

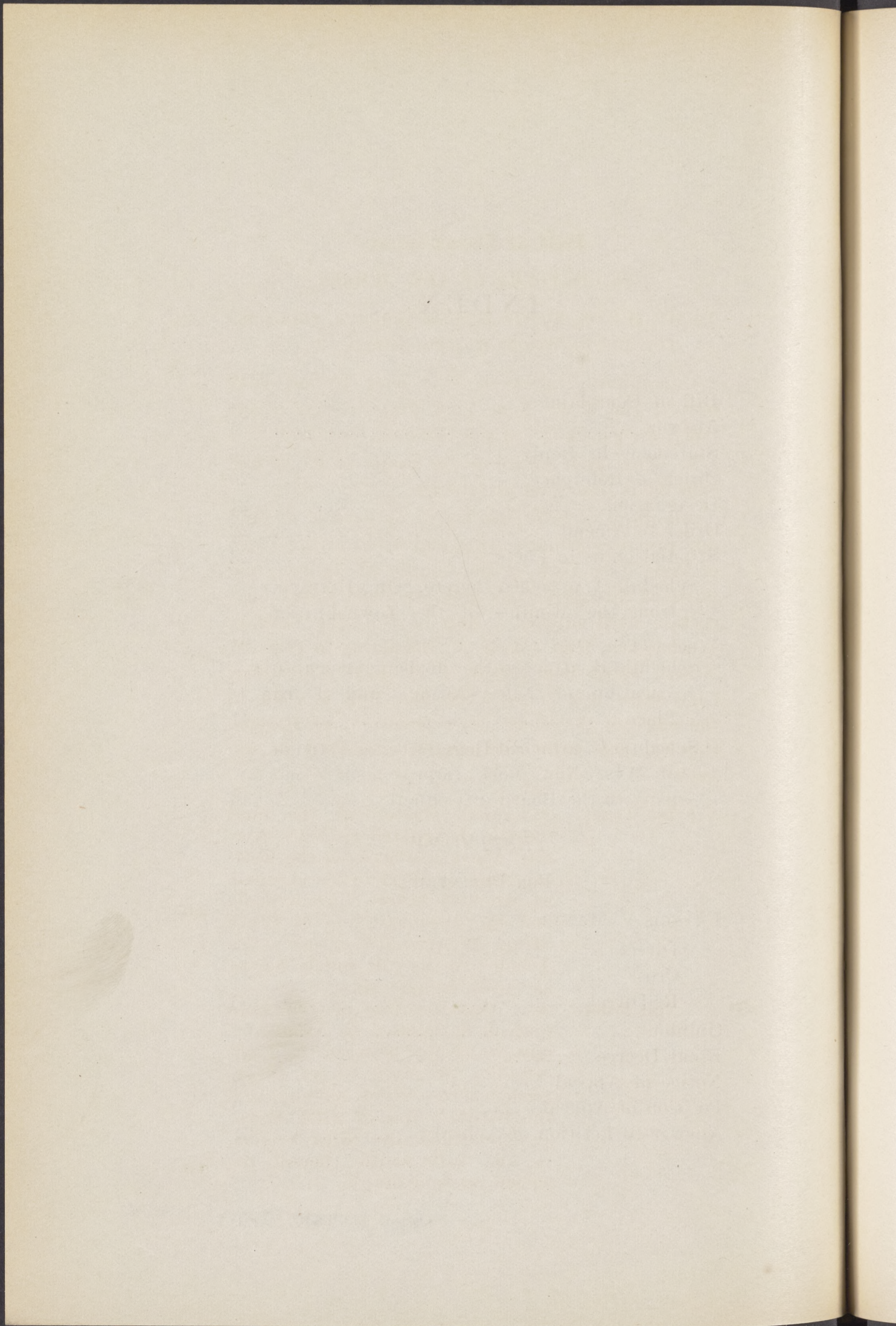
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FOR PLAINTIFF:

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Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

TO HIS HONOR, EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY :

Complaining, showeth unto your Honor, your orator, the West New York Improvement Company, a corporation of the State of New Jersey: 10

1. That your orator is the owner in fee of certain lands described as follows:

All those certain lots, tracts or parcels of land and premises situate, lying and being in the Town of West New York, in the County of Hudson, and State of New Jersey, as laid down and shown on a certain map entitled, "Map of Building Lots at Weehawken, Hud. Co., N. J., Belonging to Wm. W. Niles", dated Sept., 1858, I. B. & D. E. Culver, City Surveyors, Jersey City, filed Feb. 4, 1859, in the office of the Clerk (now Register) of Hudson County, and more particularly described as follows: 20

1st Tract: ALL that portion of the land thereon designated as Niles Avenue, which lies between the Easterly line of Weehawken Avenue, as extended across Niles Avenue, and the Westerly line of Sixth Street as extended across Niles Avenue, to the full width thereof as shown on said Map. 30

2nd Tract: ALL that portion of the land thereon designated as Niles Avenue, which lies between the Easterly line of Sixth Street as extended across Niles Avenue, and the Westerly line of Fifth Street as extended across Niles Avenue, to the full width thereof, as shown on said Map. 40

Bill of Complaint.

3d Tract: ALL that portion of the land thereon designated as Niles Avenue which lies between the Easterly line of Fifth Street as extended across Niles Avenue, and the Westerly line of Isabel Place, as extended across Niles Avenue, to the full width thereof, as shown on said Map.

10

2. Your orator is in peaceable possession of said lands.

3. That your orator's title to said lands, or some part thereof, is denied and disputed by the Town of West New York, in the County of Hudson, which is the defendant in this suit, and the said defendant claims to own or to have an incumbrance on said lands, or some part thereof, or some interest therein.

20

4. That no suit or action of any kind whatever is pending to enforce or test the validity of such title, or claim, or incumbrance, or interest, and your orator charges that the claims of the defendant are utterly without foundation, unjust and vexatious.

30

5. That your orator has applied to said defendant to release and relinquish its said claims, or to bring in some court of law, a suit which would test the validity thereof and the said defendant refuses to do either.

In consideration whereof and for as much as your orator is relievable only in a Court of equity where matters of this sort are properly, and according to the statutes of this State, in such case made and provided, cognizable and relievable.

To the end, therefore, that the said defendant may, upon oath or affirmation to the best of its knowledge, information and belief, full, true,
40 direct and perfect answer make to all and singular

Bill of Complaint.

the matters aforesaid; and more particularly that it may, in manner aforesaid, answer and set forth specifically what title or claim to said lands, or any part thereof, or any interest therein, it makes or claims, and to what part, or what interest, and further, how and by what instrument or instruments, such title or claim is derived, or was created, and that by the determination and final decree of this Court, the rights of the parties to this suit in and to the lands hereinbefore set forth and every part thereof may be fixed and settled; and that your orator may be decreed to have a perfect title thereto and the defendant to have no estate, interest in, or incumbrance on, said lands, or any part thereof; and that their claims to the same are unjust, vexatious and void; and that your orator may have such other or further relief in the premises as the nature of the case may require and as it shall be entitled to, pursuant to the statutes in such case made and provided.

10

20

May it please your Honor, the premises considered, to grant to your orator a writ of subpoena issuing out of and under the seal of this honorable Court, to be directed to the said defendant, commanding it, at a certain day and under a certain penalty, therein to be expressed, to be and appear before your Honor, in this honorable Court, then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to, abide by and perform such order, direction and decree as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

30

And your orator will ever pray, etc.

MARSHALL VAN WINKLE,
Solicitor for and of Counsel
with Complainant.

40

Answer.**IN CHANCERY OF NEW JERSEY.**

Between

WEST NEW YORK IMPROVEMENT
COMPANY, a corporation,

Complainant,

10

and

TOWN OF WEST NEW YORK, in the
County of Hudson,

Defendant.

The answer of the Town of West New York, in the County of Hudson, a municipal corporation of the State of New Jersey.

20 This defendant answering says:

FIRST: It denies paragraph one.

SECOND: It admits paragraph two.

THIRD: It admits paragraph three and says that on or about the fourth day of February, eighteen hundred and fifty-nine, one William W. Niles, the then owner of the lands described in the bill of complaint herein, filed in the office of the Clerk of the County of Hudson, N. J., a certain map entitled "Map of Building Lots at Weehawken, Hudson Co., N. J., belonging to William W. Niles, made from a Trigonometrical Survey by I. B. & D. E. Culver, City Surveyors of Jersey City, Sept., 1858", showing a large tract of ground including the lands in question laid out into building lots and showing streets thereon upon which said lots fronted and among others, a street designated on the map as Niles Avenue. That the lands in question lie wholly within the

Answer.

lines of said Niles Avenue as laid out on said map. That subsequently said William W. Niles sold and conveyed many of the lots shown thereon by reference to the said map. That such proceedings constituted a dedication of the lands in question to public use as a public street or highway, and it is the title, interest or estate thus granted to the public, of which this defendant claims to be possessed. 10

This defendant further answering says, that prior to the commencement of this action and on or about the second day of April, nineteen hundred and fourteen, this defendant by a resolution of its governing body duly and legally adopted accepted said lands as dedicated.

FOURTH: It admits paragraph four except that it denies the charges contained therein.

FIFTH: It denies paragraph five. 20

SIXTH: It prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

STATE OF NEW JERSEY, }
County of Hudson. } ss.:

The answer of the defendant the Town of West New York, in the County of Hudson, was taken this day of , nineteen 30
hundred and fourteen, before me under the seal of said defendant, as by its said seal thereto affixed appears.

Statement in Reply.
IN CHANCERY OF NEW JERSEY.

	B e t w e e n W E S T N E W Y O R K I M P R O V E M E N T C O M P A N Y , <div style="text-align: right;"><i>Complainant,</i></div>	
10	<i>and</i>	} On Bill, &c.
	T O W N O F W E S T N E W Y O R K , i n t h e C o u n t y o f H u d s o n , <div style="text-align: right;"><i>Defendant.</i></div>	

The Statement of the West New York Improvement Company, complainant, in answer to the answer of the defendant:

20 1. Complainant admits that one William W. Niles, the then owner of the lands described in the Bill, on or about the fourth day of February, Eighteen hundred and fifty-nine, filed his map as in paragraph Third of the Answer set forth, showing tract of land and a street, and that the lands in question lie and that said Niles sold and conveyed as set forth in said paragraph.

30 Complainant denies that such proceedings constituted a dedication of the lands in question to public use as a street or highway.

Complainant denies that prior to the commencement of this action and on or about the second of April, Nineteen hundred and fourteen, the defendant, by resolutions of its governing body, duly and regularly adopted, accepted said lands as dedicated.

40 2. Complainant denies that the resolution referred to in Paragraph Third of the Answer was effective to dedicate or to accept a dedication of said lands.

Statement in Reply.

Complainant states that the situation with respect to the said lands at the time said resolution was adopted, was such in fact and in law, that said resolution was ineffective to constitute a dedication or an acceptance of a dedication of the said lands to public use as a street or highway.

3. Complainant states that said resolution has not affected in any way the right and title of the complainant in and to said lands. 10

4. Complainant states that the complainant owned said lands in fee at the time of the adoption of the resolution referred to in said third paragraph of the Answer and now owns said lands in fee; that said resolution was and is ineffective to give to the defendant or to the public any right, title, interest or estate in or to the said lands or any part thereof or to affect the ownership in fee of the said lands by the complainant. 20

5. Complainant states that the said lands were never accepted or recognized by the defendant or for the public as a street or highway.

6. Complainant states that there never has been any dedication of the said lands as a street or highway in fact or in law.

7. Complainant states that all the lands sold and conveyed by said William W. Niles as stated in Paragraph Third of the Answer were afterwards reconveyed to said Niles; that such sales and conveyances by said Niles did not constitute a dedication of the lands in question to public use as a street; that prior to the time of such reconveyances the said lands had not been accepted or recognized by the defendant or the Township of Union in the territorial limits of which said lands were then situated as or for a street or highway or to the public use, nor prior to said time had the said lands been dedicated to public use for a street or highway, nor have such lands ever been 30 40

Statement in Reply.

used in any way as a street or highway or by the public; that prior to the time of such reconveyances there had been no dedication of said lands to public use for a street or highway in fact or in law; that because of such reconveyances to said Niles, any implied or attempted dedication claimed to exist because of the conveyance of said lots by
10 said Niles was thereby rendered ineffective.

8. That the said William W. Niles, after the reconveyance of the said lots conveyed said lands without reference to said map hereinbefore mentioned and without reference to the alleged street or highway mentioned in said paragraph and free of any dedication of the same to or for the public use as a street or highway.

That the said lands were thereafter conveyed to complainant free of any claim of the public
20 and free of any dedication of the same to or for the public use as a street or highway and without reference to the said map and alleged street.

9. That the Township of Union in the territorial limits of which the said lands were situated at the time of the filing of the map hereinbefore mentioned and for many years thereafter, and the defendant in the territorial limits of which said lands are now and for some years have been
30 situated, never accepted said lands to public use for a street or highway, nor in any way claimed or recognized said lands as a street or highway.

10. That at the time of the conveyance of the said lands to complainant, no owners of property in the territorial limits of the municipality in which said lands were then situated were entitled to use said lands as a street or highway or to claim that said lands had been dedicated to public use as or for a street or highway.

40 11. That at no time have said lands been recognized, opened or used as a street or highway.

Statement in Reply.

12. That if at any time the Township of Union, or the Town of West New York was entitled to claim that said lands were subject to public use for a street or highway, such right has been lost or waived because of the laches and actions of the said township and said town with respect to said land, and said land has been, because of said laches and said actions, vacated from any public use as a street or highway. 10

13. That the Assessment Map of the Town of West New York does not show and has not, since said map was made some years ago, shown said lands as a street or highway or any part of a street or highway; that said Assessment Map shows, and from the time said map was made has shown, that lands in the ownership of complainant and not subject to any public use as a street or highway; that said map was and is an act and a declaration of the defendant with respect to the said land; that the making of said map constituted a vacation of said lands for or from any public use as a street or highway if any right to claim said land was subject to public use as a street or highway existed. 20

14. That the Township of Union, until the creation of the Town of West New York, and the Town of West New York from its creation to the present time, have assessed said lands in private ownership for taxes, which taxes have been paid for many years by complainant and its predecessors in title to said township and to said town; that such yearly assessments for taxes were declarations and acts of the defendants with respect to said lands; that the assessments and payments of said taxes constituted a vacation of said lands for or from any public use as a street or highway if any right to claim that said lands were subject to public use as a street or highway existed. 30 40

Statement in Reply.

15. That complainant made and filed a map of lands in the Town of West New York, including the lands mentioned in the bill and delineated on said map and actually laid out on the ground on the land shown on said map street but no street over or including the lands mentioned in the Bill and defendant accepted said streets as public streets; that said action by defendant was an act and declaration by the defendant with respect to the lands mentioned in the Bill; that said action constituted a vacation of said land for or from any public use as a street or highway if any right to claim that said land was subject to public use as a street or highway then existed.

16. That at the time the Town of West New York was created, the Township of Union, in the territorial limits of which said lands were then situated, had no rights with respect to said lands and said lands were not then dedicated nor had they been recognized or used in any way as a street or highway; that at said time a dedication, if any, of said lands to public use for a street or highway had been vacated by the Township of Union; that a dedication, if any, of said lands to public use for a street or highway had been vacated by the Township of Union and by the owners of all lands in said township entitled to claim that the said lands had been dedicated to public use as a street or highway; that the said township's right, if any, to accept said lands as dedicated to public use for a street or highway had expired by lapse of time; that the said township's right to accept said lands as dedicated to public use for a street or highway had been lost by the laches of the said Township of Union and that any rights with respect to a dedication of the said lands had been waived and extinguished by the Township of Union.

Statement in Reply.

17. That if there were any dedication of the said lands to public use for a street or highway, all of the owners of lands on both sides of the said alleged street or highway as shown upon the map made by the said William W. Niles hereinbefore referred to under and by virtue of the provisions of the statute in such case made and provided by an assent or agreement in writing assented to the vacation of said lands to public use for a street or highway and said assent was executed by all said owners in accordance with the requirements of the statute and said assent was thereafter and on or about the sixth day of November, Nineteen hundred and thirteen, filed in the office of the Clerk of the County of Hudson pursuant to the statute in such case made and provided. 10

That because of the execution by said owners of said assent and the filing of the same as aforesaid, the said lands were vacated for and from all public use as a street or highway, and the resolution of the governing body of the defendant referred to in the Third Paragraph of the Answer of the defendant was ineffective to establish a dedication of the said lands and premises to public use for a street or highway. 20

18. That defendant permitted the construction of buildings by complainant on the said lands and the expenditure of large sums of money by complainant in the erection of said buildings. 30

That it is illegal and inequitable for the defendant to claim that the said lands have been dedicated to public use for a street or highway without repaying complainant the sums of money expended by complainant in the erection of said buildings and also the sums of money paid by the complainant and the predecessors in title of the complainant to the defendant for taxes assessed 40

Statement in Reply.

by the defendant against the said lands; and complainant prays for such relief in the premises as may be proper.

19. Complainant and its predecessors in title have always been in the peaceable, undisturbed and exclusive possession of the lands mentioned in the Bill of Complaint, free of any public
 10 use and free of any claim by the Township of Union and by the Town of West New York that the said lands or any part thereof had been dedicated to public use.

That the following is a bill of particulars of the claim or title of the complainant to the lands described in the Bill of Complaint, in addition to the claims and title of the complainant set forth in the preceding paragraphs of this State-
 20 ment, the same being an abstract of such documentary evidence of title as the complainant intends to give in evidence on the trial of this cause, in addition to the claims and title of the complainant set forth in the preceding paragraphs of this Statement:

Assessment Map of the Town of West New York, Hudson County, N. J., 1900, made under an ordinance of the Board of Town Council, passed August 18, 1898, Robert Gaw, Town Surveyor.

30 Assessment Map of the Town of West New York, York, Hudson County, N. J., showing the land in question in private ownership and the same closed as a public street and showing streets running north and south.

Map of Building lots at Weehawken, Hudson County, N. J., belonging to William W. Niles, made from a trigonometrical survey by I. B. and D. E. Culver, City Surveyors, 1 to 100 feet, September, 1858, filed February 4, 1859.

40 Maps G and H, property belonging to the West New York Improvement Company situate in West

Statement in Reply.

New York, Hudson County, N. J., County Blocks 2244, 2245, 2463, Ord J. Darling, surveyor, West New York, N. J., February, 1909.

Assent executed by the West New York Improvement Company, William Watson, Helen Walser, Alexander Miller, William Ruland, Mathilde Ruland, Henry Kattenbracker and Marie Kattenbracker, filed in the office of the County Clerk of Hudson County, New Jersey, on or about November 6, 1913. **10**

The Assessment and Tax Records of the Township of Union and the Town of West New York.

The Bills for Taxes of the Township of Union and the Town of West New York showing the lands in question and the surrounding lands and the taxes levied and also the taxes collected by the said township and the said town from the lands in question and the surrounding lands. **20**

All deeds of record in Hudson County conveying or affecting the lands in question and the surrounding lands.

The following instruments of record in Hudson County:

Deed, John Dey and Phebe Dey, his wife, to Cornelius Garrabrant, dated April 12, 1791, recorded August 25, 1804, in Liber T-23, page 333. **30**

Deed, Jane Van Horn, to William H. Niles, dated May 19, 1855, recorded June 11, 1855, in Liber 45, page 722.

Deed, William W. Niles, to Ann Maria Comstock, wife of Lucius S. Comstock, and Lucius S. Comstock, dated May 19, 1855, recorded June 11, 1855, in Liber 45, page 715.

Deed, William W. Niles to Ann Maria Comstock, wife of Lucius S. Comstock, dated May 19, 1855, recorded June 11, 1855, page 719. **40**

Statement in Reply.

- Deed, William W. Miles and Isabell Niles, his wife, Lucius S. Comstock and Ann Maria Comstock, his wife, to George W. Brainerd, dated July 14, 1856, recorded November 25, 1856, in Liber 56, page 600.
- 10 Deed, George W. Brainerd and wife to Sarah Brainerd, dated August 20, 1857, recorded October 27, 1857, in Liber 63, page 64.
- Deed, Sarah Brainerd, widow of Dyer Brainerd, to Mary Ann Brainerd, ux of George W. Brainerd, dated December 18, 1857, recorded December 31, 1857, in Liber 64, page 579.
- Deed, Ann Maria Comstock and Lucius S. Comstock, to William W. Niles, dated October 25, 1858, recorded December 3, 1858, in Liber 69, page 631.
- 20 Deed, William W. Niles and Isabel W. Niles, his wife, to Sargent V. Bagley, dated November 19, 1858, recorded December 3, 1858, in Liber 69, page 632.
- Deed, William W. Niles and Isabel W. Niles, his wife, to Anna Maria Comstock, wife of Lucius S. Comstock, dated November 19, 1858, recorded December 3, 1858, in Liber 69, page 634.
- 30 Deed, Same to James T. Sanford, dated November 19, 1858, recorded January 12, 1859, in Liber 71, page 68.
- Deed, Jane Van Horne, widow, to William W. Niles, dated January 15, 1859, recorded February 5, 1859, in Liber 71, page 152.
- Deed, William W. Niles and Isabel W. Niles, his wife, to Nathaniel Dole, dated January 3, 1863, recorded February 2, 1863, in Liber 96, page 392.
- 40 Deed, Sargent V. Bagley and Eliza Bagley, his wife, to same, dated January 3, 1863, recorded February 2, 1863, in Liber 96, page 395.

Statement in Reply.

- Deed, James T. Sanford, to same, dated January 3, 1863, recorded in Liber 96, page 397.
- Deed, Jane Van Horne, to William W. Niles, dated January 3, 1863, recorded January 21, 1864, in Liber 105, page 297.
- Mortgage, Nathaniel Dole and Sophronia L. Dole, his wife, to same, dated January 3, 1863, recorded February 2, 1863, in Liber 28, **10** page 192.
- Assignment of Mortgage, William W. Niles to Jane Van Horne, dated January 3, 1863, recorded February 5, 1864, in Liber 7, page 580.
- Deed, Ann Maria Comstock, wife of Lucius S. Comstock, and Lucius S. Comstock, to Nathaniel Dole, dated January 5, 1863, recorded February 14, 1863, in Liber 96, **20** page 559.
- Deed, Lucius S. Comstock and Anna Maria Comstock, his wife, to same, dated April 3, 1865, recorded April 5, 1865, in Liber 119, page 415.
- Deed, Nathaniel Dole and Sophronia L. Dole, his wife, to Jules S. Della Croix, dated August 1, 1865, recorded September 5, 1865, in Liber 122, page 627.
- Deed, Nathaniel Dole to A. Oldrin Salter, dated February 11, 1867, recorded February 18, **30** 1867, in Liber 144, page 372.
- Deed, A. Oldrin Salter, Receiver of Nathaniel Dole and the said Nathaniel Dole, to Hugh White, dated May 4, 1867, recorded June 15, 1867, in Liber 150, page 732.
- Deed, Sheriff: Hugh White, pltff., and Nathaniel Dole, deft., to Hugh White, dated July 11, 1867, recorded November 5, 1867, in Liber 159, page 183.

Statement in Reply.

- Deed, The Weehawken Ferry Company, to Jules S. Delacroix, dated September 30, 1837, recorded October 3, 1867, in Liber 158, page 117.
- Assignment of Mortgage, Marie Louise Comstock to Mary F. Higgins, wife of George Higgins, dated August 28, 1869, recorded October 7, 1869, in Liber 14, page 481.
- 10** Deed, Jules S. DeLaCroix and Anna B. DeLaCroix, his wife, to The Weehawken Ferry Co., dated December 31, 1870, recorded February 25, 1871, in Liber 223, page 691.
- Mortgage, The Weehawken Ferry Co. to Delos E. Culver, Trus., dated December 31, 1870, recorded February 25, 1871, in Liber 83, page 482.
- 20** Will, Jane Van Horne, dated September 2, 1873, recorded March 10, 1876, in Liber 9, page 100.
- Deed, Master in Chancery to Thomas P. Simpson, dated July 9, 1884, recorded October 9, 1884, in Liber 396, page 415.
- Deed, Thomas P. Simpson and Harriet N. Simpson, his wife, to James H. Symes, dated May 19, 1885, recorded November 25, 1887, in Liber 446, page 651.
- 30** Deed, Dec. of Sale, Michael Henry, Jr., Collector, assessed to Weehawken Ferry Co., to The Inhabitants of the Town of Union, dated March 4, 1880, recorded March 16, 1882, in Liber 366, page 318.
- Deed, Assgt. of Dec. of Sale, The Inhabitants of the Township of Union to William W. Niles, dated March 10, 1882, recorded March 16, 1882, in Liber 366, page 321.
- Assignment of Mortgage, John Winner, Jr., Exr., of Jane Van Horne, to Charles I. Colton, dated September 29, 1882, recorded May 6, 1884, in Liber 40, page 343.
- 40**

Statement in Reply.

- Deed, Agmt., The Weehawken Ferry Co., Nathaniel Dole and Jules S. Delacroix, to The New Jersey Midland Railway Company, dated December 16, 1870, recorded January 14, 1871, in Liber 222, page 285.
- Deed, The Weehawken Ferry Co., Nathaniel Dole and Jules S. Delacroix, to The New Jersey Midland Railway Company, dated December 27, 1870, recorded January 14, 1871, in Liber 222, page 288. **10**
- Deed, Dec. of Tax Sale, Weehawken Ferry Co. by Collector, to Inhabitants of the Township of Union, dated September 8, 1886, recorded December 11th, 1890, in Liber 518, page 131.
- Deed, Assgt., Inhabitants of the Township of Union, to James H. Symes, dated December 9, 1890, recorded December 11, 1890, in Liber 518, page 132. **20**
- Deed, Michael Henry, Jr., Col'r, of Township of Union, to Inhabitants of the Township of Union, dated March 4, 1880, recorded December 11th, 1890, in Liber 518, page 133.
- Deed, Assgt., Inhabitants of the Township of Union, to James H. Symes, dated December 9, 1890, recorded December 11, 1890, in Liber 518, page 136.
- Deed, John S. Darling, Collector to James H. Symes, dated November 22, 1886, recorded December 11, 1890, in Liber 518, page 138. **30**
- Deed, Inhabitants of the Township of Union to James H. Symes, dated December 9th, 1890, recorded December 11, 1890, in Liber 518, page 139.
- Deed, James H. Symes, Compl't., vs. Marie R. Audbon, William F. Dunning, Extrs. and Trus. of Marie L. Comstock, dec'd. et al, Defts., dated July 24, 1890, recorded December 11, 1890 in Liber 518, page 140. **40**

Statement in Reply.

- Deed, Same to Same, dated November 17, 1890, recorded March 2, 1892, in Liber 549, page 112.
- Deed, James H. Symes, to Chauncey M. Depew, dated May 26, 1893 recorded June 2, 1893, in Liber 577, page 206.
- 10 Deed, West Shore & Ontario Terminal Co., to The Board of Chosen Freeholders of the County of Hudson, dated July 5, 1894, recorded May 25, 1896, in Liber 645, page 370.
- 20 Deed, George B. Brainerd, Helen A. Brainerd his wife, Clarence Brainerd and Adelaide F. Brainerd, his wife, Josephine B. Smillie, widow, being the only heirs at law of Mary A. Brainerd, dec'd., to John H. Ehrehart, dated March 3, 1896, recorded May 7, 1896, in Liber 647, page 9.
- Deed, John H. Ehrehart, Frances L. Ehrehart, his wife, to William W. Niles, dated May 2, 1896, recorded February 23, 1897, in Liber 663, page 318.
- Deed, John H. Ehrehart, Frances L. Ehrehart, his wife, to Chauncey M. Depew, dated October 30, 1900, recorded November 7, 1900, in Liber 758, page 431.
- 30 Deed, Same to Same, dated October 30, 1900, recorded November 7, 1900, in Liber 761, page 420.
- 40 Deed, Sheriff, Charles S. Colton, Complt., The N. Y. Susquehanna and Western Railroad, Chauncey M. Depew, The West Shore & Ontario Terminal Co., The Board of Chosen Freeholders of the County of Hudson, Marie R. Audubon and William F. Dunning, extrs. and Trustees of Marie Louise Comstock, dec'd., and Mary F. Higgins, Defts. to Same, dated September 19, 1900, re-

Statement in Reply.

- corded September 21, 1900, in Liber 766, page 12.
- Deed, Chauncey M. Depew, to Guaranty Trust Company of N. Y., dated January 31, 1901, recorded February 23, 1901, in Liber 763, page 523.
- Deed, Guaranty Trust Co. of N. Y., to West New York Improvement Company, a corporation of New Jersey, dated July 26, 1901, recorded August 23, 1901, in Liber 788, page 170. **10**
- Deed, Sampson Q. Mingle and Rosa Mingle, his wife, to Same, dated July 29, 1901, recorded August 26, 1901, in Liber 782, page 520.
- Deed, The New York Central and Hudson River Railroad Company, a corporation of New York, to Same, dated August 13, 1901, recorded August 26, 1901, in Liber 782, page 530. **20**
- Mortgage, West New York Improvement Co., a corporation of New Jersey, to George S. Prince, dated July 26, 1901, recorded August 23, 1901, in Liber 448, page 562. Will 58, page 279. Assignment of Mortgage 79, page 72. Satisfied Book 14, page 101.
- Deed, The Guaranty Trust Company of New York to The West Shore Railroad Company, a corporation of New York, dated January 9, 1902, recorded March 17, 1902, in Liber 800, page 363. **30**
- Agreement, West New York Improvement Co. to William Ruland, Lots 5 to 16, Block 1.
- Agreement, November 19, 1912, West New York Improvement Co. to Alexander Miller, Lots 17 to 24, Block 1.
- Deed, September 1, West New York Improvement **40**

Co. to William Walser, Lots 27 to 46,
Block 1 Lots 1 to 16, Block 2.

Deed, West New York Improvement Co., July 31,
1913, to Henry Kattenbracker, Lots 24 and
25, Block 2; also

Deed, Same to Same, north half of Lot 23, Block
2.

MARSHALL VAN WINKLE,
Solicitor for Complainant.

10

Order of Reference.

IN CHANCERY OF NEW JERSEY.

B e t w e e n

WEST NEW YORK IMPROVEMENT
COMPANY, a Corporation,

Complainant,

and

TOWN OF WEST NEW YORK, in the
County of Hudson,

Defendant.

On Bill, &c.

20

It is hereby consented that the above stated
cause be referred to Hon. Vivian M. Lewis, one
of the Vice-Chancellors of this Court, to hear the
same for the Chancellor and to advise him what
order and decree should be made herein.

30

E. R. WALKER, C.

The making and entry of the foregoing Order
is hereby consented to.

MARK A. SULLIVAN,
Solicitor of Defendant.

A true copy
Robert McAdams,

Clerk.

40

Designation.**IN CHANCERY OF NEW JERSEY.**

Between WEST NEW YORK IMPROVEMENT COMPANY, a Corporation, <i>Complainant,</i> <i>and</i> THE TOWN OF WEST NEW YORK, <i>Defendant.</i>	}	On Bill, &c.	10
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This matter being opened to the Court by Marshall Van Winkle, of Counsel with the Complainant and in the presence of Mark A. Sullivan of Counsel with the Defendant. It is on this fourteenth day of September Nineteen hundred and fourteen Ordered, that the trial of this cause be fixed for Tuesday and Wednesday the ninth and tenth days of February Nineteen hundred and Fifteen at ten o'clock in the forenoon at the Chancery Chambers at Jersey City.

VIVIAN M. LEWIS,
V. C.

A true copy
 Robert H. McAdams,
 Clerk.

30**40**

Order to Amend.
IN CHANCERY OF NEW JERSEY.

	<p style="text-align: center;">Between</p> <p style="text-align: center;">THE WEST NEW YORK IMPROVE- MENT, COMPANY, body corporate,</p> <p style="text-align: center;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">THE TOWN OF WEST NEW YORK, in the County of Hudson,</p> <p style="text-align: center;"><i>Defendant.</i></p>	}	On Bill, &c.
10			

20 This matter being opened to the Court by Marshall Van Winkle, of counsel with the Complainant, and in the presence of Mark A. Sullivan, of counsel with the Defendant, and the Complainants applying for leave to amend its Bill of Complaint by adding as a party complainant, William Walser, and the Court having heard the argument of counsel and having considered the matter, and it appearing that it is for the interest of all parties that William Walser be joined as a party complainant,

30 It is, on this 9th day of February Nineteen hundred and fifteen, Ordered that the Complainant's bill be amended by adding William Walser as a party complaint.

E. R. WALKER, C.

Respectfully Advised,
VIVIAN M. LEWIS,

V. C.

Stipulation as to Facts.
IN CHANCERY OF NEW JERSEY.

Between

WEST NEW YORK IMPROVEMENT
 COMPANY and WILLIAM WALSER,

Complainants,

and

THE TOWN OF WEST NEW YORK, in
 the County of Hudson,

Defendant.

On Bill to **10**
 Quiet Title.

It is hereby stipulated and agreed that this Stipulation shall be used by the above entitled Court in deciding the above entitled suit, that no testimony of witnesses shall be taken, except the testimony of Francis V. Many and that the facts are as follows: **20**

1. That the dedication claimed by the Answer is claimed to have been made by William W. Niles by reason of a map entitled, "Map of building lots at Weehawken, Hudson County, N. J., belonging to William W. Niles, made from a trigonometrical survey by I. B. & D. E. Culver, City Surveyors of Jersey City, one inch to one hundred feet, September 1858" and filed in the Clerk's (now Register's) Office of Hudson County, February fourth, Eighteen hundred and fifty-nine. **30**

2. That prior to the making and filing of the map mentioned in paragraph 1 hereof, said William W. Niles had made two other maps of the said property shown on the map mentioned in said paragraph which maps are not of record and were not filed in the Clerk's (now Register's) Office of Hudson County. **40**

Stipulation as to Facts.

3. That William W. Niles made conveyances by reference to the filed map mentioned in paragraph hereof, and also made two other conveyances, so far as the seventeen and one hundred and seven one-thousandths acre plot, mentioned in paragraph 7 hereof is concerned, by reference to the maps not filed mentioned in paragraph 2
10 hereof.

That all of the property thus conveyed by William W. Niles was afterwards, by conveyances, conveyed to, and vested in, the grantors of James H. Symes hereinafter mentioned, except the lots called the "Brainerd Lots" hereinafter mentioned.

4. That the owners of the lands described in the four deeds by them to one Nathaniel Dole, dated January third, Eighteen hundred and sixty-three and January fifth, Eighteen hundred and
20 sixty-three, said lands being part of the said tract of seventeen and one hundred and seven one-thousandths acres mentioned in paragraph 7 hereof, and including all of said tract, except the lots called the "Brainerd lots" mentioned in paragraph 5 hereof, agreed with Dole in and by their said conveyances, and consented that the roads, streets and avenues east of the Bulls Ferry Road should be closed at the option of the
30 said Nathaniel Dole, which deeds are recorded in Book 96 of Deeds for Hudson County, N. J. at pages 392, 395, 397 and 559. That said Bulls Ferry Road was also known as Weehawken Turnpike or Avenue and is now known as Park Avenue.

5. That the title to the land in question, which land is included in the said tract of seventeen and one hundred and seven one-thousandths acres, mentioned in paragraph 7 hereof, and including all
40 the land conveyed by William W. Niles as men-

Stipulation as to Facts.

tioned in paragraph 3 hereof, was vested in Eighteen hundred and ninety in one James H. Symes with the exception of such rights as George W. Brainerd, or his heirs may have had under the deed from William W. Niles and wife to George W. Brainerd, dated July fourteenth, Eighteen hundred and Fifty-six, recorded November twenty-fifth, Eighteen hundred and fifty-six, in Book 56 of Deeds, page 600; that the land so conveyed by said Niles to said Brainerd was conveyed by reference to a map entitled, "Map of building lots situated at Weehawken, N. J. belonging to William W. Niles staked out by W. Hexamer, City Surveyor of Hoboken, and Hudson 1855" as said map is changed by the closing of Fifth Street as originally laid down on said map and by the removal of Isabelle Place. 10

That the title to these "Brainerd Lots" (so-called) being that portion of these lots lying northerly of where the Hudson Boulevard East was afterwards laid out, became vested in Chauncey M. Depew by deed dated October thirtieth, Nineteen hundred, and recorded in Book 758 of Deeds for Hudson County page 431, &c. 20

That the title to these lots, being the portion of these lots just stated in this paragraph hereof, together with other property, such other property being part of the said tract of seventeen and one hundred and seven one-thousandths acres became vested in the Complainant by deed from the Guaranty Trust Company dated July twenty-sixth, Nineteen hundred and one recorded in Book 788 of Deeds for Hudson County, N. J., page 170. 30

6. That sales for unpaid taxes were had and made by The Inhabitants of the Township of Union in the County of Hudson of the said tract of seventeen and one hundred and seven one-thou- 40

Stipulation as to Facts.

sandths acres, mentioned in paragraph 7 hereof, by reference to a certain Assessment Map made by Spielman and Brush, surveyors, which map was stated to be filed in the Clerk's Office of the Township of Union.

That this Map is in evidence in this cause.

10 That these sales were made by acreage and not with reference to lots and blocks on the filed Niles Map mentioned in paragraph 1 hereof.

That these tax sales have all been cancelled and all right, title and interest which The Inhabitants of the Township of Union had in the lands by reason of such taxes and tax sales became vested in James H. Symes and his grantees.

20 That the Inhabitants of the Township of Union by deeds of assignment to James H. Symes conveyed all their rights in the lands and premises in question growing out of taxes and tax sales by deeds dated December ninth, Eighteen hundred and ninety and recorded in Book 518 of Deeds for Hudson County, pages 132, 136 and 139.

That these deeds so made by the Inhabitants of the Township of Union are referred to and authorized in the Minutes of the Township of Union, copy of which is annexed to this Stipulation, marked Schedule A.

30 7. That a Bill of Complaint was filed by James H. Symes in the office of the Clerk in Chancery of New Jersey on February twenty-seventh, Eighteen hundred and ninety against Marie R. Audubon and William F. Dunning, Executors and Trustees under the Will of Marie Louise Comstock, deceased, Margaret E. Mitchell, Emily A. Ward, Lydia Day, Caroline Crocker, Mary Boone Ellis, Laura Barbarin, Maria R. Audubon, Mary F. Higgins, George W. Brainerd, George B. Brainerd,
40 and Mrs. George B. Brainerd, his wife, Clarence

Stipulation as to Facts.

Brainerd and Adelaide, his wife, Josephine B. Smillie and The Inhabitants of the Township of Union.

That the premises described in the Bill of Complaint as a tract of seventeen and one hundred and seven one-thousandths acres included all the lands and premises shown on the filed map made by William W. Niles mentioned in paragraph 1 hereof lying east of the Bulls Ferry Road and west of the Hoboken and Hudson River Turnpike and includes the premises described in the Bill of Complaint in this cause. **10**

That Frederick Frambach, Jr., who as Solicitor of this Court signed the Appearance which was filed for The Inhabitants of the Township of Union and who signed the Answer to the Bill of Complaint, has been dead a number of years. **20**

That all the pleadings and papers on file in the office of the Clerk in Chancery in this case of James H. Symes against Marie R. Audubon and others are included in this Stipulation and are and have been offered in evidence in the above entitled cause. **20**

That a copy of the Minutes of the said Township of Union, so far as they relate to the said suit so brought by the said James H. Symes, and to the taxes and tax sales referred to in the said Stipulation and said Decree, is annexed hereto marked "Schedule A." **30**

8. That at the time said James H. Symes filed his said Bill of Complaint he was in peaceable possession of the premises described in his said Bill of Complaint except as to the right, if any, of the heirs of George W. Brainerd, under the deed from William W. Niles to said George W. Brainerd, which said rights were excepted from the operation and effect of **40**

Stipulation as to Facts.

said decree by an amendment to the same dated November seventeenth, Eighteen hundred and ninety, recorded in the Hudson County Register's Office in Liber 549 at page 112, and except also as to the rights, if any, of the said The Inhabitants of the Township of Union in the County of Hudson because of the said taxes and tax sales.

10 All rights of The Inhabitants of the Township of Union in the County of Hudson under taxes and tax sales were cancelled and vested in said James H. Symes when he conveyed to Chauncey M. Depew, May twenty-sixth, Eighteen hundred and ninety-three, by deed recorded in Book 577 of Deeds, page 206.

20 9. That the Township Committee of the said Township of Union, at the time the suit in Chancery was brought by said James H. Symes, was composed of the following; Messrs. William H. Schmidt, Swartz, Dobbs, Scherer and Furlong and when tax titles were conveyed to said James H. Symes, and at the time the decree was entered, the Township Committee was composed of Swartz, Scherer, Burkhardt, Darling and Ruber.

That all of these men are dead with the exception of Thomas J. Dobbs, Ruber and Furlong.

30 That there was at the time of the bringing of the said Symes Suit no street or avenue actually laid out or opened on the ground running north and south, east or west across the said tract of seventeen and one hundred and seven one-thousandths acres between Bulls Ferry Road (Park Avenue) and the edge of the cliff. That at the time of the bringing of said suit, there was little development of land in the neighborhood. That the lands north and south of the so-called Comstock Tract being the plot of Seventeen and one

40 hundred and seven one-thousandths acres had not been laid out into lots or blocks.

Stipulation as to Facts.

10. That said Chauncey M. Depew obtained title to the said tract of seventeen and one hundred and seven one-thousandths acres by deed from the said James H. Symes dated May twenty-sixth, Eighteen hundred and ninety-three recorded in Book 577, page 206, and also by deed from the Sheriff of Hudson County, New Jersey, dated September nineteenth, Nineteen hundred, recorded in Book 766, page 12, and by deed from one Eherhart, said Eherhart being the grantee of the Brainerd heirs, by deed dated October thirtieth, Nineteen hundred, recorded in Book 758, page 431. **10**

Said Chauncey M. Depew was in peaceable possession of all the said premises when he conveyed the same to the Guaranty Trust Company of New York by deed dated January thirty-one, Nineteen hundred and one, recorded in Book 763 Hudson County Deeds, page 523. **20**

That said Guaranty Trust Company was in peaceable possession of all of said premises at the time it conveyed the same to the present Complainant, the West New York Improvement Company, by deed dated July twenty-sixth, Nineteen hundred and one, recorded in Book 788 of Deeds, page 170, which deed conveyed said premises to the Complainant in fee. **30**

11. That on or about November third, Nineteen hundred and thirteen, all the owners of all the land on both sides of the strip of land called "Niles Avenue" and Third Place as shown on the map filed by William W. Niles mentioned in paragraph 1 hereof which lies between the old Bulls Ferry Road (Park Avenue) and Hudson County Boulevard East, duly filed their assent in writing which assent was duly executed in accordance with the statute therein referred to, in the County **40**

Stipulation as to Facts.

Clerk's Office of the County of Hudson on November sixth, Nineteen hundred and thirteen.

That this Assent was an Assent to the vacation of the said strip called "Niles Avenue" and to the vacation of Third Place as shown on the map last referred to, easterly from Weehawken Avenue (Park Avenue) as shown upon said
10 Map to the Hudson Boulevard East, as then located, under and by virtue of the provisions of the Statute, (Pamphlet Laws 1890, page 148) 4 C. S. 4466. Section 82-A to 82-D.

That a copy of the said Assent is annexed hereto made a part hereof and marked "Schedule B."

At the time of filing of said Assent the Defendant the Town of West New York was not a township.

20 12. That the portion of "Niles Avenue" (so-called) as shown on the filed Niles Map mentioned in paragraph 1 hereof east of the Bulls Ferry Road (Park Avenue) was never accepted by The Inhabitants of the Township of Union in the County of Hudson, or by the defendant herein, The Town of West New York in the County of Hudson, prior to April second, Nineteen hundred and fourteen, when resolutions were introduced and passed by The Town Council of the Town of
30 West New York in the County of Hudson that it "do and it hereby does accept Niles Avenue (now Seventeenth) Street, West New York) as the same appears on a certain map now on file in the Register's Office of Hudson County, entitled "Map of Building Lots at Weehawken, Hudson County, New Jersey, belong to William W. Niles made from a trigonometrical survey by I. B. & D. E. Culver, City Surveyors, in Jersey City, September 1858" and that it, "do and it hereby does accept
40 Niles Avenue (now Seventeenth Street, West New York) as the same has been heretofore dedicated."

Stipulation as to Facts.

13. That "Niles Avenue" (so-called) as shown on the said Niles Map referred to in paragraph 1 hereof east of the Bulls Ferry Road (Park Avenue) never has been used, worked or opened to public travel.

14. That said "Niles Avenue" (so-called) east of the Bulls Ferry Road (Park Avenue) was always above or below the grade or surface of the Bulls Ferry Road and what is now the Hudson Boulevard East, and was covered with boulders until the Complainant, the West New York Improvement Company, leveled and graded the said land and laid out streets and avenues and constructed dwelling houses thereon as hereinafter set out. **10**

That the Complainant, the West New York Improvement Company developed the land surrounding and including said strip called "Niles Avenue" by laying out streets thereon, grading, paving and curbing the same, and laying sidewalks and sewers, at its own expense. That this work has extended over the past few years. That this development has proceeded as though "Niles Avenue" (so-called) had been eliminated as a street and as though it did not exist as a public street or road. **20**

15. That the portion of "Niles Avenue" (so-called) from the Bulls Ferry Road (Park Avenue) west to Bergenline Avenue was laid out as a public highway by surveyors of the highway under the order of the Court of Common Pleas of Hudson County entered May twenty-second, Eighteen hundred and sixty-five. **30**

That this proceeding was taken on application of ten freeholders and is recorded in the Road Book of Hudson County.

That at that time "Niles Avenue" as shown on the filed Niles Map mentioned in paragraph 1 **40**

Stipulation as to Facts.

hereof had not been accepted or improved in any way by the Township of Union. That there had been no act of the Township accepting the dedication based on the filing of the Niles filed Map mentioned in paragraph 1 hereof.

10 That said Niles Avenue west of the Bulls Ferry Road was laid out as a road or a highway by virtue of these proceedings by the surveyors of the highway. That afterwards contracts were made for the improvement of this part of Niles Avenue.

16. That in 1898 the Town Council of the Town of West New York adopted an ordinance, under which ordinance an Official Assessment Map of Property situated in said Town was made and used, the title of said map being "Assessment Map of the Town of West New York, Hudson County, N. J. 1900, 1-100 made under an ordinance of the Board of Town Council passed August 8, 1898, Robert Gaw, surveyor."

20

That this map showed a street called "Niles Avenue" running from Bulls Ferry Road (Park Avenue) to the Hudson County Boulevard East.

30 That said town did not assess the lands and premises in question mentioned in the Bill of Complaint herein by lot and block but the tract of seventeen and one hundred and seven one-thousandths acres in which the land described in the Bill of Complaint is included was assessed by the acre.

17. That the Town of West New York in 1908 adopted a new assessment map which did not show any street called "Niles Avenue" or any street of any name running east from the Bulls Ferry Road (Park Avenue) across the strip of land mentioned in the Bill of Complaint herein and assessed said land according to the lines of

40 said map. Subsequently and after the filing of the

Stipulation as to Facts.

Map of Complainant dated September, 1911 said Assessment Map of 1908 was corrected according to the lines of the Map of 1911 and the lands and premises mentioned in the bill of complainant herein and the adjoining property has been since assessed for taxes by the said Town of West New York by lot and block numbers by reference to said map of 1908 as corrected. That the maps filed by Complainant show no street running east and west across the lands of Complainant, that is, across the premises described in the Bill of Complaint herein, or across the said tract of seventeen and one hundred and seven one-thousandths acres. The Complainants have paid taxes to date on the lands and premises mentioned in the Bill of Complaint as assessed by the said Town of West New York under said Maps. **10**

18. That the Official Assessment Map of the Town of West New York of Nineteen hundred and eight as corrected under which lands in the said Town are now, and for the past three years have been, assessed for taxes, shows the lands and premises in the Bill of Complaint as lot and block number, as follows, that is to say: **20**

TRACT NUMBER ONE. As lot Sixteen (16) and parts of fifteen (15) and seventeen (17), parts of thirty-four (34) and thirty-six (36) all of thirty-five (35) in Block One (1) on Map of "Monitor Park Property belonging to the West New York Improvement Company situate in West New York, Hudson County, N. J." **30**

TRACT NUMBER TWO. As lot twelve (12) parts of eleven (11) and thirteen (13), parts of twenty-four (24) and twenty-six (26) all of twenty-five (25) in Block Two (2) on said Map. **40**

Stipulation as to Facts.

TRACT NUMBER THREE. As lot twelve (12), parts of eleven (11) and thirteen (13), parts of twenty-two (22) and twenty-three (23) in Block Three (3) on said Map.

10 That said Official Assessment Map does not show any road, avenue or street called "Niles Avenue" east of Park Avenue, nor any strip of land as a road, avenue or street on the lines of "Niles Avenue" (so-called) as laid down on the Niles filed Map mentioned in paragraph 1 hereof that is, said map shows no road, avenue or street over the premises in question running from the Bulls Ferry Road (Park Avenue) east.

20 19. That the lands east of the Bulls Ferry Road (Park Avenue) as shown on the filed Niles Map mentioned in paragraph 1 hereof have always been assessed by the acre and not by lots and blocks on any map, until after the complainant. the West New York Improvement Company filed its map entitled, "Map Monitor Park Property belonging to the West New York Improvement Company situate in West New York, Hudson County, New Jersey, Ord J. Darling, surveyor, 1911" and which map is filed in the Register's Office of Hudson County, N. J.

30 20. That the Hudson Boulevard East was laid out in Eighteen hundred and ninety-three.

That prior to Eighteen hundred and ninety-three there was no road or street used or laid out on the lines of the present Hudson Boulevard East so far as the same adjoins any part of the said tract of seventeen and one hundred and seven one-thousandths acres.

40 21. That "Niles Avenue" (so-called) as shown on the said Niles filed map, mention in paragraph 1 hereof, if opened and extended, would have run

Stipulation as to Facts.

to the edge of the Palisades or to the top of a sheer cliff.

22. That the complainants are the owners in fee of the strip of land called "Niles Avenue" described in the Bill of Complaint; that the other persons who signed the Assent mentioned in paragraph 16 hereof sometime after the signing of the same conveyed their estates in said land to the complainant, the West New York Improvement Company. **10**

23. That the complainant, the West New York Improvement Company, on October twenty-first, Nineteen hundred and thirteen, filed a petition with the Town Council of West New York, a copy of which is hereto annexed, marked "Schedule C."

24. That the Township of Union was created by an Act of the Legislature of New Jersey, approved February twenty-eighth, One thousand eight hundred and sixty-one (Chapter 102, Public Laws 1861, page 99). **20**

That the Town of West New York was created by an Act of the Legislature of the State of New Jersey, approved March second, One thousand eight hundred and ninety-eight (Chapter 21, Public Laws 1898, page 40).

That the land and boundaries of the Town of West New York were and are co-extensive with those of the Township of Union. **30**

That the Town of West New York is the successor of the Township of Union.

25. That the complainants, the West New York Improvement Company and William Walser (said Walser having taken title to part of the said strip of land caled "Niles Avenue" east of the said Bulls Ferry Road (Park Avenue) were, at the time of the filing of the Bill herein, in **40**

Stipulation as to Facts.

peaceable possession, and are now, in peaceable possession of the land and premises described in the Complainant's Bill.

10 That they have erected buildings on the strip of land called "Niles Avenue" to an aggregate value of Eleven Thousand Dollars, being two in number to the value of Eight thousand dollars, and one at Three thousand dollars, and that part of another building extends over on said strip called "Niles Avenue" which buildings were erected before the acceptance by the defendant, The Town of West New York of April second, Nineteen hundred and fourteen, mentioned in the Answer herein.

20 26. The defendant, The Town of West New York in the County of Hudson makes no claim to own any part of the lands or premises described in the Bill of Complaint in this cause, or to have any lien or encumbrance on, or rights in, said premises, except such as would accrue to it by the dedication claimed to have been made by said William W. Niles, by the filing of the said Niles Map mentioned in paragraph 1 hereof and the so-called acceptances of said "Niles Avenue" by the Town Council of the said Town of West New York as set forth herein.

30 27. All the deeds and instruments of record as set forth on the Statement filed herein by the complainant in answer to the Answer filed by the Town of West New York are in evidence herein.

MARSHALL VAN WINKLE,
Solicitor and of Counsel
with complainants.

MARK A. SULLIVAN,
Solicitor and of Counsel
with defendant.

Schedule A—Attached to Stipulation as to Facts.

SCHEDULE A.

Extracts of the minutes of meetings of the Township Committee of the Township of Union in the County of Hudson so far as the same relate to the suit of James H. Symes, vs. Inhabitants of the Township of Union, relative to the title to the property known as the "Comstock Tract" consisting of 17-107/1000 acres. 10

Meeting of the Township Committee, March 5, 1890.

Subpoena from the Court of Chancery was handed in by Counselor Frambach to the Committee, where suit has been brought by James H. Symes, complainant, and Marie R. Audubon and the Inhabitants of The Township of Union, defendants, to settle title to the property known as the Comstock Tract, consisting of 17-107/1000 of acres, trial March 15th. 20

Also Counselor Frambach wished to be informed when Committee would meet in relation to the suit and defense. Committee to fix date of meeting and he would be ready at the same time to submit to the Committee the bill drafted in reference to streets.

On motion Council be notified that the Committee would meet on Saturday Evening at Eight o'clock in relation to the suit and its defense. Also instructed to proceed immediately and defend the rights of the Inhabitants of the Township of Union against James H. Symes. 30
Meeting, March 8th, 1890. (Special.)

Meeting called for the purpose of seeing Counselor Frambach in reference to the suit with James H. Symes.

Counselor Frambach then stated to the Com- 40

Schedule A—Attached to Stipulation as to Facts.

mittee what the suit was to be brought against Maria R. Audubon and the Inhabitants for and that it was to get peaceable possession and that Mr. Corbin informed that the question of taxes would not come up.

On motion Mr. Frambach was then instructed to proceed with the Inhabitants case against Mr. **10** James H. Symes, and to protect their interests. Meeting September 17, 1890.

Mr. Darling, for Committee on law stated *
* * Also in reference to Mr. Symes' Communication requesting to meet the committee to make settlement of taxes on Comstock tract, counsel thought it would be proper to have a committee appointed from the Board to confer with Mr. Symes and make settlement and Counsel **20** would also be present at said conference.

On motion, laid over.
Special meeting October 7, 1890.

Township Attorney Frambach then appeared and he was informed by Chairman Swartz that Mr. Smyth, counsel for Mr. Symes, could not be present until October 15th at three o'clock, P. M., in reference to the settlement of taxes on Comstock Tract.

Counsel then stated that he thought they would **30** settle all taxes subsequent to 85, and there was no need of reducing the interest below 12 per cent.

Special Meeting October 15, 1890.

Meeting called for the purpose of settling the taxes against Comstock Tract.

Counsel Frambach then informed the Committee that he thought the Committee could not recover the back taxes on the Comstock Estate, as the **40** statute provides that all property must be sold inside of two years to recover or the taxes to

Schedule A—Attached to Stipulation as to Facts.

become a permanent lien; the Comstock Tract was not sold for unpaid taxes until the year 1886, the Court of Chancery having set the taxes for the years 1874 to 1878 aside.

Mr. Smyth made a proposition to the Committee as follows:

That Mr. Symes would pay the taxes beginning from the year 1885, and the subsequent years. **10**

Counselor Frambach then informed the Committee that this was a question to be entirely left to the Committee and he would advise the Committee to consider it at some other meeting so as to satisfy that they were doing what was right. The Committee then came to conclusion that before taking any action in making settlement, to have a written opinion from counsel.

On motion, counsel was directed to have a written opinion ready by next regular meeting. **20**
Meeting October 29, 1890.

Counselor Frambach's opinion in reference to the taxes on the Comstock Tract, stating that the Committee could not collect or demand any taxes back of the year 1885, but he stated that there was ten lots which the Committee could collect taxes from said lots were not freed from taxes at the time Chancery Court set aside.

On motion received to be acted on. **30**

Attorney's opinion was then taken up and on motion that the Committee abide by their counsel's opinion and the clerk directed to notify Mr. Symes if he would settle the taxes according to Counsel's opinion, the Committee would assign all their right, title and interest in the Comstock Tract.

On motion Committee on Finance was instructed to have the taxes on the Comstock Tract apportioned so as they could inform Mr. Symes **40**

Schedule A—Attached to Stipulation as to Facts.

what amount there was against 10 lots.

Meeting November 26, 1890.

The following resolution was adopted:

Be it Resolved, That upon payments by James H. Symes, of the taxes and interest due upon the Comstock Tract as agreed that the Chairman is hereby authorized to execute an assignment of

10 the declaration of sale held by the Township for all taxes due upon said tract up to 1879, and to execute a deed or deeds ordered for the said lands under certificate of tax sale by the Township since said year and the clerk is hereby authorized to affix the Township Seal to said assignment and deeds conveying all interest of the Township in said Comstock Tract for and by reason of sales thereof for unpaid taxes.

Meeting December 10, 1890.

20 Mr. Swartz stated that he had signed the assignment for the Comstock Tract, conveying the same to James H. Symes, as per resolution of the Township Committee, passed at a regular meeting Nov. 26th, and receiving the sum of \$1589.94.

I, James L. Wolfe, Town Clerk of the Town of West New York in the County of Hudson, do hereby certify that the foregoing are true copies of all the minutes of the meetings of the

30 Township Committee of the Township of Union in the County of Hudson, so far as the same relate to the suit of James H. Symes, vs. Inhabitants of the Township of Union, relative to the title to the property known as the "Comstock Tract" consisting of 17-107/1000 acres.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said town this eighth day of March, 1915.

JAMES L. WOLFE.

40 (Seal.)

Schedule B—Attached to Stipulation as to Facts.

SCHEDULE B.

Assent of all of the owners of lands on both sides of "Niles Avenue" and "3rd Place" as shown upon a Map entitled, "Map of building lots at Weehawken, Hudson Co., N. J." belonging to Wm. W. Niles, made from a trigonometrical survey by I. B. & D. E. Culver, City Surveyors, of Jersey City, Sept. 1858", filed in the Clerk's Office of Hudson County on February 4, 1859, from Weehawken Avenue as shown upon said Map, easterly to "Hudson Boulevard East" as now located. Under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey, entitled, "A further supplement to an act entitled, 'An act concerning roads' approved March 27, One thousand eight hundred and seventy-four" Ph. L. 1890, P. 148.

WHEREAS, we, the undersigned, West New York Improvement Company, a corporation of the State of New Jersey, William Walser and Helen Walser, his wife, Alexander Miller (unmarried), William Ruland and Mathilde Ruland, his wife, of West New York, Hudson County, New Jersey, and Henry Kattenbracker and Marie Kattenbracker, his wife, of West New York, Hudson County, New Jersey, all of the owners of the lands on both sides of "Niles Avenue" and 3rd Place" as shown upon a certain Map entitled, "Map of building lots at Weehawken, Hudson Co., N. J., belonging to Wm. W. Niles, made from a trigonometrical survey by I. B. & D. E. Culver, City Surveyors of Jersey City, Sept. 1858", and filed in the Clerk's office of Hudson County, February 4, 1859, Easterly from Weehawken Avenue as shown upon said Map to "Hudson Boulevard East" as now located; AND WHEREAS said "Niles Avenue" and "3rd Place" as shown

Schedule B—Attached to Stipulation as to Facts.

upon said map are altogether in the County of Hudson and have never been worked or used for public travel from the said date of filing said Map to the date of these presents easterly from said Weehawken Avenue as shown upon said Map; AND WHEREAS said "Niles Avenue" and "3rd Place" as shown upon said Map, easterly from

10 Weehawken Avenue as shown upon said Map to "Hudson Boulevard East" as now located have been unworked and unused for public travel for a period of not less than fifteen years from the date of dedication by the filing of said Map, are now, and have always remained unworked and unused for public travel.

20 NOW THEREFORE, we, and each of us, do hereby, for ourselves, our heirs, executors, administrators and assigns, and the said West New York Improvement Company, does for itself, its successors and assigns, hereby assent in writing to the vacation of said "Niles Avenue" and "3rd Place" as shown upon said Map, easterly from Weehawken Avenue as shown upon said Map, to "Hudson Boulevard East" as now located, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey entitled "A further supplement to an Act entitled, 'An Act concerning roads', approved March 27, One thousand eight hundred and seventy-four". Ph. L.

30 1890, p. 148.

IN WITNESS WHEREOF we have hereunto set our hands and seals this Third day of November, A. D. 1913, and said West New York Improvement Company hath caused its corporate seal to be hereto affixed and these presents signed by its President the day and year aforesaid.

WEST NEW YORK IMPROVEMENT COMPANY,

40

By Howard Watkin,
President.

Schedule B—Attached to Stipulation as to Facts.

Signed, sealed and delivered in }
 the presence of W. H. Roth }
 (Seal.)

Attest:

H. Bayard Hodge,
 Secretary.

Signed, sealed and delivered in the } **10**
 presence of Joseph McNeill as to }

William Walser (S),
 Helen Walser (S),
 Alexander Miller (S),
 Wm. Ruland (S),
 Mathilde Ruland (S),
 Henry Kattenbracker (S),
 Marie Kattenbracker (S).

STATE OF PENNA., } **20**
 County of Phila. } ss.:

BE IT REMEMBERED, that on this 4th day of
 November, in the year nineteen hundred and thir-
 teen before me, the subscriber, a Foreign Com-
 missioner of Deeds for New Jersey, personally
 appears H. Bayard Hodge, who, being by me duly
 sworn, doth depose and make proof to my satis-
 faction, that he well knows the corporate seal of
 the WEST NEW YORK IMPROVEMENT COMPANY **30**
 one of the grantors in the within Deed of Assent
 named; that the seal thereto affixed is the proper
 common seal of the said grantor; that the same
 was so affixed thereto, and the said Deed of As-
 sent signed and delivered by Howard Watkin
 who was at the date and execution thereof, the
 President of said grantor, in the presence of the
 said deponent as the voluntary act and deed of
 the said grantor, and that the said deponent
 thereupon signed the same as subscribing witness. **40**

H. BAYARD HODGE.

Schedule B—Attached to Stipulation as to Facts.

Sworn and subscribed before me at }
 Phila. Pa. the date aforesaid. }
 (Seal.)

W. H. Roth,
 A Foreign Commissioner
 of Deeds for New Jersey.

10 STATE OF NEW JERSEY, }
 County of Hudson. } ss.:

BE IT REMEMBERED, that on this 3rd day of November, in the year One thousand nine hundred and thirteen, before me, the subscriber, a Commissioner of Deeds in the aforesaid State and County personally appeared WILLIAM WALSER and HELEN WALSER, his wife, who, I am satisfied are two of the grantors in the within Deed of

20 Assent named, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed; AND the said HELEN WALSER being by me privately examined, separate and apart from her said husband, did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, and without any fear,

30 threats or compulsion of or from her said husband.

JOSEPH MCNEILL,
 Commissioner of Deeds,
 State of New Jersey.

STATE OF NEW JERSEY, }
 County of Hudson. } ss.:

BE IT REMEMBERED, that on this 3rd day of

40 November, in the year one thousand nine hundred and thirteen, personally appeared WILLIAM RU-

Schedule B—Attached to Stipulation as to Facts.

LAND and Mathilde Ruland, his wife, who, I am satisfied are two of the grantors in the within Deed of Assent named, and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed; AND the said Mathilde Ruland being by me privately examined, separate and apart from her said husband, did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, and without any fear, threats or compulsion of or from her said husband. 10

JOSEPH MCNEILL,
Commissioner of Deeds,
State of New Jersey. 20

STATE OF NEW JERSEY, }
County of Hudson. } ss.:

BE IT REMEMBERED, that on this 6th day of November, in the year one thousand nine hundred and thirteen, personally appeared, HENRY KATTENBRACKER and MARIE KATTENBRACKER, his wife, who I am satisfied are two of the grantors in the within Deed of Assent named, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed: AND the said MARIE KATTENBRACKER being by me privately examined, separate and apart from her said husband, did further acknowledge that she, signed, sealed and delivered the same as her voluntary act and deed, FREELY, and without any fear, threats or compulsion of or from her said husband. 30 40

JOSEPH MCNEILL,
Commissioner of Deeds,
State of New Jersey.

Schedule C—Attached to Stipulation as to Facts.

STATE OF NEW JERSEY, }
 County of Hudson. } ss. :

10 BE IT REMEMBERED, that on this 3rd day of November, in the year one thousand nine hundred and thirteen personally appeared ALEXANDER MILLER (unmarried) who I am satisfied is one of the grantors in the within Deed of Assent named, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

JOSEPH MCNEILL,
 Commissioner of Deeds,
 State of New Jersey.

20

SCHEDULE C.

To the Honorable,
 The Board of Council,
 of the Town of West New York.

Gentlemen:

30 The undersigned, owner of lands shown on map entitled, "Monitor Park, property belonging to the West New York Improvement Co., situate in West New York, Hudson County, New Jersey," a copy whereof is hereto annexed, marked "number one", whereon the manner of the layout of the land at Monitor Park, is made at present.

40 On February fourth, eighteen hundred and fifty-nine, a map entitled, "Map of Building Lots, at Weehawken, Hudson Co., N. J., belonging to Wm. W. Niles, made from a trigonometrical survey by I. B. & D. E. Culver, City Surveyors, of Jersey City", was filed in the Clerk's office of Hudson County, a copy affecting the lands in

Schedule C—Attached to Stipulation as to Facts.

question on this map, being hereto annexed and marked "number two" shows that "Niles Avenue" (now Seventeenth Street) extended east and across Bulls Ferry Road (now Park Avenue) to the "Hudson River Turnpike" to the foot of the hill.

Your petitioners, owners from "Bulls Ferry Road" east to the top of the hill ("Hudson Boulevard East") had "Isabel Place," "Fifth Avenue" and "Sixth Avenue" shown thereon, vacated by Ordinance passed by the Town of West New York. 10

At that time your petitioners were in doubt as to the manner of laying out said plot. Subsequently it was found to be impracticable to utilize "Niles Avenue" as laid down on the old map number two and being the owners of said lands at the time of making of the said map under one, laid out the same as shown thereon. 20

The question now being raised as to the validity of the title to lands embracing part of said "Niles Avenue" your petitioners respectfully request that an Ordinance be passed by your Honorable Body to the end that so much of said "Niles Avenue" as lies east of "Bulls Ferry Road" to "Hudson Boulevard East", may be vacated. This portion has never been used by the public and the public has never acquired any interest therein, except as such as arose from operation of law by the filing of the Old Map. 30

Your Petitioners are willing to bear any and all legal expenses that may be necessary to that end.

Respectfully yours,

WEST NEW YORK IMPROVEMENT COMPANY,

By Warne Smyth, 40
Atty.

Dated October 21, 1913.

Testimony.**IN CHANCERY OF NEW JERSEY.**

10	Between WEST NEW YORK IMPROVEMENT COMPANY, a corporation, <i>Complainant,</i> <i>and</i> TOWN OF WEST NEW YORK, <i>Defendant.</i>	}	On Bill, &c.
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20 Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the fourteenth day of June, 1916, before Hon. Vivian M. Lewis, Vice-Chancellor.

APPEARANCES :

MARSHALL VAN WINKLE, ESQ., for the Complainant;
 MARK A. SULLIVAN, ESQ., for the Defendant.

FRANCIS V. MANY, sworn in behalf of the Complainant, testified as follows:

30 DIRECT EXAMINATION BY MR. VAN WINKLE:

Q. You are an attorney-at-law of the Supreme Court of New Jersey? A. Yes, sir.

Q. And have been such how many years? A. About 35 years.

Q. Are you familiar with the searching of titles to real estate and searching of records? A. Yes, sir.

40

Francis V. Many—Direct.

Q. Please tell us what you did with respect to searching for a map or maps in relation to this case, and what you found. A. I made diligent search for the map referred to in the deed, dated July 14, 1856, recorded November 25, 1856 in Book 56 of Deeds for Hudson County, page 600, made by William W. Niles and wife and Lucius S. Comstock and wife to George W. Brainard; this map being referred to in the deed as a map of building lots situate at Weehawken, New Jersey, belonging to William W. Niles, staked out by W. Hexamer, City Surveyor of Hoboken and Hudson, 1855; as said map is changed by the closing of Fifth Street, and the removal of Isabel Place, I searched for this map in the Register's office of Hudson County and could not find it. I have looked elsewhere; I went to the Surveyor's office in Hoboken, the successors of Hexamer; I could not find it there; I inquired of a number of men who are searchers. I also went to the New Jersey Title Guaranty and Trust Company and was shown all their maps with reference to the Niles tract, and especially with reference to the tract of 17 107-1000 acres lying east of the Bull's Ferry Road; it covers the property in question; I never was able to find this Hexamer map; I don't know of anyone that has been able to find it.

Q. Where did you first hear of the Hexamer map? A. It was referred to in this deed from Niles and Comstock to Brainard, The Brainard lots—

MR. SULLIVAN: You are only questioned about the finding of this map; I object to any statement.

THE COURT: I cannot accept any further evidence in view of the stipulation.

Francis V. Many—Direct.

MR. VAN WINKLE: The stipulation is wider than that.

10 Q. Did you make an endeavor to locate the Brainard lots with reference to the maps, and if so, what did you find, and what did you ascertain, what did you do? A. I cannot locate the Brainard lots with reference to the filed Niles' map of 1858.

Q. Can you say whether you can locate them as abutting or bounding on Niles Avenue, the strip shown as Niles Avenue, the Niles map of 1858?

THE COURT: That is the map before me in red ink. Have you got that map before you? I had better put it before him.

20 MR. SULLIVAN: I have in my office a certified copy of that map as filed. Personally, I don't think it makes an awful lot of difference whether it abuts on there or don't. I don't think it makes very much difference whether they do or don't.

30 Q. You read the rest of your statement, that is the quickest way to get it out. A. The description in the deed from William W. Niles and others to George W. Brainard, being the deed which I have referred to, does not cover, nor do the lines of the description in this deed agree with delineation of lots 1, 2, 5, 6, 7, 8, 9, 10, 11 and 12 in Block 23, as shown on the map of building lots at Weehawken, Hudson County, New Jersey, belonging to William W. Niles, made from a trigonometrical survey by I. B. & D. E. Culver, City Surveyors of Jersey City, 1858, which is the filed Niles map. The lots as described in the said deed from W. W. Niles and others to George
40 W. Brainard, formed a parallelogram 120 feet

Francis V. Many—Cross.

wide by 200 feet in length; which does not front or abut in any way, at any point, on Niles Avenue, as shown on the filed Niles map of 1858 above referred to. In the description in the deed from Niles and others to George W. Brainard, the beginning point is 150 feet south from Niles Avenue, and 100 feet east from Sixth Street, as shown on the map made by W. Hexamer in 1855. **10**

An examination of the map—a copy of which is recorded in the deed from Niles and wife to Anna Maria Comstock, dated May 19, 1855, and recorded June 11, 1855, shows Niles Avenue as 50 feet north of the location of Niles Avenue as shown on the Niles' filed map of 1858.

CROSS EXAMINATION BY MR. SULLIVAN:

Q. Have you your search notes, Mr. Many, here? **20**
A. Yes, sir.

Q. Take them, please. I ask you to turn to the deed from William W. Niles and wife and Anna Maria Comstock and Lucius S., her husband, to George W. Brainard, recorded in Book of Deeds 56, page 600? **A.** I have part of my notes here, but not my full notes.

Q. I prefer that you go and get them; suppose you look them up and I will cross-examine you later on. Get your full notes. **30**

Mr. Van Winkle continues his argument.

FURTHER CROSS:

Q. What are the numbers of the lots that were conveyed by that deed, and the title of the map?
A. The description in that deed is as follows: "All those certain lots, pieces or parcels of land, situate, lying and being at Weehawken, Hudson County, State of New Jersey, known and design- **40**

Francis V. Many—Cross.

nated on a map on file in the Clerk's office of said county, entitled 'Map of Building Lots situate at Weehawken, N. J., belonging to William W. Niles, staked out by W. Hexamer, City Surveyor of Hoboken and Hudson, 1855,' as Lots Nos. 513, 514, 515, 516, 517, 546, 547, 548, 549, 550. As said map is changed by the closing of Fifth Street and by the removal of Isabel Place, said lots being bounded as follows—"

MR. SULLIVAN: We don't care for the boundary, unless you want it.

A. "Beginning at the northerly corner of Lot 513—"

MR. SULLIVAN: May I have this map? Go ahead, Mr. Many.

20 A. —"at a point 100 feet southeasterly from Sixth Street, by a line drawn at right angles thereto, and 150 feet southwesterly from Niles Avenue, being a line drawn at right angles thereto, running thence southwesterly and parallel to Sixth Street, 125 feet; thence southeasterly and parallel to Niles Avenue, 200 feet to Isabel Place; thence northeasterly and parallel with Sixth Street, 125 feet; thence northwesterly and parallel to Niles Avenue, 200 feet to the point or
30 place of beginning; said plot being 125 feet in front and rear and 200 feet in depth on each side."

Q. Have you looked at the original Niles map, Mr. Many; have you a copy of that? A. Not here, no, sir.

MR. SULLIVAN: I have sent for a copy.

Q. Have you any recollection in your examining the original Niles map as filed of finding lots
40 numbered such as are numbered in this deed?

A. I don't remember seeing those numbers.

Francis V. Many—Re-Direct.

MR. SULLIVAN: I will ask your Honor to let me produce that map; I have sent for it. That is all I want to put in evidence in regard to it.

Q. Now, these lots which you have just read out—this description, are the so-called Brainard lots as mentioned in the stipulation before the Court in this case? A. Yes, sir. 10

Q. And they are all of the Brainard lots? A. Yes, sir.

Q. And these lots which you have just mentioned now—or rather, this map which you have just mentioned now in that description, is the map which you have this morning testified that you could find in no place that you looked for, is that so? A. Yes, sir. 20

RE-DIRECT EXAMINATION BY MR. VAN WINKLE:

Q. How far do you say these so-called Brainard lots are shown by that description to be from Niles Avenue? A. 150 feet south, or possibly, by the correction of the present Niles map, 100 feet south.

Q. But not fronting or touching Niles Avenue? A. I cannot find that they abut or touch Niles Avenue in any way. 30

MR. SULLIVAN: I offer a map showing the original lay-out of Niles Avenue across the locus in quo, and super-imposed upon that in black is the map of the Monitor Park property of the complainant, insofar as that property lies within the confines of the street in question; and also showing certain lots marked in green, which it is claimed were the so-called Brainard lots. 40

Marked "Exhibit Sul. 1."

Opinion.**IN CHANCERY OF NEW JERSEY.**

10	<p style="text-align: center;">Between</p> <p style="text-align: center;">WEST NEW YORK IMPROVEMENT COMPANY, et als.,</p> <p style="text-align: center;"><i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">THE TOWN OF WEST NEW YORK in the County of Hudson,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>On Bill to Quiet Title. Memorandum. Not for print.)</p>
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On pleadings and proofs.

MR. MARSHALL VAN WINKLE, for complainants.
MR. MARK A. SULLIVAN, for defendant.

20 LEWIS, V. C.

I have examined the proceedings and briefs filed in this cause and have reached the conclusion that the complainants' bill must be dismissed; and that the decree in the Symes case should be opened.

The first question to be considered is the dedication of the *locus in quo* by Niles in filing the map of 1858.

30 It appears that on February 4, 1859, that Niles, while owner, filed in the office of the Clerk of Hudson County the map showing a large tract of land, including the premises in question, laid out into building lots with streets, upon which streets many lots fronted. On the said map the *locus in quo* is known as Niles Avenue, and many lots were sold and conveyed by Niles, by reference to the said map.

40 There is no doubt that such proceedings, under

Opinion.

our decisions, constituted a dedication of the *locus in quo* to the public use.

Dummer vs. Board of Selectmen, 20 N. J. Law, 86;

Trustees M. E. Church, 33 N. J. Law, 13;

and other cases.

It is this public right which the Town of West New York claims to be in possession of, and which, prior to the filing of this bill, and on April 2, 1914, it accepted. 10

The decree taken in 1890, which was entered upon consent of the town's attorney, I do not think foreclosed this public right. There was no authority given the attorney to enter the decree, and even if there had been I am inclined to the opinion that this would not have resulted in the extinguishment of the public right acquired by the dedication of 1858. 20

It may be seriously questioned if the right which the public has in Niles Avenue could be surrendered by any act of the governing body. Certain it is, that no official has the right or power to dispose of the public right in a highway in the manner adopted by the attorney in the case in hand. It was urged before me that the case of *Newark vs. The Pennsylvania Railroad*, 92 Atl., 362, was dispositive herein. 30

The facts in that case are entirely different from the one now under consideration. No steps were taken by Newark to open the premises in question to public travel, but they permitted them to remain in the exclusive possession of the Railway Company until 1901; and then they entered into a contract (with the terms of which you are familiar) with the Pennsylvania Railroad, for eliminating grade crossings by elevating 40

Opinion.

the tracks throughout the city. The plan of elevation required the use of the dedicated thoroughfares, and the contract before referred to was made with the Railroad Company, permitting their use for the purpose of elevation.

10 As I understand the opinion of the learned Chief Justice, he goes no further than to say that Newark, in view of its contract with the railroad, is estopped from claiming any right to occupy the *locus in quo* as a public highway.

It was an affirmative act on the part of Newark, and an abandonment of its right to thereafter convert the dedicated land to public use.

20 There is nothing in the proceedings before me showing that the Town of West New York has done anything which estops it from claiming the right under the dedication, except as heretofore referred to; in fact, it having accepted Niles Avenue over two years ago. Surely, it cannot be urged that a public right in a dedicated street can be impaired by lapse of time; and this is so, notwithstanding the fact, as in this case, that the property owners along the proposed thoroughfare surrendered their rights in the dedication. Any member of the public still has a right, which has not been extinguished.

30 A true copy.

ROBERT H. MCADAMS,
Clerk.

Final Decree.

Filed May , 1917.

IN CHANCERY OF NEW JERSEY.

Between**WEST NEW YORK IMPROVEMENT
COMPANY, et al.,***Complainants,**and***THE TOWN OF WEST NEW YORK
in the County of Hudson,***Defendant.*

quiet title. 10
On Bill to

This cause coming on to be heard before this Court at the Chancery Chambers in Jersey City in the presence of Marshall Van Winkle of counsel with the complainants and Mark A. Sullivan of counsel with the defendant, and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the complainants are not entitled to the relief sought and prayed for by them in their bill of complaint,

It is on this 21st day of May, 1917, by Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED that the complainants' bill be and the same hereby is dismissed with costs.

And it is further ORDERED and DECREED that the complainants pay to the solicitor of the defendant his taxed costs and as a counsel fee the sum of \$ _____ which sum may be taxed in the costs.

Respectfully advised,

VIVIAN M. LEWIS,

V. C.

EDWIN ROBERT WALKER,

C.

Notice of Appeal.

Filed May 23, 1917.

IN CHANCERY OF NEW JERSEY.

10	Between WEST NEW YORK IMPROVEMENT COMPANY, et al., <i>Complainants,</i> <i>and</i> TOWN OF WEST NEW YORK, in the County of Hudson, <i>Defendant.</i>	} On Bill.
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20 The complainants appeal from the decree made on the 21st day of May, 1917, dismissing complainant's bill and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all cases.

Dated, May 21, 1917.

MARSHALL VAN WINKLE,

Solicitor and of Counsel with Complainants.

I conceive there is good cause of appeal in the above stated cause.

MARSHALL VAN WINKLE,

Of Counsel with Complainants.

30 Service of the within acknowledged this 21st day of May, 1917.

MARK A. SULLIVAN,
Solicitor for Defendant

Petition of Appeal.

Filed May 23, 1917.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

WEST NEW YORK IMPROVEMENT
COMPANY, et al.,*Complainants-Appellants,**and*TOWN OF WEST NEW YORK, in the
County of Hudson,*Defendant-Respondent.*

On Bill.

10

To the Honorable, the Court of Errors and
Appeals, in the last resort in all causes:

20

The petition of the West New York Improvement Company and William Walser, the appellants, in the above stated cause, shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the 21st day of May, 1917, wherein the said West New York Improvement Company and said William Walser were complainants, and the said Town of West New York in the County of Hudson is defendant, in this respect, to wit: that the said decree adjudges that the complainants' bill should be dismissed.

30

And your petitioners appeal from the whole of the decree of the Chancellor which decrees as aforesaid, upon the ground that the said decree is erroneous, for that the said decree is not in accordance with equity; that the said bill should

40

Petition of Appeal.

have been retained, and a decree entered in favor of the complainants and against the defendant, adjudging and decreeing that the Town of West New York has no estate or interest in, or encumbrance upon, the land and premises described in the Bill of Complaint.

10 Your petitioners therefore pray that the said decree of the said Chancellor may be reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this court shall seem meet.

MARSHALL VAN WINKLE,
Solicitor for and of Counsel with Complainants-Appellants.

20

30

40

Answer to Petition of Appeal.

Filed May , 1917.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

WEST NEW YORK IMPROVEMENT
Co., et al.,*Complainant-Appellant,**and*TOWN OF WEST NEW YORK, in the
County of Hudson,*Defendant-Respondent.*

On Bill, &c.

10

The Answer of the above named Respondent to the Petition of Appeal of the above named Appellant.

20

The Respondent, not acknowledging all or any of the matters which in the said Petition of Appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was, on the 21st day of May, 1917, made and entered in the Court of Chancery, in the cause for the purpose mentioned in the said Petition, as is therein stated; but as to the substance and form thereof, this respondent pray to refer thereto when the same shall be produced. And this Respondent is advised and believes, that the said decree is agreeable to equity, and it prays that the same may be affirmed, with costs to be adjudged to this Respondent.

30

MARK A. SULLIVAN,
Solicitor for and of Counsel with
Defendant-Respondent.

40

Answer to Petition of Appeal.

THE PETITIONER, JOHN J. ...

NEW JERSEY COURT OF ERRORS AND APPEALS

Between ...

West New York University

vs.

John J. ...

County of Hudson

Respondent

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100

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The Answer of the above named Respondent to the Petition of Appeal of the above named Appellant is as follows:

The Respondent, not acknowledging all or any of the matters which in the said Petition of Appeal are contained to be true, for answer thereto, nevertheless says and admits that a decree was on the 21st day of May, 1917, made and entered in the Court of Chancery, in the case for the purpose mentioned in the said Petition as therein stated; but as to the substance and form thereof, this Respondent says to refer thereto when the same shall be produced. And this Respondent is advised and believes that the said decree is agreeable to equity, and it prays that the same may be affirmed, with costs to be adjudged to this Respondent.

MARK A. SULLIVAN,
 Solicitor for and of Counsel with
 Defendant-Respondent.

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**Exhibit—Record in case of James H.
Symes v. Maria R. Audubon, et als.**

In Chancery of New Jersey.

To His Honor Alexander T. McGill, Chancellor
of the State of New Jersey: **10**

Complaining showeth unto your Honor your
orator James H. Symes of the Township of Un-
ion, Hudson County, New Jersey,

(1) Your orator is in peaceable possession and
claims to own a tract of 17.107-1000 acres situated
in the Township of Union, Hudson County, New
Jersey, conveyed to him by a deed made to him
by Thomas P. Simpson and wife dated May 19,
1885, and recorded in Hudson County Registers
Office in Book 446 pages 651, &c.; which tract is
particularly described as follows: **20**

ALL that certain tract of land situate, lying
and being in the Township of Union in the County
of Hudson and State of New Jersey bounded and
described as follows viz:

BEGINNING at a point on the southeast side of
the Bulls Ferry Road which point is in the south-
erly line of land formerly belonging to Dudley **30**
S. Gregory or the National Stock Yard Company
and is distant on a course south $51^{\circ} 45'$ east as
the needle bore in 1858 60 1-3 feet from a stone
monument standing on the northwesterly side of
the Bulls Ferry Road, thence South $51^{\circ} 45'$ east
as the needle bore in 1858 along said southerly
boundary 1550 feet more or less to the northwest-
erly side of the Hoboken and Hudson River Turn-
pike Road, thence south $60^{\circ} 15'$ west as the needle

40

Exhibits.

bore in 1858 along the said northerly side of the said Hoboken and Hudson River Turnpike Road 497 feet to a stone monument, thence still along the said Turnpike 76 feet 2 inches more or less to the northeasterly line of a tract of land known as the Annett tract, thence north $53^{\circ} 20'$ west as the needle bore in 1858 along said northeasterly
10 boundary of said Annett tract 1317 feet more or less to the southeasterly side of the aforesaid Bulls Ferry Road, thence northeasterly along the southeasterly side of the Bulls Ferry Road 560 feet more or less to the point or place of Beginning. Containing 17 107-1000 acres more or less which said tract is commonly known as the Comstock tract.

20 The title of your orator in the said lands is disputed and various persons claim to have an interest therein or in some part thereof, or liens thereon, but no suit is pending to enforce or test the validity of such title claim or enforcement; the heirs of Mary Anne Brainard deceased, and her surviving husband George W. Brainard claim to be entitled to own certain lots in said tract, the location of which they will not define and which your orator can not state. Various maps
30 have been made of the said tract upon which streets have been laid down in divers and inconsistent locations and the inhabitants of the Township of Union make claim to some interest in the said tract, the nature and extent of which is not known to your orator. The devisees of Marie Louise Comstock also claim some interest therein and one Mary F. Higgins claims to hold a mortgage on said premises or some part thereof, which mortgage has been paid and surrendered to your orator but has not been cancelled of record.

40 Your orators show that the persons who claim an interest in his said lands are:

Exhibits.

Marie R. Audubon and William F. Dunning executors and trustees under the will of Marie Louise Comstock deceased, Margaret E. Mitchell, Emily A. Ward, Lydia Day, Caroline Crocker, Mary Boone Ellis, Laura Barbarin, Maria R. Audubon, Mary F. Higgins, George W. Brainard, George E. Brainard, and Mrs. George B. Brainard his wife, Clarence Brainard and Adelaide his wife, Josephine B. Smillie and The Inhabitants of the Township of Union. 10

And your orator prays that his title to said lands may be settled by this Court and all doubts and disputes concerning the same may be cleared up and that it may be decreed that the persons above named, who are the defendants in this suit, have no estate or interest in or encumbrance on said lands or any part thereof and that the said defendants may without oath, answer all and singular the premises and abide the order of the Court; and that your orator may have such further and other relief as the nature of the case may require. 20

May it please your Honor the premises considered to grant unto your orator the writ of subpoena to be addressed to the said Marie R. Audubon and William F. Dunning, executors and trustees under the will of Marie Louise Comstock deceased, Margaret E. Mitchell, Emily A. Ward, Lydia Day, Caroline Crocker, Mary Boone Ellis, Laura Barbarin, Marie R. Audubon, Mary F. Higgins, George W. Brainard, George B. Brainard, and Mrs. George B. Brainard, his wife, Clarence Brainard and Adelaide his wife, Josephine B. Smillie and The Inhabitants of the Township of Union requiring them to appear in this Court and to answer the premises. 30

And your orator will ever pray, &c. 40

COLLINS & CORBIN,
Solicitors and Counsel of Complainant.

Exhibits.

STATE OF NEW JERSEY, SS:

CHARLES L. CORBIN, being duly sworn according to law on his oath says that he is one of the solicitors for complainant and that notwithstanding due inquiry therefor, the Christian name of the wife of George B. Brainard cannot be ascertained.

10

CHARLES L. CORBIN.

Sworn and subscribed to at Jersey }
 City this 27th day of February }
 A. D. 1890 before me. }

Charles B. Hughes,
 Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

20 The answer of the Inhabitants of the Township of Union, in the County of Hudson, defendants, to the bill of complaint of James H. Symes, complainant.

First. This defendant on information and belief, admits that the said complainant is in possession of and claims to own the tract of land particularly described in the said bill of complaint commonly known as the Comstock Tract.

30 And this defendant says that it is a stranger to all and singular the other matters and things in said bill of complaint contained, and therefore leaves the complainant to make such proof thereof as he shall be able, or may be advised, to produce.

Second. This defendant further answering, denies all the other allegations in the said bill of complaint material for it make answer unto, if any there be not already above well and sufficiently answered.

40

All which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

FRED FRAMBACH, JR.,
Solicitor of Defendants The Inhabitants
of the Township of Union, in the
County of Hudson.

10

Stipulation.

IN CHANCERY OF NEW JERSEY.

Between

JAMES H. SYMES,

Complainant,

and

MARY E. AUDUBON, *et als,*

Defendants.

On Bill, &c.

20

It is stipulated and agreed that the rights of the Inhabitants of the Township of Union, in the County of Hudson, defendant in above suit, in the land and premises described in the bill of complaint in above cause, under and by virtue of the unpaid taxes and assessment, and sales for unpaid taxes and assessments levied against said premises, are not to be disputed or contested in said suit.

30

Dated, June 30, 1890.

COLLINS & CORBIN,
Complainant's Solicitors.

FRED FRAMBACH, JR.,

Solr. of Deft. The Inhabitants of the
Township of Union in the County
of Hudson.

40

Filed June 30, 1890.

Final Decree.
IN CHANCERY OF NEW JERSEY.

Between

JAMES H. SYMES,

Complainant,

and

MARIE R. AUDUBON, and WILLIAM
 F. DUNNING, Executors and
 Trustees under the will of
 MARIE LOUISE COMSTOCK, De-
 ceased, et al,

Defendants.

On Bill To
 Quiet Title.

20 This cause being opened to the Court by Col-
 lins & Corbin, Solicitors for and of Counsel with
 the Complainant, and it appearing that James
 H. Symes, Complainant in said cause, being in
 peaceable possession, and claiming to own the
 same, of the following described lands in this
 State viz:

30 ALL that certain tract of land situate, lying
 and being in the Township of Union in the County
 of Hudson and State of New Jersey, bounded and
 described as follows, viz: BEGINNING at a point
 in the southeast side of the Bulls Ferry Road
 which point is in the southerly line of land form-
 erly belonging to Dudley S. Gregory or the Na-
 tional Stock Yard Company and is distant on a
 course S. 51° 45' East as the needle bore in 1858,
 60 1-3 feet from a stone monument standing on
 the northwesterly side of the Bulls Ferry Road,
 thence South 51° 45' East as the needle bore in
 1858 along said southerly boundary 1550 feet

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Exhibits.

more or less to the northwesterly side of the Hoboken and Hudson River Turnpike Road, thence South $60^{\circ} 15'$ west as the needle bore in 1858 along the said northerly side of said Hoboken and Hudson River Turnpike Road, 497 feet to a stone monument, thence still along the said Turnpike 76 feet 2 inches more or less to the northeasterly line of a tract of land known as the Annett tract, thence north $53^{\circ} 20'$ West as the needle bore in 1858 along said northeasterly boundary of said Annett tract 1317 feet more or less to the southeasterly side of the aforesaid Bulls Ferry Road, thence northeasterly along the southeasterly side of the Bulls Ferry Road 560 feet more or less to the point or place of Beginning. **10**

Containing 17 107-1000 acres more or less, which said tract is commonly known as the Comstock Tract; and his title thereto being disputed, and various persons claiming to have interests therein or in some part thereof, or to hold liens or encumbrances thereon, and no suit being pending to enforce or test the validity of such title, claims or encumbrances, he the said complainant exhibited his bill of complaint against the defendants hereinafter named and has brought and maintained this suit to settle the title of said lands, and to clear up all doubts and disputes concerning the same—the said bill of complaint describing the lands with certainty, and naming the persons who claim interest in said lands, and calling upon them respectively to set forth and specify their title, claim or encumbrance, and how or by what instrument the same is derived or created; **20**
30

And it further appearing that process of subpoena for the appearance of the defendants (with a ticket to each defendant describing the lands **40**

Exhibits.

with precision, stating the object of the suit, and that if any defendant claimed any title or interest in, or encumbrance upon said lands, he was required to answer said bill, but not otherwise) has been duly issued and returned served upon the defendants George B. Brainard, and Mrs. George B. Brainard, his wife and The Inhabitants of the Township of Union, and that due notice of the order of this court, made on the twenty-third day of April last past, directing the other defendants to appear and plead, demur or answer to the complainant's bill on or before the twenty-fourth day of June, then next, (which notice also described the said lands with precision, stated the object of the suit, and that if any defendant claimed any title or interest in, or encumbrance upon said lands, he was required to answer said bill, but not otherwise), has been duly published and also mailed to said other defendants respectively, in the manner and as in the said order directed and prescribed; and that none of the defendants except The Inhabitants of the Township of Union have filed any plea, demurrer or answer to the said bill within the time limited by law and said order, but having wholly failed and neglected so to do—the said Inhabitants of the Township of Union having filed an answer disclaiming knowledge of the matters and things in the said bill of complaint contained, except that it admits that the said complainant is in peaceable possession, and claims to own said lands, but said answer making no claim to any estate or interests in said lands or any part thereof; and a stipulation having been filed between said complainant and the said last named defendant, that the rights of the said defendants in said lands under or by virtue of the unpaid taxes and assessments, and

Exhibits.

saied for unpaid taxes or assessments levied against said lands are not intended to be and are not to be disputed in this suit; and said defendant therefore consenting to this decree;

IT IS THEREUPON on this fifteenth day of July, in the year of our Lord One Thousand Eight Hundred and Ninety, on motion of Collins & Corbin, Solicitors for and of Counsel with the Complainant, by his Honor Alexander T. McGill, Chancellor of the State of New Jersey, ordered, adjudged and decreed and the said Chancellor by virtue of the power and authority of this Court and the act of the Legislature of this State entitled "An Act to compel the determination of claims to real estate in certain cases, and to quiet the title to the same" approved March 2, A. D. 1870, does hereby order, adjudge and decree that the said bill be taken as confessed as against all of the defendants except the Inhabitants of the Township of Union; and it is further ordered, adjudged and decreed that Marie R. Audubon and William F. Dunning, Executors and trustees under the will of Marie Louise Comstock, deceased, Margaret E. Mitchell, Emily A. Ward, Lydia Day, Caroline Crocker, Mary Boone Ellis, Laura Barbarin, Marie R. Audubon, Mary F. Higgins, George W. Brainard, George B. Brainard, and Mrs. George B. Brainard his wife, Clarence Brainard, and Adelaide, his wife Josephine B. Smillie, and The Inhabitants of the Township of Union, in the County of Hudson, who are the defendants to this suit, have no estate or interest in, or encumbrance on said lands or any part thereof, nor has any or either of them any estate or interest in or encumbrance on said lands or any part thereof, except that the rights (if any), of the said The Inhabitants of the Township of

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Exhibits.

Union, in the County of Hudson in the said lands under and by virtue of unpaid taxes and assessments and saled for unpaid taxes or assessments levied against said premises are not to be in any way affected by this decree.

ALEX T. MCGILL,
Chancellor.

10 A true copy.

Allan McDermot,
Clerk.

I consent to the foregoing decree.

FRED FRAMBACH, JR.,
Solicitor of the Inhabitants of the
Township of Union, in the County
of Hudson.

20

IN CHANCERY OF NEW JERSEY.

Between

JAMES H. SYMES,
Complainant,

and

MARIE R. AUDUBON, et al.,
Defendants.

30 STATE OF NEW JERSEY, }
County of Hudson. } ss.:

CHARLES L. CORBIN, being duly sworn, on his oath says that he is one of the Solicitors of Complainant in the above cause, and had charge there of; that after the service of process George W. Brainard, one of the heirs of Mary Anne Brainard, called and stated to deponent that he did not wish to be put to the trouble of filing any answer, and
40 deponent told him that he need not take the

Exhibits.

trouble; that the only purpose in making the heirs a party was in order that their ownership in the tract described in the bill might be defined. That the lands owned by these heirs were conveyed to their ancestor by a deed referring to a map which is not on file, and which cannot be found, and the uncertainty of their location throws a cloud upon the title to the adjoining portions of the tract. **10** These lots are, however, shown upon a later map of the said tract and by said map are described as follows:

All those lots in the Township of North Bergen, Hudson County, New Jersey, which on a map entitled "Map of Building Lots, at Weehawken, Hudson County, New Jersey, belonging to William W. Niles, made by I. B. and D. E. Culver, September, 1858", filed in the Hudson County Register's office, are known as Lots thirteen (13) to twenty (20), both inclusive, in Block Eleven (11), **20** and also as old numbers two hundred and sixty (260) to two hundred and sixty-seven (267), both inclusive, in said Block. The old numbers thus given according with the numbers given on the last map, and these eight lots are the only ones, as far as deponent can discover, which were conveyed by reference to that lost map.

And deponent says that at the time when a decree was due in this cause, he was absent from the country, in Europe, and that he expected to prepare a decree on his return, but that his partner, Mr. Collins, not knowing of the verbal arrangement made by deponent with Mr. Brainard and finding the case ripe for a decree, took a final decree in the usual form whereby the heirs of Brainard appear to be barred from their rights in these plots, and deponent desires that the decree may be corrected and the boundaries of the lots of the heirs of Brainard defined according to his **40** understanding with one of said heirs.

CHARLES L. CORBIN.

Exhibits.

Sworn and subscribed at Jersey }
 City, this 17th day of Novem- }
 ber, A. D. 1890, before me, }
 JOHN OLENDORF,
 Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

10

Between

JAMES H. SYMES,

*Complainant,**and*

MARIE R. AUDUBON, and others,

20

Defendants.

STATE OF NEW JERSEY, SS.:

CHARLES L. CORBIN, being duly sworn on his oath according to law, says:

30 That he is Solicitor of Complainant and had charge of the above suit; that after the service of process George W. Brainard, one of the heirs of Mary Ann Brainard, called and said to deponent that he did not wish to be put to the trouble of
 40 filing any answer and deponent told him that the only purpose of making the heirs defendants was that their ownership described in the bill might be defined; that the lots owned by these heirs were conveyed to their ancestor by a deed referring to a map of Hexamer which is not on file and which cannot be found and the uncertainty of their location throws a cloud upon the title to the adjoining tracts; there is a later map of the property made by Culver for William W. Niles which is now the
 40 accepted layout of the tract. The Brainard lots were conveyed by the numbers Five hundred and thirteen (513) to Five hundred and seventeen (517), inclusive, and by the numbers Five hundred

Exhibits.

and forty-six (546) to Five hundred and fifty (550), inclusive, Hexamer's map, upon Culver's map in addition to his own numbers he has in the case of eighteen (18) lots placed upon his map old numbers apparently from Hexamer's map and ten (10) of these numbers are the same as these given in the Brainard deed. This is the only clue which deponent has been able to find as to the location of these lots which are vacant and uninclosed. These lots are the following: All those lots in the Township of North Bergen, Hudson County, New Jersey, and which on a map entitled "Map of Building Lots at Weehawken, Hudson County, New Jersey, belonging to William W. Niles, made by I. B. and D. E. Culver, September, 1858, filed in the Hudson County Register's Office", are known as lots one and two and as lots five to twelve, both inclusive, in Block twenty-three, and also additionally numbered on said map as Lots five hundred and thirteen to five hundred and seventeen, inclusive, and five hundred and forty-six to five hundred and fifty, inclusive, in the same Block.

And deponent says that at the time that a decree was due in this cause, he was in Europe and expected to prepare decree on his return; but that his partner, Mr. Collins, not knowing of the verbal agreement with Mr. Brainard and finding the case ripe for decree, took a final decree in the usual form whereby the heirs of Brainard appeared to be barred from their rights in these lots, and deponent desires that the decree may be corrected and the lots of Brainard excepted therefrom.

And deponent says he made an application to correct this error in November, Eighteen hundred and ninety, and an Order was made excepting certain lots from the operation of the decree, but

Exhibits.

by a mistake of deponent the lots thus excepted were described as in another block which was not involved at all in this suit and which is not the property of either Symes or Brainard.

CHARLES L. CORBIN.

10 Sworn to and subscribed at }
Jersey City, this 15th day of }
February, 1892, before me, }
W. B. GILMORE,
Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

20	<p style="text-align: center;">Between</p> <p style="text-align: center;">JOHN H. SYMES,</p> <p style="text-align: center;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">MARIE R. AUDUBON, and others,</p> <p style="text-align: center;"><i>Defendants.</i></p>	} On Bill, &c. Order.
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30 On making and filing the affidavit of Charles L. Corbin, whereby it appears that by accident a larger amount of land was described in the final decree made in the cause dated the fifteenth day of July, eighteen hundred and ninety, than that to which the complainant is entitled, and application being made to correct the said decree, and it appearing that on previous application for such correction the property to be reserved from the operation of the decree was incorrectly described in the order made herein dated the seventeenth day of March, eighteen hundred and ninety,

40 Now, on the fifteenth day of February, eighteen hundred and ninety-two, on motion of Collins &

Exhibits.

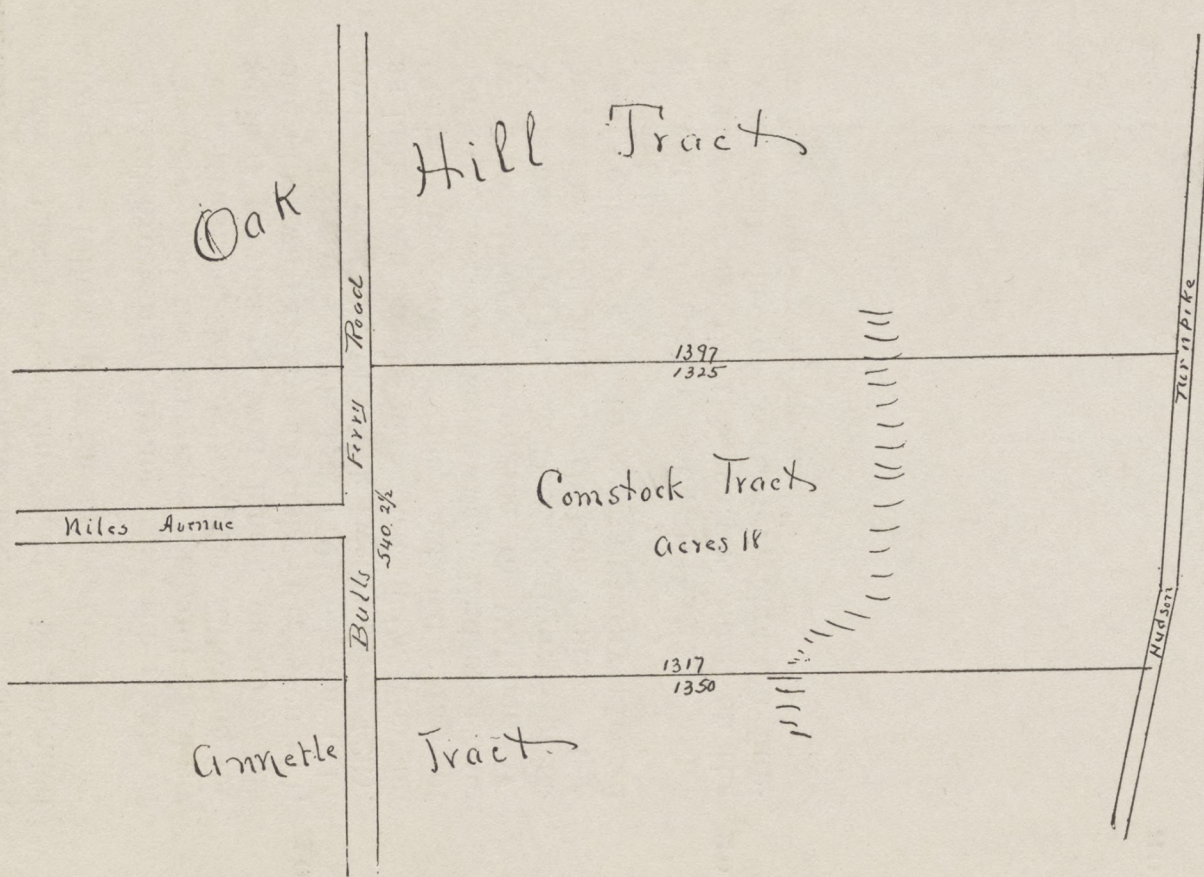
Corbin, counsel for complainants, it is ordered and decreed that the said final decree be amended by adding the following to the said decree:

“And excepting, further, that the rights of the heirs and the surviving husband of Mary Ann Brainard, deceased, in the following described portion of said lands, namely, lots one (1), two (2), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11) and twelve (12), in Block twenty-three (23), as laid down on the map filed in the Hudson County Register’s office, entitled ‘Map of Building Lots at Weehawken, Hudson County, New Jersey’, belonging to William W. Niles, made by I. B. & D. E. Culver, September, 1858, and filed in Hudson County Register’s office, are not to be in any way affected by said decree. **10**

“And it is further ordered that the order heretofore made in this matter, dated on the seventeenth day of November, eighteen hundred and ninety, be vacated.” **20**

30**40**

Exhibits.



Assessment map of the Township of
 Union, Hudson Co. N. J. 1880
 scale 100-1 inch
 Speilman H. Drush Civil Engineer
 Hoboken N. J.

Hudson River

MONITOR PARK

PROPERTY BELONGING TO THE

WEST NEW YORK IMPROVEMENT CO.

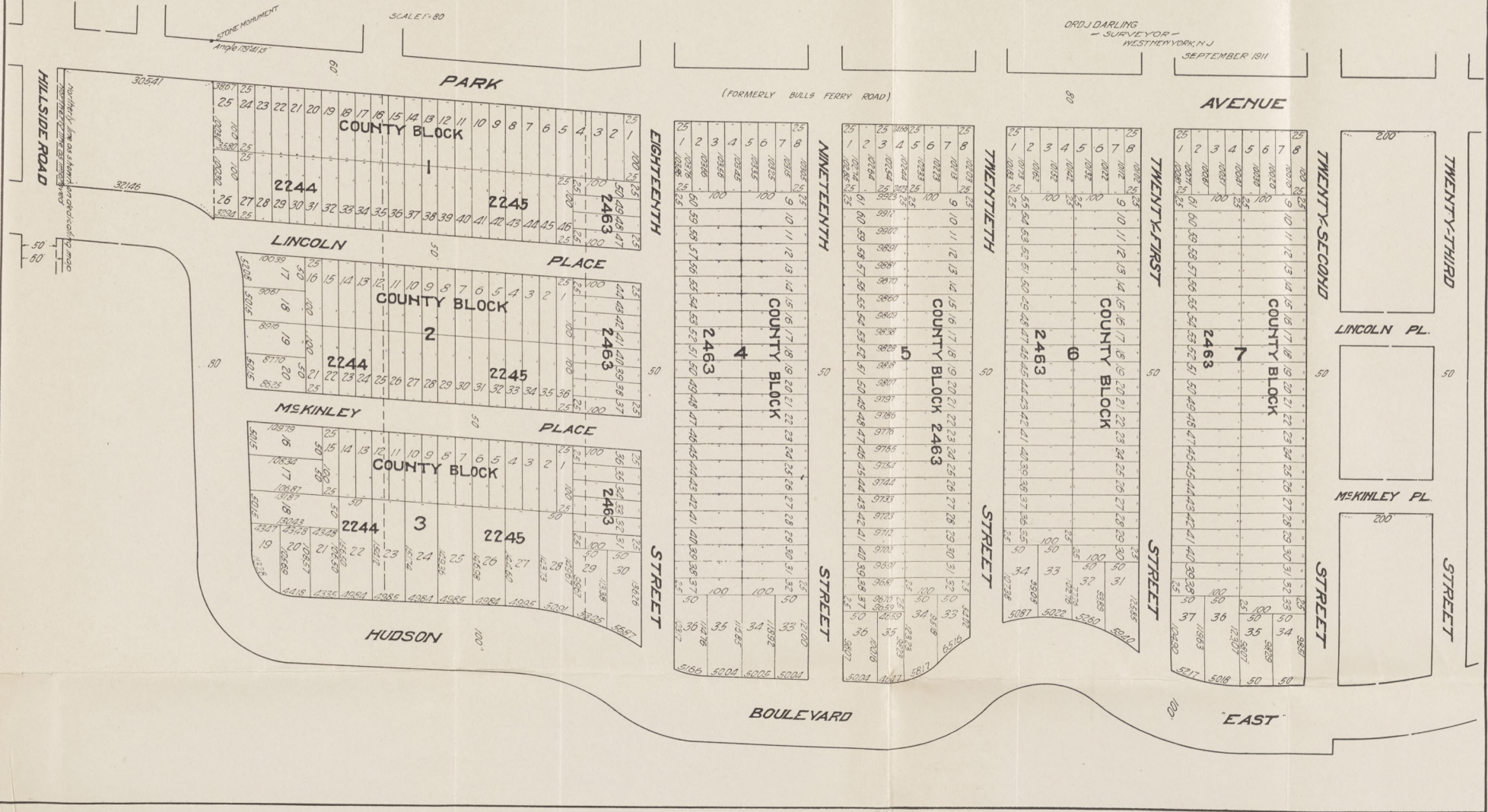
SITUATE IN
WEST NEW YORK, HUDSON COUNTY, NEW JERSEY.

NOTE:-
TO WHOM IT MAY CONCERN -
It is not the intention of the West New York Improvement Company by the filing of this map to dedicate to public use the sewers built on the streets shown hereon. Said sewers and the use of said streets for the purposes thereof and the right to regulate and control the same and the connections therewith and the use thereof are hereby expressly excepted from any dedication that may arise by operation of law or otherwise by such filing and are hereby reserved for the said West New York Improvement Company, its successors and assigns forever.

IN WITNESS WHEREOF, the said West New York Improvement Co. hath caused its corporate seal to be affixed and attested by its Secretary and these Presents to be signed by its President, this _____ day of _____, 1911.

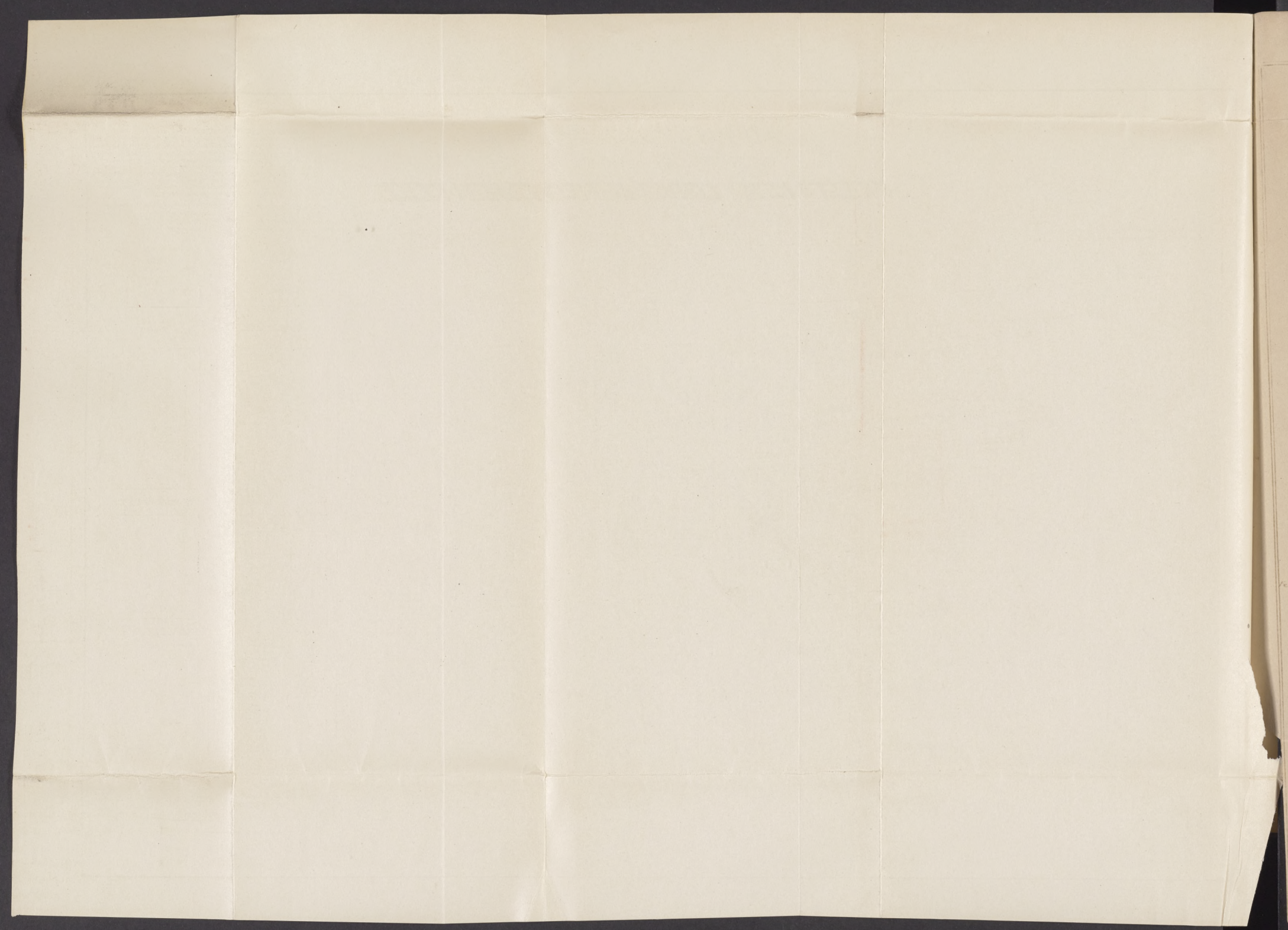
This map was laid out from survey data furnished by the N.J. Title Guarantee and Trust Co

DR. J. DARLING
SURVEYOR -
WEST NEW YORK, N.J.
SEPTEMBER 1911



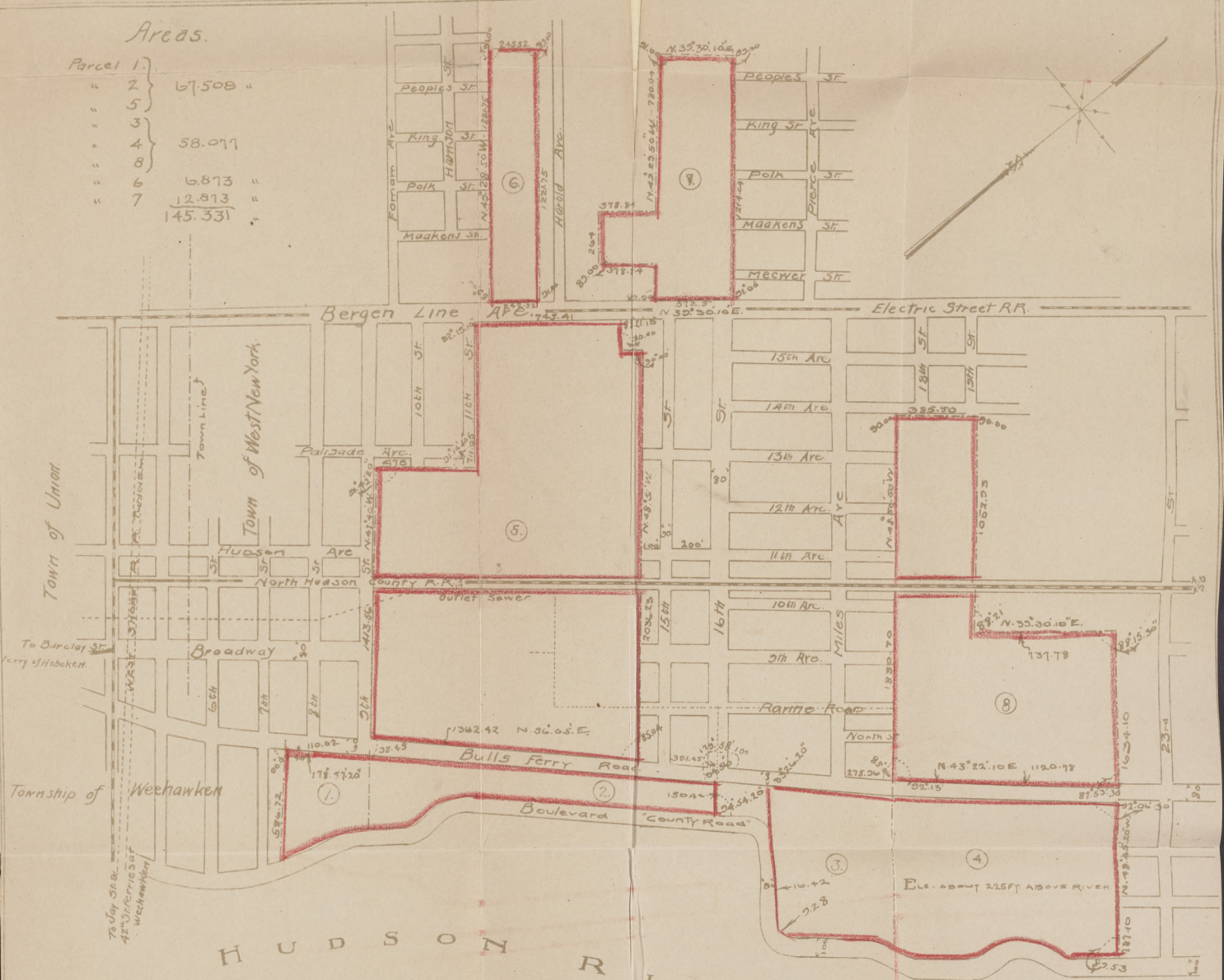
STONE MONUMENT
Angle 155° 41' 15"

HILLSIDE ROAD
north-south line as shown on preceding map



Areas.

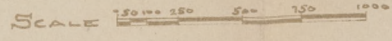
Parcel 1.	
" 2 }	67,508 "
" 5 }	
" 3 }	58,077
" 4 }	
" 6 }	6,873 "
" 8 }	12,873 "
" 7 }	145,331 "



HUDSON RIVER

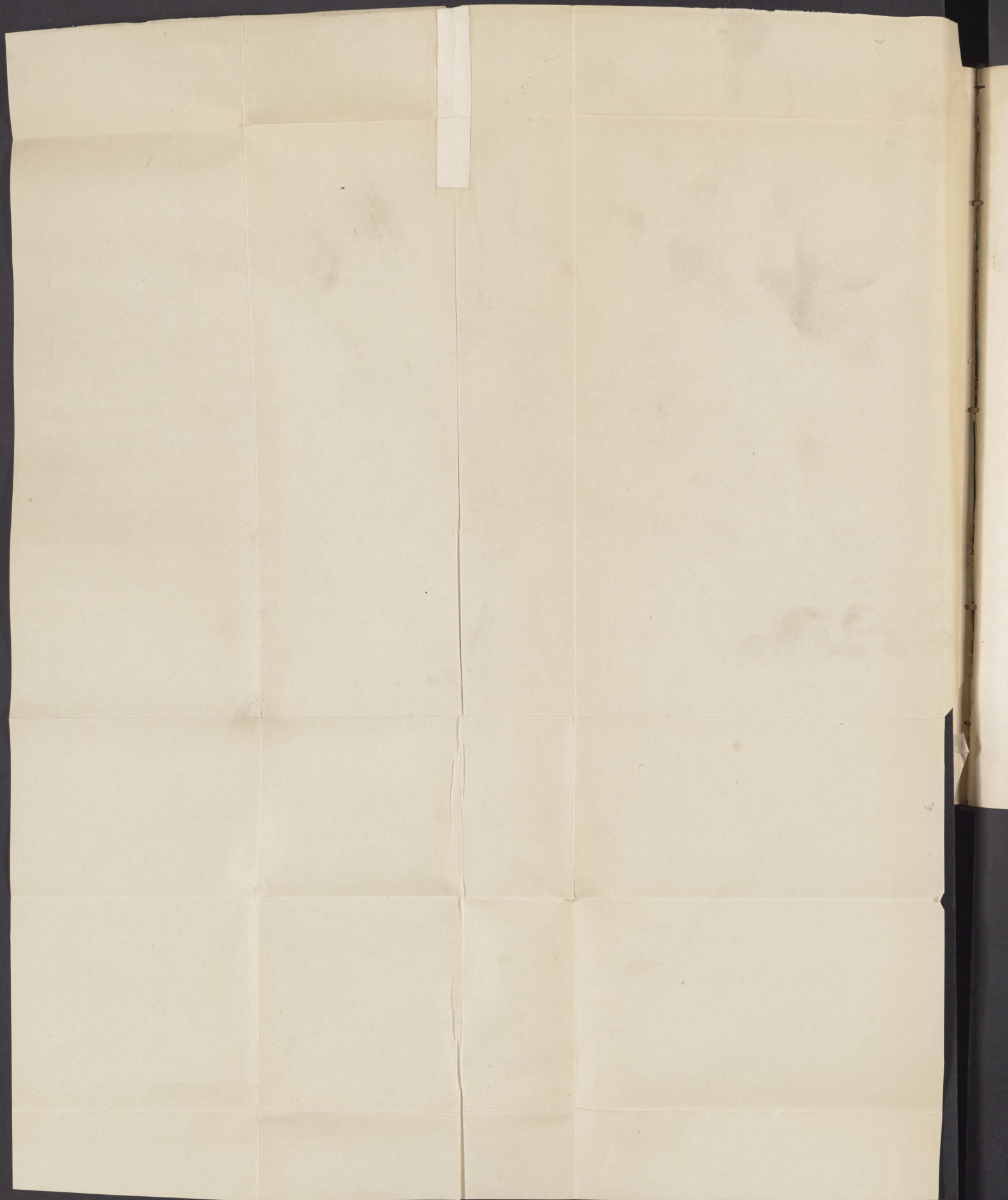
MAD SHOWING PROPERTY OF THE WEST NEW YORK IMPROVEMENT CO.

WEST NEW YORK, N.J.
Opposite about 107th St., New York City.



July 7 1902.

NOTE.
PARTS COLORED IN RED SHOW BOUNDARY LINE OF WEST NEW YORK IMP CO.



W

New Jersey Court of Errors and Appeals.

WEST NEW YORK IMPROVEMENT
Co. et al.,

Complainants-Appellants,

and

THE TOWN OF WEST NEW YORK,
in the County of Hudson,

Defendant-Appellee.

On Appeal **10**
from
Chancery.

POINTS FOR APPELLANT.

Statement.

20

William W. Niles owned a tract of land in the Township of Union (now the Town of West New York). He made a map of the tract in 1858, which map was filed in 1859. Streets and avenues were delineated on this map and one of these avenues was called on the map "Niles Avenue". This avenue was delineated as running across the tract east and west from Bergenline Avenue on the west, across the Bulls Ferry Road (now Park Avenue) to the Hudson River. There was, and is, a sheer cliff on the east end of the tract with the Hudson River running far below; so that an avenue could not physically be laid out as delineated on the map.

30

This suit is concerned with the strip delineated on this map as "Niles Avenue" east of the Bulls Ferry Road.

The Town of West New York claims a dedication of the strip delineated on the Niles map of

40

1858 as "Niles Avenue" east of the Bulls Ferry Road across the property of the Complainants to the Hudson Boulevard East, which Boulevard runs generally north and south parallel with Bulls Ferry Road, because of the filing of the map and certain resolutions of acceptance passed by the Council of the Town in 1914, 56 years after the map was made.

10 The Town has no other ground for making any claim that the strip in question is a street, and it makes this claim despite the Decree of this Court quieting title to the strip and the surrounding land, entered in this Court in 1890.

20 Niles had made at least two other maps of the tract and made conveyances by reference to such maps. All of the property thus conveyed by Niles afterwards became vested in James H. Symes, except the lots called the "Brainerd lots", which lots could never be, and cannot now be located. These lots did not front nor abut in any way at any point on Niles Avenue, as shown on the filed Niles Map of 1858.

Except with relation to the "Brainerd lots" the owners, in conveying to one Nathaniel Dole in 1863, consented in and by their conveyances that the roads, streets and avenues east of the Bulls Ferry Road should be closed at the option of the said Dole.

30 *Afterwards, the Brainerd lots were conveyed to the grantors of complainants in this suit; so there is no outstanding title in any grantee of Niles by reference to the Niles map.*

40 The section of "Niles Avenue" west from the Bulls Ferry Road to Bergenline Avenue, although also delineated on the Niles Map of 1858, was not accepted as a dedicated street by the Township of Union, the predecessor of the Town of West New York, but the same was laid out as a public highway by the Surveyors of Highway under the order

of the Court of Common Pleas entered May 22, 1865. This proceeding was taken on the application of ten freeholders and is recorded in the Road Book of Hudson County.

At that times Niles Avenue (so-called), as shown on the Niles Map of 1858, had not been accepted or improved in any way by the Township of Union, nor had there been any act of the Township accepting the dedication based on the filing of the Niles Map of 1858.

10

All the Niles property afterwards became vested in James H. Symes, with the exception of the rights of one Brainerd in certain lots which had been conveyed by Niles to Brainerd, being the lots referred to on the preceding page hereof. The rights of Brainerd afterwards became vested in Chauncey M. Depew. The title of Symes passed to Depew, who thus had the whole title. Depew conveyed to the Guaranty Trust Company of New York, which company conveyed to the West New York Improvement Company, whereupon that company became seized of all the lands with no outstanding rights.

20

A bill of complaint to quiet title was filed by said James H. Symes in the office of the Clerk in Chancery of New Jersey, February 27, 1890, against the Inhabitants of the Township of Union and others. The premises described in the Bill of Complaint in that suit as a tract of 17.107 acres included all the lands and premises on the map filed by Niles lying east of the Bulls Ferry Road and west of the Hoboken and Hudson River Turnpike, being the road running north and south at the foot of the cliff, and includes the premises described in the Bill of Complaint in this cause.

30

At the time of the filing of the Bill of Complaint, Symes was in peaceable possession.

The Bill of Complaint states as follows:

40

“Various maps have been made of said tract upon which streets have been laid down in divers and inconsistent locations and the Inhabitants of the Township of Union make claim to some interest in the tract, the nature and extent of which is not known to your orators.”

10 An appearance and also an answer was filed by the Defendant, the Inhabitants of the Township of Union. The solicitor appearing for the Township of Union was Frederick Frambach, Jr., who has been dead a number of years.

20 A stipulation was entered into by said solicitor for the Defendant, the Inhabitants of the Township of Union—that the rights of the Inhabitants of the Township of Union in the lands and premises described in the Bill of Complaint under and by virtue of the unpaid taxes and assessments and sales and unpaid taxes and assessments levied against said premises should not be disputed or contested in the suit.

The answer of the Inhabitants of the Township of Union admitted that the said James H. Symes was in possession of, and that he claimed to own, the tract of land described in the Bill of Complaint commonly known as the Comstock Tract, which is the tract of 17.107 acres.

30 Final Decree in said suit was duly entered and filed; and the decree is recorded December 11, 1890, in full in Book 518 of Deeds for Hudson County, page 40. This Final Decree adjudged and decreed that all the defendants, including the Inhabitants of the Township of Union, had no estate or interest in, or encumbrance on, the land described in the Bill, or any part thereof.

40 The Decree provided that the rights, if any, of the Defendant, the Inhabitants of the Township of Union, in said lands under and by virtue of the unpaid taxes and assessments and sales for unpaid taxes and assessments levied against the

premises should not be in any way affected by the Decree.

The Decree is endorsed with a consent to the entry of the same signed by the said Frederick Frambach, Jr., as solicitor of the Defendant, the Inhabitants of the Township of Union.

The Decree has been in full force and effect for twenty-six years and it has been in no way questioned or challenged, except in this suit.

However, the answer herein does not, in any way, bring the Decree in question. 10

The Hudson Boulevard East was laid out in 1893, subsequently to the Decree.

The tax sales mentioned in the Decree were assigned to said James H. Symes by the Township of Union and authority for the assignment is found in the minutes of the Township of Union.

It appears that the suit brought by Symes was brought to the attention of the Township Committee. 20

It is agreed that at the time of the bringing of the Symes suit no street or avenue was actually laid out or opened running north and south, east or west across the tract of 17.107 acres between Bulls Ferry Road and the edge of the cliff and that at that time there was little development of land in the neighborhood. Further, that the lands north and south of the tract of 17.107 acres had not been laid out into lots or blocks. 30

The strip in question in this suit has never been opened or worked as a street. On the other hand, the same was above or below the surface or grade of the Bulls Ferry Road and was covered with boulders until the West New York Improvement Company leveled the ground of the whole tract, laid out streets and avenues and built houses fronting on the streets and avenues and delineated by the said West New York Improvement Company. This development proceeded as though 40

Niles Avenue did not exist as a public street across the tract.

The West New York Improvement Company has built valuable dwelling houses on the whole tract and it has built several houses on the very strip delineated as Niles Avenue on the map of 1858.

These buildings were erected before the Council of the Town of West New York passed the resolutions of acceptance in 1914.

- 10 On November 3, 1913, all the owners of all the land on both sides of the strip in question, being Niles Avenue as shown on the Map of 1858 between the Bulls Ferry Road and Hudson County Boulevard East, duly filed an assent, in writing, which assent was duly executed, in accordance with the statute therein referred to, in the County Clerk's Office of Hudson County. This was an assent to the vacation of the strip in question as
- 20 a public street and to the vacation of a certain street called Third Place easterly from Bulls Ferry Road (Park Avenue) to the Hudson Boulevard East.

The West New York Improvement Company and its predecessor in title have always paid taxes on the land in question. The taxes were assessed by the acre until 1911.

- 30 The tract was assessed by the Township of Union and by the Town of West New York up to 1898 by reference to the Spielman & Brush Map, which map showed no streets or avenues east of the Bulls Ferry Road.

In 1898 the Town made a map which showed Niles Avenue east of the Bulls Ferry Road, but the Town continued to assess the tract for taxes by the acre.

- 40 In 1908 the Town made an Official Tax and Assessment Map, which map did not show "Niles Avenue" or any street running across the tract east of the Bulls Ferry Road.

In 1911 the Town adopted a tax and assessment map showing the tract laid out into lots and blocks in accordance with the layout of the lots and blocks shown on the map filed by the Complainant, the West New York Improvement Company. This map does not show any street called "Niles Avenue" or corresponding with "Niles Avenue" east of the Bulls Ferry Road.

The property has never been assessed by lots and blocks with reference to a street called "Niles Avenue" as that street is delineated on the map of 1858, nor have taxes ever been assessed by reference to any street called "Niles Avenue" east of the Bulls Ferry Road. 10

Reference is made to the maps of the Complainant, West New York Improvement Company. One of the maps shows the layout of the Town at the time the West New York Improvement Company purchased in 1901, and the other was made by the West New York Improvement Company in 1909, and was adopted by the Town in 1911, so that this last named map became the Assessment Map of the Town. 20

Brief of the Argument.

FIRST—Under the present law of New Jersey the dedication claimed could not arise on the facts in this case.

Recent legislation in New Jersey has restricted the effect of filing a map showing streets and has removed the possibility of situations arising of the kind contended for by the Defendant. 30

This legislation has in effect abrogated the old decisions on dedication relied upon by the Defendant.

The acceptance by the Town in 1914 was subsequently to this legislation.

SECOND—The suit to quiet title brought in 1890 by James H. Symes against the Township of Union (the predecessor of the Defendant), and others, was a proper proceeding to cut off the rights, if any, of the Township of Union in the land in question.

The Bill of Complaint in the Symes case stated as follows:

10 “Various maps have been made of the said tract upon which streets have been laid down in divers and inconsistent locations, and the Inhabitants of the Township of Union make claim to some interest in the said tract, the nature and extent of which is not known to your orator.”

At the time the Bill was filed no one could tell just what the Township might claim with respect to where Niles Avenue was located because of the delineation on these maps of a street called
20 “Niles Avenue”.

The Decree in this suit of James H. Symes has stood in full force and effect for 25 years and it decides the present controversy in favor of the Complainant.

Parties other than the parties to this suit hold estates and rights under the Decree. These equities are not represented in this suit.

30 **THIRD**—As the land in question had been unworked and unused for public travel for a period of not less than 15 years from the date of dedication by the filing of said map and had always remained unworked and unused for public travel, the filing in the County Clerk's Office in 1913 of the assent of the owners of all the lands on both sides of the land in question under the statute of 1890 was an effective vacation of the lands in question.

40 **FOURTH**—The defendant is estopped from setting up any rights in the land in question.

First.

The kind of dedication contended for by the Defendant could not arise in New Jersey under the present statutes; that is, a dedication no longer arises merely from the filing of a map without the approval of the municipality.

Moreover, the Legislature has protected land owners by giving them rights to vacate by their own action. 10

The general trend of the older decisions in this State was that when a map had been filed showing lots, blocks and streets, that a street delineated thereon was thereby dedicated, and that the dedication could not be revoked by an act of the land owner even though there had been no affirmative action by the municipality.

These decisions follow the decisions in the case of *The Hoboken Land Improvement Company vs. City of Hoboken*, 36 N. J. Law, 540. The severity of these decisions oftentimes resulted in positive injustice leading the Legislature to pass various acts by which streets so delineated might be vacated. 20

One of these acts is that of 1885 giving the Court of Common Pleas jurisdiction to vacate such streets. Others are the Act of 1890 whereby the owners of lands on any street or highway, or any portion thereof, may vacate by filing their consent with the County Clerk, as was done in the present case; and the Act of 1896, whereby a street which had not been used for twenty years as a street may be vacated on the consent of the land owners. 30

The Legislature has, by these statutes, dealt with the decisions of the Courts and has given the land owner rights not possessed at the time the decisions were rendered.

In this connection it should be noted that the Act of 1912 respecting maps requires the con- 40

sent of the municipality to the filing of a map. This means that the filing of a map with the approval of the municipality works a dedication because of the act of the municipality.

The general rule is stated in 13 Cyc, page 461, "Dedication":

10 "Considering a dedication as the voluntary transfer of an interest in land, it partakes both of the nature of a grant and of a gift, and is governed by the fundamental principles which control grants and gifts. Hence a dedication, like a contract, consists of an offer and acceptance; and the general rule is well settled that no dedication can be valid and complete until the public use for which it is offered has been accepted."

The general principle is expressed in Dillon on Municipal Corporation, Sec. 1091, 5th Edition 1911, as follows:

20 "Unless private rights have attached a common law dedication of land for a highway, street or other public use may, according to some authorities be revoked by the owner at any time before there has been an acceptance by formal act of the property owners or by user."

Under this section the following New Jersey cases are cited in opposition to the text of the section:

30 *Jersey City v. Morris Canal & Banking Co.*, 12 N. J. Eq. 547;
Atlantic City v. Groff, 64 N. J. L. 527;
Hoboken M. E. Church v. Hoboken, 33 N. J. L. 13.

Only these New Jersey cases and a Wisconsin case are cited against the principle laid down in the text, while the text is supported by numerous decisions of practically all the states.

40 In Elliott on Roads and Streets, 3d Ed. 1911, page 143, we find the following:

“A statutory dedication operates as a conveyance of an easement except where the statute declares that a fee shall pass and is, in its essential characteristics a grant of an interest in land, while a common law dedication generally operated by way of estoppel. The one concludes the owner upon compliance with the provisions of the statute under which it was made, while the other concludes him upon the ground that he has suffered the public and individuals to acquire rights upon the faith that he has devoted the land to the use of the public as a road or street.” 10

And further, at page 150, we find that a dedication must be accepted within a reasonable time and that what is a reasonable time depends upon circumstances.

Further, at page 185, we find the following:

“In order to make a dedication complete on the part of the public as well as the owner and to charge the public corporation having jurisdiction over highways with the duty to repair the way, there must be an acceptance of the dedication by the public or the proper local authorities. The owner may, as a rule, recall his dedication at any time before it has been accepted.” 20

There are many cases cited under this section but no New Jersey cases.

“Where the owner of land dedicated it to the public for a street, and then granted the land in fee, before the public had taken any possession or made any use of the land, and the grantee and those holding under him had possessed and occupied the land for over 25 years before the public asserted any claim or right founded upon the donation, it was held that the right in the public had ceased.” 30

See *Baldwin v. Buffalo*, 29 Barb. 396.

We find at page 198 of Elliott that one of the principal indications of acceptance is that of improving or repairing the alleged road or street. 40

It appears that in no state, other than New Jersey, would the circumstances of this case give the defendant any right to claim that the resolution of the Town Council of 1914, based on the filing of the map of 1858, operated as an acceptance.

In other states it has been held that an acceptance is too late where the dedicator, or those claiming under him, have used the land for a long period of time.

10 See 13 Cyc, "Dedication" pp. 463, 464, and 465:

The one sidedness and the unfairness of the doctrine enunciated in the earlier New Jersey Cases is shown by reference to the following decision:

20 "A mere dedication without acceptance is insufficient to charge the dedicated land with a public use and with public liability. Mr. Justice Lippincott in *N. Y. & L. B. R. R. Co. v. South Amboy*, 57 N. J. Law, 252, 30 Atl. 628, says: 'Whilst the fact of dedication may be clear as against the owner or those claiming under him, yet there must exist on the part of the public a ratification or acceptance evidenced by some authorized formal municipal act or a public user. The public acquired no rights, nor is it subject to any burdens by reason of the dedication, unless it be by some formal act of acceptance or by unequivocal public user.' *Trustees v. Hoboken*, 33 N. J. Law, 13; 97 Am. Dec. 696; *Holmes v. Jersey City*, 12 N. J. Eq. 299; *Booraem v. N. H. C. R. Co.*, 12 N. J. Eq. 465."

30

Arnold et al v. City of Orange, et al, 73 N. J. Eq. 280; 66 Atl. Rep. 1053.

Logically it should be held that the filing of the map of 1858 amounted only to an offer to dedicate; that the offer, to become a dedication, would need to be followed by an acceptance expressed or implied. That as between the man who filed it and a lot owner who bought according to the map,

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there would be a complete dedication; but as between the man who made the map and the municipality, without acceptance expressed or implied, the man who made the map and those claiming all the land under him would have the right to revoke the offer. That if a right to revoke exists it is expressed by the filing by all the land owners of an assent of the kind filed in this case.

In *Darling vs. Mayor and Aldermen of Jersey City*, (73 Equity, page 321; 67 Atl. 709) the city sought to prove "acceptance" by the making of deeds by the complainant, who, it was alleged, had dedicated the land in question as a street, which deeds referred to the official assessment map showing the street; the use of the street by the public; the adoption of the map; and the non-taxation of the property. **10**

The Court held that none of these things was sufficient to establish an acceptance and also that all of them would not have that effect. **20**

In this case the following acts logically recalled the offer of dedication:

"The owning of all the land by the alleged dedicator or those claiming under him after the filing of the map.

"The conveyances for purposes inconsistent with a dedication.

"The decree in the suit to quiet title.

"The open use of the property for a purpose inconsistent with the dedication, being the building of houses thereon. **30**

"The assent, in writing, filed by all the owners in the County Clerk's Office."

It is to be noted that all of these things took place *before* the passing of the resolutions of acceptance by the Town Council in 1914.

It is to be noted also that the cases cited by the Defendant in the Court below are cases where a street, road or highway had been dedicated, or had been used, and that none of the cases are cases **40**

where there was any question as to a street, or some part of it having been used; and that some of the cases deal with encroachments on a street, all, or some part of which had been in use.

While we understand that the case in hand cannot be decided solely in connection with what is here set down under this Point we submit that the New Jersey doctrine based on the decided cases is illogical, singular, and contrary to the
10 principles of the law relating to contracts.

In the case in hand the owners of the land always had peaceable possession and enjoyment of the land. There was never any recognition by the owners of any street, or right to a street.

Moreover, the facts that the grantees of Niles conveyed to one person without reference to any street, and that the land got in one owner with no reference to any street on the land, and that no
20 lot owner was interested in contending that a dedication had taken place, show, at least, that there was no intention to permanently devote any part of the land to public use; and, further, the taxation of the land by the municipality indicated that not only had there been no acceptance of the dedication by the municipality, but that the municipality did not intend to accept any offer of dedication.

It is clearly apparent that the township committee did not view the township as having any
30 right in the tract except so far as taxes and tax sales were concerned, and that at that time the township committee did not wish to have the township burdened with the expense of opening Niles Avenue (so-called) east of the Bulls Ferry Road, because of the great expense of doing so.

Second.

The bill to quiet title filed by Collins & Corbin for James H. Symes contains the following statement:

“Various maps have been made of the said tract upon which streets have been laid down in divers and inconsistent locations and the Inhabitants of the Township of Union make claim to some interest in the said tract, the nature and extent of which is not known to your orator.” 10

Thus we see that a reason for filing the bill to quiet title was because Niles Avenue (so-called) east of the Bulls Ferry Road, and other streets in the tract east of the Bulls Ferry Road which had been delineated on more than one map, (some of which maps had been filed and some of which had not been filed) could not be consistently located, and, in order that the rights, if any, of the Township of Union, with respect to Niles Avenue (so-called) would be cut off by a decree of the Court of Chancery. 20

At that time no one could tell under which map, or where the Township of Union might claim “Niles Avenue” existed as a street. At that time the “Brainerd lots” could not be located.

Mr. Many’s testimony should be examined, and an examination of it will show that the surveys made for the Title Company locate these lots as Mr. Many located them. The Chain of Title shows that when George B. Brainerd conveyed to Eberhard he conveyed by the description found in the deed from Niles to George W. Brainerd, which is the description read by Mr. Many. When Eberhard conveyed to Depew, he conveyed by the description found in the deed from Niles to George W. Brainerd, excepting the part of the premises which had been taken for the Boulevard, and the 30 40

part conveyed to William W. Niles; and when Depew conveyed, he conveyed by acreage.

It thus appears that the Brainerd lots never had any rights in Niles Avenue, so-called, as shown on the filed Niles Map; that they do not touch Niles Avenue as shown on the map of 1855 or the map of 1855 as changed.

10 Mr. Corbin's affidavit of February 15th, 1892 was made evidently without a careful examination of the Brainerd deed or the maps. This is proved to be so because the lots form a parallelogram as described in the deed from Niles to Brainerd and a reference to the figures written on the filed Niles Map shows the property to be L-shaped.

20 Mr. Charles L. Corbin's affidavit of November 17th, 1890 locates the Brainerd lots in a block west of the Brainerd lots and at a place where they could not front on Niles Avenue, and in property which was not involved in the Symes suit. (See Mr. Corbin's affidavit of November 17th, 1890, filed in the Symes suit.)

Mr. Corbin's second affidavit, the one of February 15th, 1892, bases the location of the Brainerd lots on information received from the filed Niles Map and on the assumption that certain figures purporting to be lot numbers written on the filed Niles Map designated the Brainerd lots.

30 There is no real foundation for fixing the location of the Brainerd lots because someone wrote certain figures on the Niles Map. A reading of the description in the deed, which description was read into the record by Mr. Many when he testified, shows that the description cannot be made to read in such a way that the lots in any way touch Niles Avenue.

40 The defendant in this suit assumes that the Township of Union had rights that could not be cut off by the Symes suit to quiet title. The Niles

Map was filed in 1859 and the suit to quiet title was instituted in 1890. For the period between those years the land had been in the peaceable possession of the owners claiming absolute title, and in 1890 Symes was in the peaceable possession of the tract and no part of the tract had ever been used by the public in any way.

A suit to quiet the title would have been the proper proceeding even if the Township had completed rights with respect to Niles Avenue (so-called) which had been used and which had been subsequently abandoned. But the Township had less than this. What did the Township have? The claim set up in the Answer in this present suit is that a dedication took place because of the offer implied from the filing of the Niles Map of 1859, and the acceptance of Niles Avenue (so-called) as delineated on that map by the resolutions of the Town Council of 1914. 10

What was there in 1890 to be cut off by a decree quieting title? At the most there was the mere offer to dedicate and that as we shall later argue, was no longer at that time outstanding. This offer had not been followed by acceptance or user, or anything that had weight in equity. The suit to quiet title operated on the inchoate right of the Town to accept, which right, so-called, the Town might never wish to exercise. If the Town had any right at the time the Symes Bill was filed it could have exercised such right by filing an Answer setting up an acceptance. It also had the right to abandon any rights that may have existed and to exercise the right to abandon by a failure to contest the claim of Symes manifested by the filing of the Bill of Complaint. 20

There was no other method by which this inchoate right, if any existed, could have been cut off except by a suit to quiet title. The situation was, to a certain extent, "up in the air," with a 30

was, to a certain extent, "up in the air," with a 40

cloud on the title. The suit in equity brought the situation to the ground, and the Decree in the Symes suit defined the situation and the rights of the parties. If the Township had then insisted that it had a right to accept the offer of dedication, and that the offer was still outstanding, and had, by its Answer, set up its claims, a different situation might have been presented. Also a different situation might have been presented if

10 there had been, prior to the filing of the Bill of Symes, any user of the land by the public.

The Township filed an appearance and also an Answer. The Answer was the Answer of the Township. What reason have we, at this time, twenty-five years later, for even surmising that the Township wished to file a different Answer, or that the Township Attorney filed an Answer not desired or ordered by the Township? We

20 think that the appearance and the Answer of the Township must stand as the acts of the Township. It is to be said that the Township acted and protected the rights it wished to protect, namely, its claims with respect to unpaid taxes and tax sales. The "rights of the Township," as expressed in the minutes, mean only the rights of the Township with respect to unpaid taxes and tax sales.

We are clearly entitled to say that at the time the Bill to quiet title was filed, the Township did

30 not wish to accept or improve "Niles Avenue."

By not accepting at that time and by not raising any right to accept in an Answer, the Township, by its own act, gave up or abandoned any right to accept.

We find that a municipality may abandon an acceptance even after a use of the land by the public as a street. This being so, certainly the Township had the right to give up or abandon the

40 mere right to accept, where there had been no

public user, and certainly the Township had the right to say that it did not wish to accept an offer, the acceptance of which would have been expensive and burdensome.

Suits to quiet title have been brought without question against municipalities in New Jersey in connection with alleged street rights, and in many other jurisdictions.

Counsel for the Defendant states that he can find no case holding that such a proceeding is an improper one to cut off the rights of the public in a dedicated street. 10

It must also be said that no decision can be found holding that such a proceeding is an improper method to be pursued to accomplish the purpose.

The method has been pursued and enforced dozens of times in New Jersey without any question; and we are entitled to invoke the doctrine of silence. 20

In the case of *McAndrews v. City of Camden*, (78 Atl. 232) in the Court of Errors, 78 Eq. 244 the decision was by Gummere, C. J. We refer to this case, because it is a comparatively recent instance of the use of a bill to quiet title to cut off the rights of the public following the filing of a map upon which a street is shown. The method was not questioned in this *McAndrews* case, and the decision in that case is a clear indication that suits to quiet title to cut off the rights of the public in streets, following the filing of maps upon which streets are shown, is the settled practice in New Jersey. It is to be noticed that this *McAndrews* Case was decided subsequently to the *Darling* Case, referred to in the following paragraph here. 30

Vice-Chancellor Howell, some years ago, in the case of *Darling v. Jersey City*, (73 Equity 318; 67 40

Atl. 709) raises a question with respect to the procedure; but that is all that he does. This Darling Case, however, contains no decision against the procedure; and, indeed, it is difficult to conceive what valid reason could have been urged against the procedure, and what Vice-Chancellor Howell said respecting the procedure was not at all necessary to the decision of the case before him. The suit was an injunction suit based on a decree to

10 quiet title which had been previously obtained; and the decree was not disturbed.

The procedure was employed by Collins & Corbin, Solicitors for James H. Symes, without question. And it is now being employed by the present Complainant without question, for the Answer herein raises no question with respect to the propriety of the procedure or the jurisdiction of the Court.

20 If a bill to quiet title were not the correct procedure for Symes to have employed, and if it is not the correct procedure for the present complainants to employ, and this Court did not have jurisdiction in the Symes Bill, and if it has not jurisdiction of the Bill of the present complainants, what is the right procedure and what Court has jurisdiction? What other procedure could be employed? What other jurisdiction can be appealed to? How could the complainants appeal to the Courts at all, if not in

30 the way that they have appealed? Counsel for the defendant simply states a doubt. He points to no other procedure.

The case of *Darling v. Jersey City* was decided in 1907. Since that time we have the decision in the case of the *Pennsylvania Railroad v. The City of Newark*, (92 Atl. 38) which establishes in New Jersey the principle that equitable estoppel may be invoked against the public. This

decision really cuts off the raising of the question suggested in the Darling Case.

In the case of *Hellmann v. City of Los Angeles*, (125 Cal., 383 [1889] 58 Pac. Rep. 10) a suit to quiet title to a certain lot of land alleged to be a street, demurrers and cross-claims were filed. There was no question raised with respect to the jurisdiction of the Court to pass on the question.

If a party is aggrieved, he is certainly entitled to some remedy. As Symes was in possession of the land a proceeding to quiet the title was the only proper proceeding. 10

The power of a Court of Equity to grant relief to remove a cloud from a title is independent of any statute conferring jurisdiction and rests on general equity principles and practice.

Tennant v. Fretts, 29 L. R. A. (N. S.)
625; 68 S. E., 387; 67 W. Va., 568.
B. v. Hemphill, 82 N. W., 501. 20

Courts of Equity will interfere where Courts of ordinary jurisdiction are inadequate instruments of justice to restrain the assertion of doubtful rights in a manner productive of irreparable damage.

R. v. City of Baltimore, 8 Gill. Md. 433.

Equity has jurisdiction where the claim to the land is valid, on the face of an instrument, for instance, or of the proceeding sought to be set aside, and where extrinsic facts need to be proved in order to prove the invalidity or illegality. 30

Heywood v. Buffalo, 14 N. Y., 534.

City liens can be removed by bill to quiet title.

Watt v. City of Elizabeth, 35 Equity 345.

There is relief in equity against an ordinance of a City as a cloud upon title. 40

177 U. S., 558. *City of Los Angeles*.

If ejectment may be brought against a city in a court of law with respect to public rights in a street, what reason can be urged against the jurisdiction of the Court of Equity to settle with respect to rights where the requisites to the bringing of an action in ejectment are not present?

- 10 Ejectment could not have been brought by Symes because he was in peaceable possession, nor can ejectment be brought by the present complainants because they are in peaceable possession.

Ejectment will lie against a city by the owner of land wrongfully taken by the City and converted into a public street.

Sedgewick & Wait on Trial of Title to Land §252.

- 20 *Strong v. City of Brooklyn*, 68 N. Y., 1;
Armstrong v. St. Louis, 69 Missouri, 309;
McCarthy v. Clark County, 101 Missouri, 179;
H. L. & I. Co. v. Mayor, &c. of Hoboken,
 36 N. J. Law, (7 Vr., 540), p. 544.

An action to quiet title to lands is maintainable although the legal title is in the government of the United States.

- 30 *Orr v. Stewart*, 67 Cal. 275; 7 Pac. 693.

All presumptions are with the decree in the Symes Case and in favor of the jurisdiction of the Court that granted it.

The Symes suit affected other lands than the lands in question and other parties than the parties in question; and the decree cannot be disturbed in the present proceeding.

- 40 There could have been a trial by jury in the Symes Case had the Township or the complainant

desired it, so that the failure to have an adjudication by a jury cannot be urged as a reason against the suit to quiet title. That was not claimed by the Township. It was waived.

This Court should uphold the Act of 1870 (providing for the quieting of titles) as comprehensive enough to include an action to quiet title against a municipality to close out an inchoate right growing out of an offer to dedicate based on the filing of a map with a street delineated thereon. 10

At the time the Township filed its Answer to the Symes Bill it had no substantial right to waive, but it waived whatever rights it had. The Township did not want "Niles Avenue" as a street east of the Bulls Ferry Road, but it did want to protect its claim for unpaid taxes and tax sales, and that claim was protected. The Township did not want to be at the expense of opening "Niles Avenue" east of the Bulls Ferry Road. In the Symes suit the Township dealt with Symes by means of the stipulation and protected its claim with respect to taxes and tax sales, and Symes gave up his right with respect to those taxes and tax sales. He afterwards paid these taxes and took assignments of these tax sales and the stipulation was carried into effect. 20

Even though the Town did not wish, or intend, to accept, still, as it took no affirmative action leading to a vacation there was a cloud on the title because of the filing of the map of 1859, even though all the lands had been deeded back, that is, were in the hands of the one owner and there were no rights outstanding in holders of lots under conveyances made by reference to the map. The only way to remove this cloud was by the suit to quiet title which Symes brought; and the only way to remove the cloud now on the title, existing because of the resolutions of the 30 40

Town Council of 1914, which were passed despite the Final Decree of this Court in the Symes suit quieting title to the very land in question, is by this proceeding to quiet the title.

Counsel for the defendant suggests that a proceeding by ten Freeholders to vacate was the proper proceeding to have been brought and that such proceeding was exclusive. By what rule was such a proceeding exclusive? Such a proceeding, **10** if it could have been employed, would only have been one method of accomplishing the desired result. Moreover, ten Freeholders might not have been obtainable.

The Road Act provides for the laying out of highways by the Court of Common Pleas. This Act does not apply to municipalities where the power to lay out and vacate has been granted to them by the Legislature. Under the decisions, **20** the Court of Common Pleas had no power to vacate streets or roads dedicated to public use up to 1885, when an Act was passed giving the Court of Common Pleas power to vacate dedicated roads.

In 1888 an Act was passed applying this power to vacate to all cities, towns and other municipalities.

In 1890 (page 148 Laws of 1890) an Act was passed giving owners of land on each side of the **30** unused portion of a road or street the right to vacate on their own action. This Act provides that owners were not required to go to the Court of Common Pleas to vacate.

Nor does this Act provide for the consent of the Township. The vacation taking place under this statute could be for all, or any portion, of a road or street.

It is to be noted that the Bill of Complaint in **40** the Symes Case was filed February 27, 1890; and

that this Act of 1890, just referred to, was not approved until March 31, 1890. So that at the time that Symes filed his Bill there was no right in Symes to vacate on consent. Moreover, it is to be noted, that the Act of 1890 does not cover cases where there might be mortgages or other encumbrances on the land, and the Bill of Complaint filed by Symes shows that there were other rights existing that made the filing of the Bill to quiet title necessary and proper.

10

The Town of West New York was created under the Act Respecting Towns of 1895. No provision was contained in this Act for the vacation of streets (see Compt. Stat. p. 5518 §60). Afterwards in 1906 an Act was passed (see Laws 1906, p. 533) giving towns the power of vacation.

Acts of 1885 and 1888 providing for vacation of roads were referred to by the defendant in the Court below; but it is to be noted that these acts do not provide for the vacation of *part* of a road. By fair interpretation, these acts relate only to the *whole* of a road.

20

See

Ridgefield Park v. R. R. Co., 89 Atl., 773.
85 Law 279.

Referring to page 4429, Comp. Stat. §12-E, we do find some legislation with respect to "short sections of roads". *That legislation, however relates only to roads originally laid out by surveyors of the highway, under the order of the Common Pleas Court.*

30

We do not find any legislation prior to 1885 giving the Court of Common Pleas authority to vacate roads or streets dedicated, whether in whole or in part. The Act of 1885 referred to by defendant seems to be the first legislation on the subject; and we contend this relates to the *whole* of a road and not to a *part* thereof.

40

The acts of 1890 referred to by defendant were approved subsequently to the filing of the Symes Bill. The Symes Bill was filed February 27th, 1890. Sub. ad resp. was issued March 15th, 1890.

It has been held that striking a street from the city plan and making a new plan on which the street is omitted constitutes the legal vacation of the street.

10 Cyc 28, p. 841;
 Wetherill v. Pennsylvania Railroad Com-
 pany, 195 Pa. St. 156; 45 Alt. 658.

This is just what the Town of West New York did when it adopted the map of the complainants in constructing the present official tax map of the Town.

20 That the Decree was a proper one, and that the municipality was the proper party to litigate for the rights or the alleged rights of the public is perfectly well settled.

Dummer v. Jersey City, 1843, Spencer
 86.

A city may maintain action of ejectment to recover lands dedicated to public use.

30 “The next question is, whether the plaintiff can maintain this action for the recovery of the possession of this land. By the act of incorporation, the lessors of the plaintiff represent the public or the inhabitants of the city, and the rights of the public in common property are vested in them and if such rights cannot be enforced, in their name, they cannot be enforced at all.”

Trustees &c. v. Hoboken, (1868) 4 Vr. 13.

Question of whether there had been a dedication or not, tried in action of ejectment against the City of Hoboken.

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Hoboken Land Improvement Co. v. Hoboken (1873) 7 Vr. 540.

“The Supreme Court of the United States has decided that a municipal corporation may defend ejection at the suit of the owner of the fee, by setting up the right of possession in a street or common, under the rights acquired by the public in the dedication to a public use. *Barclay v. Howell's Lessees*, 6 Peters 498; *Cincinnati v. White*, 10 Ib. 631. The rule is otherwise in case the servitude is a mere private easement. *Morgan v. Moore*, 3 Gray 319. If the right of possession under a public easement may be made a defense in ejection, no reason can be advanced why it should not be also available to support an action to recover the possession.” 10

Price v. Plainfield (1878) 11 Vr. 608.

“First then I think there was no error in the ruling of the judge, that, if there had been a dedication to the public, the right to protect the public's right of possession was in the City of Plainfield.” 20

“The theory upon which the right exists in the City, is by virtue of its representing the public in which is the right of possession.”

See also

Ocean Grove, &c., v. Berthall (1899)
Court of Errors and Appeals. 63 N. J.
Law, 312.

The Township was the party to be made defendant. It was made defendant and was given full notice of the suit and full opportunity to defend the same. 30

It appeared and answered and Decree was taken against it. The complainant in that suit and his grantees and others have acted upon the faith of the decree. The rights of innocent third parties have intervened. The Decree cannot be opened at this time in this suit. 40

The public right in all these cases grows out of and is dependent upon the rights of private grantees of the alleged dedicator. The private rights precede public rights, and are the source from which the public rights spring. This is the language of the Court of Errors and Appeals:

10 "Indeed, whenever a dedication as a public highway is effected—as it usually is—by means of conveyances to private persons by reference to a proposed street over other lands of the grantor, the private rights of the several grantees precede the public right, and are the source from which the public right springs. By such conveyances the grantees are regarded as purchases by implied covenant of the right to the use of the street, as a means of passage to and from their premises, as appurtenant to the premises granted, and this private right of way in the grantees is wholly distinct from, and independent of, the right of passage to be acquired by the public."

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Booraem v. North Hudson County R. R. Co., 13 Stew. 564.

In the present instance there are no private rights from which public rights can spring or upon which public rights can be predicated. If there has been no implied covenant creating private rights it is submitted there really was no offer to dedicate open for acceptance at the time that

30 Symes brought his suit to quiet title; and certainly no such offer was open to acceptance at the time that the Town passed the resolutions in 1914.

It is to be noted in this connection that any conveyance of lots fronting on "Niles Avenue" to the west of the Bulls Ferry Road, between the Bulls Ferry Road and Bergenline Avenue, are not to be considered in connection with Niles Avenue (so-called) east of the Bulls Ferry Road,

40 since "Niles Avenue" west of the Bulls Ferry

Road was opened by virtue of the proceedings taken on application of ten Freeholders to the Court of Common Pleas.

And so far as Niles Avenue east of the Bulls Ferry Road is concerned the mere reference to the map certainly was not such an "unequivocal manifestation" of intention to permanently abandon the property or dedicate it to public uses as required by the Courts.

See *Hohokus vs. Erie R. R.*, 36 Vr., 353. 10

There was no public street at the time Symes brought his suit. There was nothing more outstanding than a tender of dedication; we contend that not even that was outstanding at the time.

The rule that before tendered streets become public streets, the municipality must accept them is perfectly well settled, *Arnold v. City of Orange*, 66 Atl. 1052; *N. Y. & L. B. R. R. Co. v. South Amboy*, 57 N. J., Law 252. 20

In this latter case the Court held

"The public acquired no right, nor is it subject to any burden by reason of the dedication unless it be by some formal act of acceptance or by unequivocal user." 2 Dill. Mun. Corp. 4th Ed. 642 and cases cited *Pope v. Union* 3 C. E. Gr. 282.

In *Attorney Gen. v. Morris & Essex R. R.* 4 C. E. Gr., p. 391, the Chancellor says: 33

"The purchasers of the lots acquire an easement or right in the lands so laid out as streets, and have a right to pass over them, and to have them taken by the proper authorities for public streets, without a compensation to the owner. By such dedication, the streets do not become public highways; they are not such until accepted by the proper public authorities, or until used by the public as highways for twenty years; *until then, there is no right acquired by the public, but only by the purchases of lots, by whose con-*

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sent the easements may be surrendered, and the land freed from all claim by the rest of the public. These principles have been declared as law by the courts of this state, and affirmed by the Court of Errors by repeated decisions. Den. v. Dummer, Spencer 106; Holmes v. Jersey City, 1 Beas. 299; Jersey City v. Morris Canal & Banking Co., Ibid. 547". (This case was reversed, 5 C. E. Green 530, but not on the point cited.)

- 10** Even granting for the sake of argument that Symes could not deny that Niles had tendered a strip of land for dedication, still he had a right to insist that until the land was accepted (no private rights intervening), he could do with his own as he saw fit.

- 20** The Decree in the Symes suit can not be disturbed except through the filing of a bill of review. In such a proceeding all the original parties, or their privies, and possibly new parties, would need to be made parties to the litigation. The premises described in the Bill of Complaint in this present suit are only a part of the premises affected by the Decree in the Symes suit. There have been many changes of title since that Decree. New equities have arisen.

A Bill for Review would not lie against a decree obtained by consent unless there were fraud in obtaining it.

- 30** Beach Modern Equity Practice § 853.

- 40** "The question is not whether the instrument upon which the decree may have been founded was fraudulent, but whether the decree itself was procured by fraudulent means. This court will not look back of the decree of another court to inquire into the merits of the case, if there was no fraud in the procurement of the decree. Nor is it at all material to the present inquiry, whether the decree was obtained by consent, or by a decision of the court upon the points in contro-

versy. The conclusiveness of a judgment upon the rights of parties does in nowise depend upon its form, or upon the fact that the court investigated or decided the legal principles involved. A judgment by default or upon confession is, in its nature, just as conclusive upon the rights of the parties before the court, as a judgment upon demurrer or verdict."

Gifford, Adm'r. v. Thorn, et al, (19 Eq., p. 722).

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Laches, although not always vital to an application to open a Chancery Decree are, nevertheless, to be considered.

See page 448 Kocher's Chancery Practice.

Avon-by-the-Sea Land Co. v. Finn (56 N. J. Eq., 805);

Embury v. Klemm, (30 N. J. Eq., 517) affirmed 31 Equity, 797.

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A decree cannot be set aside upon the ground of fraud or for any other cause without having all the parties to the decree before the court. So in a Bill of Review all the parties to the original decree should be included and if they be dead their legal representatives must be made parties.

Beach § 884 pages 867-868.

To justify the Court of Equity in impeaching a decree on the ground of fraud it must be made clearly to appear that the decree has no other foundation than the fraud charged, and that if there had been no fraud there would have been no decree.

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Drimminger v. Receiver, 42 N. J. Eq., 573.

It is settled that until reversed by an appellate court, or impeached by an original bill for fraud,

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or set aside by a bill of review, the decree however, erroneous, is absolutely conclusive upon the parties to the suit and their privies.

It would be an unheard of thing to take up this case with the idea that the defendant is making an application to file a bill of review.

The Symes Decree can be challenged only by a bill of review; and laches would defeat the application.

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Kelsey v. Dilks, 72 Eq., 835.
77 Eq., 144.

It is a general rule that a bill of review will not lie against a decree entered by consent unless there were fraud in obtaining it.

Thompson vs. Maxwell, 95 U. S., 391.

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With respect to the power of attorneys and solicitors to consent, see *Price v. Ward*, 85 N. J. Law.

Third.

The Assent filed in the County Clerk's Office was effective to vacate Niles Avenue (so-called) east of the Bulls Ferry Road.

During all of that period the strip was a township road.

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The Town of West New York was created in 1898 under the Act of 1895. At the time of the creation of the town the strip of land in question had been unworked and unused for public travel for some forty years. At the time the Town of West New York was created the strip of land was "a township road," that is, it was a township road, if the public had any rights whatever in it.

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Section 84 of the Road Act (See Revision of 1877, page 1011; also General Statutes of N. J. 1895, Vol. 3, page 2822, § 84; also Comp. Stat.

Vol. 4 "Roads" page 4468, §84) provides that the term "township" made use of in the Act, shall be construed to comprehend precincts, wards, cities, boroughs and towns corporate.

The Act of 1890 (P. L., 1890, page 148; Comp. Stat. of N. J. "Roads" p. 4466, §§ 82-a to 82-d) is an amendment to the Road Act. Therefore, we may say that the definition of the word "township" found in the Road Act itself was incorporated in the Act of 1890.

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The sections of the statute under which the assent was filed have apparently not received judicial construction. Section 82-g of the Road Act (Comp. Stat. Vol. 4 "Roads", p. 4467, § 82-g), a statute somewhat similar to the statute of 1890 under which the assent was filed, is referred to in the opinion in the case of *Board of Trustees of Ridgefield Park vs. N. Y. Susquehanna & Western R. R. Co.*, 89 Atl., 773, (1914); 85 Law, 279.

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Fourth.

The Town of West New York was estopped from claiming the strip of land as a street at the time it passed the resolutions of acceptance in 1914.

The case of the *Pennsylvania R. R. Co. vs. Mayor and Aldermen of Newark* (92 Atl., 382 (1914), 86 Law, 575, is not new doctrine. Judge Dillon states the doctrine enunciated in that case, and the doctrine has often been applied in other states. The doctrine is certainly not one that is dangerous to municipalities, unless courts prove dangerous, for the only difference introduced by the decision is that the matter is left with the courts with more flexibility than formerly. The decision in this *Pennsylvania R. R. vs. Mayor and Aldermen of Newark* case indicates progress, and the decision is based on logical grounds. The

See also
Trenton v. Merce
Co., Traction Co.
Inhabitants of E
Township, Vol. 10
Atl. Rep., p. 1037
 -and-
Mason v. Ross, 7
Eq. 136.

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decision was due in New Jersey. This may be said in view of the severity and singularity of the older decisions in New Jersey which demonstrated the necessity for the application of the doctrine of equitable estoppel if justice were to be achieved. The trend of matters, as shown by the statutes regulating dedications with respect to the filing of maps referred to in another part of this brief, paved the way for the recognition of

10 the doctrine of equitable estoppel.

The facts in the case in hand furnish a basis for the application of the doctrine of equitable estoppel more clearly than do the facts in the *Pennsylvania R. R. Co.-Mayor and Aldermen of Newark* case. The doctrine was applied in that case even where there had been a formal acceptance by the municipality.

The exact facts in the *Pennsylvania R. R. Co.-Newark* case do not concern us, but the application of the doctrine to the facts in that case does not interfere, in any way, with the application of the doctrine to the facts in this case.

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The rule to be deduced from the *Pennsylvania R. R. Co.-Mayor and Aldermen of Newark* case and from the statement of the doctrine in Dillon is a just one. It tends to the quieting of titles and to the discouragement of stale demands. It means that if a municipality allows a land owner

30 to take possession of land under an apparent claim of right and if, without dissent or objection, it permits him to improve the same with buildings, the value of which the assertion of a public right would seriously disturb, equity and good sense require that the municipality be estopped to deny the title of the individual whom it has misled to his injury. It means that the public right to the use and occupation of a street

40 may be lost by estoppel. It means, also, that al-

though the statute of limitations may not run against a municipality, yet that a municipality may estop itself.

Dillon, (5th Ed., Vol. 3, § 1194) states as follows:

“There may grow up, in consequence, private rights of more persuasive force in the particular case than those of the public. It will perhaps be found, that cases sometimes arise of such a character that justice requires that an equitable estoppel shall be asserted even against the public, but if so, such cases will form a law unto themselves, and do not fall within the legal operation of limitation enactments. The author cannot assent to the doctrine that, as respects public rights, municipal corporations are impliedly within ordinary limitation statutes. It is unsafe to recognize such a principle. But there is no danger in recognizing the principle of an *estoppel in pais* as applicable to exceptional cases, since this leaves the courts to decide the question, not by the mere lapse of time, but upon all the circumstances of the case to hold the public estopped or not, as right and justice may require.”

Depue, J., in *M. & E. R. R. Co. v. Prudden*, 5 C. E. Green, at p. 541:

“Where a person entitled to a right in the nature of an easement encourages another, though passively, to acquire title and expend money on the assumption that that right will not be asserted, he will not be permitted in a court of equity to assert his right to the prejudice or injury of those who have been encouraged by his acquiescence, to expend money on the faith that his right will not be exercised to defeat the just expectations upon which such expenditures have been made. Where such acquiescence has continued for the period of twenty years, or even less, in a court of equity his right will be extinguished by estoppel.”

The following acts and conduct are proof that the Township of Union was estopped, and that the Town of West New York is estopped, from claiming any rights in the land in question.

Laches; failure for 55 years to accept tender of dedication.

Non-user by public for the whole period.

10 Use and enjoyment by the land owners for the whole period.

Taxing the land for the whole period.

Taxing the land by the acre with no reference to Niles Avenue.

The Decree quieting title in the Symes suit; no bill filed to review that Decree.

The assignment of tax titles to Symes; thus recognizing the Decree and acting under it.

20 The recording of the Decree in the County of Hudson among deeds.

The different conveyances made which recalled any offer to dedicate. No private rights upon which public rights can be predicated.

The laying out of "Niles Avenue" west of the Bulls Ferry Road by the Surveyors of the Highway and not under a dedication by means of the Niles Map of 1858.

30 The statute authorizing the filing of the Assent by the land owners to vacation.

The filing of the Assent in the County Clerk's Office.

Permitting the erection of buildings on the land.

The making of maps and the using of the same as official maps on which maps no street was shown.

40 The making of a map (the Gaw Map) on which the street was shown.

The correction of this map and the making of a new map on which the street was omitted.

Adopting the layout on the map of the Complainants upon which map a street is not shown, and taxing by that map.

It has been held that striking a street off the city plan and making a new plan on which the street is omitted, constitutes a legal vacation of the street.

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Cyc. 28, page 841;

Wetherill v. Pennsylvania R. R. Co., 195 Pa. State, 156; 45 Atl., 658.

This is certainly what the Town of West New York did.

This is an affirmative act. It is a repudiation of any tender of dedication.

A city is estopped to deny the ownership of real estate by a party whom it has permitted, under claim of right, to occupy the same and to pay taxes thereon levied by itself.

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When a city has permitted a party, under claim of right, to occupy land granted to it for a street, it will be presumed to have abandoned its right thereto.

Simplot v. City of Dubuque, 49 Iowa, page 630.

Where a city levies assessments for taxes against property, thus treating it as plaintiff's property, under the doctrines of estoppel, the city cannot now deny plaintiff's right to the land. This would be true if the city held the land for public use exclusively.

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Ibid.

The right of the town is based entirely upon

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equitable considerations; and as against these there are to be weighed the equities of the complainants with their title. From the evidence introduced the superior equities are with the complainants.

See *Nouat Lumber Co. v. Denver*, (21 Col. pp. 5-9).

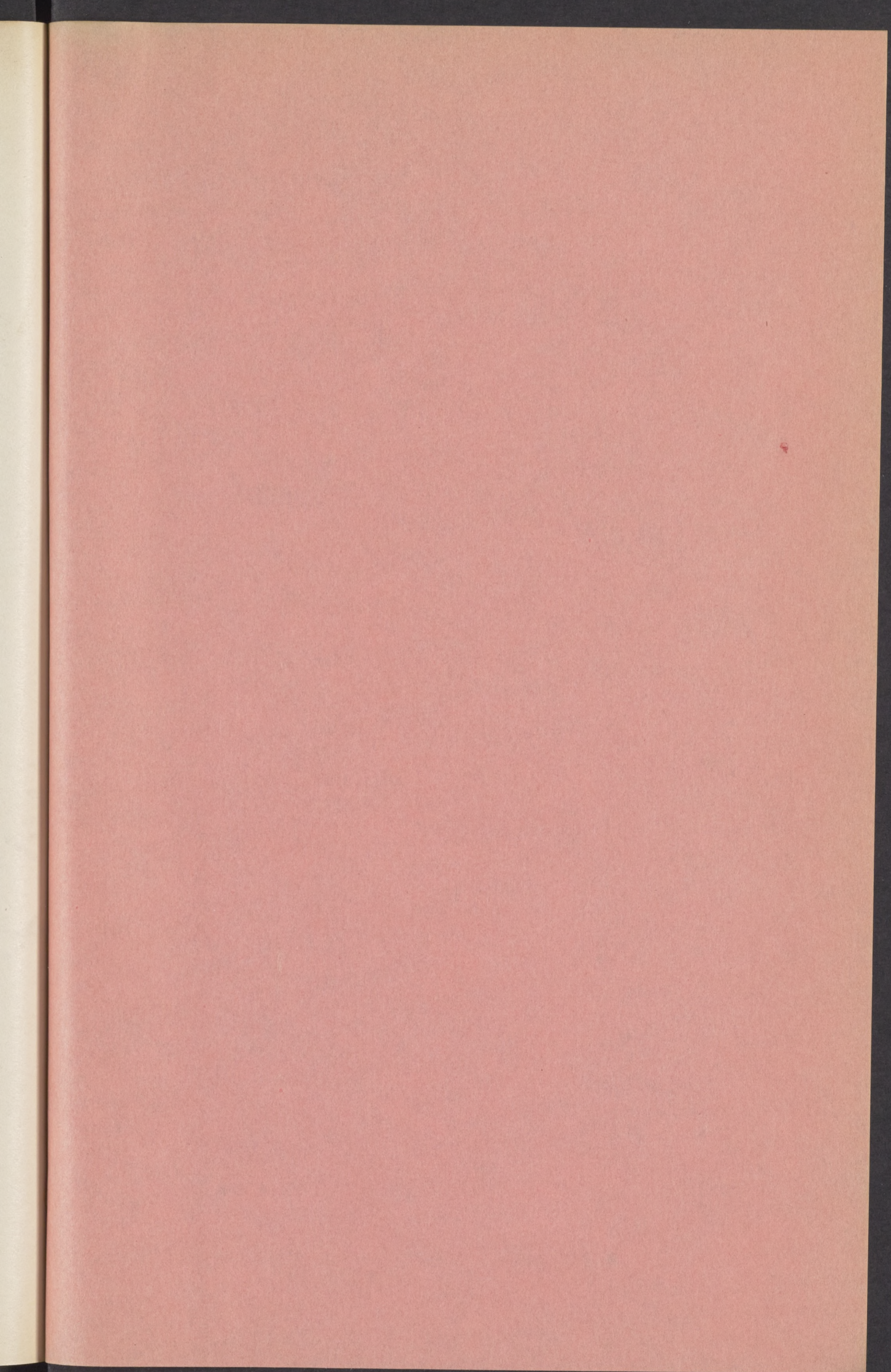
10 We respectfully submit that the bill should not have been dismissed, and that the complainants are entitled to a decree that the defendant has no easement over, or any rights in, the strip of land in question.

MARSHALL VAN WINKLE,
GILBERT COLLINS,
Of Counsel with Complainants.

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