, each of whom shall hold office until the second Monday of January, 1921, and on said last-mentioned date and on each second Monday of January thereafter, at the hour of 8 P. M., at a place to be fixed by resolution of such Joint Sewerage Commission, the said Joint Sewerage Commission shall reorganize by the election of like officers, each of whom shall hold office for one year and until their respective successors have been elected. Such Joint Sewerage Commission shall have full power to employ such other agents, servants and employees, including coun-

30

40

Return—Petition.

sel and engineers as may be determined necessary or advisable and shall fix their compensation. All such agents, servants, and employees shall be appointed or employed at the pleasure of the Joint Sewerage Commission. Said Joint Sewerage Commission shall have full power by a majority vote to do and perform any or all acts or things necessary for the acquisition, extension, enlargement, maintenance and operation of the joint sewerage disposal works and joint system of sewers herein provided for and as set forth in the said contract dated May 19th, 1920. 10

6. There is hereby created the office of Joint Sewerage Commissioners. There shall be two Joint Sewerage Commissioners appointed by the Mayor by and with the consent and approval of the Council in the same manner as other officers are appointed. Such Joint Sewerage Commissioners shall be residents and citizens of the Borough and may be the Mayor or a member of the Borough Council; provided, however, that the Borough Collector shall not be eligible for the office of Joint Sewerage Commissioner. The term of the first appointee shall expire on the second Monday of January in the year one thousand nine hundred and twenty-one unless otherwise provided by law. All subsequent appointments shall be for the term of one year from the second Monday of January in each year unless otherwise provided by law. They shall represent the Borough in the Joint Sewerage Commission, provided for in said contract dated May 19th, 1920, and shall have full power to act for the Borough in accordance with the terms thereof. 20 30

7. The Borough of Dumont may, by resolution, 40

Return—Petition.

consent to the participation of any other municipality in the ownership and use of the said joint sewer system upon the unanimous consent of all the municipalities theretofore participating in such ownership and use.

10 8. This ordinance shall take effect immediately upon publication in the manner required.

20 3. Your petitioners further show that the United States of America did heretofore construct or cause to be constructed a system of sewers and drains, sewer outlets, drain outlets, filtration beds, sewerage receptacles, sewerage disposal works and other erections, works, and establishments and fixtures to provide for the sewerage and drainage of Camp Merritt in the County of Bergen and State of New Jersey which works and establishments lie within the Boroughs of Dumont, Bergenfield, Tenafly, Cresskill, Demarest, Closter and Haworth and the Township of Palisades, all in the County of Bergen. That a part of the said sewerage system which includes the sewerage disposal plant, and other works and erections were constructed and erected upon certain lands and premises situate, lying and being outside of the limits of the Boroughs of Bergenfield and Dumont and within the limits of the Township of Palisades in the County of Bergen.

30 4. Your petitioners in furtherance of the agreement hereinbefore set forth and the ordinance hereinbefore referred to have purchased the disposal plant, and other works, buildings and erections situate within the Township of Palisades and upon lands and premises hereinafter to be described for a good and valuable consideration and have in addition thereto at a special meeting of

40

Return—Petition.

the Borough Councils of the Borough of Dumont and Borough of Bergenfield held on the twenty-fourth day of June, nineteen hundred and twenty, adopted by unanimous vote of those present the following resolution:

Resolved, that the Common Council of the Borough of Bergenfield hereby determines to acquire by purchase or condemnation the following lands and premises:

10

All that tract or parcel of land and premises, situate, lying and being in the Township of Palisades in the County of Bergen and State of New Jersey, more particularly described as follows:

Parcel A: Beginning at a point the intersection of the south line of Demarest Avenue, with the easterly line of River Road and running thence:

20

(1) South, seventy-nine degrees (79) thirty (30) minutes E a distance of 934.45 feet to the westerly line of Union Avenue, thence

(2) Along said westerly line of Union Avenue south and nineteen degrees (19) fifty-eight minutes (58) W 354.83 feet to an angle point, thence

(3) Along the westerly line of Union Avenue south thirty-six degrees (36) nine minutes (9) west a distance of 643.57 feet to the northerly line of West Street; thence

30

(4) Along said northerly line of West Street south seventy-nine degrees (79) sixteen minutes (16) E 526.28 feet to easterly line of River Road; thence

(5) Along said easterly line of River Road N thirteen degrees (13) twelve minutes (12) E four

40

Return—Petition.

hundred, sixty and eighty-one hundredths (460.81) feet to an angle point; thence

10 (6) Along said easterly line of River Road N one degree (1) seven minutes (7) west four hundred sixty-eight and sixty-six hundredths (468.66) feet to southerly line of Demarest Avenue, to point of beginning. Containing 15½ acres more or less.

Parcel B: Beginning at the point of intersection between the Center line of West Street produced and westerly line of River Road and running thence:

20 (1) South seventy-nine hundredths (.79) degrees sixteen minutes (16) E a distance of three hundred fifty feet (350) more or less to the Hackensack River, thence

(2) Along the East bank of the Hackensack River a distance of 1,000 feet more or less to a point in the south boundary line of property now or formerly belonging to John D. Demarest, thence

(3) Along said South boundary line N eighty-nine degrees (89) 00 minutes E a distance of one hundred fifty-five (155) feet more or less to the westerly line of River Road.

30 (4) Along said westerly line of River Road, N twenty-two degrees (22) forty-five (45) minutes W a distance of thirty-three and fifty-nine hundredths 33.59 feet to an angle point, thence

(5) Following the westerly line of River Road E one degree (1) 07' W a distance of four hundred and sixty-two and eighty-nine hundredths (462.89) feet to an angle point, thence

40 (6) Along the westerly line of River Road N

Return—Petition.

thirteen degrees (13) twelve (12) minutes E a distance of four hundred seventy-nine (479) feet to the point of beginning, containing seven and four-tenths ($7\frac{4}{10}$) acres more or less, together with all Riparian Rights in the Hackensack River appertaining thereto.

Resolved further, that in view of the fact that it has been impossible to treat with the owners of the said premises or reach any agreement as to the price because of the fact that the legal owners could not be found after a diligent search of the records in the Bergen County Clerk's Office and other inquiry, that William B. Mackay, Jr., is hereby directed with all convenient speed to arrange for the condemnation of the said lands and premises for the purposes aforesaid according to the statute in such case made and provided:

Resolved further, that said lands and premises are necessary to carry out a part of the provisions of an ordinance duly introduced, passed and adopted by the Borough Council, entitled "An Ordinance to provide for the establishment of sewerage disposal works and the works appertaining thereto including sewers, jointly by the Boroughs of Bergenfield and Dumont and for the acquisition by gift, purchase or condemnation of existing disposal works, sewers or property necessary therefor, including lands and real estate and the interest in lands and real estate and providing for the joint acquisition, extension, operation and maintenance thereof, and creating a joint sewerage commission for the administration thereof."

Resolved further, that any necessary application for the condemnation of the aforesaid lands and premises be signed either by the Borough

10

20

30

40

Return—Petition.

Engineer or William B. Mackay, Jr., who is hereby designated as our agent.

Your petitioners further show that the Common council of the Borough of Dumont passed a similar resolution.

10 5. Your petitioners further show that they have been unable to acquire the said lands and premises for the aforesaid purpose because of the fact that they have been unable to agree with the owner or owners of said lands and premises as to the amount of compensation to be paid therefor, because your petitioners have been unable to ascertain after due inquiry who the real and true owner or owners of said premises may be. That they have caused to be made a search of the records in the Bergen County Clerk's office by the North Jersey Title Insurance Company of Hackensack, New Jersey, and they have received a report from the said company, which report is in part as follows:

20

To an undivided one-fourth interest in Charlotte A. Brobston, her heirs or devisees and to an undivided three-fourths interest in Nelson V. Robinson as surviving trustee under the will of Edward C. Homans for the benefit of Ethel H. Smith, Frances E. Cleveland, Lois Homans, Howard P. Homans and Katherine Homans, and the heirs or
30 devisees of either of them, if any of them now be dead, except such title to such portion thereof, if any, as lie under original highwater mark of the Hackensack River, is vested in the State of New Jersey.

On October 15th, 1880, the Collector of Taxes of Palisades Township sold the premises in question for unpaid taxes assessed against I. Smith Homans for the year 1878, to George Bloomer (Book R. 10,
40

Return—Petition.

p. 534). After the expiration of the redemption period, to wit: March 6th, 1883, a tax deed was given by the Township Committee to the said George Bloomer (Book H. 11, p. 502). The sale was for thirty years and by its own limitation the lien created by the above certificate and deed expired on October 15th, 1910. Notwithstanding, those claiming under said tax sale continued in possession and exercised ownership over the said premises up to the present date. They paid taxes thereon and made deeds in respect thereto. For which reason, altho on the face of the records they appear to be merely trespassers, we have followed this tax title to date. Any interest under the said tax sale and any possible right acquired by the continued possession of the premises in question since its expiration or under color of title by reason of subsequent deeds is now vested in the North Jersey Utilization and Sewerage Disposal Plant, Inc., a New Jersey corporation.

10

20

We are informed that either the North Jersey Utilization and Sewerage Disposal Plant, Inc., or Harry H. Huplet, its grantor, made a lease of the premises in question to the United States Government and that the Government has recently sold to parties unknown to us all its equipment and improvements on Camp Merritt or used in connection with said Camp. The lease to the Government is not on record. We find of record the following:

30

George E. Frazer, Collector to the Harrington Company, dated March 21st, 1919, recorded in Book 430, page 115, plot shown on the Official Assessment Map of Palisades Township as lots 1 to 20, inclusive, in block 16 assessed to Harry H. Huplet, for tax of 1917. Sold in fee simple amount \$3,525.00.

40

Return—Petition.

George E. Frazer, Collector, to the Harrington Company, dated March 21st, 1919, recorded in Book 430, page 118, shown on the Official Assessment of Map of Palisades Township as 8.140 acres in block 19, assessed to Harry H. Huplet for tax of 1917. Sold in fee simple, amount \$4,717.00.

10 George E. Frazer, Collector, to the Harrington Company, dated March 21st, 1919, recorded in Book 430, page 121, shown on the Official Assessment Map of Palisades Township as lots 1 to 34, inclusive, in block 18, assessed to Harry H. Huplet, for taxes 1917 in fee simple, amount \$7,630.00.

20 George E. Frazer, Collector, to the Harrington Company, dated March 21st, 1919, recorded in Book 430, page 132, shown on the Official Assessment Map of the Palisades Township as Lots 1 to 26, inclusive, Block 17, assessed to Harry H. Huplet, taxes for the year 1917, in fee simple, amount \$79.57.

Note: The tax return upon which the above four tax sales are based were cancelled on March 31, 1919. Certificates, however are still open of record, not assigned or released.

30 The collector reports as unpaid the taxes for the year 1919 and for first half of the year 1920, amount not given in collector's certificate. Easements of Union Avenue, Demarest Avenue, Milford Avenue, Cooper Avenue and West Street bounding and crossing said premises.

40 6. Your petitioners further show that at the present time the lands and premises are in the possession of the United States of America under a lease made with Harry H. Huplet, which lease bears date July 1st, 1918, and was renewed on July 1st, 1919, for a further term of one year, which will expire on June 30th, 1920.

Return—Petition.

7. Your petitioners further show that the names of the owner or owners, occupant or occupants, or of the persons appearing of record to have any interest in said property and the residence of said owners, occupants or persons as nearly as your petitioners have been able to ascertain after due inquiry are as follows:

10

NAME:	RESIDENCE:
-------	------------

Charlotte A. Brobston—	Chicago, Ill.
------------------------	---------------

John S. Enos—	Unknown.
---------------	----------

Frances E. Homans—	Unknown.
--------------------	----------

Nelson V. Robinson—	Unknown.
---------------------	----------

Ethel H. Smith—	Providence, R. I.
-----------------	-------------------

Sibley C. Smith, her husband—	Providence, R. I.
-------------------------------	-------------------

Frances E. Cleveland—	New York, N. Y.
-----------------------	-----------------

Charles B. Cleveland, her husband—	New York, N. Y.
------------------------------------	--------------------

20

Lois Homans—	New York, N. Y.
--------------	-----------------

Howard P. Homans—	New York, N. Y.
-------------------	-----------------

Katherine Homans—	New York, N. Y.
-------------------	-----------------

State of New Jersey	
---------------------	--

North Jersey Utilization & Sewerage Disposal Plant, Inc., a N. J. Corp.	
--	--

Harrington Company	
--------------------	--

Township of Palisades	
-----------------------	--

Harry H. Huplet—	Hackensack, N. J.
------------------	-------------------

Bessie Moyer Huplet—	Hackensack, N. J.
----------------------	-------------------

30

8. Your petitioners further show that the said tract of land whereof condemnation is sought and set forth in the resolution above described is more particularly described as follows:

All that tract or parcel of land and premises, situate, lying and being in the Township of Palisades in the County of Bergen and State of New Jersey, more particularly described as follows:

40

Return—Petition.

(And then follows description of land heretofore in this petition set forth.)

10 Your petitioners further show that they have made application in writing to the Township Committee of the Township of Palisades and the Local Board of Health of the Township of Palisades asking them to consent to allow your petitioners to use the said lands and premises together with the buildings thereon erected as a disposal plant in connection with the sewerage system of the Boroughs of Dumont and Bergenfield, which application was filed with the Township Clerk of the Township of Palisades and the Clerk of the Board of Health of the Township of Palisades in June, 1920; that no reply has been received.

20 Wherefore your petitioners pray that your Honor may appoint three commissioners, disinterested freeholders, residents of the said County of Bergen, to examine and appraise the said lands and premises and to fix the compensation to be paid therefor and to fix the time and place for the hearing of this petition, and further that your Honor may direct the manner in which the notice required by the Statute to be given to the owners, occupants and persons appearing of record to have any interest in said property and premises may in the present case be given, and your petitioners will ever pray, etc.

BOROUGH OF DUMONT,
A. V. MOORE,

Mayor.

Attest:

Henry J. Bersch,
Borough Clerk.

40

Return—Petition.

BOROUGH OF BERGENFIELD,
THOMAS J. PRIME,

Mayor.

Attest:

Thos. M. Clare,
Borough Clerk.

(Seal)

State of New Jersey, }
County of Bergen, } ss. :

William B. Mackay, Jr., of full age, being duly sworn according to law, on his oath deposes and says, that he is the agent of the Borough of Dumont and the Borough of Bergenfield, the petitioners in the foregoing petition; that the matters therein referred to are within his knowledge and information and that the statements therein contained are true; that the map hereto annexed and marked "Exhibit I" entitled "Sewage Disposal Plant, Peetzburg, N. J., June 24, 1920," shows the premises described in the foregoing petition and was prepared by the direction of this deponent. That it is necessary for the Boroughs of Dumont and Bergenfield to acquire the said premises for the establishment of sewerage disposal works and the works appurtenant thereto under an ordinance duly introduced, adopted and passed by the Common Council of the Boroughs of Dumont and Bergenfield entitled, "An ordinance to provide for the establishment of sewerage disposal works and the works appurtenant thereto, including sewers, jointly by the Boroughs of Bergenfield and Dumont, and for the acquisition by gift, purchase or condemnation of existing disposal works, sewers, or property necessary therefor including lands

10

20

30

40

Return—Petition.

and real estate and the interest in lands and real estate, and providing for the joint acquisition, extension, operation and maintenance thereof, and creating a joint sewerage commission for the administration thereof.”

10 That the United States of America is in occupation of said premises under a lease made with one Harry H. Huplet bearing date July 1, 1918, and the renewal thereof, which term expires on June 20th, 1920. That he has made efforts to ascertain the name of the owner of said lands and premises; that he has caused to be made a search by the North Jersey Title Insurance Company, and their report is as set forth in the petition, and from an examination of the same he has been unable to ascertain who the legal owner of the said premises is, and for that reason has been unable to agree with the owner or make any agreement as to the price; that the owners, occupants and persons appearing of record to have any interest in said premises are as set forth in the petition.

20

WILLIAM B. MACKAY, Jr.

Subscribed and sworn to before me)

this 25th day of June, 1920.)

Geo. W. Mackay,

Atty. at Law of N. J.

30

40

Return—Order Fixing Time and Place.

NEW JERSEY SUPREME COURT.

In the Matter

of

The Petition of the Boroughs of
DUMONT and BERGENFIELD for
the condemnation of lands
within the Township of Pali-
sades of Charlotte A. Brobston
et als. and the unknown
owners of said lands.

On Petition.
Order Fixing
Time and
Place.

10

The petition of the Boroughs of Bergenfield and
Dumont setting forth the authority of the said Bor-
oughs to acquire by condemnation certain lands
lying in the Township of Palisades, County of
Bergen and State of New Jersey, and that the said
Boroughs of Bergenfield and Dumont have deter-
mined to acquire said lands for sewer purposes as
provided by Chapter 152 of the Session Laws of the
Legislature of the State of New Jersey for the year
1917, having been presented to me, Francis J.
Swayze, a Justice of the Supreme Court of the
State of New Jersey, and

20

It further appearing that the said Boroughs of
Bergenfield and Dumont cannot acquire such lands
and property by agreement with the owners by
reason of inability to agree as to the compensation
to be paid therefor, and by reason of the inability
of the known owners to convey valid title by rea-
son of the absence of the persons alleged to be the
owners to said lands, and that the said lands and
premises are particularly described as follows:

30

(Same description as in petition.)

40

Return—Order Fixing Time and Place.

10 And the said petition containing a prayer that there may be appointed three commissioners, disinterested freeholders of the County of Bergen to examine and appraise the said lands and premises and to fix the compensation to be paid therefor and the damages arising by reason of the taking thereof and that a time and place for the hearing of said petition may be fixed and no cause appearing to the contrary,

20 It is on this 29th day of June, nineteen hundred and twenty, ordered that the said petition be heard at the Court House in the City of Jersey City, in the County of Hudson and State of New Jersey on the 18th day of September, nineteen hundred and twenty at the hour of 10 o'clock in the forenoon of said day or as soon thereafter as counsel can be heard; notice whereof shall be given to the owner and occupant of said lands and premises and the persons interested therein named in said petition in the following manner:

30 To Charlotte A. Brobston, a non-resident of the State of New Jersey by causing the said notice to be published for five weeks once in each week in the Bergen Daily News, a newspaper published in the County of Bergen, and by mailing said notice together with a copy of this order and the petition filed in this cause, neither of which need to be certified to the said Charlotte A. Brobston at her last known address, Chicago, Illinois, at least thirty days before the day fixed herein for the hearing of the said petition.

40 To Ethel H. Smith and Sibley C. Smith, her husband, non-residents of the State of New Jersey by causing the said notice to be published five weeks once in each week in the Bergen Daily News, a newspaper published in the County of Bergen,

Return—Order Fixing Time and Place.

and by mailing said notice together with a copy of this order and the petition filed in this cause, neither of which need be certified, to the said Ethel H. Smith and Sibley C. Smith, her husband, at their last known address, Providence, Rhode Island, at least thirty days before the day fixed herein for the hearing of said petition.

10

To Frances E. Cleveland, Charles B. Cleveland, her husband, Lois Homans, Howard Homans, and Katherine Homans, non-residents of the State of New Jersey, by causing said notice to be published five weeks once each week in the Bergen Daily News, a newspaper published in the County of Bergen and by mailing said notice together with a copy of this order and the petition filed in this cause, neither of which need be certified, to the said Frances E. Cleveland, and Charles B. Cleveland, her husband, Lois Homans, Howard Homans, and Katherine Homans, at their last known address, New York City, New York, at least thirty days before the day fixed herein for the hearing of the said petition.

20

To the North New Jersey Utilization & Sewerage Disposal Plant, Inc., a corporation of the State of New Jersey by leaving said notice together with a copy of this order and the petition filed in this cause, neither of which need to be certified, at the principal office of the said corporation in this State with the agent in charge of said office or with any officer or director of the said corporation, at least six days before the date herein fixed for the hearing of said petition.

30

To the Harrington Company, a New Jersey corporation, by leaving said notice together with a copy of this order and the petition filed in this cause, neither of which need to be certified, at the

40

Return—Order Fixing Time and Place.

principal office of the said corporation in this State with the agent in charge of said office or with any officer or director of the said corporation, at least six days before the date herein fixed for the hearing of said petition.

10 To the Township of Palisades, a Municipal corporation of the State of New Jersey, by leaving said notice together with a copy of this order and the petition filed in this cause, neither of which need to be certified, with the clerk of the said Municipal corporation at least six days before the date herein fixed for the hearing of the said petition.

20 To the State of New Jersey by mailing the said notice together with a copy of this order and the petition filed in this cause, neither of which need to be certified, to the Secretary of State, State House, Trenton, New Jersey, at least six days before the date herein fixed for the hearing of the said petition.

30 To Harry H. Huplet and Bessie Moyer Huplet, his wife, by personal service, or if not found, by mailing said notice together with a copy of this order and the petition filed in this cause, neither of which need to be certified, addressed to the said Harry H. Huplet and Bessie Moyer Huplet, his wife, at their last known post office address, Hackensack, New Jersey, at least thirty days before the day herein fixed for the hearing of said petition.

40 To John S. Enos, Frances E. Homans and Nelson V. Robinson, their heirs, executors, administrators, successors and assigns, whose whereabouts are unknown, by causing the said notice to be published for five weeks once each week in the Bergen Daily News, a newspaper published in the County of Bergen.

Return—Notice.

It is further ordered, that the notice hereinbefore ordered to be published addressed to the non-residents shall also be published and addressed to the unknown owners of the said lands hereinbefore described, for five weeks once each week in the Bergen Daily News, a newspaper published in the County of Bergen.

10

FRANCIS J. SWAYZE,
Justice of Supreme Court.

NEW JERSEY SUPREME COURT.

In the Matter

of

The Petition of the Boroughs of
DUMONT and BERGENFIELD for
the condemnation of lands
within the Township of Palisades of Charlotte A. Brobston
et als. and the unknown
owners of said lands.

Notice.

20

To Charlotte A. Brobston, Ethel H. Smith, Sibley
C. Smith, her husband, Frances E. Cleveland,
and Charles B. Cleveland, her husband, Lois
Homans, Howard Homans, Catherine Homans,
North Jersey Utilization & Sewerage Disposal
Plant, Inc., a New Jersey corporation, The
Harrington Company, a New Jersey corporation,
State of New Jersey, Township of Palisades,
Harry H. Huplet and Bessie Moyer Huplet, his wife,
John S. Enos, Frances E. Homans, Nelson V. Robinson, their

30

40

Return—Notice.

heirs, executors, administrators, successors and assigns, and the unknown owners of the lands described herein.

10 Please take notice, that an application has been made by the Boroughs of Dumont and Bergenfield, Municipal Corporations of the State of New Jersey, in the County of Bergen, to the Honorable Francis J. Swayze, one of the Justices of the Supreme Court of the State of New Jersey upon their petition, which petition has been duly filed in the office of the Clerk of the County of Bergen for the appointment of three (3) disinterested freeholders, residents of the County of Bergen and State of New Jersey, commissioners as provided by law to examine and appraise and to fix the compensation to be paid for a certain tract of land hereinafter more particularly described, and to make such decisions and awards as to such commissioners shall seem just and proper and to do whatever else said commissioners so to be appointed are by law authorized and required to do in the premises, and that the said tract of land is described as follows:

(Same description as in petition.)

30 That the Boroughs of Dumont and Bergenfield appear to be the owners and occupants of the improvements erected upon the said lands.

40 Take further notice that an order was made by the said Justice on Tuesday, the 29th day of June, nineteen hundred and twenty, fixing Saturday, the 18th day of September, 1920, at the hour of ten o'clock in the forenoon of said day at the County Court House, in the City of Jersey City in the County of Hudson, and State of New Jersey, as the time and place when and where the said peti-

Return—Order Appointing Commissioners.

tion will be heard, at which time you should appear if you desire to be heard.

This notice is given to you, Charlotte A. Brobston, Ethel H. Smith, Sibley C. Smith, your husband, Frances E. Cleveland and Charles B. Cleveland, your husband, Lois Homans, Howard Homans, Katherine Homans, N. J. Utilization & Sewerage Disposal Plant, Inc., a New Jersey corporation, State of New Jersey, Township of Palisades, Harry H. Huplet and Bessie Moyer Huplet, your wife, John S. Enos, Frances E. Homans, Nelson V. Robinson, your heirs, executors, administrators, successors and assignees, and the unknown owners of the lands described herein, because you and each of you appear of record to have some right, title, interest, claim or demand in, to and against the said lands. 10

MACKAY AND MACKAY,
Attorneys for Petitioners. 20

NEW JERSEY SUPREME COURT.

In the Matter
of

The Petition of the BOROUGHS OF DUMONT and BERGENFIELD for the condemnation of lands within the Township of Palisades of Charlotte A. Brobston *et als.*, and the unknown owners of said lands.

Order for the
Appointing of
Commissioners. 30

The Boroughs of Dumont and Bergenfield having made application to me by petition in writing 40

Return—Order Appointing Commissioners.

to which reference is hereto made, to appoint three disinterested freeholders, residents of the County of Bergen, to value and appraise the land and property of Charles A. Brobston and others and the unknown owners of said land mentioned in said petition and to assess the damages on at least six days' notice to be given to the parties interested in said property, in such manner as I may direct and in such order of appointment to fix the date on or before which, such commissioners must file their report; and I having ordered that Saturday the 18th day of September, 1920, at the hour of ten o'clock in the forenoon or as soon thereafter as counsel can be heard, at the Court House in the City of Jersey City, County of Hudson and State of New Jersey, as the place for the hearing of said petition before me, and that notice of such hearing should be published for five weeks, once in each week in the Bergen Daily News, a newspaper published in the County of Bergen, and the hearing now having been had on the day and at the hour and place named in said order; and evidence satisfactory to me having been presented by affidavits that notice has been served and published as required by said order, and I having heard what was to be said in the matter by the attorneys for the petitioner and no objections being heard to the granting of said petition,

It is on this eighteenth day of September, 1920, ordered, that the following be appointed, and I do hereby appoint Frank M. Taylor, Ernest J. Heppenheimer and Alvah A. Swayze, three disinterested freeholders, residents of the County of Bergen, Commissioners, to examine and appraise the lands and property described in said petition and to assess the damages to be sustained in the taking

Return—Order Appointing Commissioners.

and condemning the said lands or property for the public use of the Boroughs of Bergenfield and Dumont and for the purposes set forth in said petition and to proceed therein in all respects as is directed by the act entitled, "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use" (Revision of nineteen hundred). 10

And it is further ordered that said commissioners give notice to each of the persons interested in the lands and property described in the said petition and to the unknown owners of the lands described in said petition of the time and place when and where they will meet and proceed to execute their duties under this appointment in the following manner:

To Charlotte A. Brobston, a non-resident of the State of New Jersey, by causing the said notice to be published for five weeks once in each week in the Bergen Daily News, a newspaper published in the County of Bergen and by mailing said notice as published to the said Charlotte A. Brobston at her last known address, Chicago, Illinois, at least thirty days before the day fixed herein for the hearing before the said commissioners. 20

To Ethel H. Smith and Sibley C. Smith, her husband, non-residents of the State of New Jersey, by causing the said notice to be published for five weeks once in each week in the Bergen Daily News, a newspaper published in the County of Bergen, and by mailing said notice to the said Ethel H. Smith and Sibley C. Smith, her husband, at their last known address, Providence, Rhode Island, at least thirty days before the day fixed 30

40

Return—Order Appointing Commissioners.

herein for the hearing before the said Commissioners.

10 To Frances E. Cleveland, Charles B. Cleveland, her husband, Lois Homans, Howard Homans, and Katherine Homans, non-residents of the State of New Jersey, by causing said notice to be published for five weeks once in each week in the Bergen Daily News, a newspaper published in the County of Bergen, and by mailing said notice to the said Frances E. Cleveland and Charles B. Cleveland, her husband, Lois Homans, Howard Homans and Katherine Homans, at their last known address, New York City, New York, at least thirty days before the day fixed herein for the hearing before the said commissioners.

20 To the North New Jersey Utilization & Sewerage Disposal Plant, Inc., a corporation of the State of New Jersey, by leaving said notice, at the principal office of the said corporation in this State with the agent in charge of said office or with any officer or director of the said corporation, at least six days before the date fixed herein for the hearing before said commissioners.

30 To the Harrington Company, a New Jersey corporation, by leaving said notice at the principal office of the said corporation in this State with the agent in charge of said office or with any officer or director of the said corporation, at least six days before the date herein fixed for the hearing before said commissioners.

40 To the Township of Palisades, a Municipal Corporation of the State of New Jersey, by leaving said notice with the clerk of the said Municipal Corporation at least six days before the date fixed herein for the hearing before the said commissioners.

Return—Order Appointing Commissioners.

To the State of New Jersey by mailing the same notice to the Secretary of State, State House, Trenton, New Jersey, at least six days before the date herein fixed for the hearing before said commissioners.

To Harry H. Huplet, and Bessie Moyer Huplet, his wife, by personal service or if not found by mailing said notice to the said Harry H. Huplet and Bessie Moyer Huplet, his wife, at their last known post office address, 325 E. 21st Street, Flatbush, Brooklyn, N. Y., at least thirty days before the day herein fixed for the hearing before said commissioners.

10

To John S. Enos, Frances E. Homans and Nelson V. Robinson, their heirs, executors, administrators, successors and assigns, whose whereabouts are unknown, by causing said notice to be published for five weeks once each week in the Bergen Daily News, a newspaper published in the County of Bergen.

20

It is further ordered that the notice hereinbefore ordered to be published addressed to the non-residents shall also be published or addressed to the unknown owners of the said lands hereinbefore described, for five weeks once each week in the Bergen Daily News, a newspaper published in the County of Bergen.

30

And it is further ordered that the said Commissioners shall file their report on or before the first day of December, 1922.

FRANCIS J. SWAYZE,

Justice of Supreme Court.

Entered on the minutes September 18th, 1920.

40

Writ of Certiorari.

Returnable October 13, 1920.

New Jersey, to wit:

(SEAL) The State of New Jersey to George
Van Buskirk, Clerk of the County of
Bergen, Greeting:

10 We being willing, for certain reasons, to be
certified of a certain order made by the Honorable
Francis J. Swayze, a Justice of the New Jersey Su-
preme Court, in the matter of the petition of the
Boroughs of Dumont and Bergenfield for the con-
demnation of lands within the Township of Pali-
sades of Charlotte A. Brobston, *et al.*, and un-
known owners of said lands, on or about the 11th
day of September, 1920, appointing commissioners
in condemnation:

20 We do command you that the said order to-
gether with all things touching and concerning
the same, as fully and entirely as before you they
remain, to our Supreme Court of Judicature, at
Trenton, on Wednesday, the 13th day of October,
1920, you certify and send, together with this writ,
that therein may be done what of right and ac-
cording to the laws of this State ought to be donè.

30 Witness, the Honorable William S. Gummere,
Chief Justice of our said Supreme Court, at Tren-
ton, the 27th day of September, 1920.

ENOCH L. JOHNSON,
Clerk.

Archibald C. Hart,
Attorney for Prosecutors.

This writ is allowed. Let it be sealed. It is not
to act as a stay. Application may, however, be

Return.

made on three days' notice for a stay. Depositions may be taken on two days' notice.

F. J. SWAYZE,
Justice Supreme Court.

Dated, September 27, 1920.

10

Return.

To the Honorable, the Justices of the Supreme Court of Judicature of the State of New Jersey:

In obedience to the command of this writ to me directed, I, George Van Buskirk, Clerk of the County of Bergen, do send unto the Honorable, the Justices of the Supreme Court of Judicature of the State of New Jersey, the order mentioned in said writ made on the 11th day of September, 1920, together with all things touching and concerning the same as fully and entirely as before me they remain as appears in a certain schedule hereto annexed as by the said writ I am commanded.

20

In witness whereof I have hereunto set my hand and seal this 13th day of October, 1920.

(Seal)

GEORGE VAN BUSKIRK.
C.

The schedule annexed is the same schedule annexed to the writ in the case of the North Jersey Utilization Company.

30

It is stipulated and agreed that the stenographer need not be sworn and that signatures to depositions be waived, and that the depositions taken apply in both cases.

Depositions taken this 22nd day of October, 1920, before me, Clarence Mabie, Supreme Court Commissioner, 173 Main Street, Hackensack, N.

40

Frederick Atanasio, direct.

J., in the presence of the attorneys as hereinbefore mentioned.

CLARENCE MABIE,
Sup. Ct. Comr.

10 FREDERICK ATANASIO, of full age, being duly sworn according to law, upon his oath, deposes and says:

I reside at No. 1149 50th Street, Brooklyn, New York.

I am an officer of the North Jersey Utilization and Sewerage Disposal Plant, Inc., being the secretary of that company and a stockholder therein.

20 I have been familiar with the affairs of the company from the date of its incorporation, and am familiar with the business of the company, and with the physical situation of the property making up the sewerage disposal plant located in the Township of Palisades now sought to be taken by the Boroughs of Dumont and Bergenfield.

30 On the 2nd day of October, 1917, Harry H. Huplet, being the owner of certain lands and premises containing sixteen acres of land situated on the Hackensack River, Bergen County, New Jersey, and which is the same land sought to be condemned by the Boroughs of Dumont and Bergenfield for sewerage purposes, entered into a lease to the United States Government for the term of on year, and from thence yearly, the premises to be used for a cantonment. It was further provided "that the lessee may fix, place upon, and erect upon the demand premises, during said term at its own cost and expense, all such buildings and other improvements as the necessities or convenience of the military use of the same may require;

40

Frederick Atanasio, direct.

but, all such buildings and improvements fixed to, or erected or placed in or upon the said premises by the lessee, shall be and remain the exclusive property of the lessee and shall be removed by the lessee within 90 days after the said premises are vacated under this lease or renewal thereof."

Although the property is referred to in said lease as containing sixteen acres, the actual measurements show that it contains approximately twenty-one acres.

On the 29th day of January, 1919, the North Jersey Utilization and Sewerage Disposal Plant, Inc., a corporation of the State of New Jersey, purchased from Harry H. Huplet and Bessie Moyer Huplet, his wife, the said property described in said lease, and which said deed is recorded in the office of Bergen County in Book 1007 of Deeds for said County, pages 408, etc., and since which time the said North Jersey Utilization and Sewerage Disposal Plant, Inc., has been entitled to the fee of the said lands, and whatever reversionary interest there was in the said Harry H. Huplet and Bessie Moyer Huplet, and since that time the North Jersey Utilization and Sewerage Disposal Plant, Inc., has procured a bargain and sale deed of the interest of the heirs of Charlotte A. Brobston, who held, in her lifetime, in her own right, a one-quarter interest in said property subject to the adverse right of Harry H. Huplet.

On this day (September 17th, 1920), there has been recorded a statutory title under the Tax Act barring the right of redemption to the remaining three-quarters interest of the heirs of Howard C. Homans, which right of Howard C. Homans was subject to the same adverse right of Harry H. Huplet; Harry H. Huplet and his predecessors in title

10

20

30

40

Frederick Atanasio, direct.

held, at the time he gave the deed to the North Jersey Utilization and Sewerage Disposal Plant, Inc., an adverse for upwards of thirty-seven years, so that the North Jersey Utilization and Sewerage Disposal Plant, Inc., now holds a complete title for said lands and premises.

10 The United States Government caused to be erected on said lands a sewerage disposal plant consisting of two units, each of these units being constructed wholly of concrete, of a depth of fifteen feet or more, each of said units having a capacity capable of taking care of from forty to fifty thousand persons. In my estimation, they probably cost to erect between fifty and seventy-five thousand dollars. They are permanent structures, built into the soil and impossible to remove
20 without destruction, and if they are removed are worth only scrap concrete. This would be a liability rather than an asset. There is absolutely no scrap value to the plant. During most of the time one of these units only was used and took care of between forty and fifty thousand soldiers.

 The government gave up the possession of Camp Merritt and the lands and premises hereinbefore mentioned on July 1st, 1920. On that day Captain
30 Dunn, who was the Utilities Officer of the United States Government, and authorized for that purpose came upon the premises and surrendered physical possession of the plant to me representing the Utilization Company. At that time the plant had not been destroyed in any way and was in the precise situation as it was at the time it was erected.

 I took possession for the North New Jersey Utilization and Sewerage Disposal Plant, Inc., on the
40 1st day of July, 1920, and retained possession until

Frederick Atanasio, direct.

on or about the 2nd day of July, 1920, when I was served with an order of the Court of Chancery of New Jersey directing that the North Jersey Utilization and Sewerage Disposal Plant, Inc., and its workmen, etc., desist and refrain from interfering or molesting the Borough of Dumont and Borough of Bergenfield, their workmen, agents and servants in the possession of the disposal works, and erections, upon the premises described in the bill of complaint, said bill being a bill filed by the Borough of Dumont and Borough of Bergenfield against the North Jersey Utilization and Sewerage Disposal Plant, Inc.

10

On June 30th, 1920, I went to the disposal plant and shortly after my arrival the representatives of the Boroughs of Dumont and Bergenfield came upon the premises and looked over the same, and held, what appeared to be, a meeting at the extreme end of the property, and shortly after this left the premises.

20

The next morning, that is, July 1st, 1920, I again went to the premises and Captain Dunn turned over possession to me as I have heretofore related. Later in the day the representatives of the two boroughs came upon the premises and threatened to oust me. I, however, refused to be ousted and put padlocks on the place that night. I ordered them off, and actually forced them to remove themselves from the premises and left a constable in charge of the premises for me. During the night some one representing the two boroughs came upon the premises and broke them open, taking my locks off. The next morning, July 2, about eleven o'clock, I went to the premises again and found the same open and the workmen of the Boroughs of Dumont

30

40

Frederick Atanasio, direct.

10 and Bergenfield operating the sewerage disposal plant. I again ordered them off and forced them to remove themselves from the premises and again put padlocks on the door. Shortly after they informed me that a restraining order had been obtained from the Court of Chancery and I requested them to go and procure a copy and I would await service thereof.

If the North Jersey Utilization and Sewerage Disposal Plant, Inc., is permitted to operate its own property, and the said plant, it will operate the plant for all of the surrounding towns.

20 The Township of Palisades, in which said plant is located, has no sewerage disposal plant, is now proceeding to vest itself with power to make arrangements for sewerage disposal. The other towns which surround the plant, besides the Boroughs of Dumont and Bergenfield, to wit, Tenafly, Harrington Park, Cresskill, Closter, Haworth, Teaneck, and others beyond them, have no sewerage disposal plants and I intend that the plant should be used for the benefit of all, extending as far as Westwood.

30 There is no erecting to be done in this plant; it is a complete going, operating plant at the present time.

By Mr. Lane:

Q. Where do you live? A. 1149 50th Street, Brooklyn, New York.

Q. Are you connected with the North Jersey Utilization and Sewerage Disposal Plant, Inc? A. Yes.

O. What office do you hold? A. Secretary.

40 O. Are you familiar with the affairs of this corporation? A. To date, yes.

To date, that is what I mean.

*Frederick Atanasio, cross.**Cross examination by Mr. Mackay:*

Q. On July 1st, 1920, you were on this property in Palisades Township, were you not? A. I was.

Q. You were there prior to July 1st, 1920? A. I was.

Q. And were you there on June 30th, 1920? A. I was. 10

Q. And on June 30th, 1920, you saw the representatives of the Boroughs of Dumont and Bergenfield? A. I saw men there whom I believe to be representatives.

Q. Well, you said they were representatives of the Boroughs of Dumont and Bergenfield? A. I saw men there whom I believed to be representatives of the Boroughs of Dumont and Bergenfield.

Q. You said on direct examination that they were representatives of the Boroughs of Dumont and Bergenfield? A. Yes. 20

Q. They were representatives on the property? A. On the property.

Q. At what time of day was this? A. What day are you speaking of now?

Q. On June 30th, 1920? A. About 8 o'clock—8 P. M.

Q. And what time did you leave there? A. After 8, I thought.

Q. What time? A. About 9 o'clock. 30

Q. And when did you go back there again? A. July 1st.

Q. The next day? A. Yes.

Q. At what time? A. About 11 o'clock.

Q. And who did you see on July st? A. I saw the men in charge of the plant and workmen in charge of their plant.

Q. On July 1st? A. On July 1st.

Q. At 11 o'clock? A. At about 11 o'clock. 40

Frederick Atanasio, cross.

Q. How many men were in charge? A. Two or three.

Q. Did you talk with any of them? A. I did.

Q. Did you go there after July 1st? A. Yes, I went there after July 1st.

Q. When? A. The next day.

10 Q. July 2nd? A. Yes.

Q. And who did you see there at that time? A. The workmen.

Q. The same workmen? A. Yes.

Q. At what time on July 2nd was it that you went over and saw the same men? A. I believe it was in the afternoon.

Q. These same men that you saw on July 2, 1920, were operating the sewerage disposal plant?

A. On July 2nd, yes.

20 Q. The same men were operating the sewerage disposal plant on June 30th, when you were there? A. Yes.

Q. And they were the workmen of the Boroughs of Dumont and Bergenfield? A. When?

Q. The 30th, 1st or 2nd? A. I do not know whether they were or not.

Q. The men you saw on July 2nd were the workmen of the Boroughs of Dumont and Bergenfield? A. I do not know.

30 Q. You said they were. You said on direct examination the men you saw there on July 2nd were the workmen of the Boroughs of Dumont and Bergenfield. Is that right? A. Yes.

Q. Has the United States Government used that plant since the 1st of July? A. I don't know. Captain Dunn, an officer of the Utilities Department of—

40 Q. You have already said that. I asked you whether the United States Government used the plant since July 1st? A. No.

Frederick Atanasio, redirect.

By Mr. Lane:

Q. Has there been any physical change in the structure on this ground up to this time? A. No.

By Mr. Mackay:

Q. When did you last see the property? A. On October 20, 1920. 10

Q. On that particular property? A. No, not on the tract on which the plant was erected.

Q. Up to October 20, 1920? A. Yes.

Q. And the plant is still there? A. It is still there.

By Mr. Lane:

Q. Do you know of your own knowledge—have you any knowledge as to the rental value of the property upon which that sewerage disposal plant is erected? A. No, I would have to do a lot of figuring and little thought. 20

Q. Do you know, as a matter of fact, the amount of the rent reserved in the lease made by Huplet to the United States Government?

Mr. Mackay: I object to that question as immaterial.

Deponent objects also.

By Mr. Lane:

Q. You do, why? A. Because the conversation I had with Mr. Huplet— 30

Mr. Mackay: I object to this line of testimony as not binding on the Boroughs of Dumont and Bergenfield unless there is some officer or agent of the boroughs present during this conversation. 40

Frederick Atanasio, redirect.

By Mr. Lane:

Q. Did you also have a conversation with any officer of the United States Government? A. Yes, I—

Mr. Mackay: I object.

10 A. I had a conversation with one of the officers in the War Department, Captain Dunn, and he thought—

By Mr. Lane:

Q. Wait a minute. How was the rental value fixed? A. It was based upon the amount of taxes that was due on the property. Enough to take care of the payment of taxes on this property.

20 Q. Why was that? A. I don't know, unless one of the patriots at that time bought it for a nominal sum to pay taxes and after the government was through with it they had no use for it.

Q. What do you mean? A. I mean that the sewerage disposal plant would remain on the land and the holder of the land would be the one to profit by it.

30 Q. Were you present at the time this lease was executed between Mr. Huplet and the United States Government? A. I was, but was not present during the time arrangements were made as to terms. Mr. Huplet took it up with me and I passed upon the arrangements that it was necessary for it to be made at that time.

Q. Were the arrangements made with Captain Dunn? A. No, they were made with Major Stivers.

Q. Did you ever talk with Major Stivers as to whom the improvements would belong to? A. No.

40 Q. Do you know, as a matter of fact, whether

Frederick Atanasio, recross.

the amount of rent reserved was only sufficient or about sufficient to take care of the taxes on the property? A. About sufficient to take care of the taxes on the tract leased by the government.

Recross examination by Mr. Mackay:

Q. You were not a party to the lease between Mr. Huplet and the United States Government? A. No, I was not. 10

Q. And you know that at the time Mr. Huplet executed that lease he was not the owner of the fee? A. I knew he was the owner of the fee.

Q. Do you know at what time the lease was made? A. No, I do not know the time the lease was made.

Q. As a matter of fact, did you know he was not the owner of the fee? A. No, I do not recall. 20

Mr. Lane: I object to the form of the question. The question is whether he was considered at the time the owner of the fee.

A. He was.

By Mr. Mackay:

Q. Your recollection is, he was? A. Yes.

Q. Have you any knowledge of your own in which you can swear that Mr. Huplet was the owner of the fee at the time he made that lease? A. No, except that Mr. Huplet procured a deed from Charlotte A. Brobston. 30

Q. You testified under direct examination that a deed was obtained on July 6th from Charlotte A. Brobston for an undivided interest in the fee in this land. Do you? A. Yes.

Q. That undivided interest was outstanding at the time the lease was executed between Huplet 40

Frederick Atanasio, recross.

and the United States Government? A. Must have been.

Q. Why do you say must have been? A. Because subsequent to the time the lease was executed—

10 Q. Have you ever heard of a title by adverse possession? A. Yes.

Q. Do you know what the present holder acquired title by adverse possession? A. Yes.

Q. Why do you say this interest must have been out? A. Whatever that interest was, if at any value, was out at that time.

Q. What you mean is that Mrs. Brobston has not yet signed a deed. Is that right? A. No, we did not know whether it was necessary to have it or not, but it was procured after.

20

Attorney for the North Jersey Utilization and Sewerage Disposal Plant, Inc., offered in evidence.

Lease between the United States Government and Harry H. Huplet and Bessie Moyer Huplet. Marked Exhibit P-1 on the part of the North Jersey Utilization and Sewerage Disposal plant, Inc.

30 The notice and renewal dated May 31, 1919. Marked Exhibit P-2 on the part of the North Jersey Utilization and Sewerage Disposal Plant, Inc.

I offer formally, but I do not suppose counsel will require them to be printed, deeds which are referred to in the testimony of the witness, Atanasio.

Mr. Mackay: Have they been recorded?

40 Mr. Lane: All except the one, and I have not it here.

John L. McDermott, direct.

Mr. Mackay: I will have to object, as the deed is not here.

Then they may be considered as offered with the exception of one and need not be printed.

North Jersey Utilization Sewerage Disposal Plant, Inc., offers in evidence certified copy of proceedings for the conveyance of title to it of this property from Hennie L. Jennings, *et als.*, to the North Jersey Utilization Sewerage Disposal Plant, Inc., recorded September 17th, 1920, which is marked Exhibit P-3 on the part of the North Jersey Utilization Sewerage Disposal Plant, Inc.

10

JOHN L. McDERMOTT, being duly sworn, upon his oath deposes and says:

20

I am and have been since the 1st day of September, 1917, the Township Clerk of the Township of Palisades, County of Bergen and State of New Jersey.

About September, 1917, a camp to provide for the embarkation of United States soldiers, named "Camp Merritt," was established in the Borough of Dumont, County of Bergen and State of New Jersey, a municipality immediately adjoining on the east the Township of Palisades.

30

On September 1st, 1917, Major Spackman, of the Engineers' Corps of the United States, attended a meeting of the Township Committee, the governing body of the Township of Palisades. The official minutes of the said Township are in my possession and I quote from them concerning the action of the Township Committee at that meeting as follows:

40

John L. McDermott, direct.

10 “Major Spackman of the Engineers’ Corps of the U. S. A. and Captain Hopping of the Q. M. C. of the U. S. A. attended the meeting and asked permission to build a sewer on request of the War Dept. under the supervision of the Quatermaster’s Dept. The proper officials are to sign an agreement to do all work without any expense to the Township and pay all damages due to adjoining property or any accident occurring along line of run of sewer while in course of construction, said sewer to start at Lincoln Ave., and run through Milford Ave. Request granted.”

20 Thereafter, and on October 6th, 1917, the following resolution Township Committee of the Township of Palisades, the following license was granted to the United States of America for the construction and operation of said plant:

“September 19th, 1917.

State of New Jersey,
County of Bergen,
Township of Palisades.

30 1. Under and by virtue of a resolution and ordinance duly passed and adopted and approved at a regular meeting of the Committeemen of said Township held on 1st day of September, A. D. 1917, the right, privilege and permission is hereby given and granted unto the United States of America to lay, construct, maintain and operate over, along, through, and underneath the surface of Milford Avenue and other streets, alleys, highways and roads, within said Township and

40

John L. McDermott, direct.

over, upon, across and along and underneath the surface of any intersecting streets, roads, alleys and highways of said Milford Avenue a certain sewer pipe and system for conduct of sewerage from Camp Merritt in said County and State, to the Hackensack River, as the said system is now surveyed, staked out upon the ground.

10

2: Said right, privileges and permission herein given, granted to be and remain in full force and effect during the continuance of the existing war and for one year thereafter.

3. The said United States of America to have the right and privilege of taking up and removing during the life of this grant, privilege and permission, or any extension thereof, any and all sewer pipe or appliances connected with the said sewer system from said streets, alleys, roads, highways.

20

(Signed) THOS. A. YEARSLEY,
Chairman.

(Sig.) John L. McDermott,
Township Clerk,
September 19th, 1917."

30

Thereafter, and on October 6th, 1917, the following resolution was adopted at a regular meeting of the said Township Committee:

"Whereas, the Constructing Quartermaster at Camp Merritt, in the Borough of Dumont, Bergen County, New Jersey, has requested the Township Committee of the Township of Palisades to close a certain

40

John L. McDermott, direct.

street, avenue or highway in the Township of Palisades, known as "Cooper Street," and more particularly described as follows:

10 Being a street, avenue or highway running from River Road to Union Avenue fifty (50) feet in width—that is to say: Twenty-five feet on each side of the center line thereof, which side line is described as follows:

Beginnning at the intersection of the center line of Cooper Street and the easterly line of the River Road; thence (1) along the center line of Cooper Street south seventy-nine degrees (79°) twenty-four minutes (24') east six hundred forty-nine and fifty hundredths (649.50) feet to the westerly line of Union Avenue and there to end.

20 and

Whereas, the Constructing Quartermaster at the camp aforesaid has also requested permission to use the said street, avenue or highway as a part of the disposal plant site.

30 Now therefore, be it resolved, that Cooper Street from River Road to Union Avenue fifty feet in width—that is to say: twenty-five feet on each side of the center line thereof, which said center line is described as follows:

40 Beginnning at the intersection of the center line of Cooper Street and the easterly line of the River Road; thence (1) along the center line of Cooper Street south seventy-nine degrees (79°) twenty-four minutes (24') east six hundred forty-nine hundredths (649.50) feet to the westerly line of Union Avenue and there to end, be closed as a public road, street, avenue or highway dur-

John L. McDermott, direct.

ing the continuation of the present war and
for a period of one year thereafter.

and

Be it further resolved, that the Construc-
tion Quartermaster Department at Camp
Merritt, Borough of Dumont, Bergen County,
New Jersey, is hereby given permission to
use the whole or any part of the said road,
street, avenue or highway as a part of the
disposal plant site.

10

THOS. A. YEARSLEY,
Chairman.

October 6th, 1917.

JOHN L. McDERMOTT,
Township Clerk.

After the adoption of the said resolution, the
United States Government constructed a disposal
plant and laid the necessary pipe lines and equip-
ment under the street surface and upon property
within the Township of Palisades.

20

The sewer system and disposal plant constructed
by the United States Government under the author-
ity hereinbefore described is not now used under
the authority then given.

This deponent is informed by the petition, etc.,
served upon him in the above entitled matter,
that the petitioner, the Borough of Dumont and the
Borough of Bergenfield, have made application in
writing to the Township Committee of the Town-
ship of Palisades, asking them to consent to allow
the said boroughs to use the said land and premises,
etc., described in the said petition. The date upon
which the alleged application was presented ap-
pears blank in the said petition.

30

This deponent says that no such application has

40

John L. McDermott, cross.

at any time been presented by either of the said boroughs to the Township Committee of the Township of Palisades.

10 The Township of Palisades has never consented to allow either of the said boroughs to use the said land and premises, together with the buildings thereon erected as a disposal plant in connection with the sewer system of the Boroughs of Dumont and Bergenfield.

Cross examination by Mr. Mackay:

Q. How long have you been Clerk of Palisades Township? A. Up to December 31st about three years and six months, I should judge. December 31st, 1920.

20 Q. When you first took office was there a disposal plant and sewerage system erected in Palisades Township? A. No.

Q. How many years after you took office was it erected there? A. I could not say.

Q. About? A. I could not answer that question.

Q. Do you remember in 1917 when an officer of the United States Government appeared before the Township Committee? A. Yes.

30 Q. For what purpose did he come there? A. To ask permission to lay sewerage pipe lines through the Township of Palisades and for the erection of a disposal plant and—

Q. And what? A. Nothing else.

Q. When was the disposal plant erected? A. I do not know.

Q. It was a year ago? A. I do not know.

Q. Have you been there a year? A. I could not say.

40 Q. You know? A. Well, let me explain that to you. I never go down in that section.

Q. When was the first time you saw the dispo-

John L. McDermott, cross.

sal plant there? A. I was riding past there in an automobile and I just took notice of it. That is all.

Q. When? A. I could not say.

Q. About when? A. A couple of months ago.

Q. And before that who did you ride past in an automobile with? A. I could not say. It has been there for some time, but I never paid any particular attention of it. 10

Q. And how long ago was it you noticed that? A. Last summer, it was fierce.

Q. In 1919? A. We will agree on it in 1919, yes; it was there then.

Q. Have you your original records of the Township of Palisades with you? A. Of what?

Q. Of the minutes of their meetings? A. Of myself personally? 20

Q. No. Have you the minutes of October 6, 1917? A. I have given the counsel all the data around. I did not bring my minute book down.

Q. You testified on direct examination on October 6, 1917, the Township Committee adopted a resolution which has been offered in evidence in which the Constructing Quartermaster of Camp Merritt was given permission to use the whole or any part of the road, street, avenue or highway as a part of the disposal plant site. Is that correct? 30
A. That is correct.

Q. You testified on direct examination that after the adoption of that resolution the United States Government constructed a disposal plant and laid the necessary pipe lines and equipment under the street surface and upon property within the Township of Palisades. On what day was that?
A. After the adoption of the resolution, October 6, 1917, they must have laid this. 40

John L. McDermott, cross.

Q. You know they did? A. Personally, I never investigated the laying of it, but I know it is in the Township of Palisades. I was not there; I paid no attention; but according to the minutes and resolution it is all correct.

10 Q. And you know that it was done? A. Certainly.

Q. And it was done shortly after the adoption of the resolution? A. Yes.

Attorney for the Township of Palisades offers in evidence: The minutes of the said Township of Palisades. Marked Exhibit P. on the part of the Township of Palisades.

20 License granted to the United States of America for the construction of said plant. Marked Exhibit P. on the part of the Township of Palisades.

Resolution adopted at a regular meeting of Township Committee. Marked Exhibit P. on the part of the Township of Palisades.

It is stipulated and agreed that no application has been made to the State Board of Health by the Boroughs of Dumont and Bergenfield or either of them.

30 It is also stipulated and agreed that no notice has been sent by the Township of Palisades or by the local board of health to the Boroughs of Dumont and Bergenfield acting upon any request of the Boroughs of Dumont and Bergenfield.

The disposal plant is in the Township of Palisades and pipes run therefrom into the Boroughs of Dumont and Bergenfield, the land being condemned is in the Township of Palisades.

40

Frank Campbell, direct.

It is stipulated that the armistice in the World War was signed November 11th, 1918.

CLARENCE MABIE,
Sup. Ct. Com'r.

Hearing adjourned to Monday, October 25th, 1920, at 5 P. M., for the purpose of taking additional testimony.

10

CLARENCE MABIE,
Sup. Ct. Com'r.

Hearing resumed at Hackensack, New Jersey, at the office of Clarence Mabie, 173 Main Street, on Monday, October 25th, 1920, at five o'clock in the afternoon.

CLARENCE MABIE,
Sup. Ct. Com'r.

20

FRANK CAMPBELL, of full age, being duly sworn according to law, on his oath, testifies as follows:

Direct examination by Mr. Hart:

I am a civil engineer practicing in the State of New Jersey and have been such for the past eighteen years. My office is in Hackensack, New Jersey.

Q. Mr Campbell, have you designed and constructed sewerage systems? A. I have.

30

Q. Do you know the sewerage system used until lately by the Camp Merritt managers which has a disposal plant in the Township of Palisades? A. I do, yes.

Q. Have you at any time designed and constructed disposal plants of that type or types similar thereto, if so, name them? A. I have. In Hackensack, Borough of Delford and Township of Palisades.

40

Frank Campbell, cross.

Q. Do you know the topographical conditions of the Boroughs of Dumont and of Bergenfield? A. I do.

10 Q. I ask you, Mr. Campbell, whether the topographical and other physical conditions existing in the Borough of Dumont make the erection of the disposal works within its boundaries impracticable as an improvement for the benefit of that entire community? A. It can be constructed within the limits.

Q. Does this condition apply in the Borough of Bergenfield? A. Yes.

Cross examination by Mr. Mackay:

20 Q. Could a disposal plant be erected in Borough of Palisades to serve the Boroughs of Dumont and Bergenfield? A. It could.

Q. The present disposal plant, to your knowledge, has been within the Township of Palisades and used by the United States Government from Camp Merritt for how long? A. Three years.

Q. Has it been in use during the greater part of the last three years? A. Up to about a year ago.

Q. And was it used within the last year? A. I believe it was by the camp authorities.

30 Q. Do you know whether it is being used now? A. That I do not know.

Q. Did you make an investigation to ascertain whether or not the disposal plant now erected within the Township of Palisades could be used by the Town of Palisades? A. I did.

Q. With what result? A. I found out that it would be impracticable to use it.

By Mr. Hart:

40 Q. Do you, of your own knowledge, know that that plant now in Palisades Township has been

Exhibits.

used by any person within the past year? A. I do not.

Exhibit P. 1.

LEASE

Lessor, Harry H. Huplet, Hackensack, N. J. 10
 Contracting officer, D. G. Stivers, Major, Q. M. C., N. G. U. S., at Camp Merritt, N. J.

Premises, Sixteen acres of land situated on Hackensack River, Bergen County New Jersey.

To be occupied by United States Government as Site for Sewerage Disposal.

Rental Per month \$12.50. Appropriation, Barracks & Quarters.

Date of lease Oct. 2, 1917. Date effective Oct. 2, 1917. Date expires June 30, 1918. The authority for this lease is Secretary of War. 20

THESE ARTICLES OF AGREEMENT, Entered into this 2nd day of October 19, between D. G. Stivers, Major, Quartermaster Corps, N. G. U. S., for and in behalf of the United States of America (hereinafter designated as lessee), of the first part, and Harry H. Huplet of Hackensack, in the County of Bergen, and State of New Jersey (hereinafter designated as lessor), of the second part, WITNESS: That the said parties do hereby mutually covenant and agree to and with each other as follows: 30

1. That the said lessor shall, and by these presents does hereby lease, demise, and let to the lessee the following described premises, to have and to hold the same with their appurtenances, unto the lessee, for the term beginning with October 2nd, 1917, and ending with June 30, 1918, at the rate per month and under the conditions named below, viz: 40

Exhibits.

10 A tract of land containing sixteen (16) acres, more or less, situated on Hackensack River, Bergen County, New Jersey, more particularly described below—at a yearly rental of One Hundred and fifty (\$150.00) Dollars, payable in equal monthly installments of Twelve and 50/100 (\$12.50) Dollars.

* * * * *

This lease is given, subject to the following conditions, viz:

20 (a) That the lessors shall, and by these presents do hereby lease, demise, and let to the lessee of the premises herein described to have and to hold the same with their appurtenances, to the lessee, for the term beginning on the 2nd day of October, 1917, until the 30th day of June, 1918, and thereafter from year to year during the period of the present emergency, and for one year thereafter, at the rental and upon the conditions hereinafter named, viz:

Provided, and it is hereby agreed, that the said tenancy shall be determinable by the lessee at any time (during said term) by the giving to the lessor or thirty days' previous notice in writing of its desire and intention to so determine the same.

30 (b) That the said premises are to be used for the site, location, construction and maintenance of a cantonment for military instruction, training, drilling, maneuvering and other purposes incident to such military use.

* * * * *

40 (e) That the lessee may fix, place upon, and erect upon the demised premises, during said term, at its own cost and expense, all such buildings and

Exhibits.

other improvements as the necessities or convenience of the military use of the same may require; but, all such buildings and improvements fixed to, or erected or placed in *or upon the said premises by the lessee, shall be and remain the exclusive property of the lessee and shall be removed by the lessee within 90 days after the said premises are vacated under this lease or renewal thereof.

10

* * * * *

IN WITNESS WHEREOF the parties aforesaid have hereunto placed their hands the date first hereinbefore written. The officer of the United States whose name is signed below certifies that the rate stated in this lease is not in excess of the commercial rental value of the premises named and that the said rate is the amount to be actually paid to the lessor for his own use, and that there are no public buildings, quarters, or grounds available for use as specified in this lease, and that the rate stipulated in this lease is a fair rental value of reasonably good premises suitable for the purpose stated in the locality where situated.

20

Witnesses.

Walter B. Hopping, as to D. J. Stivers,
 Capt. Q.M.C., U. S. R. Major, Quartermaster Corps,
 N. G. U. S.
 Edwin Lewis as to Harry H. Huplet.

30

(Executed in triplicate)

40

*Exhibits.***Exhibit P. 2.**

WAR DEPARTMENT

Real Estate Service

Office of the Chief of the Real Estate Service

Washington

10

May 31, 1919.

NOTICE OF RENEWAL.

To Harry H. Huplet,
325 E. 21st St.,
Brooklyn, N. Y.

Sir:

In accordance with Article 7 of the following
lease:

20

Lessor, Harry H. Huplet.

Lessee, United States of America.

Dated, July 1, 1918. Effective, July 1, 1918. Ex-
pires, June 30, 1919.

Premises 16 acres of land situated of Hacken-
sack River, Bergen County, N. J.

30

You are notified that the United States of Amer-
ica does hereby exercise the privilege of renewal
contained in said lease, and does hereby renew
same for the government fiscal year, 1920, namely,
July 1st, 1919, to June 30, 1920, or if said renewal
privilege does not grant the right of renewal to
June 30, 1920, then to such intermediate period

40

Exhibits.

nearest to June 30th, 1920, as is granted in said lease.

Kindly acknowledge receipt of this notice.

Very truly yours,

G. F. WOODS,

A. J.

10

G. F. WOODS,

Chief, Real Estate Service.

S/9772—LML QMC Site for sewerage, Camp Merritt.

RENEWAL OF LEASE

Lessor, Harry H. Huplet, 325 E. 21st St., Brooklyn, N. Y.

Contracting officer, C. F. von dem Bussche Col. Inf. USA. Actg. Chief Real Estate Service, W. D.

20

Premises, sixteen acres of land situated on Hackensack River, Bergen County, New Jersey.

Occupied by United States Gov. as Camp Site, Site for Sewerage disposal plant.

Rental per month \$12.50. Appropriation B. & Q. f. y. 1920.

Date of renewal 7/1/19. Date effective 7/1/19. Date expires 6/30/20.

The authority for this lease is Original Lease, "The Secretary of War."

30

THESE ARTICLES OF AGREEMENT, Entered into this 1 day of July, 1919, between C. F. von dem Bussche Col. Inf. USA Acting Chief Real Estate Service, W. D. for and in behalf of the United States of America (hereinafter designated as lessee), of the first part and Harry H. Huplet, of Hackensack, in the County of Bergen, and State of New Jersey (hereinafter designated as lessor), of the second part, WITNESSETH, that:

40

Exhibits.

WHEREAS by certain articles of agreement dated 1 day of July, 1918, the lessor did lease, demise and let unto the United States of America certain premises situate in the Town of Hackensack, County of Bergen, and State of New Jersey, to-wit:

10 A tract of land containing sixteen (16) acres, more or less, situated on the Hackensack River, Bergen County, New Jersey, more particularly described as follows: Property as shown on Map No. 164, filed December 25th, 1870, in the County Clerk's Office of Bergen County, N. J., and enumerated as Blocks Nos. 16, 17, 18 and 19; Block No. 16 being bounded on the north by Cooper Street; on the east by Union Avenue; on the south by West Street and on the west by River Road; Block
20 No. 17 being bounded on the north by Milford Avenue; on the east by Union Avenue; on the south by Cooper Street; on the west by River Road. Block No. 18 being bounded on the north by Demarest Avenue on the east by Union Avenue; on the south by Milford Avenue; on the west by River Road. The said Blocks Nos. 16, 17, 18 containing eight (8) acres, more or less. Block No. 19 being bounded on the north by ground now or formerly of John Demarest, on the east by River Road; on the south by the ground now or formerly of
30 J. E. Waite; on the west by the Hackensack River. Said Block No. 19 containing eight (8) acres, more or less.

For a term beginning July 1st, 1918, and expiring June 30, 1919, which said agreement in paragraph 7 thereof provided that at the option of the lessee, said lease, with all its covenants and agreements, might be renewed yearly as often as the needs of the public service might require, and

40 Whereas, the needs of the public service require that said lease be renewed,

Exhibits.

Therefore said parties do hereby mutually covenant and agree to renew and extend said lease with all its covenants and agreements, and by these presents do hereby renew and extend the same for further term beginning on the date of the expiration of said lease and terminating on the 30th day of June, 1920, upon the said terms, and with the same covenants and conditions as set forth in said lease hereby renewed, so far as applicable, the rent reserved hereunder being payable as follows: 10

Twelve dollars fifty cents (12.50) per month.

The following deletions were made prior to execution:

The words "U. S. Army" in 2nd line of preamble. 20

Line 5 of preamble.

In witness whereof the parties aforesaid have hereunto placed their hands the date first hereinbefore written. The officer of the United States whose name is signed below certifies that the rate stated in this lease is not in excess of the commercial rental value of the premises named and that said rate is the amount to be actually paid to the lessor for his own use, and that there are no public buildings, quarters or grounds available for use as specified in this lease, and that the rate stipulated in this lease is a fair rental value of reasonably good premises suitable for the purposes stated herein in the locality where situated. 30

C. FRANCIS BUSSCHE.

Witnesses:

Andrew Joyce	as to	C. F. von dem Bussche,	
121st J. A.		Col. Inf. USA. Actg.	
		Chief Real Estate Ser-	40
		vice, W. D.	

S. Rabbitt	as to	Harry H. Huplet.	
------------	-------	------------------	--

Reasons.

NEW JERSEY SUPREME COURT,

TOWNSHIP OF PALISADES,
Prosecutor,

v.

10 GEORGE VAN BUSKIRK, Clerk of
the County of Bergen, and
THE BOROUGHS OF DUMONT
and BERGENFIELD,
Respondents.

On Certiorari
Reasons.

The prosecutor writes down the following reasons why the proceedings brought up by this writ should be set aside:

20

1. Prior to the institution of the proceedings to condemn, the condemning municipalities had not obtained the consent of the governing body or the Department of Health of the Township of Palisades, the municipality in which the lands lie, the lands being condemned for the construction of a sewerage disposal plant being without the condemning municipalities, nor had the condemning municipalities or either of them obtained from the State Department of Health any reversal of any refusal of the local authorities to grant such a permit, nor had they in fact made any application to the Department of Health.

30

2. The lands sought to be condemned have upon them extensive improvements, and the condemnation proceedings are expressly limited to the condemnation of the land without the improvements. The condemnation of the lands without

40

Reasons.

the improvements would be abortive and the proceedings would be prejudicial to the owner of the land and improvements.

3. The proceedings to condemn are not warranted by Sections 1 and 2 of Article 21, Chapter 152 of the Laws of 1917, or any other provision of law.

10

4. The Boroughs of Dumont and Bergenfield are acting without authority of law.

A. C. HART,
Attorney for Prosecutor.

Reasons.

NEW JERSEY SUPREME COURT,

THE NORTH JERSEY UTILIZATION
AND SEWERAGE DISPOSAL
PLANT, INC.,

Prosecutor,

v.

GEORGE VAN BUSKIRK, Clerk of
the County of Bergen, and
THE BOROUGHS OF DUMONT
and BERGENFIELD,

Respondents.

20

On Certiorari
Reasons.

30

Same as in Township of Palisades case.

40

Opinion.

(Filed February 15, 1921.)

NEW JERSEY SUPREME COURT.

Before Justices SWAYZE, PARKER and BLACK.

10

TOWNSHIP OF PALISADES,
Prosecutor,

v.

GEORGE VAN BUSKIRK, Clerk of
the County of Bergen, and
BOROUGHS OF DUMONT and
BERGENFIELD,
Respondents.

No. 242
November
Term, 1920.

20

NORTH JERSEY UTILIZATION AND
SEWERAGE DISPOSAL PLANT,
INC.,
Prosecutor,

v.

GEORGE VAN BUSKIRK, Clerk of
the County of Bergen, and
BOROUGHS OF DUMONT and
BERGENFIELD,
Respondents.

No. 243
November
Term, 1920.

30

Submitted Dec. 2, 1920.

Decided February 15, 1921.

On Certiorari.

40

Opinion.

For the Prosecutor, Township of Palisades, A. C. HART.

For the Prosecutor, North Jersey Utilization and Sewerage Disposal Plant, Inc.,
MERRITT LANE.

Per Curiam:

10

This writ brings up the order of a Justice of the Supreme Court appointing commissioners under the eminent domain act of 1900 (C. S. 2182, *et seq.*) to appraise the value of lands situate within the Township of Palisades and desired by the two boroughs of Dumont and Bergenfield for the purposes of a sewage disposal plant.

The petition is professedly based upon, and solely upon, powers contained in the Act of 1917, Chapter 152 (P. L., pp. 319 to 463), commonly known as the Home Rule Act, and especially upon Section 1 of Article XXI, beginning at page 397, which is too long to quote in full, but which, in general, permits the governing body of any municipality by ordinance to provide for and construct, among other things, sewage systems and disposal works within or without the municipality and to acquire by purchase, gift or condemnation, and take and appropriate in the name of and for the municipality, any land or interest in land that may be needed therefor, within or without the municipality. To this, however, is annexed a proviso that no work shall be undertaken * * * or land, acquired under this article in any other municipality without the consent of the governing body and the Board of Health of such other municipality upon written application being made therefor, and in

20

30

40

Opinion.

case of refusal, the section contains a provision for an appeal to the Department of Health of the State of New Jersey, which shall have power to reverse the decision of the local authorities, etc. Section 12 of Article 38 of the Act, pages 457, 458, also authorizes two or more municipalities to join in the execution of various public works, including that in question.

The situation on the facts is a little unusual, because the application of the petitioning municipalities is not simply for the acquisition of an unimproved tract of land upon which it is proposed to build a sewage disposal plant, but is for the acquisition of a tract of land upon which such plant has already been constructed. The lands desired are part of the territory occupied by the great army cantonment called Camp Merritt, where, during the period of hostilities in 1917 and 1918, army engineers built a complete disposal plant for the purposes of that camp, and such plant remained *in situ* after the abandonment of the tract for military purposes; so that if the petitioners acquire the land, they acquire also the disposal plant unless it should be taken out and removed. In fact, they claim in their petition to have purchased the plant itself separate from the land and that this was legally practicable to be done in view of certain provisions contained in the lease to the United States by the parties who owned or claimed to own the premises at the time the United States occupied it; so that what they asked in the petition was for a valuation of the land separate from the plant. Their claim is denied by the prosecutor, North Jersey Disposal Plant, and the controversy in this aspect might raise some interesting questions if it were neces-

Opinion.

sary to be determined here, but we think it is not, and that we need go no further than to examine the question as bearing on the power of the petitioners to take either the land separate from the plant or land and plant together under the legislation invoked in their petition. In fact, for present purposes, it may be assumed, contrary to the statements in the petition, that they are desiring to acquire both land and the plant installed thereon as part of the real estate.

10

Our examination of the case leads to the conclusion that however meritorious practically the scheme may be and, apparently, is, of municipalities taking over a ready-made sewerage plant in operating condition, the petitioners, at the time of presenting their petition and of the making of the order appointing the commissioners, had not the power to condemn this property because they had not complied with conditions set forth in the statute as fundamental. Assuming for present purposes that Section 1 of Article XXI is broad enough to cover the acquisition by condemnation of a complete sewage plant owned by other parties, we are met with the insuperable difficulty that no such property can be acquired in any other municipality without the consent of the governing body and of the Board of Health of that municipality, or, in case of their refusal, without the reversal of such refusal by the Department of Health of New Jersey. It is not pretended in this case that the consent of the Township of Palisades or of its Board of Health has been secured; in fact, there is a controversy as to whether such consent was even asked for; but, if so, it does not appear to have been given, the petition stating that an application was made and that no reply had

20

30

40

Opinion.

been received. To meet this difficulty, respondents suggest that the proviso is not applicable to the acquisition of a complete sewerage plant, but is directed only to the land on which a future plant is to be constructed. This, however, does not help them because the proviso is fully as broad as the
10 purview of the section, and if the petitioners are not within the proviso, they are not within the purview. Consequently, they are in the dilemma that if the section in question is not broad enough to cover the acquisition by condemnation of an existing plant, they have no power to condemn at all, and if, on the contrary, it is broad enough, they have not acquired the power because of not having
20 complied with the condition. In the case of *Florham Park v. Madison*, 78 N. J. Law, 446, which turned on a very similar statute (P. L. 1907, p. 707), Mr. Justice Reed, speaking for the Court of Errors and Appeals, said on page 449: "If the above provision is applicable to the proceeding taken by this borough, the power to condemn this land fails because of the refusal of the local authorities of the borough to consent to the location of the disposal plant, and the absence of any reversal of their refusal by the State Board of Health." This finding, if in point, as we think it
30 is, is controlling upon us.

So far as relates to the failure of the prosecutor municipalities to make any answer to the requests for permission, the matter was dealt with by us very recently in the unreported case of *West Deptford v. Paulsboro*, Number 217 of the present term, where we intimated that perhaps a mandamus might be resorted to, to compel the municipalities
40 of which permission was asked, to take action one

Rule.

way or the other, either granting or refusing such permission, but that until permission was obtained, either from the municipality or the State Department of Health, nothing could be done.

These considerations require that the order appointing the commissioners be set aside.

A true copy.

10

ENOCH L. JOHNSON,
Clerk.

Rule.

NEW JERSEY SUPREME COURT.

THE NORTH JERSEY UTILIZATION
AND SEWERAGE DISPOSAL PLANT,
INC.,

Prosecutor,

20

v.

GEORGE VAN BUSKIRK, Clerk of
the County of Bergen, *et als.*,
Defendants.

The proceedings brought up by the writ of certiorari in the above entitled matter, including the order appointing commissioners in condemnation, having been inspected, and the argument of Merritt Lane, for the prosecutor, and Mackay and Mackay, for the respondents, having been heard and considered:

30

It is ordered that the proceedings in condemnation and the order appointing commissioners

40

Rule.

brought up by this writ be set aside, with costs.
Let the above rule be entered.

By the Court—

F. J. SWAYZE,
J.

10 Entered March 11, 1921, on motion of
MERRITT LANE,
Attorney for Prosecutor.

A true copy.

ENOCH L. JOHNSON,
Clerk.

Rule.

NEW JERSEY SUPREME COURT.

20

TOWNSHIP OF PALISADES,
Prosecutor,

v.

GEORGE VAN BUSKIRK, Clerk of
the County of Bergen, *et als.*,
Defendants.

30

(Same as North Jersey Utilization and Sewer-
age Disposal Plant, Inc.)

40

Notice of Appeal.

to the Court of Errors and Appeals of the State of New Jersey on the following grounds:

1. Because the Court erred in holding that the petition was especially based upon Section 1 of Article 21 of P. L. 1917, Chapter 152.

10 2. Because the petition upon which the order appointing commissioners was made contained sufficient to give the Court jurisdiction.

3. Because the Court failed to consider the fact that the sewerage plant was owned by the condemning municipalities upon the date of filing the petition to condemn the land upon which it had been erected.

20 4. Because the petition was filed only to condemn the land and not to construct a sewerage disposal plant and, therefore, the consent of the local authorities was not necessary.

5. Because the North Jersey Utilization & Sewerage Disposal Plant, Inc., could not raise the question of the consent of the local authorities under Section 1 of Article 21.

6. Because the Court set aside the order appointing the Commissioners.

30 7. Because the recital in the petition of Section 1 of Article 21 was surplusage.

Yours respectfully,

MACKAY & MACKAY,
Attorneys for Respondents.

New Jersey Court of Errors and Appeals

THE NORTH JERSEY UTILIZATION AND SEWER-
AGE DISPOSAL PLANT, INC.,

Appellee,

vs.

GEORGE VAN BUSKIRK, Clerk of the County
of Bergen, and THE BOROUGHES OF DUMONT
AND BERGENFIELDS,

Appellants.

*Heard Below
Before Justices
Swayze, Parker
and Black.*

TOWNSHIP OF PALISADES,

Appellee,

vs.

GEORGE VAN BUSKIRK, Clerk of the County
of Bergen, and THE BOROUGHES OF DUMONT
AND BERGENFIELDS,

Appellants.

BRIEF FOR RESPONDENTS.

The brief for the appellants, Boroughs of Dumont and Bergenfields, has just been served, and the time is too short to prepare a complete brief in reply.

There is, therefore, submitted to the Court herewith the brief of respondents used in the Supreme Court, and all that we will attempt to do here will be to refer to some statements in the brief of appellants which we believe ought not to be passed without comment.

I.

With respect to the facts.

Counsel states, page 2 of the brief, that prior to June 30th, 1920, the United States Government, having no use for Camp Merritt and its appurtenances, advertised and sold all of the buildings and other fixtures used in connection with Camp Merritt, and Harris Bros., a corporation, purchased the sewerage disposal plant and other buildings erected upon the premises to be con-

demned and other buildings in the camp proper, and then states that prior to June 30th the Boroughs of Dumont and Bergenfields, for a good and valuable consideration, purchased the said disposal plant and other works, buildings and erections.

There was no evidence before the Supreme Court with respect to these supposed facts. Counsel refers to the case, page 14, paragraph 4. This is a paragraph of the petition for condemnation. There was no evidence offered to support it. There is no mention in the petition or in the case of any Harris Bros. The allegation in paragraph 4 of the petition is that the Boroughs of Dumont and Bergenfields for a good and valuable consideration purchased the system of sewers and drains, &c. From whom they purchased, how they purchased, for what consideration they purchased, is not disclosed in the petition. The proceedings by which the Boroughs of Dumont and Bergenfields claim to have acquired title to the disposal works, aside from the land, were not offered in evidence. As matter of fact, had they been offered in evidence it would have appeared, it is submitted, that Dumont and Bergenfields, never acquired title to the sewerage disposal plant aside from the land, by purchase from Harris Bros., or anyone else.

On page 11 of counsel's brief they reiterate that the government sold the buildings as personal property to Harris, who, in turn, sold the sewerage disposal and other buildings to Dumont and Bergenfields, and that was all done prior to July 1st, 1920. There is not a scintilla of evidence upon which counsel may base this statement.

II.

In several places in the brief counsel state that on June 30th the Boroughs of Dumont and Bergenfields were in possession, and that this was prior to the surrender by the government to the North Jersey Utilization and Sewerage Disposal Plant, Inc., on July 1st, and that since June 30th, 1920, the Boroughs of Dumont and Bergenfields have been kept in possession by an order of the Court of Chancery (pp. 3, 11, 13, 19). On the last page counsel say that it is "admitted" that Dumont and Bergenfields were in possession on June 30th. That Bergenfields and Dumont were in possession on June 30th is not only not admitted, but, it is submitted, that the evidence does not support any such contention. Until July 1st the government of the United States was

in possession and upon that day an accredited representative of the government surrendered possession to a representative of the North Jersey Utilization and Sewerage Disposal Plant, Inc., as the owner of the fee (p. 41). It is true that Mr. Attanassio, the representative of the North Jersey Utilization and Sewerage Disposal Plant, Inc., said that on June 30th he saw some representatives of the Boroughs of Bergenfields and Dumont come upon the premises, and look over the same, and hold, what appeared to be, a meeting at the extreme end of the property, and thereafter left. On July 1st Attanassio attended, representing the North Jersey Utilization and Sewerage Disposal Plant, Inc., and on that day the government, through its accredited representative, surrendered possession to him. Later on that day the representatives of Bergenfields and Dumont came upon the ground, and threatened to oust Attanassio. Attanassio refused to be ousted, ordered them off the place, and actually forced them off the place, put padlocks on the property and left a constable in charge for the North Jersey Utilization and Sewerage Disposal Plant, Inc., and that company remained in possession until July 2nd. On July 2nd the representatives of Dumont and Bergenfields broke in (p. 41). The representative of the North Jersey Utilization and Sewerage Disposal Plant, Inc., again came upon the premises and forced them off, and again put padlocks on the door. After that an order was made by the Court of Chancery, under which order Dumont and Bergenfields have been kept in possession, without, it is claimed, any warrant, in law.

III.

While not expressly so stating, counsel in their brief give the impression at various points that the right of the government and of any purchaser from the government of the lands and buildings erected upon the lands was somewhat greater than a right to remove, and that by reason of the filing of the petition to condemn on June 29th, 1920, the rights of the boroughs to the land and buildings became greater than the right of the government.

As stated in the brief in the Supreme Court, page 5, the land was leased with the privilege of the government erecting upon it such structures as it might see fit. While it is provided in the lease that the structures so erected should remain the property of the government, it is likewise specifically provided that such

property "shall be removed by the lessee within ninety days after the said premises are vacated under this lease or renewal thereof." The plant is built of concrete, built into the ground and became, by annexation, a part of the freehold. Were it not for the express provision in the lease, as between the government and the owner of the fee, the structure would become a part of the land.

Flint v. Flint, 87 N. J. E. 560, affirmed on opinion below 88 N. J. E. 346.

And see the extent to which the courts go in cases of this kind, *Torrey v. Burnett*, 38 N. J. L. 456, an opinion of this Court.

As stated in the brief in the Supreme Court, page 5, the rental to the government was fixed at approximately the amount of the taxes. The government and the landlord knew what kind of structure the government intended to put upon the land. They knew that the structures had no scrap value, and that it would be reasonable to anticipate that when the land was surrendered the structures would remain upon it. To permit the boroughs now, through condemnation of the land, to acquire the improvements, without compensation, would result in disappointing the reasonable expectation of the landowner, and in making a gift of the property to another not in anywise entitled to it.

IV.

It is said that it is not necessary for the boroughs to obtain the consent of the Township of Palisades because the Township of Palisades had already given its consent to the erection of the sewerage system by the government.

But that consent was not the consent contemplated by section 1 of article 21 of chapter 152 of the Laws of 1917.

It was limited to a consent to the government erecting and maintaining a sewerage system during the progress of the war and for one year thereafter (pp. 50, 51).

V.

It is now said that the Boroughs of Dumont and Bergenfields are not necessarily proceeding under the provisions of section 1 of article 21 of the Home Rule Act. (Chapter 152 of the Laws of 1917.) And it is said that reference to that section in the petition is surplusage. But if the right of the boroughs cannot be rested upon section 1 of article 2 there is no other provision

of law upon which it may rest. Up to the time of the filing of the brief in this court by counsel for the boroughs there has been no suggestion that there was any other legislation upon which it might rest.

The specific section is referred to in the petition to condemn and was the only provision referred to in the brief of counsel in the Supreme Court.

Counsel under the head of Reason IV refer to two other sections, of chapter 152 of the Laws of 1917. Section 3 of article 20, p. 371, and section 6 of article 18, p. 366. But all of section 20, chapter 152 of the Laws of 1917, p. 371, applies to the making of a "local improvement" and a "local improvement" is defined section 1, article 20, as one "the cost of which, or portion thereof, may be assessed upon lands in the vicinity thereof benefited thereby." The acquiring of this sewer system is not a local improvement within the meaning of article 20. It is not one the cost of which may be assessed upon lands in the vicinity thereof.

Section 3 gives the right to condemn lands only "for the making of any *such improvement*."

Section 5 of this same article, that is, article 20, referred to by counsel on page 17 of their brief, refers to the taking over by purchase or condemnation of property or works mentioned in article 20, that is, works, the erection of which would constitute a local improvement. It has no reference to the acquiring of a general sewerage system outside of the municipality.

Article 18, section 6, p. 366, has to do with public lands and buildings. The section gives power to acquire lands by condemnation "necessary or useful for the proper exercise of any power lawfully conferred upon it; provided, this section shall not repeal any provision requiring the consent of another municipal corporation or any State authority to the acquiring of any such lands, easements, materials, &c." The right to condemn is ancillary to some power which must be found in some other section. It is not found in article 18, nor, as I have previously pointed out, is it found in article 20.

Moreover, this section specifically requires that if there is any provision requiring the consent of another municipality, it must be observed. The argument that there is no such provision contained on pages 15 and 16 of counsel's brief is specious. It is expressly provided for by section 1 of article 21: The consent given to the government is not such a consent as is required under

this section. The Township of Palisades has a much greater right than merely to require the removal of the buildings. It has the right to prevent the operation of a sewerage system within its borders, for the use of other municipalities, without its consent. Reference is made to section 2 of article 21, but this section gives the municipalities the right to purchase an existing operating plant from a private individual or corporation owning the same. Neither the government nor the person to whom the government sold, if in fact it did sell, owned this sewerage disposal plant as an existing operating plant after the expiration of the lease. No right existed in any one other than the owner of the soil to do more than to remove the structures.

The theory is that if there is an existing operating plant the municipality may be permitted to acquire it and it will not injure the municipalities in which the plant is operating because it is assumed that the municipality in which the plant is operating has consented to the operation of the plant by a "private individual or corporation owning the same." Sections 1 and 2 must be read together.

Article 21 is complete in itself. It deals with a specific matter. So is article 18, and article 20 complete, each in itself.

VI.

It is stated in counsel's brief that the North Jersey Utilization and Sewerage Disposal Plant could not raise the question of the consent of the local authorities under section 1 of article 21.

No cases are cited upon this point nor do we think there could be.

The Boroughs of Dumont and Bergenfields are proceeding to exercise the right of eminent domain and are proceeding *in invitum* to take the property of the North Jersey Utilization and Sewerage Disposal Plant, Inc. That company is the owner of the property to be taken by eminent domain and has the right to insist that the condemning authorities are acting without power.

We cannot follow the argument of counsel on pages 18 and 19 with respect to the putting of rights of an individual ahead of the rights of the public. The rights of the public are measured by the legislation. The private individual is entitled to retain his lands and the improvements thereon unless the public by law is entitled to condemn.

We cannot understand the theory by which it is claimed that the North Jersey Utilization and Sewerage Disposal Plant, Inc., is estopped to contest that the consent of the local authorities of the Township of Palisades was not required by reason of the fact that it knew that the sewerage disposal plant had been erected, and renewed the lease. In the first place, the North Jersey Utilization and Sewerage Disposal Plant did *not* renew the lease. If it did, we cannot conceive how it is estopped. There was no consent of Palisades Township to the building of the plant and its operation, other than the consent which it gave to the government that it might be operated so long as it was operated by the government during the war and for one year thereafter.

It is respectfully submitted that the judgment of the Supreme Court should be affirmed.

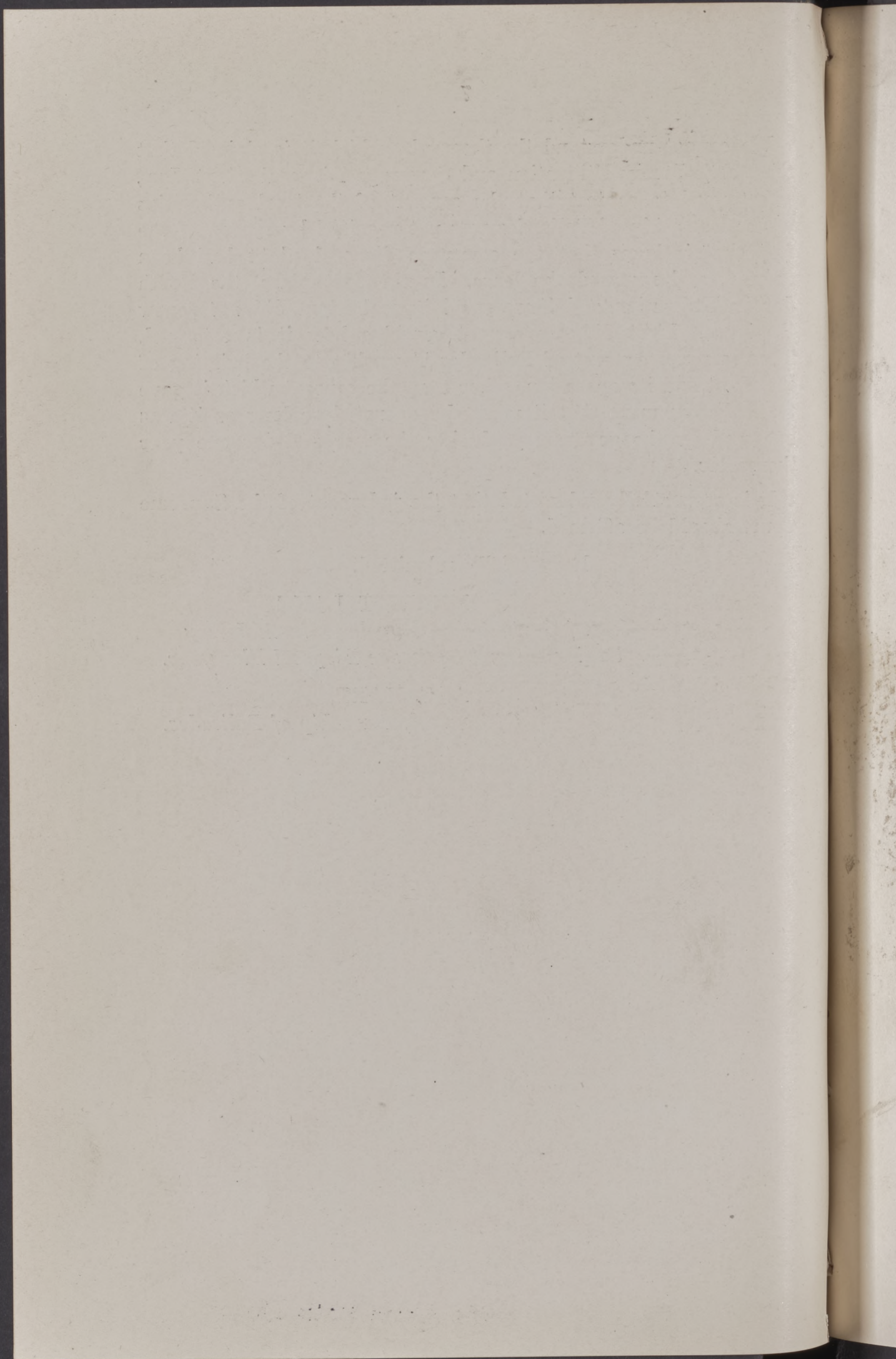
Respectfully submitted,

MERRITT LANE,

*Of Counsel with Appellee, North Jersey
Utilization and Sewerage Disposal Plant, Inc.*

A. C. HART,

Of Counsel, Township of Palisades.



New Jersey Supreme Court

THE NORTH JERSEY UTILIZATION AND SEWER-
AGE DISPOSAL PLANT, INC.,

Prosecutor,

vs.

GEORGE VAN BUSKIRK, Clerk of the County
of Bergen, and THE BOROUGHS OF DUMONT
AND BERGENFIELDS,

Respondents.

TOWNSHIP OF PALISADES,

Prosecutor,

vs.

GEORGE VAN BUSKIRK, Clerk of the County
of Bergen, and THE BOROUGHS OF DUMONT
AND BERGENFIELDS,

Respondents.

On Certiorari.

BRIEF FOR THE PROSECUTORS.

The Boroughs of Dumont and Bergenfields, acting under authority of article 21, section 1-7, chapter 152 of the laws of 1917, P. L. 1917, pp. 397-400, entered into a contract, p. , under the terms of which they agreed to, for their joint benefit, purchase or acquire by condemnation or otherwise a system of sewers and drains which had been prior to June 30th, 1920, maintained and operated by the United States for the sewerage and drainage of Camp Merritt, including the necessary land and real estate therefor, establish a joint sewer commission and create the office of joint sewer commissioners. Each municipality adopted an ordinance, p. , entitled:

“An ordinance to provide for the establishment of sewage disposal works and the works appurtenant thereto including sewers, jointly by the Boroughs of Bergenfields and Dumont, and for the acquisition by gift, purchase or condemnation of existing disposal works, sewers, or property necessary therefor, including lands and real estate and the interest in lands and real estate, and providing for the joint acquisition, extension, operation and maintenance thereof, and creating a joint sewage commission for the administration thereof.”

In pursuance of these contracts and ordinances an application was presented to a Supreme Court Justice on June 29th, 1920, for the condemnation of certain lands located in the Township of Palisades and the Supreme Court Justice on that day made an order fixing September 18th, 1920, as the time when he would hear the parties in interest. On September 18th, 1920, over the protest of the prosecutors of these writs, the Supreme Court Justice appointed commissioners, the proceedings being under the Act Concerning Eminent Domain, revision of 1900, 2 C. S. of N. J. 2182. He thereupon allowed a writ of certiorari to the New Jersey Utilization and Sewerage Disposal Plant, the owner of the fee of the lands proposed to be taken, and a similar writ to the Township of Palisades, in whose territory it was proposed to establish the sewerage disposal system.

The writs will be argued together.

I.

The proceedings are irregular and void because it does not appear that the municipalities of Dumont and Bergenfields have obtained either the consent of the Department of Health of the Township of Palisades and the consent of its governing body, or the action of the Department of Health of the State of New Jersey.

Under section 1, article 21, P. L. 1917, chapter 152, p. 397, it is provided that the governing body of every municipality, may by ordinance, provide for and cause "to be constructed within or without the municipality any * * * sewage disposal works, * * * within or without the municipality, * * * provided, however, that no work shall be undertaken, or any street, road, alley or other public place occupied, or land acquired under this article in any other municipality, *without the consent of the governing body and the board of health of such other municipality*, upon written application being made therefor, and in case of the refusal of the municipalities and local boards of health to grant such permission, then the municipality making the application may *within thirty days after such refusal apply to the Department of Health of the State of New Jersey* which shall have power to reverse the decision of the local authorities and grant the application for the erection of said disposal works, *upon being satisfied that the topographical and other physical conditions existing*

in the applying municipality are such as to make the erection of a disposal works within its boundaries impracticable as an improvement for the benefit of the entire municipality; and in case the local authorities grant the permit to locate such disposal works, and the same shall be deemed objectionable by the inhabitants of the municipality where it is proposed to locate such works, then ten citizen freeholders thereof may, within thirty days after the granting of such permit, apply to the Department of Health of the State of New Jersey which shall have like power to reverse the decision of the local authorities and to prohibit the location of such disposal works upon being satisfied that the topographical and other physical conditions existing in the applying municipality do not make the erection of its disposal works within its boundaries impracticable as an improvement for the benefit of the entire municipality;” and it is further provided that all municipalities making application as aforesaid for the location of any such disposal works shall accompany the same with a descriptive map of the premises they propose to occupy, a copy of which shall also be filed in the office of the Department of Health of the State of New Jersey.

It is conceded that the condemning municipalities have neither the consent of the Township of Palisades or of its Board of Health nor have they the consent of the Department of Health of the State of New Jersey nor have they made any application to the Department of Health of the State of New Jersey. While it was alleged in the petition to condemn that an application was filed with the Township Clerk of the Township of Palisades and the clerk of the Board of Health on June , 1920, (p.) and that no reply had been received the testimony taken upon the writs indicate that no such assumed applications as were set forth in the petition, were, in fact, ever made. The Township Clerk swears that none such was ever received. Under the act, the consent both of the governing body and the Board of Health must be obtained. There is no proof supporting the statement of the petition that these applications were filed. It would make no difference if they were filed for the act requires the consents.

That the failure to obtain these consents prior to the filing of the petition to condemn is fatal, I think, is indicated by *Philadelphia Trust Company v. Merchantville*, 75 N. J. L. 451, affirmed on the opinion below 76 N. J. L. 822. In that case a certiorari was allowed to an order made by a Justice of the Supreme Court on application of the Borough of Merchantville to condemn lands

for the construction of sewerage disposal works in an adjoining municipality. One of the reasons assigned was that the condemning municipality had not obtained the consent of the municipality in which the lands were to be acquired. The Court overruled this contention but it was expressly upon the ground that the act under which the municipality was proceeding did not require the consent of the municipality in which the lands were to be acquired. It determined the point upon its merits and the judgment was affirmed by the Court of Errors upon the opinion of this Court.

Even if the governing municipality and the board of health granted a permit any ten citizen freeholders might within thirty days apply to the Department of Health which has the power to reverse the decision of the local authorities and to prohibit the location of the disposal works upon being satisfied that the topographical and other physical conditions existing in the applying municipality are such as not to make the erection of a disposal works within its boundaries impracticable as an improvement for the benefit of the entire municipality. Before the Department of Health could reverse the decision of the local authorities not to grant the permission under the statute they must be satisfied that the topographical and other physical conditions existing in the applying municipality were such as to make the erection of a disposal works within its boundaries impracticable as an improvement for the benefit of the entire municipality. In the case at bar the evidence before this Court is to the effect that the topographical and physical conditions existing in the Boroughs of Bergenfields and Dumont make it practicable that the sewerage disposal plant should be erected within the boundaries of either municipality. The municipalities cannot proceed under the provisions of section 2 of article 21, P. L. 1917, p. 399, for the reason that in that section they are not given the power to condemn.

II.

The proceeding to condemn being expressly limited to the land without improvements is illegal and should be set aside.

It appears from the petition to condemn and from the testimony taken upon the writs that the position of the municipalities is that they acquired by purchase (presumptively under the provisions of section 2, article 21) the sewerage disposal plant

which is erected upon the land sought to be condemned and that all that is sought to be condemned is the land without improvements. The condemnation being by the petition so limited, if the municipalities are not entitled to take the land without compensating for the improvements, proceedings designed for that purpose are illegal and will be set aside.

The land was leased by the owner to the government of the United States, the term commencing the 1st of July, 1918, expiring the 30th of June, 1919, and renewed from the 1st of July, 1919, and expiring the 30th of June, 1920. The land was leased with the privilege to the government of erecting upon it such structures as it might see fit. Permission was reserved to the government to remove the structures erected within ninety days after vacation. Under this lease the government erected upon the property sought to be condemned an extensive sewerage disposal plant. The plant is built of concrete, built into the ground, and became by annexation a part of the freehold. Were it not for the express provision in the lease as between the government and the owner of the fee the structure would become a part of the land.

Flint v. Flint, 87 Eq. 560, affirmed on opinion below, 88 N. J. E. 346.

The right of the government (if any right existed) so far as removing the improvements was concerned, was confined strictly to such right as was expressly reserved in the lease and that right was in express terms limited to removal within ninety days after vacation. The North Jersey Utilization Sewerage Disposal Plant, Inc., has acquired all of the rights of the owner of the fee. The rental fixed in the lease was fixed in view of the fact that improvements might be left on the land which would become the property of the land owner. There is no scrap value to the improvements on this land. The boroughs have no more right than a private individual to defeat the reasonable expectation of the land owner that improvements which could not be removed at a profit would be left. The government did not obtain the right to acquire the land. Permitting the boroughs through condemnation of the land to acquire the improvements without compensation, would result in making a gift of property of the land owner to another not in any wise entitled to it. It can not be argued that anyone acquired from the government anything more than the right to remove. The right to remove being worthless, it is not to be presumed that anyone paid the government any substantial

sum for it. Nevertheless, if the boroughs succeed in the scheme on foot through the use of condemnation proceedings, the owner of the land who surrenders it at a rental fixed in view of the fact that improvements might be left on it, will be deprived of a reasonable expectation and a present made to someone.

On June 29th, 1920, the government, through its accredited representative, surrendered to the North Jersey Utilization and Sewerage Disposal Plant, Inc., the land with the improvements thereon and the North Jersey Utilization and Sewerage Disposal Plant went into possession of the plant. It was subsequently ousted from possession by agents of the Boroughs of Dumont and Bergenfields without, it is insisted, any legal warrant. Nevertheless, the Court of Chancery issued an order to show cause with *ad interim* restraint enjoining any interference with the boroughs, which order to show cause has not yet been heard. The boroughs claim to have acquired in some way, not disclosed by the record, some rights in the sewerage system erected upon these lands. However these rights may have been acquired they could not be greater than the right of the government which was to, within ninety days, remove the structures. Assuming, but not conceding, that inasmuch as the boroughs may have acquired from the government the right to remove these structures, they might remain in possession until the removal had been accomplished, the ninety days having now long since expired within which removal was permitted under the provisions of the lease, they are now in possession of such sewerage disposal works merely as trespassers.

Presumptively, the purpose in filing the petition to condemn on the 29th of June, 1920, was to form a basis for the contention that the filing of the petition gave the boroughs some rights.

But under the provisions of the act concerning eminent domain title does not pass until the payment or tender of the award. Section 7 of the act, 2 C. S. of N. J. 2184, provides that upon filing the report of the commissioners and upon payment or tender or payment of the amount awarded * * * petitioner is hereby empowered to enter upon or take possession of such land or other property.

In *re Essex Park Commission*, 80 N. J. E. 1, Vice-Chancellor Emery had under consideration this statute and said notwithstanding the provisions of the 6th section of the act which requires the assessment of the amount to be paid by the condemn-

ing party to be made as of the date of filing the petition and order thereon, "But the subsequent provisions of the act indicate that the land is not to be considered as 'taken' from the owner so as to deprive him of the ordinary rights and obligations of an owner of the property, until payment or tender of the award or verdict for damages." Referring to sections 7 and 14, the Vice-Chancellor said:

"These statutory conditions requiring payment as the condition precedent to 'taking' assure the benefit of the constitutional provisions that 'private property shall not be taken for public use without just compensation.' It may happen in some instances that the rule of evidence prescribed by the statute as to the time of the valuation may not give the owner his full constitutional rights and may perhaps not be the proper method of assessing his damages."

The Court of Errors, *sub nom Bowers v. Bloomfield*, 81 N. J. E. 163, affirmed the Vice-Chancellor but did not pass upon the point that he made that title did not pass until the amount of the award was paid.

It is insisted that a consideration of the statutory language and of *Welch v. Board of Education*, 73 N. J. L. 643; *O'Neill v. Hudson County*, 41 N. J. L. 161; *Re Jersey City Water Commissioners*, 31 N. J. L. 72; *State, ex rel Mabon v. Halsted*, 39 N. J. L. 640; *Manda v. Orange*, 78 N. J. L. 630, and the constitutional provision that land shall not be taken for public use without just compensation, paragraph 16 of article 1, leads to the conclusion that title does not pass until the payment or tender of the award. Until such time the right of the owner of the fee remains unimpaired. Ninety days having elapsed, after the vacation of the lands by the government, and the surrender of the lands with the improvements to the North Jersey Utilization and Sewerage Disposal Works, Inc., the owner of the fee, the North Jersey Utilization and Sewerage Disposal Works, Inc., is the absolute owner of the lands with the improvements, and if the boroughs desire to obtain the sewerage disposal plant they must either purchase or condemn.

In considering this matter it must not be overlooked that, although there is a statement in the petition that the boroughs have acquired rights in the sewerage disposal plant, there is no evidence as to how these rights were acquired or what the rights are. There is evidence that the land, with its improvements, were upon the 29th day of June, 1920, surrendered by the gov-

ernment to the North Jersey Utilization and Sewerage Disposal Plant, Inc., the owner of the fee.

That title does not pass until the payment or tender of compensation is the prevailing rule in other jurisdictions.

20 *Corpus Juris*, title "Eminent Domain," p. 843, sec. 281, 284,

where it is said:

"So under constitutions which contain no express requirement that payment shall precede taking but prohibit the taking of private property for public use without just compensation, title does not pass before payment, except where the statute expressly provides that title shall pass before compensation and makes adequate and certain provision for such compensation."

The statute with respect to eminent domain does not expressly provide that title shall pass before compensation made nor does it provide any method for compensation. It is a statute with respect to procedure only and indicates the manner in which the amount of compensation may be fixed. In the case at bar neither of the municipalities have appropriated any money for the payment of compensation, and there is no certainty whatever that compensation will ever be made. The municipalities have the absolute right to abandon the proceedings.

The proceedings to condemn being limited to the condemnation of the land without the improvements and it appearing that the condemnation of such land will serve no useful purpose, the proceedings to condemn are not warranted by the act and are a gross abuse of the discretion reposed in the municipalities.

III.

Dumont and Bergenfields are acting without authority of law.

It is assumed that the municipalities are acting under powers conferred by sections 1 and 2 of article 2 of chapter 152 of the laws of 1917. Under section 2 the municipalities claim to have purchased the system of sewer or drain works, but under that provision power is only given to purchase an existing operating plant, "from a private individual or corporation owning the same." Neither the government nor the person to whom the government sold, if, in fact, it did sell, owned this sewerage disposal plant as an existing operating plant after the expiration of

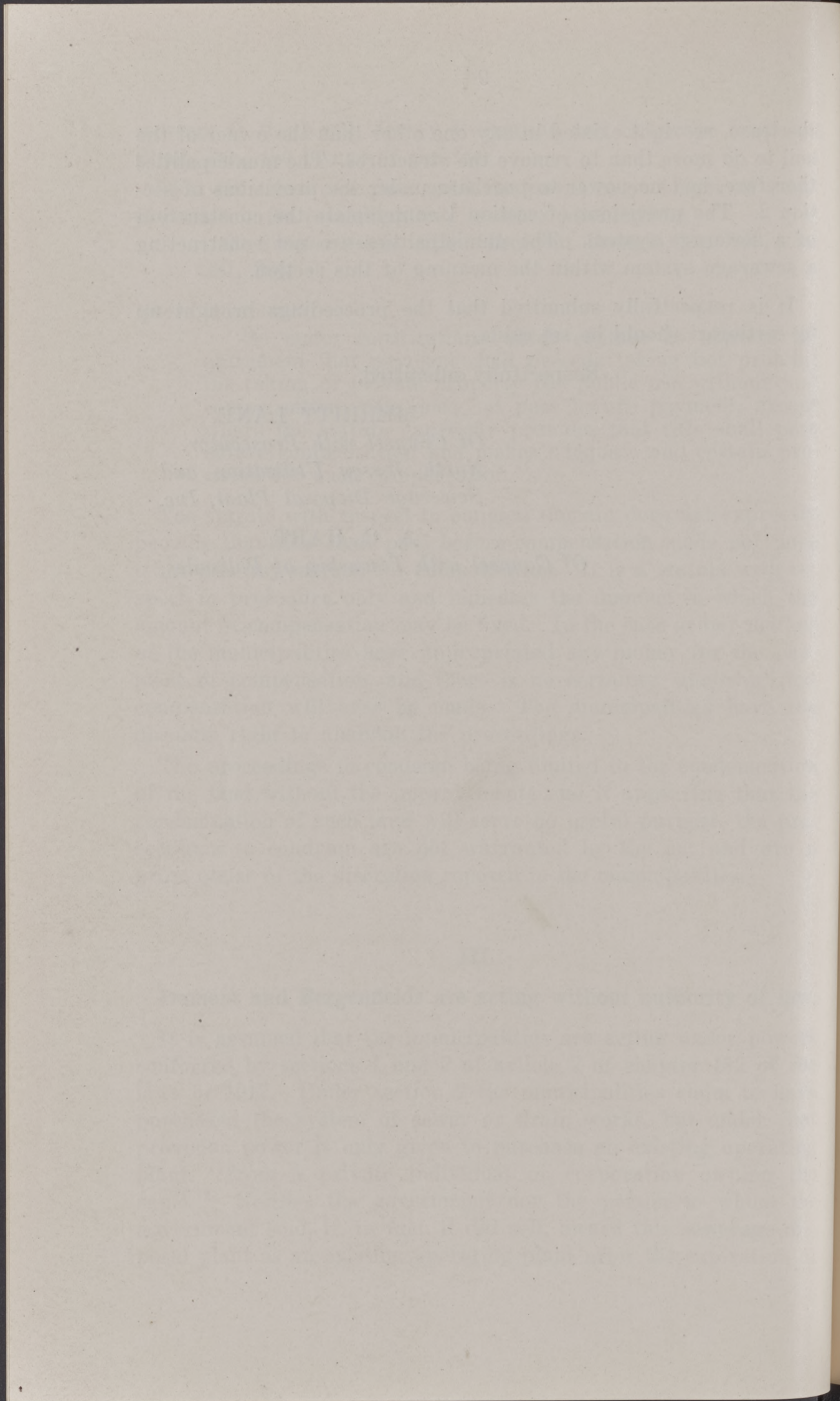
the lease, no right existed in any one other than the owner of the soil to do more than to remove the structures. The municipalities therefore, had no power to purchase under the provisions of section 2. The provisions of section 1 contemplate the construction of a sewerage system. The municipalities are not constructing a sewerage system within the meaning of this section.

It is respectfully submitted that the proceedings brought up by certiorari should be set aside.

Respectfully submitted,

MERRITT LANE,
*Of Counsel with Prosecutor,
North Jersey Utilization and
Sewerage Disposal Plant, Inc.*

A. C. HART,
Of Counsel with Township of Palisades.



New Jersey Court of Errors and Appeals

THE NORTH JERSEY UTILIZATION AND
SEWERAGE DISPOSAL PLANT, INC.,
Prosecutor-Respondent,

v.

GEORGE VAN BUSKIRK, Clerk of the
County of Bergen and BOROUGHS OF
DUMONT and BERGENFIELD,
Respondents-Appellants.

THE TOWNSHIP OF PALISADES,
Prosecutor-Respondent,

v.

GEORGE VAN BUSKIRK, Clerk of the
County of Bergen and BOROUGHS OF
DUMONT and BERGENFIELD,
Respondents-Appellants.

BRIEF FOR THE BOROUGHS OF DUMONT AND BERGENFIELD.

Statement.

This appeal brings up for review a judgment of the Supreme Court setting aside an order appointing commissioners in condemnation proceedings.

The petition was filed by the Boroughs of Dumont and Bergenfield to condemn a tract of land situate in the Township of Palisades adjoining (Case, p. 3). The petition to condemn was filed on June 29, 1920. The land which the Boroughs proposed to condemn is described in the petition (Case, p. 15), and was used by the United States

Government as part of a military cantonment during the World War and known as Camp Merritt. The United States Government on October 2, 1917, leased the land from one Harry H. Huplet, for the term of one year, which expired on June 30, 1918 (Case, p. 59), with a privilege to renew the same from year to year thereafter during the period of the present emergency, and for one year thereafter (Case, p. 60). The Government renewed the said lease from year to year and the final renewal was executed on July 1, 1919, and expired on June 30, 1920, upon the same terms and conditions as set forth in the original lease (Case, pp. 63, 65). By the terms of said lease it was provided that all buildings and other improvements fixed to, or erected, or placed in or upon the said premises by the lessee shall be and remain the exclusive property of the lessee (The United States Government) and shall be removed by the lessee within 90 days after the said premises were vacated.

Prior to June 30, 1920, the United States Government having no further use for Camp Merritt and its appurtenances, advertised and sold all of the buildings and other fixtures used in connection with Camp Merritt, and Harris Bros., a corporation, purchased the sewerage disposal plant and other buildings erected upon the premises to be condemned and other buildings in the camp proper. And the Boroughs of Dumont and Bergenfield prior to June 30, 1920, for a good and valuable consideration purchased the disposal plant and other works, buildings and erections situate within the Township of Palisades and upon the lands and premises to be condemned (Case, p. 14, Par. 4).

After they made this purchase, the Boroughs of Dumont and Bergenfield entered into a joint agree-

ment which is set forth on page 5 of the printed case. They also passed an ordinance ratifying the said agreement, which ordinance is set forth in the printed case beginning at page 10. Acting under said agreement and ordinance the Boroughs of Dumont and Bergenfield as heretofore stated purchased the disposal plant and other works erected upon the lands to be condemned. The Boroughs also, prior to June 30, 1920, caused a search to be made of the records in the Bergen County Clerk's Office to ascertain the real and true owners of the lands to be condemned; the search was made by the North Jersey Title Insurance Company of Hackensack and their report is set forth in the printed state of the case on page 18 by which it appears that the title of the fee was in doubt and a list of the assumed owners or persons entitled to any interest is set out in the printed case (p. 21).

The United States Government surrendered possession of the land to Frederick Atanasio, an officer of the North Jersey Utilization and Sewerage Disposal Plant, Inc., one of the respondents, on July 1, 1920, (Case, p. 40). Prior to surrendering possession of the land, the government had sold the buildings erected thereon, in accordance with the provision contained in their lease, and prior to this same date of surrendering of the land, the Boroughs of Dumont and Bergenfield had purchased the buildings and on June 30, 1920, their workmen were in possession (Case, p. 43, line 14, and Case, p. 41, line 16), and have been kept in possession by virtue of an order of the Court of Chancery of New Jersey which restrained the North Jersey Utilization and Sewerage Disposal Plant, Inc., its workmen, etc., from interfering or molesting the Boroughs of Dumont and Bergenfield in the possession of the said sewerage disposal plant and other buildings (Case, p., 41).

Before the land was surrendered by the United States Government on July 1st, the Boroughs of Dumont and Bergenfield filed their petition to condemn the land, having previously bought the buildings and before the surrender of the land, the Boroughs of Dumont and Bergenfield, their workmen, etc., went into possession and have continued in possession and have been protected in their possession by virtue of the Court order.

On June 29, 1920, which was prior to the surrender of the land and after the Boroughs of Dumont and Bergenfield had bought the buildings, the Honorable Francis J. Swayze, Supreme Court Justice, signed the order fixing the time and place for the appointment of commissioners to condemn the lands (Case, p. 25, etc.), which was returnable on September 18, 1920, at the Court House, in the City of Jersey City (Case, p. 26). On September 18, 1920, Justice Swayze signed an order appointing Frank M. Taylor, Ernest J. Heppheimer and Alvah A. Swayze, commissioners.

On September 27, 1920, two writs of certiorari were granted by Justice Swayze, one for the Township of Palisades and one for the North Jersey Utilization and Sewerage Disposal Plant, Inc., to review the order of September 18, 1920, appointing commissioners; these writs were returnable before the Supreme Court and submitted on brief at the November Term, 1920, and decided February 15, 1921, by a *per curiam* opinion (Case, p. 69).

This appeal is to review that judgment.

REASON I.

Because the Court erred in holding that the petition was especially based upon Section 1 of Article 21 of P. L., 1917, Chapter 152.

The petition is set forth in the printed case at page 3 and, among other things, contains the following:

That your petitioners were created by an act of the legislature of the State of New Jersey entitled, "An Act Relating to Boroughs" (Revision of 1897) Approved April 24, 1897, and acts amendatory thereof and supplements thereto.

That by an act of the legislature known as Chapter 152 of the Public Laws of 1917 entitled, "An Act Concerning Municipalities" it is provided as follows:

Article 1, Section 1: Definitions.—The term Municipality, or Municipal Corporation where used in this Act shall be construed to mean "city," "town," "township," "village," "*borough*" and any municipality governed by a Board of Commissioners or Improvement Commission.

and then goes on and sets forth Article 21, Section 1, and also sets forth a Joint Agreement between the Boroughs of Dumont and Bergenfield (Case, p. 5), and ordinances passed by the respective governing bodies of the Boroughs of Bergenfield and Dumont (Case, p. 10, etc.), all of which were authorized under Chapter 152 of the Laws of 1917.

The Joint Agreement between the municipalities is provided for under Section 6 of Article 20, P. L. 1917, p. 373, as amended by P. L. 1918, p. 483.

The Supreme Court in its opinion (Case, p. 69) said:

“The petition is professedly based upon, and solely upon, powers contained in the Act of 1917, Chapter 152 (P. L., pp. 319 to 463), commonly known as the Home Rule Act, and especially upon Section 1 of Article XXI.”

We contend that the Court took too narrow a view of the petition by confining the petition to Section 1 of Article 21 when the petition not only recites the “Home Rule Act” but alleges the incorporation under the General Borough Act and its amendments and supplements, and further sets forth proceedings taken by the Boroughs under other sections of the “Home Rule Act,” particularly those relating to joint agreements or improvements under Article 20. The Court should keep in mind that the work or the enterprise undertaken by the boroughs was a public enterprise and should further recognize the fact that being a public enterprise they should not be confined to one particular section of the act; as we will hereafter under another reason argue, the recital of this section should have been treated as surplusage.

The petition shows that the Boroughs of Dumont and Bergenfield were organized under the General Law relating to Boroughs and the amendments thereof and supplements thereto. The “Home Rule Act” is also set forth in the petition and is a supplement to the General Borough Act. This having been recited in the petition, it is sufficient to permit the boroughs to come within the operation of the provisions of the act as a whole.

We find dictum of the Supreme Court in the case of *Winter v. Telephone Company*, 51 N. J. L., page 83. The Court said:

“The petition in this case fails to show that the said company was organized under any law of this State so as to be within the operation of said supplement.”

From this it undoubtedly appears that the recital in the petition of the act under which the boroughs were organized entitled them to the benefits of all of the provisions of the act.

REASON II.

Because the petition upon which the order appointing commissioners was made contained sufficient to give the Court jurisdiction.

The Supreme Court after referring to the “Home Rule Act” then confined its opinion entirely to Section 1 of Article 21. It provides for the obtaining of the consent from the governing bodies of Palisades Township, and the Board of Health, assuming that the proceedings were brought to condemn land within the Township of Palisades for the purpose of constructing a sewerage disposal plant works upon the land, and before they could acquire any land for that purpose under Section 1 of Article 21, they must first secure the consent of the adjoining municipality. But the present case does not come within the provision of Section 1 of Article 21, for the reason that the sewerage disposal plant had already been erected upon the land by the Government, and this erection was contemplated and previously consented to under the terms of the lease between Harry H.

Huplet and the Government, which lease passed to the defendant, the North Jersey Utilization Disposal Plant, by deed dated January 29, 1919, who claims to have purchased all the right, title and interest of Harry H. Huplet, the lessor (Case, p. 39), and at the time of purchasing, the buildings were erected, and subsequently on July 1, 1919, renewed the lease with the Government or permitted Harry H. Huplet to renew it for them upon the same terms and conditions (Case, p. 63), and those terms and conditions were, that any buildings or other improvements fixed to or erected or placed upon the lands should be and remain the exclusive property of the Government, as heretofore argued under Reason I. The petition showed that the petitioners were acting under the General Borough Law and all of the amendments and supplements thereto and the "Home Rule Act" as an entirety.

REASON III.

Because the Court failed to consider the fact that the sewerage plant was owned by the condemning municipalities upon the date of filing the petition to condemn the land upon which it had been erected.

The Supreme Court in rendering its opinion (Case, p. 70) said:

"The situation on the facts is a little unusual, because the application of the petitioning municipalities is not simply for the acquisition of an unimproved tract of land upon which it is proposed to build a sewage disposal plant, but is for the acquisition of a tract of land upon which such plant has already been constructed. The lands desired

are part of the territory occupied by the great army cantonment called Camp Merritt, where, during the period of hostilities in 1917 and 1918, army engineers built a complete disposal plant for the purposes of that camp, and such plant remained in *situ* after the abandonment of the tract for military purposes; so that if the petitioners acquire the land, they acquire also the disposal plant unless it should be taken out and removed. In fact, they claim in their petition to have purchased the plant itself separate from the land and that this was legally practicable to be done in view of certain provisions contained in the lease to the United States by the parties who owned or claimed to own the premises at the time the United States occupied it; so that what they asked in the petition was for a valuation of the land separate from the plant. Their claim is denied by the prosecutor, North Jersey Disposal Plant, and the controversy in this aspect might raise some interesting questions if it were necessary to be determined here, but we think it is not, and that we need to go no further than to examine the question as bearing on the power of the petitioners to take either the land separate from the plant or land and plant together under the legislation invoked in their petition. In fact, for present purposes, it may be assumed, contrary to the statements in the petition, that they are desiring to acquire both land and the plant installed thereon as part of the real estate."

This assumption, that the petitioner desired to acquire both the land and the plant, was an erroneous assumption and we believe tended to influence the Court in confining the rights of the boroughs to Section 1 of Article 21, thereby depriving them of the benefits of the other provisions of the "Home Rule Act" which was clearly referred to in the petition.

At the time of the filing of the petition it was impossible for the boroughs to ascertain the names and addresses of all the persons interested in the land. They made due inquiry by having a search made of the records in the Bergen County Clerk's office; the report of the North Jersey Title Insurance Company was set forth in the petition (Case, p. 18, etc.). The North Jersey Utilization and Sewerage Disposal Plant, Inc., after the petition to condemn was filed, claimed that they obtained a deed for the outstanding interest from one Charlotte A. Brobston; this was obtained on July 6, 1920 (Case, p. 47, line 33), and was after the boroughs of Dumont and Bergenfield were in possession of the buildings and after they filed their petition to condemn. Although we feel that it is not necessary to determine in these proceedings the ownership of the buildings, in view of the fact that it seems to have been referred to by the Supreme Court in its opinion, something ought to be said upon the subject. Ordinarily when a tenant leases land and voluntarily erects thereon buildings, these buildings become a part of the freehold in the absence of an agreement, but where the landlord agrees that all buildings or improvements put upon the land are to be and remain the exclusive property of the tenant, this constitutes in the law, such an agreement that preserves the status of the buildings and improvements as personal property, and the landlord cannot acquire any right, title or interest to the same unless the tenant has surrendered the possession or abandoned the premises. (*Kutter v. Smith*, 69 U. S., 491-17, Law. Ed., 830, which was approved by the Court of Errors and Appeals of New Jersey; *West Shore R. Co. v. Wenner*, 68 Atl., 225.)

At the time the United States leased the lands there were no buildings or improvements upon

the same. By the terms of their lease it was expressly provided that all buildings and other improvements fixed to or erected upon the said premises shall be and remain the exclusive property of the lessee and shall be removed by the lessee within 90 days after the said premises are vacated. Under this lease, or renewal thereof (Case, p. 60), the United States Government erected upon the premises the sewerage disposal plant. Before it surrendered possession of the land to the North Jersey Utilization and Sewerage Disposal Plant it sold the buildings as personal property to Harris Brothers, who in turn sold the sewerage disposal plant and other buildings to the Boroughs of Dumont and Bergenfield, the appellants herein; this was all done prior to July 1, 1920, the date which the North Jersey Utilization and Sewerage Disposal Plant alleges as the date that possession was surrendered to them or the earliest date at which it can be said that the Government abandoned it. The Court must keep in mind that prior to July 1, 1920, the date of the alleged surrender or abandonment, the buildings and improvements had been sold and had been purchased by the Boroughs of Dumont and Bergenfield and that prior to July 1, 1920, the Boroughs of Dumont and Bergenfield actually took possession, which is admitted by the testimony of Atanasio, the secretary of the North Jersey Utilization and Sewerage Disposal Plant, Inc., on cross examination (Case, p. 43), and his testimony was as follows:

“Q. And were you there on June 30, 1920?

A. I was.

“Q. And on June 30th, 1920, you saw the representatives of the Boroughs of Dumont and Bergenfield? A. I saw men there whom I believe to be representatives.

“Q. Well, you said they were representa-

tives of the Boroughs of Dumont and Bergenfield? A. I saw men there whom I believed to be representatives of the Boroughs of Dumont and Bergenfield.

“Q. You said on direct examination that they were representatives of the Boroughs of Dumont and Bergenfield? A. Yes.

“Q. They were representatives on the property? A. On the property.

“Q. At what time of day was this? A. What day are you speaking of now?

“Q. On June 30th, 1920. A. About 8 o'clock —8 P. M.

“Q. And what time did you leave there? A. After 8, I thought.

“Q. What time? A. About 9 o'clock.

“Q. And when did you go back there again? A. July 1st.

“Q. The next day? A. Yes.

“Q. At what time? A. About 11 o'clock.

“Q. And who did you see on July 1st? A. I saw the men in charge of the plant and workmen in charge of their plant.”

On his direct examination (Case, p. 41), he said:

“On June 30, 1920, I went to the disposal plant and shortly after my arrival the representatives of the Boroughs of Dumont and Bergenfield came upon the premises and looked over the same, and held, what appeared to be, a meeting at the extreme end of the property, and shortly after this left the premises.

“The next morning, that is, July 1st, 1920, I again went to the premises and Captain Dunn turned over possession to me as I have heretofore related.”

On page 40 of the state of the case on direct examination he testified:

“I took possession for the North Jersey Utilization and Sewerage Disposal Plant, Inc., on the 1st day of July, 1920, and retained possession until on or about the 2nd day of July,

1920, when I was served with an order of the Court of Chancery of New Jersey directing that the North Jersey Utilization and Sewerage Disposal Plant, Inc., and its workmen, etc., desist and refrain from interfering or molesting the Borough of Dumont and Borough of Bergenfield, their workmen, agents and servants in the possession of the disposal works, and erections, upon the premises described, etc.”

The Boroughs have been in possession ever since and are still in possession. They were in possession prior to July 1st, 1920; they were entitled to the possession on that day because they purchased the buildings.

How, then, can it be said by the North Jersey Utilization Company that the United States had surrendered their rights to the buildings and improvements? The most that can be said is that the United States had previously sold the buildings and improvements and that on July 1st, 1920, merely surrendered possession of the land. But at the time of said surrender and prior thereto, to wit, on June 29, 1920, the Boroughs of Dumont and Bergenfield had filed their petition to condemn the land only. And on June 30th, 1920, were in actual possession of the buildings which they had previously bought and that they previously purchased the buildings and improvements as personal property; they were at least given an implied right to enter upon the possession of the land for which they had filed their petition to condemn. *Coster et als. v. N. J. R. Co.*, 23 N. J. L., 227, and as was said in the *Coster* case:

“The trespass was not a merely wanton or malicious injury, but one committed in the prosecution of a great public improvement, for the accomplishment of which the corpora-

tion was invested with the power of taking property against the consent of the owner, subject only to the duty of making just amends to him for all his loss" (*Coster v. N. J. R. Co.*, 24 N. J. L., p. 730, at 732).

REASON IV.

Because the petition was filed only to condemn the land and not to construct a sewerage disposal plant and, therefore, the consent of the local authorities was not necessary.

From what has been set forth in the above it must clearly appear that the petition was filed only to condemn the land and not to construct a sewerage disposal plant. Article 21, Section 1, of the Home Rule Act, only requires the consent of the adjoining municipality when it is intended to construct a sewerage disposal plant within the limits of the adjoining municipality or when it is intended to acquire land within the adjoining municipality for the purpose of constructing a sewerage disposal plant, no such purpose was ever intended by the Boroughs of Dumont and Bergenfield; the sewerage disposal plant and all its appurtenances which extended into other municipalities were erected by the United States Government under permission given them in their lease which specifically provided that these buildings and improvements were the exclusive property of the United States and were sold by the United States prior to any surrender or abandonment under their lease and were purchased by the Boroughs of Dumont and Bergenfield. It is clear, therefore, that it was not necessary for the Boroughs to obtain the consent required under Section 1 of Article 21, and we must, therefore, look

to other provisions of the Home Rule Act, P. L. 1917, for the power to condemn lands without the limits of the Boroughs and we find under Article 20, Section 3, page 371:

“Any municipality may purchase, condemn or otherwise acquire, any land or real estate, or any right or interest therein, useful or necessary for the making of any such improvement, whether such land or real estate be located within or without the municipality, and may acquire any personal property and hire, engage and employ all engineers, surveyors, officers and employees, and construct or cause to be constructed any work or thing deemed necessary for the making of any such improvement, and may enter into any contract or agreement for the acquiring of any such property or the constructing of any such work, and may do any and all other acts or things necessary to carry on, complete, maintain and operate any such improvement.”

By Article 18, Section 6, page 366, it is provided:

“Every municipality shall have power to acquire by purchase, gift or condemnation any lands, easements, materials, waters, water rights or property or any estate or interest therein, either within the municipality or beyond its limits, which its governing body may deem necessary or useful for the proper exercise of any power lawfully conferred upon it; Provided, this section shall not repeal any provision requiring the consent of another municipal corporation or any State authority to the acquiring of any such lands, easements, materials, waters, water rights or property, or any estate or interest therein.”

And we submit that there is no other provision of law requiring the consent of the Township of Palisades to simply acquire lands within its limits and assuming for the sake of argument that Ar-

ticle 21, Section 1 was such a provision as referred to in the above proviso, the Legislature never intended that the consent should be required twice, it having been previously been given by the Township to the United States Government as shown by the resolution of the Township Committee, dated October 6, 1917 (Case, p. 51). How then can it be said that the Boroughs of Dumont and Bergenfield must again obtain the consent before they could condemn the land; the least that could be said for the Township of Palisades is that they may require the buildings removed, which is questionable and not necessary and not in issue under the present proceedings.

Under Article 21, Section 2 it is provided that:

“The Governing body of every municipality shall have power to purchase any sewer or drain, sewer or drain works, system of sewers or drains, or system of sewers and drains, or any rights, privileges or interests therein or thereto, within or without the corporate limits of such municipality from any private individual or corporation owning the same, or from any other municipality, or may contract, for the use thereof for a limited time or otherwise.”

By virtue of the power given under this section we submit that the Boroughs of Dumont and Bergenfield did purchase sewer or drain works from a private corporation and having so purchased, then proceeded to condemn the land; so that it cannot be said that the Boroughs were acting without authority in law in purchasing the sewerage disposal plant, etc., within the Township of Palisades and even though it be contended that the North Jersey Sewerage Disposal Plant were the owners of the buildings they could not prevent the Boroughs of Dumont and Bergenfield from condemning lands

within the Township of Palisades, for by Section 5 under Article 20 it is provided:

“A municipality may take over by purchase or condemnation any property or works mentioned in this article which at the time of such purchase or condemnation is privately owned or operated, and assessments for benefits accruing therefrom may be made and levied upon the lands benefited thereby” (as amended by P. L., 1918, 483).

It is a general rule of law that the right of eminent domain is given to every State and that its powers are co-extensive within the boundaries of the State, and it is another well established rule of law that municipalities being created by the Legislature can only exercise such powers and duties by virtue of some express authority given to them by the Legislature and when the Legislature authorizes a municipality to condemn land without its limits without the consent of the adjoining municipality, that power is recognized by the Courts and the Courts will not require the consent to condemn land unless there is an express condition in the statute requiring the condemning municipality to first obtain consent.

While we are upon this point we may also include herein the 5th reason namely:

REASON V.

Because the North Jersey Utilization and Sewerage Disposal Plant, Inc., could not raise the question of the consent of the local authorities under Section 1 of Article 21.

Assuming for the sake of argument that the Boroughs of Dumont and Bergenfield did contemplate the construction and erection of sewerage disposal works within the limits of the Township of Pali-

sades upon land claimed to be owned by the North Jersey Utilization and Sewerage Disposal Plant there is nothing either under Article 21, Section 1, or in any other part of the "Home Rule Act" which requires the condemning municipalities to first obtain the consent of a private corporation. The North Jersey Utilization and Sewerage Disposal Company is a private corporation and we respectfully submit that in so far as their writ of certiorari is concerned they cannot collaterally attack the alleged failure of the Boroughs of Dumont and Bergenfield to first obtain the consent of the local authorities of the Township of Palisades. The right of eminent domain granted to the Boroughs of Dumont and Bergenfield by the Legislature of this State is far superior to the right of the North Jersey Utilization and Sewerage Disposal Plant, Inc., for the reason that the duties to be performed or the works to be undertaken by the Boroughs are of a public nature and are entitled to a wider latitude and should not be hindered or delayed by the objection that the alleged consent from another municipality has not been obtained. If the Legislature intended that the consent be obtained from a private corporation or individual they would have expressly provided so in the statute. If it can be said that the North Jersey Utilization and Sewerage Disposal Plant have a right to such an objection can it not be said also in view of the lease between the United States and Harry H. Huplet whose rights the North Jersey Utilization Company acquired in January, 1919 (Case, p. 39, line 13), and subsequently by a renewal of that lease for one year from July 1, 1919, upon the same terms and conditions as the original lease, that they are estopped at this time to contend that the consent of the local authorities of Palisades Township was not acquired. They had full knowledge

that the sewerage disposal plant and other improvements had been erected and notwithstanding that knowledge they renewed the lease for another year and to permit them as a private corporation to come in at this late day and say that the Boroughs of Dumont and Bergenfield as public corporations are not acting by authority at law in condemning the land because they had not first acquired the consent of the local authorities would certainly be putting the rights of the individual ahead of the rights of the public. The rights of the parties in the present proceedings should be determined as of the date that the petition to condemn was filed, to wit, June 29th, 1920. The Courts must revert to that day to determine whether or not at that time any interest was vested in the North Jersey Utilization Company and also to determine the rights of the parties under the present proceedings on that day. The buildings and improvements were owned by the Boroughs of Dumont and Bergenfield. The title to the land upon which they were erected was in dispute. The Government had previously sold to them all the right they had under the terms of the lease, who ever owned the land had no right to the buildings on June 29th, 1920, because at that time the Government had not surrendered or abandoned its possession of the land. The land was not surrendered by the Government until July 1, 1920. On June 30, 1920, it is admitted that the Boroughs of Dumont and Bergenfield were in possession and it is further admitted that they have been kept in possession by virtue of an order of the Court of Chancery of New Jersey. If it should be determined that the North Jersey Utilization and Sewerage Disposal Plant, Inc., were the owners of the land at that time, under the terms of their lease with the Government they had no right to the

buildings and the most that their claim could amount to would be the right of removal which could not have been exercised by them until after ninety days from July 1, 1920, which would be October 1st, 1920. We contend that their right at that time would be nothing more than a right of removal or an action for damages for failure to remove as the Boroughs of Dumont and Bergenfield were in possession of the buildings, as the owners thereof, and were technically in possession of the land by filing their petition to condemn the same.

We have argued at some length the question distinguishing the ownership of the buildings and the ownership of the land although we do not feel that it is material in the present case, but our reason for doing so was that it appears to have been taken into consideration by the Supreme Court in its opinion.

REASON VI.

Because the Court set aside the order appointing Commissioners.

REASON VII.

Because the recital in the petition of Section 1 of Article 21 was surplusage.

In a careful perusal of the opinion of the Supreme Court they regarded the recital of Article 21, Section 1, in the petition as the only authority set forth which authorized the Boroughs of Dumont and Bergenfield to condemn the lands in question and their reason for setting aside the order appointing commissioners was that consent

of the local authorities in Palisades Township had not been obtained.

We have argued this somewhat in our reasons heretofore set forth, but because of the importance of the litigation we will refer again to the petition and particularly to those parts of the petition which refer to the organization of the Boroughs of Dumont and Bergenfield, under the General Borough Act and its amendments and supplements;—to the recital of the “Home Rule Act” and Section 1 thereof, containing the definitions; to the Joint Agreement and the ordinances passed by the Boroughs under authority given them by the “Home Rule Act.” We cannot arrive at any other conclusion that the recital of Article 21, Section 1, in the petition was immaterial and of no consequence for the reason that that section only applied to a case where a municipality intended to acquire lands without its limits for the purpose of erecting or constructing a sewerage disposal plant and other works. From a careful examination of the record in this case, it stands out clearly that no such improvement was contemplated by the Boroughs of Dumont and Bergenfield. The record shows that the improvements and a sewerage disposal plant and its appurtenances had already been erected and had been in operation by the United States Government, and the only object or purpose of the Boroughs of Dumont and Bergenfield was to acquire the land upon which this disposal plant and appurtenances had been erected, they having previously purchased the building. We, therefore, contend that by the recital set forth in the petition to condemn the lands, there was ample to give the Court jurisdiction to appoint the commissioners and there

was ample to show that the Boroughs were entitled to all of the provision of the Home Rule Act, P. L. 1917, pages 319 to 463, inclusive. By the provisions of that act, it is not necessary to obtain the consent of another municipality to condemn lands within the limits of that municipality; the consent of the adjoining municipality would not be required except in a case where the sewerage disposal plant or other works set forth in Article 21 were to be constructed.

Power is given to municipalities to condemn lands within or without their limits under Article 20, Section 3, and consent is not necessary and, in the absence of any express provision in the statute, how can it be said that an implied consent is required? At the very end of that act we find under Article 37, Section 26, among other things:

“And in construing the provisions of this act, all courts shall construe the same most favorably to municipalities, it being the intention hereof to give all municipalities to which this act applies the fullest and most complete powers possible over the internal affairs of such municipalities for local self-government.”

The condemnation of the land in the Township of Palisades by the Boroughs of Dumont and Bergenfield was for the purpose of carrying out an enterprise or public improvement for the benefit of the municipalities of Dumont and Bergenfield and the residents, and taxpayers therein.

In conclusion we want the Court to bear in mind that there are two writs of certiorari on this appeal; one for the Township of Palisades and one for the North Jersey Utilization and Sewerage Disposal Plant, Inc., which is a private corporation. No rights that may be given under the Home

Rule Act to the Township of Palisades as a municipal corporation can in any way extend to the North Jersey Utilization and Sewerage Disposal Plant, Inc. Their rights are separate and distinct.

For the reasons above set forth we respectfully submit that the judgment of the Supreme Court in both cases be reversed.

Respectfully submitted,

MACKAY & MACKAY,
Of Counsel for the Boroughs
of Dumont and Bergenfield.



