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TESTIMONY.

NEW JERSEY SUPREME COURT.
ATLANTIC COUNTY.

BENJAMIN R. FOX COM- PANY,	} Plaintiff,	Action at Law.	10
v.			
CITY OF ATLANTIC CITY, Defendant.			

Mays Landing, N. J., May 16th, 1923.

TESTIMONY 20

Before HON. RALPH W. E. DONGES, Judge, and jury.

APPEARANCES:

For the plaintiff: THEODORE W. SCHIMPF, Esq.,
and MESSRS. BOURGEOIS & COULOMB.

For the defendant: W. FRANK SOOY, Esq., City
Solicitor, and JOSEPH B. PERSKIE, Esq., Assis-
tant City Solicitor. 30

(Jury impaneled and sworn.)

Mr. Bourgeois: If the Court please, I offer in evidence a final decree of the United States District Court in the case of Frank T. Elliott and others against Atlantic City.

(Final decree admitted in evidence and marked Exhibit P1.)

10 Mr. Bourgeois: I offer in evidence a record of a deed from Frank S. Elliott and wife to David C. Folwell of record in the clerk's office of Atlantic County in book 384, of Deeds, page 194.

The Court: That is all with a view of proving title to the property, that is the strip of land in question?

Mr. Bourgeois: That is right.

20 The Court: I understand there is no question about the plaintiff's having title originally.

Mr. Sooy: No question at all.

The Court: Practically a single question whether the acts of the plaintiff amount to a dedication.

Mr. Bourgeois: Then we rest.

30

PLAINTIFF RESTS.

DEFENDANT'S TESTIMONY.

JOHN W. HACKNEY, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Q. Mr. Hackney, where do you reside?

A. Atlantic City.

10

Q. What is your profession?

A. Civil engineer.

Q. How long have you been a civil engineer?

A. About 1890, but I have been city engineer of Atlantic City from 1898 to 1909, and from 1912 to date.

Q. So that you were city engineer in January of 1920?

A. Yes, sir.

Q. Do you remember preparing an ordinance in January, 1920, with reference to Main Avenue?

20

A. Yes, sir, I prepared an ordinance with relation to the improvement of Maine Avenue.

Q. I show you a paper purporting to be a certified copy of ordinance number two and ask you if that is a copy of the ordinance you prepared?

A. Looks exactly like it.

Q. And that provided for the improvement to Maine Avenue by what means?

A. Well, by grading and graveling the street.

30

The Court: I suppose it speaks for itself.

A. Wooden curbing and bulkheads along the ocean front between Atlantic Avenue and Madison Avenue.

Q. At whose suggestion was that ordinance introduced?

Mr. Bourgeois: That is objected to as immaterial and irrelevant.

Mr. Sooy: It would be relevant if Mr. Fox was the man suggested it. I don't know whether he did or not.

10

The Court: I think I will permit that.

A. It was prepared upon the orders of Charles D. White, the director of streets and public improvements.

Q. Had you had any talk with Mr. Fox with reference to the improvement of Maine Avenue prior to the introduction of this ordinance, if you remember?

20

Mr. Bourgeois: That is objected to. This is a municipal ordinance.

The Court: He may answer that yes or no.

A. Oh, yes, Mr. Fox spoke to me about the desirability of having the street improved.

Q. At the time of the introduction of this ordinance, what was the condition of Maine Avenue?

30

A. Maine Avenue extended northwardly from Atlantic Avenue, a distance of 150 feet, had a wooden curb on the westerly side, and a cement paved walk, and a graveled way, inside of a wooden bulkhead about 25 feet wide, leading from Atlantic Avenue to the residence of Commodore Nuttal. Outside of that, all the way from Atlantic Avenue

to Madison Avenue, a distance of two blocks, it was a mere sand hill.

Q. Did anyone else reside on Maine Avenue at that time or were there any other buildings there than Commodore Nuttal's residence?

A. Not between Atlantic Avenue and Madison Avenue, two blocks.

Q. They are the two blocks covered by the property which Mr. Fox then owned?

A. Yes, Mr. Fox owned in those two blocks.

Q. Now after the introduction of this ordinance and its final passage—it was finally passed, was it not? 10

A. Yes, sir.

Q. Did you have any conversation with Mr. Fox as to the city's intention with reference to the width of Maine Avenue?

Mr. Bourgeois: That is objected to as irrelevant and immaterial, if your Honor please, Mr. Fox is not the plaintiff in this suit. That is pure hearsay, and not binding. I don't see how it is binding at all on the Benjamin R. Fox Company. 20

The Court: Unless it is shown Fox was actually acting with authority from the plaintiff.

Mr. Sooy: If the Court please, we intend to show at the time this was done, at the time of the dedication, Fox was the owner of the land himself, and that thereafter he conveyed the property to the Benjamin R. Fox Company, of which he was one of the stockholders and officer of the company. 30

The Court: On that theory I will permit it.

Mr. Bourgeois: We want to know when that was.

Mr. Sooy : Your record title will show.

The Court: I suppose you mean when the conversation took place?

Mr. Bourgeois: Yes.

10

The Court: Better identify the conversation.

Q. Afterwards, after the introduction and passage of this ordinance, you prepared another ordinance did you with reference to Maine Avenue?

A. Yes, sir, following—but that followed the conversation that I had with Mr. Fox.

Q. That is the reason I want to get that, that ordinance had to do with what?

20

A. Had to do with the width of Maine Avenue.

Q. I show you a copy of ordinance twenty-two, dated April eighth, 1920, and finally approved May sixth, 1920, passed April twenty-second, 1920, and ask you if that is the ordinance you have reference to for the widening of Maine Avenue?

A. Yes, sir, I prepared that ordinance.

30

Q. In between the passing of ordinance number two and ordinance number twenty-two, did you have any discussion with Mr. Fox with reference to the width of Maine Avenue?

A. Yes, Mr. Fox came to see me and inquired as to the width of Maine Avenue, that the city proposed to improve under the first of those two ordinances.

Q. What did you tell him with reference to the intention of the city as to the width of Maine Avenue?

A. I told him that I was aware of the fact, having been in a preceding suit that was decided in favor of Elliott in the block between Grammercy Place and Madison Avenue, that the legal width was fifty feet, and that I presumed the same construction that was applied in that block would also apply in the block between Atlantic Avenue and Grammercy Place, and while that had never been decided, I had no doubt that Dr. Dick, who owned on the easterly side of Maine Avenue for a distance of 200 feet, would insist that it was likewise fifty feet in that block, and under those circumstances, that the only width that the city could improve would be a normal driveway, thirty feet in width, with two ten foot wide sidewalks, and a fifty foot street. 10

Q. Did Mr. Fox express his satisfaction or dissatisfaction with that width street?

Mr. Bourgeois: I object.

20

The Court: I suppose what he said, what did he say?

Q. What did Mr. Fox say in reply to what you told him?

A. Mr. Fox said that wasn't satisfactory at all, "I don't want anything like a fifty foot wide street improved, I want a hundred foot wide street improved."

Q. Did he tell you why?

30

A. Well, he told me that he was going to make very extensive and valuable improvements there, and he desired that those new apartment houses that he intended to build, which he described as to be the highest class of apartment houses erected in Atlantic City that would be built, he must have

something better than a fifty foot wide street, and he insisted that the improvement must be for a hundred foot wide street, he said that he owned the land entirely on both sides between Grammercy Place and Madison Avenue, and that he purposed to widen that block to a hundred feet, and he had also some interests in the territory between Grammercy Place and Atlantic Avenue, and that he would give the city a deed for whatever he owned in that block, which I happen to know, however, was the only riparian rights, and he had had Dr. Dick, who owned 200 feet on the easterly side of Maine Avenue in that block up on the ground, and showed him the plans and the outlook, and that Dr. Dick had agreed that he also would widen Maine Avenue to a hundred feet, and that only left a small amount which the city would have to acquire in order to make the entire two blocks one hundred feet. He thought the city ought to help him out by acquiring any outstanding interests in the block between Atlantic Avenue and Grammercy Place. We pointed out the fact that Dr. Dick had a half interest down at the corner of—

Q. Won't you point out those interests as you go along, so the jury can see?

A. I pointed out for Mr. Fox for a distance of 100 feet on the easterly side of Maine Avenue, and beginning at Atlantic Avenue and going northward that Dr. Dick had an undivided half interest both to the high land and to the riparian rights, and that one McPherson, John McPherson, had the other half. The interest of McPherson was subsequently acquired by the Moebs Apartment Company. Just south of that was a property that was owned by Commodore Nuttal. This property was afterwards acquired by Benjamin R. Fox. I am not sure but what he owned it at the time I was talking. I

am not sure about that. The other was another 50 foot frontage just north of that that was owned by Henry E. Stevens. Henry E. Stevens had given a deed to the city for the land along the Boardwalk oceanward therefrom for city park purposes, but he, of course, hadn't given anything to the city between the Boardwalk and the line of Maine Avenue, considered 50 feet wide, so we would have to do this with Mr. Stevens, which I also showed that Mr. Stevens had interest in another hundred feet just 10 above that other, being a fifty foot wide strip that was owned by the Absecon Land Company. They had never deeded anything to the city. We didn't even have a right of way for the Boardwalk or anything else. Also showed him Dr. Dick owned a strip 200 feet along next to Grammercy Place. There, the titles were a little peculiar. The city had no interest there at all, either for Boardwalk purposes, park purposes or street purposes or anything else, excepting the original fifty 20 foot wide street. Dr. Dick owned the high-land down to the high-water mark. The high-water mark at that time was under the Boardwalk. Benjamin R. Fox owned the riparian rights to that whole 200 feet, and he also owned the riparian rights to the next 200 feet. It seemed at one time that the high water line was inward, if not landward of the line of Maine Avenue. These property owners, Dr. Bedloe for the first 200 feet and Armenia L. Bartlett for the next 200 feet, had gone in and at- 30 tempted to occupy the land by getting riparian grant over what subsequently became high land as the ocean or the inlet receded, and Mr. Fox was the successor in title to the Bedloes.

Mr. Bourgeois: If your Honor please—

The Court: I suppose the witness is departing somewhat from the question on which was what was your conversation with Mr. Fox.

A. All I was stating is that I told Mr. Fox of these owners and these titles which would have to be acquired before we could improve Maine Avenue 100 feet wide.

10 Q. What did Mr. Fox say with reference to the property he owned between Grammercy and Atlantic Avenue, what did he say with reference to what would become of that?

A. He said he would give us a deed for anything he owned to make that street a hundred feet wide.

Q. Did he say anything to you with reference to any conversations he had had with other owners in that block?

20 A. He said he had had a conversation with Dr. Dick, and Dr. Dick would also give the city a deed to widening out Maine Avenue a hundred feet wide.

Q. You hadn't introduced the widening ordinance at the time of this conversation, had you?

A. No, sir.

Q. Did you at that time or shortly thereafter, prepare a deed of dedication to be signed by Dr. Dick for that land?

A. Deed of dedication with Dr. Dick and Benjamin R. Fox as grantors.

Q. Who did you give that deed to?

30 A. Benjamin R. Fox.

Q. For what purpose did you give it to him?

A. He said he would take it to Dr. Dick and have it signed.

Q. I show witness what purports to be an unsigned copy of a deed of dedication with Benjamin R. Fox, widower, and Walter B. Dick, widower,

as grantors, and ask the witness if that is a copy of the deed prepared?

A. That is a copy.

Q. And did Mr. Fox take that deed away from your office?

A. Yes.

Q. Did he ever return it with the signature of Dr. Dick or himself on it?

A. No, sir, he came back, however.

Q. What did he say?

10

A. He said Dr. Dick was perfectly willing that we should go on the land and improve the street and build a bulkhead on the Boardwalk, but he would not sign any papers.

Q. What did he say with reference to his own signature?

A. Well, he didn't sign it.

Q. And never has signed it?

A. And he never has signed it.

Q. At the time you had your conversation with him—after the time you had your conversation with him with reference to the widening of Maine Avenue, was there introduced the proposed ordinance 22, which I have shown you, was there?

A. Yes, sir.

Q. And that provided generally for the widening of Maine Avenue one hundred feet?

A. I might add that I don't think that—yes, sir, but I don't think that I prepared any dedication deed until after this ordinance was passed.

30

Q. Until after ordinance 22 was passed?

A. Yes, sir.

Q. Ordinance number 22 was passed, you say, after you had these conversations with Mr. Fox in which he said that he would give to the city his interest in the land he owned between Grammercy

Place and Atlantic Avenue, and also give to the city a deed for a fifty foot strip between Madison Avenue and Grammercy Place for the purpose of a hundred foot street?

A. Yes, sir.

Q. Now, then, after those two ordinances had passed, after you had had these conversations with Dr. Dick, did you again see him with reference to the city going ahead with the improvement of Maine
10 Avenue?

A. He saw me.

Q. What did he want you to do then, or what did he say, rather?

A. He wanted us to get busy.

Q. He wanted you to get busy and do what?

A. Grade out the street and gravel it, so he would have a passable street.

Q. Was there anything said with reference to bulkheading the street?

20 A. Yes, he wanted the bulkhead.

Q. When was that, after the two ordinances had been passed?

A. Yes, after the widening ordinance had been passed, Fox wanted it done a hundred feet wide.

Q. Did you explain to Mr. Fox any reason why the city could not put the bulkhead in that he argued for?

A. I told him we had not acquired the title between Grammercy Place and Atlantic Avenue,
30 either to the widened street or to the land under the Boardwalk as a whole, therefore, we had no place on which we could build a bulkhead except along the line of the original fifty foot street. He was building a bulkhead himself under the Boardwalk in front of his own land where he owned both sides of Maine Avenue, between Madison and Grammercy at that time.

Q. He built that himself?

A. Oh, yes.

Q. Then what he wanted the city to do was to continue the building of the bulkhead from Grammercy Place down to Atlantic Avenue, was it?

A. Yes, sir.

Q. And you told him you couldn't do it because the city did not own the land?

A. Exactly, yes, sir.

Q. What happened with reference to the building of that bulkhead then? 10

A. Well, the first said that Dr. Dick would give permission to build the bulkhead across his land, and I prepared a consent for Dr. Dick to sign, that consent was taken along with that deed of dedication, he would not sign either, so then Mr. Fox begged us so hard to go ahead and do something that the director of streets decided to take a chance and build a bulkhead anyhow, so the city went in and built a bulkhead along the edge of the Boardwalk between Grammercy Place and Atlantic Avenue. 20

Q. And that was for the preparation of what?

A. That was for the preparation of the intended Maine Avenue improvement.

Q. Had Maine Avenue actually been opened to the extent of a hundred feet at the time you put the bulkhead in?

A. Well, it was in process of being improved.

Q. Who was doing the improving insofar as the land between Madison Avenue and Grammercy Place was concerned? 30

A. Mr. Fox.

Q. The ordinance number two that I referred to provided for the improvement of that by the city, why was it, or how was it that Fox was doing the improving himself?

A. Well, as I said before, Mr. Fox desired that we should push the improvement with all possible speed, he complained that after passing the improvement ordinance, we hadn't taken steps to get the avenue actually improved. I told him that we were hampered by the fact that we had not the title to the hundred foot wide street, we couldn't very well expend the money on somebody else's land, we would have to wait until we got the title. That
10 didn't suit him, he thought the city ought to go ahead anyway. We arranged a conference between the director of streets, Mr. Steinbricker, Mr. Fox and myself, and during the conversation, the suggestion was made by Mr. Steinbricker that Mr. Fox might go ahead and build and grade the street himself, because the ordinance number two you referred to, contains a provision for an assessment of benefits for the cost of the improvement, that is upon the abutting lands benefitted by the improvement,
20 and it has been the custom in Atlantic City in the case of an original street building, in fact I think without any variation whatever, for commissioners of assessment—

Q. Did you tell this to Mr. Fox?

A. I certainly did.

Mr. Bourgeois: I thought he said Mr. Steinbricker told him?

30 The Court: Either.

A. You see, I told him and Mr. Steinbricker told him also, but the original suggestion was made by Mr. Steinbricker, inasmuch as he would be subject to this assessment for benefits, and the rule was to assess the entire cost against the abutting property

owners, that he might just as well go ahead, if he was not satisfied with our speed, and build the street himself, spend his own money, and he might even save some money, and we pointed out we would require levels to be taken on the irregular sand hill surface, would have to prepare specifications for advertising for bids, award a contract, with the usual two weeks delay, and those sorts of things, and if he was in a hurry, that was the way to get it done. Mr. Fox thought that was a good suggestion. 10

Q. Did he go ahead and do it?

A. He did.

Q. What did he do, that is, what kind of a street did he put in, what kind of a sidewalk, if any, and what kind of curbs?

A. He first asked the city engineer's office to indicate the grade for curbs, wanted me to specify the sub-grade, and get ready to put in the gravel pavement. I caused my assistants to put these stakes in according to the city ordinance. 20

Q. Right there, when you say according to the city ordinance, I show you ordinance number 237, or certified copy thereof, and ask you whether or not that is the ordinance you refer to with reference to widths of streets and sidewalks?

A. We determined the width of the sidewalks on Maine Avenue, of course, on the assumption that the whole width of the street was a hundred feet, but the grades were in accordance with an old grade ordinance which we had. Mr. Fox proceeded to excavate to the sub-grade, he proceeded to set curbs. I might add that Mr. Fox objected to the grades which I gave him under the terms of the city ordinance, and came around and wanted to know whether I couldn't raise the grade. I told 30

him I had no authority to raise the grade. He thought that it would be subject to the inroads of the sea at very high storm tides, and that the grades ought to be raised, and that he, being the almost sole owner of that vicinity, his wishes ought to be favored, so I took him into Mr. Steinbricker, director of streets, and we talked the matter over, I examined the grade ordinance, observed the way the water had run, and reported that I could raise the
10 grade at Grammercy Avenue about eighteen inches, and I could raise the grade at Madison Avenue about seven inches, and nothing at Atlantic. That was entirely satisfactory, and I then ordered my assistants to go back and reset the grade stakes to conform to that grade. Mr. Fox gave out a contract for cement curbing. About the middle of May, I discovered that Mr. Fox had changed my grade stakes, instructed the men to raise in the middle of the block the stakes at least a foot, changed
20 the disposition of the water and everything else. I wrote a letter of protest to him the latter part of May, I had my levels taken the first day of June to disclose the situation, called the matter to the attention of the director of streets, we went up there, and we had it out with Mr. Fox, we came pretty nearly to ordering the cement curbs all ripped out and put back where they belonged, but Mr. Steinbricker took pity on him, and we let the cement curbs remain.

30 Mr. Bourgeois: How does Mr. Hackney know that Mr. Steinbricker took pity on him?

A. He certainly expressed himself that way to me. He allowed the curbs to remain. After that, he put on gravel and graveled the street.

Q. What width?

A. Seventy foot driveway provided for fifteen foot wide sidewalks, and a hundred foot wide street.

Q. You say that was between Madison and Grammercy; did he continue the opening, grading, curbing and levelling and so forth of the street from Grammercy to Atlantic Avenue, or near Atlantic Avenue?

A. He ran the cement curb down on both sides, and my recollection is that he graveled about the westerly one-half, he may have put some gravel on the easterly side, I don't remember, somebody did. 10

Q. That was done by Fox at his own expense, was it?

A. I presume he paid for it, city didn't.

Q. Did the city do any portion of the grading and leveling of Maine Avenue between Atlantic and Grammercy Place?

A. Yes, sir.

Q. About what portion? 20

A. Well, we put in quite a lot of waste material on the easterly one-half of the hundred foot wide street, there was an old bulkhead there, we ripped that out, we moved a lot of stone that was in front of it, and they actually hauled in some rubbish there, which I complained about.

Q. In addition to that, you say you built the bulkhead from Atlantic Avenue to Madison?

A. Yes, sir.

Q. I mean Grammercy? 30

A. Oh, yes, built it to Grammercy.

Q. About when was the entire improvement complete, do you know?

A. I can't give you the answer as to that, I don't know. It was sometime prior to January of 1921, but when—

Q. It was completed prior——

A. Prior to July, 1921.

Q. Prior to July, 1921, the entire property had been completed, I mean the entire improvement had been completed?

A. Yes, sir.

Q. Have you seen the street since it was improved from time to time?

A. A large number of times, yes, sir.

10 Q. Has it been used by the public generally, from the time it was improved up until the present time?

Mr. Bourgeois: I object. That is leading, and calls for a conclusion. I am willing to show what he did see.

The Court: Yes.

Q. What use was made of the street?

20 A. People walked through it, people drove through it.

Q. Throughout its entire length?

A. Yes, sir.

Q. What width?

A. The seventy feet between Madison Avenue and Grammercy, and seventy feet between Atlantic and Grammercy to where the Boardwalk crosses it and narrows the driveway.

30 Q. Was the street at any time obstructed after it had been opened and built by Mr. Fox and the city jointly?

A. Yes, sure.

Q. Who obstructed the street first, if you remember?

A. My recollection is that Mrs. Bradley, daughter of Dr. Dick, obstructed it.

Q. How did she obstruct it?

A. She built a fence along the easterly line of a fifty foot wide Maine Avenue; in other words, down the center of the driveway for a distance of 200 feet from Grammercy Avenue, that is towards Atlantic Avenue and closed in the ends so you could not drive through it.

Q. During the time that this fence put there by Mrs. Bradley, what was the condition of the street between Madison and Atlantic Avenue with respect to its being open for the seventy foot width? 10

A. All that was all open.

By the Court:

Q. She fenced in fifty feet?

A. She fenced in fifty feet.

Q. Leaving the other 35 feet of roadway and fifteen sidewalks open?

A. Yes.

20

By Mr. Sooy:

Q. At the time Mrs. Bradley put up that fence, who was the owner of land eastwardly of Maine Avenue abutting along the line of the fence?

A. I should say the Benjamin R. Fox Company.

Q. Who was the owner of the land enclosed within the fence at that time?

A. Mrs. Bradley.

Q. Do you know whether or not the city afterwards acquired that property that has been closed in by that fence?

30

A. Yes, sir, I prepared all the papers.

Q. And after Atlantic City became the owner of that property, was the fence removed or was it allowed to remain?

A. The fence was removed.

Q. What became of the land embraced within the fence?

A. That was used by the general public as a public street.

Q. In other words, when Atlantic City bought the property from Mrs. Bradley, they immediately reconverted it into a street?

10 A. That is, to the hundred foot width. We got additional land from Mrs. Bradley's successor in title.

Q. You say there were two times, who obstructed the street the second time?

A. Well, I was told the Benjamin R. Fox Company.

Q. Where was it obstructed?

A. It was obstructed between Madison Avenue and Grammercy Place by building a fence down the easterly line of the original fifty foot wide street,
20 down the center line of the seventy foot driveway, closing in the end so nobody could drive through it.

Q. Enclosing within it land that had been being used by whom?

A. By the general public.

Q. In other words, did it include the land that Fox had opened as a public street?

Mr. Bourgeois: That calls for a conclusion.

30 The Court: I suppose that is a conclusion, whether or not it was opened as a public street.

Q. Did it enclose lands that Fox had graded and graveled?

A. Yes, sir, graded, graveled and curbed.

Q. And did it include the lands that was graveled and curbed by him which the public had been using?

Mr. Bourgeois: Who is the public?

The Court: People had been driving over.

Q. People had been driving over?

A. Yes, sir.

The Court: Walking over?

A. Yes, sir.

Q. For how long a period of time had they been using it for walking and driving over? 10

A. Ever since it had been first graveled by Mr. Fox up until the time he built the fence.

Mr. Bourgeois: That doesn't—

The Court: If you can fix the dates, when was the obstruction put up?

A. I can't fix that date. 20

The Court: All the improvement you say was between January and July of 1921?

A. The improvement was sometime between May, 1920, and July, 1921, improvement was completed.

Q. Do you know whether this fence was put up during the year 1920, or not?

A. Put up during 1921.

Q. You say that—can you tell whether it was put up after July of 1921? 30

A. Yes.

Q. Was it?

A. Yes, sir.

The Court: Do you know about when?

A. Not the month, I should judge it by the fact that it was after we bought the land from Mrs. Bradley's successor in title, which was in July, 1921, and the fact the affidavit I made in the case was dated November, 1921, I just looked at the affidavit.

Q. Was it sometime between July and November, 1921, Mr. Fox put up this fence to obstruct Grammercy Place?

A. Yes, sir.

10 Q. Is the fence still there?

A. No, sir.

Q. Who removed it?

A. I heard the orders given for the removal, I suppose it was carried out by the supervisor of streets of Atlantic City.

A. In other words, Atlantic City moved it, did it not?

A. Yes, sir.

20 Recess taken until 9.30 o'clock A. M.

Mays Landing, N. J., May 17th, 1923.

Trial of the cause resumed at 9.30 A. M.

CARLTON ADAMS, sworn for the defendant.

Direct examination.

10

By Mr. Sooy:

Q. Mr. Adams, where do you live?

A. In Ventnor.

Q. What business are you engaged in?

A. Real estate and insurance.

Q. Are you a member of the Realtors Board of Atlantic City?

A. I am.

Q. Were you in 1921 on the appraisal committee of that board?

20

A. I was.

Q. Were you in May of 1921 called upon by Mr. Fox to appraise the property at Maine Avenue, where he had some apartment houses?

A. I was.

Q. Do you remember the purpose of the appraisal?

Mr. Bourgeois: That is objected to. How is that relevant, purpose of appraisal? I don't think the appraisal itself is relevant in an ejectment suit.

30

Mr. Sooy: I want to prove by this witness that in May, 1921, at the request of Mr. Fox, he went to the properties in question and made an appraisal

and that Mr. Fox made the statement at that time with reference to Maine Avenue.

Mr. Bourgeois: If he wants to show the statements, I have no objection to that, but I do object to the appraisal.

The Court: I suppose he is simply leading up and introducing the conversation. All right, go
10 ahead.

Q. Who else was with you at the time you made the appraisal?

A. Mr. H. G. Harris and Thomas B. Williams.

Q. Did Mr. Fox at that time make any statement to you with reference to Maine Avenue?

A. Yes.

Q. What did he say with reference to Maine Avenue?

20 A. The widening of the street, he thought that the property was worth more than we appraised it at, that is the land, on account of having Maine Avenue of such width, that is all.

Q. What was the width then?

A. As I remember it was either eighty feet or a hundred feet, I am not sure.

Q. Did he say how it was that the avenue happened to be widened, through whose efforts, did he say?

30 A. As I remember, he said that he had given—had widened the street there to—had made the street especially wide there to make his operation that much more attractive, that is as I remember.

Q. Did he say anything about how the land had been acquired to widen the street by the city?

A. I don't remember that, Mr. Sooy, that he did.

Cross-examination.

By Mr. Bourgeois:

Q. Where was the street that you are talking about, he said that had been widened or would be widened?

A. Where was the street?

Q. Yes.

A. Maine Avenue, between Grammercy and Atlantic. 10

Q. It included in land that they paid Dr. Dick thirty-two thousand dollars for, didn't it?

A. I am not sure of that.

Q. At any rate, from Grammercy Place down to Atlantic?

A. Let me see the location.

Q. The apartments are over here?

A. Yes, that is right.

Q. Right in front of that?

20

A. Yes.

Q. Not this land between Madison and Grammercy at all?

A. No.

By Mr. Sooy:

Q. Mr. Adams, when you say that it was the land between Grammercy and Atlantic, you mean that that was the land that was occupied by the Fox Apartments? 30

A. Yes, sir, the land occupied by the apartments, right in here.

Q. And Maine Avenue, at the time you were making the appraisalment had been widened from Madison Avenue on down through Grammercy, had it not?

A. As I remember it had but—

Mr. Bourgeois: What was the but?

Q. Have you seen Maine Avenue since that time?

A. Have I seen it since then? Yes, yes.

Q. Have you traveled over Maine Avenue since that time?

A. Yes.

Q. Is it the same width now as it was then?

A. It is wider now than it was, it is wider now.

10 It was either widened at that time, or just about to be widened, I am not quite sure of that.

Q. In other words, when you had the conversation, it either had been widened as it is now, or they were working on it?

A. Yes, sir, that is the idea.

Q. And that included from Madison Avenue to Atlantic Avenue?

A. As I remember it.

Q. You say you have gone up and down Maine
20 Avenue since that time?

A. Yes.

Q. Very frequently?

A. Quite frequently.

Q. Have you noticed others going up and down Maine Avenue since that time?

A. Yes.

Q. Frequently?

A. Yes.

Q. How were they going, automobiles and afoot,
30 or how?

A. Automobiles, or walking, both.

Q. In other words, it was a public thoroughfare,

was it not?

Mr. Bourgeois: I object.

The Court: I suppose he means that the public used it as a thoroughfare.

Mr. Bourgeois: I am willing he should testify to that.

Q. Did the public use it as an open thoroughfare from Maine——

A. Yes.

Mr. Bourgeois: I object as leading and move that be stricken out.

10

The Court: Yes.

Q. What use did the public make of it?

A. As a driveway and also as pedestrians also.

Q. Was it being used by the general public, or just a particular few?

A. General public.

By Mr. Bourgeois:

20

Q. How do you know it was the general public?

A. Well, I have seen any number of automobiles.

Q. Who have you seen? Mention one particular person you have seen.

A. Who have I seen?

Q. Yes, up there.

A. Well, I can in a few minutes, I can tell you a number of people I have seen there, I have been with. I have seen John Slape, I have seen Ferdinand Patzowski, and a number of others.

30

Q. Don't stop with just those two, they don't constitute the general public, do they, those two?

A. I can't name the whole of Atlantic City, Mr. Bourgeois.

Q. Do you know if the whole of Atlantic City has ever been there?

A. No, sir, I do not.

Q. And John Slape, he was interested in these houses that you were up there to appraise, wasn't he?

A. Not at that time, no.

Q. Wasn't he?

A. Not at that time.

Q. When did you see him up there?

A. He wasn't with me that time, he was passing
10 by.

Q. I didn't mean that, but I say he was a member of this company, the Fox Company owned the houses you appraised?

A. I don't remember whether he was a member of the Fox company or not.

Q. Didn't John Slape ask for the appraisal?

A. I believe he did.

Q. I might be up there.

A. I have seen Charles Austermuhl of Camden up
20 there.

Q. Who?

A. Charles Austermuhl.

Q. Do you know if he was up there for the purpose of appraising the property?

A. He was not, not at that time.

Q. What was he up there for? I say did you say we were, what was he up there for?

A. He has been there with me, and I have passed him in his automobile also.

30 Q. Now we have got three people who have been there, they constitute the public, I suppose. Now, Mr. Adams, when you went there and Mr. Fox spoke to you about that street, as a matter of fact, the street had not been widened, had it, they had not acquired that land from Dr. Dick's estate, had they?

A. I am not certain of that.

Q. Was the fence up there at that time when you were there?

A. Not that I remember, Mr. Bourgeois.

Q. And you don't know whether it was fifty foot wide or a hundred foot wide, in the street at that time?

A. I do not, no, sir.

Q. But the portion of the street Mr. Fox spoke to you about was the portion of the street immediately in front of these apartment houses, wasn't it, between Grammercy Place and Atlantic Avenue? 10

A. I know he was speaking about that and I am not sure whether he made a statement about the other or not, I am not certain about that.

Q. The part you do remember was the land between Grammercy Place and Atlantic Avenue?

A. Absolutely, I remember that, absolutely.

20

HOWARD G. HARRIS, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Q. Mr. Harris, where do you live?

A. Ventnor City.

Q. What is your business?

A. Real estate.

Q. Were you a member of the appraisal committee of the Atlantic City Realtor's Board? 30

A. I was.

Q. Did you go with Mr. Adams and Mr. Thomas B. Williams to appraise the Fox apartment houses property in May of 1921?

A. I did.

Q. Where is Mr. Williams now, is he in Atlantic City any more?

A. He is living in the state of Maryland.

Q. At the time you went to make the appraisal, you went on Maine Avenue, did you?

A. I did.

Q. Did you meet Mr. Fox there?

A. We did.

Q. What, if any, statements did Mr. Fox make
10 to you with reference to Maine Avenue, as to its width?

A. He dwelled on the unobstructed ocean view, the width of Maine Avenue, being widened to a hundred feet as an argument for increasing its valuation.

Q. Do you remember whether Maine Avenue at that time had been widened to a hundred feet?

A. I think at that time the Dick piece had a little fence around it.

20 Q. Outside of that portion which is occupied by the Dick fence, had it been widened from Madison to Atlantic Avenue to a hundred feet?

A. Not to my recollection.

Q. Did Mr. Fox tell you through whose efforts the street had been widened to a hundred feet?

A. He assumed the credit for himself.

Q. Saying what, if you remember?

A. That he had induced the city to widen the street, that he had donated his land in front, and,
30 as I understood, he had built the bulkhead himself as part inducement.

Q. As part inducement for the city, you mean to widen the street?

A. Widen the street to a hundred feet.

Q. And he used that as an argument for an increase in your appraisal, did he?

A. He was dissatisfied with the ground valuation we put on the land.

Q. And in considering the value, did you take into consideration that Maine Avenue had been widened from Madison to Atlantic as well as that it had been widened from Grammercy to Atlantic?

Mr. Bourgeois: That is objected to as irrelevant and immaterial.

The Court: I suppose what they may have considered is not material or competent. 10

Q. What use is being made of the street from Madison Avenue to Atlantic at the time you made your appraisal?

Mr. Bourgeois: That is objected to, doesn't show that he knows at all.

The Court: Well, if he does know. 20

A. The street was being used by the public, all kinds of vehicles passing through the street.

Q. All kinds of vehicles, was it being used for the full width of one hundred feet, excepting where it was obstructed by the Dick fence?

A. That is my recollection.

Q. Have you been up on the street since that time?

A. I have. 30

Q. What use is now being made of it?

A. It is opened the full width, a hundred feet, from the Inlet to Atlantic Avenue.

Q. From the Inlet to Atlantic Avenue, which, of course, includes from Madison to Atlantic Avenue?

A. Yes, sir.

Q. How frequently have you traveled over it since that time?

A. Oh, quite frequently, once or twice a week, probably.

Q. Has it been continuously being used, used by vehicular and pedestrian traffic?

A. It has.

Q. How is it being used, that is, is it being used by an individual or by the general public?

10 A. General public.

Cross-examination.

By Mr. Bourgeois:

Q. What is the distinction between the individual, that is a number of them, and the general public, is there any that you know of?

20 A. All kinds of vehicles, of passenger, delivery, pleasure, all kinds of automobile traffic goes through that street.

Q. I am not speaking of that, but Mr. Sooy wanted to know whether it was used by the individuals or the general public, and I wanted to know whether there is any distinction between them, if there is any distinction?

A. I suppose he meant exclusively for private use.

30 Q. Then you gave your answer on the assumption he was asking if it was used for private use only?

A. Yes.

Q. Now, Mr. Harris, when Mr. Fox told you about the street, did you then know that the city had not paid him for the land on which the street was built?

Mr. Sooy: Objected to.

The Court: I suppose it is not a question of what the witness knew, it is a question of what the conversation was, what he may have been told.

Q. I mean, did you know from Mr. Fox, did he tell you that the city had not paid him?

A. From Mr. Fox's conversation, I gained the impression——

Q. I didn't ask you that, I don't want your impression. I want to know whether he told you or 10 not, did he tell you that the city had not paid him yet for it?

A. Did he tell me, gave me the impression that he had donated the land to the city.

Q. I told you I didn't want your impression, so I will ask it be stricken out as not responsive.

Mr. Sooy: I think that is responsive.

The Court: No, I don't think so, his impression. 20 If anything was said from which he reached a conclusion, he may tell what was said.

(Question repeated.)

A. He did not.

Q. Did he tell you that he had built the bulkhead that you speak of upon the promise of Atlantic City to reimburse him?

A. He did not.

Q. Did he tell you that he had done the work on 30 the street between Grammercy Place and Atlantic Avenue, upon the promise of the city to reimburse him?

A. He did not.

Q. Did he tell you that he had built the other

street between Madison Avenue and Grammercy Place on the promise of the city to reimburse him?

A. He did not.

Q. Or the individual commissioners of the city as a whole?

A. No.

Q. You were there to appraise the buildings on the landward side of Maine Avenue between Grammercy Place and Atlantic Avenue, weren't you?

10 A. We were.

Q. And his conversation with you about the street had reference to the street immediately in front of those buildings, didn't it?

A. No, the great value that had been added by opening the street a hundred feet wide throughout to Atlantic Avenue, that is what had the bearing on the case. Of course, at that time the Dr. Dick property was still in litigation, or in process of condemnation.

20 Q. You knew it had not been opened that hundred feet, didn't you?

A. No, we knew the intention was to acquire that for street purposes.

Q. How did you know what the intention was?

A. Well, I happened to be more or less in close touch with Dr. Dick's problem.

Q. Then you were interested in Dr. Dick's proposition, were you?

30 A. No, they had come to me several times discussing this problem, and the proper price to put on it, they had great ideas of the value.

Q. And you were a real estate agent, in the real estate business?

A. I am.

Q. And did you put the price on it \$32,000?

A. I did not.

Q. Did you pass judgment to the city that the land was worth \$32,000 before they bought it?

A. I did not.

Mr. Sooy: Objected to as being absolutely immaterial.

The Court: I don't suppose it is cross-examination.

10

Mr. Bourgeois: I don't think it is.

Re-direct examination.

By Mr. Sooy:

Q. I understand that you say that Mr. Fox said nothing at all to you about the city owing him any money at the time of this appraisement?

A. He did not.

20

Q. What did you say he said with reference to the land for the widening of Maine Avenue?

A. Either he or Mr. Young said that he had, he had donated his land to the city for the street purposes.

Q. Were they both present at the time of this appraisal?

A. I don't think Mr. Young was present at that time.

30

Mr. Bourgeois: Then I ask that be stricken out.

The Court: Yes, unless it was said in the presence of Fox.

Mr. Bourgeois: Either one or the other, he doesn't say Mr. Fox.

Mr. Sooy: One moment, Mr. Young was not present at that time, therefore Mr. Fox must have said it, not Mr. Young.

The Court: I don't understand the witness has said that, as I recall the testimony, on that occasion necessarily the statement was made.

10 Mr. Bourgeois: I ask that be stricken out.

The Court: Yes, it may be stricken out.

Q. Did Mr. Fox at any time say to you that he had dedicated the land to the city so they could open the street a hundred feet wide, any of the lands between Madison Avenue and Atlantic Avenue on Maine Avenue?

20 Mr. Bourgeois: I admit to that. We are not interested in the land between Grammercy Place and Atlantic Avenue.

The Court: I suppose, in view of the cross-examination at any rate that the whole problem along there, the whole question is open. I will permit that.

(Exception noted for plaintiff.)

30 (Question repeated.)

A. Mr. Fox at no time made a statement that he had dedicated the land between Madison Avenue and Grammercy Place a hundred feet wide, but I always—

The Court: No, you are asked what he said.

Q. Did he ever make a statement that he had dedicated any of the lands to the city in order that they could make a hundred foot street?

Mr. Bourgeois: What does that mean, any of the lands?

Mr. Sooy: Any of Fox's lands of course.

The Court: Between what points?

10

Mr. Sooy: Between the Inlet and Atlantic Avenue, and if so, where?

Mr. Bourgeois: That is objected to, if your Honor please, because——

The Court: You may answer that.

(Exception noted for defendant.)

20

A. Either Mr. Fox or Mr. Young made the statement——

The Court: You are asked about Mr. Fox.

(Question withdrawn.)

Q. Did you ever, at the solicitation of Mr. Fox, talk over the question of Dr. Dick's dedicating his land to the city so it could be a one hundred foot street?

30

Mr. Bourgeois: I object, if the Court please, that would seem as if he was going to become the agent of Mr. Fox and I want to know what the agency was.

The Court: He may testify to what Mr. Fox may have said to him on that point, Mr. Fox being the only person who has yet, who could bind the plaintiff.

Mr. Sooy: That is at the solicitation of Fox.

The Court: He may say what Fox asked him to do.

10

Q. Did Mr. Fox ever ask you to consult with Dr. Dick, or talk to Dr. Dick with reference to his land being dedicated to the city?

A. Only to Mr. Young.

Q. Only to Mr. Young?

A. Yes.

Q. Who was Mr. Young?

A. Associate of Mr. Fox's.

Q. How was he associated with Mr. Fox, if you
20 know?

A. Acting as his agent.

Q. Who introduced you to Mr. Young as Fox's agent?

A. I don't think anyone. They occupied offices together and worked together on these problems.

Q. Did you discuss with Fox and Young together these various problems?

A. Not together, no. Mr. Young came to see me several times on behalf of Mr. Fox's problem's up
30 there. I owned land along Maine Avenue. They tried to induce me to sell it to the city, and one of the arguments was that they had donated their land——

A. Mr. Young.

Mr. Bourgeois: I ask that be stricken out.

The Court: Yes.

Q. Did Mr. Fox ever say that to you?

A. No.

By Mr. Bourgeois:

Q. Then, Mr. Harris, the city bought your land, did it?

A. Yes.

10

Q. Now you are helping them to get Fox's, without pay, is that the idea?

A. No. I am merely trying to state the facts as they came to me.

Q. But you are not very strong for them paying to Fox, are you?

Mr. Sooy: Objected to.

(Question withdrawn.)

20

JOHN W. HACKNEY, resumed.

Direct examination.

By Mr. Sooy:

Q. Since the time Atlantic City removed the fence between Madison and Grammercy Place, which had been erected by Fox, has the street been opened its entire width of the seventy feet? 30

A. Seventy feet between curbs and the sidewalk on the westerly side fifteen feet wide.

The Court: No sidewalk established to the east?

A. Grass plot, just simply a grass plot.

Q. What was the date of the conveyance of Benjamin R. Fox to the Fox Company?

A. Want my general recollection, or may I refer to a memorandum?

Mr. Bourgeois: Better refer to the records.

The Court: Yes, the records will be the best evidence.
10

Mr. Sooy: It isn't here. I didn't suppose there was any question.

(Deed produced by the plaintiff.)

Q. I show you a deed purporting to be from Benjamin R. Fox to the Benjamin R. Fox Company for this land in question, and ask you the date on that
20 deed?

A. This deed is dated July first, 1920.

The Court: When is it recorded?

Mr. Sooy: On September twentieth, 1920.

Q. Was all the work completed before the conveyance from Mr. Fox to the Fox Company. When I say all the work completed, I mean the work of
30 grading, filling, graveling and building the street from Madison Avenue to Atlantic Avenue, a width of one hundred feet?

Mr. Bourgeois: That is objected to as leading. He may tell when it was completed.

The Court: Yes. I suppose it would be better form.

Q. What was the condition of the street on July first, 1920, at the time of the conveyance from Fox to the Fox Company?

A. My recollection is that the street had not been fully graded, nor graveled between Madison Avenue and Atlantic Avenue at the time.

Q. Had any portion of the work been done? 10

A. Oh, yes.

Q. About what percentage, if you can remember?

A. The nearest I can recall is that a few days after the first of June I was up there, cement curbs had been constructed along the westerly side between Madison Avenue and Grammercy Place, and the street was partly graded, it was in a passable condition, but I do not think it was entirely and completely graveled. There were, I believe, no 20 curbs set between Grammercy Place and Atlantic Avenue at that time, because I was up there with Mr. Steinbricker determining the question of the grade. We objected to the grade of the curb, as Mr. Fox had altered it between Grammercy Place and Madison Avenue, and he desired to do the same thing between Grammercy Place and Atlantic Avenue, and we very strongly protested because it would require the rebuilding of the curbs, and sidewalks adjoining the Moeb's Apartment house which 30 was at the corner of Atlantic Avenue, by reason of an increased slope, and I am quite sure that, while we consented to the change, that no curbs had been built in that block, and no graveling had been done, and that, as I say, was possibly about the first week in June, 1920.

Q. Now, then, after July first, 1920, who continued the improvement of Maine Avenue and the widening of the avenue to one hundred feet?

A. Well, that, of course, is a technical question as to who was responsible for paying for it, as I understand it. It was continued in the same way that it had been preceding that time, city didn't pay for it excepting filling behind the bulkhead between Grammercy Place and Atlantic Avenue.

10 Q. But it was continued and completed sometime after July first, 1920?

A. Yes.

Q. Now, then, did Fox ever refuse to sign the deed of dedication which you had prepared and submitted to him for his signature?

A. Well, I prepared three or four.

Q. Did he ever refuse to sign any of them?

A. Yes, he reached the point of refusal to sign the last one.

20 Q. And the last one was given to him when?

A. It was mailed to him in July, 1921.

Q. That was in whose name, who was the grantor in that one?

A. Benjamin R. Fox Company.

Q. Was it after—you say it was after the mailing of that to Mr. Fox that he refused to sign the deed of dedication?

A. I asked him why he didn't sign it and return it.

30 Q. What was his reason he gave you?

A. He said that in view of the fact that the city could pay the Dick people, that is, Aber, who actually conveyed to the city \$24,000 for his two hundred feet, he didn't see why he should give the city the land for nothing.

Q. Is that the first time he had refused to sign the deed of dedication?

A. Oh, yes.

Q. Is that the first time he had given any excuse for not signing?

A. First time.

Q. And that is the reason he assigned?

A. Yes, sir, that is the reason he gave me.

Q. Did he say anything to you at that time about the city not having paid him money that he claimed to be due for improvements that he had made on Maine Avenue? 10

A. I never heard of such a claim.

Q. Then Fox, never in your presence, made any such claim on the city?

A. No, sir.

Q. How frequently, during the course of these negotiations from the time of the passing of the ordinance from January, 1920, up until the date of his refusal to sign the deed of dedication, had you met and conferred with Mr. Fox? 20

A. A great many times, I couldn't say how many.

Q. Was it as frequently as once a week?

A. No, sir.

Q. Could you approximate about the number of times a month?

A. Oh, I don't think it came in regular fashion, like number of times a month, whenever he wanted anything, he came around.

Q. And that, you say, was frequently?

A. Frequently, yes, sir.

Q. And on one of those occasions, had he made any suggestion that the city owed him any money? 30

A. Never heard of that until you read a letter which he wrote to somebody, I couldn't say, that is the first I ever heard of that.

Q. You say the first refusal was in July, 1921?

A. No, sir, I did not. I say that I sent the last deed of dedication which covered only the land

from Madison Avenue to Grammercy Place and mailed it to him in July, 1921, and that was just following the purchase from Aber, of the Dick property.

Q. And it was after July first, 1921, that Fox made his first refusal to sign?

A. Oh, yes.

Q. Did Fox, after the opening of Maine Avenue for its width of a hundred feet acquire additional
10 property on Maine Avenue, between Grammercy and Atlantic Avenue?

Mr. Bourgeois: Objected to as irrelevant and immaterial.

The Court: How is that material?

Mr. Sooy: I don't know that I care about that.
I will withdraw it.
20

Mr. Bourgeois: Now, Mr. Sooy, if you will offer in evidence those ordinances you were examining on, the ordinance and deed, I will want to cross-examine on them.

Mr. Sooy: First ordinance number 237 establishing the widths of driveways and sidewalks of Atlantic City.

30 (Ordinance admitted in evidence and marked Exhibit D1.)

Second is ordinance number two providing for the improvement of Maine Avenue.

(Ordinance offered in evidence and marked Exhibit D2.)

The third is ordinance number 22 providing for the widening of Maine Avenue between Atlantic Avenue and Madison Avenue.

(Ordinance admitted in evidence and marked Exhibit D3.)

Also blank form of deed of dedication from Benjamin R. Fox, widower, and Walter B. Dick, widower.

10

(Paper admitted in evidence and marked Exhibit D4.)

By Mr. Sooy:

Q. Mr. Hackney, did you produce a copy of the deed of dedication that you prepared for Benjamin R. Fox Company to Atlantic City?

A. I did not, but I can.

20

Mr. Sooy: I also offer blank deed of dedication of Benjamin R. Fox Company and Walter B. Dick to the city of Atlantic City.

(Paper admitted in evidence and marked Exhibit D5.)

Also blank form of deed of dedication from Benjamin R. Fox Company, to the City of Atlantic City.

30

(Deed offered in evidence and marked Exhibit D6.)

Q. Do I understand, Mr. Hackney, the deed of dedication marked D6 is the last deed of dedication

that you sent to the Fox Company as per your testimony?

A. Yes, sir, that covers only between Madison Avenue and Grammercy Place, has the typewritten date of 1921 in there; that is the last one.

Q. And the deed marked D5 was sent about when?

A. That has the blank date of 1920 in, was sent after I discovered that Mr. Fox conveyed his title to the Benjamin R. Fox Company.

10 Q. What land does that embrace?

A. That embraces the entire stretch from Atlantic Avenue to Madison Avenue.

Mr. Sooy: I also offer in evidence deed Benjamin R. Fox to Benjamin R. Fox Company dated July first, 1920, recorded September twentieth, 1920.

(Deed admitted in evidence and marked Exhibit D7.)

20

I offer also deed from Moebs Apartment House Company to Atlantic City dated the sixth day of August, 1920, for a portion of the lands now embraced in the street lying between Grammercy Place and Atlantic Avenue.

Mr. Bourgeois: That is objected to.

30 Mr. Sooy: Deed from Moebs Apartment House to Atlantic City showing a purchase of a portion of the land on Maine Avenue for the purpose of widening the street, the relevancy of the offer is that we want to show that relying on the inducements of Fox, we opened the avenue 100 foot and expended money on it, deed recorded in book 643, page 287.

The Court: That is undisputed, I take it.

Mr. Bourgeois: Undisputed they paid for it. The other part is undisputed and this doesn't show what their reliance was.

The Court: No, it doesn't show it was upon the statements of Fox. It is undisputed and appears beyond controversy that the city did acquire the land, and Mr. Hackney has testified they paid for some land, so I suppose it adds nothing to it.

Mr. Sooy: In this case, that is perfectly satisfactory. I will offer a deed from the Absecon Land Company to Atlantic City dated the seventh day of May, 1920, recorded in book 639, page 258, and I presume the same objection is made to that, is it?

10

Mr. Bourgeois: We are going to withdraw the objection to the other and let you put it in.

Mr. Sooy: I don't care whether it is in or not.

20

Mr. Bourgeois: We don't object to that.

(Deeds admitted in evidence from the county clerk's records but not marked.)

Mr. Sooy: Then I offer in evidence deed Henry E. Stevens, Jr., to Atlantic City dated the eleventh day of November, 1920, for lands which were also included by Atlantic City in the widening of Maine Avenue between Grammercy and Atlantic.

30

(Deed admitted in evidence and marked Exhibit D8.)

(Offer in evidence deed from Edmund S. Aber, to Atlantic City, dated the eighteenth day of July,

1921, for that portion of the land used in the widening of Maine Avenue referred to as the Dick property.

D9.)

I want to offer in evidence deed from Benjamin R. Fox Company to City of Atlantic City dated the second day of June, 1920, recorded in book 656, page 261.)

10

(Deed admitted in evidence from county clerk's records, but not marked.)

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Hackney, I call your attention to exhibit D2, which is an ordinance introduced by Mr. White on January eighth, 1920, and ask you did you prepare it?

A. Yes, sir, I did.

Q. I show you Exhibit D3 which is an ordinance introduced by Mr. Steinbricker, on April eighth, 1920, and ask you did you prepare it?

A. Yes, I did.

Q. Now, I understand that you prepared four deeds of dedication from Mr. Fox or the Fox Company to Atlantic City; will you tell me what land was comprised in the first deed of dedication that you prepared?

30

A. The first deed of dedication that I prepared was from Benjamin R. Fox, widower, and Walter B. Dick, widower.

Q. That was to Atlantic City for what land, covering what land?

A. Covering a hundred foot wide strip extending from Atlantic Avenue to Madison Avenue.

Q. Between the two of them all the way along?

A. Yes, sir.

Q. Was that signed?

A. No, sir.

Q. When was that dated?

A. Sometime in 1920, but, of course, the full date was never inserted, the year was 1920.

Q. And that is Exhibit D5, is it not? 10

A. No.

Q. What is that, D4?

A. Yes.

Q. What date do you say it was?

A. The date seems to be blank.

Q. Sometime in 1920?

A. 1920.

Q. But you don't know the month?

A. No, I don't know the month. That was to be filled in by Mr. Fox. 20

Q. The next deed prepared was for what, assume this one, D5?

A. Covered the same land, the grantors were to be Benjamin R. Fox Company and Walter B. Dick.

Q. Was that signed?

A. That was not signed.

Q. You prepared both of them?

A. Yes, sir.

Q. Then the next deed of dedication you prepared was D6, is that right? 30

A. Yes, sir, this is deed of proposed deed of dedication from Benjamin R. Fox Company with the year marked 1921, covering one block only, that is to say from Grammercy Place to Madison Avenue.

Q. That is the land that is now in dispute?

A. Yes, sir.

Q. And that deed was prepared by you?

A. Yes, sir.

Q. Then besides those deeds, Mr. Hackney, there were other deeds prepared, weren't they?

A. Not deeds of dedication, but deeds of purchase.

Q. Was there a deed of dedication prepared for land extending from Grammercy Place down towards Atlantic Avenue on St. Catherine's place?

A. Oh, yes. Yes, sir.

10 Q. Who prepared that deed?

A. Oh, I did.

Q. Was that signed?

A. There were two deeds.

Q. Was this one signed?

A. I say there were two deeds and both were executed.

Q. Some question covering this same tract of land?

A. Well, each deed covered a half, each deed
20 covered a half.

Q. Each deed covered a strip twenty-five feet wide by 200 feet in length?

A. Yes, sir.

Q. Now was there another deed that was executed by Mr. Fox, a deed of dedication for some interests on the outside of Maine Avenue between Grammercy Place and Atlantic Avenue?

A. There was a deed, I wouldn't call it a deed of dedication, I would say it was a deed of gift, but it
30 was not in the form of a mere dedication, it was a conveyance in fee.

Q. And that was for what land?

A. That was for riparian rights.

Q. Extending from where to where?

A. From the high-water line of the Atlantic Ocean to the riparian commissioners' exterior line, cover-

ing a distance of 400 feet along Maine Avenue, beginning at Grammercy Avenue and extending southwardly.

Q. How far in did the high-water mark of the Atlantic Ocean extend, or inlet; must have been, there at the time that deed was executed?

A. High-water line, as I recall it, was under the Boardwalk at about that time.

Q. So that a part of it, that deed did cover, I mean a portion of this extension of Maine Avenue? 10

A. I didn't consider technically at that time that this deed of dedication covered any portion of Maine Avenue because at that time the high-water line was entirely beyond or eastwardly of the easterly line of the proposed widened Maine Avenue.

Q. So that you think that the high-water line did not come up to and touch any part of the hundred foot wide street?

A. No, sir, but when the grant was made the high-water lines were either within the line of that Maine Avenue or inward, because I think clean over to the westerly line of Maine Avenue so that the title company raised an objection to the title, that we were acquiring from Aber by reason of this overlapping riparian right. 20

Q. In other words, if the high-water line did cover over on Maine Avenue then the title you were getting from Aber was defective, in other words, you were getting no title for the part covered by the high water? 30

A. Needed a deed in order to complete the title against every eventuality.

Q. Who prepared the deed from Benjamin R. Fox to Atlantic City for that land?

A. I did.

Q. You, of course, did not do it as an individual, you were representing somebody?

A. I was city engineer.

Q. And you were representing the city when you prepared those deeds?

A. I did it for the city.

Q. At the city's request, of course, or the city commissioners' request?

A. Expressed or implied, one or the other.

Q. Mr. Hackney, do you know if Mr. Fox had anybody representing him at that time, at the time
10 this transaction was going on?

A. I had no dealings with any attorney representing Mr. Fox.

Q. I didn't ask you that, I just asked you for your knowledge.

A. After the Benjamin R. Fox Company got into the matter I was told, I believe, by the attorney named that he represented the company, that is Theodore Schimpf. Prior to that I do not recall of any attorney representing Mr. Fox.

20 Q. Were you ever present at a conference before the commissioners when Mr. White was a member of the commission, Mr. Fox and Mr. Schimpf were both present?

A. I recall Mr. Schimpf being present before the city commissioners in session, if that is the time you have in mind.

Q. Representing Mr. Fox?

A. Yes, sir, but I do not recall whether Mr. White was then commissioner, or whether director Stein-
30 bricker was commissioner, I couldn't say as to that.

Q. Well, this transaction arose, did it not, originated during the regime of the previous commission to the one now in office?

A. Yes, sir, during Mr. White's term as director of streets.

Q. Who were the other directors at that time, commissioners at that time?

A. Mayor Bacharach, Albert Beyer.

Q. Dr. Thompson?

A. Dr. Thompson, and I think Cuthbert was in at that time. There were some changes, it may have been Underwood Cochran, I don't know when he died.

Q. Did Cuthbert succeed Cochran?

A. Yes, sir.

Q. Now you say that the city put in some waste material along this avenue, what did the city put in as waste material? 10

A. Well, they allowed to be put in some pretty poor stuff.

Q. What do you mean by allowing it to be put in?

A. Well, they allowed it to be used as a dump whereby people brought in rubbish from building operations and so forth and dumped in there.

Q. Now who had built the bulkhead in order to hold it, anybody?

A. Where this dumping was permitted by the city, or done by the city the city had built the bulkhead, that is, between Grammercy Place and Atlantic Avenue. 20

Q. Out of what did the city build the bulkhead?

A. Out of lumber.

Q. I know, what kind of lumber, where did it come from?

A. Well, there was old boardwalk lumber, and some new lumber.

Q. And what part of the street between Atlantic Avenue and Grammercy Place, on what part was it constructed, the entire distance or just a part of it? 30

A. The bulkhead was built under the Boardwalk, of course the Boardwalk overlaps the street, to that extent it was built within the street.

Q. But was that a portion of what would now be

a street, or is now the street that is under the Boardwalk?

A. Yes, sir, we came along the near edge of the Boardwalk.

Q. Who built the bulkhead portion of what is now the street between where the city ceased to build and Grammercy Place?

A. In which direction?

Q. North and west.

10 A. We began the bulkhead at Grammercy Place and went down to Atlantic Avenue.

Q. Atlantic City did it all?

A. In that block.

Q. I understand you to say that the city built that part of the bulkhead which was underneath the Boardwalk and the Boardwalk does not cover the entire portion?

A. The Boardwalk runs the whole length, and they filled in under the Boardwalk the whole
20 length.

Q. They didn't build on the street line?

A. No, sir, all the bulkheads were built under the Boardwalk, under the edge of the Boardwalk.

Q. And not along the street line?

A. Mr. Fox's as well.

Q. Have you any definite knowledge as to when the work was commenced on this street by Mr. Fox?

A. I can't give you the date when he began work.

Q. Do you know whether the work was commenced by Mr. Fox or the Benjamin R. Fox Com-
30 pany?

A. Oh, it was begun by Mr. Fox at the time he had the title, at least.

Q. Well, did he have the title at the time the work was commenced, or had the title then been passed?

A. A pretty large amount had been done when the title passed from Benjamin R. Fox to the Benjamin R. Fox Company.

Q. Are you quite sure about that, Mr. Hackney?

A. The deed was dated July first, 1920. I was up there arguing about it after the first of June, 1920.

Q. How do you fix the first of June when you were there arguing it?

A. I have two ways of fixing it, one is I wrote a letter of protest to Mr. Fox dated May twenty-sixth, 10 1920, and I have there on the table a note book——

Q. What is that protest?

A. I have on the table there the note book of my assistant engineer showing the levels taken on the cement curb built by Mr. Fox dated June first, 1920.

Q. Where is that curb, what curb is it?

A. That was a cement curb on the westerly side of Maine Avenue between Madison Avenue and Grammercy Place.

Q. That was on the side of the street, the same 20 side of the street on which the apartment houses were built?

A. But in the other block.

Q. In the other block but on the same side?

A. Yes, but on the downtown side, westerly side.

Q. That street had been opened up, it had been dedicated more than fifty years, had it not?

A. That half of the street, calling it a hundred foot street, that half of the street. 30

Q. We won't call it a hundred foot street, we will call it that street.

A. All right.

Q. That had been dedicated to the city more than a hundred years prior.

A. It was shown on the original dedication map.

Q. And it was on the side of that street that Mr. Fox began work prior to July first, 1920?

A. Yes, but proposed to open a hundred foot street, otherwise it would not have been fifteen feet wide.

Q. Then it is based, so far as you were concerned, on a hundred foot street?

A. That is the way he wanted it.

Q. And that is the way you wanted it?

10 A. Certainly.

Q. That is the way your ordinance had provided for it?

A. Yes, sir, but that ordinance was passed before the dedication that it was only fifty feet wide.

Q. That may be true, but the ordinance was still there?

A. Yes, sir.

Q. When, if you know, did Mr. Fox or the Benjamin R. Fox Company, first begin work on that portion of the land that is now in dispute between Grammercy Place and Madison Avenue?

A. He had done a great deal of work prior to June first, 1920.

Q. What like?

A. Grading.

Q. On the outside?

A. Yes, sir, the full width.

Q. What was it before that, sand hills?

A. Yes, sir.

30 Q. And he leveled down the tops?

A. Yes, sir.

Q. Was there anything else done?

A. And it was graded up to make a street out of it.

Q. Was it graded up for a street or was it graded up for land?

A. Streets.

Q. Can you tell?

A. Oh, I can tell, yes, sir.

Q. You can tell whether grading a lot or street, can you?

A. Not only that, but at his request the city engineers had set the stakes for the curb line on the easterly side as well as the westerly.

Q. When was that done?

A. That was done prior to June first, 1920. 10

Q. Can you give us the date?

A. No, sir.

Q. How do you know it was prior to June first, simply your recollection?

A. No, sir.

Q. What?

A. Because before June first he had changed the grade of the stakes that had been set at the same time on the westerly side.

Q. Set them on both sides at the same time, did 20 you?

A. How is that?

Q. Set the grade stakes on both sides at the same time?

A. At approximately the same time, may have been a different day.

Q. I mean approximately the same time?

A. Yes, sir.

The Court: All one piece of work? 30

A. All one piece of work, yes, sir.

Q. Now did I understand you to say in your direct examination that these negotiations with Mr. Fox were concerning these different tracts of land, were separate and distinct, not all one single transaction?

A. What do you mean by different tracts of land?

Q. Well, first the Grammercy, I mean the St. Katherine Place tract, 25 feet by 400, then there was the easterly side of Maine Avenue between Grammercy Place and Atlantic Avenue, and the easterly side of Maine Avenue between Grammercy Place and Madison Avenue, now was the whole of that as one transaction or was it two separate transactions?

10 A. There were two transactions.

Q. Were there two transactions?

A. Yes, sir.

Q. What were they?

A. One related to the widening of St. Katherine's Place, and the other related to the widening of Maine Avenue.

Q. They were separate and distinct, were they?

A. Yes, sir.

20 Q. And one had no connection whatever with the other?

A. No, sir.

By Mr. Sooy:

Q. Mr. Hackney, at whose request did you prepare the first deed of dedication, if you remember?

A. The first deed of dedication was between Walter B. Dick and Benjamin R. Fox, and that deed was prepared—

30

The Court: Wait a minute, you mean between Dick as one party and Fox as the other?

A. Benjamin R. Fox and Walter B. Dick as grantors to the City of Atlantic City, I don't know that I could say that Mr. Fox requested me to prepare

that, but it was prepared as the result of our conversation and his statement that if I would prepare it that he would take it to Dr. Dick and have it executed.

Q. And at whose request was the second deed of dedication prepared, if you remember?

A. Oh, I think that was prepared on my own volition after I learned from Mr. Fox that the title had passed from him to the Benjamin R. Fox Company.

Q. And the third would be the same, would it?

10

A. The third, I think, was prepared wholly on my own initiative, I don't think Mr. Fox asked me to prepare that, in fact, I think he—well, I won't say what I think.

A. No, if you do they will object. You say that the inception of the scheme of widening Maine Avenue was during the term of Senator White?

A. No, sir, I didn't say that.

Q. Well, I understood you, Senator White did introduce the ordinance for the improvement of Maine Avenue, did he not?

20

A. For the improvement, yes, sir, the inception of the improvement originated with Senator White.

Q. But was there any idea at that time of making Maine Avenue a hundred foot wide street when Mr. White was in?

A. I couldn't say.

Q. All other negotiations after the passage or introduction of Mr. White was between Mr. Steinbricker and yourself and Mr. Fox, were they?

30

A. Yes, sir.

By Mr. Bourgeois:

Q. Mr. Hackney, the reason that Mr. Fox said that he would try to get Dr. Dick's signature was

because he was supposed to stand rather closer to Dr. Dick than the city was supposed to do, isn't that right, he thought he would be able to get it when maybe the city could not?

A. He was the initiator, he had had Dr. Dick, so he told me up on the ground and had convinced him of the great desirability of doing that thing, and consequently he was the fellow to get it signed.

Q. He thought he may be able to get Dr. Dick to
10 sign it?

A. He said Dr. Dick would sign it.

Q. The city had quite a little difficulty with Dr. Dick, hadn't they, they didn't get along very well, did they?

A. They had in the past difficulties with Dr. Dick.

Q. Lawsuits and a few things of that sort?

A. Always.

20

JOHN TOMLIN, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Q. Mr. Tomlin, where do you live?

A. 303 Madison Avenue, Atlantic City.

30 Q. What is your business?

A. Contractor and general hauling, scooping and grading and so on.

Q. Were you ever employed by Mr. Fox in your business?

A. Yes, sir.

Q. For what work?

A. Well, I done a lot of work for Mr. Fox.

Q. With reference to Maine Avenue, I will put it.

A. Well, I built Maine Avenue from Madison Avenue to Atlantic Avenue within a hundred and fifty feet of Atlantic Avenue.

Q. Who built the rest of it?

A. I think the city did the rest of it.

Q. Who employed you to build Maine Avenue?

A. Mr. Fox.

Q. Benjamin Fox?

A. Yes, sir.

10

Q. Can you tell when you first started work for Mr. Fox on Maine Avenue?

A. I started on the contract on Maine Avenue on the twenty-fifth day of May, 1920. I did do some work previous to that by the day, filling and grading.

Q. You started on your contract May twenty-fifth, 1920, and prior to that you had been working by the day grading?

A. Yes.

Q. What, grading Maine Avenue?

20

A. Yes, Maine Avenue and the sidewalks.

Q. And the sidewalks also?

A. Yes, sir.

Q. How long had you been working prior to the time you entered into your contract on May twenty-fifth, 1920?

A. I should say off and on for about a month, not positive about that.

Q. So that you started approximately on April twenty-fifth, 1920, for the purpose of widening Maine Avenue and grading it and so forth?

30

A. Yes, sir.

Q. Now, what width did you make Maine Avenue from Madison to Atlantic, I mean within a hundred and fifty feet of Atlantic?

A. Graded seventy feet up to a point where the bulkhead would not quite allow that width.

Q. That is where the Boardwalk encroaches on Maine Avenue near Atlantic Avenue?

A. Yes.

Q. What width did you lay your sidewalks?

A. I didn't lay the sidewalks.

Q. Do you know what width they were laid?

A. Fifteen feet, I think, each side.

Q. So that that made the streets, including sidewalks, a hundred foot street?

10 A. Yes, sir.

Q. Did you lay the curbs?

A. No.

Q. Just exactly what work did you do?

A. I done the filling where needed, cutting where needed, and graded it and put in cinder base and gravel top and rolled it.

Q. And who paid you for it?

A. Mr. Fox.

20 Q. Now, then, when did you complete your contract work with Mr. Fox?

A. Sometime in February of the same year.

Q. Sometime in February of 1920?

A. Yes, sir.

Q. Who paid you after July of 1920?

A. Mr. Fox.

Q. And continued to pay you up until the time of the expiration of the contract?

A. Yes, sir.

30 Q. Did he have any conversation with you as to what he was going to do on Maine Avenue?

A. Well, he was filling on the west side of Maine Avenue, I think he had started when I started up there, and he said he was going to open up Maine Avenue.

Q. For what purpose, did he say?

A. Well——

Mr. Bourgeois: If he said, now don't just guess at it, what he said.

A. He said he was going to put up some buildings on Maine Avenue, of course he wanted the street—

Mr. Bourgeois: Don't of course.

The Court: If that is what he said, just tell what he said.

10

A. He said he wanted Maine Avenue opened up as he was going to build on the west side of Maine Avenue.

Q. Did he tell you what width he was going to have Maine Avenue?

A. Oh, yes.

Q. What did he tell you?

A. Seventy feet.

20

Mr. Bourgeois: I object to that. The witness has not said that Fox was going to do it, he said he wanted it opened up, Mr. Sooy, I ask to have that stricken out as leading.

The Court: I suppose it is leading.

Q. What did he tell you, if anything, with reference to the width of Maine Avenue?

A. Told me to build it seventy feet wide.

Q. Told you to build it seventy feet wide, did he tell you why he wanted it that wide?

30

A. No.

No cross-examination.

KIRK LOVELAND, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Q. You are feeding at the public crib too, aren't you?

10 A. Yes, sir.

Q. What is your position?

A. Boardwalk superintendent, and assistant street supervisor.

Q. In Atlantic City?

A. Yes, sir.

Q. How long have you been in the employ of the city?

A. I guess about fifteen years.

Q. Were you in the employ of the city as assistant street supervisor in January of 1920?

20 A. Yes, sir.

Q. And so on down to the present time?

A. Yes, sir.

Q. Did you have anything to do with the—did you know the condition of Maine Avenue prior to January first, 1920?

A. Yes, sir.

Q. What was it?

A. Sand hills.

30 Q. Was it opened from Atlantic Avenue on into Grammercy Place?

A. It was opened there slightly there about twenty-five feet in front of Commodore Nuttal's property.

Q. Was that graded for that twenty-five feet, curbed and paved?

A. To Commodore Nuttal's private residence.

Q. From Atlantic Avenue?

A. From Atlantic Avenue, yes sir.

Q. Was there any vehicular traffic on Maine Avenue from Commodore Nuttal's residence on up to Madison Avenue?

A. No, sir, couldn't be.

Q. Just sand hills?

A. Sand hills.

Q. Now, then, who owned the property in January of 1920, from Madison Avenue on down to Grammercy Place?

A. I don't know that I could answer that, I presume that Mr. Fox did.

Q. Did you, as supervisor of streets, have anything to do with the improving of Maine Avenue?

A. None, whatever, only the bulkhead.

Q. Did you have charge of the building of the bulkhead?

A. Yes, sir, I had charge of the bulkheads for the 20 last eight years, the building of them for the city.

Q. And you built the bulkhead then, under the Boardwalk from Grammercy Place to Atlantic Avenue?

A. Under my supervision, yes, sir.

Q. At whose expense?

A. The city's expense.

Q. What was the purpose of that bulkhead?

A. To protect Maine Avenue.

Q. About what time did you start the erection of 30 the bulkhead from Grammercy Place down?

A. Sometime in May.

Q. 1920?

A. 1920.

Q. During the time you were building the bulkhead was there any other work going on tending toward the improvement of Maine Avenue?

A. I think Maine Avenue had been widened, the bulkhead had previously been erected from Madison to Grammercy.

Q. Who directed that?

A. Mr. Fox, I think. I just don't remember the contractor, but Mr. Fox, it was being done by Mr. Fox.

Q. What was Mr. Fox doing there?

A. Grading the street. Mr. Tomlin had that
10 work.

Q. Grading it for a width of what?

A. A hundred foot street, that is seventy foot driveway.

Q. Had you finished the erection of the bulkhead prior to the time when Fox was finishing the grading, graveling and curbing of Maine Avenue?

A. He had finished between Madison and Grammercy before we finished the bulkhead, I just can't tell you what date we finished that bulkhead but I
20 presume it was in October, either September or October, 1920.

Q. Was Fox still working on the grading, graveling and curbing of Maine Avenue between Grammercy and Atlantic when you quit your bulkhead?

A. Oh, yes, he was hurrying up that proposition account of his buildings.

Q. What was the state of his bulding with reference to its completion at the time you completed the bulkhead?

A. All those buildings in that particular point, that is the first proposition, was nearly completed very beautiful buildings there.
30

Q. You say nearly completed when you completed the bulkhead?

A. Yes.

Q. Now, then, after Fox had completed the work

on Maine Avenue do you know whether or not the street was thrown open?

A. Well, the street was not thrown open in its entire width until the city finished that part of the street opposite the Nuttall property.

Q. That is the Atlantic Avenue end of the street?

A. Yes, that was narrow, if you will recall, and Mr. Fox was very anxious for us to finish that, he kept back of us, but I didn't blame him, and the old bulkhead was tore away and the city completed the balance of that street and threw it open to the public. 10

Q. And it was open to the public?

A. Absolutely.

Q. Do you know what use has been made of that street from that time up until the present time?

A. Why, it is the Maine Avenue Boulevard, it is the main driveway to the Inlet.

Q. Who is it used by?

A. By the public. 20

Q. Generally, that is, everybody wants it?

A. Sure.

Q. How wide is it opened for the use of the public?

A. Seventy foot continuously.

Q. Is that the same width as it was when it was originally opened, that is after your improvements were done?

A. It has been the only thing I have known is a hundred foot street with a seventy foot driveway. 30

Q. Now, then, to what point has it been opened to a hundred feet?

A. Previous to Mr. Fox's time it was opened a hundred feet, if I remember right, from Madison Avenue to the Inlet.

Q. I don't mean previously to Mr. Fox's time.

A. I didn't know anything of it but a seventy foot driveway from Atlantic Avenue to the Inlet.

Q. And it so existed as a seventy foot driveway from the time of the completion of the improvements up to the present time?

A. Sure.

Q. Now, then, who is maintaining that street?

A. City of Atlantic City.

Q. In what way are they maintaining it?

10 A. By scraping it, by regraveling it, filling up the holes with gravel, and keeping it passable to the public, even by sprinkling in the summer time.

Q. How long has Atlantic City been maintaining it in the manner that you have testified to?

A. Since its completion in the winter or fall of 1920.

Q. Who lights Maine Avenue?

A. City of Atlantic City.

20 Q. Can you tell us the aggregate amount of—I mean the cost of the building of the bulkhead to the city?

A. The expenditure of new lumber and labor was about \$3200, but I presume we used about from five to seven hundred dollars worth of old lumber, that would make it close to four thousand dollars in cost.

Q. All the old lumber you used was suitable for the purpose of building the bulkhead?

A. Entirely so.

30 Q. How much has the city spent on graveling and repairing, sprinkling and resurface of the street since they took it over?

A. As near as I can tell to date about \$2500 approximately.

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Loveland, the city acquired by purchase from everybody except Dr. Dick the land between Grammercy Place and Atlantic Avenue inside of the bulkhead that you built, by purchase, didn't they?

A. I don't know anything about that part of it.

Q. You do remember this, I am quite sure you remember the time when Dr. Dick's daughter, Mrs. Bradley, had a fence built along the middle part of the avenue, don't you? 10

A. Sure do.

Q. And you had built the bulkhead at that time, hadn't you?

A. Oh, yes, the street had been opened before that, though, public had been using it.

Q. That didn't make any difference whether street or not, about the public using it? 20

A. I don't know.

Q. They use it wherever it is level and they want to go?

A. Sure.

Q. And you knew that Mrs. Bradley claimed that land?

A. I knew someone had built a fence there.

Q. Didn't you know that Atlantic City had acquired all this land along here by purchase from the owners? 30

A. No, sir.

Q. Didn't know that?

A. That is not my business, I am a busy man.

Q. Are you?

A. I sure am.

Q. Did you know that prior to the time that you

built the bulkhead underneath the Boardwalk that Mr. Fox at his own expense had filled that land in once and the ocean washed it out because the bulkhead was not built?

A. I knew there was a place there that a bulkhead gave way, that a little sand washed out, but we returned more than he ever put in there.

Q. I am not asking you, I am asking you for the fact.

10 A. That is the fact, I guess, I am telling you facts.

Q. Now I suppose there wouldn't be any obligation on Mr. Fox's part to build a bulkhead for the city on the property where the city got the land from the other people, would there?

Mr. Sooy: Objected to.

The Court: That is a conclusion.

20 Mr. Bourgeois: I think that is right. You needn't answer that.

Q. You said Fox kept back of you?

A. What do you mean, kept back of me?

Q. I don't know, you said it. You said that Fox kept back of you, hurrying you up.

A. This was a hurry up proposition, if I understand —

Q. Don't tell us what you understand, just tell
30 us what you meant when you said Fox kept back of you?

A. He was hurrying this proposition up, the city was doing it for Mr. Fox.

Q. And the city had delayed getting title for some fourteen months?

A. I don't know anything about the titles, Mr. Bourgeois.

Q. You don't know anything about the city, either?

A. Yes, I do.

Q. Do you?

A. I know that I do my work as I am ordered, but when it comes to title propositions, I am out of it.

LOUIS STEINBRICKER, sworn for the defendant.

10

Direct examination.

By Mr. Sooy:

Q. Mr. Steinbricker, where do you reside?

A. Atlantic City.

Q. Have you any official position with Atlantic City?

20

A. Yes, I am director of streets and public improvements.

Q. When did you take office as director of streets and public improvements?

A. On January fifteenth, 1920.

Q. At the time you took office as director of the department of streets, had ordinance number two been introduced by Senator White providing for the improvement of Maine Avenue?

A. It had.

30

Q. Did you take up the work of improving Maine Avenue under the ordinance?

A. No, I did not.

Q. Why didn't you take up the work?

A. Well, we were about to start that work when Mr. Fox started to ask for a hundred foot wide

street. That ordinance provided for opening up a fifty foot wide street.

Q. You say Mr. Fox asked you for a hundred foot street, where did he ask that, under what circumstances, what did he say, I will put it that way?

A. Well, he said that he was building or about to build some very handsome apartment houses, and that a fifty foot street would not do, then in fact that this argument was strong enough and I took it
10 up with the Commissioners in conference and they decided that we had better pass an ordinance opening the street a hundred feet instead of fifty.

Q. What, if anything, did Fox say that he would do towards securing of a hundred foot street?

A. Well, he was going to do most everything, he was going to give the city all that part that was necessary between Madison and Grammercy Avenue and he was to get a deed of dedication from
20 Dr. Dick, the part that he owned between Grammercy and Atlantic, that is what he was to do originally.

Q. Who owned the land between Madison and Grammercy on both sides of the street at the time that he was talking to you?

A. I was led to believe that Mr. Fox owned it.

Q. And you say he would give that portion, what do you mean, that portion of the land?

A. Fifty feet easterly of the easterly side of Maine Avenue, running parallel from Grammercy
30 to Madison.

Q. At the time of his conversation with you what was the condition of Maine Avenue, had it been opened at all?

A. Oh, yes, Maine Avenue was just a lot of sand piles, wasn't fit to drive through.

Q. At the time of his conversation with you and

at the time that you had agreed or the Board of Commissioners had agreed with Mr. Fox that you would open up a hundred foot street, was it in contemplation of the city that the city would do the work of levelling it and paving it at all?

A. Yes.

Q. That was the understanding that you and Mr. Fox had?

Mr. Bourgeois: I object to that, if the Court 10 please.

The Court: I suppose that is leading.

Mr. Sooy: Yes, it is. It is leading up to something else.

Q. Did the city actually do the work of improving, such as grading, curbing, between Madison and Atlantic Avenue? 20

A. A small portion of it.

Q. Under what circumstances was it that Mr. Fox did the work of grading and levelling?

A. Well, Mr. Fox seemed to be in a tremendous hurry to get this street built, and he was in my office well, pretty near every other day, urging on and urging us on, and I kept telling him that there were a lot of things had to be done before we could go ahead and build that street, and I says to him, "If you are in such a hurry," I says, "you will prob- 30
ably be assessed for the entire improvement, why don't you go ahead and build it yourself at your own expense?" And he thought it was a grand idea, and immediately he started to do that work.

Q. In other words you told him that the probable cost to him for assessment of benefits would be the

same amount of money that he would have to pay to do it himself?

Mr. Bourgeois: If the Court please he hasn't said that at all.

The Court: Let him state it Mr. Sooy.

Q. What was it you said to Mr. Fox with reference to the cost if the city did the work and the cost if he did the work?

A. That is just what I —

The Court: You are asked what you said.

A. I told Mr. Fox that he would be assessed for the cost of this work if the city did it.

Q. Now, Mr. Steinbricker, I show you ordinance marked Exhibit D3; did you introduce that ordinance, that is the ordinance for the widening of Maine Avenue, number 22?

A. Yes.

Q. And that ordinance was finally passed on the—

A. Sometime in April.

Q. April twenty-ninth, 1920?

A. Yes.

Q. Do you know of your own knowledge when Mr. Fox started the work in the widening of Maine Avenue himself?

A. Well, it was very shortly after this ordinance was passed, I don't know the date.

Q. Did you at the time you told Mr. Fox that the assessment for benefits would equal the cost of the work have any conversation with Mr. Fox wherein you agreed that the city would reimburse him for his work?

A. None at all.

Q. Did you ever have such conversation?

A. No, sir.

Q. Under whose direction was the bulkhead built from Grammercy Place to Atlantic Avenue?

A. Under the direction of the supervisor or assistant supervisor of streets.

Q. But under your——

A. Under my instructions.

Q. Under whose instructions was the filling, grading, etc. of the hundred and fifty foot strip of Maine Avenue done, yours? 10

A. No, only that portion just north of Atlantic Avenue.

Q. That is the portion I mean.

A. About a hundred and fifty to two hundred feet, something like that.

Q. Did Fox tell you why it was that a fifty foot street would not be sufficiently wide enough for his purposes? 20

A. Well, he told me that the buildings, the type of buildings that he was going to put there wouldn't look good there on a fifty foot street, so he preferred to have it a hundred.

Q. Now, then, did the city, after the passage of ordinance number 22 which provided for the widening of Maine Avenue, enter into negotiations for the purchase of outstanding interests?

A. Oh, yes, through the agency of Mr. Hackney or his department. 30

Q. And you did purchase outstanding interests?

A. Yes, sir, quite a number.

Q. Did the city go ahead in the carrying out of ordinance number 22 in every way it could.

A. Except where Mr. Fox interfered and went ahead without our consent.

Q. Now then, was the improvement of St. Katherine's Place a part of this improvement on Maine Avenue or was it a separate transaction?

A. Why that was a separate transaction.

Q. Did it have anything to do with Maine Avenue at all?

A. Not at all.

Q. Was that improvement made under a separate ordinance?

10 A. Yes.

Q. After the opening of Maine Avenue who has maintained it?

A. The city.

Q. That is through your department?

A. Yes.

Q. What have they done towards maintaining it?

A. Well, they have kept it in condition, they have scraped the gravel which is necessary quite frequently, they have replaced gravel where there is
20 holes, and we have sprinkled it every summer since it has been done.

Q. Has any one else attempted to improve or keep Maine Avenue in condition outside of the city?

A. Not to my knowledge.

Q. And you are in charge of the lighting department of the city too, aren't you?

A. Yes, sir.

Q. Who lights Maine Avenue?

A. The city.

30

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Steinbricker, you say that the city acquired outstanding property rights under ordinance

number 22? How much money did the city pay for the land it acquired under that ordinance?

A. Well I can't answer that unless you allow me to refer to my memorandum.

Q. All right, I don't mind.

A. The city acquired the land, one-half undivided interest in a fifty foot owned by Benjamin R. Fox Company—no, that is not right—well, we acquired that piece from Mr. Aber, \$24,000.

Q. I don't care about the names, if you will just 10 tell me the amounts. You can give the names if you want to, however.

A. Purchased from one Stevens his right and title to 150 foot of land at \$30 a foot, that is \$4500, and they purchased from the Absecon Land Company 50 foot, at \$30 a foot, \$1500, purchased from the Moebs Apartment Company, one-half interest in 100 foot at \$15 per foot, \$1500.

Q. That aggregates \$31,500?

A. \$31,000.

20

Q. Seems to add to \$31,500.

A. Whatever it adds, that is the price.

Q. And that was all that you bought?

A. Yes.

Q. Now the only land that has been dedicated to Atlantic City for the purpose of completing that street was the land dedicated by Fox, wasn't it, that riparian grant land?

A. Yes.

Q. Then you say that the city has maintained the 30 avenue and nobody else has?

A. Yes, sir.

Q. Had anybody tried to prevent the city from maintaining that avenue?

A. Absolutely not.

Q. Didn't Mrs. Bradley?

A. Just a minute, except when Mrs. Bradley had her fence there.

Q. And she kept it there?

A. She kept it there.

Q. When she bought the land?

A. Yes, sir.

Q. Now did Mr. Fox try to build, or build a fence in Maine Avenue between Madison Avenue and Grammercy Place?

10 A. Yes.

Q. And did you instruct the police department to go up there and tear it down?

A. No, sir.

Q. How did it come to go down, do you know?

A. Well we got an order from Mr. Sooy, city solicitor, to send up and have it taken down.

Q. And you took it down?

A. On Mr. Sooy's advice.

Q. And Mr. Fox tried to prevent Atlantic City
20 from maintaining it, having possession of it, didn't he, Mr. Fox tried to prevent you from having possession of that land, didn't he?

A. When he built the fence, he surely did.

Q. So that while you have maintained it you have maintained it against his will?

A. Oh, no.

Q. What did he want to put the fence there for if he didn't want to keep you away, keep you out?

A. Well I don't know, unless he wanted to sell
30 it to the city, wanted money for it.

Q. Don't you think that is what he wanted to do?

A. I do.

Q. I do too. Now you say St. Katherine's Place is a separate transaction?

A. Yes, sir.

Q. In the affidavit you made in this case I notice

as follows: "In pursuance of conversation with Mr. Fox and his representations, the city engineer was instructed to prepare and introduce ordinance as aforesaid." Now, who instructed the city engineer to prepare this ordinance?

A. I did.

Q. And the one that you instructed him to prepare was ordinance number 22, was it?

A. Yes, sir.

Q. That is the one for the widening and acquiring 10
the land?

A. Yes, sir.

Q. Then you say that afterwards you talked to Mr. Fox about it and told him that the cost to be assessed against the land would be the expense or cost of making the improvement?

A. Yes, sir.

Q. Did he rely on you, what did he say about that?

A. Why he said he would go on and build it 20
himself.

Q. In other words he assumed what you told him was a fact, that the city was going to charge him as much as it cost the city to do the work?

A. Yes, sir.

Q. And then he would be out the value of the land entirely and have to pay for the improvement himself, now that is true, isn't it?

A. That was his own side of the land.

Q. Didn't he tell you that he was willing to give you land in consideration of the city doing the work? 30

A. No, sir.

Q. Mr. Steinbricker, did you ever tell him afterwards that what you had told him was not correct, that the city could not assess him the entire cost of that construction?

A. No, sir.

Q. Well you understand that it cannot, don't you?

A. No, sir, I do not.

Q. Don't you?

A. No, sir.

Q. Don't you understand as a city official that the city can only assess for street improvement the benefit to the adjoining property, not the cost of it?

A. Yes, sir.

Q. Not the cost of it, but the benefit to it?

10 A. I do.

Q. Did you tell him that, did you tell him that they would assess the entire cost to him?

A. I told him probably the improvement, the benefit would amount to probably the entire improvement, of course I had no authority to set any price on it.

Q. Didn't you tell him that it would be the whole thing, the whole cost would be assessed against him?

A. I said probably.

20 Q. You mean probably told him, or probably be assessed against him?

A. I told him the entire cost would probably be assessed.

Q. Well did you make an affidavit reading as follows: "That Fox was persistent at all times, first that the city build a bulkhead at its own expense, and secondly that the city open up Maine Avenue for its entire length to the full width of a hundred feet at its own cost and expense including graveling, 30 grading and curbing thereof, but that he finally did the work done by him at his own cost and expense by reason of the fact that I advised him that if the city did the work of grading, graveling and curbing that the entire cost thereof would be assessed against the property owner there, that it would cost Fox as much as if the city did it as though he did it

himself.” Then the rest of that paragraph, if you want it—“and would occupy a longer period of time for completion, and with reference to bulkhead, Fox do the work himself instead of waiting for the city to do it by reason of the delay that would be necessitated pending the time when the city could have secured title in order to do the bulkhead work Fox wanted.” Now don’t seem to be a thing about probable in there, simply a bald statement that you told him. 10

A. I did.

Q. Is that right?

A. Well, if the affidavit says so, I guess it is right.

By Mr. Sooy:

Q. Mr. Steinbricker, have you ever had any experience of the assessment of benefits where the entire cost had been assessed? 20

Mr. Bourgeois: I object. It isn’t his experience at all. It is what he told this man.

The Court: Yes, I suppose that is the question, what he told him.

DEFENDANT RESTS.

PLAINTIFF'S REBUTTAL.

Mr. Bourgeois: I want to offer in evidence, if your Honor please, deed from Edwin A. Crawford and others to Benjamin R. Fox for the tract of land lying on the westerly side of Madison Avenue ninety-five foot front on Madison Avenue. I am offering that simply because the deed from Benjamin R. Fox to Fox Company includes this land with other land.

(Deed admitted in evidence and marked Exhibit D2.)

I offer in evidence deed bearing date the twenty-second day of August, 1919, between George H. Earle, Jr., of the one part, and Benjamin R. Fox of the other, of record in the clerk's office in book 611, of Deeds, page 236, for the land beginning at the corner of Grove Tract that I just offered in evidence, then running out to the railroad right of way, along the railroad right of way, thence direct to high-water mark, covering, crossing over Maine Avenue, then along high-water mark to the northerly line of Grammercy Place, or Arctic Avenue, then to the place of beginning, covering all of that land.

(Deed admitted in evidence and marked Exhibit D3.)

The other deed from Fox to Fox Company covering both tracts is already in evidence.

THEODORE W. SCHIMPF, sworn for the plaintiff.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Schimpf, you are a practicing attorney?

A. Yes, sir.

Q. And you have some information concerning the 10
dispute between the Benjamin R. Fox Company and
Atlantic City?

A. I have.

Q. How did it occur that you became possessed
of knowledge concerning that transaction or negot-
iation?

A. I represented Benjamin R. Fox during the ne-
gotiations with the city and subsequently the Benja-
min R. Fox Company in this dispute with this city.

Q. Did you ever appear before the City Commis- 20
sioners or the City Commission in session so that
they would know you represented them?

A. I did.

Q. Represented Fox or the Fox Comany? Now
when did the negotiations first begin before the Com-
mission?

A. Before the Commission, that was in—before
the administration that lasted until May, 1920, be-
fore the Commissioners who were in office until that
time.

Q. Will you relate to the Court and jury the ne- 30
gotiations, so far as you know them, beginning in
the earliest part and coming down to the present
time, just your knowledge of them?

A. I went before the board of commissioners of
the City of Atlantic City with Mr. Fox in the fall of

1919, or in the very early part of January, 1920. My recollection is not exact as to the date, but I think it was in November or December of 1919. At that time the commissioners were Harry Bacharach, Charles D. White, Mr. Beyer, Mr. Thompson, and I think Dr. Cochran. Mr. Steinbricker was not a member of the commission. There were present at that time, Mr. Sooy, the city solicitor, Mr. Perskie and Mr. Hackney in addition to the board of commissioners. I proposed to the board of commissioners, representing Mr. Fox, that, inasmuch as he was about to expend a very large sum of money in the improvement of the block between Atlantic Avenue and Grammercy Place on the westerly side of Maine Avenue, that he would like to have their improvement of Maine Avenue made as soon as possible and in time to benefit him with the erection of these properties and also to have St. Katherine's Place made into a street. At that time, by this decision of this case, as stated to the commission, by reason of the decision in the United States District Court, in the case of Elliott against Atlantic City, Maine Avenue between Grammercy Place and Madison Avenue was decreed by that court to be a street of only fifty feet in width. The same condition with respect to the map upon which that decree was made existed with reference to the block between Arctic Avenue and Atlantic Avenue, or Grammercy Place and Atlantic Avenue. And I felt, and told them so, that if any action were begun by the property owners in the block it would probably result in the same decree.

Mr. Perskie: If your Honor please, I object to that testimony. That is not a part of the negotiations.

The Court: This is what he said. The witness states this is what he said to the commissioners, I suppose a part of the conversation.

A. —that if the city would widen Maine Avenue to one hundred feet—I also stated to them that Fox owned all of the property on the west side of Grammercy Place, on the west side of Maine Avenue between Grammercy Place, and a point I think, one hundred and fifty feet north of Atlantic Avenue, that he owned or had an interest in the part on the east side of Maine Avenue extending from Grammercy Place to a point 200 feet south of Grammercy Place, and that he had some interest in property between that point and Atlantic Avenue, on the east side of Grammercy Place. 10

That he owned the whole of the property on both sides of Maine Avenue between Madison and Grammercy Place, and that he owned also all property on St. Catherine's Place from a point, from Grammercy Avenue to a point 150 feet north of Atlantic Avenue. That, if the city would widen St. Catherine's Place to 75 feet, and Maine Avenue to a 100 feet in width, and pay the cost of bulkheading and paving those streets, without subsequently assessing him for the benefits of paving those streets, that he would give the city a deed for the property on the easterly side of St. Catherine's Place 25 feet wide by 400 feet in length, that he would give them his interest that he had on the easterly side of Maine Avenue, whatever that interest was, between Grammercy Place and Atlantic Avenue, and that he would also give them a deed for the 50 foot strip 475 feet long on the easterly side of Maine Avenue between Madison and Grammercy Avenue. That was discussed then, in a more or less informal way and Mr. 30

Charles D. White, then a member of the board of commissioners, and at that time director of streets and public improvements, was called upon for an expression of opinion and he said to the board that he had had a great deal of negotiation with Dr. Fox about the matter and that he was prepared to approve of it, and sponsor it. So the board agreed that they would accept the proposition and introduce the necessary ordinance to widen Maine Avenue to 100 feet, and St. Catherine's Place to 75 feet, that they would acquire whatever interest any property owner had on the outside of Maine Avenue, and would build that street, but would not assess the Fox Company, or Fox, after the street was built for benefits. Now that is about all the conversation there was at that meeting of the board of commissioners.

Q. What was the next step in the transaction?

A. Subsequently, I had some conversation with Mr. Hackney about the preparation of the St. Catherine's Place deed. It appeared that they wanted to go ahead with that part of the improvements first and they were then ready to go ahead with it. What subsequently happened was that Charles D. White, as a member of the board of commissioners, introduced an ordinance, I think known as #2, on January eighth, which was finally adopted by the board of commissioners on January 22nd, for the improvement of Maine Avenue, and that ordinance was subsequently repealed by ordinance number 22 which Mr. Steinbricker introduced in April, and which I think was finally passed on the twenty-second of April providing for the improvement of Maine Avenue 100 feet wide. The St. Catherine's Place ordinance had already been introduced, I believe, and that improvement was practically ready to go through. We gave Mr. Hackney a deed for

the St. Catherine's Place property. I think he got two deeds, one from William H. Bartlett Company and the other from Benjamin R. Fox, or the Benjamin R. Fox Company, but at that time that Bartlett deed was used because that property was under contract to be sold to us, if it had not actually——

Q. When you say Bartlett, you mean Fox?

A. I mean either Fox or the Fox Company. The Benjamin R. Fox Company was organized some time before this title was actually transferred to them, and negotiations were had with them looking towards the transfer—— 10

Mr. Sooy: I object to the organization of the Fox Company.

The Court: I suppose it is a question of the negotiations that took place.

Q. I suppose that fact wasn't brought to the attention of the city? 20

A. No, I don't think so.

Q. Now what was your next step?

A. I had very little more to do with the transaction then. The matter went on between Fox and the city and in June, 1920, I left the matter then with my law firm, which then consisted of Thompson, Schimpf and Hanstein, and when I got back in the fall, in September of 1920, I asked Fox if the city—— 30

Mr. Sooy: I object to what you said to Fox.

The Court: I suppose the conversations with Fox are not admissible.

Mr. Bourgeois: I suppose he can say what he

asked Fox, he can tell what he did do, he can tell what was done.

The Court: No, I don't suppose he could out of the presence of the party to be bound.

Q. At any rate, what was the next transaction with the city officials, you had a conversation with Fox?

10 A. I had a conversation with Fox.

Q. As a result of that, you did what?

A. I did nothing as the result of that conversation.

Q. Why did you do nothing as the result of that conversation?

A. There didn't appear to be anything to do just at that time.

Q. Now what happened then?

A. The matter went on then, for a long period of
20 time. It had begun in the fall of 1919, the buildings were well under way in the summer of 1920, and I think were completed sometime about the time the street was completed along in November of that year and the buildings were occupied sometime during the fall of 1920, I think, the city called upon us for a deed for the outside of Maine Avenue south of Grammercy Place, and that deed was prepared, and I approved it and it was executed.

Q. Prepared by Mr. Hackney?

30 A. It was prepared by Mr. Hackney and submitted to me, and I approved it, I approved both deeds, both the St. Catherine Place deed and the Maine Avenue deed, and that deed was executed and the city got it. Things went on then until about the second of June or the very last day of May, as near as I can recall——

The Court: What year?

A. Of 1921, Fox came in the office, and as a result of that conversation that I had with Fox, I went down to see the board of commissioners with Fox, and he saw them. I think I went to see the Mayor first, and he called for Mr. Sooy, and the whole burden of the thing was that Mrs. Bradley had closed off two hundred feet of Maine Avenue, fifty feet wide, between Grammercy Place and Atlantic Avenue, she had built a fence through the middle of what was then laid out as a hundred foot wide street at that point, she had closed up both ends, running it into the side walk, so that nobody could get through, and that happened on a day that we had a committee from a large financial institution down there appraising our property for the placing of a mortgage, they and the fence arrived at the same time, and they departed but the fence did not. I went down to see the mayor and he then called the city solicitor, and I tried to induce the mayor and city solicitor to take that fence down, which they declined to do upon the theory that they had no power to do it, no authority or power at all, and then we had a meeting of the board of commissioners with the mayor, and city solicitor a few days after that, a day or two after it at which I was again present, and the burden of the board or the substance of the conversation by the members of the board was that there had intervened an election in May, 1920, and that the present commissioners were not fully aware of the agreement made with Fox concerning that street and they wanted to know all about it, and I told them all about it, I told them from the beginning, I told them a good deal more than I have testified to, because I told them about Fox's negotiations with

Charles D. White long before I ever got into the matter, or appeared before the commission. In other words, I rehearsed the whole thing over, my own knowledge of it and what Fox had told me about it, and the transactions also that had occurred between he and Mr. Steinbricker and Mr. Hackney with reference to the building of the streets, grades and so forth. In other words, I told them what I knew about the thing and I told them what Fox had told me about it. So that they had before them, as far as I believe, an accurate and comprehensive and chronological history of the whole transaction. All of the present members of the board were there, Mr. Perskie was sent for, Mr. Sooy was there, and Mr. Hackney was there, and I demanded that the city carry out its agreement with us and also demanded, really, because I must confess I was pretty well overheated about the thing, why they hadn't already carried out their agreement with us, and acquired the title to the property on the outside of Maine Avenue, so that, from the fact our improvements were completed, that we could not have been put in the financial danger that we were put in because of the closing in of that street. At that time I was a member of the board of directors of the Benjamin R. Fox Company, a stockholder in it, and I had more interest in the matter than just representing him as an attorney. They said that they had ordered the city solicitor to proceed to acquire Mrs. Bradley's property by condemnation, wanted to know why he hadn't done it, and Mr. Sooy said that he had turned that matter over to Mr. Perskie to attend to, and then Mr. Perskie was sent for and Mr. Perskie said that he had been too busy to attend to it. I think at the time of this conversation it was about fourteen months after the agreement had originally

been made. We couldn't get the city to make any move toward tearing down that fence. They absolutely declined to do it. The mayor was quite willing to do it but the city solicitor advised him he hadn't any authority to do it and the rest of the commission thought they should not do it, so the fence stayed. From that time on until the property of Mrs. Bradley was acquired, I didn't let the commission or the city solicitor's office or anybody else rest. Finally that property was acquired. We then declined, because of the dangerous position that we had been put in on the failure of the city to carry out its contract with Fox, to convey the property between Grammercy and Madison Avenue. 10

Q. Had the city built the bulkhead between Madison Avenue and Grammercy Place and built the street?

A. Had not.

Q. At the time you declined to go into it?

A. It had not, and not only that, but since then they have assessed us for benefits in St. Catherine's Place. 20

Q. At that time they had passed this ordinance, instead of excluding the Fox Company or Fox from payment for the improvement, they provided that it should be assessed against him, this ordinance number twenty-two, had they passed that?

A. That ordinance was passed in April, 1920.

Q. And had been passed, and at that time they were proposing to make him pay for the improvements? 30

A. Yes, apparently from the ordinance.

Q. What next came along?

A. Fox saw me a number of times and I saw various members of the city commission from time to time about matters, about our refusal to give them

this deed, and asserted to the board of commissioners at once that we would regard that property, our promise to give them any further deeds or anything else at an end, because they had not kept their agreement with us, and that we would take, we would put a fence up in that street, put up a fence around our own property because they had no right in there at all, and they told me that if we did that they would immediately tear the fence
10 down. We put the fence up and they threatened to tear it down, and I went into the court of chancery with a bill for injunction, and the Vice-Chancellor decided that I could not have a restraining order against the city because an ejectment suit must be brought first and the title to the property settled.

Q. Simply a matter of law, technical?

A. It is a matter of law, and practice, and the city went in, I suppose the police department, and not
20 only took the fence down but took all the materials away, which were quite valuable, so in addition to the rest of it they had got that.

Q. They didn't want you to put that material back, I suppose?

A. No, it was just a fence 475 feet long, 50 feet wide on two ends.

Q. What after that?

A. After that there was some conversation with members of the commission and the city solicitor's
30 office about their lack of knowledge about this whole transaction, and so in the early part of March—I went to them and suggested to them that in view of their utter failure to perform their promise, which I think is the language I used to them, that they could not have that property, that 50 by 475 feet on the easterly side of Maine Avenue, but that we

would do either one of two things, with them, we would either sell that property to them for its actual value or we would demand of them payment to us for the cost of the paving of Maine Street, which they had promised to pay. They did not pay the cost of paving St. Catherine's Place, though they have assessed us for it.

Q. In other words then, the original agreement was that if they would do the improvement, pay for the improvement without cost to Fox or the Fox 10 Company, that company would give the land, and after they didn't, you finally made a further proposition to them that if the work had been done, if then they would pay the cost you would give them the land?

A. We would give them the land if they would pay us the cost of the improvement, or we would give them that land if they would pay us the cost of the land. I mean the land which we have still withheld from them. They have got our deeds to 20 the rest of it.

The Court: You mean the strip that is here in suit?

A. Strip that is here in suit, yes. What has been referred to as the easterly 50 feet of Maine Avenue between Grammercy Place and Madison Avenue. Yes, I told them we would give them that strip if they would pay us for the money we had expen- 30 ded in paving Maine Avenue, we would give them the strip if they would pay us the value of that strip. After that there was still some talk about certain commissioners having not been members of the former commission when the negotiations were had, and the agreement made, and in March of 1922,

in order that there could be no further lack of information on the part of the city, I dictated and directed a letter to the city.

Mr. Bourgeois: Mr. Sooy, have you that letter?

Mr. Sooy: Which one, February or March, Mr. Schimpf?

10 The Witness: Letter I had to do with is March.

Mr. Sooy: There is one of February and one of May.

Q. I show you a letter of May fifteenth, 1922, and ask you if that is the letter you refer to?

A. Let me use my own copy, otherwise I will have to read this through. It is quite a long letter. May I use this, Mr. Sooy?

20

Mr. Sooy: Yes, sure.

A. This is the letter I dictated and caused to be executed by the Benjamin R. Fox Company and had taken to the mayor and board of commissioners of the City of Atlantic City on April fifteenth, 1922.

(Letter referred to offered and admitted in evidence and marked Exhibit P4 and read to the jury
30 by the witness.)

Q. What reply did you get to that, do you know?

A. I never had any reply, never saw any.

Q. Anything happen after that?

A. Well, before that I went to see the city about permitting Sebring to fly there. This man went on

the very property that we had given the city a deed for.

Mr. Perskie: If your Honor please, he is testifying to negotiations with the city, I don't see what relevancy that has.

The Court: No, but I suppose that if it relates to what the bargain was it was competent.

10

(Exception noted for defendant.)

A. We gave this deed to the city in November, as I recall it, and in the early part of the summer of 1920, Sebring appeared there with his airplane.

Q. The deed was given for street improvement and they were using it for something different, is that the idea?

A. I don't remember just what the deed says, I think the deed dedicated it both for street and park purposes. I think we gave them a deed in fee simple to our land on Grammercy Place and Maine Avenue, I don't think that was a deed of dedication, I think that was a deed in fee simple. Sebring came there with his airplane right across the street from these beautiful apartment houses and proceeded to conduct a business on that land all that summer. I went to the city and the mayor, city solicitor, time after time about it with Fox.

20

30

Mr. Sooy: I object to this, being not relevant at all.

The Court: How is it competent, how is it material?

A. With putting up the fence in Maine Avenue—were you asking me?

The Court: No, I am asking Mr. Bourgeois.

Mr. Bourgeois: I don't know unless it was given for the purpose of having a street built there. If it was given for that purpose, then, of course, it would be relevant.

10

The Court: I suppose if they made other use of it that may be material, but what was said upon the question does not seem to be material.

Mr. Sooy: Not only that, but this is outside of the street entirely the flying is done.

The Court: No, according to Mr. Schimpf's testimony, Mr. Schimpf says it was upon this land
20 that was given for street purposes.

A. I don't say given for street purposes. I think that was in fee simple. I think it was on the land given in the park to build that street.

Mr. Sooy: But not on the street at all?

The Court: I don't believe it is material.

30 Q. I suppose flying of these machines in front of the apartment is not particularly advantageous to the apartment house?

Mr. Sooy: Objected to.

The Court: I don't think that is competent. Objection is sustained.

Q. Do you know anything else or have you told us all?

A. That is all I recall at the present time.

Cross-examination.

By Mr. Sooy:

Q. Mr. Schimpf, you went to Europe in 1920, didn't you? 10

A. June seventeenth and returned September thirteenth, 1920.

Q. June what?

A. Seventeenth.

Q. And returned in December?

A. September thirteenth.

Q. The entire improvement had not been completed, then, on your return, had it?

A. I am not sure about that. I didn't pay much attention to the physical aspect of things up there. 20

Q. Now you say that you went in and had a conversation with White either the latter part of December or the early part of January?

A. No, I didn't say that.

Q. What?

A. I didn't say that.

Q. When you say you went in and had your conversation with Mr. White, your first conversation with reference to the proposed improvement of Maine Avenue. 30

A. I didn't say I did.

Q. You went before the commission then in the latter part of December then, or the early part of January?

A. Yes.

Q. It has been testified that Mr. Steinbricker

went in on the twelfth, I think, or fifteenth of January, as a result of your conversation with Mr. White and the commission ordinance number two was introduced and passed, wasn't it?

A. I think so.

Q. You never had any conversation with Mr. Steinbricker prior to the passage of that ordinance, did you?

A. No.

10 Q. Nor did you have any conversation with the members of the commission as they existed after January fifteenth with reference to the passage of the ordinance before you went to Europe, did you?

A. I don't think so.

Q. You assisted in the preparation of ordinance number two, did you?

A. No.

Q. Did you look over the ordinance after it had been passed?

20 A. Well, I can't remember that specifically, I watched this matter in a general way, yes.

Q. You were the attorney watching it?

A. Yes.

Q. And you knew that it had been passed?

A. I think so.

Q. Did you, to Mr. Steinbricker or any other member of the commission as it was consisted after January fifteenth, 1920, object that ordinance number two provided that ordinance number two provided that it should be made and the benefits assessed?

30

A. Ordinance number two?

Q. Yes.

A. I don't think so.

Q. I call your attention to ordinance number two and ask you whether or not you noticed there that

the benefits were to be assessed in accordance with the, I mean the damages were to be assessed in accordance with the benefits?

A. Do I notice that it does say so?

Q. Yes.

A. Why, of course.

The Court: Did you, was the question.

A. I don't ever remember seeing the ordinance and reading it, but maybe I did, probably I did, but I have no recollection of it. 10

Q. You were the attorney for Mr. Fox and also a stockholder in the company at the time, were you not?

A. Well, I have been a stockholder in the company practically ever since the stock was issued. I don't remember when that was, but probably at that time.

Q. You knew you were attorney at that time? 20

A. I was attorney.

Q. And took care of this situation? After the ordinance had been passed and up until the time the improvement had been completed, did you ever object to the commissioners that the ordinance provided that Fox must pay the benefit for the improvement along his land?

A. The ordinance doesn't say so.

Q. What does the ordinance say with reference to the assessment of benefits, let's see what it says, 30 read that portion?

A. "The work of improving"——

Q. Suppose you read it out loud.

A. You didn't show me the right part of it. "The work of improving and protecting Maine Avenue as aforesaid shall be undertaken as a local improve-

ment and after the completion thereof, a just and equitable assessment of benefits conferred upon any lands and real estate by reason of such improvement and protection shall be assessed thereon in the manner provided by law. If the benefits so assessed shall not equal the cost and expense of the improvement and protection the balance shall be paid by the city at large."

10 Q. In other words that does provide for assessment of benefits on all of Mr. Fox's lands after the improvements are completed, does it not?

A. I don't think so.

Q. What does it provide?

A. It provides for the assessment of benefits to land benefitted by that improvement.

Q. Mr. Fox's lands would be benefitted by the improvement, wouldn't they?

A. Yes, and so would the city's, you could assess the city's land there.

20 Q. The city own any land?

A. The city owns it now, long before the assessment was made, the assessment on Maine Avenue hasn't yet been made.

Q. In other words you mean by that if Mr. Fox had conveyed to the city in accordance with the terms, and the city had owned the land, then there would have been no assessment?

A. There would be no assessment against lands owned by Fox, there would be an assessment against
30 lands owned by the Moebs Apartment House.

Q. Why wouldn't there have been an assessment against Fox if he had not conveyed to the city?

A. Because the city agreed not to assess and he did convey to the city.

Q. But the ordinance provides for an assessment, does it not?

A. It does.

Q. It don't discriminate against the Moebs Apartment between Fox, does it?

A. You know that in the case of an agreement—

Q. I want an answer to that question.

A. I say the ordinance does, that paragraph does, but the agreement with the commissioners didn't read like that, the ordinance certainly does.

Q. I don't want the agreement with the commissioners at the present time.

10

Mr. Bourgeois: If the Court please, I object.

The Court: I suppose this is an argument with the witness. The ordinance speaks for itself.

Mr. Bourgeois: Mr. Fox isn't a party to that ordinance, he is a party to the agreement, and they can't violate his agreement by passing an ordinance referring to that.

20

The Court: Wouldn't be bound by the ordinance in the absence of any agreement with him with regard to its terms.

Mr. Bourgeois: If he makes an agreement with the city and they pass an ordinance to assess that he is not bound by it.

Recess taken until 1.30 o'clock P. M.

30

AFTERNOON SESSION.

Trial of the cause resumed at 1.30 P. M.

Mr. Sooy: I ask permission to reopen the case to put the city commissioners on for a few questions.

(Permission granted.)

10

EDWARD L. BADER, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Q. Mr. Bader, you are Mayor of Atlantic City?

20

A. Yes, sir.

Q. Have been since when?

A. 1920.

Q. May of 1920?

A. May of 1920.

Q. Did you, as Mayor of Atlantic City, ever agree with Mr. Fox that you should reimburse or that the city would reimburse Mr. Fox for improvements made by him on Maine Avenue in the widening of Maine Avenue and the paving thereof?

30

A. No.

Q. Did you ever authorize anyone else to do so?

A. No.

Q. Did you ever agree with Mr. Fox or the Benjamin R. Fox Company for the city that the city should purchase from Mr. Fox the land that is comprised in the area between Madison Avenue and

Grammercy Place on the easterly side thereof, being a tract 50 feet wide by 475 feet in length?

A. No.

Cross-examination.

By Mr. Bourgeois:

Q. Did you ever have any knowledge of this transaction about the improving of Maine Avenue between Madison Avenue and Atlantic? 10

A. I know the proposition came up before my time but we had several conferences with it afterward.

Q. Was Mr. Fox ever at one of those conferences?

A. Yes.

Q. Mr. Schimpf?

A. Yes.

By Mr. Sooy:

20

Q. At any of those conferences was it ever suggested that the city buy Mr. Fox's land or that they reimburse him for the moneys that he had expended in improving Maine Avenue?

A. No.

By Mr. Bourgeois:

Q. Did you ever see this letter, Mayor? (Referring to Exhibit D4.) 30

A. I suppose I saw a copy of it, if not the original. Yes, I guess that is the one.

ALBERT L. BEYER, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Q. Mr. Beyer, you are city commissioner of Atlantic City?

10 A. Yes, sir.

Q. Occupy the office of what?

A. Director of finance.

Q. How long have you been city commissioner?

A. Since 1912.

Q. Continuously?

A. Yes, sir.

Q. Occupied that same position all that time?

A. Yes, sir.

20 Q. Did you ever agree or were you ever present at a conference with the city commissioners where they agreed with Mr. Fox that the city would reimburse him for the moneys that he expended in improving Maine Avenue?

A. No.

Q. Did you on behalf of the city or were you ever present at a conference where the city commissioners agreed with him that they would purchase from him the land on the easterly side of the middle line of Maine Avenue between Madison Avenue
30 and Grammercy Place 50x475?

A. No.

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Beyer, I show you Exhibit D4 and ask you if you ever saw that letter?

A. Yes, a copy of this.

Q. Did you answer it?

A. No.

10

EDWARD L. BADER, recalled.

Cross-examination.

By Mr. Bourgeois:

Q. Mayor, did you answer this letter I showed you, D4? 20

A. No, sir.

WILLIAM S. CUTHBERT, sworn for the defendant.

Direct examination.

By Mr. Sooy:

30

Q. Mr. Cuthbert you are a city commissioner?

A. Yes.

Q. Have been since about when?

A. January fifteenth, 1920.

Q. What position do you occupy?

A. Director of public safety.

Q. Did you ever, as a commissioner on behalf of the city agree with Mr. Fox that the city would reimburse him for moneys expended by him in improving Maine Avenue?

A. No, sir.

10 Q. Did you ever agree for the city, or were you ever present at a conference that the commissioners agreed to purchase from Mr. Fox his land lying eastwardly of the middle line of Maine Avenue between Madison Avenue and Grammercy Place?

A. No, sir.

Q. Did you, as a commissioner receive from Mr. Benjamin R. Fox a letter dated February twenty-seventh, 1922, addressed to yourself?

A. Yes, received a copy.

Q. Was there annexed to that this copy of a letter that Mr. Fox had sent to Mayor Bader?

20 A. Yes, that is right.

By the Court:

Q. Is that the form in which you received it?

A. Yes, sir.

By Mr. Sooy:

Q. And you turned it over to me?

30 A. Absolutely.

Mr. Sooy: I will offer it in evidence.

(Letter referred to and admitted in evidence and marked Exhibit D10.)

Cross-examination.

By Mr. Bourgeois:

Q. Witness is shown letter D10 and asked did you answer it?

A. No, sir.

Q. Just treated it with sort of silent contempt, is that right? 10

A. Well, we have a city solicitor for that, I turned the letter back to him.

Q. Did he answer it?

A. That I couldn't tell you.

Q. Which did you have a city solicitor for, to answer them or treat them with silent contempt?

A. That is up to the city solicitor.

Q. Did you ever see the letter I show you now, P4, that seems to be addressed to you? 20

A. No, sir.

Q. Ever see a copy of it?

A. No, sir.

Q. Were you one of the city commissioners on the fifteenth of April, 1922?

A. 1922, yes.

LOUIS KUEHNLE, sworn for the defendant.

30

Direct examination.

By Mr. Sooy:

Q. Commodore, are you a member of the city commission?

A. I am.

Q. Have been since what time?

A. May, 1920.

Q. Have you as a member of the city commission, on behalf of the city, ever agreed with Mr. Fox or were you ever present at a conference with the city commissioners where they agreed on behalf of the city with Mr. Fox to reimburse him for moneys expended by him in improving Maine Avenue?

A. No, sir.

10 Q. Have you, on behalf of the city, or have you ever been in a conference where the other commissioners in behalf of the city have agreed to purchase from Mr. Fox land lying eastwardly from the middle line of Maine Avenue between Madison and Grammercy Place?

A. No, sir.

Cross-examination.

20 By Mr. Bourgeois:

Q. Mr. Kuehnle, I show you a letter under date of fourth of April, 1922, addressed to the mayor and board of commissioners of Atlantic City, P4, and ask you if you ever saw that letter or a copy of it?

A. I have some knowledge of the letter, yes, sir.

Q. Did you answer it?

A. I did not.

THEODORE W. SCHIMPF, resumed.

Further direct examination.

By Mr. Bourgeois:

Q. Mr. Schimpf, just one question I wanted to ask you so Mr. Sooy can cross-examine. Did you ever have any conversation over the telephone or directly with Mr. Sooy about this matter? 10

A. I had a great many conversations with Mr. Sooy directly and over the telephone I think, about it.

Q. Ever have a conversation with him touching the ordinance that authorized that the improvement is to be made as a local improvement and the property is to be assessed?

A. No, I don't think so.

Q. Ever have any conversation with him about the assessment? 20

A. Yes.

Q. What was it?

A. After the assessment was made on St. Catherine's Place, I called him over the telephone and told him that an assessment had been made against the Benjamin R. Fox Company for street improvement over land which he had given the city, and that that assessment could not have been made because it was understood that no assessment would be made for those streets, and he told me, I think, that Mr. Perskie was in charge of those assessments, but if I would appear before the commission and make that statement to them they would probably remove it. 30

Cross-examination.

By Mr. Sooy:

Q. Did you ever call Mr. Perskie up and ask him anything about it?

A. I did.

Q. Did you ever appear before the commission and ask them to remove it?

10 A. I did not.

Mr. Bourgeois: What does Mr. Perskie say?

Mr. Sooy: Mr. Bourgeois, I will take care of this matter.

Q. That conversation that you had with the city commissioners prior to the introduction of ordinance number two you say was an informal discussion of the entire matter?

20 A. Oh, no, it was an official meeting of the board of commissioners.

Q. Official public meeting? You mean to say that the discussion you had with the board of commissioners prior to January, 1920, was an official public meeting?

A. It was an official public meeting.

Q. Was there any resolution passed by the board at that time embodying any of the terms of your discussion?

30

A. I think so.

Q. Then, as a result of your discussion with the commissioners prior to January of 1920, was the introduction of ordinance number two, was it?

A. I think so. Mr. Fox was in communication with them but I was not.

Q. But the first official act of the city was the official introduction of ordinance number two?

A. That is my belief.

Q. And that ordinance recites in it that the improvements shall be made as a local improvement and that requires that notice be mailed to each one of the property owners affected, doesn't it?

A. It does.

Q. Do you remember whether or not, you as solicitor of the Fox Company, received such a notice? 10

A. I never received any such notice.

Q. Nor the solicitor of Benjamin R. Fox who personally owned this property?

A. I personally never received any such notice or ever saw one.

Q. You say that after the introduction of that ordinance, you don't remember whether you read it over or not?

A. I have no recollection of reading the ordinance. It may be that I may have done so. 20

Q. And you never did, or have you read over the ordinance since its final passage?

A. I read it this morning.

Q. That is the first time that you remember having read it since?

A. That is the first time I can recall having read it.

Q. Are you sure of your dates, Mr. Schimpf, with reference to your discussion as to the widening of Maine Avenue? 30

A. You mean sure of the time of holding that meeting?

Q. Yes.

A. No.

Q. The reason I ask you that, Mr. Schimpf, is this, that ordinance number twenty-two was intro-

duced April eighth, 1920, three months after the introduction of the ordinance for the improvement of Maine Avenue, and the ordinance of May eighth, 1920, provides for the widening of Maine Avenue; is it not possible that your discussion for the widening of Maine Avenue was a little prior to April eighth, and after the passage of ordinance number two?

10 A. No, I think not, because I am perfectly certain that C. D. White was a member of the board of commissioners at the time my discussion was had with the board of commissioners. I am just as reasonably certain that Dr. Cochran was too.

Q. Isn't it quite possible that after the introduction of ordinance number two, which merely provided for the improvement of Maine Avenue and the putting in of a wooden curb and the gravel surface, and a fifty foot street, that your attention being called to that by the fact that Mr. Fox would require a nicer looking street than that, that you had
20 a conference with the commission asking them to pass the widening ordinance?

A. I don't think so. I think it was prior to the introduction of that ordinance. Do you want me to say why I think so?

Q. No, I don't care why, but I just want to get what the facts may be. Then ordinance number two had been passed which provided for merely the improvement of Maine Avenue as a fifty foot street,
30 and having that done as a local improvement, and the assessment for benefits, and can you tell under what circumstances Mr. Steinbricker introduced the ordinance number twenty-two providing for the widening of Maine Avenue?

A. I don't know anything about it.

Q. You were still representing Mr. Fox at that time?

A. Yes, but I was not having anything to do with this matter with the board of commissioners at that time.

Q. Now, then, you had had, according to your recollection of the conference with the commissioners, an agreement whereby the city commissioners consented to widening Maine Avenue and you said that you never remonstrated with them over the introduction of ordinance number two which did not provide for the widening of Maine Avenue, am I 10 correct in that?

A. You are.

Q. Then don't it appear highly true that you had a conference with them and asked them to introduce ordinance number twenty-two in order to carry out their agreement to widen?

A. No, as the probabilities, I think that Mr. Hackney looked after that himself, if you want probabilities, that he and Mr. Steinbricker and Mr. Fox got together over the question of the introduction 20 of a proper ordinance.

Q. You don't know anything about it?

A. I don't know anything about the introduction of either ordinance, so far as my personal recollection is concerned.

Q. And didn't protest against either ordinance?

A. No, I don't know that I ever saw either one of them until last week, when I seen them. I am not sure I didn't see them however.

Q. When it comes to St. Catherine's Place, you 30 said St. Catherine's Place was seventy-five feet wide, you didn't mean that, did you?

A. Yes, I said that was to be made seventy-five feet wide.

Q. Was that the agreement between the commissioners and Mr. Fox that it should be seventy-five feet wide?

A. At least we should give them twenty-five feet in order to make seventy-five.

Q. Isn't it a fact that the giving of twenty-five feet would have only made it a fifty foot wide street?

A. Perhaps it is.

Q. What was the opening out to Grammercy Place to St. Catherine's Place when you gave that land?

A. I don't know.

Q. Only fifteen foot, wasn't it?

10 A. I haven't any idea.

Q. That was all talked over, wasn't it?

A. No, I don't think any actual dimensions of that opening was talked over, the natural condition of the street and the bad openings at both ends were talked over, but I don't know how wide they were, nor how wide they are now.

Q. Must have been some agreement, wasn't there, as to the width it was to be after they used the Fox land?

20 A. Not as to the openings, no.

Q. Not as to their openings, but how about their middle part?

A. Yes, there was an agreement as to how wide it should be. My recollection is seventy-five, though it may be bad in that respect.

Q. Now, then, you say that your recollection of the conversation was that Fox was to give a deed and the city was not to make any assessment for benefits?

30 A. Unquestionably.

Q. And you approved the deed from Fox to the city dedicating the lands necessary to widen St. Catherine's Place?

A. I did.

Q. And you didn't insert, see the necessity of inserting in that deed a provision that would relieve Mr. Fox from the assessment of benefits, did you?

A. I did not.

Q. And there is no such provision?

A. I think not.

Q. Now then, that deed, however, did contain such conditions as—did contain other conditions, did it not?

A. I don't remember what that deed contained. I haven't seen it for—

Q. Now, then, you also passed that and approved the deed from Benjamin R. Fox to Atlantic City for 10 the riparian rights outside of Maine Avenue, did you not?

A. I did.

Q. And you approved that?

A. I did.

Q. Did you insist that they put in there as a condition that there should be no assessment of benefits against Mr. Fox?

A. I did not.

Q. You knew at that time that ordinance number 20 two provided for the assessment?

A. I don't know that I ever knew of the passage of ordinance number two.

Q. You did insert, however, in the deed from Benjamin R. Fox Company to the City of Atlantic City, the conditions under which Atlantic City should enjoy the use of that property under that deed, did you not?

A. I don't believe I inserted anything in the deed. I either approved the deed the way Mr. Hackney 30 had drawn it or made some suggestions to him.

Q. There were inserted in the deed which you approved three conditions, were there, under which the property should be occupied, deed from Benjamin R. Fox Company to City of Atlantic City, dated July first, 1920?

A. No, it is dated the second day of June, 1921, this deed is.

Q. That is the one I am referring to.

A. Book 656, page 261, and the deed contains certain conditions marked first, second and third.

Q. Won't you read the first, second and third conditions?

A. Yes. "First, the portions of said above described premises situate within the bounds of the
10 public park a place of public resort, and recreation called the beach or ocean front of Atlantic City as fixed and adopted by ordinance passed October ninth, 1899, and approved October thirteenth, 1899, shall be used as a public park or a place of public resort or recreation in accordance with the provisions of said ordinance.

Two, the portions of the above described premises outside of the bounds of the public park above mentioned, but within the bounds of Maine Avenue,
20 considered one hundred feet wide, as widened by said ordinance passed April twenty-ninth, 1920, approved May 6th, 1920, shall be used for public highway purposes, and whenever the interior or inland line of said public park and the elevated Boardwalk now located along said interior or inland line be moved by virtue of said ordinance further to the eastward, the said Maine Avenue shall be opened to public highway use for the full width of one hundred feet in con-
30 formity with the ordinance widening Maine Avenue to one hundred feet.

Three: any portion of the above described premises, situate in the easterly line of Maine Avenue one hundred feet wide and the interior inland line of said public park or place of public resort or recreation, as now established, or as the same may be here-

after established, shall be used for general park purposes, with the restriction that no building shall be erected thereon."

Q. Now, then, after reading the reservations in the deed contained, you find no reference to an agreement between the city and Mr. Fox or the Fox Company that the city would not assess him for benefits?

A. I don't find it in that deed. I didn't look for it there.

Q. Now, then, that deed dated June, of 1921, particularly refers to the ordinance widening Maine Avenue, doesn't it?

A. It does.

Q. And Maine Avenue, at the time of giving that deed, had been widened, and was in use as a hundred feet wide street, was it not?

A. It was. Now let me see, I think it was the day that the deed was given that Mrs. Bradley shortened it up to a fifty foot street, I am not perfectly certain about that, but I think it was on the very day that deed was given, on that very day that was not a hundred foot wide street, if that is so.

Q. If that is so that would be true, but it is also true, is it not, that Mrs. Bradley was the owner of the land which she enclosed within that fifty feet wide street at the time she enclosed it?

A. Of course she was.

Q. It is also true, is it not, that the city afterwards purchased from Mrs. Bradley that strip of land that she had enclosed by the fence and removed the fence?

A. Yes, a long while after, too.

Q. It is also true, is it not, that Mrs. Bradley restrained the city by an injunction issuing out of the court of chancery from disposing of that portion of the land which she enclosed within her fence?

A. Now, I am not going to guess about the terms of that injunction. There was an injunction but what it said I don't remember, it has been too long ago.

Q. It is also true that that injunction was outstanding at the time you wanted the city to remove the fence, isn't it?

A. Well, I don't know about that. There was a long period of time elapsed between the issuance of
10 that injunction and the building of that fence, and I don't remember whether the injunction was outstanding or whether it was not, and I don't remember what the terms of the injunction were.

Q. It was, anyhow, after the city had removed the fence of Mrs. Bradley before Mr. Fox had his fence up on Maine Avenue between Madison and Grammercy, wasn't it?

A. It was sometime afterward, and during which
20 period of time there were a great many conferences with the commissioners about this thing.

Q. Did you dictate for Mr. Fox the original of the copy of the letter annexed to Exhibit D10?

A. I haven't read the whole letter, but I am sure I didn't dictate it. I am sure I didn't dictate that letter.

Q. I call your attention to paragraph one on page three of the letter of the fourth month fifteenth, 1922, which is marked four, and the reading of it:
30 "As the result of all this failure upon the part of the city to carry out its plain contract with me, so that I withdraw my remaining property from Grammercy Place to Madison Avenue and have since declined to give the City of Atlantic City a deed." And so on. Did you dictate that paragraph?

A. I did, I dictated the whole letter.

Q. When did you think that Fox withdrew the

remaining portion of his property as indicated in that paragraph?

A. Why, my best recollection of it is that we did that at a meeting of the board of commissioners at which you were present in the latter part of December of 1921.

Q. Was that when you put your fence up, after you had withdrawn the property?

A. Yes, sir.

Q. Prior to the time that you withdrew it the city had been using it and the public had been using it as a thoroughfare one hundred feet wide, had they not? 10

A. It is my belief that they had been, yes, I don't know that I was ever actually there and saw them do it.

Q. Are you still a stockholder in the Fox Company?

A. I am.

Q. Are you still its solicitor, or don't you know? 20

A. I don't know. I don't believe I ever was elected to any position of solicitor. I suppose they can employ whoever they please.

Q. But you do represent them?

A. I think so, yes. There have been matters that they have had in which I am not representing them, but I generally represent them as their counsel.

By Mr. Bourgeois:

30

Q. Mr. Schimpf, at the time you approved the deed for the conveyance from Mr. Fox to the city for the St. Catherine's Place strip of land did you know that there was to be an assessment of benefits levied against Mr. Fox?

Mr. Sooy: Objected to. What difference does it make what he knew? The ordinance had been passed providing for an assessment of benefits.

The Court: I think I shall permit that.

A. I did not.

Q. At the time you approved the deed from Mr. Fox to Atlantic City for the land lying on the outside of Maine Avenue, that is a fifty foot wide street, Maine Avenue between Grammercy Place and Atlantic Avenue, did you know there was to be an assessment against that land for benefits?

Mr. Sooy: Objected to on the ground that the ordinance had been passed providing for an assessment of benefits and was a public record.

The Court: That may be, but the point is as to the conduct of this witness on those things, on whether he knew.

Mr. Sooy: And that it is immaterial whether or not he knew, inasmuch as that was the only contract that could bind the city.

The Court: That may be, but as to why the witness may or may not have done something merely as affecting his conduct, not as affecting the contract, I think it may be permissible.

Mr. Sooy: Then an additional objection that anything that might have affected his conduct and did not bind the Fox Company would be absolutely irrelevant and immaterial.

The Court: But you have asked him whether he

did not approve the terms of a deed, and I presume that it might be argued from that that he did it with the knowledge of the entire situation and therefore his conduct might have some effect upon the parties. Now I think in that situation he is entitled to say whether or not he did have full knowledge of everything that may have existed at that time.

Mr. Sooy: My point is that he has said he ap- 10
proved the deed and the mere fact as to whether or
not he had knowledge of the existing ordinance
makes no difference at all insofar as the contract
between Mr. Fox and the city is concerned.

The Court: No, perhaps not, but merely as ex-
plaining his conduct at that time, the witness' con-
duct at that time, not as affecting the contract, be-
cause I do not understand the contract was made
by him. 20

(Exception noted for defendant.)

The Court: You may answer it.

A. I didn't know it then, and I don't know it now.

Q. Mr. Schimpf, you attempted to state and was
stopped by Mr. Sooy, why you thought that your
conference before the commission was prior to the
introduction of ordinance number two? 30

A. Oh, the reason was that Mr. Fox had had
many negotiations with Charles D. White, the com-
missioner of streets and public improvements before
I was ever brought into the matter, and my first
conference with the commissioners was while
Charles D. White was still a member of the board of

commissioners, and he resigned, I believe, on the twelfth of January.

Q. It appears from the deed that Mr. Fox gave for the land between Grammercy Place and Atlantic Avenue on the outside of Maine Avenue was conditioned upon the land, among other things, being used for street purposes and highway purposes. Was that land or any part of it ever used for any other purposes by the city after the deed was given,
10 any purpose other than street purposes and highway purposes?

A. Yes, it was.

Mr. Sooy: Objected to, there is no allegation here to eject the city by reason of non-user or false-user, no allegation, and no allegation in the opening to support it.

Mr. Bourgeois: I told them about the flying
20 business in the opening.

The Court: I suppose, anyway, that wasn't any part of the agreement, as I understand it.

Mr. Bourgeois: Isn't it? I thought the way it read it was, I thought it was sort of a conditional deed.

The Court: I don't suppose it would be termed
30 a legal misuser if they had title to it.

Mr. Sooy: That is in the deed, and we had no title to the Bradley property, therefore this deed can't refer to the Bradley property, simply refers to the property included in the deed.

Mr. Bourgeois: I am asking him with regard to

the land conveyed, the question was with regard to the land that was conveyed.

(Question repeated.)

A. That part of the land which was within the boundaries of Maine Avenue was not used that I know of for any other than highway purposes.

Q. Now the deed also provides that the land not within the bounds of Maine Avenue, considering it a hundred feet wide, should be used for public park purposes. Was any part of that land used for other than public park purposes? 10

Mr. Sooy: Objected to because that is not the land in question, did not touch the lands in question.

The Court: I don't suppose this present suit is for an ejectment from that land, the land conveyed by this deed, on the theory that there was a use for any other purpose for which it was not granted, and for which—— 20

Mr. Bourgeois: That is true, if your Honor please, then it is quite evident that the deed was not relevant at all in this case.

Mr. Sooy: It has been admitted.

30

Mr. Bourgeois: Then if it has been admitted I have a right to cross-examine on it.

The Court: But you are not cross-examining on the deed now, you are merely asking whether that land, which is not here in controversy, was used for any purpose for which the grant was not made.

Mr. Bourgeois: I am cross-examining on that deed because that says what it shall be used for. This is exact cross-examination on that.

The Court: If it is not material then I don't think you ought to cross-examine on it. If there had been an objection and the deed was not material it would have been excluded.

- 10 Mr. Bourgeois: If your Honor please, I think the deed is material in this case, as a matter of fact, while it may not be strictly relevant or material, if it were considered as a strict ejectment suit, this has switched around to where you are trying a dedication, and as bearing on dedication we think it is relevant and material, and it is cross-examination and relevant, as I see it, on the question of dedication, not on the question of trying title to the land, and while this suit is an ejectment suit, the defence
20 is dedication, and this is a part of the chain of their claim of dedication.

The Court: And you claim there was no dedication because the contract was an entirety for the conveyance of all of this. That is the only theory that I can see that any examination upon this point may be material.

- Mr. Bourgeois: That is the whole thing, one
30 transaction.

The Court: On the theory that it was one transaction.

Mr. Sooy: They are outside of Maine Avenue with the examination now.

The Court: But the theory of the plaintiff is that he was to make a conveyance of certain piece of property, not only that it was to be within the lines of Maine Avenue as widened, but likewise the lands that was to be within the lines of St. Catherine's Place as widened, likewise the land that was to be used for park purposes outside the lines, of the new lines or proposed lines of Maine Avenue, and it seems to me in that aspect it is competent.

10

Mr. Sooy: I haven't heard any testimony on their side that incorporated into the contention of the plaintiff the idea that at the time of the agreement with reference to Maine Avenue there was anything said at all with reference to riparian rights on the outside, but that that was an after consideration entirely.

The Court: I think it was opened that it was all a part of one transaction, that if the city would 20 widen Maine Avenue and would widen St. Catherine's Place at its expense that Fox would give the land necessary for the widening of St. Catherine's Place and the land which he wanted within Madison Avenue and Arctic Avenue necessary for the widening, and he conveyed in fee certain of the lands outside of the proposed lines of Maine Avenue for park purposes.

Mr. Sooy: No, if your Honor please, the testi- 30 mony is that he did not even know that it was going to need this land on the outside of the Boardwalk, riparian lands, until they attempted to buy Mrs. Bradley's land, and then they found that the title company put exceptions there that required them to get this property from Mr. Fox.

The Court: I think there is some difference on that point, as I recall it, between the plaintiff company and the defendant company and defendant's testimony. My recollection is that the plaintiff's opening is that this was one entire transaction and that Fox carried it out up to the point where the city declined to pay for the cost of grading and opening and improving Maine Avenue, and he then declined to make the conveyance of the lands within
10 Maine Avenue. That is my recollection of the difference on that point. I think I shall permit this.

(Exception noted for defendant.)

(Question repeated.)

A. It was.

Q. What?

A. The land on the outside of the Boardwalk
20 was used by a man named Sebring to erect and build a platform there and from which he flew an airplane for hire.

Q. Do you know whether or not Fox——

Mr. Sooy: If the Court please, I move to strike that out, it can't possibly bind the city that a man by the name of Sebring went out on the outside of the Boardwalk and put a flying machine platform, when it appears that the city was not the owner of
30 the land at the time, and how in the world can that bind the city?

Q. Was it before or after the deed of conveyance was given?

A. I don't remember when it was done.

The Court: It ought to be before, otherwise it

will be stricken out, better be stricken out until that appears.

Q. When was the flying machine man there?

A. Well, I am sure that he was not there until after we gave that deed to the city. He was there the summer before, but not during that summer until after that land belonged to the city.

Mr. Bourgeois: I will ask that it will be stricken out, if your Honor please. 10

The Court: All the testimony on the point of the use of the land outside of Maine Avenue will be stricken out and the jury is instructed to disregard it.

THEODORE W. SCHIMPF, recalled.

20

By Mr. Bourgeois:

Q. Mr. Schimpf, I will ask you again the question I asked and had stricken out because I misunderstood.

(Question repeated.)

A. I don't know the date.

Q. When, with relation with the giving of the deed by Mr. Fox to Atlantic City which bears date the second day of June, 1921? 30

A. The very best of my knowledge and belief it was after June second, 1921, that he went there, that summer.

Q. Now was there any objection made by Mr. Fox or by you on behalf of Mr. Fox to the city because he was permitted to use that land for flying purposes?

A. There was.

Q. By whom?

A. By Mr. Fox and by me together.

Q. With what result?

A. No result.

Q. Why did you object——

10

The Court: Who did you see?

A. I saw the mayor and I saw Mr. Sooy.

Mr. Sooy. I object to that on the ground, and ask it be stricken out, on the ground seeing the mayor and seeing Mr. Sooy can't possibly bind the city, impossible.

20 The Court: I suppose it ought to be brought to the attention of the city authority having control, which must be the commissioners.

Q. Was it ever brought before the commissioners at a stated meeting of the council, session of the council?

A. I can't remember, it was brought to the attention of one or more city officials repeatedly, whether they ever were all together when I saw them I don't

30 remember.

Mr. Sooy: If the Court please, I ask that be stricken out then.

The Court: It seems to me it can't bind the city unless it was done by the board or body having of-

ficial authority, that would be the commissioners, I suppose, as a whole.

Mr. Bourgeois: I suppose that would be true so far as any corporate act is concerned, but I hardly think that is the case for the purpose of giving notice, that the man is there, and any one commissioner gets notice his duty is to give the notice to the rest, and I think it would be considered as notice.

10

Q. How long was the man there?

Mr. Sooy: I object to that and I ask all this be stricken out.

The Court: No, I think not. I shall permit this to stand.

(Exception noted for defendant.)

20

Q. How long was the man there, Mr. Schimpf?

A. He was there all summer.

By Mr. Sooy:

Q. By virtue of the lease, from whom was he there, do you know?

A. Haven't the least idea.

Q. Don't know then whether Mrs. Bradley leased it to him or whether Mr. Fox leased it to him?

30

A. Well, I don't know whether Mrs. Bradley leased it to him. I know Mr. Fox did not.

Q. What makes you say that he was there after the date of the deed from Fox to the city June, 1921?

A. Because he tried to lease the property from Fox and Fox wouldn't lease it to him nor permit him to go on the ground.

Q. What date did he try to lease it from Fox?

A. I don't know.

Q. Then how can you say it was after the time Fox had conveyed the property?

A. I said because Fox would not allow him to take possession of it while he owned it.

10 Q. He tried to get a lease from Fox, you say?

A. Yes.

Q. And you have no recollection as to the date of that at all?

A. No, it was in the early part of the summer, 1921.

Q. You had no recollection of the date of the deed from Fox to Atlantic City until it was read today, either, had you?

A. No, I don't have.

20 Q. In other words if you had been called upon you couldn't have said it was June or September, could you?

A. No, But I could have assumed we made that deed before we did. No, I have no recollection of the date that he went there. My belief that he went there after the city got the property is because of Mr. Fox's refusal to lease the property to him and his refusal to let him fly from there.

30 Q. You know also, don't you, that Mr. Fox did lease to an operator of an airplane lands on the ocean front between Grammercy and Madison Avenue?

A. I think he did.

Q. You also know that the lands he leased for the purpose of flight in the proximity of his apartment houses there was land belonging to the city, don't you?

A. That Fox leased land belonging to the city?

Q. Yes.

A. I don't know.

Q. You know you tried to get an injunction stopped, didn't you?

A. I tried to get an injunction?

Q. I mean you tried to keep the city from stopping this man from flying and couldn't?

A. No, I didn't, I didn't have anything to do with any such suit. 10

Q. Somebody else must have been around?

A. Somebody else must have been around, I didn't try to get an injunction.

A. You are right. It was Mr. Richards. That was last summer he did that?

A. I think it was.

Q. They flew right by the apartment house, didn't they?

A. I suppose they did. I wasn't there to watch them. 20

By Mr. Bourgeois:

Q. Did they take them in front of the apartment house?

A. I haven't any idea in the world where the land was that Fox leased to this man to fly, nor the least idea, never saw him fly from there, the other one I did because I went up to see.

Q. You went up with him, you say? 30

A. I say I went up to see.

Mr. Bourgeois: Why was it objectionable to having them fly over in front of the apartment house?

Mr. Sooy: I object as immaterial.

The Court: I don't suppose that is material.
This is not a suit for damage.

(Exception noted for plaintiff.)

BENJAMIN R. FOX, sworn for the plaintiff.

10 Direct examination.

By Mr. Bourgeois:

Q. Mr. Fox, you live in Atlantic City?

A. Yes.

Q. How long have you lived there?

A. About ten years.

20 Q. Mr. Fox, were you in 1919 and 1920, the owner
of a tract of land extending from Grammercy Place
to Madison Avenue eastwardly to the Inlet high-
water mark?

A. Yes.

Q. And were you also the owner of some land
lying on the westerly side of Maine Avenue be-
tween Grammercy Place and Atlantic Avenue?

A. Yes.

Q. Did you own on both sides or only on one side
of St. Catherine's Place?

A. From St. Catherine's Place to Maine Avenue.

30 Q. Distance from Grammercy Place, how many
feet?

A. Four hundred feet.

Q. Did you have an interest in land lying on the
easterly side of Maine Avenue between Grammercy
Place and Atlantic Avenue?

A. I had the riparian rights there.

Q. For the whole 475 feet?

A. Yes.

Q. Mr. Fox, what is your business?

A. Builder.

Q. Did you contemplate building on the land you owned between Maine Avenue and St. Catherine's Place along in 1919?

A. Yes.

Q. Did you ever have any negotiation with the city or any of the officers of the city touching the improving of St. Catherine's Place and Maine Avenue? 10

A. I did.

Q. Now will you tell the jury just what those negotiations were and with whom they were had?

A. After a number of interviews with commissioner White, Mr. Hackney was brought into the conference and he submitted some plan that he had, and had had for a number of years, for the improvement of Maine Avenue, making Maine Avenue a hundred feet wide. Maine Avenue for a block between Madison and Grammercy Place was a street only 50 feet wide, that is, it was a laid out street fifty feet wide. 20

Mr. Sooy: As I understand, you were supposed to repeat a conversation.

The Court: No, that is what he was asked, but I take it the witness is not, he is narrating the circumstances. Just answer the question. 30

Mr. Bourgeois: He is answering. He is telling, he is leading up to the conversation, in between the conversation, but I don't care, just wanted to shorten it. Go on.

A. Mr. Hackney saw that by making——

The Court: Don't say what he saw. Say what was said. Just tell what was said.

A. Mr. Hackney wanted Maine Avenue a hundred feet wide as we did.

Mr. Sooy: Objected to and ask that be stricken
10 out.

The Court: It may be stricken out. He said Mr. Hackney wanted it. That is a state of mind.

Mr. Bourgeois: He is repeating a conversation that was had between Mr. Hackney, Mr. White and himself. Now this statement that he has said, he says, that Mr. Hackney wanted to have this improved according to a plan that he had previously
20 prepared, and he stated, that is, Mr. Hackney stated this in the conversation with Mr. White and himself.

The Court: He is not putting it in that form.

Q. Isn't that what you said?

A. That was what I intended to.

The Court: He said that Mr. Hackney wanted it a hundred feet, so did we.

30

A. We finally arranged——

The Court: Just tell what was said. Better ask him questions, Mr. Bourgeois, and we will get along better that way.

Q. What was said at the conference between Mr.

White, Mr. Hackney and yourself about the improving of those streets?

Mr. Sooy: I object to that, because that don't bind the city at all, the conversation that he had leading up to a conference with the commissioner. The conference with the commissioner is what binds.

The Court: I suppose for the purpose of contradiction, as well as for the purpose of showing what was the intention, the intention being one of the important elements in the dedication. 10

Mr. Sooy: But what he is trying to do now is to establish a conversation that he had with Mr. Hackney, and Mr. White prior to a time when they had a final conversation, prior to the time when the board of commissioners in pursuance of what they considered to be that conversation, passed ordinance number two. 20

The Court: But Mr. Hackney testified to certain conversation, and I suppose this witness may contradict or confirm the statements made by Mr. Hackney as to what took place.

Mr. Sooy: But Mr. Hackney didn't testify to any conversation that took place prior to January, 1920.

Mr. Bourgeois: If your Honor please, my understanding is that, whether or not there is a dedication depends upon Mr. Fox, if your Honor please, and I have a right to show by him everything that took place between he and any member of the city for the purpose of showing his intention. 30

The Court: I think so. I will permit that.

(Exception noted for defendant.)

(Question repeated.)

Mr. Sooy: I object to that on the ground it don't fix any time.

10 The Court: The time ought to be fixed.

Mr. Bourgeois: I can't fix the time.

The Court: The witness ought to.

A. The time can very easily be fixed, Judge, because Mr. White——

Mr. Sooy: No question pending.

20

The Court: If the witness can fix the time, he may.

A. ——Mr. White went out of office a few months after we had this conversation, and he was supposed to have turned that matter over to Mr. Steinbricker.

Mr. Sooy: Objected to "supposed to have turned over." I don't think that is proper at all.

30

The Court: No, I don't suppose he can tell what was done.

(Question repeated.)

A. We agreed——

The Court: Don't say "we agreed." You are asked what was said. Agreement is a conclusion that results from what was said. You are asked what was said. The jury might disagree with your conclusion as to what was concluded.

Q. What did they want and what did you offer?

The Court: Let it be stated what was said.

Q. I mean what did they say they wanted. What was the conversation, that they wanted to get?

A. First they wanted to get a strip of land for St. Catherine's Place. There was no street at all at St. Catherine's Place. The houses there had been built right up to the line.

Mr. Sooy: I object to that. That don't answer the question.

The Court: You will have to learn to distinguish between your comments as you go along and telling the conversations.

Mr. Bourgeois: If your Honor please, we have a right to do more than tell conversations. There is an atmosphere to this case and every other case. He has a right to state those things that are a part of that conversation.

The Court: No, Mr. Bourgeois, he has a right to answer the question. You asked him about a conversation and not about physical conditions.

Mr. Bourgeois: I am asking him a question, for him to state it as he has it. I don't want him to

tell, what I want told. I want this jury to have the information, not to find out what he has got to say about it. I don't want to interfere with him.

The Court: Let him answer the question directly and we will get along a great deal better. He is asked about a conversation, not about physical conditions, and he will have to learn.

10 Q. What was the physical condition along St. Catherine's Place at that time?

A. At that time there was no street at all there. The houses had been built up to the property line, almost. There was six feet allowed for sidewalks, and six feet more for the street, and that is all there was. The people had been going over the back end of this lot of mine, now the city wanted this street—

Mr. Sooy: I object.

20

The Court: Wait a minute.

Q. What was the physical condition of Maine Avenue?

A. On Maine Avenue, as I understood it, at this particular block was a hundred—

Q. Not what you understood, but what was there?

A. Well, Maine Avenue was fifty feet wide, there was no street at all there, it was just simply a beach
30 drifting down to the water.

Q. Now, that was where, above?

A. That was from Atlantic Avenue all the way to Madison.

Q. What buildings were built along Maine Avenue?

A. Number two Maine Avenue and the apartments at the corner of Atlantic and Maine Avenue.

Q. Now what did you contemplate doing there in the way of building?

A. I had planned for a number of high-class apartments.

Q. Where were they to be located?

A. From Grammercy Place 400 feet toward Atlantic Avenue, within one hundred and fifty feet of Atlantic Avenue.

Q. What did Atlantic City want?

10

Mr. Sooy: Objected to.

The Court: Let him tell what was said by any of the commissioners or officials of Atlantic City with whom he had conversations.

Q. You may tell.

A. They said that they would agree——

The Court: Who?

20

A. The commissioners of Atlantic City, through Mr. White finally introduced to the body of the commissioners.

Mr. Sooy: Just Mr. White, you say?

A. Through Mr. White.

Mr. Sooy: I object to that. He said through Mr. White. 30

The Court: Let him tell what.

A. They agreed then——

Q. Were they there, or just Mr. White?

A. At this time we had this arrangement they were all there.

Q. And Mr. White did the talking, did he?

A. No, I don't know who did the talking. Mr. Schimpf did most of the talking, I think.

Q. Then tell what Atlantic City said they wanted to get from you?

Mr. Sooy: I object to that. I want to know
10 who said it.

The Court: I suppose they are entitled to know, if he knows who said it.

A. We were together, they——

Mr. Sooy: I object.

Q. Not what you were together, though. I want
20 to know what they wanted, what did they want to get from you?

The Court: What did they say or someone of the commissioners say?

A. They wanted Maine Avenue——

Mr. Sooy: I object to that. He don't say what
30 they said at all.

Q. What did they say?

A. First they wanted this strip of land in St. Catherine's Place.

Mr. Sooy: I object.

Mr. Bourgeois: Must he turn around and repeat my question in order to make an answer?

The Court: If he can repeat in substance what he said rather than his conclusion of the effect, he ought to do it.

Mr. Bourgeois: I will be delighted if your Honor or Mr. Sooy can get it out of him.

10

The Court: I think it is somewhat of a job to get this witness to answer in the manner he ought to. It is perfectly easy, it seems to me, to distinguish between what he wants, the effect of a conversation, and the conversation itself.

Q. Now, Mr. Fox, won't you try and tell what some of them said, if you can remember who it was, and state the conversation, state what they said, if you can. If you can't remember what they said, 20 then state the substance of it.

The Court: But don't state your conclusion of what the effect of it was, state as near as you can that Mr. White said certain things, and you said certain things, if you can do it.

Mr. Sooy: When, where and who was present?

The Court: Let's get along if we can.

30

Q. State what was said by any of the commissioners as to what they wanted to get. What did they want to accomplish?

A. They wanted this particular piece on St. Catherine's Place.

Mr. Sooy: Wait.

The Court: What did they say?

Mr. Bourgeois: It is simply impossible. How do you expect a man after three years to tell which of those commissioners did the talking?

The Court: That is not necessary. He certainly
10 can say in substance, if not in exact language, what was said, not merely that somebody wanted something and wanted something else.

Q. Can't you start every answer with the word, "they said" then maybe you will get somewhere. Just write it down on a piece of paper and start every answer, "they said."

A. They said, if we would agree to give them this strip twenty-five feet wide, four hundred feet
20 long on St. Catherine's Place, and a strip in Maine Avenue 400 feet wide and 475 feet long in Maine Avenue—

Q. How many feet wide?

A. 50 feet wide and 475 feet long in Maine Avenue, a strip 200 feet on the outside of Maine Avenue, eastward from Grammercy Place that they would pave Maine Avenue a hundred feet wide, get all the property on the outside of Maine Avenue that was in individual ownership, pave St.
30 Catherine's Place for us without any assessment to us.

Q. Now, was there a question, anything about any bulkheading in there?

A. They were also to bulkhead the proposition. It was impossible to put the street there without a bulkhead.

Q. And that was without any assessment against you?

A. Without any cost to us or without any assessment.

Q. What did you say as to that?

A. We finally agreed to that.

Q. And when was the improvement to be made?

A. At once. It was to be included in the paving program for that year. That was the understanding we had with them.

Q. And that was what year?

10

A. That would have been 1921, I guess, the paving program.

Q. 1921? 1919 they were starting out, wasn't it?

A. Then it was 1920 possibly.

Q. What part of the agreement, if any, was carried out on the part of the city or by the city? Did they do any of it?

A. Yes, they paved St. Catherine's Place.

Q. Did you give them the deed for St. Catherine's 20 Place?

A. We gave them a deed for that strip 25 feet by 400 feet.

Q. What did they do with regard to making improvements in Maine Avenue?

A. They did nothing there.

Q. Ever have any conversation with them?

A. Yes.

Q. With whom did you have your conversation?

A. With Mr. Sooy so often he got tired of seeing 30 me.

Q. With whom else?

A. Mr. Hackney.

Q. Whom else?

A. Mr. Perskie, Mayor Bader, and the commission in body a number of times.

Q. Ever have any with Mr. Steinbricker?

A. Very often, yes.

Q. He was director of public streets then?

A. Yes.

Q. Was the improvement on Maine Avenue long delayed?

A. It was never started.

Q. What did you do when they didn't pave it? When they didn't go on with the agreement, what did you do?

10 A. I went to City Hall a number of times, and finally, after not being able to do anything through Mr. Steinbricker, I saw Mayor Bader, and he called Mr. Steinbricker in, Mr. Hackney was called in and wanted to know why these improvements had not gone on. Finally, Mr. Sooy stated that Mr. Perskie had some difficulties, there was a number of entanglements in the title on Maine Avenue above Grammercy, and that he was clearing them up.

20 That is as far as I could get for a long long while, until finally Mr. Steinbricker suggested that I better get started in and pave Maine Avenue and they would begin, I am not sure whether Mr. Steinbricker or Mayor Bader, they would take and pave the other half from Grammercy Place to Atlantic Avenue, while I was paving Madison Avenue to Grammercy. Now, Mr. Steinbricker did make a remark that——

Q. Before you get along to that——

30 Mr. Sooy: Let him go ahead. He said Mr. Steinbricker made a remark. We are entitled to hear the rest of it.

A. They said they would pave the one-half while I was paving the other half, by the time got through with mine they would have theirs done. I finished——

Q. What about the compensation, what was to be paid?

A. I was to be reimbursed for the money I spent on this paving. I didn't ask, they said, "We have an appropriation, we could take it from the Boardwalk appropriation," or, "we have some such other fund."

Q. Where were they going to get the money from to do their part of the paving?

A. They already had it, or could take enough money from a fund they had for the Boardwalk to finish that half a block, but they couldn't get enough for the other half, they told me. 10

Q. They told you that?

A. That was the statement at the meeting, yes.

Q. Then they wanted you to pave this between Madison Avenue and Grammercy Place, and while you were doing that, they were going to pave the other?

A. They were to take care of the other half, yes. 20

Q. What were they to reimburse you for, just the paving, or the bulkheading, too, have to be bulkheaded in.

A. Yes.

Q. Which?

A. For the entire expense of the proposition.

Q. Do you know how much?

A. I figured that half, yes.

Q. How much? You were building the bulkhead, where was that located?

A. Bulkhead is all inside of the Boardwalk. 30

Q. Along the line of the street?

A. No.

Q. How much of the street did you build?

A. For the entire expense of the proposition.

A. I built it all.

Q. 100 feet wide?

A. Yes.

Q. Graveled it?

A. Graveled it.

Q. Curb it?

A. Yes.

Q. What kind of curb?

A. Concrete.

10 Q. When you got your part done, that is the street from Madison Avenue down to Grammercy Street, had the city completed the part they were to do?

A. They hadn't started it.

Q. Then what was done?

A. I was instructed to go ahead and finish the other half and they would put in the bulkhead in the meantime.

Q. Who was to pay for that, then?

A. They were to do the same thing. They were to reimburse me for that.

20 Q. They have done the same thing, all except the reimbursing, haven't they?

A. That is all.

Q. They were to put in the bulkhead, what happened during the construction of that?

A. I stopped at City Hall a number of times as this fill was progressing and told them if they didn't have this bulkhead in, in case we should have a storm, that work would all be lost in that block. They paid no attention to it at all and the fill was washed out entirely, not entirely, but most of it.

30 Q. Then what did you do?

A. Then after they saw what had happened, they sent Mr. Steinbricker up there and he put some old Boardwalk material in for a bulkhead, a poor insecure proposition, and I had to put jetties on the outside of her or it wouldn't have stood there three months, then I filled again, and they did help with

some trash, some ashes and stuff from nearby, one or two days a week.

Q. Finally the street was completed?

A. Street was finished and opened, yes.

Q. When, with relation to the completion of the street, I mean a completion of the lower part of this avenue, of Maine Avenue, below Grammercy Place, when did you begin, or do you remember? Was it before or after the street was built?

A. No, it was after, I imagine just about the time they were finishing it. 10

Q. Mr. Hackney has said that you built the street not in accordance with the grade stakes that he gave you; what about that?

A. I got some grades from the engineer's office, and I put some sidewalks and curbs in under protest, knowing that they were too low, and they stayed there only a few months.

Q. Then what happened to them?

A. I went down to City Hall and got Mr. Hackney, took him up in my car and showed him just what had happened. 20

Q. What had happened?

A. The cement was broken up, all washed out or covered up with sand, you couldn't find them. I told him then just what I had wanted before and he took the matter up with Mr. Steinbricker.

Q. What caused the sand to wash out, and wash over the cement?

A. It was low, making Maine Avenue very— 30

Mr. Sooy: Objected to as immaterial and irrelevant. What difference does it make what caused it?

Mr. Bourgeois: They seemed to think we oughtn't to put it so high.

Mr. Sooy: Don't make any difference.

The Court: There was testimony, I suppose, made to explain the difference from the statement of Mr. Hackney.

Q. Was there a storm there?

A. Yes.

Q. Was that the cause of the wash-down?

10 A. That was the cause.

Q. Then what was done after you showed it to Mr. Hackney?

A. Mr. Hackney gave me the lines to raise the grade something like sixteen inches, I think it was, and I went there and had the work go ahead, but I raised it about twenty-one inches, and Mr. Hackney protested very strongly about that, and he brought Mr. Steinbricker up there one day telling me there was a mountain in the middle of the street, un-

20 sightly, and so Mr. Steinbricker came up there and looked it over and he says, "I don't see any mountain." He walked aside with me and he says, "Go ahead, Fox, I think you know more than they do."

Q. How did it turn out when the storm came along?

A. We haven't had any water on Maine Avenue since.

Q. Now, Mr. Fox, I show you a letter that you apparently wrote to Mr. Steinbricker February sev-

30 enth, 1922. It is marked Exhibit D10.

A. Yes, I recall this letter.

Q. Did you write that?

A. I think so, yes.

Q. In that letter which reads as follows (Mr. Bourgeois then read Exhibit D10). Now, Mr. Fox, did anybody ever answer that letter?

A. No.

Q. Didn't write back and tell you that wasn't the agreement?

A. No reply at all.

Q. Didn't deny that was the agreement?

A. Never got a reply to it.

Q. I show you another letter, rather more extensive one that Mr. Schimpf dictated and you signed?

A. Yes.

Q. Ask you if you remember that?

10

A. Yes, I do.

Q. Did they ever write back and say that was not the agreement at all?

A. No, no reply to it.

Q. You stated in that proposition that you attempted to take possession of this land between Madison Avenue and Grammercy Place to build a fence there. Did you build a fence?

A. I built the fence, yes.

Q. How long a fence?

20

A. 475 feet, 50 feet at each end.

Q. What did it enclose? The city admits that you have the title to land 50 feet wide in this colored portion from Madison Avenue down to Grammercy Place. What did that fence enclose?

A. That fifty feet.

Q. Did they let it stay there?

A. No, they ordered that removed. They ordered me to take it down or they would take it down, and I didn't take it down so they did.

30

Q. How long was it up?

A. A week or ten days, possibly two weeks.

Q. What became of the material?

A. They took it away with them.

Q. Mr. Fox, was there ever any intention upon your part of giving this strip of land fifty feet wide,

extending from Madison Avenue down to Grammercy Place, to the city, except upon condition that they would improve it, that is, improve the avenue a hundred feet wide?

A. Never. That was the arrangement.

Q. And that was the condition?

A. That was the only condition.

Q. If they had not agreed to improve that street a hundred feet wide, would you have given the
10 land?

A. Wouldn't have made any such arrangement with them, no.

Q. Was there any agreement at the time you made the arrangement with them, that you were to be assessed for that land?

A. We were not to be assessed.

Q. Then there was an agreement that you were not to be assessed for it?

A. No.

20 Q. For the improvement, I mean?

A. No.

Q. Were you to be assessed for the improvement at any block?

A. Two blocks on Maine Avenue.

Q. Were you to be assessed for this land on St. Catherine's Place?

A. No, sir.

Q. For the improvement made on St. Catherine's Place, did they assess you for it?

30 A. Yes, I think, I believe they agreed to withdraw that assessment. I only got that from Mr. Schimpf.

Mr. Sooy: I object to that as not being responsive, and ask it be stricken out.

The Court: No, that is not responsive.

Q. Up until the present time, has Maine Avenue ever been assessed for improvements?

A. No.

Q. That is so far as you know?

A. So far as I know.

Q. Now, Mr. Fox, I suppose you have some notion how much this improvement that you made on Maine Avenue cost you?

A. I spent over sixty thousand—

Mr. Sooy: I object. I don't see what difference it makes what it cost him, in this suit.

10

Mr. Bourgeois: I think it does, if your Honor please. I can conceive that the jury might think, if there was a conditional dedication, and the dedication only involved five or six dollars, they wouldn't upset an arrangement, but when it comes to involving sixty thousand dollars, it makes quite some difference, that is some condition.

20

The Court: I don't suppose it makes any difference so far as the intention is concerned with an express agreement, what the improvement cost.

Mr. Bourgeois: If your Honor please, I think it does because he says the consideration here, he was going to give the land for a certain consideration, was going to give a valuable strip of land, while there is no evidence of the value of it, except what they give for 300 feet below, there was 475 feet of valuable land he was going to give for a consideration, how much was he going to get for it?

30

The Court: According to his statement he was to get nothing except the street was to be improved.

Mr. Bourgeois: Certainly.

The Court: And that was regardless of the cost, the cost was not an element.

Mr. Bourgeois: If your Honor please, my experience has been that when you put up a cold technical proposition to a jury without any element of the human in it it doesn't go very far, but when you
10 let a jury see what it means in dollars and cents they get an appreciation of it, puts a different aspect in it.

The Court: I don't think we are going to assume the jury will disregard their plain duty to determine the facts submitted to them.

Mr. Bourgeois: No, they wouldn't do that.

20 Q. In this letter of April fifteenth, 1922, there was a statement "Under the circumstances I feel that I am entitled to call upon the city either to reimburse me for the moneys I have expended to make the improvement promised by the city or else to purchase from me the fifty feet of land." Did they ever reimburse you?

A. Never.

Q. Did they ever offer to purchase the land?

A. Never.

30 Q. Did you ever agree to give them the land and make the improvement yourself?

A. Never.

Q. At your own expense?

A. Never.

Cross-examination.

By Mr. Sooy:

Q. Mr. Fox, when did you put your fence up on Maine Avenue, between Madison Avenue and Grammercy Place first?

A. Right after the summer season. I suppose September, 1921.

Q. September, 1921?

10

A. I think so.

Q. And immediately upon your putting the fence up you were notified by the city to remove it and if you didn't remove it, they would tear it down?

A. I think so.

Q. And you then tried to restrain the city by injunction from taking it down, didn't you?

A. Yes.

Q. And you lost that suit, didn't you?

A. Yes.

20

Q. It was after you had lost the suit that the city came in and took it down, wasn't it?

A. I imagine it was.

Q. Then you were notified by the city that the lumber taken from there was in the city yard at your disposal?

A. Yes.

Q. So that you have at all times known where the lumber was and could have gotten it if you wanted to, couldn't you?

30

A. I don't know where it was. I suppose I could have gotten it.

Q. Notified it was in the city yard?

A. Yes.

Q. You could have gone there and gotten it?

A. I didn't know where the city yard was.

Q. You didn't know where the city yard was?

A. No.

Q. You live in the city?

A. Yes.

Q. Have lived there how long?

A. Ten years, about ten years.

Q. Don't know where the city yard was?

A. Haven't the least idea today where it is.

Q. You know where the City Hall is, don't you?

10 A. Oh, yes.

Q. You could have inquired there if you wanted your lumber?

A. Sure.

Q. Wouldn't have been the least bit of trouble, so that you don't lay much stress, do you, on the stealing of your lumber?

A. You call it stealing?

Q. Didn't you?

A. No, I call it borrowing.

20 Q. Some day you will come after it?

Mr. Bourgeois: Why don't the city return it to him? Why should he go after it?

Q. Prior to the time you put your fence up there what use was being made of that fifty feet that you enclosed when you put the fence up?

A. That was in the street.

30 Q. Been used by the public generally for a street from the time you built it to the time you put the fence there?

A. Part there, Mrs. Bradley put the fence up.

Q. I am talking just about the part in question in this suit.

A. That is right across the street, right in the same line.

Q. We are talking now, of this part you enclosed in that fence, had been used by the public as a street from the time it had been improved up to that time?

A. Yes.

Q. After the fence was taken down it has been used by the public ever since?

A. Yes.

Q. You had finished, according to Mr. Tomlin, your improvement of Maine Avenue from Madison Avenue all the way down to Atlantic Avenue with the exception of 150 feet the city built in 1920? 10

A. Well, I don't—no, I don't imagine it was finished after that.

Q. Mr. Tomlin says he finished all his work in November, 1920.

A. Yes.

Q. And from that time on the public used Maine Avenue from Atlantic Avenue on up to the Inlet as a one hundred foot street, did they not, with the exception of the time you blocked it off and the time Mrs. Bradley blocked it off? 20

A. I think so, outside of I had there many thousand tile without any permit from the city, so the street was still mine.

Q. So the public used it at all times?

A. Had a right to use it, wasn't blocked off.

Q. Had a right to use it by reason of the fact you had given them that right? 30

A. I didn't stop them.

Q. You gave them that right?

A. I didn't stop them.

Q. Knew they were using it all the time?

A. Yes.

Q. Knew they were using it all the time by reason of the fact you had made it possible for them to use it?

A. Yes.

Q. They couldn't have used it if you had not improved it?

A. No.

Q. In other words, if you had not graded and graveled it, they could not have used it?

A. No.

Q. And they did use it from the time Tomlin got done way up until the time you put your fence
10 there?

A. Yes.

Q. And they continued to use it from that time up until the present time?

A. Yes.

Q. Now, then, it is a fact, is it not, also then at the time Mrs. Bradley put the fence up in front of your apartment houses she was the owner of that 200 feet which she enclosed?

A. I imagine she was. There was two owners
20 within thirty days, apparently, within fifteen days.

Q. But Mrs. Bradley, insofar as you knew, was the owner, you knew Atlantic City wasn't, didn't you?

A. No.

Q. Didn't you know when you came down to see me about that fence that Atlantic City was not the owner of that property?

A. Dr. Dick had told me he had——

Q. No, but don't you know?

30 A. You asked me if I didn't know Mrs. Bradley owned it, I just wanted to tell you what her father told me.

Q. Dr. Dick, was it?

A. Yes, he told me he didn't believe he had any title at all, his title was very peculiar.

Mr. Sooy: I object, and ask that be stricken out.

The Court: Answer the question.

A. No, I didn't know Mrs. Bradley owned it.

Q. You knew Atlantic City didn't own it, didn't you?

A. When she put her fence there we had deeded our part to the City of Atlantic City.

Q. You knew you hadn't deeded any portion of the middle of the street to Atlantic City and that it was closed within the fence, didn't you? 10

Q. Will you let me explain?

The Court: No, you better answer the question, if you don't know, say so, it is based upon knowledge.

A. No.

Q. You don't know whether or not when you made your deed to Atlantic City for the riparian rights in front of that property whether or not you had included in that deed land in the middle of the street which Mrs. Bradley fenced off? 20

A. I was under the impression we had.

Q. You were under the impression then, that you were the owner?

A. Yes.

Q. To the middle of the street?

A. Yes.

Q. Didn't I tell you that Atlantic City had no ownership and that Mrs. Bradley was the owner? 30

A. Yes, sir.

Q. Didn't I tell you by reason of the fact that Atlantic City had no ownership and that Mrs. Bradley had, that we had no legal right to tear down the fence?

A. You told me the title was very peculiar there,

with Mrs. Bradley, and something awfully hard to explain.

Q. Answer my question there.

A. You told me that.

Q. Answer my question.

(Question repeated.)

A. Yes.

10 Q. And you knew that Mrs. Bradley had an injunction against Atlantic City restraining them from tearing down the fence or trespassing on the land?

A. Yes.

Q. Notwithstanding that fact you urged that Atlantic City tear down the fence by its police department, didn't you?

A. That what?

20 Q. That Atlantic City tear down the fence, irrespective of the injunction, did you not?

A. Yes.

Q. The injunction was against you too, was it not, Mr. Fox?

A. Yes.

Q. You were very bitter against Atlantic City because they didn't tear down that fence in the face of the injunction?

A. Yes.

30 Q. And that was one of the things that made you erect your fence on Madison Avenue, I mean on Maine Avenue between Madison and Grammercy Place?

A. One of the things.

Q. And if Atlantic City, in face of an injunction by the court of chancery, in face of the fact that they did not own that land, had torn down the fence,

the probabilities are that you would not have put your fence up?

A. If they had paid me for the street, or paid me for the street I wouldn't have put the fence up.

(Question repeated.)

A. Yes, I would have put my fence up.

Q. You would have put your fence up anyhow?

A. I would have put my fence up, yes.

Q. You say in your letter here that the result, 10
your letter of fourth month, fifteenth, 1922, marked P4, that the result of all this failure on the part of the city to carry out its plain contract with me that I withdrew my remaining part from Grammercy Place to Madison Avenue and have since declined to give Atlantic City deed for the same." You withdrew your property, did you?

A. Yes.

Q. Just when do you consider that you had with- 20
drawn it?

A. When the city wouldn't make any——

Q. I mean with relation to the time your street was completed?

A. Well, I suppose we began to see the city's attitude towards us——

The Court: No, you are asked when in point of time.

A. Well, at the time the city permitted Sebring 30
to fly on the beach there.

Q. And that was after the street had been completed and been in use for some time?

A. Well, yes, it had, sure it had.

Q. Street had been in use for practically a year, hadn't it?

A. No, not a year.

Q. It was finished in November, it had been going from November until the summer of next year?

A. Spring, yes.

Q. In other words, it had been used by the public from November, 1920, to the summer of 1921, and then you withdrew it?

A. Yes.

Q. You had already turned it over to the use of
10 the public before you withdrew it, of course?

A. We had——

Q. You couldn't withdraw unless you put in, could you?

A. We withdrew our agreement with the city.

Q. But you had opened up your street, improved it and everything for the benefit of the public and yourself, of course, and of the city, and also allowed the city to use it and the public to use it from November until the following summer, and then it was
20 that you withdrew it?

A. Yes.

Q. Now, then, you say you went to see Mr. White, you went to see Mr. Hackney, you went to see several other people and as a result of your conference there was introduced by Senator White an ordinance, which we have called ordinance number two?

A. Yes.

Q. And that ordinance was passed?

A. Yes.

30 Q. And that was an improvement ordinance, was it not?

A. Yes.

Q. And provided for the improvement of Maine Avenue by grading, paving, guttering, curbing with wood, did it not?

A. Yes.

Q. Now, then, did you complain to Senator White or thereafter to Mr. Steinbricker that that ordinance was not in accordance with the understanding between you and he?

A. No.

Q. Never did?

A. Never.

Q. You knew that such an ordinance had been passed?

A. Yes, I knew the ordinance for improving the 10 street had been passed.

Q. And you naturally were interested more than anyone else, weren't you?

A. Yes.

Q. And you read it over?

A. I don't believe I ever saw it.

Q. You don't believe you ever saw it?

A. No, we had an arrangement which we thought was going to be carried out.

Q. You owned a block of land on Maine Avenue 20 480 feet from Madison to Grammercy practically all the remaining land on the west side from Grammercy to Atlantic Avenue, and you were going to build \$800,000 worth of apartments, and yet you say that you don't believe you ever read that ordinance number two for the improving of Maine Avenue.

A. I knew what the arrangement was with the city.

Q. Answer the question. Not what you knew. 30

A. No, I never read it, not that I recollect.

Q. You say that you knew that such an ordinance had been passed, even though you never read it?

A. Yes, sir.

Q. If you knew such an ordinance had been passed before, though you never read it, even though you

were expending all this large sum of money, even though you didn't object to it, you had some conversation with Mr. Hackney or Senator White or with the commissioners with reference to the width of Maine Avenue, didn't you?

A. Yes.

Q. As the result of that conference ordinance number twenty-two was put in and it was made 100 foot street, wasn't it?

10 A. Now I don't follow, I only know the arrangements.

Q. Answer the question.

A. Well, yes, we will agree to that, I think, ordinance number two in reference to the hundred feet.

Q. No, ordinance number twenty-two.

A. Twenty-two, I mean.

Q. Ordinance number twenty-two, marked D3 is the ordinance for the widening of Maine Avenue?

A. Yes, one hundred feet wide.

20

(Former question repeated.)

A. As the result of that conversation, I don't know whether that ordinance was put in or not.

Mr. Perskie: If your Honor please, he answered affirmatively.

The Court: He says now he wants to change his
30 answer.

Q. You went to Mr. Hackney after ordinance number two was passed, that is the first ordinance, and had a discussion with Mr. Hackney as to the width of Maine Avenue, didn't you?

A. Yes, I had a number of discussions.

Q. And Mr. Hackney told you that Maine Avenue could only be opened to the extent of fifty feet, didn't he, by reason of the decision of *Elliott v. Atlantic City*?

A. Yes.

Q. And he said that his idea of the situation was that the fact of this decision would be binding on Maine Avenue from Grammercy down to Atlantic, did he not?

A. I don't know as he mentioned the next block 10 at all.

Q. Well, the result of that conversation between you and Hackney was that Hackney told you the city couldn't open it for any more than fifty feet under present conditions, didn't he?

A. No.

Q. And he told you that?

A. No.

Q. When you left Hackney after the various discussions, you left him under the impression that the 20 city could open it a hundred feet?

A. Yes.

Q. Did you ever request Hackney and Steinbricker, or anyone else to put in an ordinance that would open the street a hundred feet?

A. No.

Q. You didn't request it?

A. Never requested them, no.

Q. And it was a surprise to you when you found out such an ordinance was passed? 30

A. No, we had an agreement that the street should be a hundred feet wide, we never deviated from that.

Q. You never discussed it?

A. Sure we discussed it with them numerous times.

Q. Was it before the introduction of ordinance number two that you discussed it?

A. I have told you that.

Q. Ordinance number twenty-two was introduced in April eighth, 1920.

A. I suppose we discussed it before and after, a number of times.

Q. You never requested that they put in an ordinance that would widen Maine Avenue?

10 A. I don't know as I requested Mr. Hackney, we did want Maine Avenue a hundred feet wide.

Q. That was your request, wasn't the city's request?

A. Mr. Hackney had a plan for years, he told me, for a hundred foot wide avenue.

Mr. Sooy: I ask that be stricken out.

The Court: Answer the question.

20

Q. It was your request Maine Avenue be one hundred feet?

A. Yes.

Q. You also said did you not, Maine Avenue fifty feet wouldn't satisfy your purposes?

A. Well, I would have changed my plans if it had only been fifty feet wide.

The Court: Did you say that, you are asked.

30

A. No, it would not have answered my purpose.

Q. It would not have answered your purpose that wood curbs be put in, would it?

A. I don't know about that.

Q. You say you don't know about that? Would wood curbs for these handsome buildings you put

up there have satisfied your purpose on Maine Avenue?

A. No, I don't suppose it would.

Q. So you put in concrete curbs, didn't you?

A. Yes.

Q. You knew at the time you put in concrete curbs that there was no ordinance in Atlantic City authorizing the city to put concrete curbs, there is you?

A. We also put piling under the curbs, there is 10
no ordinance.

The Court: Just answer the question.

(Question repeated.)

A. No, I didn't.

Q. Again I will refer to ordinance number two, and you have since found out that that provides for simply wood curbs, haven't you?

20

A. I heard it read here, yes.

Q. Therefore you know now that the city could not have put in concrete curbs for you, don't you?

A. Yes.

Q. Were you ever present at any public meeting of the board of commissioners of Atlantic City wherein there was any resolution or ordinance introduced and passed by that commission agreeing to reimburse you for any expense for improving Maine Avenue by grading, graveling, curbing and so forth? 30

A. Yes.

Q. When?

A. I don't know just when it was. We went before the body a number of times.

Q. Wait a minute, Mr. Fox, before you answer, I direct your attention to the fact, I asked you

whether you were ever present at any meeting when a resolution or ordinance was passed?

A. No, I wouldn't say was a resolution.

Q. You say there was never a resolution or ordinance passed?

A. I would simply say it was an agreement.

Q. Was there ever any resolution or ordinance passed?

A. I would simply say it was an agreement.

10 Q. Was there ever any resolution or ordinance passed?

A. No.

Q. Were you ever present at any meeting, public meeting of the board of commissioners of Atlantic City where they made a motion, which was seconded and carried, that you reimbursed for the expenses you had gone to in developing Maine Avenue?

A. I didn't attend any public meetings after this arrangement was made, these were all in private
20 conference.

Mr. Sooy: I ask that be stricken out.

The Court: It may be stricken out.

A. No, no public meetings.

Q. Did you ever attend any public meetings of the board of commissioners of Atlantic City wherein any ordinance or resolution was introduced or where
30 any motion was made and carried that Atlantic City purchase from you the land lying outside of the easterly line of Maine Avenue as laid out one hundred feet wide from Madison to Grammercy Place?

A. I never attended any meetings.

Q. The answer is that you never did?

A. Yes.

Q. Now, then, you say that the only time you discussed the proposition of your paving, I mean discussed the proposition of widening Maine Avenue and the proposition of taking care of St. Catherine's Place and the other details was at the time when Senator White was a member of the commission?

A. No, I did not.

Q. Did you say that you have discussed those questions before all the members of the commission when Mr. White was not a commissioner, I mean at one time, all the members being present at one time? 10

A. Yes.

Q. When?

A. Dates? I don't know the dates. Mr. Schimpf and I were down there several times.

Q. When you and Mr. Schimpf were down there was after the improvements had been made, was it not?

A. No.

Q. What? 20

A. No, we went down there and arranged to make the improvements, arranged for the city to make the improvements.

Q. What year was that?

A. That was 1920, I guess, early part of 1920, first of the year.

Q. That was before then of 1920?

A. Oh, yes.

Q. But your ordinance for the widening of Maine Avenue was only passed in April on the twenty-ninth, 1920, so that there was one month intervening between the time the ordinance was passed and work was started, wasn't it, by yourself? 30

A. No.

Q. A little over a month?

(Question withdrawn.)

Q. Mr. Tomlin has testified a month before the twenty-fifth day of May, 1920, he was working for you, with his man, working in grading and rebuilding Maine Avenue between Madison and Grammercy?

A. No, he was not.

Q. He says so.

A. We were surveying for the buildings, we didn't start the street before we started the build-
10 ings.

Q. Mr. Tomlin is wrong about that?

A. He was wrong, yes.

Q. He also testified on May twenty-fifth he actually started his contract with you, May twenty-fifth, 1920.

A. He may have done that.

Q. How many conferences did you have with the commissioners between the time this ordinance was passed widening Maine Avenue and the time you
20 started your work which was——

A. I don't know. You know how often I was down there.

Q. Leaving out the imagination, won't you answer that?

A. Oh, I suppose two or three times, I was down to City Hall.

Q. From the time of the passage of the ordinance until you started work?

A. From the time passed the ordinance? Well, I
30 don't know just at that time, but I was pretty regular there.

Q. Now as a matter of fact, isn't it true that immediately after the passing of the ordinance of April twenty-ninth, 1920, which is ordinance number twenty-two that you yourself started the improvement of Maine Avenue by leveling, grading and so forth?

A. I did start it, I don't know just what time or how long after, because the city didn't.

Q. You started it after you had had a conversation with Mr. Steinbricker?

A. Yes, sir.

Q. In which he had told you, had he not, that it would be impossible for him to get it done as readily as you could?

A. Yes, sir.

Q. And it was speed that you wanted more than 10 anything else, wasn't it?

A. Yes.

Q. And you started your bulkhead work by reason of the fact that Mr. Steinbricker told you that he couldn't go over the lands belonging to others which the city had not acquired, isn't that true?

A. Yes, that was true, but the city had had a year and a half to do something and had stood still.

Q. That only applies to the bulkhead between Grammercy and Atlantic that the city did build, 20 and that they did not, and Madison Avenue to Grammercy you built yourself, didn't you?

A. Yes.

Q. And you never asked the city to build that for you, did you?

A. Yes.

Q. You did?

A. Yes.

Q. When?

A. In fact I gave the job to the Bader Construc- 30 tion Company.

Q. Yes, but the Bader Construction Company was not the city, was it?

A. No, they were not the city.

Q. And Bader was not the mayor of the city at the time you gave it to Bader Construction Company either, was he?

A. I think so.

Q. Oh, no, I beg your pardon. Mayor Bader was elected in May, 1920, wasn't he?

A. Yes.

Q. And you had completed your bulkhead—you had started your work on the bulkhead prior to the election of May, 1920?

A. No.

Q. Sure of that, are you?

10 A. No, not positive.

Q. The bulkhead from Madison Avenue to Atlantic Avenue was all on your land, wasn't it?

A. Yes.

Q. Under what theory was the city to build on your land?

A. It was a protection for the street, if there was no bulkhead there, there is only twenty-seven feet between the bulkhead and street.

20 Q. But protected your land outside of the street, didn't it?

A. Twenty-seven feet of it.

Q. In other words it protected the hundred feet of your land, didn't it?

A. There is no part of it a hundred feet deep.

Q. Then I guess our engineers on both sides have fallen down, each engineer says——

A. 97 feet and 27 feet.

Q. All right, 97 and 27?

A. Yes.

30 Q. And yet you wanted the city to build it?

A. Yes, sir.

Q. You don't deny, do you, that when you went to Mr. Steinbricker and opened up this proposition to him that you told him that you discussed the proposition with Dr. Dick and that Dr. Dick would sign a deed of dedication?

A. Yes, sir, he told me he would.

Q. And you told Mr. Steinbricker that you would go out and get the deed of dedication to know that the city would have that land?

A. Wait a minute, I am talking too fast, Mr. Sooy. I didn't say a deed of dedication.

Q. What kind of a deed was it?

A. It was just simply an agreement, that he would agree to Maine Avenue being a hundred feet wide.

Q. That is not what I asked you. Maybe you 10
didn't understand me. I say, didn't you tell Mr. Steinbricker at the time of this conversation with him that you would get Dr. Dick to sign a deed for his interest in Maine Avenue between Grammercy Street and Atlantic Avenue?

A. No, I did not.

Q. Mr. Steinbricker, you heard him testify that you did do that, didn't you?

A. I didn't say a deed. That is where the differ- 20
ence is.

Q. Now, then, isn't it true that you first said you would get a deed and afterwards you came back to Mr. Steinbricker and said, "I can't get a deed, but I will try to get an agreement," and that you would help try to get Dr. Dick to sign a written agreement?

A. Yes.

Q. Isn't it true Dr. Dick wouldn't sign a written agreement and you came back to Mr. Steinbricker and told him Dr. Dick wouldn't sign any deed or 30
agreement, but he would not kick?

A. Dr. Dick said he would do anything for me in reference to that if it is all agreed, but he wouldn't do anything for the city.

(Question repeated.)

A. Yes.

Q. And the doctor never signed?

A. And the doctor never signed.

Q. Isn't it a fact that when the city discussed this proposition with you and you told them that you would give your land and that Dr. Dick would give his land that there was a very small outstanding interest that they had to buy?

A. Yes, sir.

10 Q. You say when you first contemplated building your buildings there, after you had purchased your land, that St. Catherine's Place really was not a street?

A. Never a street there, no.

Q. And you say that the city was anxious to get the land so that they could make a street of it?

A. Judge Waldmayer had just bought a house there.

Q. Never mind, that is what you said, isn't it?

20 A. Yes.

Q. And you were not very anxious, were you?

A. It wouldn't have made a great deal of difference for me, for I had plans either way.

Q. Your handsome new \$800,000 building——

A. Yes, but that wasn't the original plan. I had a chance to change them.

Q. You had a chance to change them?

A. I simply conformed to conditions, if we were getting 100 feet street and so on.

30 Q. If Atlantic City hadn't put in a street for you at St. Catherine's Place you would have built a more modest apartment house, would you?

A. Yes.

Q. And you would not have had these fine buildings you now have, would you?

A. No.

Q. It is a fact that you were very anxious to have these fine apartments that you have now, than you would the other?

A. I don't know.

Q. Get a lot more rent for them, don't you?

A. Yes.

Q. And you won't deny that it was a handsome benefit to you to have St. Catherine's Place widened and opened, will you?

A. Yes, it didn't make any difference. 10

Q. Didn't make any difference at all?

A. Not a bit, it is back of all these apartments. We faced some of them on it, finally.

Q. Only fifteen feet wide into Grammercy Place at that time, wasn't it?

A. It was less, twelve, I think, six feet for sidewalk and six feet for street, but we had a lot 200 feet deep, and I could have used as much back of it as I wanted.

Q. When you consider you dedicated twenty-five 20 feet to the city of that back there?

A. With the understanding the city would improve Maine Avenue.

Q. I don't care about the understanding.

A. That was the agreement, though.

Q. You read over the deed you signed?

A. I turned those over to Mr. Schimpf.

Q. Did you read them over?

A. Read the descriptions.

Q. You noticed, didn't you, in these deeds that 30 there was nothing in there that contemplated the payment to you by the city of any moneys——

A. I didn't think it was necessary to embody that in the deed, we had the arrangement with the city, an honorable body of men, I thought.

Q. Did you notice it there?

A. I didn't see.

Q. Did you notice it wasn't there?

A. No.

Q. Didn't look to see?

A. Didn't look for it at all, or expect to find it.

Q. You will admit it was awfully important to have Maine Avenue widened, though, don't you?

A. Yes, Maine Avenue should have been widened.

Q. And you will admit your property was the one
10 to get the most benefit from it, won't you?

A. The property I have there, I have always, as I stated, I have always felt Maine Avenue was a hundred feet wide in front of the buildings were erected. I haven't anything at all in the next block, though.

Q. But you did have, didn't you?

A. Never.

Q. Didn't you own Fox Apartment House Com-
pany, or Benjamin R. Fox Company own it?

20 A. We still own part of it, but no buildings erected there.

Q. You own from Grammercy down to Madison, don't you?

A. Part of it.

Q. And did own it all, didn't you?

A. Yes.

Q. And it was a decided benefit to your vacant land there even to have this hundred feet street through, wasn't it?

30 A. It has not benefited us any.

Q. Didn't benefit you at all?

A. We have sold land for a hundred dollars a foot less than we paid for it, that is how much good we got out of the hundred foot street in the next block.

Q. So the opening of this street a hundred feet has been a detriment to you?

A. It has, yes.

Q. You are sorry it was done?

A. Very sorry.

Q. Let me see about this hundred dollars a foot less, was that after you had attempted to withdraw Madison Avenue, I mean on Maine Avenue from Madison Avenue to Grammercy?

A. From Grammercy Avenue after it was attempted.

Q. Yes?

A. No, we sold it before, a year ago or more.

Q. But you sold it on a hundred foot street?

A. Wait a minute, maybe I am thinking too fast there.

Q. Shouldn't wonder.

A. A year last September, since we withdrew that, isn't it?

Q. Yes.

A. No, it was sold before.

Q. At the time you sold it as fronting on a hundred foot street?

A. I don't know as that, it is implied there because there is a hundred foot street there but I don't think the agreement——

Q. You admit that you sold your land facing on Maine Avenue as a hundred foot street?

A. Yes, sir, and got a hundred dollars less than we paid for it.

Q. Then after which you withdrew your land or attempted to withdraw your land from that street, is that right?

A. Yes.

Q. Now, then, when you signed the deed of the Benjamin R. Fox Company to Atlantic City you knew that there were certain reservations as to the use of the land, didn't you?

A. We thought we did.

Q. You thought you did?

A. Yes.

Q. Well, as a matter of fact you knew you did, didn't you? And did you know that you, in your second reservation said: "The portions of the above described premises outside of the bounds of the public park above mentioned but within the bounds of Maine Avenue considered one hundred feet as
10 widened by city ordinance passed April twenty-ninth, 1920, approved May sixth, 1920, shall be used for highway purposes." You knew that went in there?

A. I suppose I did.

Q. You knew that that was a deed referring to Maine Avenue as a hundred foot street?

A. In that particular part of Maine Avenue.

Q. And you didn't specify in this deed any particular part of Maine Avenue, did you?

20 A. That is what it reads.

Q. Didn't specify any particular part of Maine Avenue as being a hundred feet and the other part fifty, did you?

Mr. Bourgeois: If the Court please, that is up there.

The Court: I suppose the deed speaks for itself.

30 A. My remembrance of the deed, that is the only thing you have to go by.

Q. Did you attempt to withdraw your lands between Madison and Grammercy before or after the second day of June, 1921?

A. After.

Q. After that?

A. Yes, sir.

Q. In other words you had conveyed to the city of Atlantic City and referred in that deed to conveyances to Maine Avenue as a one hundred foot street, then afterwards you withdrew fifty feet of that one hundred feet between Madison Avenue and Grammercy, did you?

A. But you are speaking of the next block.

Q. No, I am not speaking of any next block, speaking of Maine Avenue. 10

A. Yes, but that deed there refers to the next block.

(Question repeated.)

A. That is an entirely different part of the street, it is in a different block.

Q. That don't answer the question at all. If you are embarrassed, I don't want to press it.

A. I am not embarrassed at all. 20

Mr. Bourgeois: If the Court please, that is not, that contradicts the deed itself, the deed is the best evidence and the question is unfair and I object to it because the deed says it is between Grammercy Place and Atlantic Avenue, now Mr. Sooy runs in the question between Madison Avenue and Grammercy Place.

The Court: The question is whether he referred 30 to Maine Avenue as a one hundred foot street.

Mr. Sooy: That is exactly what the deed does do, refers in this deed to Maine Avenue as a one hundred foot street, and then conveys a portion of the property between Grammercy Place and Atlantic Avenue.

(Question repeated.)

The Court: I suppose the deed refers to Maine Avenue as a one hundred foot street but the conveyance is for land between Grammercy Place and Atlantic Avenue.

Mr. Bourgeois: You didn't withdraw any of the land from the land described in that deed?

10 Mr. Sooy: Withdrew from Maine Avenue as considered a one hundred foot street.

The Court: Suppose you separate your question.

Q. At the time you conveyed to the city of Atlantic City, you had not withdrawn any property at all, had you?

A. No.

20 Q. And you considered Maine Avenue at that time as a hundred foot street, did you not?

A. Yes.

Q. From Madison to Atlantic?

A. Yes.

Q. And when you conveyed to the city of Atlantic City, you referred to Maine Avenue as a one hundred foot street, you meant a hundred foot from Madison to Atlantic, didn't you?

A. In front of that particular piece of ground.

30 Mr. Hackney drew the papers, I did not.

Q. Remember, Mr. Fox, you hadn't withdrawn any?

A. No.

Q. And you considered, up until the time you did withdraw, Maine Avenue was a hundred foot street from Madison to Atlantic, didn't you?

A. Yes.

Q. When you drew the deed to Atlantic City, you considered Maine Avenue a hundred foot street from Grammercy to Atlantic, didn't you?

A. Yes.

Q. After you had conveyed to Atlantic City you lengthened the width of Maine Avenue between Madison and Grammercy by withdrawing fifty feet?

A. Yes.

Q. And that was after you had conveyed to other 10 parties also on Maine Avenue between Grammercy and Madison?

A. No. Yes, after, that was after, yes.

Q. Did they ever kick at your withdrawing, or haven't you ever had any talk with them?

A. No.

Q. Now, then, you say that after you had gone ahead or you say at some time after the original agreement that you contend for between the city and yourself, that Mr. Steinbricker, as I remember, 20 said that he would reimburse you for the paving expense?

A. No, I didn't say that.

Q. I mean that the city would?

A. I tried to say that at a meeting we put the question to the body and the mayor spoke for the body. I said, "How am I to get my money back?" and the mayor, looking at all the body of commissioners, said, "We will have to take it from the Boardwalk fund, or some other fund that is large 30 enough to pay you," and he looked over and they all nodded that that was the solution of it.

Q. They all nodded, did they? No one said anything, though?

A. He was the spokesman, no.

Q. No one said anything? Which mayor was that, Bacharach?

A. Mayor Bader.

Q. Now then, that meeting with the mayor as spokesman and the others silently nodded their head was held when?

A. Now I don't know. It was after they had told me that they hadn't money enough to go ahead with Maine Avenue and that, if I would go ahead with half of it they could take part of their appropriation with the Boardwalk and would be enough
10 to finish the other block, but they would not have enough money to finish the two blocks.

Q. Was it after the passage of ordinance twenty-two which was passed April twenty-ninth, 1920?

A. It was after that, I suppose.

Q. Well, you can't make it any more definite?

A. I can't just place the time, no.

Q. Mr. Fox, you heard the commissioners, Beyer, Kuehnle and Cuthbert and the rest of them testify
20 here today that they had never been present at any meeting when an arrangement was made to reimburse you; they were present there nodding their head when the mayor spoke?

A. Yes, they were all there.

Q. Is it your statement now that you did not start any of the work to improve Maine Avenue until after the commissioners had agreed to reimburse you?

A. Yes. Now wait a minute. Start the work? No, I don't believe, then somebody told me to go
30 ahead and do it, then afterwards I put that question up to them at one of the meetings how was I going to get my money back for the work I was doing.

Q. In other words, before they agreed to reimburse you for it, they had told you to go ahead and do it, and you started work and after you had worked

awhile you wondered where you would get your money and they said that?

A. No, this was at one of the meetings and I wanted to find out how I was going to get out.

Q. But they had told you they didn't have the money to do it?

A. No, they said they didn't have the money to do it.

Q. When they said they didn't have the money to do it, they say anything about the assessment of benefits? 10

A. No.

Q. Mr. Steinbricker said he told you it would cost you as much if the city did it as if you did it yourself. That was when Mr. Steinbricker, Mr. Hackney and myself were going over that proposition and he stated it would take the city so long and I was anxious to get it done, why not start the work myself.

Q. And that it would cost you just as much if the city did it as if you did it? 20

A. No, it would cost more, I guess.

Q. Did he tell you that?

A. No, I don't know whether he said—

Q. Do you remember any such conversation with Mr. Steinbricker?

A. Yes, I recall him making the statement like that, but I thought it was simply conversation.

Q. But he did make the statement?

A. We had an arrangement with the city. 30

Q. It was after he made that statement you started that work, wasn't it?

A. Possibly it was.

Q. And if Mr. Steinbricker had told you that prior to the time you started your work, that he told you it would cost you just as much if the city

did it, and if you did it yourself, prior to the time you started your work, after you started your work, why did you worry about where you were going to get your money from?

A. I would naturally want to know where I was going to get paid for what I was doing, wouldn't I?

Q. Not if you had an original agreement, the city was going to pay you.

A. If we had an original agreement, a written
10 agreement, we wouldn't be here today.

Q. But if you had an arrangement or agreement that the city was going to pay you, why were you worrying? You hadn't completed your work?

A. I wasn't worried, I simply put this question to the body when we were referring, that is how I was concerned about it.

Q. You hadn't had your work yet, you were beginning to worry where you were going to get your money to pay for it, although they promised to pay
20 you?

A. Yes, I simply put the question to them as we were standing there, the mayor was seated.

Q. Did you take advantage of Mr. Steinbricker, did you tell Mr. Steinbricker that you would insist that the city build the street, that there would be no assessment, and that the improvement would be clear?

A. Never.

30 By Mr. Bourgeois:

Q. Mr. Fox, Mr. Sooy asked you whether there was ever any motion passed, resolution or ordinance to reimburse you for the work that you did up there and you told him no.

A. At a public meeting.

Q. Did you know at that time that if there was no motion, no ordinance or no resolution passed by these men in session that you could not get the money?

Mr. Sooy: Objected to as being irrelevant and immaterial.

The Court: I think I will permit it.

A. No.

10

(Exception noted for defendant.)

Q. Did you know that if there was no motion passed, resolution or ordinance passed at a meeting of the commissioners, public meeting, that you could not get compensation for the land?

A. I did not.

Mr. Sooy: Same objection. Didn't get it in fast enough.

20

Q. Now, Mr. Sooy says that you considered the street a hundred feet wide at the time you gave deed of dedication to the lower part.

Mr. Sooy: I object to that. I didn't say that, the witness said it.

Q. Or had you testified to that? Did you, at that time, consider that Atlantic City would carry out its agreement?

30

A. I sure did.

Q. When you found they wouldn't carry it out, that is the time you rescinded your contract?

Mr. Sooy: Objected to as being leading, putting the answer in the witness' mouth.

The Court: Yes, it is leading and argumentative, and objectionable on either or both grounds.

Q. You have testified to some dates here. Was your testimony given as being accurate as to those dates?

10 Mr. Sooy: Objected to.

A. Such as what?

The Court: I will permit that.

A. There are some things I can recall the dates very readily.

Q. The question was when you commenced the work on the street?

20 A. No, not as far as dates, as far as commencing the work on the street.

Q. They say your property was most benefitted by the street.

Mr. Sooy: Beg your pardon, didn't say that.

Q. And he asked that, and you assented to it, whose money went to build that property?

A. I built the property.

30 Mr. Sooy: Objected to.

The Court: I don't suppose that is material, is it?

Mr. Bourgeois: All goes to the question of bene-

fit. If the property is benefited by this street, the city is most benefitted by the taxes they get on it, the city is most benefitted by the large amount, that is the reason they were willing to do it.

The Court: It is a matter of argument, and not a matter of testimony. The fact is the expensive buildings are there.

Q. How much did they cost?

10

A. Those buildings cost about \$800,000.

Q. Exclusive of the land?

A. Yes.

Recess taken until Monday morning, May 21st, 1923, at 9.30 o'clock A. M.

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30

Mays Landing, N. J., May 21st, 1923.

Trial of the cause resumed at 9.30 A. M.

PLAINTIFF RESTS.

10

SUR REBUTTAL.

HARRY BACHARACH, sworn for the defendant.

Direct examination.

By Mr. Sooy:

Q. Mr. Bacharach, were you mayor of Atlantic City for a time?

20

A. I was.

Q. When did your term of office as mayor expire?

A. May, 1920.

Q. Were you a commissioner, then, in January and April of 1920?

A. I was.

Q. I show you ordinance marked D2 and known as ordinance number 2 and ask you if you were a member of the commission when that ordinance was passed?

30

A. I was.

Q. That was passed on January the eighth, or introduced on January eighth?

A. Introduced and approved January twenty-ninth.

Q. I show you ordinance marked D3, known as ordinance number 22 for the widening of Maine Ave-

nue, and ask if you were also one of the members of the board of commissioners at that time?

A. I was.

Q. Mr. Fox has testified that prior to the passage of ordinance number two, ordinance—were you also a commissioner at the time Senator White was a commissioner?

A. Yes.

Q. Mr. Fox has testified that prior to the passage of ordinance number two, which was an ordinance for the improvement of Maine Avenue, he appeared before the commissioners as they were then constituted, and asked the commission to open up Maine Avenue— 10

Mr. Bourgeois: I object as leading.

Q. —and asked the commissioners to open up Maine Avenue saying to them that if they opened up Maine Avenue to the width of one hundred feet— 20

Mr. Bourgeois: If the Court please, I think this question ought not to be continued, simply putting in this witness' mouth what he wants him to say, and it is not relevant, simply leading, and it is not the proper way to do that. Let him find out if the man came before him. He was not asked any question, Mr. Fox was not asked any question by which it could be contradicted, that is, as a contradictory question. 30

The Court: No, I suppose that it could be contradicted as to the whole transaction or any part of it.

Mr. Bourgeois: Yes, it may be, but in that event

it is not a leading question. You asked him what happened, and here he is putting a leading question to him, repeating all that he said.

The Court: I suppose it is objectionable. I suppose if the purpose is to elicit what took place for the purpose of contradicting any particular part, the witness may be asked what took place.

- 10 Mr. Sooy: If the Court please, this is rebuttal, and Mr. Fox testified to certain things that he said to the commissioners, and the commissioners said to him. Now if the Court please, I have a right to call the witness' attention to what he said.

The Court: Yes, but you are now narrating testimony. If it is for the purpose of contradicting, ask him whether a certain thing ever took place.

- 20 Mr. Sooy: The only thing I can do is call his attention to what Mr. Fox said took place.

The Court: No, that is the vice of the question in directing his attention to the testimony of another witness. You may ask him whether a certain thing took place, whether a certain conversation took place.

- 30 Q. Did you, as a member of a board of commissioners agree with Mr. Fox that if Mr. Fox would open up Maine Avenue 100 feet wide and would level, grade and gravel it, and put the sidewalks and curbs in that the city would reimburse Mr. Fox for his expenses in so doing?

Mr. Bourgeois: That is objected to. It is clearly leading.

The Court: I do not think that it is leading when it is for the purpose of rebuttal.

Mr. Bourgeois: If your Honor please, I don't understand the question of rebuttal has anything to do with the form of the question.

The Court: Oh, yes.

Mr. Bourgeois: I don't understand that you can 10 ask leading questions on rebuttal.

The Court: You may ask whether a witness, having stated a certain thing, you may ask whether or not that conversation took place and you may put in words the conversation as testified to by the witness to be contradicted.

Mr. Bourgeois: If your Honor please, I always understood the first thing is to find out what the witness' knowledge is, now after you have the witness' knowledge, and then the question has not been answered, then you can direct his attention to it, but I do not understand the practice by which you can just put the whole question to the witness and say, is that so, yes or no. 20

The Court: Yes, I think it is better practice if the witness is allowed to state what he knows about the transaction. 30

Mr. Bourgeois: Mr. Schimpf called my attention to the fact Mr. Sooy put this in as a part of his main case anyway.

Mr. Sooy: They put Mr. Fox on and testified

that it is the agreement that Mr. Bacharach made with Mr. White and Mr. Thompson. Now, we certainly have got a right to show they didn't make that agreement

Mr. Bourgeois: Don't your Honor recall that Mr. Sooy in his case called everyone of the commissioners and asked them this particular question?

10 The Court: No, I don't so understand it. I understood that the plaintiff's case was interrupted to permit commissioners to testify out of turn, that was my recollection of the order.

Mr. Bourgeois: No, if your Honor please, the plaintiff's case, we were the plaintiffs, we put in a prima facie case, then they went on with their case, they withdrew some witness, but it was their case. Now we come back with the rebuttal, and in rebuttal I examine Mr. Schimpf and Mr. Fox before that time they had put in these other people.

Mr. Sooy: You withdrew Mr. Schimpf so we could let the commissioners testify.

The Court: That was my recollection, out of turn, as I recall it. The only witness which the defendant introduced or offered were Mr. Hackney, Adams, Harris, Tomlin, Loveland, Steinbricker, and
30 they testified in the main concerning the physical work that was done, except on cross-examination as I recall it.

I think the question ought to be reframed, as this witness at the time was mayor, and it seems to me he ought to narrate what took place, and then if you want to specifically have him deny some state-

ment made by the plaintiff, or the plaintiff's witnesses, you may.

Mr. Sooy: The only point I want to examine the witness on is as to whether or not he agreed to do the things Fox said he agreed to do. Now he can't be expected to come in here and narrate everything that happened back in 1920, when he has been out of office for three years.

The Court: Then ask him the specific question, what, if any agreement there was and if he can't state them, you may. 10

Q. Do you remember what specific agreement, if any, was arranged between Fox and the city commissioners at that time?

A. No, only in a general way, from your previous question recalls some of it to me.

Mr. Sooy: Then it seems to me the other question—— 20

The Court: Yes, but change the form of the question, instead of stating what Mr. Fox said, ask him whether or not a certain agreement was made.

Mr. Bourgeois: That is for the purpose of contradiction and Mr. Fox did not testify Mayor Bacharach said anything at all, it was Mayor Bader, Mr. Fox said it, not Mayor Bacharach at all. 30

Mr. Sooy: Mr. Fox testified and Mr. Schimpf testified back in 1919 and 1920, up to May, 1920, both of these ordinances were passed during that time, that the commissioners as then constituted

were Mayor Bacharach, Dr. Thompson, Dr. Cochran, Mr. Beyer, and Senator White, and Mr. Fox testified these conferences were before the entire commission, and that the entire commission agreed to and assented to the proposition that he is now contending for.

Mr. Bourgeois: He said, if your Honor please, that Mayor Bader was the spokesman, apparently.

10

The Court: No, I think that was later.

Mr. Bourgeois: But the question about the cost came up later, no question about the cost at all with regard to the first commission.

Mr. Sooy: If the Court please, Mayor Bader could not have been the spokesman when these negotiations were going on, because he was not a member of the commission.

20

Mr. Bourgeois: Mayor Bacharach was not in office at the time.

The Court: If I recall, the witness said beginning in 1919, the negotiations were entered into looking to the widening of St. Katherine's Place and Maine Avenue. That upon condition that the city would improve St. Katherine's Place and that the city would improve Maine Avenue to a width of a hundred feet, the plaintiff would convey certain land for the widening of St. Katherine's Place and certain land for the widening of Maine Avenue to a width of a hundred feet, and procure other land for the widening of Maine Avenue. That St. Katherine's Place was widened, and that thereafter when

30

new commissioners had been inducted into office, an agreement was made with respect to the financing or the improvment of Maine Avenue.

Mr. Bourgeois: Exactly so, yes, sir.

The Court: But that the agreement calling for the conveyance of the land and the widening of the two thoroughfares was made prior to the time Mayor Bader and Mr. Steinbricker came into office. 10

Mr. Bourgeois: I have no objection to that question, they want to call Mayor Bacharach to try to contradict Mr. Fox about this agreement about the financing of it. It was made by the new commission after Mayor Bacharach had gone out of office and Mr. Fox on the stand says he can't tell which one said it, they were all talking, Mayor Bader was the one did the talking.

The Court: As I recall his testimony, Mayor Bader is the one who he says stated, "We can pay for this out of the Boardwalk appropriation," and the other gentlemen assented as he understood by nodding their heads in approval, but that prior to the time, prior to February, 1920, when ordinance number two was passed, this agreement for the conveyance of the land to widen St. Katherine's Place was linked for the arrangement for the widening of Maine Avenue. 20

Mr. Bourgeois: That is correct. I have no objection to that, but the part I am objecting to— 30

The Court: Did that occur, that is, in substance, the testimony of Fox?

Mr. Bourgeois: That is the testimony, what I am objecting to is that Mr. Sooy is apparently endeavoring to contradict what Mr. Fox said by Mr. Bacharach when Mr. Bacharach was not in office at all.

10 Mr. Sooy: If Mr. Bourgeois understands the testimony and the jury understands the testimony as being that this arrangement for compensation of Fox for the improvement and the arrangement for the city to buy his land if they did not compensate him for it was made not with the old commission, but with the commission as it is now comprised.

The Court: I think that is all the controversy.

Mr. Sooy: If that is the case we are perfectly satisfied.

20 The Court: As I understand his testimony, Mr. Schimpf's testimony was that the negotiations looking to the widening of both St. Katherine's Place and Maine Avenue were taken up before there was a change in the commission, at the time Mayor Bacharach was in office and Mr. Thompson and Senator White and Mr. Beyer and Dr. Cochran.

30 Mr. Sooy: Then if I understand it, the testimony stands there was no negotiation with the old commission——

The Court: Looking for the work being done by Mr. Fox and to be reimbursed by the city.

Mr. Sooy: Or the purchasing of Fox's land in case we didn't reimburse him.

Mr. Bourgeois: There is no testimony in this case about the purchase of Fox's land at all.

The Court: I think that was injected for the first time by Mr. Fox in the letter dictated by Schimpf where he proposes as an alternative, "If you do not propose to go through with what I say you agreed with respect to repaying me for this improvement, then buy my land."

TESTIMONY CLOSED.

10

MOTION FOR DIRECTION.

Mr. Bourgeois: If the Court please, I am going to move for a direction. As I recall it, there is nothing in this case that could by any possible inference be construed into a dedication of this land by the Benjamin R. Fox Company. Mr. Sooy realized the technicality of proceedings in corporations when he, in questioning the commissioners, inquired specifically whether they, as commissioners, had ever passed any vote, resolution or ordinance, always qualifying by whether they did it as commissioners, indicating in his mind if they had had any conference it must be an official act. That is true with not only municipal corporations, but private corporations, but, so far as I recall, there is not a single thing in this case that connects the Benjamin R. Fox Company, which has a title to this land, with this agreement that existed or was being carried on between these parties.

20

30

The Court: I think it raises a question for the jury.

(Exception noted for plaintiff.)

DEFENDANT'S MOTION FOR DIRECTION.

Mr. Sooy: I want to make a motion for a direction because by the plaintiff's own testimony it appears Fox dedicated Maine Avenue to Madison Avenue through its entire length, 100 feet, having dedicated the lands in question Fox cannot with-
10 draw the dedication and maintain ejectment. By the plaintiff's own testimony it clearly appears the agreement with the city commissioners was actually made, whether of binding force on the defendant, that the agreement was Fox should dedicate and open Maine Avenue, if the street was so dedicated the city was to take it over and maintain it, the city was to reimburse Fox for the expenses of opening Maine Avenue or the city would levy no expenses on Fox's other land. If there was a dedication,
20 then Fox can't withdraw his dedication or the Benjamin R. Fox Company can't withdraw it. Lands once dedicated can't be withdrawn. There is no question about that, I think. I believe the Court will agree with me on that. Now, then, assuming for the sake of this argument that this had been a dedication, now then, if the city has failed in their agreement with Fox, in that they have not compensated him for the expenses he had in opening Maine Avenue, then Mr. Fox has a perfect remedy against the
30 city in an action at law to recover the money he expended by a suit to recover the actual expenses he says that they agreed to reimburse him if he would open the street.

The Court: The motion will be denied.

(Exception noted for defendant.)

Mr. Bourgeois: I want to offer in evidence record of deed from Benjamin R. Fox Company to Frank Spechter, recorded in book 686, page 203, dated the fourteenth day of July, 1922.

Mr. Sooy: I want to object to that on the ground it is immaterial.

The Court: What is its materiality, Mr. Bourgeois? 10

Mr. Bourgeois: It is for the purpose of showing that there was no reference to Maine Avenue being a hundred feet wide which Mr. Sooy says he has gotten Mr. Fox to admit.

Mr. Sooy: He didn't say in the testimony, that is what he said at all. He says he referred to it as a hundred foot wide street, and the natural inference was it was a hundred foot wide street. 20

The Court: I understand that he testified that the deeds were made for property abutting on a hundred foot street.

Mr. Sooy: Not as I understand it. At the time he sold it as fronting on a hundred foot street, it is implied there because there is a hundred foot street there.

The Court: I will receive it. 30

Mr. Bourgeois: Offer in evidence record of a deed from Benjamin R. Fox Company to Harry Potampkin, dated the fourteenth of October, 1922, recorded in book 695, page 2, also the record of a deed from

Benjamin R. Fox Company to Harry Fadden, et al., dated the fifteenth of September, 1922, of record in book 689, page 349.

Mr. Sooy: Same objection.

TESTIMONY CLOSED.

10

CHARGE OF THE COURT.

DONGES, J.:

Ladies and gentlemen, it is admitted in this case that the Fox Company has title to the land in question. The plaintiff asserts that, owning that land, it never, nor did any person who owned the land before the plaintiff acquired it, ever dedicate, by deed
20 or other act, the part of what has been generally referred to here as the easterly half of the street to public uses, and that, therefore, not having given, by any act of the plaintiff or persons preceding it in title, the right to the public to the use of the surface of the land owned by it for street purposes, it is entitled to recover the possession of such land from the city which it is claimed holds it for the use of the public. You are not determining the question of the title to this land because the Fox Company
30 owns it. You are determining, however, or will determine, whether the public has the right to the use of the surface of that land for street purposes.

That question turns upon whether or not the plaintiff, or Mr. Fox who owned that land before the plaintiff acquired it, by an act gave the public the right to use the land for street uses. That dedi-

cation may be made not only by a grant, by deed or other conveyance, but it may be accomplished just as effectually by acts or an act of the party who owned the fee of the land. And once land is dedicated, once the public acquires a right, as I will hereafter instruct you, that right, so far as being revocable by the owner of the land, the person who dedicated it, is established. He has no right to revoke it once the public acquires the right to use it by his dedication. And, as I said, dedication, it being admitted in this case there was no grant, there was 10
no conveyance by deed or other instrument of the right to use this land for street purposes, the question is whether or not there has been a dedication by act of the owner which gives the public a right for all time, as against that owner, to use the land for street purposes. A person may, owning land upon both sides of a proposed street, make a conveyance of a piece of property, a lot or piece of property abutting on that proposed street, and describe the street as being of a certain width and thereby dedicate that street of that width. He may 20
open it and by the act of opening it and permitting the public to use it so evidence an intention to create a public highway as to preclude himself from thereafter denying the public the right to use it.

Our Supreme Court has laid down the law in very clear language in these words: "The doctrine of dedication rests on the principle of the common law which had an almost universal application, that 30
whenever a person has made representations or pursued a line of conduct with a view to lead others to adopt a particular course of action, such representations or conduct have produced that effect, they shall be binding and conclusive against him and he cannot afterwards be permitted to retreat or repudiate them."

In speaking of dedication, the court says: "Its vital principle is the *animus dedicandi* 'that is the intention to dedicate)' and whenever that is manifested, the dedication, so far as the owner of the fee is concerned, is complete, and he is concluded from his power of retraction without an acceptance by the public authorities or public user—acceptance being essential only where the question is whether the public authorities are chargeable
10 with reparation. Time is not an essential ingredient of the act of dedication. Where it rests upon an express declaration or act it takes effect instantaneously."

And therein it is to be distinguished from a right of the public acquired by user merely, that is where the public may for a number of years use what has come to be termed or regarded or used as a road, it requires then, that that user or right, being based merely upon use, shall be continued for a number of
20 years, but where it rests upon the act of dedication of the party, it is instantly a right of the public, and it is not necessary that it should be based upon a twenty year user.

It is, in all cases a question of intention and must be proved or disproved by the acts of the owner, and the circumstances under which the use has been permitted.

So that in this case we are not concerned directly with the question of whether there is a right of in-
30 junction in the court of chancery, whether there can be a recovery by the plaintiff or any other person who may have expended money. We are not concerned directly with whether there was a valid agreement for reimbursement by the city authorities to the plaintiff or his predecessor in title. Those questions are related to this case only insofar as

they may show an intention upon the part of the person claiming the land to dedicate the street. If you should find that the plaintiff, or Fox, did not intend to dedicate the street, but was merely making some improvements with the view that thereafter the city, when it acquired title, should open the street, it would not be a dedication; because there the intention to dedicate would be absent; and it would be merely an improvement under an agreement, whether valid or otherwise, to make the improvement in order that thereafter the property might be used as a public highway. So that all of those questions, whether the city commissioners could lawfully transfer money from one fund to another, whether they had the money, all of those matters are related to the question here involved, only as they may throw light upon the question of dedication, and that is the sole question which you are called upon to determine. All these other matters, as I say, are side lights, perhaps, and may be directly related when you come to test the credibility of witnesses, and find the fact, but they are not the questions you are to determine. The question is boiled down to a single one, was there a dedication by act of the owner of the strip of land in question for street uses? If there was he cannot withdraw it, and your verdict will be for the defendant. If there was not, if there never was, by act of the owner, a dedication and giving up of the surface of his land for street purposes, then your verdict will be for the plaintiff. And that is the question and the sole question.

Mr. Bourgeois: May I ask your Honor to charge that there may be a conditional dedication and in that event there is no dedication until the condition is performed?

The Court: In this case, Mr. Bourgeois, I don't see how there can be a conditional dedication. He either improved the land upon the distinct agreement which moved him, whether it be a valid agreement or not. If he improved the land for the city with the idea of thereafter having it opened for street purposes, I take it that is not a conditional dedication.

- 10 Mr. Bourgeois: I think the thing was this, as I understood, they were going to improve the property, and in consideration of that he was going to dedicate. Now that made a conditional dedication.

The Court: If I understand his position, the dedication was not to take place until the improvement was made.

- 20 Mr. Bourgeois: That is true.

The Court: So the question is whether or not there was a dedication. Now, if I understand plaintiff's position, it is, there never was any dedication at all, because nothing was to be done by Fox until the city had done its part, and, therefore, it seems to me the question of conditional dedication is not of the case.

- 30 Mr. Bourgeois: I think that is conditional dedication and that is all.

The Court: You may retire, gentlemen.

JUDGMENT RECORD.

NEW JERSEY SUPREME COURT.

BENJAMIN R. FOX COM- PANY, a corp., <i>Plaintiff,</i>	} Judgment Record. Action at Law. In Ejectment. Theo. W. Schimpf., Attorney.	10
v. CITY OF ATLANTIC CITY, <i>Defendant.</i>		

City of Atlantic City, the defendant in this cause, was summoned to answer unto Benjamin R. Fox Company, a corp., the plaintiff therein in an action at law upon the following complaint: 20

(Summons issued August 17, 1922.)

The plaintiff, Benjamin R. Fox Company, a corporation of the State of New Jersey, having its principal office in the City of Atlantic City, County of Atlantic, demands of the City of Atlantic City, the defendant herein, the possession of a tract of land with the appurtenances situated in the City of Atlantic City in said county, containing one acre, more or less, bounded on the north by Baltic Avenue on the south by Grammercy Place, on the west by a line of fifty (50) feet, eastwardly from the westerly line of Maine Avenue, as presently laid upon the ground, and on the east by lands of the plaintiff, and the plaintiff says that its right to the possession of the same accrued on the fifth day of November, nineteen hundred and twenty-one; and 30

that the defendant wrongfully deprives it of the possession thereof to its damage, one hundred thousand (\$100,000.00) dollars.

THEO. W. SCHIMPF,
Attorney of Plaintiff.
GEO. A. BOURGEOIS,
Of Counsel.

(Filed Aug 30 1922)

Defendant, a municipal corporation of the State
10 of New Jersey, says that:

1. It denies the truth of the matters contained in the complaint.

WM. F. SOOY,
Attorney of Defendant.

(Filed Sep 9, 1922)

This case was tried before Judge Ralph W. E. Donges, and a jury at May's Landing on May 21st, 1923, and the jury found a general verdict in favor of the plaintiff and against the defendant and ad-
20 judged the defendant guilty.

Whereupon it is adjudged that the plaintiff, Benjamin R. Fox Company, a corpn., do recover of the said defendant, the City of Atlantic City the possession of the premises mentioned and described in the complaint together with its costs which have been taxed at the sum of forty four dollars and sixty cents.

Costs \$44.60.

Judgment entered June 1, 1923.

30

WM. S. GUMMERE,
C. J.

I, EDWARD J. KELLEHER, clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment en-

tered in the above-stated cause as the same remains of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this fourteenth day of August, A. D. nineteen hundred and twenty-three.

(Seal) EDW. J. KELLEHER,
Clerk.

10

NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT.
ATLANTIC COUNTY.

BENJAMIN R. FOX CO.,	}	Action at Law. 20 Notice of Appeal.
Plaintiff-Respondent,		
v.		
CITY OF ATLANTIC CITY,		
Defendant-Appellant.		

To Theo. W. Schimpf, Esq., and Bourgeois and Coulomb, Esqs., Attorneys of Plaintiff-Respondent:

Take notice that the defendant appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause on the following grounds: 30

(1) Because the Court overruled defendant's motion for a direction of verdict in favor of the defendant and against the plaintiff.

(2) Because the Court permitted witness, Schimpf, to answer the following question, over the objection of attorneys for the defendant:

10 “Q. At the time you approved the deed from Mr. Fox to Atlantic City for the land lying on the outside of Maine Ave., that is, a fifty feet (50') wide street, Maine Avenue between Grammercy Place and Atlantic Avenue, did you know there was to be an assessment against the land for the benefits?”

(3) Because the Court, over the objection of attorneys for the defendant, permitted the witness, Schimpf, to answer the following question:

20 “Q. Now the deed also provides that the land not within the bounds of Maine Avenue, considering it a hundred feet wide, should be used for public park purposes. Was any part of that land used for other than public park purposes?”

(4) Because the Court refused to strike out the answer of witness, Schimpf, to the following question, although requested so to do by attorneys for the defendant:

30 “Q. Was it ever brought before the Commissioners at a stated meeting of the council, session of the council? A. I can't remember, it was brought to the attention of one or more city officials repeatedly, whether they ever were all together, when I saw them I don't remember.”

(5) Because the Court permitted the witness, Schimpf, to answer the following question over the objection of attorneys for the defendant:

 “Q. What was said at the conference between

White, Hackney and yourself about the improving of the streets?"

(6) Because the Court permitted witness, Fox, to answer the following question over the objection of attorneys for the defendant:

"Q. Did you know at that time that if there was no motion, no ordinance or no resolution passed by these men in session that you could not get the money?"

10

WM. FRANK SOOY,
JOS. B. PERSKIE,
*Attorneys of Defendant-
Appellant.*

Atlantic City, N. J.,
August 4th, 1923.

20

[ENDORSED]

Service of a copy of within notice of appeal hereby acknowledged, this 4th day of August, A. D. 1923.

Theo. W. Schimpf,
Atty. of Plaintiff.

30

EXHIBIT P1. 5-16-23 L.

UNITED STATES CIRCUIT COURT
DISTRICT OF NEW JERSEY.

10	Between Frank S. Elliot and others,	}	In Equity On Bill to quiet title. FINAL DECREE.
	Complainants, and Atlantic City Defendant.		

This cause coming on to be heard on bill, answer and replication and proofs taken before Henry Henry D. Olifant Examiner, and the Court having heard and considered the arguments of respective

20 counsel and being of the opinion that an easement exists in favor of the defendant, Atlantic City, a municipal corporation, of a public street through and over the lands described in the bill of complaint of a width of fifty feet and that said street constitutes the westwardly half of Main avenue as originally laid down on a map filed in the Clerk's office of the County of Atlantic in May's Landing in eighteen hundred and fifty-two, which map is known as the plan of Atlantic City, which said westwardly

30 line of Main avenue begins at a point four hundred feet eastwardly from the easterly line of New Hampshire avenue, it is on this twenty first day of March nineteen hundred and seven on motion of Thompson & Cole, solicitors for complainants, ordered, adjudged and decreed that defendant, Atlantic City, has an easement of a public street through and over the lands of the complainants described in the bill

of complaint of a width of fifty feet which constitutes the westwardly half of Main avenue as laid down on a map filed in the Clerk's office of the County of Atlantic at May's Landing, New Jersey, in eighteen hundred and fifty-two the beginning point of which said westwardly line or half of Main avenue is four hundred feet eastwardly from the easterly line of New Hampshire avenue.

It is further ordered, adjudged and decreed that the complainants have and recover from the defendant their costs of suit to be taxed. 10

JOSEPH CROSS,
JUDGE.

UNITED STATES OF AMERICA, }
District of New Jersey. } ss:

I, George T. Cranmer, Clerk of the District Court of the United States of America, for the District of New Jersey, in the Third Circuit, do hereby certify the foregoing to be a true copy of the original 20
FINAL DECREE.

on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Trenton, in
(SEAL) said District, this 9th day of January nineteen hundred and twenty-three.

George T. Cranmer,
Clerk, District Court, U. S. 30
by R. S. Chevrier,
Deputy.

Filed: March 21, 1907.
H. D. Oliphant,
Clerk.

EXHIBIT P2.

Deed: Edwin A. Grover, William F. Grover, Roy L. Grover and Guy N. Grover, executors and trustees under the will of John D. Grover, deceased, to Benjamin R. Fox, dated Feb. 2, 1920.

Consideration: \$25,750.00

10 Description: Beginning at the Northwest corner of Grammercy Place and Maine Avenue (Grammercy Place being 75 feet wide) and extending thence (1) Northwardly along the Westerly line of Maine Avenue, 95 feet; thence (2) Westwardly parallel with Grammercy Place, 90 feet; thence (3) Southwardly, parallel with Maine Avenue, 95 feet to the Northerly line of Grammercy Place; thence (4) Eastwardly along the same, 90 feet to the place of beginning.

20 Recorded: In the Clerk's Office of Atlantic County on the 10th. day of February, 1920, in Deed Book 624, pages 119, etc.

EXHIBIT P3.

Deed: George H. Earle, Jr. to Benjamin R. Fox, dated Aug. 22, 1919.

Consideration: \$1.00 and other "lawful money of the United States of America."

30 Description: Beginning in the North line of Arctic Avenue (sixty feet wide) at a point distant four hundred feet Eastwardly from the Easterly line of New Hampshire Avenue, thence extending Northwardly parallel to New Hampshire Avenue, one hundred feet, thence Westwardly parallel with Arctic Avenue two hundred ninety-seven and six-tenths feet to the East line of a right of way of the West Jersey

and Seashore Railroad, thence Northwardly along said right of way on a line curving to the left with a radius of nineteen hundred forty feet, four hundred thirty-three and seventy-one one-hundredths feet to the South line of Baltic Avenue, at a point three hundred eighteen and forty-eight one-hundredths feet Eastwardly from the Easterly line of New Hampshire Avenue, thence Eastwardly along said line of Baltic Avenue three hundred forty-two feet more or less, to the high water line of Absecon Inlet, thence Southwardly along the high water line of Absecon Inlet the several courses thereof four hundred seventy-five feet more or less to the North line of Arctic Avenue, thence Westwardly along said line of Arctic Avenue two hundred seventy-four feet more or less to the place of beginning. 10
Recorded in the Clerk's Office of Atlantic County in Deed Book No. 611, page 236 etc.

20

EXHIBIT P4. 5-17-23 L.

To the Mayor and the Board of Commissioners of the City of Atlantic City.

Gentlemen:

In the Fall of 1919, or about January, 1920, I had some negotiations with Commissioner White, now Senator, looking toward an improvement of two blocks of property on North Maine Avenue, which had come under the ownership of the Benjamin R. Fox Company. Intending to build some large apartment houses and to generally improve the property, it was very important that Maine Avenue should be widened to 100 feet from Atlantic Avenue to Madison Avenue, and that St. Katherine's Place should be widened to 75 feet. 30

At that time, Maine Avenue between Grammercy Place and Madison Avenue was only 50 feet in width, and that width was decreed by the United States District Court in a suit in which one Elliott was plaintiff and the City of Atlantic City was defendant, the case being known as Elliott, et al. against Atlantic City, and recorded in No. 149 Federal Reporter, at page 849.

- Between Atlantic Avenue and Grammercy Place
- 10 Dr. Dick and certain other persons were the owners of property on the ocean side of Maine Avenue, and a claim was made by them that Maine Avenue was only 50 feet in width. I was the owner of property at the corner of Grammercy Place and Maine Avenue, extending southwardly a distance of 200 feet on the ocean side of Maine Avenue. I proposed that if the City would widen Maine Avenue to 100 feet, and would acquire the property on the outside of Maine Avenue necessary to do so, and if the City
- 20 would bulkhead the property and build the street, that I would give to the City in consideration of these improvements a deed to the 200 feet of Maine Avenue south of Grammercy Place, and a deed to the 475 feet between Grammercy Place and Madison Avenue; and also a deed to 25 feet of St. Katherine's Place 400 feet in length.

—No. 2—

4-15-22

To the Mayor and the Board of Commissioners:

- After the negotiations with Senate White, I appeared before the Board of Commissioners at a public meeting with my counsel, Mr. Theodore W. Schimpf, and made these proposals publicly, and it was agreed, either formally or informally, that the City should take the deeds and would make the improvements promptly.
- 30

I gave the City a deed for St. Katherine's Place and a deed for that part of the property on the out-

side of that property, extending southwardly from Grammercy Place a distance of 200 feet; but the City utterly failed to build either bulkhead or street.

I had begun an improvement between Atlantic Avenue and Grammercy Place, consisting of four large apartment houses, costing approximately \$800,000.00, and the condition in which the City left Maine Avenue made it almost impossible for me to arrange for the necessary mortgages, or put tenants in the properties. I was compelled to fill Maine Avenue for a distance of two blocks, to grade and gravel the same, to build the entire bulkhead from Madison Avenue to Grammercy Place, and to protect the small and insecure bulkhead built by the City from Grammercy Place to Atlantic Avenue by jetty work, all at my own expense, for which work the City agreed to reimburse me. 10

After giving the City my property on the outside of Maine Avenue south of Grammercy Place, the City permitted Sebring, a flyer, to squat upon the property that I had given the City, and all summer long to fly his aeroplane to the detriment of my property, and this after I had declined to rent the property to the same man for the same purpose. 20

Mrs. Bradley was permitted to erect a fence in the middle of Maine Avenue to the great detriment of my property because the City had failed for fourteen months, after making this agreement with me, to take any steps to acquire her property

—No. 3—

4-15-22

To the Mayor and the Board of Commissioners: 30
by condemnation.

The result of all of this failure, on the part of the City to carry out its plain contract with me, was that I withdrew my remaining property from Grammercy Place to Madison Avenue, and have since de-

clined to give the City of Atlantic City a deed for the same.

It is true, of course, that the present Commissioners are practically without knowledge of these arrangements because in May, 1920, a commission election intervened and the gentlemen now composing the commission were inducted into office, subsequently to the time of making these arrangements.

Under these circumstances, I feel that I am entitled to call upon the City, either to reimburse me for the moneys I have expended to make the improvements promised by the City, or else to purchase from me, or the Benjamin R. Fox Company, the land 50 feet in width eastwardly of Maine Avenue from Grammercy Place to Madison Avenue at a price commensuate with the value of said land.

In order to fortify the fairness of my position with respect to this matter, I have consulted with a great many of property owners and voters in the First Ward of Atlantic City, all of whom are familiar with the history of this transaction and the history of the improvements made by me, all of whom expressed their willingness to sign a petition addressed to the Board of Commissioners requesting that this land be purchased from me and not confiscated.

I enclose with this letter a petition signed by many of them, and have no hesitation in saying that if you deem it necessary or advisable, I can have a similar petition signed by ninety per cent. of the property owners of the First Ward.

Yours very truly,

BENJAMIN R. FOX COMPANY,

By Benj. R. Fox

EXHIBIT P5.

Deed: Benjamin R. Fox Co. to Harry Potamkin, dated Oct. 14, 1922.

Consideration: \$100.00 and other good and valuable considerations."

Description: Beginning at a point in the northwest corner of Maine Avenue and Grammercy Place (seventy feet wide) and extending thence (1) westwardly along the northerly line of Grammercy Place eighty feet to the easterly line of a ten feet wide alley; thence (2) northwardly along said easterly line of said alley and parallel with Maine Avenue a distance of one hundred and sixty-five feet to the southerly line of a thirty feet wide street; thence (3) eastwardly, parallel with Grammercy Place and along the southerly line of said street eighty feet to the westerly line of Maine Avenue; thence (4) southwardly, in said line of Maine Avenue one hundred and sixty-five feet to the place of beginning.

ALSO BEGINNING at a point in the northwest corner of Maine Avenue and a thirty feet wide street, said point being distant one hundred and ninety-five feet north of the northerly line of Grammercy Place (seventy feet wide) extending thence (1) westwardly, parallel with Grammercy Place and along the northerly line of said thirty feet wide street eighty feet to the easterly line of a ten feet wide alley way; thence (2) northwardly, along said easterly line of said ten feet wide alley and parallel with Maine Avenue a distance of two hundred and fifty-five feet to a point said point being 80 feet west of westerly line of Maine Avenue measured at right angles thereto, thence, still northwardly, and along the easterly line of said alley way deflecting to the east to a point a distance of twenty feet more

or less to a point in the southerly line of Madison Avenue, said point being seventy-one feet west of the westerly line of Maine Avenue; thence (3) eastwardly, along said southerly line of Madison Avenue a distance of seventy-one feet to the southwest corner of Madison and Maine Avenues; thence (4) southwardly, along the westerly line of Maine Avenue a distance of two hundred and seventy-five feet to the place of beginning.

- 10 Recorded in the Clerk's Office of Atlantic County in Deed Book 695, page 2 etc.

EXHIBIT P6.

Deed: Benjamin R. Fox Co. to Harry Faden, et al,
dated Sept. 19, 1921.

Consideration: \$25,000.00

- 20 Description: Beginning at a point distant ninety feet west of the westerly line of Maine Avenue, measured at right angles thereto, and ninety-five feet north of the northerly line of Grammercy Place measured at right angles thereto (Grammercy Place being seventy feet in width) said point being in the westerly line of a ten feet wide alley and extending thence (1) northwardly, parallel with Maine Avenue and along the westerly line of said alley a distance of three hundred and fifty-six and sixty-nine one hundredths feet to a point of intersection with
- 30 the easterly line of the right of way of the West Jersey and Seashore Railroad; thence (2) southwardly along the right of way of said railroad following the curve with a radius of nineteen hundred and forty feet, a distance of four hundred and sixteen and forty-eight one hundredths feet to a point, said point being distant ninety-five feet north of the

northerly line of Grammercy Place, measured at right angles thereto and two hundred and ninety-seven and six tenths feet west of the westerly line of Maine Avenue; thence (3) eastwardly, parallel with Grammercy Place a distance of two hundred and seven and six tenths feet to the place of beginning.

Beginning at a point in the westerly line of Maine Avenue distant one hundred and sixty-five feet north of the northerly line of Grammercy Place (Grammercy Place being seventy feet in width) and extending thence (1) westwardly, parallel with Grammercy Place a distance of eighty feet to the easterly line of the ten feet wide alley above described; thence (2) northwardly along the easterly line of said alley and parallel with Maine Avenue a distance of thirty feet; thence (3) eastwardly, parallel with Grammercy Place a distance of eighty feet to the westerly line of Maine Avenue; thence (4) southwardly, in said line of Maine Avenue thirty feet to the place of beginning.

Recorded in the Clerk's Office of Atlantic County in Deed book No. 689, page 349 etc.

EXHIBIT D1. 5-17-23 L.

ORDINANCE NO. 237.

AN ORDINANCE establishing the widths of driveways and sidewalks of alleys, streets and avenues within the territory bounded on the north by the north line of Winchester avenue, the south line of Baltic Avenue and the south line of Madison avenue; on the west by the west line of Albany Avenue; on the south and east by Atlantic Ocean and Absecon Inlet.

Section 1. Be it ordained by City Council of Atlantic City that the widths of driveways and sidewalks of alleys, streets and avenues within the territory bounded on the north by the north line of Winchester avenue, the south line of Baltic avenue and the south line of Madison avenue, on the west by the west line of Albany avenue; on the south and east by the Atlantic Ocean and Absecon Inlet, shall be as follows:

- 10 Maine avenue, driveway seventy feet; sidewalks, each fifteen feet.

Rhode Island avenue, between Arctic and Atlantic avenues, driveway twenty-eight feet; sidewalks, east side twelve feet, west side ten feet.

Houston street, driveway sixteen feet.

Massachusetts avenue, between Baltic and Atlantic avenues, driveway twenty-eight feet; sidewalks, each eleven feet.

Congress street, driveway twelve feet.

- 20 Connecticut avenue, between Baltic and Pacific avenues, driveway twenty-eight feet; sidewalks, each eleven feet.

New Jersey avenue, between Baltic and Pacific avenues, driveway twenty-eight feet; sidewalks, each eleven feet.

Delaware avenue, between Baltic and Atlantic avenues, driveway twenty-eight feet; sidewalks, each eleven feet.

- 30 States avenue, between Pacific avenue and Atlantic Ocean, driveway sixty-two feet; sidewalks, each fourteen feet.

States avenue, between Atlantic avenue and Pacific avenue, driveway twenty-eight feet; sidewalks, eleven feet.

Moore Street, driveway sixteen feet; sidewalks, each seven feet.

Maryland avenue, between Arctic and Atlantic

avenues, driveway twenty-eight feet; sidewalks, east side ten feet; west side twelve feet.

Virginia avenue between Atlantic avenue and Pacific avenue, where total width of street is sixty-five feet, driveway, thirty-eight feet, sidewalks east side ten feet, west side seventeen feet; where total width of street is eighty feet, driveway forty-six feet sidewalks, each seventeen feet.

Curb joining above two sections of Virginia avenue to be in a straight line with curves of ten feet 10 radius at the angles.

Virginia avenue between Pacific avenue and Atlantic Ocean, driveway forty-eight feet; sidewalks, east side seventeen feet, west side, fifteen feet.

Pennsylvania avenue, driveway forty-six feet; sidewalks, each seventeen feet.

North Carolina avenue, between Baltic and Atlantic avenues and between Pacific avenue and Atlantic Ocean, driveway forty-six feet; sidewalks, 20 each seventeen feet.

South Carolina Avenue between Arctic avenue and West Jersey and Seashore Railroad, driveway forty-four feet; sidewalks, each side ten feet, west side sixteen feet.

Ocean avenue, driveway twenty-four feet; sidewalks, east side eight feet, west side for a distance of four hundred feet southwardly from Pacific avenue, seven feet; thence to Atlantic Ocean, eight feet.

Tennessee avenue, between Pacific avenue and Atlantic Ocean, driveway twenty-eight feet; sidewalks, 30 each eleven feet.

Kentucky avenue, between Baltic and Arctic avenues, driveway twenty-seven feet; sidewalks, east side twelve feet, west side eleven feet.

Kentucky avenue, between Arctic and Atlantic avenues, driveway twenty-eight feet; sidewalks, each eleven feet.

Mt. Vernon avenue, south from Pacific avenue, driveway twelve feet; sidewalks, east side four feet, west side three feet.

Illinois avenue, between Baltic and Atlantic avenues, driveway twenty-eight feet; sidewalks, each eleven feet.

Illinois avenue, between Atlantic avenue and Atlantic Ocean, driveway twenty-nine feet; sidewalks, east side eleven feet, west side ten feet.

- 10 Indiana avenue, between Baltic and Arctic avenues, and between Atlantic and Pacific avenues, driveway twenty-eight feet; sidewalks, each eleven feet.

Indiana avenue, between Arctic and Atlantic Avenues, driveway twenty-seven feet; sidewalks, east side eleven feet, west side twelve feet.

Indiana avenue between Pacific avenue and Atlantic Ocean, driveway thirty-eight feet; sidewalks, east side twelve feet, west side ten feet.

- 20 Ohio avenue, between Baltic and Atlantic avenues, driveway twenty-eight feet; sidewalks, each eleven feet.

Michigan avenue, between Baltic and Atlantic avenues, driveway twenty-eight feet; sidewalks, each eleven feet.

Arkansas avenue, between Pacific avenue and Atlantic Ocean, driveway twenty-eight feet; sidewalks, east side ten feet, west side twelve feet.

- 30 Missouri avenue, between Baltic and Arctic avenues, driveway twenty-six feet, sidewalks, east side fourteen feet, west side ten feet.

Mississippi avenue, between Baltic and Arctic avenues, driveway twenty-eight feet; sidewalks, each eleven feet.

Mississippi avenue, between Arctic and Atlantic avenues, driveway twenty-seven feet; sidewalks, east side thirteen feet, west side ten feet.

Georgia avenue, between Baltic and Atlantic avenues, driveway twenty-eight feet; sidewalks, east side ten feet, west side twelve feet.

Florida avenue, between Baltic and Arctic avenues, driveway twenty-eight feet; sidewalks, east side ten feet, west side twelve feet.

Riddle avenue, driveway twenty feet; sidewalks, each five feet.

Bellevue avenue, driveway twenty feet; sidewalks, each ten feet.

10

Texas avenue, between Baltic and Atlantic avenues, driveway, twenty-eight feet; sidewalks, each eleven feet.

Belmont avenue, driveway twenty-six feet; sidewalks, each twelve feet.

Iowa avenue, driveway forty-four feet; sidewalks, each fourteen feet.

Stenton Place, driveway twenty-six feet; sidewalks, each twelve feet.

Boston avenue, driveway thirty-one feet; sidewalks each twelve feet.

20

Hastings Terrace, sidewalk, east side twelve feet.

Providence Terrace, between Winchester and Ventnor avenues, driveway forty-five feet; sidewalks, each fifteen feet.

Hartford Terrace, between Winchester and Ventnor avenues, driveway forty-five feet; sidewalks, each fifteen feet.

St. Davids Place, driveway thirty-four feet; sidewalks, each thirteen feet.

30

Albany Terrace, between Winchester and Ventnor avenues, driveway thirty-five feet; sidewalks, east side fifteen feet, west side ten feet.

Grammercy Place, between New Hampshire and Maine avenues, driveway fifty feet; sidewalks, each ten feet.

Arctic avenue, between New York and Illinois

avenues, driveway thirty-five feet; sidewalks, north side twelve feet, south side thirteen feet.

Arctic avenue, between Illinois and Indiana avenues, driveway thirty-four feet; sidewalks, north side twelve feet, south side, fourteen feet.

Arctic avenue, between Indiana and Michigan avenues, driveway thirty-five feet; sidewalks, north side twelve feet, south side thirteen feet.

10 Arctic avenue, between Michigan and Missouri avenues, driveway thirty-four feet; sidewalks, north side twelve feet, south side fourteen feet.

Arctic avenue, between Missouri and Georgia avenues, driveway thirty-three feet; sidewalks, north side twelve feet, south side fifteen feet.

Arctic avenue, between Georgia and Florida avenues, driveway thirty-four feet; sidewalks, north side twelve feet, south side fourteen feet.

20 Arctic avenue, between Florida and Texas avenues, driveway thirty-five feet, sidewalks, north side twelve feet, south side thirteen feet.

Atlantic avenue, driveway seventy feet; sidewalks each fifteen feet.

Pacific avenue, between Iowa avenue and Stenton Place, driveway forty-seven feet; sidewalk, north side thirteen feet.

Pacific avenue, except Iowa avenue and Stenton Place, driveway thirty-four feet; sidewalks, each thirteen feet.

30 Winchester avenue, driveway thirty-four feet; sidewalks, each thirteen feet.

Ventnor avenue, driveway, seventy feet; sidewalks, each fifteen feet.

All other alleys, streets or avenues or portions thereof, driveways to be three-fifths of total width between property lines; sidewalks to be each one-fifth of total width between property lines.

Section 2. That the line dividing the sidewalks

from the driveway at all alley, street or avenue intersections shall be the arc of a circle with a radius of ten feet.

Section 3. That all parts of all ordinances heretofore passed which fixed or established the widths of driveways or sidewalks within the territory above described, whether consistent or inconsistent with this ordinance, be and the same are hereby repealed.

Section 4. That this ordinance shall take effect immediately. 10

Passed at a regular meeting of City Council. October 23rd 1899

James D. Southwick
President.

Attest:

E. D. Ireland
City Clerk.

Returned without the Mayors signature Nov. 11, 1899

Attest:

E. D. Ireland
City Clerk.

20

CITY OF ATLANTIC CITY
(Shield)

Department of Public Affairs

I, Anne M. Delaney, Acting City Clerk of the City of Atlantic City, in the County of Atlantic, State of New Jersey, Do Hereby Certify, that the foregoing is a true copy of an ordinance as taken from the original on file in the office of the City Clerk—which ordinance passed at a regular meeting of City Council October 23rd 1899 and which is marked in the Book of Ordinances as having become a law without the Mayor's signature Nov. 11, 1899..... 30

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of the City of Atlantic City, this 10th day of January, 1923.

Anne M. Delaney,
Acting City Clerk.

EXHIBIT D2. 5-17-23 L.

10

ORDINANCE NO. 2.
CITY OF ATLANTIC CITY.
NEW JERSEY.

INTRODUCED BY DIRECTOR WHITE,
JANUARY 8, 1920.

20 AN ORDINANCE to provide for the improvement and protection of Maine Avenue extending from the Southerly line of Atlantic Avenue to Madison Avenue including the driveways and sidewalks of all intersecting streets, avenues and alleys included within the property lines of said portions of Maine Avenue by grading, paving and curbing the driveways and sidewalks with gravel pavement with wood curbing wherever required and by the construction of a Bulkhead or Sea Wall wherever required.

30 The Board of Commissioners of the City of Atlantic City do Ordain:

Section 1. Maine Avenue extending from the Southerly line of Atlantic Avenue to Madison Avenue including the driveways and sidewalks of all intersecting streets, avenues and alleys included within the property lines of said portion of Maine Avenue shall be improved by grading, paving and curbing the driveways and sidewalks with gravel

pavement with wood curbing wherever required; and shall be protected from erosion by the water of Absecon Inlet by the construction of a Bulkhead or Sea Wall wherever required.

Section 2. All such work of improvement and protection shall be done by contract or by City Employees under such plans and specifications as may be adopted, or according to such directions as may be given by resolution of the Board of Commissioners. Such plans, specifications and directions shall 10
fix the location and extent of each feature of improvement and the location and the extent of the protective Bulkhead or Sea Wall; which Bulkhead or Sea Wall may be located either within or without the boundary line of Maine Avenue; it being distinctly provided that the area of Maine Avenue within the limits aforesaid, to be improved at any time may be less than the entire area, and the length of Bulkhead or Sea Wall to be constructed at any time may be greater or less than the entire length 20
of said Avenue.

Section 3. The work of improving and protecting Maine Avenue as aforesaid shall be undertaken as a local improvement and after the completion thereof, a just and equitable assessment of benefits conferred upon any lands and real estate by reason of such improvement and protection shall be assessed thereon in the manner provided by law. If the benefits so assessed shall not equal the cost and expense of the improvement and protection the balance shall 30
be paid by the City at large.

Section 4. The cost and expense of such improvement shall be paid for in the first instance out of the proceeds of Bonds to be issued for that purpose.

Section 5. It is hereby certified that the financial statement required by section 12 of Chapter 252 (Laws of 1916 of the State of New Jersey) entitled

"An act to authorize and regulate the issuance of bonds and other obligations and incurring indebtedness, by county, city, borough, village, township or any municipality governed by an improvement commission," approved March 22, 1916, and the amendments thereto, has been filed in the office of the City Clerk.

10 Section 6. The ordinance entitled "An Ordinance to provide for the improvement of the driveway of Maine Avenue extending from Atlantic Avenue to Madison Avenue, including the driveways of all intersecting streets, avenues and alleys included within the property lines of said portion of Maine Avenue, by grading, paving, curbing the same with gravel or macadam or Warrenite, with wood curbing, and by the construction of a protective Bulkhead or Sea Wall wherever required," approved May 19, 1917, is hereby repealed.

20 Section 7. All other ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistencies, and this ordinance shall take effect immediately.

Passed at a regular Meeting of City Commission, January 22, 1920.

Approved January 29, 1920.

Albert Beyer,
Mayor of Atlantic City.

Attest:

Joseph A. McNamee,
City Clerk.

30

CITY OF ATLANTIC CITY
(Shield)

Department of Public Affairs

I, Joseph A. McNamee, City Clerk of the City of Atlantic City, in the County of Atlantic, State of New Jersey, Do Hereby Certify, that the foregoing

is a true copy of an ordinance passed at a regular meeting of City Commission, January 22, 1920, and approved January 29, 1920, as taken from the original on file in the office of the City Clerk.....

.....
In Testimony Whereof, I have hereunto set my hand and affixed the official seal of the City of Atlantic City, this ninth day of May, 1923.

Joseph A. McNamee,
City Clerk. 10

EXHIBIT D3. 5-17-23 L.

ORDINANCE NO. 22.
CITY OF ATLANTIC CITY
NEW JERSEY.

INTRODUCED BY DIRECTOR 20
STEINBRICKER, April 8, 1920.

AN ORDINANCE providing for the widening of Maine Avenue between Atlantic Avenue and Madison Avenue so that the easterly line thereof shall be parallel with New Hampshire Avenue and distant 500 feet Eastwardly at right angles therefrom; and providing for the acquiring of the lands and premises required for such widening; and providing that such widening shall be undertaken as a local improvement with an assessment of benefits. 30

The Board of Commissioners of the City of Atlantic City do Ordain:

Section 1. Maine Avenue shall be widened between Atlantic Avenue and Madison Avenue so that the Easterly line thereof shall be parallel with New Hampshire Avenue and distant 500 feet East-

wardly at right angles therefrom; thus making the total width of Maine Avenue between Atlantic Avenue and Madison Avenue 100 feet.

Section 2. There shall be acquired by the City of Atlantic City such portions of the lands and premises required for such widening as have not already been acquired by said City, or already been dedicated to public highway use.

- Section 3. The Board of Commissioners may by
10 Resolution negotiate for the purchase of said lands and premises from various owners thereof paying therefor such prices as it may consider equitable and just; and in case it is unable to acquire any portion of said premises at a price which it deems to be equitable and just, by reason of failure to agree with the owners thereof or by reason of legal incapacity of such owner to deliver a free and unencumbered title, or for any other reason whatsoever, it may proceed to acquire the same by con-
20 demnation in the manner provided by law.

Section 4. The widening of said Maine Avenue shall be undertaken as a local improvement, and a just and equitable assessment of the benefits conferred upon any lands or real estate by reason of such widening shall be made in the manner provided by law.

- Section 5. The cost of such widening of Maine Avenue including the acquisition of the necessary land and premises shall be paid for in the first in-
30 stance out of the proceeds of the sale of Bonds to be issued for that purpose or out of moneys to be raised by general taxation for such purpose—or partly out of each — as the Board of Commission in their wisdom may hereafter by Ordinance or resolution determine; and it is hereby certified that the financial statement required by Section 12 of Chapter 252 (Laws of 1916 of the State of New Jersey)

entitled "An act to authorize and regulate the issuance of bonds and other obligations and incurring of indebtedness, by county, city, borough, village township, or any municipality governed by an improvement commission," approved March 22, 1916, has been filed in the office of the City Clerk.

Section 6. All ordinances or parts of ordinances inconsistent herewith, are, to the extent of such inconsistencies, hereby repealed, and this ordinance shall take effect immediately.

Passed at a Regular Meeting of City Commission,
April 29, 1920.

Approved, May 6, 1920.

Harry Bacharach
Mayor of Atlantic City.

Attest:

Joseph A. McNamee,
City Clerk.

CITY OF ATLANTIC CITY
(Shield)

Department of Public Affairs

I, Joseph A. McNamee, City Clerk of the City of Atlantic City, in the County of Atlantic, State of New Jersey, Do Hereby Certify, that the foregoing is a true copy of an ordinance passed at a regular meeting of the Board of Commissioners on April 29, 1920, and approved May 6, 1920, as taken from the original on file in the office of the City Clerk...

.....
In Testimony Whereof, I have hereunto set my hand and affixed the official seal of the City of Atlantic City, this ninth day of May, 1923.

Joseph A. McNamee.

City Clerk.

10

20

30

EXHIBIT D4. 5-17-23 L.

Know all men by these presents that Benjamin R. Fox, Widower and Walter B. Dick, Widower both of the City of Atlantic City, in the County of Atlantic State of New Jersey for and in consideration of the sum of One Dollar, lawful money of the United States of America to them paid by the City
10 of Atlantic City a Municipal Corporation of the State of New Jersey, have dedicated and by these presents do dedicate for public highway use forever a certain strip of land and premises SITUATE in the City of Atlantic City, County of Atlantic State of New Jersey, described as follows the same to be known as Maine Avenue: BEGINNING in the Northerly line of Atlantic Avenue at a point distant Four Hundred (400') feet East from the North East
20 Corner of Atlantic and New Hampshire Avenues thence extending (1) Northwardly parallel with New Hampshire Avenue Ten Hundred and eighty-five (1085) feet to the Southerly line of Madison Avenue, thence (2) Eastwardly along said line of Madison Avenue One Hundred (100) feet, thence (3) Southwardly parallel with New Hampshire Avenue Ten Hundred and Eighty-five (1085) feet to the North line of Atlantic Avenue, thence (4) Westwardly along said line of Atlantic Avenue One Hundred (100) feet to the place of beginning.

30 In witness whereof, the said Benjamin R. Fox and Walter B. Dick have hereunto set their hands and seals, the day of A. D. 1920.

(SEAL)

(SEAL)

Sealed and Delivered
in the presence of

EXHIBIT D5. 5-17-23 L.

KNOW ALL MEN BY THESE PRESENTS that BENJAMIN R. FOX COMPANY, a corporation of the State of New Jersey, and WALTER B. DICK of the City of Atlantic City in the County of Atlantic and State of New Jersey, for and in consideration of the sum of One Dollar lawful money of the United States of America to them paid by the CITY OF ATLANTIC CITY, a municipal corporation of the State of New Jersey, have dedicated and by these presents do dedicate to public highway use forever, a certain strip of land and premises situate in the City of Atlantic City in the County of Atlantic and State of New Jersey, described as follows; the same to be known as Maine Avenue: 10

BEGINNING in the Northerly line of Atlantic Avenue at a point distant Four Hundred feet Eastwardly from the Northeast corner of Atlantic and New Hampshire Avenues; thence extending (1) Northwardly parallel with New Hampshire Avenue One Thousand and eighty-five feet to the Southerly line of Madison Avenue; (2) Eastwardly along said line of Madison Avenue One Hundred feet; (3) Southwardly parallel with New Hampshire Avenue One Thousand and eighty-five feet to the Northerly line of Atlantic Avenue; (4) Westwardly along said line of Atlantic Avenue, One Hundred feet to the place of beginning. 20

IN WITNESS WHEREOF the said Benjamin R. Fox Company has caused its corporate seal to be hereunto affixed and these presents to be signed by its President and attested by its Secretary; and the said Walter B. Dick has hereunto set his hand and seal this day of 30

in the year of our Lord one thousand nine hundred and twenty.

Signed, sealed and delivered

in the presence of

_____(L. S.)

EXHIBIT D6. 5-17-23 L.

10

KNOW ALL MEN BY THESE PRESENTS that BENJAMIN R. FOX COMPANY, a corporation of the State of New Jersey, for and in consideration of the sum of One Dollar lawful money of the United States of America to it paid by the CITY OF ATLANTIC CITY, a municipal corporation of the State of New Jersey, has dedicated and by these presents does dedicate to public highway use forever, a certain strip of land and premises situate in the City of Atlantic City in the County of Atlantic and State of New Jersey, described as follows; the same to be known as Maine Avenue:

20

Beginning in the Southerly line of Madison Avenue (formerly Baltic Avenue) at a point distant Four hundred feet Eastwardly at right angles from New Hampshire Avenue; thence extending (1) Southwardly parallel with New Hampshire Avenue, Four hundred and seventy five feet to the Northerly line of Grammercy Place (formerly Arctic Avenue); (2) Eastwardly along said line of Grammercy Place, One Hundred feet; (3) Northwardly parallel with the first course Four hundred and seventy five feet to the Southerly line of Madison Avenue; (4) Westwardly along said line of Madison Avenue, One Hundred feet to the place of beginning.

30

IN WITNESS WHEREOF the said Benjamin R. Fox Company has caused its corporate seal to be

hereunto affixed and these presents to be signed by
its President and attested by its Sec-
retary, this day of in the year of
our Lord, one thousand nine hundred and twenty
one.

Signed, sealed and delivered
in the presence of

EXHIBIT D7.

10

Deed: Benjamin R. Fox to Benjamin R. Fox Co.,
dated July 1, 1920.

Consideration: \$279,600.00.

Description: Beginning at the Northwesterly
corner of Grammercy Place and Maine Avenue
(Grammercy Place being seventy feet wide) and
extending thence (1) Northwardly, along the west-
erly line of Maine Avenue, ninety-five feet; thence 20
(2) Westwardly, parallel with Grammercy Place,
ninety feet; thence (3) Southwardly, parallel with
Maine Avenue, ninety-five feet to the Northerly line
of Grammercy Place; thence (4) Eastwardly, along
the same, ninety feet to the place of beginning.

Tract 2. Beginning in the North line of Arctic
Avenue (sixty feet wide) at a point distant four
hundred feet Eastwardly from the Easterly line of
New Hampshire Avenue, thence extending North-
wardly parallel to New Hampshire Avenue, one hun- 30
dred feet, thence Westwardly parallel with Arctic
Avenue two hundred ninety-seven and six-tenths
feet to the East line of a right of way of the
West Jersey and Seashore Railroad, thence North-
wardly along said right of way on a line curving to
the left with a radius of nineteen hundred forty feet,
four hundred thirty-three and seventy-one one hun-

dredths feet to the South line of Baltic Avenue, at a point three hundred eighteen and forty-eight one-hundredths feet Eastwardly from the Easterly line of New Hampshire Avenue, thence Eastwardly along said line of Baltic Avenue three hundred forty-two feet more or less, to the high water line of Absecon Inlet, thence Southwardly along the high water line of Absecon Inlet the several courses thereof four hundred seventy-five feet more or less
10 to the North line of Arctic Avenue, thence Westwardly along said line of Arctic Avenue two hundred seventy-four feet more or less to the place of beginning.

AND ALSO, All that certain parcel of land flowed by tide water lying at Atlantic City aforesaid and described as follows, to wit: Beginning at a point in the high water line of the Westerly shore of Absecon Inlet where the same is intersected by the Northerly line of Arctic Avenue extended
20 extended Eastwardly to the said high water line, said point being distant ninety-four feet Eastwardly from the Westerly line of Maine Avenue extended; thence Eastwardly along the Northerly line of Arctic Avenue extended, nine hundred ninety-seven and seventy-six one-hundredths feet to the exterior line established by the Commissioners appointed under the authority of the act entitled "An act to ascertain the rights of the State and of Riparian owners in the lands lying under the waters of the Bay of
30 New York and elsewhere in this State" approved April 11, 1864, and the supplements thereto, thence Northwardly along said exterior line curving to the left on a radius of four thousand feet, four hundred seventy-eight and twenty-two one hundredths feet to a point in line with the Southerly line of Baltic Avenue, thence Westwardly in line with the Southerly line of Baltic Avenue extended nine hun-

dred, ninety-one and twenty-four one-hundredths feet to the high water line of the Westerly shore of Absecon Inlet at a point distant two hundred thirty-five feet Eastwardly from the Easterly line of the right of way of the West Jersey and Seashore Railroad, thence Southwardly along said high water line to the place of beginning.

ALSO BEGINNING at a point in the Westerly line of Maine Avenue distant one hundred and fifty feet Northwardly from the Northerly line of Atlantic Avenue and runs thence (1) Northwardly 10 in and along the Westerly line of Maine Avenue, two hundred feet; thence (2) Westwardly parallel with Atlantic Avenue, one hundred and seventy-five feet; thence (3) Southwardly parallel with Maine Avenue two hundred feet; thence (4) Eastwardly parallel with Atlantic Avenue, one hundred and seventy-five feet to a point in the Westerly line of Maine Avenue and the place of beginning.

BEGINNING at a point in the high water line of Absecon Inlet distant one hundred and fifty feet 20 Northwardly at right angles from the Northerly line of Atlantic Avenue and from thence (1) Eastwardly parallel with Atlantic Avenue, extended 1033.96 feet to the exterior line established by the Commissioners appointed under the authority of the act entitled "An act to ascertain the rights of the State and of Riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State" approved April 11, A. D. 1864 and the 30 supplements thereto;" thence (2) Northwardly along said exterior line, curving to the west on a radius of four thousand feet, two hundred and seven and twelve hundredths feet; thence (3) Westwardly parallel with Atlantic Avenue and distant three hundred and fifty feet Northwardly at right angles from the Northerly side of the same 1087.84 feet

to the high water line of Absecon Inlet as shown on the map annexed to the original grant to the W. G. Bartlett Company; thence (4) Southwardly along said high water line to the place of beginning. Recorded in the Clerk's office of Atlantic County in Deed Book #641, page 57 etc.

ADMITTED BUT NOT MARKED.

Deed Moebs Apartment Co. to City of Atlantic City, dated October 6, 1920.

10 Consideration: \$1500.00.

Description: Beginning at the northeasterly corner of Atlantic and Maine Avenues, said Maine Avenue being considered fifty feet wide; thence extending (1) northwardly, along said line of Maine Avenue the same being parallel with New Hampshire Avenue and distant four hundred and fifty feet eastwardly at right angles therefrom, one hundred feet; (2) Eastwardly, parallel with Atlantic Avenue to the High Water Line of Absecon Inlet; (3) southwardly, along said high water line of Absecon Inlet the several courses and distances thereof to the northerly line of Atlantic Avenue; (4) Westwardly, along said line of Atlantic Avenue to the place of beginning.

Also an undivided one-half interest of, in and to the Riparian lands lying in front of the above described premises bounded on the south by the extended line of Atlantic Avenue; on the north by a line parallel thereto and distant one hundred feet northwardly at right angles therefrom; on the west by the High Water Line of Absecon Inlet; on the east by the Riparian Commissioners Exterior line in Absecon Inlet:

Recorded in the Clerk's Office of Atlantic County in Deed Book No. 643, page 287, etc.

ADMITTED BUT NOT MARKED.

Deed: Absecon Land Co. to City of Atlantic City,

dated August 23, 1920.

Consideration: \$1499.00.

Description: Beginning in the easterly line of Maine Avenue, considered fifty feet wide at a point distant two hundred feet northwardly at right angles from Atlantic Avenue; thence extending (1) northwardly, along said line of Maine Avenue the same being parallel with New Hampshire Avenue and distant four hundred and fifty feet eastwardly, at right angles therefrom, fifty feet; (2) eastwardly, 10 parallel with Atlantic Avenue to the high water line of Absecon Inlet; (3) southwardly, along said High Water Line of Absecon Inlet the several courses and distances thereof to a point distant two hundred feet northwardly, at right angles from Atlantic Avenue; (4) westwardly, parallel with Atlantic Avenue to the place of beginning.

Recorded in the Clerk's Office of Atlantic County in Deed Book No. 639, page 258 etc.

20

EXHIBIT D8.

Deed: Henry E. Stevens, Jr., et ux to City of Atlantic City, Dated: Nov. 11, 1920.

Consideration: \$4499.00.

Description: Parcel 1. Beginning in the Easterly line of Maine Avenue considered fifty feet wide at a point distant one hundred and fifty feet Northwardly at right angles from Atlantic Avenue; thence 30 extending (1) Northwardly along said line of Maine Avenue, the same being parallel with New Hampshire Avenue and distant Four hundred and fifty feet Eastwardly at right angles therefrom, fifty feet; (2) Eastwardly parallel with Atlantic Avenue to the High Water Line of Absecon Inlet; (3) South-

wardly along said high water line of Absecon Inlet the several courses and distances thereof to a point distant one hundred and fifty feet Northwardly at right angles from Atlantic Avenue; (4) Westwardly parallel with Atlantic Avenue to the place of beginning.

- Parcel II. Beginning in the Easterly line of Maine Avenue considered fifty feet wide at a point distant two hundred and fifty feet Northwardly at right angles from Atlantic Avenue; thence extending (1) Northwardly along said line of Maine Avenue the same being parallel with New Hampshire Avenue and distant four hundred and fifty feet Eastwardly at right angles therefrom, one hundred feet; (2) Eastwardly parallel with Atlantic Avenue to the High Water Line of Absecon Inlet; (3) Southwardly along said High Water Line of Absecon Inlet the several courses and distances thereof to a point distant two hundred and fifty feet Northwardly at right angles from Atlantic Avenue; (4) Westwardly parallel with Atlantic Avenue to the place of beginning.

Recorded in the Clerk's Office of Atlantic County in Deed Book 642, page 252, etc.

EXHIBIT D9.

- 30 Deed: James S. Aber et ux to City of Atlantic City.
Dated: July 18, 1921.
Consideration: \$23,900.
Description: Beginning in the southerly line of Grammercy Place (formerly Arctic Avenue) sixty feet wide as said Arctic Avenue was originally laid out, at a point distant fifty (50) feet Eastwardly at right angles from the westerly line of Maine

Avenue; thence extending (1) southwardly along the Easterly line of Maine Avenue, fifty feet wide as originally laid out, two hundred (200) feet; (2) Eastwardly parallel with Grammercy Place forty six and eighty nine hundredths (46.89) feet to the interior inland line of the public park or place for public resort and recreation along the beach or ocean front of Atlantic City as fixed and established by City ordinance approved October 13, 1899, and the amendment or amendments thereto; (3) 10 Northwardly along said interior or inland line of said public park established as aforesaid, deflecting Five degrees, twenty minutes, fifty seven and one-half seconds Eastwardly from a line parallel with Maine Avenue, thirty-three and thirty-two hundredths (33.32) feet to a point distant Fifty feet Eastwardly at right angles from the first course herein; (4) Northwardly parallel with the first course herein one hundred sixty six and eighty three hundredths (166.83) feet to the southerly line of 20 Grammercy Place; (5) Westwardly along said line of Grammercy Place fifty (50) feet to the place of beginning.

Recorded in the Clerk's Office of Atlantic County in Deed Book 660, page 26, etc.

ADMITTED BUT NOT MARKED.

Deed: Benjamin R. Fox Co. to the City of Atlantic City, dated June 2, 1921.

Consideration: \$1.00.

Description: All its right, title and interest of, in and to the lands flowed by the tide waters of Absecon Inlet situate in the City of Atlantic City, in the County of Atlantic and State of New Jersey, bounded on the west by the westerly line of Maine Avenue, on the east by the Riparian Commissioners Exterior line in Absecon Inlet; on the south by a line parallel with Atlantic Avenue and distant one 30

hundred and fifty feet northwardly at right angles therefrom; and on the north by a line parallel with Atlantic Avenue and distant three hundred and fifty feet northwardly at right angles therefrom.

Also all its right, title and interest of, in and to the lands flowed by the tide waters of Absecon Inlet situate in the city, county and State aforesaid, bounded on the west by the high water line of Absecon Inlet as the same existed in July 1900; on the
10 east by the Riparian Commissioners Exterior line in Absecon Inlet; on the south by a line parallel with Atlantic Avenue and distant three hundred and fifty feet northwardly at right angles therefrom; and on the north by the southerly line of Grammercy Place. Subject however to the following conditions and restrictions:

FIRST: The portions of said above described premises situate within the bounds of the public park or place for public resort and recreation along
20 the beach or ocean front of Atlantic City as fixed and established by City Ordinance passed October 9, 1899 and approved October 13, 1899, shall be used as a public park or place for public resort and recreation in accordance with the provisions of said ordinance.

SECOND: The portions of the above described premises outside of the bounds of the public park above mentioned, but within the bounds of Maine Avenue considered one hundred feet wide (as widened by City ordinance passed April 29, 1920, and
30 approved May 6, 1920) shall be used for public highway purposes; and if and whenever the interior or inland line of said public park and the elevated boardwalk now located along said interior or inland line are moved by authority of City ordinance further to the eastward, the said Maine Avenue shall be opened to public highway use for the full width

of one hundred feet in conformity with the ordinance widening Maine Avenue above recited.

THIRD: Any portions of the above described premises lying between the easterly line of Maine Avenue considered one hundred feet wide and the interior or inland line of said public park or place for public resort and recreation as now established or as the same may be hereafter established, shall be used for general park purposes with the restriction that no building shall be erected thereon. 10
Recorded in Clerk's Office of Atlantic County in Deed Book No. 656, page 261, etc.

EXHIBIT D10.

Hon. Louis N. Steinbricker,
Director of Streets & Highways,
Atlantic City, N. J.

20

Dear Sir:

I feel we have reached the time when there should be some settlement of the question of Maine Avenue. In going over this matter in my mind I thought if I would state in writing just what we had agreed to do and what we thought the City was going to do for us, we might reach a point where we could come to some satisfactory agreement.

We agreed to deed to the City of Atlantic City all our right, title and interest in that piece of ground on the East side of Maine Avenue at Grammercy Place, extending 200 feet south on Maine Avenue; 30

Also a strip of land 400 feet by 25 feet on the East side of St. Catherine's Place, South from Grammercy Place;

Also a strip of land extending the entire block 475

feet long, 50 feet wide between Madison Avenue and Grammercy Place, East side of Maine Avenue 50 feet wide, making Maine Avenue 100 feet wide, its entire length.

We were to receive, "work to start immediately" a 100 foot wide Maine Avenue with gravel surface; St. Catherine Place 75 feet wide, paved with asphalt.

This we were to get without any assessment or
10 without any cost to us.

When the work did not start on Maine Avenue as agreed, I was informed that there were many entanglements which the City Solicitor and Asst. City Solicitor were cleaning up as fast as possible.

Our buildings were now nearing completion and in order to rent, we had to have a street to front them on. I was now informed that Maine Avenue had not been included in the program for paving that year. St. Catherine Place has been included
20 and would be paved.

It was then arranged that I should grade and surface the block from Madison to Grammercy, with the understanding that I would be reimbursed for the money spent on this work, the City to finish the block between Atlantic Avenue and Grammercy at the same time.

I finished my block and there had been no work done on the part of the City, and I had to continue in the block to Atlantic Avenue. There was a fill
30 of from 6 to 9 feet, and I urged the City to get their bulkhead in, as if we had a storm it would take it all out, which really did happen.

The City then did put up a light bulkhead, using some old boardwalk material and did help to fill, having their trash and ash-carts one or two days a week dump their collection that was nearby.

I built three jetties 150 feet each on the outside

of this bulkhead and made sand 5 to 7 feet deep almost the entire length, otherwise the bulkhead would not have stayed there.

We now reach the time when we were annoyed by this aviator Sebering. He had unloaded several loads of piling and lumber and was preparing to build a landing stage. I informed City Engineer Hackney, who was preparing a deed from us to the City for this ground, that before we made the transfer we had better clear this fellow off. He stated 10 that inasmuch as the city would have title in a few days, to save ourselves the trouble as the City would not permit him to fly on City property. I consulted our attorney, Mr. Schimpf, and he instructed me to sign the deed transferring the property to the City. Sebering continued to build this landing stage, although I was assured by different City officials that there would be no flying from there. Mr. Kirk Loveland assured me that they could get a permit to open the Boardwalk only through his department, 20 and it would not be given.

I was humiliated as I had repeatedly stated to inquiring tenants that there would be no flying from this point.

There was then a fence erected right down the center of Maine Avenue, and City Solicitor Frank Sooy informed me that the city had no authority. The only practical way to get rid of this fence was to agree to let the flyers have the beach this year, and they would clear them off next year. This riled 30 me to such an extent that I put a fence down the middle of the street in the next block, although Mr. Sooy stated to me the City had no authority to take down the fence erected in the block between Grammercy and Atlantic Avenues where the street was never designated at anything but 100 feet wide street. They, the City, had all the authority neces-

sary to order and remove a fence erected by me on a street that there is a United States court decision designating the width of 50 feet. This, I think, explains our understanding with the City and also our grievance.

If there is any further information you might want on this subject, I would be pleased to hear from you.

Respectfully yours,

Benj. R. Fox.

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February 27th, 1922.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

BENJAMIN R. FOX COMPANY,
Plaintiff-Respondent,

v.

CITY OF ATLANTIC CITY,
Defendant-Appellant.

ON APPEAL.

BRIEF OF RESPONDENT.

STATEMENT.

The matter in the above-stated cause was a suit of ejectment brought by respondent against appellant to recover possession of a strip of land fifty (50) feet in width and four hundred (400) feet in length, lying on the easterly side of and adjacent to Maine Avenue, between Grammercy Place and Madison Avenue.

The appellant offered in evidence an ordinance of Atlantic City for the widening of Maine Avenue from fifty (50) feet to one hundred (100) feet.

The real controversy arose over the alleged fail-

ure upon the part of Atlantic City to keep and perform an agreement it had made with the Benjamin R. Fox Company, concerning the land in question.

The testimony of Mr. Fox was that respondent was the owner of the land in question, also of certain lands between Atlantic Avenue and Grammercy Place, lying on the easterly side of Maine Avenue, and also of a tract of land lying on the westerly side of Maine Avenue, between Atlantic Avenue and Grammercy Place. Appellant was desirous of widening Maine Avenue. Respondent had recently built two large apartment houses on the westerly side of Maine Avenue, between Atlantic Avenue and Grammercy Place, and had in course of construction two apartment houses on the westerly side of Maine Avenue, between Grammercy Place and Madison Avenue, and was desirous of having a certain alley (St. Catherine's Place), running in the rear of the apartment houses built on the westerly side of Maine Avenue, between Atlantic Avenue and Grammercy Place, widened ~~to a~~ twenty-five (25) foot street, and was likewise desirous of having Maine Avenue improved and curbed, so as to aid in the sale or rental of his said apartment houses.

The claim of the respondent was that he entered into a verbal agreement with certain of the commissioners and engineer of Atlantic City, when not in session, wherein appellant agreed that if respondent would dedicate nineteen (19) feet of land adjoining St. Catherine's Place for street purposes, and would dedicate its right in the land lying easterly of the then Maine Avenue, and between Atlantic Avenue and Grammercy Place; and would dedicate a fifty (50) foot strip adjoining the easterly line of Maine Avenue, between Grammercy Place and Madison Avenue, to wit, the land in question, that appellant

would pave St. Catherine's Place with a hard pavement, and would pave Maine Avenue from Atlantic Avenue to Madison Avenue with a gravel surface, its full width; that the respondent agreed to dedicate upon the conditions aforesaid, and thereupon set over to appellant the nineteen (19) feet along St. Catherine's Place by deed, and Atlantic City paved it according to the verbal agreement, above mentioned; and later conveyed it by deed to the city; that respondent later conveyed to Atlantic City all its rights, lying easterly of the easterly line of Maine Avenue, between Atlantic Avenue and Grammercy Place, but appellant neglected and failed to pave Maine Avenue; that respondent's houses were nearing completion, and it was of great importance that the paving should be done, and that at a further conference with the commissioner of streets and engineer of appellant, respondent was asked to pave said street, and said appellant would raise the money and reimburse respondent for the outlay, stating that the city had not the money in hand, and would have to raise it, which would take considerable time; respondent assented, and paved Maine Avenue its full width from Atlantic Avenue to Madison Avenue, at a very great cost, and after expending this money, the city refused to reimburse him for his outlay, whereupon respondent erected a fence around the land owned by him, above mentioned, and not conveyed to the city, to wit, the fifty (50) foot strip on the easterly side of Maine Avenue, extending from Grammercy Place to Madison Avenue, which fence appellant tore down and carried away, and thereupon claimed that respondent by paving said street had dedicated it to public use, claiming right to possession thereof, whereupon respondent brought his suit of ejectment to recover possession of his said land.

LAW.

The *First Reason* assigned for the reversal of the judgment is that the Court erred in refusing to direct a verdict in favor of the appellant.

The evidence showed the legal title of the property in the respondent. Appellant showed that Fox had graded and graveled the street, and that the public, while this work was being done, and for less than a month thereafter, had used it as part of Maine Avenue (p. 22, l. 1); that Fox had erected a fence around the tract of land in question, which fence the city had torn down, and from that time on, the land had been subjected to public use by persons using Maine Avenue (p. 21, l. 11); that the city had made an assessment against respondent for the paving of St. Catherine's Place.

The testimony of respondent was that respondent, at the request of appellant, had agreed to convey land along St. Catherine's Place to appellant; had agreed to convey all its interest in the land lying easterly of Maine Avenue, between Atlantic Avenue and Grammercy Place, to appellant, and had agreed to convey the fifty (50) foot strip of land in question, lying on the easterly side of Maine Avenue, and adjacent thereto, between Grammercy Place and Madison Avenue, to the city, upon condition that the city would pave St. Catherine's Place without expense to respondent, and would improve Maine Avenue with gravel street and curbing from Atlantic Avenue to Madison Avenue; that respondent accepted that agreement, and conveyed the land along St. Catherine's Place to Atlantic City; that afterwards respondent conveyed its interest in the land on the easterly side of Maine Avenue, between At-

lantic Avenue and Grammercy Place, to the city (p. 88, l. 28); that appellant neglected to improve Maine Avenue (p. 143, l. 26), which was important to respondent in aiding the sale and rental of his properties; that he requested appellant to perform its part of the agreement, to wit, the improvement of Maine Avenue; that he was told by the street ^{commissioner} ~~super-~~visor and engineer that appellant had not the moneys in hand with which to do the work, and promised that appellant would reimburse him for the cost of the improving of the street, if he at his own expense would improve it; that relying upon that promise, he improved the street by grading, graveling and curbing it, at a very great cost to him (p. 146, ll. 2-8); that after having gone thus far, respondent learned that Atlantic City had assessed benefits against his property for the paving of St. Catherine's Place (p. 150a, l. 30), and upon request for payment of the money to reimburse him for the moneys expended by him in improving Maine Avenue, he was not only refused, but was told that the city was not obligated to make payment, because the agreement had not been made by commissioners when in session (p. 166, l. 18). The land in question being then in possession of appellant, in that appellant had by its strong hand torn down the fence and thrown it open to public use, claiming that respondent had dedicated the lands to the city, which was denied by respondent, respondent instituted this ejectment suit.

The question then was whether or not Fox Company had dedicated the land to public use. Fox had stated that he never intended to dedicate, except upon condition that the city would perform its said agreement (p. 173, l. 22). The question being a question of dedication, the intention of respondent

in improving the street was the gist of the matter. There was testimony from which appellant claimed that he did intend to dedicate, and testimony from which respondent claimed that he did not intend to dedicate, except on the conditions above mentioned, which conditions had not been fulfilled. Therefore, the question before the Court being one of intention, and there being testimony on both sides, it was a question of fact for the jury, and the refusal to direct a verdict was proper.

p 7-14-84-192-146-

The *Second Reason* assigned was because the Court permitted Mr. Schimpf to answer the following question (p. 120, l. 8):

“Q. At the time you approved the deed from Mr. Fox to Atlantic City for the land lying on the outside of Maine Avenue, that is a fifty foot wide street, Maine Avenue between Grammercy Place and Atlantic Avenue, did you know there was to be an assessment against the land for benefits?”

This question is found on page 120, and it had then appeared in evidence from the appellant's case that the appellant had caused benefits to be assessed against respondent's lands for street improvements made on St. Catherine's Place (p. , l.) it being the contention of the respondent that there was but a single transaction between these parties, which included the widening and paving of St. Catherine's Place, and the improving of Maine Avenue, from Atlantic Avenue to Madison. The testimony had also shown that Mr. Schimpf was acting for and with the respondent throughout this transaction, and to meet their pretended claim that appellant's intention to dedicate without condition was evidenced

by the fact that the city had made assessment for benefits against its land for a part of the improvements which were included within the negotiations, and that thereafter he voluntarily executed a deed for other lands, a part of the same transaction, rendered this question pertinent and relevant, and it was so considered by the trial Court (p. 120, l. 25), and in its admission, it is respectfully submitted that there was no error.

The *Third Reason* was because Mr. Schimpf was permitted to answer the following question (p. 123, l. 9):

“Q. Now the deed also provides that the land not within the bounds of Maine Avenue, considering it a hundred feet wide, should be used for public park purposes. Was any part of that land used for other than public park purposes?”

It was testified by respondent's witnesses that this was a conditional dedication, and this question was offered for the purpose of showing that Atlantic City had not observed these conditions. It was answered on page 126, line 15: “A. It was.” This question and answer, however, to which objection was made, though relevant, was wholly immaterial, because on page 122, the same question had been asked and answered before any objection whatever was interposed to it (p. 122, l. 3).

The *Fourth Reason* was because the Court refused to strike out the answer to the following question (p. 128, l. 24):

“Q. Was it ever brought before the commissioners at a stated meeting of the council, session of the council?”

A. I can't remember, it was brought to the attention of one or more city officials repeatedly, whether they ever were all together when I saw them I don't remember."

That the question was relevant, there can be no doubt, and that the first part of the answer was responsive is likewise removed from doubt. The question and answer then would be:

"Q. Was it ever brought before the commissioners at a stated meeting of the council, session of the council?

A. I can't remember."

We contend that the remaining portion of said answer should not have been stricken out as not responsive, to wit:

"It was brought to the attention of one or more city officials repeatedly, whether they ever were all together when I saw them I don't remember,"

but, if it should have been stricken out, the refusal of appellant's motion was correct, because it was directed to the whole answer, a part of which was responsive and relevant, and, therefore, the Judge was right in refusing to strike the whole answer, and there was no motion made to strike the latter part of it only.

The *Fifth Reason*, to wit, that the witness Schimpf was permitted to answer the following question over appellant's objection:

"Q. What was said at the conference between Mr. White, Mr. Hackney and yourself about the improving of those streets?"

I do not find that Mr. Schimpf was asked any such

question, but if he had been asked such a question, it was relevant and admissible to the issue. Appellant was claiming to be rightfully in possession of respondent's land, and as a matter of law, appellant could not claim to be the rightful possessor of it, and at the same time exclude negotiations between its agent and respondent which led up to appellant's right, if any such right it had.

The *Sixth Reason* was because the Court permitted witness Fox to answer, over objection of appellant, the following question (p. 183, l. 1):

“Q. Did you know at that time that if there was no motion, no ordinance or no resolution passed by these men in session that you could not get the money?”

The testimony of Hackney (p. 14, l. 1) shows that this question of paving Maine Avenue was discussed by Hackney, Steinbricker and Fox. Their contention was that Fox was to do the street improvement at his own expense, and dedicate the land, after the street was improved, to the city. Respondent's contention was that it was to dedicate the land, and the city was to make the improvement, and that when the city had not the money with which to make the improvement, he made them, upon the promise of the commissioner of streets and engineer that appellant would reimburse respondent (p. , l.). Appellant's attorney contended that inasmuch as there was no motion or resolution of the commissioners passed touching the matter, that the city was not obliged to perform. The question was asked for the purpose of excluding from the jury's mind a conclusion that inasmuch as there could be no recovery against the city on the promise

made by the commissioner and the city engineer, when the commissioner was not in session, that therefore Fox, knowing that fact, must have intended to dedicate the land after improving it, and for the purpose of rebutting the inference that appellant had drawn from the testimony submitted, this question was relevant and admissible.

THEO. W. SCHIMPF,
GEO. A. BOURGEOIS,
*Attorneys for Plaintiff-
Respondent.*

AVE.

MADISON

AVE.

400'± N.H. Ave

100'±
50'±
50'±

Map of Maine

Atlantic City, N.J.

made May 1923

by J.H. Williams & Co., Engineers
Cedar Rapids, Iowa

W.L. Supreme Court

By J.H. Williams & Co., Engineers

City of

Atlantic City

Expenditure

Locus
in
quo

47.5'

MAINE

BOARDWALK

GRAMMERCY PLACE

AVE.

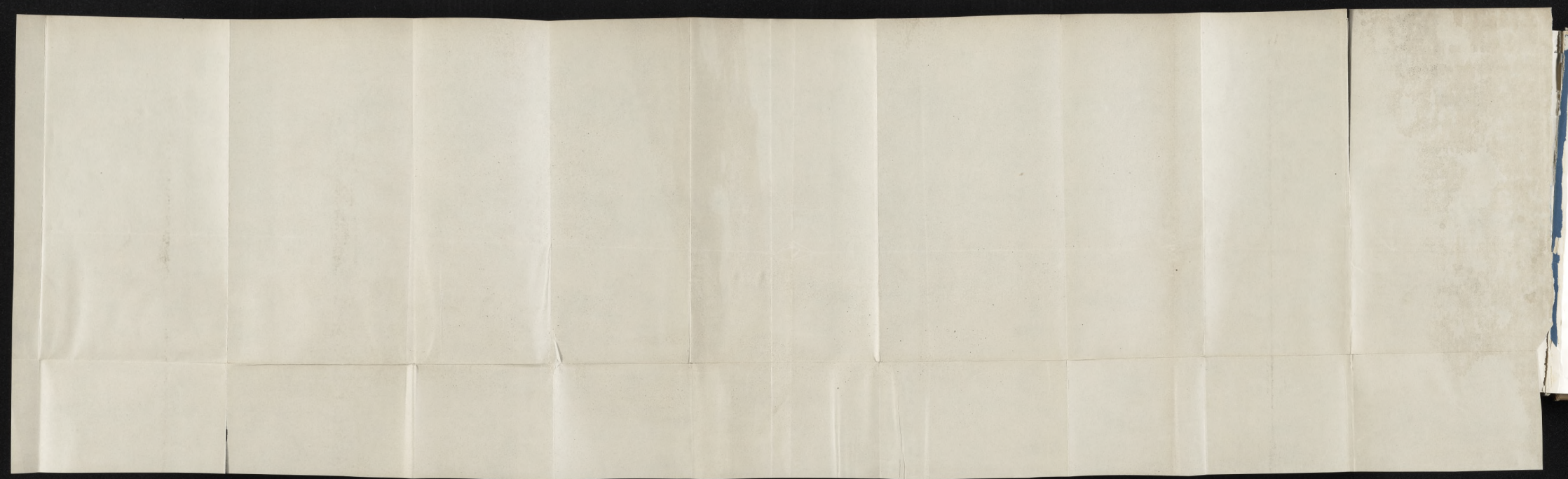
MAINE

ATLANTIC AVE

Map of Maine
by J.H. Williams & Co., Engineers
Cedar Rapids, Iowa

Atlantic City, N.J.
made May 1923
by J.H. Williams & Co., Engineers
Cedar Rapids, Iowa

Atlantic City, N.J.
made May 1923
by J.H. Williams & Co., Engineers
Cedar Rapids, Iowa



NEW JERSEY COURT OF ERRORS AND APPEALS

BENJAMIN R. FOX COMPANY, <i>Plaintiff-Respondent.</i>	} Appeal from Supreme Court.
vs.	
CITY OF ATLANTIC CITY, <i>Defendant-Appellant.</i>	

BRIEF OF DEFENDANT-APPELLANT.

1. The plaintiff instituted suit in ejectment against the defendant in the Supreme Court demanding possession of the land, containing one Acre, more or less, bounded on the North by what was formerly called Baltic Avenue, (now called Madison Avenue), on the South by Grammercy Place, on the West by line 50 feet Eastwardly from the Westerly line of Maine Avenue, and on the East by other lands belonging to the plaintiff.

2. As the situation stood at the time of the filing of the complaint, the land in question was in the possession of the City, being used by the general public for street purposes and constituted the Easterly half of Maine Avenue, between Madison Avenue and Grammercy Place.

3. At the trial, there was no dispute that the Benjamin R. Fox Company had title to the land in question, but the defendant claimed that the Benjamin R. Fox Company and its predecessors in title had dedicated the land in question to the city for street purposes.

4. It was not claimed that the dedication was by deed or other conveyance, but that it had been dedicated by the acts and statements of the plaintiff and its predecessors in title.

5. It was admitted by both sides that Benjamin R. Fox was the original owner of the lands in question, and that the plaintiff had acquired its title by virtue of a conveyance from Benjamin R. Fox to Benjamin R. Fox Company. Exhibit D-7, "C" 233.

6. It was also admitted that at the time Fox acquired title, he became the owner of all the lands lying on both sides of Maine Avenue, between Madison Avenue and Grammercy Place, and that prior to the time when he conveyed to the Benjamin R. Fox Company he was the owner of the greater portion of the lands on both sides of Maine Avenue, between Atlantic Avenue and Grammercy Place, so that Fox, prior to his conveyance to the Benjamin R. Fox Company was admittedly the owner of all the land on both sides of Maine Avenue and from Madison Avenue to Grammercy Place and the owner of two-thirds of the land on both sides of Maine Avenue between Atlantic Avenue and Grammercy Place.

7. It was also admitted that at the time Fox took title to the lands lying on both sides of Maine Avenue, between Atlantic Avenue and Madison Avenue, that the land was entirely undeveloped, and consisted of sand dunes "running down to the sea," and that there were no buildings on either side of the street, other than one dwelling on the Westerly side of Maine Avenue, about 150 feet north of Atlantic Avenue.

8. It was also admitted that no improved driveway had then ever been constructed along Maine Avenue, and that the only means of access to Maine Avenue from Atlantic Avenue was a narrow, unimproved entrance from Atlantic Avenue, and along Maine Avenue

to Grammercy Place which was probably never used excepting for the convenience of tradesmen who might be dealing with the occupant of the single dwelling hereinbefore referred to.

9. It was also admitted that Mr. Fox, when he became the owner of the various properties along both sides of Maine Avenue had conceived a building scheme of considerable magnitude, which dealt, however, in the first instance, with the erection of large apartment house buildings, on the Westerly side of Maine Avenue, fronting Maine Avenue, and having a direct view over the Boardwalk, and over the sea, which apartment house buildings backed on St. Katherine's Place.

10. A reading of the testimony will show that Fox, before his apartment house buildings were completed and before Maine Avenue was finally opened and improved, had many interviews with members of the governing body of the City of Atlantic City and the City Engineer, which interviews had to do with Fox's efforts to get the City to improve Maine Avenue, in accordance with the beautification scheme that Fox had, in order that his valuable buildings might become more valuable, by reason of a beautiful neighborhood.

11. At the outset of Fox's endeavors to create a beautiful section of Atlantic City, and thereby enhance the rental value of his apartments, he was met by a decree of the U. S. Circuit Court for the District of New Jersey. Exhibit P-1, "C" 208.

12. This decree had established the width of Maine Avenue between Madison (Baltic) Avenue and Grammercy Place as 50 feet, and while there had been no litigation with reference to the width of Maine Avenue between Grammercy Place and Atlantic Avenue, yet both Fox and the governing body of Atlantic City, as well as the City Engineer labored under the assump-

tion (and rightly so) that the same decree would be rendered if litigation were instituted, involving the width of Maine Avenue, between the last two mentioned streets, so that it was apparent to both Fox and to the City that in order to widen the Avenue, it would be necessary for the City to acquire the 50-foot strip running from Madison Avenue to Atlantic Avenue.

13. It is not denied that at the outset of the negotiation between Fox and the City, that Fox agreed, either with or without conditions (the City claiming without conditions—Fox claiming with conditions) to dedicate to the City for street purposes so much of his land holdings as would be necessary to secure a street 100 foot wide between Madison Avenue and Atlantic Avenue, and the fact is not disputed that Fox agreed with the City that he would use his efforts to secure a dedication by other land owners for the purpose of procuring the 100 foot wide street.

14. The result of all these negotiations and the desire of Fox to front his properties on a 100 foot wide street was that eventually such a street was created, and was in actual use by the public for a considerable space of time, in fact for about a year, and with the exception of two occasions was continued opened for its entire width for that period of time, and was generally used by the public as a street of a 100 feet wide.

15. When reference is made to a street 100 feet in width, either in the testimony or in this brief, it must be held in mind that the sidewalks were 15 feet in width, making the width of the street between curbs, 70 feet.

16. The City of Atlantic City, as far back as October of 1899 had passed an Ordinance establishing the widths of various streets, and at that time had designated Maine Avenue as a driveway 70 feet; sidewalks,

each 15 feet. Exhibit D-1, "C" 217. This Ordinance was of course passed prior to the time when the U. S. Circuit Court decreed that the street so far as its width between Madison Avenue and Grammercy Place was concerned, was a 50 foot wide street.

17. The first Ordinance passed in order to carry out the request for Fox was passed by the Board of Commissioners of Atlantic City on January 22, 1920, Exhibit D-2, "C" 224, and provided that Maine Avenue, extending from the Southerly line of Atlantic Avenue to Madison Avenue should be improved by grading, paving and curbing the driveways and sidewalks, and with gravel pavement with wood curbing, and also providing that the work should be undertaken as a local improvement, and that an assessment of benefits should be made.

18. The second Ordinance having to do with the improvement of Maine Avenue was passed on April 29, 1920, Exhibit D-3, "C" 227, and provided for the widening of Maine Avenue between Atlantic and Madison Avenues, and for the purchase or condemnation of the necessary lands to accomplish the purposes of the Ordinance, and also provided for assessment of benefits.

19. It will be disclosed by the testimony that Fox himself and not the City did all the work of grading, filling, gravelling and putting in the curbs and sidewalks between Madison Avenue and Grammercy Place, and that he did most of the filling, grading and gravelling between Atlantic Avenue and Grammercy Place, and that he did all the curbing and sidewalks between the last two named Avenues, and that Atlantic City constructed some bulkhead work between Atlantic Avenue and Grammercy Place, but that Mr. Fox did all of the bulkhead work between Grammercy Place and Madison Avenue.

20. Fox admits and the City does not deny that there were numerous delays between the time of the first negotiations with Fox and the passing of the two Ordinances above mentioned, and the time when the City found itself in position to push forward the work required in order to widen and improve Maine Avenue; Fox became impatient, as he himself admits, and consistently importuned the City to go ahead with the improvement of Maine Avenue; Fox's apartment houses were nearing completion, and he was endeavoring to raise mortgage money, so that he claimed to be, and evidently was, embarrassed, and very desirous that the work proceed to completion; he had had on the ground appraisers fixing the value of the property and thought that the 100 foot wide street would enhance the appraised value.

21. Fox claims that all the work done by him in and about the widening of Maine Avenue, the paving thereof and the putting in of the sidewalks and curbs, as well as the bulkhead work done by him, was done under a promise made by the members of the governing body of the City of Atlantic City that he would be reimbursed for his work and expenses. The City contended that this was not the situation, but that it had been explained to Fox that there were several reasons for delay, among others being that the City was not the owner of all the lands in question, and therefore had no right to proceed so that the City advised Fox that he proceed himself, as the actual cost of the work would not exceed by very much the amount that would be assessed against Fox if the City did the work.

22. It seems to the defendant that it makes no difference whether Fox is right in his contention that he was to be reimbursed, or the City right in its contention that he was not to be reimbursed, but that such a condition leads to the conclusion that if Fox is right,

his remedy is not by ejectment, for failure of the City to carry out its agreement and pay him, but by action for damages to recover his costs and expenses; that is to say that would be the remedy providing it clearly appears from the testimony that Fox, realizing on his acceptance of the promise of the City, did in fact open up and dedicate Maine Avenue in so far as he was able to dedicate it by reason of his ownership of the lands in question.

23. The real question, therefore, is: "Was there ever a dedication by Fox, and this point is raised under the first reason for reversal. "C" 205.

"1. Because the Court overruled defendant's motion for a direction of verdict in favor of the defendant and against the plaintiff."

The motion for direction of verdict is found on page 196.

1. That by the plaintiff's own testimony, it clearly appears that Fox dedicated Maine Avenue from Madison Avenue to Atlantic Avenue throughout its entire length to the width of one hundred (100) feet.

2. That having dedicated the lands in question, Fox cannot withdraw the dedication and maintain ejectment.

3. That by plaintiff's own testimony, it clearly appears that if the agreement made by the City Commissioners was actually made, and if it had any binding force on the defendant, that the agreement was

(a) That Fox should open and dedicate Maine Avenue;

(b) That if the street was opened and dedicated, the City was to take it over and maintain it;

(c) That the City was to reimburse Fox for the money expended by him in opening Maine Avenue, or, that the City would levy no assessments for benefits on Fox's other land.

Benjamin R. Fox was the owner of the land in question at the time he claims he had dealings with the City with reference to the improvement of Maine Avenue. The Benjamin R. Fox Company the plaintiff in this suit, is the successor in title under deed from Benjamin R. Fox.

Fox says, (C-142, L. 17) that the substance of the agreement he made with the City was that if he would agree to give the City the strip of land in question, 50 feet wide and 475 feet long, on the outside of Maine Avenue that the City would pave Maine Avenue, 100 feet wide, and "get all the property on the outside of Maine Avenue that was in individual ownership," and at the bottom of the page he says "they were also to bulkhead the proposition," and at (C-143) he says that the work was to be done by the City without any assessment against Fox; that the improvement was to begin at once.

Fox says that the City did not start its work, and that finally (C-144, L. 21) he says: "Mr. Steinbricker suggested that I better get started in and pave Maine Avenue, and they would begin, that they would take and pave the other half from Grammercy Place to Atlantic Avenue, while he was paving from Madison Avenue to Grammercy Place."

At page 145, Fox continuing says: "I was to be reimbursed for the moneys I spent on this paving, they said we have an appropriation," and at line 26, (C-145) he says he was to be paid the entire expense of the proposition, and at the bottom of the page he says: "I built it all (Maine Avenue) 100 feet wide."

On page 146 he says he gravelled it and curbed it, and on page 147 he says, at line 4, the street was finally finished and opened.

On Page 150, line 10, Fox says that if the City had not agreed to improve the street, he would not have made any such arrangement with them as he did make.

On Page 155, Fox says that the street built by him 100 feet wide, including the land in question had been used by the public as a street from the time it was improved up to the time of the suit, with the exception of two intervals when fences were erected in the middle line of the street, either by Fox or by some one else, claiming ownership, and he further says, on the same page, that the work of paving and improving Maine Avenue was completed in November, 1920, and that the public used it at all times and had a right to use it by reason of the fact that he Fox consented; that he knew the public was using it and that he put his fence up because the City did not tear down the fence put up by Mrs. Bradley which enclosed her own land. (C-158, Lines 20, etc.)

On page 150 he says that he withdrew his property from the public use at the time Sebring was permitted to fly on the beach, and at the bottom of the page 159, he says that the public had used the street for a year, and on page 160 he says that the public had used the street from November 1920 to the summer of 1921 when Fox withdrew it.

Fox was asked, page 160, line 9:

Q. You had already turned it over to the use of the public, before you withdrew it, of course?

A. We had.

Q. You couldn't withdraw unless you put in, could you?

A. We withdrew our agreement with the City.

Q. But you had opened up your street, improved it and everything for the benefit of the public and yourself, of course, and of the city, and also allowed the city to use it and the public to use it from November until the following summer, and then it was that you withdrew it?

A. Yes.

Fox testifies and all of his witnesses agree with him that the so-called agreement between Fox and the City was never made by virtue of any resolution or ordinance introduced and passed by the Board of Commissioners of Atlantic City at any public meeting, but that whatever was done that might be construed as being an agreement between the City and Fox was accomplished by conversations with individual members of the Board of Commissioners. (C-165, Line 24, etc. and C-166).

On page 175 Fox was asked:

Q. You admit that you sold your land facing on Maine Avenue as a 100 foot strip?

A. Yes, sir, and got \$100 less than we paid for it.

Q. Then after which you withdrew your land or attempted to withdraw your land from that street, is that right?

A. Yes.

He admits (C-176) that he conveyed to the City land bordering on Maine Avenue with the following reservation in the deed:

"The portions of the above described premises outside of the bounds of the public park above mentioned but within the bounds of Maine Avenue considered one hundred feet as widened by city ordinance passed April 29, 1920, approved May 6, 1920, shall be used for highway purposes."

and at the bottom of 176, he was asked:

Q. Did you attempt to withdraw your lands between Madison and Grammercy before or after the second day of June, 1921?

A. After.

Q. After that?

A. Yes, sir.

Q. In other words, you had conveyed to the City or Atlantic City and referred in that deed to conveyances to Maine Avenue as a one hundred foot street, then afterwards you withdrew fifty feet of that one hundred feet between Madison Avenue and Grammercy, did you?

The answer to the above question is found on page 178 and is "Yes."

Q. At the time you conveyed to the City of Atlantic City, you had not withdrawn any property at all, had you?

A. No.

Q. And you considered Maine Avenue at that time as a hundred foot street, did you not?

A. Yes.

Q. From Madison to Atlantic?

A. Yes.

Q. And you considered up until the time you did withdraw, Maine Avenue was a hundred foot street from Madison to Atlantic, didn't you?

A. Yes.

Page 179.

Q. When you drew the deed to Atlantic City, you considered Maine Avenue a hundred foot street from Grammercy to Atlantic, didn't you?

A. Yes.

Q. After you had conveyed to Atlantic City, you shortened the width of Maine Avenue between Madison and Grammercy by withdrawing fifty feet?

A. Yes.

Q. And that was after you had conveyed to other parties also on Maine Avenue between Grammercy and Madison?

A. No Yes after, that was after, yes.

With reference to the alleged agreement of the City, under which Fox claimed he improved Maine Avenue the following is the testimony?

Q. Now, then, you say that after you had gone ahead or you say at some time after the original agreement that you contend for between the city and yourself, that Mr. Steinbricker, as I remember, said that he would reimburse you for the paving expense?

A. No, I didn't say that.

Q. I mean that the city would?

A. I tried to say that at a meeting we put the question to the body and the mayor spoke for the body. I said, "How am I to get my money back," and the Mayor looking at the body of commissioners said, "We will have to take it from the Boardwalk fund, or some other fund that is large enough to pay you," and he looked over and they all nodded that that was the solution of it.

Q. They all nodded, did they? No one said anything, though?

A. He was the spokesman, no.

Q. No one said anything? Which mayor was that, Bacharach?

A. Mayor Bader.

Q. Now then, that meeting with the mayor as spokesman and the others silently nodded their heads was held when?

A. Now I don't know. It was after they had told me that they hadn't enough to go ahead with Maine Avenue and that, if I would go ahead with half of it they could take part of their appropriation with the Boardwalk and would be enough to finish the other block, but they would not have enough money to finish the two blocks?

Q. Was it after the passage of ordinance twenty-two which was passed April 29, 1920?

A. It was after that, I suppose?

Q. Well, you can't make it any more definite?

A. I can't just place the time, no.

Q. Mr. Fox, you heard the commissioners, Beyer, Kuehnle and Cuthbert and the rest of them testify here today that they had never been present at any meeting when an agreement was made to reimburse you; they were present there nodding their head when the mayor spoke?

A. Yes, they were all there.

Q. Is it your statement now that you did not start any of the work to improve Maine Avenue until after the commissioners had agreed to reimburse you?

A. Yes. Now wait a minute. Start the work? No, I don't believe, then somebody told me to go ahead and do it, then afterwards I put that question up to them at one of the meetings how was I going to get my money back for the work I was doing.

Q. In other words, before they agreed to reimburse you for it, they had told you to go ahead and do it, and you started work and after you had worked awhile you

wondered where you would get your money and they said that?

A. No, this was at one of the meetings and I wanted to find out how I was going to get out.

Q. But they told you they didn't have the money to do it?

A. No, they said they didn't have the money to do it.

Q. When they said they didn't have the money to do it, they say anything about the assessment of benefits?

A. No.

Q. Mr. Steinbricker said he told you it would cost you as much if the city did it as if you did it yourself. That was when Mr. Steinbricker, Mr. Hackney and myself were going over that proposition and he stated it would take the city so long and I was anxious to get it done, why not start the work myself.

Q. And that it would cost you just as much if the city did it as if you did it?

A. No, it would cost more, I guess.

Q. Did he tell you that?

A. No, I don't know whether he said——

Q. Do you remember any such conversation with Mr. Steinbricker?

A. Yes, I recall him making the statement like that, but I thought it was simply conversation.

Q. But he did make the statement?

A. We had an arrangement with the city.

Q. It was after he made that statement you started that work, wasn't it?

A. Possibly it was.

Q. And if Mr. Steinbricker had told you that prior to the time you started your work, that he told you it would cost you just as much if the city did it, and if you did it yourself, prior to the time you started your work, after you started your work, why did you worry about where you were going to get your money from?

A. I would naturally want to know where I was going to get paid for what I was doing, wouldn't I?

Q. Not if you had an original agreement, the city was going to pay you.

A. If we had an original agreement, a written agreement, we wouldn't be here today.

Q. But if you had an arrangement or agreement that the city was going to pay you, why were you worrying? You hadn't completed your work?

A. I wasn't worried, I simply put this question to the body when we were referring, that is how I was concerned about it.

Q. You hadn't had your work yet, you were beginning to worry where you were going to get your money to pay for it, although they promised to you?

A. Yes, I simply put the question to them as we were standing there, the mayor was seated.

Q. Did you take advantage of Mr. Steinbricker, did you tell Mr. Steinbricker that you would insist that the city build the street, that there would be no assessment, and that the improvement would be clear?

A. Never.

By Mr. Bourgeois:

Q. Mr. Fox, Mr. Sooy asked you whether there was ever any motion passed, resolution or ordinance to reimburse you for the work that you did up there and you told him no.

A. At a public meeting.

Q. Did you know at that time that if there was no motion, no ordinance or no resolution passed by these men in session that you could not get the money?

A. No.

Q. Did you know that if there was no motion passed, resolution or ordinance passed at a meeting of the commissioners, public meeting, that you could not get compensation for the land?

A. I did not.

Q. Now, Mr. Sooy says that you considered the street a hundred feet wide at the time you gave deed of dedication to the lower part.

Q. Or had you testified to that? Did you, at that time, consider that Atlantic City would carry out its agreement?

A. I sure did.

Outside of the testimony of Fox himself, showing his acts with reference to the widening of Maine Avenue and its improvement and its dedication by him, there was introduced in evidence letters from Fox, the first being marked "Exhibit P-4," (C-211) in which he says on page 212: "I proposed that if the City would widen Maine Avenue to 100 feet, and would acquire the property on the outside of Maine Avenue necessary to do so, and if the City would bulkhead the property and

build the street, that I would give to the City in consideration of these improvements, a deed to the 200 feet of Maine Avenue south of Grammercy Place, and a deed to the 475 feet between Grammercy Place and Madison Avenue."

He then goes on and says that he did the work of improving Maine Avenue, "for which work the City agreed to reimburse me." He then enumerated the things in which the City had failed to carry out its agreement, (bottom of page 213), and says: "The result of all of this failure, on the part of the City to carry out its plain contract with me was that I withdrew my remaining property from Grammercy Place to Madison Avenue, and have since declined to give the City a deed for the same." On Page 214, he says: "Under these circumstances, I feel that I am entitled to call upon the City, either to reimburse me for the moneys I have expended to make the improvements promised by the City, or else to purchase from me, or the Benjamin R. Fox Company the land 50 feet in width eastwardly of Maine Avenue, from Grammercy Place to Madison Avenue."

In other words, Fox in his testimony as well as in his letters admits that he dedicated Maine Avenue throughout its entire length to a width of 100 feet and alleges that he is entitled to receive from the City the cost of improving Maine Avenue, or that the City should buy the 50 feet by 450 feet which he, Fox, had dedicated.

It is also shown that after Fox dedicated Maine Avenue, he deeded to Harry Potamkin a strip of land bordering on Maine Avenue, and referred to Maine Avenue as a 100 foot street. (See testimony Exhibit P-5, (C-215).

He also conveyed to Harry Fadden land bordering on Maine Avenue as laid out to a 100 foot wide street (Exhibit P-6, C-216).

He also conveyed to the City of Atlantic City by deed dated June 2, 1921, land lying along Maine Avenue and particularly referred to Maine Avenue in said deed as being 100 feet wide, and referred to the width of Maine Avenue as having been widened by a City Ordinance passed April 29, 1920, and approved May 6, 1920. Exhibit D-9, (C-240), under the Caption "FIRST."

It must be remembered that the Ordinance referred to in said deed provided for the widening of Maine Avenue throughout its entire length, so that there can be nothing in the contention of Fox that the reference in the deed merely applied to that portion of the property which immediately adjoined the street as widened.

Fox's letter, Exhibit D-10, (C-241) states that he dedicated Maine Avenue.

It is submitted that there is no testimony in the case on the part of the plaintiff which disputes the fact that there was an absolute dedication. Mr. Schimpf admits that Fox withdrew the remaining portion of his property (the land in question) in the latter part of December, 1921, (C-118) at the bottom and the top of C-119.

Mr. Schimpf also admits that the original proposition between the City and Fox was that Fox would dedicate his lands so that Maine Avenue could be widened to 100 feet, and that Fox did widen the Avenue, and says the work of widening the Avenue was done by Fox under a promise of reimbursement for his expenses and costs of doing the work, and that the land was withdrawn because the City would not reimburse Fox.

The defendant contends and did contend at the trial that a dedication was made and a dedication once made cannot be withdrawn, and that the proper remedy on the part of the plaintiff in this case was a suit to recover his expenses and not a suit in ejectment.

No reference is made to the testimony of defendant's witnesses, which deny the agreement for reimbursement claimed by Fox, because if such an agreement was made the defendant claims the plaintiff must fail in this suit.

The street having been opened was, as has been heretofore shown according to the testimony of Mr. Fox and all of the plaintiff's witnesses, used by the general public and is still being used by the general public as a street, and the City has maintained it by scraping, re-gravelling, sprinkling and lighting. (C-68, L. 10), and Fox up until the institution of this suit has sat quietly by and permitted all this, and the City relying on the dedication by Fox has spent in purchasing lands with which to widen the street, the sum of \$31,500. (C-77) and in addition to that has spent in improving the street, the sum of \$5,700. (C-68) and all of these expenditures were made prior to the time when Fox put his fence up in the middle of the street and disputed the City's right to further use the street for street purposes, and also prior to the time when this suit was instituted.

It is submitted that the Court should have granted defendant's motion for direction of verdict.

Reason No. 2: "Because the Court permitted witness, Schimpf, to answer the following question over the objection of attorney for defendant.

"Q. At the time you approved the deed for Mr. Fox to Atlantic City for the land lying on the outside of Maine Avenue, that is, a fifty foot wide street, Maine

Avenue between Grammercy Place and Atlantic Avenue, did you know there was to be an assessment against the land for benefits?"

The first question propounded is found on page 119, and is followed on page 120 and 121 by the colloquy between Court and counsel.

The evidence showed that the Ordinance for the improvement of Maine Avenue had been passed prior to the time Schimpf approved the deed in question. It was a public record. It was legally passed and published, and it made no difference whether Schimpf knew that it provided for an assessment of benefits or not. He was charged with notice of the provisions of the Ordinance and should not have been permitted to answer the question. The impression created in the jury's mind was one that went to the atmosphere of the case, i. e., that the Commissioners of Atlantic City had dealt unfairly with Fox in that they had led him to believe that there would be no assessment of benefits, and had certistiously inserted such a clause in the Ordinance and instituted harmful error.

Reason No. 3, deals with the following question:

"Q. Now the deed also provides that the land not within the bounds of Maine Avenue, considering it a hundred foot wide street should be used for public park purposes. Was any part of that land used for other than public park purposes?"

The question appears on page 122 and is followed by a colloquy between the Court and counsel which finally resulted, on page 127, in the Court striking out all the testimony governed by that question, but it is followed by the question being repeated in different form, on pages 128 and 129, so that the plaintiff was permitted to show that portions of the lands not in controversy in this suit, but included within the deed

from the Benjamin R. Fox Company to the City had been used, but contrary to the terms of the deed, that is to say, for other than public park purposes. It was surely not a matter in issue and merely tended to the confusion thereof. The portion of "said above described premises" was that portion thereof outside of the lines of Maine Avenue and had nothing to do with the locus in quo, nor did the violation of the condition, if it was a violation, give the plaintiff a right of re-entry. It was a harmful error.

The last reason is directed to the admission of the following testimony:

"Q. Did you know at that time that if there was no motion, no Ordinance, or no resolution passed by these men in session that you could not get the money?" The answer was "No," and is found on page 183.

What difference could it have made whether Fox knew the legal procedure involved in his dealing with the City of Atlantic City? He was bound by that legal procedure, whatever it might have been and the purpose of the question was to further make it appear to the Jury that Fox had been unfairly dealt with, and that his ignorance had been taken advantage of by the governing body of Atlantic City.

The decisions of our Courts as to what constitutes a dedication are clear, and it is also established by our Courts that the question of dedication, being a question of intention, is, to a great extent, a question of fact for the jury.

There is no question as to the intention of Fox to dedicate presented in this case, because he admits that he intended to dedicate and did in fact open for the public use the street in question, and he further admits that after he had opened it and the public had used it, he "withdrew it."

It is too elementary a proposition of law to cite the numerous cases holding that a dedication once made cannot be revoked. TRUSTEES, etc. vs. HOBOKEN, 33 N. J. L. 13.

Respectfully submitted,

W. FRANK SOOY,
JOS. B. PERSKIE,
Attys. for Defendant

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NEW JERSEY COURT OF ERRORS AND APPEALS

BENJAMIN R. FOX COMPANY, <i>Plaintiff-Respondent</i>	}	Appeal from Supreme Court
vs.		
CITY OF ATLANTIC CITY, <i>Defendant-Appellant.</i>		

POINTS

Take notice that the following are the points to be urged at the argument of the above cause:

1. That by the plaintiff's own testimony, it clearly appears that Fox dedicated Maine Avenue from Madison Avenue to Atlantic Avenue throughout its entire length to the width of one hundred (100) feet.

2. That having dedicated the lands in question, Fox cannot withdraw the dedication and maintain ejectment.

3. That by plaintiff's own testimony, it clearly appears that if the agreement made by the City Commissioners was actually made, and if it had any binding force on the defendant, that the agreement was

(a) That Fox should open and dedicate Maine Avenue;

(b) That if the street was opened and dedicated, the City was to take it over and maintain it;

(c) That the City was to reimburse Fox for the money expended by him in opening Maine Avenue; or, that the City would levy no assessments for benefits on Fox's other land.

4. That the Court failed to direct a verdict on the motion of the defendant.

5. That the Court admitted testimony over the objection of the defendant.

6. That the Court refused to strike out testimony upon the request of the defendant.

The following case is cited:
TRUSTEE, etc. vs. HOBOKEN, 33 N. J. L. 13.

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Attorneys of Defendant.

