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New Jersey Court of Errors and Appeals.

MARCH TERM, 1862.

DAVID S. MANNERS, *Appellant*,

AND

PETER BENTLEY, *Respondent*,

} *On Appeal.*

THIS cause coming on to be heard in the presence of counsel of the respective parties, and the Court having seen and inspected the record and proceedings of the Court below, and heard the arguments of counsel thereon, and maturely considered the same, it is now, on this twenty-eighth day of March, of the term of March, one thousand eight hundred and sixty-two, ordered, adjudged, and decreed that, the Court not being satisfied by the proofs that the land and real estate, whereof partition or sale is prayed by the bill, cannot be partitioned among the owners and proprietors without great prejudice to their interest and without great loss in the value of 10 the property ; this Court now order and direct that the decree of the Chancellor be reversed, and that the cause be remitted to the Court of Chancery, to the end that the said Court may order a commission of partition to be issued to three commissioners, to be designated by the said Court, for the partition of said lands and real estate among the owners and proprietors, according to their respective rights and interests therein ; or in case they shall be of opinion that such partitions cannot be made without great prejudice to the said owners and proprietors, that they partition and set off to the appellant the one-twentieth part thereof in value ; or, if they shall be of opinion 20 that such partition to the appellant cannot be made without great prejudice to the said owners and proprietors, that they so report to the said Court of Chancery, so that the said Court may then make such order for the partition or sale thereof, or of any part thereof, as to the said Court shall then appear to be equitable and just, and that the said Court of Chancery may make such further directions in regard to the incumbrances, and the costs and expenditures incurred in relation to said property, or in other respects, as to the said Court may appear to be necessary and just.

New Jersey Court of Errors and Appeals.

In Chancery of New Jersey.

BETWEEN PETER BENTLEY, *Complainant*,
 AND
 THE LONG DOCK COMPANY, MOSES
 TAYLOR, *and Catharine, his wife*, DAVID
 S. MANNERS, *and Deborah P., his wife*,
 CHARLES G. SISSON, *and Mary Elizabeth,*
his wife, ABRAHAM O. ZABRISKIE, *and*
Julia M., his wife, MARY BELL, ABRA-
 HAM S. JEWELL, *and Abby, his wife*,
 STEPHEN D. HARRISON, *and Martha*
Rosale, his wife, *Margaret E. Bentley, wife of*
Peter Bentley, and ROBERT GILCHRIST,
Senior, Defendants.

*Order for the
 appointment of
 Commissioners,
 &c.*

This cause coming on to be heard in the presence of I. W. Scudder, solicitor for and of counsel with the complainant, and Jacob Weart, solicitor for and of counsel with David S. Manners, and A. O. Zabriskie, solicitor for and of counsel with the other defendants, and it appearing to the chancellor that the said cause has been remitted to the Court of Chancery from the Court of Errors and Appeals in the last resort in all causes; and the order and decree of the Court of Errors and Appeals in the said cause having been read—

It is thereupon, on this fifteenth day of April, in the year of our
 10 Lord one thousand eight hundred and sixty-two, on motion of I. W. Scudder, solicitor for and of counsel with the complainant, by Henry W. Green, Esq., Chancellor, ordered, adjudged, and decreed, that Aaron S. Pennington, Ashbel Welsh, and John Huyler, be, and they are hereby appointed Commissioners to make partition of the lands and real estate, in the bill in this cause described, among the owners and proprietors thereof, according to their respective rights and interests therein; and that the said commissioners do set apart by metes and bounds, where they shall see occasion, the said lands and real estate, as follows:

To Peter Bentley, the one-fifth thereof.

To the Long Dock Company, the one-fourth thereof.

To Moses Taylor, the one-tenth thereof.

To David S. Manners, the one-twentieth thereof.

To Charles G. Sisson, fifty-nine six-hundredths thereof.

To Abraham O. Zabriskie, fifty-nine six-hundredths thereof.

To Mary Bell, sixty-two six-hundredths thereof.

To Abraham S. Jewell, one-twentieth thereof.

To Stephen D. Harrison, one-twentieth thereof.

Or, in case the said commissioners shall be of the opinion that 10 such partition cannot be made without great prejudice to the said owners and proprietors, that the said commissioners do partition and set off to David S. Manners, the one-twentieth part of the said lands and real estate in value, by metes and bounds, where they shall see occasion—

Or, if the said commissioners shall be of opinion that such partition of one-twentieth part of the said lands and real estate in value cannot be made as aforesaid, to said David S. Manners, without great prejudice to the said owners and proprietors, that the said commissioners do so report to this court, that the said court may 20 thereupon then make such order for the partition or sale of the said lands and real estate, or of any part thereof, as to the said Court of Chancery shall appear to be equitable and just.

And it is further ordered, adjudged, and decreed, that all deeds, writings, surveys, and muniments, relating to the said premises, in the custody or power of any of the parties, be produced before the commissioners upon oath, as the commissioners shall direct.

And it is further ordered, adjudged, and decreed, that the testimony, depositions, and exhibits taken and produced before the respective masters in the said cause, can be used before and by the 30 said commissioners, as testimony, depositions, and exhibits; and that the said commissioners shall further examine witnesses on interrogatories, or otherwise, in relation to the matters in question, as they shall think fit.

And it is further ordered, adjudged, and decreed, that in case partition shall be made of the said lands and real estate, the said commissioners shall report the same to this court.

And in such case it is further ordered and adjudged that the costs and expenses be borne and paid by the parties ratably, and in proportion to their estates and interests respectively;

And that such other orders and directions as are contained in the order and decree of the Court of Errors and Appeals, shall hereafter be provided for by the order and decree of this court.

HENRY W. GREEN, *C.*

A true copy,

BARKER GERMMERE, *Clerk.*

IN CHANCERY OF NEW JERSEY.

BETWEEN PETER BENTLEY, *Complainant,*
AND
THE LONG DOCK COMPANY *and others,*
Defendants.

Examination of witnesses in the above-stated case, before Ashbel Welsh, John Huyler, and Aaron S. Pennington, Commissioners appointed by the Chancellor, to make partition, &c., in the above-stated case, on Monday, the 23d day of June, A. D., 1862, at Taylor's Inn, Jersey City. Present, all the counsel: Adjourned to Monday, 7th July, 10 A. M., at Taylor's Hotel, Jersey City.

Monday, July 7th, 1862.—Examination resumed. Present, as above.

SIMEON S. POST, being by us duly sworn according to law, deposed and saith:

Question. Were you examined before in this case, and, if so, did you make the calculation and diagram embraced in Exhibit C, on the part of the defendant, David S. Mannors?

Answer. I have been examined in this case, and made calculations and a diagram, which I suppose are contained in said exhibit.

Q. Have you, or not, lately had your attention called to some disputed or diagonal lines, running across this property, and been shown a map on which these lines are laid down?

A. I have.

20 *Q.* Have you lately, or not, had your attention called to this property, and considered whether one-twentieth part, in value, can be set off, embracing the disputed and undisputed parts?

A. I have.

Q. Can one-twentieth in value, or not, be set off, without great prejudice to the other joint-owners?

A. I think it can be.

Q. Can one-twentieth, or not, be set off, without any prejudice to the other joint-owners?

A. I think so.

Q. How would you proceed to set off one-twentieth, in value, of this property, embracing its proportionate share of disputed and undisputed portions of the property, without great prejudice, or without any prejudice to the other owners?—stating the amount of 10 prejudice, and exhibiting any diagram, map, or calculations, if you have made any, and if you have made more than one such division, please state them.

A. I have prepared a diagram,* which I now produce, and which is marked Exhibit, Post No. 1, on the part of David S. Manners; also, I have made a written calculation, which I submit as part of my answer to the above-stated question, as follows:

I have made a careful examination of the property lying between Pavonia avenue and South Seventh street, and between Prospect and Atlantic streets, in Jersey City, for the purpose of ascertaining 20 how one-twentieth of it can be set off, with due reference to the disputed and the undisputed portions. I think there are several ways in which a division or a combination of lots can be made, which will give substantially the one-twentieth part of the value of this property, and at the same time provide, in case any of the mooted claims shall be established by law, that the one-twentieth owner shall suffer his share of the loss. Some such divisions I will state presently, in the form of distinct propositions.

In my former testimony (Exhibit C), I estimated the number of lots at 1,216. I then misunderstood the exact boundary along shore, and 30 included eleven lots more than I should have done, as I now understand it. These lots being near shore, and requiring little or no filling, I assume their present value to be \$19,000.

This correction being made, my estimate of the present value will stand, \$1,441,343.55, less \$19,000, equal \$1,422,343.55, and the one-twentieth part of this value is \$71,117.18.

The whole number of lots being 1,205, the one-twentieth part of this number is sixty and one-fourth.

The whole number of corner-lots being 143, the one-twentieth of the number of corners is seven and fifteen-hundredths.

* See map or diagram, last page.

The whole shore-front, exclusive of streets, being 1,400 feet, the one-twentieth of this shore-front will be seventy feet.

These lots adjoin improved land, as follows: on South Seventh street, 2,300 feet, on Pavonia avenue, 1,900 feet, and on shore-front, 1,400 feet; in all, 5,600 feet, which, divided by twenty-five, give 224 widths of lots, the one-twentieth of which is eleven and two-tenths.

PROPOSITION 1.

DIVISION No. 1.

- 10 Assuming the title to be in dispute to all the lots in front of J. D. Miller, that is, to the six blocks between South Sixth and South Seventh streets, from Prospect street to Atlantic street, then the number of disputed lots will be 192, and the one-twentieth of the disputed lots will be nine and six-tenths.

By my estimate, the average present value of the lots, in this tier of blocks, is about \$1,015, which will locate these nine and six-tenths lots near River street. And ten lots, not far from River street, and in block thirty, may be considered an equivalent for the nine and six-tenths lots of average value.

- 20 Assuming the title to be in dispute to all the lots in front of Hutton also, that is, to 118 feet in width, on the south side of the blocks between South Fifth and South Sixth streets, from Prospect to Atlantic streets, the location of the one-twentieth of this width will be found in block thirty-one, near River street, for precisely the same reasons as apply in the case of the lots in front of Miller. For the same reasons, also, the *undisputed* portion of that tier of blocks, as well as the one-twentieth of the whole tier of undisputed blocks between South Fourth and South Fifth streets, may be similarly located.

- 30 It is presumed that fractions of lots may be dropped, or increased to whole ones, and that whole numbers may be varied, where the average value is departed from, *provided* the *one-twentieth value* is substantially maintained in both the disputed and the undisputed portions. Thus, the nine and six-tenths lots of average value may be replaced by ten lots at a value slightly below the average, in each of the blocks, thirty, thirty-one, and thirty-two.

To locate the sixty and one-fourth lots in a continuous belt, across from South Seventh street to Pavonia avenue, if the first to be improved, would cut off the water communication with the in-shore 40 lots. It is important that the one-twentieth should be set off not only

in full-sized lots, but in as compact shape as possible, and so located as to allow of its improvement, and of the improvement of other portions of the cove, without material interference. This may all be accomplished, by leaving open certain blocks, and not permitting the entire cove to be spanned by the one-twentieth. In this case, block thirty-three is supposed to be left open, and the remaining undisputed lots to be located near River street, in blocks thirty-four, thirty-five, and thirty-six, to wit: ten lots on block thirty-four, ten lots on block thirty-five, and twelve lots on block thirty-six, including six corners, undisputed, in place of five and seven-twentieths, 10 undisputed, and one and eight-tenths, disputed corners, to which the one-twentieth is entitled; in all, sixty-two lots, instead of sixty and one-fourth.

The average value of the lots, in the four tiers of blocks north of South Fourth street, is about \$1,288, of which thirty and one-fourth should go to the one-twentieth owner, as a part of the undisputed lots; then, 1,288 times thirty and one-fourth, equal \$38,962, will be their value, and is nearly the value of the thirty-two lots as located.

The estimated value of the sixty-two lots, which are colored red on the diagram herewith, is as follows: 20

12 Lots in Block 36, at \$1,614.27,	\$19,371.24
50 " " " 30, 31, 32, 34, and 35, at \$1039.74,	51,987.00
Total value (\$241.06 more than 1-20),	\$ 71,358.24

PROPOSITION 2.

DIVISION No. 1.

I have seen a lithographic map, purporting to be a "Plan for an Equitable Apportionment of the Water-rights in Harsimus Cove, among the Shore Owners."

On this map, is a line drawn from the Old North Point, in Jersey City, to the nearest head-land of Hoboken. This line is called the *base line*. It measures the extent of the opening of the cove upon the river, and is divided into as many parts as there are shore owners, and the several parts are said to be proportioned to the length of shore-line belonging to the respective owners.

From the various points of division on shore, converging lines are drawn to the corresponding points of division on the base line, and are then continued indefinitely toward the river, parallel with the streets running in that direction.

Assuming that the title is in dispute to all that part of the cove 40

that lies south of the convergent line drawn from the point of division between Hutton and Van Vorst, that is, from a point eighty-two feet south of the south side of South Fifth street, to a point in the "base line" near the centre of the easterly quarter of block thirty-four, and thence through the middle of block ten, to the river; then the disputed portion will be very nearly equal to 680 lots, 25×100 , exclusive of streets, and one-twentieth of this number of lots is thirty-four. To give these thirty-four lots their proper average value, they will be found located in blocks thirty, 10 thirty-one, thirty-two, and in the south-east corner of block thirty-four, precisely as in Proposition 1.

Assuming that the title is in dispute to all that part of the cove that lies south of the convergent line drawn from the point of division between Hutton and Miller, and assuming that the claim of Hutton is derived from 148 feet of shore, and eighty-two feet of base line, which would cover seventy-six lots, and assuming, further, that the claim of Hutton cannot be established by law, there will remain 604 disputed lots, the one-twentieth of which is thirty and one-fourth.

The average value of these 604 lots, by my estimate, is \$1,136 per 20 lot. Then thirty lots, worth \$1,145 per lot, will be the fair one-twentieth part of the disputed portion in this case, and this valuation will entitle them to a location near River street.

Under these assumptions in regard to title, there do not appear to be any reasons for locating the lots, both disputed and undisputed, in a manner materially different from that suggested in proposition 1, and as colored red on the diagram.

PROPOSITION 3.

DIVISION No. 1.

I have seen upon a map, certain lines purporting to be the boundary of a tract called the "Budd Grant."

Assuming that the convergent lines are not to cross the boundaries of the Budd grant, about 452 lots will be contained within the disputed limits: that is, within the following described boundary, to wit: Beginning at the intersection of Prospect and South Seventh streets, and running along South Seventh street to Atlantic street—thence along Atlantic street to a point half way between South Fifth and South Fourth streets; thence midway between these last mentioned streets to the base line; thence to the south-east corner of the Budd Grant; thence along the southerly boundary of the Budd grant to 40 the intersection of the convergent line, which is drawn from the

point of division, between Hutton and Van Vorst; thence along said convergent line to Prospect street, and thence to the place of beginning.

The one-twentieth part of these 452 lots is twenty-two and six-tenths, almost exactly the quantity which will be cut off in blocks 30, 31, and 32, within the boundary just described, and which are located as stated in proposition 1, and colored red on the diagram.

By neglecting the claim of Hutton, between the converging lines, the number of disputed lots will be reduced about $31\frac{1}{2}$, that is to $420\frac{1}{2}$ lots, the one-twentieth of which is 21 lots very nearly, and 10 the exact division would be accomplished by locating the lots about 50 feet nearer North street, in blocks 30, 31, and 32, than they are located by proposition 1, and colored red on the diagram. Under these assumptions in regard to title, no sufficient reasons appear for varying the location of the lots from that stated in proposition 1, and as colored red on the diagram.

PROPOSITION 4.

DIVISION No. 2.

It may be considered important that the one-twentieth division should embrace one-twentieth or 70 feet of the shore front. 20

In view of this necessity, I have supposed the division to be made by setting off the lots as follows :

1 lot	18×100	in block	103,	say	-	\$720.00
15 lots	25×100	"	" 78,	at	\$612.41,	9,186.15
19 "	" " "	"	" 79,	"	"	11,635.79
2 "	26×75	"	" 105,	say		2,000.00
64 "	25×100	"	81& 57,	at	\$612.41,	39,194.24
8 "	25×100	"	" 33,	"	1,039.74,	8,317.92

Total value (\$63.08 less than one-twentieth), \$71,054.10 30

Now, assuming the title in dispute to be confined to the tier of blocks in front of Miller, that is, to the lots between South Sixth and South Seventh streets, of which the one-twentieth value is \$9,743.92, then the value of sixteen lots in block seventy-eight will be $\$612.41 \times 16 = \$9,798.56$, or \$54.64 more than the one-twentieth. In this case, the disputed shore front is 200 feet, and the one-twentieth part is 10 feet, which may be set off on the shore of block 102, in lieu of one of the sixteen lots in block seventy-eight. There will then be left 60 feet of undisputed shore front to be set off elsewhere, say between South Third and South Fourth streets. 40

Assuming the disputed title to be confined to the front of Hutton and Miller, the whole disputed shore front will be 318 feet, of which one-twentieth is fifteen and nine-tenths feet. The lot in block 103 is 18 feet wide, or two and one-tenth feet more than the one-twentieth. By setting off this lot, also fifteen lots in block 78, seven lots in block 79, on the south side, and the seven fractions, 25×18 , the conditions in this case will be very closely satisfied.

Assuming the disputed title as stated in proposition 3, the number of disputed lots will be 452, and the one-twentieth part twenty-six 10 and six-tenths. Taking this number at the average value of \$1,015 per lot, then $\frac{1015 \times 22\frac{6}{10} - 720}{\$612.41} = 36$ lots, very nearly, should be set off in blocks 78 and 79,—or, if Hutton's claim be rejected, the one-twentieth of the whole number of disputed lots will be $\frac{1015 \times 21}{\$612.41} = 35$, or say 34, in blocks 78 and 79, and one, 10×100 , on the shore in block 102, as before suggested.

Assuming, as in proposition 2, that all the cove south of the convergent line from the point of division between Hutton and Van Vorst is in dispute, then the whole number of lots in dispute is 680, 20 the one-twentieth part of which is 34, and their value is by my estimate about \$42,728 00.

From this amount deduct \$21,542, that is, for one lot 18×100 in block 103, at say \$720.00, and 34 lots 25×100 in blocks 78 and 79, at \$612.41, \$20,822.00, then the further value of disputed lots to be set off, is \$42,728 less \$21,542, equal \$21,186.00, which is the value very nearly of

16 lots in block 57, at \$612.41,	-	\$9,798.56
and 11 " " " 33, " 1,039.74,	-	11,437.14

Total (\$49.70 in excess), \$21,235.70

30 Assuming Hutton's title between the converging lines to be set aside, the number of disputed lots will be reduced to 604, and the one-twentieth part to thirty and one-fourth, at an average value per lot of \$1,136.00, or to the sum of $\$1,136 \times 30\frac{1}{4} = \$34,364.00$, leaving, after setting off the 35 lots in blocks 103, 78, and 79, $\$34,364 - \$21,542 = \$12,822$, still to be appropriated to disputed lots. This will be nearly equal to

5 lots in block 57, at \$612.41,	-	\$3,062.05
9 " " " 33, " 1,039.74,	-	9,357.66

40 Total (\$402.29 short), \$12,419.71

Under any of the assumed contingencies of title, the division according to this proposition would seem to be equitable, and is further indicated upon the diagram, by being colored blue.

PROPOSITION 5.

DIVISION No. 3.

Assuming that the disputed lots are only in front of Hutton and Miller, a very close approximation to a correct division will be made by setting off

1	lot	18×100	in	block	103,	say	-	\$720.00
16	lots	25×100	"	"	54,	\$612.41	-	9,798.56 10
8	"	"	"	"	55,	"	-	4,899.28
2	"	26×100	"	"	83,	\$1,039.74	-	2,079.48
24	"	25×100	"	"	83,	"	-	24,953.76
28	"	"	"	"	59,	"	-	29,112.72

Total (in excess, \$446.62),	-	-	\$71,563.80
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These lots are colored *brown* on the diagram, except the lot in block 103, which is colored blue. This division, as well as the others proposed, gives very nearly the due proportion contiguous to improved property.

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PROPOSITION 6.

DIVISION No. 4.

One-twentieth of the whole interest will be contained in one block on the river front, between Atlantic and Hudson streets, with the addition of six lots on the East end of the next block in the rear. These blocks are numbered F and 11, and the lots referred to are colored *yellow* on the diagram. This proposition is based on the assumption that the one-twentieth owner shall be compelled to pay one-twentieth part of the cost of a bulkhead on Atlantic street, from Pavonia Avenue to South Seventh street, in case the nineteen-twentieth owners will build the same within a reasonable time; or his 30 proportion as far as built; or, in case the nineteen-twentieth owners should not so improve their property, the one-twentieth owner will have some chance to make his improvement without great dependence upon the others.

The value of this division is estimated as follows:

32	lots in front block, at \$2,173.24,	-	\$69,543.58
6	" " block 11, at 1,039.74,	-	6,238.44
	Deduct for one-twentieth of bulkhead,	-	4,000.00

Total value (\$664.94 in excess,)	-	\$71,782.12 40
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On the supposition that the title is defective only in front of Miller, the six lots on block 11 may be rejected, and their value set off on Miller's tier. So, also, may lots be taken from the West end of block F, to satisfy any increase of claims to title.

It is assumed that the bulkhead will be built on Atlantic street, as located on the diagram. Should the location of the bulkhead be changed, the lots in this division should have the same relative position with regard to the bulkhead.

In case *one-twentieth* of this property should be set off in any one
10 of the different ways I have mentioned, and the lots should not be improved jointly, nor simultaneously with those adjoining, the party first improving will sustain injury, or a prejudice, in consequence of the escape of the filling material; or otherwise, would be obliged to fence the boundary between the parties so as to retain the hard material used for filling.

On any of the lots inside of Hudson street, I think the escape of the material, excepting very thin mud, can be effectually prevented by a system of piling and sheet piling: and if a bulkhead were first built on Atlantic street, it is quite probable that any of the lots
20 between Hudson and Atlantic streets could be similarly protected from filling with any thing but very soft mud.

To protect the 30 lots, in blocks 30, 31, and 32, and the 32 lots in blocks 34, 35, and 36, with their proportions of the streets, as located and colored red on the diagram, will require 3,365 lineal feet of barricade, which I estimate will cost \$3 per foot, or \$10,095.

Other locations will be more or less expensive to protect, in proportion to the depth of mud, and the greater or less extension of the boundary.

Assuming the value of the whole property to be \$1,422,345.55, as
30 I have before estimated it, and that the *one-twentieth* is \$71,117.18, it will cost the owner of the *one-twentieth*, located as colored red, if he improves first, about fourteen and one-third per cent. of its value; and if the *nineteen-twentieths* owners fill first, it will cost them about *three-fourths of one per cent.* of the value of their lots, to make the same protection.

As a compensation for the injury which the party first improving might sustain, two lots in each of the blocks 30, 31, 34, and 35, with one lot in block 36, might be *taken from* or *added to* the *one-twentieth*, as the case should require. The value of these nine lots
40 will be:

1 lot on block 36, at \$1,614.27,	-	-	-	\$1,614.27
8 lots on blocks 30, 31, 34, and 35, at \$1,039.74,				8,317.92
Total (short, \$162.81);	-	-	-	<u>\$9,932.19</u>

The details of my estimate of the cost of fencing are, for every three feet—

1 pile, 35 feet long,	-	-	-	-	\$3.00
Driving same,	-	-	-	-	1.75
Cap for do., 3 feet long, 3 by 12, at \$20 per thousand,					.18
Hemlock plank, 228 feet, b. m., at \$10 per thousand,					2.28
Spikes,	-	-	-	-	.10
Labor and contingencies,	-	-	-	-	1.69
Total cost of three feet,	-	-	-	-	<u>\$9.00</u>
Cost of one foot,	-	-	-	-	3.00

These piles are supposed to be driven fifteen feet in mud and ten feet in hard bottom, once in three feet, centre to centre; a portion of the planks to be laid horizontally, one side against the piles, in thicknesses proportionate to the pressure, and as far down in the mud as they can be pressed; the other portion of the planks to be used for 20 sheet piling inside of the horizontal planking, by being driven edge to edge, vertically, until they get firm hold of the hard bottom.

In my judgment, one-twentieth of this property can be set off without great prejudice to the nineteen-twentieths, by either of the divisions proposed; and if a sufficient number of lots should be taken from the one-twentieth to compensate for protection against loss of filling, then it can be set off without prejudice.

Q. Have you had your attention called to block marked G, in Exhibit Post No. 1—and if so, is there any filling lately put on that block, which would prevent the building of the bulkhead at Hudson 30 street, and the use of that block for piers and slips?

A. I have observed that during the last year a large quantity of filling has been put in that block, in Hudson street, and block No. 12—that filling would interfere with putting a bulkhead in Hudson street, near Pavonia avenue—the slip next to Pavonia avenue would be partly filled. In this calculation I suppose block G would be a slip.

Question by Commissioners. Where is ordinarily low-water mark?

A. Between North street and River street. I suppose it is half-way between those streets.

Question on the part of Mr. Manners. In your estimate you have put down the small lot in block 103, at about \$700, and two lots in block 105 at \$1,000 each. Why did you estimate these three lots higher than the adjacent lots?

A. Because they were on the shore. I estimated them as improved lots.

Q. Do the divisions No. 2 and No. 3 each embrace one-twentieth share of the shore front, exclusive of the streets?

A. They embrace one lot, eighteen feet wide; two lots twenty-10 six feet wide, making seventy feet, which is one-twentieth of the shore front, exclusive of the streets.

Cross-examination on the part of the Complainant.

Being shown the map called Clerk's map, called Post 2, on the part of the complainant, he says it is the map from which he took the converging lines. He says he took the converging lines, as nearly as he could, from that map; but the blocks on this map being marked differently from the blocks on his map, Exhibit Post No. 1—they appear to cut the blocks differently.

Q. Do you know the present selling value of lots on the Pavonia 20 avenue?

A. I do not know that I do—except what I have heard said by others.

Q. What do you understand to be their selling value?

A. I was passing down Pavonia avenue within a week; I saw them preparing the foundation of a building on that avenue, and I was told by some persons standing there, that that lot brought five thousand dollars.

Q. Where was that lot?

A. It was, I think, on the corner of North street and Pavonia 30 avenue. I think it was on block 61, on Mangin's map.

Q. Is not property along Pavonia avenue held at that price?

A. Property has increased in value there, but I do not know what it sells for.

Q. Are lots on block 36 worth as much as on block 61, if their condition as regards filling was the same? I mean on Pavonia avenue.

A. I think the lots on block 36, on Pavonia avenue, are about as valuable as on 61 on that avenue.

Q. Are not the lots on 36 nearly as much filled in as this lot on 40 block 61 was two weeks ago?

A. I think it would not require more than two-thirds or three-quarters as much to fill block 61, as it would to fill 36. I mean the front lots of both blocks.

Q. What would it cost to fill a front lot on block 36?

A. To fill the lots on block 36 would cost two hundred and fifty dollars a lot.

Q. How many lots have you given in your first proposition on Pavonia avenue?

A. Six.

Q. How many lots are there in all on the south side of Pavonia 10 avenue, to Hudson street?

A. Sixty.

Q. How many lots to Atlantic street?

A. Seventy-six.

Q. Is Pavonia avenue filled in east of Hudson street?

A. It is not filled in complete, it is piled and bridged.

Q. At what price in your estimate did you put the lots colored red on Pavonia avenue?

A. Sixteen hundred and fourteen dollars and twenty-seven cents.

20

Q. How near to Hudson street is Pavonia avenue filled in?

A. I cannot tell; it is filled in to the old L of the Long Dock, which is about one-third of the distance from River street to Hudson street.

Q. Is any part of that avenue filled in farther east than this point, except the raising of the mud, occasioned by the Long Dock Company filling in on the north, and by the boats and stone sunk by them on the south side of the bridge and adjoining the line of Pavonia avenue?

A. No, except that the material and stones, &c., brought there 30 for filling on the south side, have *crowed* over upon the avenue.

Q. Have not the stones and filling on the south side of the avenue, above spoken of, been put there by the Long Dock Company within the last two years?

A. The filling has been put there within the last two years, and I suppose by the Long Dock Company.

Q. Did you not understand that these were put there by the Long Dock Company, under an agreement with the other owners except Mr. Manners, that each was to allow them his proportion of the expense?

40

A. I never heard any suggestion of that kind. I did not know any thing about it.

Q. Would the piles you have spoken of, thirty-five feet long, driven ten feet in the hard bottom, one every three feet, sustain twenty-five feet of filling, including the soft mud now there, above the hard bottom?

A. I think so; the mud on the outside is not taken away.

Q. Would the plank prevent the soft mud being pressed out by the filling above it, under the plank into the adjoining lots?

10 A. Soft mud may be considered a comparative term; it would not keep in the water, and that would be discolored and would carry some of the earthy matter, but any hard material worth saving would be held.

Q. Would not most of the mud, such as is now there, between North and River streets, assumed by you to be about fifteen feet above hard bottom, be pressed out under these planks into the adjoining lots, by ten feet of solid filling above the mud?

A. I don't think you could get ten feet of solid filling in there. I think the solid filling would go under the mud, the mud rising to 20 the top.

Q. Would it be pressed out by ten feet of street sweepings or earth, such as is usually used for the purpose of filling?

A. I think not.

Q. Does not the filling thrown on the top of the mud, behind bulkheads thirty or forty feet deep, often press out the bulkheads themselves?

A. It does.

Q. Would not that filling pass into the adjoining lot, under the plank, in your proposed fence?

30 A. I do not see how it could possibly.

Q. What would the whole tract proposed to be divided bring in the market, just as it is, with all defects for want of filling in, and arising from the actual disputes about the title, provided it was sold at private sale, and with six months' time to negotiate?

A. I really cannot say what it would bring under any circumstances.

Q. Would you be willing to bind yourself to sell it for six hundred thousand dollars?

A. I would not be willing to bind myself to sell it at any price.

40 Q. What could be had, or what would you give for six lots on

the south side of South Sixth street, in block six, if the title was guaranteed to be good, take them as they now are, under the water, without any understanding with the other owners as to filling in, or without any way of compelling them to join you in filling in?

A. I don't want to purchase—but I should think they would bring \$1,000 apiece.

Q. In your last plan, in which you set off the yellow lots, you state that if the lots are not to be filled out to Atlantic street, that then they are to be put back; ought they not in that case to be diminished in number?

10

A. I think they ought.

Q. How could the Commissioners, at this time, set off any number of lots there,* before it was known whether the bulkhead would be at Atlantic street or Hudson street, or where they would allow it to be built?

A. The boundary of the property to be divided must be known before any part can be set off wholly.

Q. What did you value each of these yellow lots at?

A. \$2,173.24—it is the average of the front blocks.

Q. What would the lots fronting on Atlantic street be worth 20 on an average? I mean a lot twenty-five feet front by one hundred feet deep.

A. I suppose \$4,000.

Q. What would the lots fronting on South First street, adjoining Hudson street, be worth?

A. They are worth, say, \$2,000 each, if lots in block No. 6 are worth \$1,000 each.

Q. If the owner of the lots on the east end of block F. was willing to sell all his right in front of the block east of the centre line of Atlantic street, so as to sell the water front and retain his 30 lots, what would the water front bring, or what is the water front in front of those blocks worth?

A. I put it at \$2,000 a lot.

Q. Would not this water front for the eight lots on Atlantic street, in front of the yellow lots, bring \$30,000 separate from the lots?

A. I cannot say. It may.

Q. Would not each of the eight lots on the east end of block F, if the water right on the opposite side was owned by another

person, be worth twice as much as the lots fronting on South First street, adjoining Hudson street?

A. They are more valuable—I cannot say whether they would be worth twice as much.

Q. In each of the propositions to set off the blue, red, and brown, did you assume that the other tenants in common would be allowed to fill out to Atlantic street?

A. I did.

Further examination in chief.

10 Q. In your diagram Exhibit Post No. 1, should you have embraced seven more lots in block No. 105 than you have done?

A. Yes—I should have embraced them.

Q. In proposition No. 1, colored red, you have set off six lots on Pavonia avenue. How many would one-twentieth be entitled to if the street should be extended to Atlantic street?

A. Nearly four.

Q. In this same division, colored red, you have embraced no lots on the water front. How many lots would one-twentieth be entitled to on the water front?

20 A. Two lots and four-fifths of a lot.

Q. By throwing out the share of one-twentieth on the water front, would this division, colored red, give more than the one-twentieth share in value on Pavonia avenue?

A. No—I think it don't.

Q. Which do you consider most valuable, the lots on Pavonia avenue, or the lots on the water front?

A. The lots on the water front.

Q. Suppose the shore front was detached from block F, would the lots without the water front be worth as much as they would
30 with the water fronts?

A. No. I stated that the value of those lots consisted of the water front.

Q. According to your mode of filling, if the sheet piling should be driven to hard bottom, and the hard filling should be put around the edge of the sheet piling first, would not the soft mud be pressed up in the middle of the part filled, instead of being pressed out on the adjoining property?

A. The hard filling will displace the soft mud, and I don't see how either will get out.

40 Q. From the sales of surrounding property, and your present

information, would you consider your former valuation of this property in the aggregate, by which you have made your present calculations, too high or too low?

A. I think they are too low rather than too high.

Q. Were you the chief engineer of the Long Dock Company at the time they built their bulkhead? if so, did they get from the Board of Chosen Freeholders any license to build their bulkhead and piers?

A. I was the chief engineer. I never heard of any application to the Board of Chosen Freeholders, or any grant from the Board to the Company.

Q. If any such application had been made and advertised in the newspapers, would you not have known it?

A. I think it is likely I would.

Q. Were you the engineer who attended to superintending the building the bulkheads of the Jersey Shore and Improvement Company, from the north line of the Long Dock Company's property to Hoboken—and if so, did they get a license from the Freeholders to dock out?

A. I was such engineer, and I have no knowledge of their applying or getting any such license.

Further Cross-examination.

Q. When did your connection with the Erie and Long Dock Company cease?

A. Three or four years ago.

Q. When your former examination was had, had your connection then ceased?

A. It had.

Q. What have you been engaged in since then?

A. In engineering, and principally in bridge-building.

30

Q. If property has risen in value on Pavonia avenue, would not the present be a better time for sale than when you were previously examined?

A. I should infer from the fact of property rising, that it was a better time to sell.

Q. Is not public attention now directed to property of this kind?

A. I don't think it is, especially at this time. I think it would be if the war was over.

Q. Has it not increased in value at the points where it is capable of improvement, as shown by improvements already made, more than any other property in Jersey City?

A. The property along Pavonia avenue will sell much higher now than it would before the Erie Railroad terminus on the Long Dock Company's property was brought into full use. How it may be with other property in Jersey City I cannot say. I don't know of any place where it has improved so much.

Question by the Commissioners. Please state what you would now estimate as the cost per lineal foot, of a bulkhead sufficient to hold the filling safely on each of the streets from Atlantic to Provost inclusive, and what kind you would adopt in each case.

- 10 A. On Atlantic street, forty-five dollars per foot for crib work, which would always answer for commercial purposes. On Hudson street, same kind, forty dollars; also would answer for commercial purposes. On River street, three dollars and fifty cents per foot for a pile fence, which would not answer for commercial purposes. On North street, two dollars and fifty cents per foot for a pile fence. On Meadow street, one dollar and fifty cents per foot for a pile fence. On Provost street, one dollar per foot for a pile fence.

Question by the Commissioners. What would now be the cost per full-sized block, including half the adjacent streets, to fill up
20 ready for use, after the bulkhead is in, in each of the tiers of blocks between Atlantic and Prospect streets?

- A. Between Atlantic and Hudson streets, fifteen thousand five hundred dollars; between Hudson and River streets, seventeen thousand dollars; between River and North streets, fourteen thousand dollars; between North and Meadow streets, thirteen thousand two hundred dollars; between Meadow and Provost streets, twelve thousand four hundred dollars; and between Provost and Prospect streets, ten thousand six hundred dollars. The prices are the same as I formerly estimated, viz.: twenty-five cents per cubic yard for
30 the outer blocks, and thirty-five for the rest.

Question by the Commissioners. Suppose the title all good, what is the present value, in your opinion, per lot, of each tier of lots in each block?

- A. On blocks Nos. 12, 36, 60, and 84, I would put the north tiers at two thousand dollars per lot; the southern, at twelve hundred and thirty dollars. On blocks 11, 35, 59, and 83, I put the northern tiers at twelve hundred and thirty dollars per lot; the southern tiers, at one thousand dollars per lot. On blocks Nos. 6, 7, 8, 9, 10, 30, 31, 32, 33, and 34, one thousand dollars per lot on
40 both tiers. On blocks Nos. 54, 78, and 102, seven hundred dollars

per lot on both tiers. On blocks Nos. 55, 79, and 103, 56, 80, and 104, six hundred dollars per lot. On blocks Nos. 57 and 81, on both tiers, five hundred dollars per lot. On blocks 58 and 82, both sides, eight hundred dollars. On blocks marked *a, b, c, d, e, f,* and *g*, I should put one equal to another, and would make each the same as I did block *f*. I get at the present value by estimating what the value would be when filled up, and deducting the cost of filling, including its share of the cost of bulkhead.

Question by Counsel for Complainant. Have you ever been a dealer in this kind of lots?

10

A. I have not.

Q. Have you ever been a dealer in lots in Jersey City?

A. Not at all.

Q. Do you know the number of *eligible* lots in Jersey City not improved?

A. I know of a large number of lots not improved.

Q. Do you know any thing of the demand for lots in that part of Jersey City to which your attention has been called, and who are the parties seeking to make investment therein?

A. Mr. Homer Ramsdell has disposed of quite a number of lots 20 to Railroad employés, in that part of the city.

Q. Do you know the prices paid for those lots?

A. My impression is that he sold some for two thousand dollars.

Q. Were the lots you speak of above or below water?

A. I do not know.

Question by the Counsel for the Defendant, D. S. Manners. If you are not a dealer in real estate, have you not lived near this property for some time past, and are you not conversant with the value of property around it?

A. I have lived on South First street, about one thousand feet 30 from Prospect street, between six and seven years. I am conversant with the value of property.

S. S. Post.

Sworn and subscribed before us, this 7th day of July, A. D. 1862

A. S. PENNINGTON,

JOHN HULYER,

ASHBEL WELCH.

S. S. Post, being recalled, was examined on his oath aforesaid, on the part of D. S. Manners.

40

Q. Since you were examined before, have you made a survey or measurement, to ascertain whether the filling on the south side of Pavonia avenue, with old hulks, stones, &c., extended across Hudson street, and into block letter *g*, on Exhibit Post No. 1, and if so, how far did that filling extend east of Hudson street, and how wide was it?

A. I made some measurements there yesterday, and found the east line of Hudson street, inside of block letter "*g*," a distance of forty or forty-five feet east of the east line of Hudson street. It is 10 filled up with gravel and stones to high-water mark. There is a whole hulk of a canal-boat, which is about seventy feet long, lying its whole length on block "*g*." The width of the filling south of Pavonia avenue, is nearly two hundred feet, unequally filled. It is filled with canal-boats, gravel, &c.

Q. From the appearance of this old hulk, which lies along Pavonia avenue, unfilled with gravel, did it appear to lie upon a filling which had been previously there?

A. I should think it did; or they had been filling with gravel on each side of it.

20 Q. At what point along there did the filling in the blocks appear to be the highest?

A. There were two or three points which did not appear to vary much from the highest filling in the block letter "*g*."

Q. Was nearly the whole of block No. 12 filled?

A. It was mostly filled; but a part was not filled quite as high as a part of block "*g*."

Q. If you were to go there at this time, to sink a bulkhead, commencing on the south side of Pavonia avenue, and running south, at about what point would you have to commence, taking into view 30 the filling which has been put there, and commencing as close in as you could?

A. I should commence by making the front of the bulkhead about the middle of block "*g*."

Q. Mr. Charles D. Sisson, who states that he has had a great deal of experience in filling in, on page 150 of the printed book, says: "A temporary bulkhead on the east side of Hudson street, is sufficient to hold back all the filling. This should be done by old canal-boats and piling." If such a temporary bulkhead will hold the filling on Hudson street, would it not certainly do so as high 40 up as River street?

A. Certainly it would.

Q. Since you were examined on Monday last, have you made a more accurate calculation in relation to pressures, than you had made heretofore, and if so, what is the result of the same, in relation to sustaining the filling as proposed, in the plan heretofore stated by you?

A. I have revised the calculation I made, and made a diagram, which I now produce, and which is marked Exhibit Post No. 3.

Q. Will you please state your calculations in relation to pressures?

A. My estimates are in writing, and I now produce them to save 10 time, which are as follows:

I estimated the filling west of River street to be made with gravel. Gravel, when unsupported, stands with a slope of 53° from a vertical line. It weighs, when dry, 120 pounds per cubic foot.

To find the pressure of any material against a wall, multiply together the square of the natural tangent of half the angle of its natural slope, the square of the depth, and the weight of a cubic foot of the material; divide this product by six, and the quotient will be the pressure at the surface of the embankment.

The half angle of the natural slope of gravel is $26\frac{1}{2}^\circ$, and the 20 natural tangent of this half-angle is 0.4986, or, say 0.5. The depth of filling is 23 feet. Then $\frac{0.5 \times 0.5 \times 23 \times 23 \times 120 \times 3}{6} = 7,935$ lbs., is the pressure of the gravel against each pile at the surface of the filling.

Water stands at an angle of 90° with a vertical line; the half angle is 45° , and the natural tangent is 1. Water in a pure state, weighs $62\frac{1}{2}$ lbs. per cubic foot. The depth of the water at low tide is taken at 16 feet. Then $\frac{1 \times 1 \times 16 \times 16 \times 62.5 \times 3}{6} = 8,000$ lbs., is the counter pressure of the water against each pile at its surface.

The moments of these pressures are:

For the gravel, $7,935 \times 23 = 182,505$ lbs.

“ water, $8,000 \times 16 = 128,000$ “

Difference, $54,505$ “

which is the force which acts against the pile one foot above the hard bottom, and is equivalent to a pressure at the surface of the filling, of $\frac{54,505}{23} = 2,370$ lbs.

The lateral dimensions of a spruce pile to just sustain this pressure are $\sqrt[3]{\frac{2,370 \times 23}{120\frac{1}{2}}} = 7\frac{8}{100}$ square at the surface of the hard bottom, or $8\frac{8}{10}$ inches diameter, which is the equivalent. If the pile is 14 to 15 inches in diameter at the top, and 9 inches at the smallest end, as it should be, the diameter at the surface of the hard bottom will not be less than $10\frac{3}{4}$ inches, which will very nearly double the strength of the pile, the ratio in the two cases being:

$$8\frac{8}{10}^3 : 10\frac{3}{4}^3 :: 681 : 1242.$$

- 10 This is probably the most unfavorable calculation that can be made. The soft mud presses at least fifty per cent. harder against the piles and planking than water, while on the other side the saturation of the gravel by water cannot add more than twenty per cent. to its pressure. A very considerable portion of the pressure which is here estimated as being against the piles, will be taken off by the sheet piling, if the planks penetrate the hard bottom at all; and if they are driven two or three feet into the hard bottom, they will relieve the piles of more than twenty per cent. of the above estimated pressure.

- 20 The thicknesses of plank are:

Sheet piling 3 inches thick, 13 feet long, for 3 ft., 117 ft. b. m.

Lower horizontal plank, 3" thick $\times$ 18 ft. sq., 54 "

Next " " 2 " 18 " 36 "

Top " " 1 " 18 " 18 "

Total plank per pile, 225 "

Q. If you should be mistaken about this fence standing, how could you secure it by a trifling additional expense?

- A. My first plan was to drive a pile nearly to low-water mark, 30 about thirty feet from the fence, and connect it with the fencing by means of a tie made of a common dock log; to put these in every fifteen or eighteen feet, or at the joints of the capping. After making my calculation of the strength of the piling, I thought it would be unnecessary to use those ties. If, however, the strength of the piling is insufficient, I would add those piles and ties.

Q. If old hulks can be purchased from fifteen to forty dollars apiece, and from thirty to eighty feet long, putting down piles once in about ten feet, which could be done the cheapest—putting down his fence, or putting down these hulks and filling them with 40 gravel?

A. I am inclined to think the old hulk arrangement would be the cheapest if the hulks could be got at that price; I did not know that they could be got at that price.

Q. If there should by any possibility be doubt about this fence standing, around this plot colored red, is there any doubt in your mind about its standing around the plots colored brown or blue on your map?

A. I have no doubt, unless the mud should be a good deal deeper, and I do not know why it should be.

Q. Have you lately had a great deal of experience about the 10 pressure and strength of materials?

A. I have; I am almost constantly engaged in it.

Q. What would be the additional cost of these ties in the part colored red?

A. I should say the pile and the tie would cost about six dollars, once in eighteen feet; that would be about a dollar a pile every three feet.

Further *cross-examination* on the part of the complainant.

Q. Was not the canal-boat which you say lay its whole length on block "g," upon the twenty feet which was conveyed to the 20 Long Dock Company, on the south side of Pavonia avenue?

A. I am very confident it is on block "g," beyond the twenty feet.

Q. Is it not close up to the bridge?

A. Yes, it is.

Q. Has the bridge started at all, east of Hudson street?

A. It has some, but I cannot say how much.

S. S. Post.

Sworn and subscribed before us, this 9th July, A. D. 1862.

A. S. PENNINGTON,	} <i>Commissioners.</i>
JOHN HUYLER,	
ASHBEL WELCH,	

30

BENJAMIN VAN KEUREN, a witness produced on the part of David S. Manners, being by us duly sworn according to law, deposes and saith: I reside in Jersey City; I am a brick dealer; my brick yard is located on the south side of South Seventh street, and opposite North street. I occupy four lots, and hire them from Garret D. Winans. I pay seven hundred dollars a year for the four lots. We put the improvements on these lots.

40

Q. How is South Seventh street filled, from your place up to Prospect street?

A. There are some old hulks, some piles, and some cribs.

Q. Has not South Seventh street a crib-work four feet wide upon the old hulks, which answered as a dock for commercial purposes?

A. There is some dock four feet wide and some narrower, and some wider. We repaired some of ours which was four feet wide; it has been used for commercial purposes.

Q. When did you repair your dock?

10 A. About a year ago.

Q. How did you repair your dock?

A. We drove piles about six feet out from the old dock, capping them, planking them, and using cross-ties.

Q. How deep did you drive the piles before you found hard bottom?

A. About eight feet before we came to the rock.

Q. How long were the piles, from the capping down to the rock?

A. I think about fifteen feet.

20 Q. How long was this dock you built?

A. One hundred feet.

Q. About how much did it cost you?

A. I could not tell; the dock cost me about fifty dollars. Mr. Winans furnished the piles. I think there were twenty-eight piles, and five feet apart.

Q. Do you think that dock cost \$200?

A. No; I do not think it cost \$100.

Q. Do those piles stand well, and make a substantial commercial dock?

30 A. I have not seen any fault in it yet, and we have tested it pretty well.

Q. Where does the rock show at times above the water?

A. In block 6, a little east of River street, and also in block 7 there is a rock.

Q. Have you observed low water in your boating operations from your dock?

A. Yes, sir; we have to observe that very strictly.

Q. Can you tell where low-water mark is, north of South Seventh street?

40 A. I have seen it bare down to the middle of the block between River and Hudson street.

Q. From your observation, was the mud pressed out, north of South Seventh street, by the filling on the south?

A. Yes, sir.

Q. How much was it pressed out?

A. I should think it pressed out considerably, enough I should think, to raise it fifteen feet wide, at least so that you could see it.

Cross-examination on the part of complainant.

Q. Does not the principal value of your lots, to you, consist of having the dock by which you can land your brick on the dock? 10

A. Yes, sir.

Q. Would you give one-half of what you pay as rent for them if South Seventh street, and the blocks north of it, were filled out to Hudson street?

A. No, sir, I would not, if I could get a water-front anywhere else.

Q. Don't some low tides leave the earth bare some hundred feet further than others?

A. Yes, sir.

BENJ. VAN KEUREN. 20

Sworn and subscribed before us, this 9th day of July, 1862.

A. S. PENNINGTON,	} <i>Commissioners.</i>
JOHN HUYLER,	
ASHBEL WELCH,	

Mr. David S. Manners gives his consent to receive his share in any of the four ways stated in Simeon S. Post's testimony, and as marked on Exhibit, Post No. 1.

A. S. PENNINGTON,	} <i>Commissioners.</i>
JOHN HUYLER,	
ASHBEL WELCH,	

30

GARRET J. VAN HORN, being duly sworn by us according to law, deposeth and saith: I reside in the town of Bergen, Hudson County, one and a half miles from Jersey City. I am thirty-two years of age, and am a surveyor and engineer by profession.

Q. Have you had your attention called to the property in dispute in this case?

A. I have.

Q. Have you made an actual survey, and a map from this survey?

40

A. I made the measurements locating the shore line as located on a map made by me, dated June 1st, 1861, upon which is my signature, and which is offered in evidence, and marked Van Horn, No. 1, on the part of David S. Manners. I made the measurements, locating the extent of filling on Pavonia avenue, and the street is filled to one hundred feet east of the east side of River street. I surveyed the old pier, together with the plank pier to the ferry, together with the ferry buildings, slip, and car-house. I also laid out on this map the Budd grant, which is marked on said
 10 map by black lines bordered with red. I also measured the shore line, which is marked on said map as "present medium high-water line." From the various measurements I made, and the data furnished me, I believe that map to be correct.

Q. Have you been furnished with a lithograph map, marked Post No. 2, on which are laid down the converging lines across this property?

A. I have.

Q. Have you recently made calculations and estimate whether one-twentieth in value in this cove can be set off, including its relative proportions of the disputed and undisputed parts, without
 20 great prejudice to the other owners?

A. I have.

Q. Can one-twentieth share, in your judgment, be so set off or not?

A. I think it can.

Q. Can such one-twentieth share be thus set off without any prejudice, or not?

A. I think it can be set off without prejudice.

Q. How would you proceed to set it off?

30 A. I would make what I call a fence for the property by driving piles say about every three feet apart, capping the piles, planking, and sheet-piling to the hard bottom, deducting the cost of fencing, and taking a sufficient number of lots from the share thus set off, that would make it without prejudice. I made a calculation setting off the number of lots.

There are 30 lots in blocks 30, 31, and 32, at \$1,040 each, - - - - - \$31,200 00

This is a little more than one-twentieth of the disputed lots.

40 The cost of fencing those 30 lots at \$3 a foot, would be, - - - - - 5,055 00

In block 34, 10 lots; 35, 11 lots; block 36, 12 lots.
 The lots in blocks 34 and 35, I value at \$1,040 each.
 Block 36, \$1,614; making total, \$72,408 00.

This takes in 30 lots in blocks 30, 31 and 32, and 33 lots on blocks 34, 35 and 36=63 lots.

Q. Would or would not this make one-twentieth in value of the disputed and undisputed parts of the property?

A. I think it will, just about.

Q. In this division, have you considered and estimated all the converging lines as marked on Exhibit Post No. 2? 10

A. I have, with the exception of the lines of John Van Vorst which have been purchased.

Q. Have you drawn out this one-twentieth on the map Van Horn, No. 1, and if so, how is it colored on said map?

A. It is colored red or lake on said map, and I have drawn it out on said map.

Q. Have you estimated the cost of fencing the portion in blocks 34, 35, and 36, and how much will it cost?

A. I have—at \$3 the lineal foot, it will cost \$5,040.

Q. How many lots would you have to deduct from that parcel 20 to make it without any prejudice to the other owners?

A. I would take off the two inside lots running across block 36, one inside lot on block 35, and one inside lot on block 34. That would take off more than the cost of building the fence.

Q. How many lots would you take from the blocks 30, 31, and 32, to make it without any prejudice to the other joint-owners?

A. I would take say five.

Q. What would be the prejudice to the other nineteen-twentieths if this twentieth is set off, without any deduction for fencing, as colored red on exhibit Van Horn, No. 1, say the whole property 30 is worth \$1,441,000?

A. About seven-tenths of one per cent.

Q. In making this division as on "Van Horn, No. 1," what is the object of leaving block No. 33 open?

A. To make it easy of access, in filling, etc., to the owners of the rest of the property.

Q. Mr. Sisson has testified that he would take block 36, and 12 lots in block 103, for a tenth, and give \$1,000 to any person who would get it for him. Mr. Zabriskie has stated before the commissioners that he would take block 36 for a tenth. If this property 40

runs out to Atlantic street, there will be five blocks on Pavonia avenue; block 84 is short, and the water block will more than make it up, which, at that rate, would dispose of one-half of the shares. Upon that basis how many lots would Mr. Manners be entitled to in the balance of the property?

A. It would be over 100 lots. I think 102 or 104 lots.

Q. Would he, Manners, then be entitled to his share in the six blocks on the river front?

A. I should think so.

10 Q. Are you acquainted with the valuations which Mr. Post has put on the property?

A. I am; the valuations I have worked from are the same.

Q. Do you consider the present aggregate value of this property, as made by Mr. Post, too high or too low?

A. If any thing, I should consider it as too low.

Cross-examination on the part of the complainant.

Q. In the partition that you have made, have you made more than one allotment to Mr. Manners?

A. I made a calculation in the second block from Pavonia 20 avenue, on the river front, and one quarter of the block in the rear.

Q. Have you put this on your map?

A. No.

Q. Does your piling and fencing refer only to the lots marked red on your map, as given in your answer?

A. Yes.

Q. For thirty of those lots, is there not a frontage on streets?

A. Yes, there are fronts of five lots on each side of blocks 30, 31, and 32.

30 Q. What would become of the piles and sheet piling, provided the streets were filled up in front of the lots last referred to?

A. They would simply be filled up. If the street was filled up there would be no need of the sheet piling.

Q. Would not filling the street carry away the sheet piling?

A. I don't see that it would.

Q. Would piles and sheet piling withstand the pressure of the earth on filling the streets?

A. I think it would. I don't see why it should not. In fencing the lots in blocks 30, 31, and 32, we start from South Seventh 40 street, and continue the fence to the middle of South Fourth street across the street.

Q. Would not filling the streets on your plan fill the lot?

A. If the streets were filled across each of the lots no doubt it would, but that could be managed by fencing the whole of the lots in, if necessary.

Q. Could you use the lots without filling the streets in front?

A. I should think not.

Q. Then would not your plan of piles and sheet piling be nothing more nor less than a method of designating the lots?

A. No, it would not.

Q. Would the sheet piling stop the filling of the party who 10 filled the street down to where it crossed the same?

A. I think it would.

Q. Are you willing to give your opinion as an engineer, that sheet piling and piles, as you have described the same, would be sufficient to stop and sustain the quantity of earth necessary to fill the street?

A. With the addition, perhaps, of anchors, which are included in the estimate, I would.

Q. Describe the anchors.

A. They are pieces of timber fifteen or twenty feet long, fast-20 ened to the piles or cap, going back into the filling, and fastened at the back end to a cross-piece.

Q. What is the depth of the mud in front of the lots in South Fifth street?

A. I have depended on the figures in Mr. Post's estimate. I have never taken soundings. I think it something about fifteen feet.

Q. Do you know of your own knowledge whether Mr. Post ever took soundings?

A. I do not.

Q. Have you ever been practically engaged in filling in land 30 under water, or making streets, docks, or bulkheads in navigable rivers?

A. I have not.

Q. Are not your lots marked red on Van Horne, No. 1, the same plan of partition designated on Mr. Post's map, and there marked red?

A. I believe it is the same plan. I do not know whether the number of the lots is the same.

Q. Were you not shown Mr. Post's map before you marked the lots known as the red lots on your map?

A. Mr. Post and I made the calculations together. I do not think they were on his map first.

Q. Did Mr. Manners assist in these calculations and the making up of the map?

A. Mr. Manners was present, and made some suggestions; but the calculations were made by Mr. Post and myself.

Q. Can you state the depth to the hard bottom in front of the several parcels of lots marked red on your map?

A. Not of my own knowledge. I depend on Mr. Post's testimony.

Q. Can you designate the lots you would take away from Mr. Manners' share, on account of the cost of fencing?

A. I did so on my direct examination.

Q. How would the other owners be enabled to fill in such lots, they fronting on streets, to advantage, without co-operating with Mr. Manners?

A. Just as any of the rest, as they will be outside of the fencing.

Q. Would your piling be sufficient to hold the filling necessary to fill the streets and these excepted lots?

A. I think they would.

Q. Who would pay for the fencing, on your plan?

A. If the lots are not deducted, Mr. Manners ought to pay; if they are, the owners outside ought to pay.

Q. Except on Pavonia avenue, are the streets in front of the lots marked red on your map filled in?

A. South Seventh street is filled in to the centre of the street. No other is.

Q. To make the lots marked red available, does not your plan contemplate the filling in of streets which lie both easterly and westerly of said lots?

A. It would be necessary to fill up River street, from Pavonia avenue to South Third street, and all the streets running east and west from River street, the width of the front of the lots.

Q. To make the lots marked red fully available, to the owner thereof, would it not be requisite that the contiguous lots should also be filled in?

A. To make them all fully available, it would be requisite; but some of them would be available by filling the lots themselves, and not filling the adjacent property.

Q. Have you ever purchased piles and materials requisite for such a fence as you propose?

A. I have not purchased, but sold them.

Q. Do you know what is the consistence of the mud, above the hard bottom, in the place where you propose to put the fence?

A. Of my own knowledge, I do not. I suppose it is like the river-mud along the shore.

Q. Do you know whether a pole thirty-five feet long, driven fifteen feet in that mud, just down to the hard bottom, would stand?

10

A. I think it would not sustain its own weight, but sag over.

Q. If such a pile were driven ten feet in the hard bottom, would it sustain the pressure of a column of earth three feet wide, and twenty-five feet high above the hard-pan, with nothing on the other side but the soft mud?

A. I think it would.

Q. Did you ever see the experiment tried?

A. Not to that extent.

Q. Did you ever calculate the pressure in such a case?

A. I have not, in exactly such a case. I have of walls. It is 20 a matter of judgment.

Q. What pressure, at the top of a pile of twenty-five feet above the hard-pan, would break a pile of six inches in diameter at the hard-pan?

A. I could not say.

Q. Could you say within twenty tons?

A. I could not at present.

Q. Then you know nothing of this from calculation?

A. It would depend on whether it was a brittle or strong wood.

Q. Do you know what a white-oak timber, twenty feet long and 30 ten inches square, will bear, suspended from its centre, when it is supported at the ends?

A. I do not, without calculation. I have rules by which to calculate it.

Q. Have you ever calculated it for this fence?

A. I have not; but have depended on Mr. Post's calculation.

Q. On what would you fix the anchors you spoke of?

A. In the ground, as it is filled up; on either side that is filled.

Q. Are there not many lots filled in, immediately south of South Seventh street?

40

A. I believe there are.

Q. Are there not four blocks, immediately south of it, filled up, and unoccupied, except by temporary buildings?

A. Yes.

Q. Have not those blocks been filled up three or four years?

A. Should think two or three, may be three or four years.

Q. Do you know of a single lot being sold?

A. Don't know of any, either of my own knowledge or hearsay.

Q. Do you know the prices asked by the owners?

10 A. I have been told that lots there were worth three thousand dollars. I don't know whether it was the owner who told me or not.

Re-examined in chief.

Q. Do you or not know, that these four blocks on the south side of South Seventh street are leased for high prices?

A. I do not.

Q. Do you or not know, that the Van Keurens pay an annual rent of seven hundred or eight hundred dollars, for the small corner they occupy in block number twenty-nine?

20 A. I do not. GARRET S. VAN HORN.

Sworn and subscribed before us, this 7th day of July, A. D. 1862.

A. S. PENNINGTON.

JOHN HUYLER.

ASHBEL WELCH.

Adjourned to 8th July, A. D. 1862.

July 8th, A. D. 1862. *Examination resumed.*

JAMES F. FIELDER, being by us duly sworn, according to law, deposeth and saith:

30 I have lived in Jersey City since 1838. I have been engaged as a contractor in filling in lots and streets, and have done a good deal of it. I was one of the contractors who filled in Grand street, from Jersey street to Mill creek: a portion of it was filled in over the soft mud. I was a contractor of the horse-railroad, from Jersey City to the hill at Hudson City: a portion of this filling rested on soft mud. I filled in a part of South Seventh street. From Prospect street, I think we filled out to within 200 feet of Washington street; then we turned down; a portion of that was filled in on the soft mud; the rest, by sinking canal boats, and filling the canal boats, and then
40 filled in on each side to make the streets. I never built a bulkhead.

I filled in Washington avenue, from 200 feet the other side of Mill creek, on the way between the Morris Canal and the Plank Road, 688 feet across the meadow. I filled in a part of a basin of the Morris Canal; the last two were filled over soft mud. I filled in, for the New Jersey Railroad, a turnpike, from a point where the Turnpike Bridge is now, 600 or 800 feet, to where it struck the turnpike: this was over the meadow; soft mud. When the New Jersey Railroad Company filled the block where their depot is, and the block north of it, I was in the employ of that company, as road master, and witnessed its progress from day to day. I noticed 10 the filling in by the associates, from Montgomery street to Essex street. The last two were filled in upon soft mud. The latter filling was partly filled in with soft mud; a majority of it was so filled in.

Q. What, from your experience, is the effect of filling in on soft mud, as to the displacement of the mud upon which the filling is placed?

A. My opinion is, that a large portion of the finer part of the mud runs away, and is displaced.

Q. Does this raise the land on each side of the land filled in? 20

A. It does, if it is meadow or soft mud on either side.

Q. Did the filling in of Grand street raise the ground on each side?

A. It raised the meadow on each side, 400 feet, to the canal; it filled the canal up so that we had to dig it out. It was so perceptible on the canal, that when a load was dumped on the bank, in the street, you could see the bubbles and riley water come up in the canal.

Q. Was there any filling in upon Grand street, before you commenced to fill in; and if there was so, how long had it been there? 30

A. Yes, sir; there was a portion of the road filled in before I took the contract. I think that road was filled in some fifteen years before I took the contract.

Q. After your work was finished, did you have soundings made through the work?

A. Yes, sir.

Q. How deep did you find the hard bottom, what part of that was filled with the compressed mud, and what part was the solid filling above?

A. We only sounded to the mud, and not to the hard bottom. 40

The deepest place we found to the mud was thirty-three feet from the grade of the street; the meadow was raised or bulged up, in some places, nearly to the grade of the street.

Q. How high was the grade of that street above the natural grade of the meadow?

A. My impression is that it was from four to five feet.

Q. How thick was the old filling, in the centre of the street, before you commenced work?

A. I cannot answer that question. I only sounded in the centre 10 to the old filling; that was from five to ten feet; the sides went down thirty-three feet.

Q. Did the new filling mix with the mud, or did it crowd out the mud, and lie by itself, on the top of it?

A. Partially it did, and partially it did not; in the main it did not. At the bottom, we found the two materials, for about two feet, mixed together; above that, we found nothing but the material we had put in.

Q. Did you fill in Washington avenue on old filling, or on the meadow?

20 A. On the meadow.

Q. What was the effect of filling in there, as to spreading?

A. It had the same effect there as it has in all other places where you fill in on the mud.

Q. How far did the filling sink in there?

A. The deepest filling in we had there, was, I think, fifteen feet; my contract with the Commissioners was to fill in the worst place with brush. I put in three hundred or four hundred wagon loads of cedar brush, this *buoyed* it up, and it has gone down since four or five feet, and they are now engaged in filling it up.

30 Q. In your opinion, will the four or five feet of earth they are now putting there, sink it again?

A. Yes, sir.

Q. What was the effect of the additional earth placed on the old Newark Turnpike, at the place you have spoken of, near the hill at Hudson City?

A. It had the effect of settling it down. I think it went down fifty feet, and it is still sinking.

Q. From reputation, how long had the road on which you placed the filling, been filled in?

40 A. Old gentlemen have told me, some seventy or eighty years.

Q. What effect had that sinking on the meadow on each side?

A. It raised it up some ten or fifteen feet.

Q. How far did it raise the meadow on each side?

A. It was perceptible for at least three hundred feet, the heaviest grading, of course, was next to the bank.

Q. What was the filling here on this road on each side supported by?

A. About twenty feet of it in length, there was piling driven close together; it was capped with heavy capping and heavy plank on the top, and a wall on the top of that, built with cement; then 10 for some sixty or seventy feet this side, the bottom was covered with two-inch plank lengthwise, and three-inch plank crosswise, and then there was a dry wall started on that about eight feet thick; the other wall was about eight feet thick at the bottom. The piling were two rows running at right angles to the road, making four rows of piling on each side of the road.

Q. How high, at the place where the piles were driven and capped, was the grade of the road above the face of the capping?

A. I should think from twenty to twenty-five feet.

Q. What did the filling consist of?

20

A. It consisted of clay, gravel, sand, and hard earth.

Q. What effect did that have on your side walls, to support it?

A. It commenced settling as we filled in, and settled in proportion as we filled up, from three to ten feet a day; we kept building on the top of the wall, thinking it would reach the bottom; the wall all went down. I think I got paid for building the wall forty feet, and we had to abandon it; there is no side wall there now; if there is, it is so far down that it cannot be seen.

Q. What length of time is it now, since you first commenced putting earth there?

30

A. I commenced working there about the middle of May, 1860.

Q. Beyond Mill Creek, how is the earth supported?

A. It is supported by a wall six, seven, or eight feet thick at the bottom, and about three and a half feet at the top, in the highest place twenty-five feet high, average height about sixteen or eighteen feet.

Q. Is that wall strong enough to hold the earth in?

A. No, sir.

Q. Has the wall fallen down?

40

A. Yes, sir. Portions of it.

Q. Was there any thing to disturb those walls except the earth that was between them?

A. There might have been heavy rains, which might have got in behind the walls and softened the earth and caused a shrinkage of the earth, and an unequal pressure; except this I know of no cause for it except the weight of the earth.

Q. When you filled in South Seventh street, did you do it by sinking canal boats, and filling them with earth and stone?

10 A. Yes, sir.

Q. When the filling was thrown upon the soft mud, south of the canal boats, did it drive out the soft mud under the north of the canal boats? if so, state how.

A. I am not prepared to answer that question, for more than one reason. The place was covered with water all around me, and I could see at that time, my own opinion is, that it did. I watched the progress of the filling; I owned a quarter of that cove. I sold out during the progress of the work.

Q. Did you afterwards notice the premises, so as to judge that
20 this was the fact?

A. Yes, sir. I am satisfied that it was so; a portion of the boats, and filling, and piles which were driven on the outside of them, were driven out fifteen feet, as, I should think, by the pressure in the basin.

Q. How long were the piles which were driven outside, and how deep were they driven?

A. I cannot say; they may not have been more than thirty-five feet long; they were not very large piles; they were put there principally to steady the boats; if the boats did not move the dirt
30 would not.

Q. How deep was the mud along Seventh street above the hard pan?

A. I cannot tell.

Q. Exhibit Post No. 1 being shown him. If along the east line of the plot colored red, on blocks 30, 31, and 32, and along the north and west lines of that plot, a fence was erected by driving piles of thirty-five feet long, three feet apart, through fifteen feet of soft mud, ten feet into the hard bottom, and planking the outside of those piles with hemlock plank, two inches thick, spiked
40 firmly to them, and the outside of that fence, on all sides, should

be filled in with the ordinary earth filling, so as to be even with the top of the piles, or twenty-five feet above the hard bottom, and the filling to extend four hundred feet on each side; if no filling were placed on the red plot inside of that fence, would the effect of the filling outside, twenty-five feet high, force the soft mud inside of that inclosure and fill it up, and to what extent?

A. It would fill it up, sir, to a certain extent; it would have the effect of throwing the piles toward the centre of the plot; it would break some of them, if they were not of good material; if they were of oak, they would bend; they would all break or bend; 10 the others, except the oak, would break at the hard pan.

Q. Would any piles that you have ever known sustain that pressure?

A. I think not; the rock on the bottom shelves out towards the channel, and a crib twenty feet wide filled in with solid stone would slide. I think it would be impossible to hold any thing there with a fence.

Q. Would oak piles, ten inches in diameter, driven close to each other, be strong enough to sustain the weight of twenty-five feet filling? 20

A. No, I do not think four rows of piles would do it, and keep it plumb.

Q. If a row of brick houses were built on the lots adjoining this plot, on the west, would not that increase the pressure by the weight of the houses?

A. Not if they were built on piles.

Q. If they were put on the earth would it?

A. I guess it would.

Q. In that soft mud, could you get down hemlock plank near to the hard bottom, so as to plank the piles? 30

A. Not with any ordinary machines; not any that I have ever seen; it will go down part of the way; they could be pushed down part of the way.

Q. If they were not close down, would not the pressure of filling to the height of twenty-five feet above the hard bottom, force the soft mud through into the inclosure, on the red plot?

A. I think so.

Q. Would it not if the opening was only three or four feet wide?

A. Yes; this mud will go through where water will go 40 through.

Q. Do you know of what the bottom consists on that red plot?

A. I do not know particularly. I suppose it consists of soft mud, hard clay, and underlaid with rock.

Q. Is not that clay in many places so thin a stratum as not to be sufficient to hold a pile for any beneficial or useful purpose?

A. I think it is sufficient provided the weight is on the top of the pile, and the bottom of the pile is level; where the bottom is uneven, it will slide if a heavy weight is on it.

10 Q. Would this stratum hold piles with a lateral pressure of the kind mentioned in the few last questions?

A. I think not. I think if there was any power to keep the top of the piles, then the foot of the pile would go.

Cross-examination on the part of David S. Manners.

Q. Take the one thousand or eleven hundred acres embraced in Jersey City, is not the depth to the rock from the surface much greater in some portions than in others?

A. Yes, sir, it is very irregular.

Q. Is not the rock nearer the surface on this property, or adjacent to it, than in any other part of Jersey City?

A. The nearer you approach the channel the less mud there is, and near the rock. I think there is a place in Grand street where the rock is as near the surface as it is on this property.

Q. What is the depth of rock near North Point?

A. I have never sounded there.

Q. In filling Grand street, you speak of the filling as thirty feet—was not that in some salt wells, or salt holes which you found there?

A. On each side of Grand street there was a ditch of ten feet
30 wide, on each side of the road, dug out, and the earth put on the road where the deepest of that filling was; it had no appearance of salt holes; it went down for one hundred feet in length to that depth of thirty-three feet; it was deeper in some places than in others.

Q. What is about the distance you filled?

A. Some thirteen hundred feet in length.

Q. What about was the average depth of filling on the sides of the old roadway which you have spoken of, for the whole distance?

40 A. Not far from fifteen feet.

Q. What was the average depth of filling on Washington avenue, that you have spoken of?

A. About seven feet.

Q. In filling at the Mill Creek on the Newark Turnpike, could you reach bottom by any soundings which you were able to make?

A. We did not make any.

Q. Was not a portion of this filling in a natural channel which used to be navigable for vessels?

A. I have understood that oyster vessels have sailed up that creek, but that was a great while ago, and I think before I was 10 born.

Q. Do you know how deep it is at that point?

A. For about three hundred feet I filled out, I think it is about eighty feet deep.

Q. Do you know of any other point about Jersey City where the mud is as deep as it is at this place?

A. I have never found any so deep.

Q. Did any of the wall give way, which you built there, which was securely built in a solid foundation?

A. Since I have finished my contract two portions of twenty 20 feet each fell down where the foundation was solid ground.

Q. Did not that wall give way in consequence of the foundations giving way on the soft ground, and thus starting the foundations under this wall?

A. I can't speak from my own knowledge, but I have heard from those who built them up that the wall gave way about half way down, from the pressure above.

Q. Were not these walls much above the tops of the houses adjoining them?

A. There are no houses on the side where the walls fell; on 30 the other sides the wall is as high as the second story of the houses.

Q. Do you know how much the New Jersey Railroad went down, a few blocks south of this point, where it crosses the meadow?

A. I think about seventy feet.

Q. Do you know how much the Erie Railroad, about an equal distance north of this point, has gone down, where it crosses the meadow?

A. I never heard how much.

Q. How deep was the mud at the Hackensack River where you filled?

A. About thirty feet to a hard pan which is something equal to a rock, and the farther you go towards Newark the thinner the mud is.

Q. When you were an owner in the cove, in South Seventh street, how far did you dock out from Prospect street?

A. Eight hundred or nine hundred feet. I cannot tell.

Q. Did you obtain any license under the wharf act?

10 A. No, sir.

Q. How far out have the present owners of property south of South Seventh street gone out; have they gone out to Atlantic street?

A. I could not tell.

Q. Do you know whether they have obtained a license?

A. I do not know. I suppose the owners have gone on and improved the property as I should have done, if I had not sold out.

Q. When you put down the canal boats on South Seventh
20 street, how far apart were the piles driven?

A. Ten feet. They put canal boats on that street to within two hundred feet of Washington street.

Q. Were these canal boats tight, or were there large openings at the ends where they came together?

A. They were large barges instead of canal boats; we had two rows of them; the inside row broke the joints.

Q. Did you make any attempt to keep the filling or soft mud from coming out north of South Seventh street?

A. No sir, I had no occasion; after I sold, the parties filled and
30 bursted the boats out, say fifteen feet.

Q. In filling that south side, do you suppose sufficient mud was forced out north of Seventh street to make any material prejudice or loss to the parties filling on the south?

A. I presume those who filled in on the south lost what did run out on the north, and I consider that a good deal of the fine did run out; where it burst out it made an impression on the south side to the extent of an acre; I suppose hundreds of yards ran out.

Q. If this accident had not occurred, do you suppose there would have been enough loss to make any material prejudice?

40 A. It cost the parties south, several hundred dollars more than

there would have been if the filling had been on the north at the same time.

Q. Have you ever attempted to drive piles, and plank them, and drive sheet piles to the hard bottom to keep filling in or out?

A. I don't know that I have for any extensive job, but presume I have for coffer-dams and the like.

Q. Have you ever had your attention particularly called to it as to whether such a plan would be feasible or not?

A. Not before to-day. Never had a man to ask such a question. Was called here as a witness without knowing what I was to be asked.

Q. Do you know the side pressure that an ordinary white oak pile would sustain, driven through fifteen feet of mud, and ten feet of hard bottom, if thirty-five feet long?

A. No man living could answer exactly. The pressure that would move it sideways would be very slight. The ordinary waves of the water would move it. A tackle would move it ten feet. I mean in the mud we have here.

Q. Suppose you take the tract colored red in Post No. 1, in blocks 30, 31, and 32, and drive piles around the same 35 feet long, 20 three feet from centre to centre, then plank the same, and drive sheet piling to the hard bottom on the outside, then commence and fill all around it, supposing the mud to be fifteen feet deep, filling the same with the light street filling from New York, capping the piles, and putting out sufficient anchors from the top into the filling as it is put on, would not that fencing protect the filling and keep it out of the plot colored red, filling to come up to grade?

A. It would not hold. It would not stand till the filling was half way up. The anchors would draw through the mud. It is not a quarter as strong as a crib, and the chances are that a crib would 30 move. This is my opinion.

Q. If that fencing, put up as stated in the last question, should be strong enough to hold, and you were to commence the street filling from New York adjoining the fencing first, filling to grade, and gradually filling out, would not the soft mud be pressed out upon the surrounding property, and not through the fencing upon the plot colored red?

A. I think the precaution of driving piles, and planking and filling, would have a good tendency, providing the fence stands, and but little would pass through. Until you compress the ten feet of 40 mud it would run out more or less.

Q. If this fence should stand, and the filling should be put in as before stated, could not the outside owners fill without material prejudice?

A. The filling could be done, but they would naturally lose more or less; some portions would run in; there would be a loss.

Q. Has the wall put up on Newark Avenue which you have spoken of, built upon solid ground, fallen upon the south side?

A. It has not, but it would if the company had not piled a large quantity of stone against it. It is a dry wall.

10 *Q.* Do not all dry walls have a tendency to crack and fall if there is no side pressure, if they are built of any considerable height?

A. A good dry wall properly built is better than a lime wall, or a poor cement wall; I mean poor cement.

Q. How many feet were the meadows raised on each side of Grand street by the filling which you put upon the street?

A. I should judge it raised four feet near the road, on both sides of the road, gradually going off to nothing in going something over two hundred feet.

Question by the Commissioners. What was your valuation per 20 lot of your property adjoining South Seventh street unimproved?

A. We thought they were worth five hundred dollars on an average.

JAS. F. FIELDER.

Sworn and subscribed before us, this 8th July, 1862.

A. S. PENNINGTON,	} <i>Commissioners.</i>
JOHN HUYLER,	
ASHBEL WELCH,	

JOHN HOUSTON, a witness produced by the complainants, being 30 duly sworn according to law, on his oath saith:

I am a civil engineer, now in the employ of the Long Dock Company; have been in their employ three years and three months; have, during that time, superintended the putting down their bulkheads, and filling in their property. There was a bulkhead sunk from North First street up to North Fourth street. I do not know the depth; it was sunk before I came. There was filling in places behind it. It pushed it out into the river in some places eight or ten feet, and pressed the mud through under the bulkhead so that it came up in the river. The Company were 40 obliged to sink a new bulkhead between North First and Second

streets; then another between North First and North Third. They are now sinking another the balance of the distance to North Fourth. This was necessary to keep the mud from running under and around the old bulkhead.

Q. How far is Pavonia avenue filled in east of River street?

A. Fifty or sixty feet, I think.

Q. How is it beyond that?

A. On piles, supporting a pile bridge.

Q. When they filled in north of Pavonia avenue, opposite this bridge, did the soft mud escape towards the bridge, and what effect 10 had it on the bridge?

A. When it was first filled in it had no effect, and the trains ran over it four or five months; but one afternoon it gave way, and sunk four or five feet, and forced the part of the bridge opposite about ten feet down the river, raising the mud between the bridge and the embankment above the level of low tide, where there had previously been about eight feet of water.

Q. How far was the bridge from the embankment?

A. About one hundred and fifty feet.

Q. How was the embankment built on which the track was? 20

A. At that place piles were driven so as to carry a track; stones from the tunnel brought down and dumped in off that track; afterwards finished off with earth.

Q. What was done to stop the further movement of the bridge?

A. Canal boats were sunk on the lower side of it, and filled with stone, so as to counterbalance the pressure of the embankment on the opposite side.

Q. Who were they sunk by?

A. The Long Dock Company.

Q. Was there not an agreement between the Company and the 30 other owners of the property below, except Mr. Manners, that each owner would allow the Long Dock Company his proportion of the expense of filling in?

(Mr. Weart objects to the contents of this written agreement being stated unless the same is produced, and called for the production of the same.)

A. I believe there was such an agreement.

Q. How long were the piles on which that bridge was built?

A. From fifty to sixty feet.

Q. Did the soft earth run through where those boats are now 40 sunk before they were sunk?

A. Yes.

Q. If those piles had been planked up, so that the soft earth could not have run through them, would the mud have carried them further down stream than it did?

A. Yes.

Q. Do those boats extend east of Hudson street?

A. No; they are between Hudson and River streets.

Q. Have you made any soundings of the depth of the mud either north or south of Pavonia avenue?

10 A. I made soundings about three years ago in the river, outside of the bulkhead, north of Pavonia avenue, and I think we took one or two soundings behind the bulkhead north of Pavonia avenue. We sounded with a two-inch gas-pipe, with a sharp point to it. We found very little variation in any of the soundings. We got the rod down eighty feet below high tide, with four men, but could get no deeper. We are boring now through a five-inch tube about two hundred feet in front of the bulkhead, opposite the foot of North Fourth street. We found nothing there but black mud, till the rod got down ninety-four feet below high tide. Then we
20 struck coarse sand. The tube is now down one hundred and twenty feet, and no appearance of rock; still sand. There was very little variation in the consistence of the black mud till we reached the sand.

Q. Were any of your inside soundings west of the range of the L, in the old wharf?

A. I think they were, but am not at all positive.

Q. Do you know whether, south of Pavonia avenue, the soundings are the same, or different?

A. I do not know.

30 Q. If on the map "Post 1," the plot colored red, in blocks 34, 35, and 36, there was a fence built all round it of piles thirty-five feet long, three feet apart from centre to centre, driven ten feet in the hard bottom, with fifteen feet soft mud above, such as you find in that vicinity above that bottom, with two-inch plank securely spiked all around on the outside of the piles, as low down as such plank could be put in the mud, and spiked by any means you know of, and the lots all round for four hundred feet were filled in with earth and street filling, such as used for such purposes, to the top of the piles, or twenty-five feet above the hard bottom, would
40 the soft mud be forced by the weight under the plank into the inclosure represented by the red plot?

A. Yes.

Q. From your experience in these matters, have you any doubt of it?

A. No. I should not consider such a fence as any protection at all scarcely.

Q. Would not the soft mud, under such circumstances, rise inside the enclosure almost as high as the filling outside of the fence?

A. I could not say it would rise so high as that.

Q. If the bottoms of such piles were driven for ten feet into a substantial hard bottom, would they bear the weight of the filling 10 above mentioned, pressing sideways against them?

A. I think not. I think they would break. I have no doubt they would break or bend. If they bent irregularly, the other work would all break.

Q. If they were driven for ten feet into such mud, or sand, of the consistence you found in boring, would that be sufficient to prevent the bottoms from slipping, or being pressed out with the filling that has been described?

A. The sand would—the mud would not.

Q. In your opinion how deep would you have to go, at that 20 point colored red, before you came to the bottom of the mud?

(Mr. Weart objects to the question, and expression of opinion of the witness, as he states he has made no soundings south of Pavonia avenue.)

A. I cannot say except from hearsay. I believe the mud grows shallower as you go towards Jersey City.

Q. Would the boats and stones sunk near the bridge prevent the sinking of a bulkhead along Hudson street?

A. I think not. I don't think they extend to the middle of Hudson street.

30

And on being *cross-examined* by Mr. Weart the witness further said :

Q. If the plot colored red on map "Post 1," in blocks 34, 35, and 36, had a fence of piles thirty-five feet long, three feet apart from centre to centre, fifteen feet in the mud and ten feet in the hard bottom, planked on the outside with hemlock plank fastened with spikes, then with sheet piling close together driven to the hard bottom on the outside, with a cap on the top of the piles, and commence to fill the same with street filling from New York, to grade adjoining the fencing, gradually filling off and supporting the 40

piles by anchors put down in the filling, as it is put on, would there not be sufficient strength to support the filling and keep it from pressing over into the plot colored red?

A. I think not. So long as the mud would not resist the same pressure as the fence, it would give way before the filling; but when it got so stiff as to resist an equal, or a greater pressure, the fence would give way. I do not think the anchors would be of any use at all in that soft mud.

Q. As you gradually filled away from the sheet piling, the mud 10 would be forced away. If that filling settled to the hard bottom, would it not gradually become solid, and therefore assist the fencing against the pressure of the mud driven off?

A. No. Leaving the question of the mud out altogether, that fence acts as a retaining wall, and has not strength to resist the pressure of such a mass of earth behind it.

Q. If there should be sufficient strength in that fence to stand, commencing to fill as before stated next the fence, would not the soft mud be pressed off into the surrounding property, and kept out of the plot colored red, by the street piling?

20 A. Certainly, if the fence was strong enough.

Q. Have you kept an account of the filling put on the property south of Pavonia avenue?

A. I have, according to the orders of the president.

Q. If there is such an agreement, and you have seen it, for them to fill, why was Mr. Manners not consulted, as a joint owner, nor asked to sign it?

A. I understood there was such an agreement. I don't know that I have seen it, and did not get the names to it.

30 *Question by the commissioners.* What is the cost of the bulkhead recently built by the Long Dock Company?

A. $2\frac{3}{4}$ cents per cubic foot for the one now building. It is sixty feet wide, and will probably be fifty feet high. This amounts to \$82.50 per lineal foot. I do not consider a narrower bulkhead safe at that place. It is about eighty feet outside of Hudson street to the face. The old bulkhead I understood was forty feet wide at bottom, and twenty-five at top. I consider it gave way because too light. A crib under the end of the pier, about four hundred feet outside of Atlantic street, is about fifty-four feet high, eighty feet by fifty, was loaded with eight hundred tons of stone four months, and 40 went down six inches after they were taken off.

JOHN HOUSTON.

Sworn and subscribed before us, this 8th day of July, 1862.

A. S. PENNINGTON, }
JOHN HUYLER, } *Commissioners.*
ASHBEL WELCH, }

William Sanderson, a witness on the part of the complainants, being duly sworn according to law, saith as follows :

Q. Are you employed in the neighborhood of Pavonia avenue ?

A. I am employed superintending the erection of a building east of Provost street, on Pavonia avenue.

Q. Did Mr. Bentley ask you to-day to see where low water came ?

A. Yes.

Q. Did he go with you ?

A. Yes.

Q. When was it ?

A. When we left Pavonia avenue it was about a quarter past eleven ; we came down to a point between Warren and Washington streets, on South Seventh street.

Q. How far was the mud bare ?

A. From the centre of the block on Pavonia avenue between Meadow and North streets, nearly straight to a point on South Seventh street, about fifty feet west of the range of the west side of Washington street, except some little irregularities.

Q. Is that about ordinary low-water mark, as you understood ?

A. It was about what I conceive to be an ordinary low tide. They tell me it sometimes runs off a great deal farther, but ordinarily about as it was to-day.

And being cross-examined by Mr. Weart he further says :

Q. Who did you get your information from ?

A. From my own observation, and from those who have boats, and who have business on the shore. I am a carpenter.

Q. Did you ever have occasion before to-day to notice exactly how far the tide fell off, as regards the streets ?

A. I never took any points particularly before.

Q. Where did you get your hour for low tide ?

A. First from Mr. Perrine, then Mr. Bentley, then a New York paper, also from a man who lets boats. He says it would run out some, after I was there.

Q. What time were you there, and when was it low water ?

A. I was there about eleven o'clock, and it was low water at

half-past eleven. We remained there some time, and went up to the point. I have mentioned fifteen minutes afterwards.

Q. Do you know whether the hour of half-past eleven, given in the newspaper, fixes the low tide at Sandy Hook, Governor's Island, or the Navy Yard?

A. I do not, of my own knowledge.

Q. Do you know what is the average difference between high and low-water mark, each day?

A. No, sir.

10

WM. SANDERSON.

Sworn and subscribed before us, this 8th day of July, 1862.

A. S. PENNINGTON,	} Commissioners.
ASHBEL WELCH,	
JOHN HUYLER,	

GARRET E. WINANS, being by us duly sworn according to law, deposeth and saith :

Q. Are you one of the owners of the property that has been reclaimed and filled in, south of and adjoining South Seventh street,
20 in Jersey City?

A. Yes, sir.

Q. Do the owners of that property claim the right to fill out and own the lands north of South Seventh street, now covered by water, and below high-water mark, according to the diagonal lines marked on the map, Exhibit, Post, No. 2?

A. Yes, sir, we claim the right, in accordance with that map; that map was made for that purpose.

Q. Did you, and the other owners of that property, cause piles that were driven down in the block north of South Seventh street,
30 near Hudson street, by Mr. Bentley and the owners of the cove south of Long Dock, to be pulled out, by virtue of your claim?

A. I caused those piles to be drawn out by my authority. I do not know who put them down, except by hearsay; I did it by reason of my right under those diagonal lines, and as an encroachment on my property. I live in the city of New York; I have been for many years engaged in filling in flats in Jersey City and New York, as contractor and owner, and have been so engaged for the last nine years.

Q. Did you ever try the experiment of keeping the filling from
40 running off the lots on which you were placing it, by a barrier

made by driving piles and covering the side with plank, or any similar contrivance, and if so, what was the result?

A. I do not know that I have made any such experiment in mud. I think I have in one space of thirty feet, or thirty-five feet. I drove down some piles and put some braces across long stringers from an abutment on either side; I threw some mud over to the side I was endeavoring to close, and I did enclose the space within, and the result was it burst out, and gave me a good deal of trouble and expense; there was a bulkhead on each side which formed the abutments I spoke of; this was to shut up a space in the bulkhead which had been left to get vessels through; this was a continuous bulkhead with this opening; on the outside of this bulkhead I had recently dug or excavated, for the purpose of getting vessels further up in the cove or bay; this excavation extended along the bulkhead and across the opening.

Q. What gave way?

A. It was the timbers and planking with which I had enclosed it.

Q. Did you have piles driven?

A. I had some piles driven; the timbers were braced principally by the abutments.

Q. If in the cove north of South Seventh street, west of Washington street, at some place where the soft mud is fifteen feet above the hard bottom, a fence was made, by driving piles thirty-five feet long, ten feet into the hard bottom, ten-inch white-oak piles capped on the top, three feet apart, and by spiking two-inch plank on one side of the piles, shoving the plank down in the mud as far as you could, and you were to fill in on the plank side of this fence with street filling and earth, such as usually used for that purpose, so that the filling should be twenty-five feet above the top of the hard bottom, would this fence retain the soft mud, or would the weight of the filling press it through on the other side of the fence?

A. It would depend greatly on the nature of the mud. Mud differs in this very bay; some is more compressed than others; if you should use all earth filling, I do not think it would stand; I do not think I would like to try it, at ordinary filling.

Q. Would the mud, such as you know the mud to be north of South Seventh street, east of Washington street, be retained by such a fence, or would it be forced through, if ordinary street fill-

ing should be placed on it, so as to be twenty-five feet above hard bottom?

A. I do not think the structure could be kept in a line by putting this pressure upon it.

Cross-examination on the part of D. S. Manners.

Q. If you should take this plot colored red on map, Post, No. 1, located in blocks 30, 31, and 32, with the depth of mud in the cove at that point, and drive piles thirty-five feet long, three feet centre to centre, ten feet into the hard bottom, cap the same, then
 10 nail sufficient planking to the outside, as close as you could get them down to the mud, and from there drive a sufficient strength of sheet piling to the hard bottom, commencing to fill the same from the outside with street filling from New York, putting down anchors from the top of the piles into the filling as it is put on, filling the property to grade, would not that structure hold the filling and keep it from running into the plot colored red?

A. The anchors would not help it; at block 30 it is rock. If you had ten feet of hard filling in the bottom, it would stand possibly, but I would not like to try the experiment; it might stand
 20 for the time being. Here at block 30 rock comes near to the surface, not more than eight feet of mud. I have lost so many thousand dollars by filling in, with mud on one side and docks and cribs on the other, that I would not like to try the experiment.

Q. Have you lost by driving of piles and sheet piling as above stated?

A. I have not, except in the instance I have stated, between those abutments.

Q. How many piles were driven in that opening?

A. Not many; I depended mostly on the abutments; I had
 30 very heavy timbers across.

Q. How deep did you dig out the channel in front of these bulkheads and opening?

A. About four feet, as I should judge.

Q. If this fence would stand around this plot colored red, and you were to commence the filling on the outside of the fence, gradually filling off, would not the soft mud be pressed off on the surrounding property, and kept from running into the plot colored red?

A. It would go off to a considerable extent. If it should be perfectly tight, very little would pass through, but it would be
 40 shoved off the other way.

Q. Have you made any calculations or estimate whether such a fence would stand?

A. I have thought over these matters, hitherto, and have made no calculations except in my mind.

Q. Do you know about how much side pressure, piles driven as above stated, will bear?

A. That depends upon the character of the mud, the tenacity of the mud, and would require some calculations which I have not made.

Q. Are you a joint-owner in that tier of lots from Prospect 10 street to Atlantic street, south of South Seventh street?

A. I own individually from Provost street to one hundred feet east of North street.

Q. What about is the yearly rental of blocks 77, 53, and one hundred feet on the corner of block 29?

A. I could not tell without my papers.

Q. What do you value your lots at, in this vicinity?

A. At the present time I cannot tell; I have put no valuation on them, and can find no purchasers.

Q. When these lots were in the market, what was your asking 20 price?

A. I decline to answer that question.

Q. What have you been offered for some of your lots along there?

A. I cannot say that I have had any real offer.

Q. What is the price of old canal-boats and hulks, such as are used for filling, and what have you paid for them?

A. When I purchased some years ago, I paid from fifteen to forty dollars.

Q. About what is their average length?

30

A. From thirty to eighty-five feet.

Q. As far down as you have filled on South Seventh street, did these old hulks, with piles driven about every ten feet, protect your filling?

A. They protected it to a very considerable extent.

Q. Did sufficient mud escape to make any material prejudice to your filling on the south?

A. It did, only in this wise—that it compressed the mud and made the water shoaler, raising the mud, so that we had to excavate some, so as to get in the boats.

40

Q. Can you tell the cost per running foot for boats and piling?

A. I did not do the piling, and do not know what it would cost.

Q. Did you, on filling out your property, get a license from the Freeholders, under the Wharf act?

A. No, sir, we did not.

Question by the Commissioners. What is the depth of the mud, to hard bottom, along South Seventh street?

A. At River street, the rock is very near the surface; to the plot colored red, it is from six to eight feet of mud on the rock; at 10 North street it is in the neighborhood of ten feet; at Meadow street it is thirty feet; at Provost street it is probably fifty feet; at Prospect street I cannot state—it is at Mr. Miller's lot, which is on the hard ground.

Q. What is the comparative depth of mud, as you go north from South Seventh street?

A. It is very unequal; in some places the rock is near the surface. I have taken no soundings, except along the dock.

Q. Where is common low-water mark north of South Seventh street?

20 A. I cannot tell.

Q. What kind and size of bulkhead, on Atlantic street, would be sufficient?

A. I am not prepared to answer without making soundings.

Q. What is the relative value of lots along South Seventh street?

A. The lots on the river front are most valuable. I would rather have lots near the water than those further off.

G. E. WINANS.

Sworn and subscribed before us, this 9th day of July, 1862.

30 A. S. PENNINGTON, }
JOHN HUYLER, } *Commissioners.*
ASHBEL WELCH, }

CHARLES A. WOOLSEY, a witness on the part of the complainants, being duly sworn, doth depose as follows:

A superintendent of the ferry from Jersey City to Courtlandt street, and has been since November, 1845.

Q. Do you, as superintendent, use a great many piles about the ferry?

A. Yes.

Q. Are these piles subject to be destroyed by worms or insects?

40 A. They are subject to be destroyed by worms.

Q. In what way do the worms destroy them?

A. By what I call eating the piles off between low water and the surface of the mud, so that they will not hold their own weight.

Q. How long do your piles last, on an average, against these worms?

A. I do not know how long on an average. I have recently replaced piles that have been eaten off in six years.

Q. Did not the Railroad Company have to take down one of the wings of their new depot and replace the piles under it, because eaten off by worms?

10

A. Yes, it was *best*.

Q. How long had it been up?

A. It did not exceed six years.

Q. Have you a specimen of the wood?

A. Yes.

The piece of wood marked "Exhibit One, Woolsey," was produced.

Q. Where is that from?

A. It is part of a brace which was under the wing of the New Jersey Railroad depot.

Q. Were their white-oak piles eaten in the same manner?

20

A. Yes.

Q. Are these piles eaten down close to the mud?

A. Yes.

And being cross-examined by Mr. Weart, he says:

Q. Can you tell what is the average duration of the piles?

A. I cannot give an average, because fifteen or twenty years ago they were very destructive; then they disappeared to a great extent, as I supposed, on account of the sewers and gas-works emptying into the river on the New York side, and I have been surprised to find, within five or six years, that they have taken a start again. We did not think necessary to take the precautions 30 of charring, coppering, &c., which are sometimes taken.

Q. Did you ever know them to do any damage above low-water line?

A. I don't think I have.

Q. Did you ever know them to do any damage below the surface of the mud?

A. I cannot exactly tell, as I never draw any, because they *brook off* at the surface of the mud.

Q. Did you ever know them to work in stagnant water, outside 40 of the running stream?

A. I don't know. I never had any experience of them except in the running stream.

Q. Will they work anywhere except in very salt water?

A. Yes. I think they are worst in brackish water, rather than in extreme salt.

Q. Will they work in fresh water?

A. No, sir.

Q. If you were to take a plot in the Harsimus cove, pile it all round, then fill in on the outside of the piles all round, and shut
10 the river-water entirely out of it, would the worms eat that part of the pile exposed on the inside?

A. I cannot answer.

Q. Do you suppose that worms would work in a pond of stagnant water, made by the water oozing in from the tide, and from the rainwater?

A. I cannot answer.

Question by the commissioners. How long are your piles?

A. The rock is uneven from forty to sixty-five feet.

CHARLES A. WOOLSEY.

20 Sworn and subscribed before us, this 9th day of July, 1862.

A. S. PENNINGTON.

JOHN HÜYLER.

ASHBEL WELCH.

A true copy.

BARKER GERMERE, *Clerk.*

IN CHANCERY OF NEW JERSEY.

BETWEEN PETER BENTLEY, *Complainant,*

AND

THE LONG DOCK COMPANY, MOSES TAYLOR,
and Catherine, his wife, DAVID S. MANNERS,
and Deborah P., his wife, CHARLES G. SISSON,
and Mary Elizabeth, his wife, ABRAHAM O. ZABRISKIE, *and Julia M., his wife,* MARY BELL,
 ABRAHAM S. JEWELL, *and Abby, his wife,* STEPHEN D. HARRISON, *and Martha Rosale,*
his wife, Margaret E. Bentley, the wife of Peter Bentley, the Complainant, and Robert Gilchrist,
Defendants.

*On Bill,
 &c.,
 Return.*

In pursuance of a certain commission issued out of and under the seal of the Court of Chancery, of the State of New Jersey, bearing date of the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and sixty-two, in a certain cause therein depending, wherein Peter Bentley is complainant, and "The Long Dock Company," Moses Taylor, and Catherine, his wife, David S. Manners, and Deborah P., his wife, Charles G. Sisson, and Mary Elizabeth, his wife, Abraham O. Zabriskie, and Julia M., his wife, Mary Bell, Abraham S. Jewell, and Abby, his wife, Stephen D. Harrison, and Martha Rosale, his wife, Margaret E. Bentley, wife of Peter 10 Bentley, the complainant, and Robert Gilchrist, are defendants, appointing us, the subscribers, commissioners, to separate, set apart, and divide the lands and real estate with the appurtenances, in the said commission particularly set forth and described, into certain shares, in the said commission set forth, lay metes and bounds, where we should see occasion, and allot—

To Peter Bentley, the one-fifth thereof; to The Long Dock Company, the one-fourth thereof; to Moses Taylor, the one-tenth thereof; to David S. Manners, the one-twentieth thereof; to Charles G. Sisson, fifty-nine six-hundredths thereof; to Abraham O. 20

Zabriskie, fifty-nine six-hundredths thereof; to Mary Bell, sixty-two six-hundredths thereof; to Abraham S. Jewell, one-twentieth thereof; to Stephen D. Harrison, one-twentieth thereof; to be enjoyed by each of them in severalty; or that in case we, the said Commissioners, or any two of us, should be of opinion that such partition, as last aforesaid, cannot be made without great prejudice to the said owners and proprietors, that we, the said Commissioners, or any two of us, should separate, set apart, partition, and set off to David S. Manners the one-twentieth part of the said lands and real
 10 estate in value by metes and bounds, when we, the said Commissioners, should see occasion, to be enjoyed by the said David S. Manners in severalty. Or if we, the said Commissioners, or any two of us, should be of opinion that such partition, as aforesaid, of one-twentieth part of the said lands and real estate in value, cannot be made, as aforesaid, to the said David S. Manners, without great prejudice to the said owners and proprietors, that we, the said Commissioners, or any two of us, should so report to the Chancellor. And that we, the said Commissioners, should make return of our acts and proceedings in the premises into the Court of Chancery :
 20 do hereby report to the said Court, that having taken upon us the burden of the said commission and appointment, and having been first duly sworn according to law, we were attended by the counsel of the respective parties; we did with them enter upon, walk over, and survey the said lands and premises, so far as the same was practicable, and did direct a map to be made, which is hereunto annexed, marked C, and did mark exhibits which are certified under our signatures;

And have taken depositions which are hereunto annexed; and after carefully examining the exhibits and depositions taken in the
 30 cause, and after hearing the arguments of the counsel of the parties respectively, and considered of the same, we beg leave to report as follows:—

1st. That such partition cannot be made among all the said owners and proprietors, without great prejudice to the said owners and proprietors.

2nd. That such partition as aforesaid of one-twentieth part of the said lands and real estate in value, cannot be made, as aforesaid, to the said David S. Manners, without great prejudice to the said owners and proprietors. And the counsel for the respective parties,
 40 or some of them, having upon the argument requested the Com-

missioners to state, in their report, the reasons upon which we should base our report, we do, in compliance with such request, state some of the reasons, as follows :—

It appears to the Commissioners that it is their duty, under the order of the Chancellor, to divide the property if it can be done without great prejudice to the interest of the owners; and if it cannot be done, to set off to Mr. Manners his share, if practicable and without great prejudice to the interest of the other owners. It also appears to the Commissioners that the damage or prejudice which should prevent a partition should be of a very serious ¹⁰ character. The lands and real estate proposed to be divided consist of a narrow strip of land above high-water mark, of little value except for the right or privilege of filling and docking out in front of the same and appurtenances thereto; and the right of the Budd tract, enclosed by yellow lines in the map C, hereto annexed, under the act of the Legislature, passed November eighth, 1836, and which does not include any, or if any, a small part of the land above and adjoining the shore line.

The said property was purchased by all the parties, with the view of reclaiming and improving it at the joint expense of the ²⁰ parties so purchasing, and upon the ground that it could be more profitably and less expensively managed and improved jointly, because of the great cost of the improvement; that this improvement could only be made by building bulkheads and filling in the same, and afterward filling the parts so reclaimed, and by making slips on the front, and perhaps a basin or basins in the interior of the property. It contemplated unity of action, and required either perfect harmony among the owners, or that a power should be given to a committee of the owners, or to trustees, to act for the best interest of all; this has not been done, and it is manifest that ³⁰ where there is a want of harmony among the owners, any one of them can stop all improvement, and so the whole object of the purchase be defeated.

By our law the land below high-water mark belongs to the state; by the wharf act the shore-owner has a right to build docks or improve in front of his land to low-water mark.

By the same act the shore-owner may obtain a license from the board of chosen Freeholders to build docks, wharves, and piers beyond the limits of ordinary low-water mark, so as not to hinder, interfere with, or impair the public right of navigation; but the ⁴⁰

State reserved the right, before improvements actually made by virtue of such license, to appropriate to the public use the lands lying under water. Then the right to all the land below ordinary high-water mark belongs to the State, until the owner of the upland shall improve the same; and the land below low-water mark belongs to the State until such license shall be obtained.

It is admitted that no such license now exists as to this property.

A partition of this property can only be made by dividing the
10 land above high-water mark among the parties in proportion to their respective interests, and allotting to each the whole land covered by water in front of his lot; or by allotting parts of the shore lots and blocks, or parts of blocks now under water, in different parts of the property.

If the shore line should be divided among the owners, each holding his share on severalty, any one could prevent his neighbor from improving without great loss, by simply refusing or neglecting to join in building bulkheads or filling in; all community of interest would be broken up; one owner would either have to abandon his
20 improvements, or expend his money to fill in his neighbor's lot; this would produce a constant clashing of interests. Again, by dividing the shore line it would cut the blocks in such a way as to greatly impair the value of the lots, giving to the smaller owners so small a strip that the costs of filling in would be more than the value of such share when filled in; again, some one would have the front on Pavonia avenue, the most valuable part of the property; by reference to the map hereto annexed, marked C, it would be seen that a division of the shores cannot be made in this way without destroying the whole plan and object of the owners in making
30 the purchase. In fact, none of the parties seemed to think this mode of partition desirable.

Can the property be divided by allotting blocks and lots in different parts of the tract to the several owners, making the shares equal in value to their respective interests? Some of the objections to this course are—

I. These parties own the south of Pavonia avenue, and enclosed by yellow lines on map C, hereto annexed, called the Budd tract, by virtue of certain deeds and a grant from the Legislature in the year 1836. But the parties in interest in this suit having now become
40 the owners of the Budd tract up to and enclosing the upland west

of that tract, the Commissioners think it possible that this tract might be divided. Although this part might be free from some of the objections herein stated to a partition, yet a partition of that part alone would present great difficulties, involving questions of a very serious character. If the Budd tract should be divided, then the whole of that tract would be held in severalty, and what would become of the property east of the Budd tract, and south of Pavonia avenue? It could not be improved, and if all outside of the Budd tract should be sold, the purchaser of the part east of the Budd tract would have no legal title, nor land to which the 10 right to dock out and fill in would be appurtenant; and if all but the Budd tract should be sold, that portion of the property east and south of the Budd tract would be of very little value. In fact, none of the parties interested have advocated or even suggested it.

II. It breaks up the entire unity of interest, for these nine persons would own in severalty distinct parts of the property.

III. It would prevent the building of bulkheads, except where all the owners inside of such bulkheads should agree to build, and should also agree what proportion each one should pay towards the 20 improvements.

IV. It would prevent improvements, for one owner could not improve his blocks or lots without filling up to a considerable extent the lots or blocks of the adjacent owner, or go to great expense to prevent it.

V. If A. should be allotted block No. 1, and B. block No. 104, with the shore, on map C, then A. would be allotted property which not only belongs to the State of New Jersey, but he would have no right to improve his block, because, by the fifth section of the wharf act, the license to erect docks, &c., is not assignable ex-30 cept with and as appurtenant to said lands, and must pass by any sale of said lands (that is, the uplands) as appurtenant thereto; therefore if B. should sell his upland, the purchaser would have all the right of improving in front of his lands, and A., as to his block, would be entirely at the mercy of B's. grantee.

VI. Because the cost of filling part is proportionably much greater than the cost of filling all.

VII. Because that portion of the property lying under water south of line five, and between that line and South Seventh street, is disputed property: the owners of block 126 and part of block 40

127, and the owners of all the shore south of South Seventh street, claim rights as riparian owners to all this land.

All the owners of the property proposed to be partitioned, deny the claims of these riparian owners, and intend to resist these claims, but the claimants intend to support these claims by suit. The existence of these claims is proved by the testimony and is admitted by the parties.

These parties claim this land according to the converging lines, Nos. 1, 2, 3, 4, 5, marked on said map C, and other lines not 10 marked on map;—but the mode of ascertaining the direction of these lines, whether by converging lines such as the above, or by lines drawn at right angles to a base line from headland to headland, or in any other way, has not yet been settled in New Jersey; the effect of this would be to leave the disputed part uncertain, and the Commissioners have no mode of ascertaining the boundary line between the disputed and undisputed parts.

VIII. Whatever plan shall be decided by the courts to be the true line to be adopted, in case the rights of these claimants shall be decided in their favor, still the lines will cut the lines of the 20 streets, as adopted by the city, when extended through this tract, more or less diagonally, cutting the lots into fractions, leaving some of small depth and some without fronts in the street, which would be a damage to all the owners.

IX. By the partition law, if there be controverted and uncontroverted parts of the property in making partition, a proportion of each must be allotted to each share; therefore the true line between the controverted and uncontroverted parts should be settled before partition; this would require a double or probably a treble partition.

30 X. All the land outside of the Budd tract and east of it cannot be well divided, from the uncertainty of how far it may be extended into the river, and from the doubt whether the right of the riparian owner may not be interrupted or taken away by the Budd grant.

XI. It is alleged that the claims of the several parties, as riparian owners, to the controverted parts are unequal, some better than others; some may be good and some bad; of this the Commissioners have no knowledge, nor have they thought it proper to take testimony on this point, for they have no power to de- 40 cide the matter. If this should be so, a partition made now might

do great injustice to some, to the advantage of others, by allotting to one a part which would ultimately be of no value, and to another a part which would be good.

XII. The uncertainty of the line to which the shore owners would be permitted to extend their wharves and docks into the river, depending as it does upon the license which may or may not be granted by the board of chosen Freeholders, the danger of interference with navigation, the right to appropriate the same to public use, and the probable utility of making slips on the front or basins in the interior of the property, present difficulties in the division by blocks or lots. 10

XIII. It is understood that low-water mark lies between North — and River streets. It appears by the testimony that the lots fronting on the river will be the most valuable; if then a block on Hudson street should be allotted to A., and a block in front of that lot, on Atlantic street, should be allotted to B., if the board of chosen Freeholders should fix the limit to which wharves or docks should be built to Hudson street, then B.'s block on Atlantic street would be lost, and the block of A. on Hudson street would be the front lot, and would be greatly increased in value. 20

XIV. A division of the land below high-water mark could only be fairly made by allotting proportionate parts of such front lots to each owner, first of the disputed, next of the undisputed parts; in this case, the shares of the small owners being so divided would be of little value, for the reasons before stated.

XV. From the many unsettled questions which relate to this property, and the rights of these parties in it, there would be great risk in setting off Mr. Manners' share of giving him much more or much less than was intended, and of complicating things still more. 30

We have tried very hard to set off Mr. Manners' share. Some of the objections to partition, if they stood alone, might be overcome; altogether they seem to us insurmountable.

XVI. The Commissioners consider that the opinion of the owners of nineteen-twentieths of the property, that a partition would materially injure their property, its future improvement and value, should, in the question whether a partition would be of serious prejudice to their interest, be entitled to some weight.

There are some other objections to a partition which the Commissioners do not deem of sufficient importance to be here pre-40

sented, or which the parties themselves do not consider of any serious nature.

In witness whereof, we have hereunto set our hands and seals, this seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two.

AARON S. PENNINGTON. [L. S.]

JOHN HUYLER. [L. S.]

ASHBEL WELCH. [L. S.]

IN CHANCERY OF NEW JERSEY.

BETWEEN PETER BENTLEY, *Complainant*,

AND

THE LONG DOCK COMPANY, MOSES TAYLOR, and *Catherine, his wife*, DAVID S. MANNERS, and *Deborah P., his wife*, CHARLES G. SISSON, and *Mary Elizabeth, his wife*, ABRAHAM O. ZABRISKIE, and *Julia M., his wife*, MARY BELL, ABRAHAM S. JEWELL, and *Abby, his wife*, STEPHEN D. HARRISON, and *Martha Rosale, his wife*, *Margaret E. Bentley, wife of Peter Bentley*, and ROBERT GILCHRIST, Senior, *Defendants*.

On Bill for partition.

Exceptions to report of Commissioners.

Exceptions taken by the defendant, David S. Manners, in this cause, to the report made therein, on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, by Aaron S. Pennington, John Huyler, and Ashbel Welch, Esquires, three commissioners appointed by an order of the Court of Chancery, to make partition of the lands and real estate, in the bill in this cause described, among the owners and proprietors thereof, according to their respective rights and interests therein; which said order also directed that said commissioners do set apart by
10 metes and bounds, when they shall see occasion, the said lands and real estate, as follows:

To Peter Bentley, the one-fifth thereof;
 To the Long Dock Company, the one-fourth thereof;
 To Moses Taylor, the one-tenth thereof;
 To David S. Manners, the one-twentieth thereof;
 To Charles G. Sisson, fifty-nine six-hundredths thereof;
 To Abraham O. Zabriskie, fifty-nine six-hundredths thereof;
 To Mary Bell, sixty-two six-hundredths thereof;
 To Abraham S. Jewell, one-twentieth thereof;
 To Stephen D. Harrison, one-twentieth thereof;

Or in case the said commissioners shall be of the opinion that 10 such partition cannot be made without great prejudice to the said owners and proprietors, that the said commissioners do partition and set off to David S. Manners, the one-twentieth part of the said lands and real estate in value, by metes and bounds, where they shall see occasion;

Or if the said commissioners shall be of opinion that such partition of one-twentieth part of the said lands and real estate in value cannot be made, as aforesaid, to said David S. Manners, without great prejudice to the said owners and proprietors, that the said commissioners do so report to the Court of Chancery, so that 20 the said Court of Chancery might, thereupon, then make such order for the partition or sale of the said lands and real estate, or of any part thereof, as to the said Court of Chancery should appear to be equitable and just—and which said order bears date on the fifteenth day of April, in the year of our Lord one thousand eight hundred and sixty-two.

First Exception.—For that the said commissioners have, by their said report, set out and reported that such partition cannot be made among all the said owners and proprietors without great 30 prejudice to the said owners and proprietors, when in truth and fact such partition can be made without great prejudice to the said owners and proprietors, and the said commissioners should have so reported.

Second Exception.—For that the said commissioners have, by their said report, set out and reported that such partition as aforesaid, of one-twentieth part of the said lands and real estate in value, cannot be made as aforesaid to this exceptant, David S. Manners, without great prejudice to the said owners and proprietors—when 40

in truth and in fact such partition of one-twentieth part of the said lands and real estate in value can be made as aforesaid to this exceptant, David S. Manners, without great prejudice to the other said owners and proprietors, and said commissioners ought to have so reported, and set off said share.

Third Exception.—For that the said commissioners have reported that the lands and real estate proposed to be divided, consist of a narrow strip of land above high-water mark, of little value,
 10 except for the right or privilege of filling and docking out, in front of the same, and appurtenances thereto. And the right of the Budd tract, embraced by yellow lines on Map C, annexed to said report, under the act of the legislature, passed November 8, 1836, and which does not include any, or if any, a small part of the land above and adjoining the shore line; when in truth and in fact the lands to be divided as between the parties to said suit, embraced large tracts of land covered with water, outside of the shore line, and also large tracts of land outside of the Budd grant, and the commissioners ought to have so reported.

20

Fourth Exception.—For that the said commissioners assign as a reason why this property cannot be divided, that the state owns all outside of the low-water line, and that the shore owner has no interest in the land below low-water mark, until a license is obtained from the board of chosen freeholders to reclaim and fill out—when in truth and in fact said owners had an interest and estate below low-water line, and this exceptant offered to take his whole share in this property set off below the low-water line, and in the property claimed by the commissioners to belong to the state, and the
 30 commissioners ought to have set off the share so claimed by him.

Fifth Exception.—For that the said commissioners have reported that possibly the Budd tract might be divided—when in truth and in fact that tract should have been divided, and one-twentieth of that tract, in the judgment of this exceptant, would be of more value to him than the proceeds of a sale, if the whole tract should be sold together.

Sixth Exception.—For that the said commissioners have reported
 40 that this property cannot be divided on account of the disputed

lines, and because it is not settled whether these disputed lines will run by converging lines, or by lines drawn at right angles, to a base line from headland to headland, or in any other way—when in truth and in fact there were no disputed lines between the parties in this cause, and if any, or between them and any other persons not parties, this exceptant offered to take his share set off so as to take his full share of the disputed and undisputed property, allowing the outside limit of disputed lines claimed by any party, and plotted out several such shares on a map, and said commissioners ought to have set off to this exceptant one of said shares. 10

Seventh Exception.—For that in the report of the said commissioners, all the reasons why this property cannot be divided are assigned to a division of the whole property among all the joint-owners, and no reason is assigned why this exceptant, David S. Manners' one-twentieth cannot be set off without great prejudice to the other owners, except the reasons assigned in the fifteenth reason of said report, which is, that "from the many unsettled questions which relate to this property, and the rights of these parties in it, there would be great risk, in setting off Mr. Manners' 20 share, of giving him much more or much less than was intended, and of complicating things still more"—when in truth and in fact such share can be set off without giving him much less or much more than his share, and without complicating things any more; and this exceptant is willing to take his one-twentieth set off to him, and run any such risk, if any (which this exceptant denies), and the other joint-owners would be no more prejudiced than this exceptant, and said commissioners ought to have so set off one-twentieth in value to this exceptant.

30

Eighth Exception.—For that in the report of said commissioners, and the reasons assigned why the property cannot be divided, or the share of this exceptant set off to him, this exceptant excepts to all the reasons assigned by the said commissioners, as illegal and insufficient.

Ninth Exception.—For that in the report of said commissioners there are many other erroneous statements and conclusions, all of which this exceptant excepts to; and in all respects this said exceptant does except to the said commissioners' report, and prays 40

that it may be set aside and for nothing holden, and that this exceptant may have his one-twentieth in value of said land and premises set off to him, and prays the judgment of this Court thereupon, and that such order or decree may be made in the premises as shall be agreeable to equity and good conscience.

JACOB WEART,

Solicitor, and of Counsel with the defendant,

DAVID S. MANNERS.

IN CHANCERY OF NEW JERSEY.

BETWEEN PETER BENTLEY, *Complainant*,

AND

THE LONG DOCK COMPANY, MOSES TAYLOR, *and Catherine, his wife*, DAVID S. MANNERS, *and Deborah P., his wife*, CHARLES G. SISSON, *and Mary Elizabeth, his wife*, ABRAHAM O. ZABRISKIE, *and Julia M., his wife*, MARY BELL, ABRAHAM S. JEWELL, *and Abby, his wife*, STEPHEN D. HARRISON, *and Martha Rosale, his wife*, Margaret E. Bentley, *wife of PETER BENTLEY*, and ROBERT GILCHRIST, SENIOR, *defendants*.

On Bill to Partition or sell, &c.

Decree to sell.

Upon opening this matter to the Court by Isaac W. Scudder, of counsel with the complainants, in the presence of Jacob Weart, Esq., solicitor for and of counsel with defendant, David S. Manners, and of Abraham O. Zabriskie, solicitor for and of counsel with the other defendants, upon due notice given and admitted: It appearing to the Court that Aaron S. Pennington, John Huyler, and Ashbel Welch, Esqrs., the Commissioners heretofore appointed by this Court, by an order made in this cause, on the fifteenth day of April last, to make partition of the lands held in common by the
 10 parties in this suit, and whereof partition is prayed therein, have made their report in writing, under their hands and seals, bearing

date the seventeenth day of July last, and that the same is duly returned with the commission issued out of this Court, and is filed in this cause; and the defendant, David S. Manners, having made objections in writing to the said report and the confirmation thereof, in the form of exceptions to the same, which exceptions were directed by the Chancellor to remain filed as objections, but not to be considered as formal exceptions under the practice of this Court relating to exceptions :

And it appearing by said report, that said commissioners, having each taken the oath required by law, did proceed to view and examine said lands and premises in the presence of the counsel of the respective parties, and caused a map of said premises to be made, and did examine witnesses, and cause exhibits to be produced and proved before them, and have sent the depositions of such witnesses, reduced to writing and signed, and such map annexed to their report, to the office of the Clerk in Chancery, to be inspected by the Chancellor, and that they heard the respective parties by their counsel upon the matters before them, and examined the depositions and exhibits taken in the cause, and considered the same :

And it further appearing that the said commissioners were of opinion that said lands were so circumstanced that a partition thereof could not be made without great prejudice to the owners of the same, and did thereupon report, that such partition could not be made among all the said owners and proprietors of said lands and premises without great prejudice to the interests of said owners and proprietors, and that a partition of one-twentieth part in value of said lands and real estate could not be made to the said David S. Manners, without great prejudice to the said owners and proprietors :

And the said report, and the map and depositions thereto annexed, and the proofs and exhibits in this cause, and said objections in writing, having been considered by the Chancellor, and it appearing satisfactorily by such proof to the Chancellor that such lands, premises, and real estate cannot be partitioned either among the owners and proprietors, or by setting off one-twentieth part in value thereof to the defendant, David S. Manners, without great prejudice to the interests of said owners and proprietors, and said report made by said commissioners being approved by the Chancellor :

It is, on this first day of September, in the year eighteen hundred and sixty-two, ordered, adjudged, and decreed by the Chancellor, that the report of the said Commissioners be confirmed in all things; and it is further ordered, adjudged, and decreed, that said Commissioners do sell at public auction to the highest bidder, said lands, premises, and real estate so held in common, and whereof partition is prayed by the bill of its complainant, and therein described as follows, to wit:

The lands and premises situate at Jersey City, in the State of New Jersey, and described as follows: Commencing at a point formed by the intersection of Pavonia avenue with Meadow street, at the centre line of said streets, where such intersection is; thence running westerly along the centre line of Pavonia avenue three hundred and thirty feet; thence southerly, and parallel with Provost street, to a point three feet above high-water mark at Harsimus Bay or Cove; thence southwesterly, and parallel to high-water mark, and distant three feet therefrom, to the centre line of South First street; thence westerly along the centre line of South First street seventy-five feet to the centre line of Provost street; thence south-
 20 erly along the centre line of Provost street to a point three feet from, and above high-water mark of said bay or cove; thence southwesterly, and parallel to high-water mark, and distant three feet therefrom, above said high-water line to the centre line of South Third street; thence westerly along the centre line of South Third street, about eighty feet, to a point distant one hundred feet westerly from the westerly line of Provost street; thence southerly, and parallel with Provost street, one hundred and thirty feet, to the centre of block number one hundred and five on Coles' map of Harsimus; thence westerly, and parallel with South Third street,
 30 two hundred feet; thence southerly, and parallel with Prospect street, one hundred and thirty feet, to the centre line of South Fourth street; thence westerly along the centre line of South Fourth street to the centre line of Prospect street; thence southerly along the centre line of Prospect street to the centre line of South Seventh street; thence easterly along the centre line of South Seventh street to the middle of the Hudson River; thence northerly along the middle of the Hudson River to a point which the middle line of Pavonia avenue would strike if extended to the middle of said river; thence westerly along the centre line of Pavonia avenue to the point or
 40 place of beginning. Also all land in Prospect street east of the

west line of Prospect street, from the north line of South Fourth street to the south side of South Seventh street, being the same lands and premises mentioned in the following deeds : one made by Mary Bell, bearing date the ninth day of September, in the year eighteen hundred and forty-five, which was duly proved according to law, and recorded in the Clerk's office of the county of Hudson, on the ninth day of May, in the year of our Lord one thousand eight hundred and forty-six; another deed made by the said Mary Bell to Peter Bentley, bearing date the eighth day of March, in the year eighteen hundred and fifty-four, and which was acknowl-10 edged on the eleventh day of March, in the year last aforesaid, and recorded March thirteenth, in said last named year, in the Clerk's office of the county of Hudson, in book 36 of deeds, pages 569, etc. Another deed made by John B. Coles and others, to said Peter Bentley, bearing date the eighth day of March, eighteen hundred and fifty-four, and which was recorded March thirteenth, in the year last aforesaid, in book 36 of deeds for the county of Hudson, pages 560, etc.; and also a certain deed of trust, made by John Van Vorst and Emily H., his wife, to Robert Gilchrist as trustee, which bears date the thir-20 teenth day of September, eighteen hundred and fifty-six, and was recorded in the Clerk's office of the county of Hudson, on the eleventh day of October, in the year last aforesaid, in book 55 of deeds for Hudson county, pages 528, etc.; to which said four deeds, or the records thereof, for greater certainty, reference is made, excepting out of the property above described the following property, conveyed to George Mather, which is butted and bounded as follows, viz. : commencing at a point on the south side of South Third street, distant seventy-five feet westerly from the intersection of South Third street and Provost street, and running from thence 30 southerly and parallel with Provost street, two hundred feet, to northerly side of South Fourth street; thence westerly and along the northerly side of South Fourth street, fifty feet; thence northerly and parallel with Provost street, one hundred feet; thence easterly and parallel with South Fourth street, twenty-five feet; thence northerly and parallel with Provost street, one hundred feet, to the southerly side of South Third street; thence easterly and along the southerly side of South Third street, twenty-five feet, to the place of beginning; and also excepting out of the property above described, all the right to fill up and use, for the purpose of a 40

ferry, all that land under water east of the west side of Hudson street and north of a line drawn parallel to, and sixty feet South of, the centre line of Pavonia avenue, so long as the same shall be used for the purpose of a ferry-slip or ferry-landing; and also excepting, out of said property, the lands and premises and property which John Van Vorst reserved to himself by said deed of trust, and described as follows: So much of said lands in said Van Vorst's deed, described, as lie west of a line drawn one hundred feet east of and parallel to the east side of Prospect street,
 10 reserved to the use of said John Van Vorst, his heirs and assigns forever. To which said deeds and the clauses, covenants, and reservations therein contained, for greater certainty, reference is made. And also all the lands under water, water rights and water privileges to the same belonging; and also together with all and singular the hereditaments and appurtenances to the said property belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, to be sold at public auction to the highest bidder, in the presence and under the direction of the said Commissioners. And that the same be sold subject to the
 20 mortgage given by Robert Gilchrist to John Van Vorst, dated September eighteenth, eighteen hundred and fifty-six, and to the mortgage given by Peter Bentley and Margaret E., his wife, to John B. Coles and others, dated March eighth, eighteen hundred and fifty-four, for the amounts due on said mortgages respectively.

And it is further ordered, that the said Commissioners do sell the same entire, or in such portions as to them may seem most for the interest of the parties therein, and that they do give public notice of the time and place of such sale, and in all respects conduct the same according to the provisions of an Act entitled "An Act
 30 to regulate sales of Real Estate made under a public statute or the directions of a Court;" and that the said Commissioners do further, after such sale, make report thereof to this Court, and after their report shall have been confirmed by this Court, then that they make and execute unto the purchaser or purchasers thereof, good and sufficient conveyances in the law, for said property, upon their complying with the conditions thereof; and that such sale and conveyance or conveyances duly executed as aforesaid be valid and effectual forever, both at law and in equity, against the said defendants and the said complainant, and all persons claiming by, from, or under
 40 them or any of them.

And it is further ordered, that the said Commissioners do pay the money arising from such sale, after deducting therefrom their fees and commissions and the taxed costs and expenses of the suit in this Court, to the several parties interested, or their assigns, in proportion to their respective interest in the same; the mortgages and other encumbrances on each share to be first paid, in order of their legal priority, out of the proceeds of such share.

And the share or proportion of each tenant in common shall be ascertained and adjusted by adding to the net proceeds of such sale, over and above said fees, commissions, and taxed costs and ex-10 penses, the amount due on said two mortgages to which said sale is ordered to be made subject, and by paying to such of said tenants in common and his encumbrances, a share of such whole sum proportioned to his interest in said property, as settled by the decree for partition in this cause, first deducting from such share, the share of the amounts due on said two mortgages which such tenant is bound to pay, as between him and his other tenants in common. And that the said parties or either of them may at any time, either before or after the sale, apply to this Court for any order and directions relating to the costs and expenditures incurred in relation to 20 said property, which this Court is authorized or directed to make by the judgment and decree of the Court of Errors and Appeals in that behalf, and for other further orders and directions if occasion shall require.

HENRY W. GREEN, *C.*

A true copy.

BARKER GUMMERE, *Clerk.*

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN DAVID S. MANNERS, *Appellant*,

AND

THE LONG-DOCK COMPANY, PETER
BENTLEY, *and Margaret E., his wife*,
MOSES TAYLOR, *and Catharine A., his*
wife, DEBORAH P., *wife of the said David*
S. Manners, CHARLES G. SISSON, *and*
Mary Elizabeth, his wife, ABRAHAM O.
ZABRISKIE, *and Julia M., his wife*, MARY
BELL, ABRAHAM S. JEWELL, *and Abby,*
his wife, STEPHEN D. HARRISON, *and*
Martha Rosa, his wife, and ROBERT GIL-
CHRIST, SENIOR, *Appellees.*

On Appeal.

*To the Honorable, the Court of Errors and Appeals of the State
of New Jersey :*

The petition of the defendant, David S. Manners, appellant in the
above cause, respectfully shows :

That your petitioner is aggrieved by a decree made in said cause,
bearing date on or about the first day of September, A. D., 1862,
confirming the report of the commissioners, and ordering a sale of
the property, in the following particulars; to wit:

1st. From all that part of the decree which orders that the writ-
10 ten objections in the form of exceptions, filed by the defendant,
David S. Manners, against the confirmation of the report of the
commissioners, which, according to the practice in said court, in
such cases, were considered as objections, and ordered to be filed
as such, were not sufficient to set aside the report of the commis-
sioners, made in said cause.

2d. From all that part of the decree which confirms in all things
the report of the commissioners, made in said cause.

3d. From all that part of the decree which orders that the com-

missioners shall make sale of the lands, premises, and real estate, described in the complainant's bill.

4th. From all that part of the decree which confirms the report of the commissioners, and adjudges that partition cannot be made among all the said owners and proprietors, without great prejudice to the said owners and proprietors.

5th. From all that part of the decree which confirms the report of the commissioners, and adjudges that one-twentieth part, in value, of said land and premises, cannot be set off to this appellant, David S. Manners, without great prejudice to the interest of said owners and proprietors.

6th. And that the said decree is in several other respects erroneous.

JACOB WEART,

Solicitor and Counsel with Appellant, David S. Manners.

COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES.

20

DAVID S. MANNERS,

Appellant,

AND

PETER BENTLEY and OTHERS,

Respondents.

Answer to Petition of Appeal.

The respondent, Peter Bentley, not confessing or acknowledging all or any of the matters to be true as in and by the said petition of appeal are contained and set forth, for answer thereunto, says: 30 That he believes it to be true, that such decree as is complained of by the appellant was made by the Court of Chancery, as in the said petition of appeal is set forth, but as to the date, substance, and contents thereof, this respondent humbly craves leave 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 justice, and he therefore humbly prays that the same may be affirmed, and that the said petition of appeal may be dismissed by this Honorable Court, with costs to be adjudged to this respondent.

J. W. SCUDDER,

40

Solicitor for and of Counsel with the said respondent, Peter Bentley.

EXHIBITS.

Exhibit X, No. 2, on the part of the defendant, David S. Manners.

Josephine Hutton to Abraham O. Zabriskie and Peter Bentley. Deed acknowledged November 12th, 1861; recorded November 27th, 1861.

This indenture, made the twelfth day of November, in the year one thousand eight hundred and sixty-one, between Josephine Hutton, widow and relict of Robert Hutton, late of Jersey City, in the county of Hudson, and State of New Jersey, deceased, party of the first part, and Abraham O. Zabriskie, of Jersey City, and Peter Bentley, of the township of Bergen, in the State of New Jersey, parties of the second part, witnesseth: That the said party of the first part, for and in consideration of one thousand dollars, to her in hand paid by the said parties of the second part, at or before the
 10 ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm unto the said parties of the second part, and to their heirs and assigns forever, all that certain plot, piece, or parcel of land and premises situate, lying, and being in Jersey City, in the county of Hudson, and state of New Jersey, and bounded and butted as follows, viz.: Beginning on the westerly side of Prospect street, at a point distant
 20 eighty-two feet south of the southerly line of South Fifth street, and running from thence southerly along the westerly line of Prospect street, a distance of one hundred and fifty feet, to the centre line of South Sixth street, to the middle of the Hudson River; thence along the middle of said Hudson River, northerly, one hundred and fifty feet; thence westerly, and parallel with South Sixth street, to the place of beginning; together with all the right and privilege which the party of the first part has in the Hudson River, or Harsimus Cove, by reason of any ownership of a part of block number one hundred and twenty-seven, as laid down on map of John B. Coles, of ———; together with all and singular the tenements,

hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances—to have and to hold all and singular the above-mentioned and described premises, together with the appurtenances, unto the said parties of the second part, and their heirs and assigns forever. In witness whereof the party of the first 10 part hath hereunto set her hand and seal to these presents, the day and year first above written.

Signed, sealed, and delivered in the presence of

JOSEPHINE HUTTON. [L. S.]

The word interlined before signing, on the first page.

GEO. W. CASSEDY, *Jersey City, N. J.*

STATE OF NEW JERSEY, ss. } Be it remembered, That on this
Hudson County. } twelfth day of November, in the
 year one thousand eight hundred and sixty-one, before me, GEORGE
 W. CASSEDY, a Master in Chancery in and for said State, personally 20
 appeared Josephine Hutton, who, I am satisfied, is the grantor in the
 within indenture named, and I having first made known to her the
 contents thereof, she did acknowledge that she signed, sealed, and
 delivered the same, as her voluntary act and deed, for the uses and
 purposes therein expressed.

GEO. W. CASSEDY,

Master in Chancery of New Jersey.

Received in the office and recorded November 27, 1861.

NEW JERSEY, } I, ROBERT GILCHRIST, Clerk of Hudson 30
Hudson County, ss. } county, aforesaid, and Clerk of the Court
 of Common Pleas holden in and for said county, do certify the forego-
 ing to be a true and correct copy from the record thereof of a certain
 deed and the acknowledgment thereto, as the same are recorded, as
 above stated, on the 27th November, 1861, in liber 91 of deeds for
 Hudson county, aforesaid, pages 247 and 248.

Witness my hand and the seal of said courts and county, this
 [SEAL.] sixth day of May, A. D. 1862.

R. GILCHRIST, *Clerk.*

Exhibit X, No. 4, on the part of the defendant, David S. Manners.

Release, John Van Vorst to David S. Manners.

This Indenture, made this fifth day of April, in the year one thousand eight hundred and sixty-one, between John Van Vorst, of the city of Jersey City, in the county of Hudson and State of New Jersey, party of the first part, and David S. Manners, of the city, county, and State aforesaid, party of the second part :

Whereas, Robert Gilchrist, by Indenture of Mortgage, bearing date the thirteenth day of September, one thousand eight hundred
 10 and fifty-six, for the consideration therein mentioned, and to secure the payment of the money therein specified, did convey certain lands and tenements, of which the lands hereinafter described are part, unto John Van Vorst, to secure the payment of the following described bonds, to wit: One made by "the Long Dock Company," to secure the sum of \$5,500; one made by Peter Bentley, to secure the sum of \$4,400; one made by Mary Bell, to secure the sum of \$2,923.34; one made by Stephen D. Harrison and Abraham S. Jewell, to secure the sum of \$1,540; one made by Moses Taylor, to secure the sum of \$2,200; one made by David S. Manners, to secure
 20 the sum of \$1,100; one made by Abraham O. Zabriskie, to secure the sum of \$2,163.33; and one made by Charles G. Sisson, to secure the sum of \$2,163.33. And whereas the said Robert Gilchrist holds the following described lands in trust for the aforesaid described parties, and said bonds are in proportion to the amount of interest that each holds in said lands; and whereas the said David S. Manners is entitled to the undivided one-twentieth part of the following described lands, and that said mortgage was given to secure his bond for \$1,100, and other bonds, said bond of \$1,100 being the balance due from said Manners to said Van Vorst for one-twentieth
 30 part of the consideration money paid for said premises :

And whereas, the said party of the first part, at the request of the said party of the second part, has agreed to give up and surrender the lands hereinafter described unto the said party of the second part, and to hold and retain the residue of the mortgaged lands as security for the money remaining due on the said mortgage: said Manners having paid his said bond for eleven hundred dollars in full, which is in full payment for his one-twentieth of said premises so held in trust by said Robert Gilchrist :

Now this Indenture witnesseth, that the said party of the first
 40 part, in pursuance of the said agreement, and in consideration of

eleven hundred dollars to me duly paid at the time of the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, released, quit-claimed, and set over, and by these presents do grant, release, quit-claim, and set over, unto the said party of the second part, all that part of the said mortgaged lands, to wit: The undivided one-twentieth part of all that part of the certain tract or parcel of land under water in Harsimus Cove, in the Fourth ward of Jersey City, in the county of Hudson, and State of New Jersey, lying in front of the homestead lot of the party of the first part, hereto; eastwardly of a line as run parallel to, and 10 distant one hundred feet easterly from the east line of Prospect street; said homestead lot in front of which the tract hereby conveyed lies, extends from the middle line of South Fourth street on the north to the north line of lands formerly of James McDonald, deceased; together with the hereditaments and appurtenances thereto belonging, and all the right, title, and interest of the said party of the first part, of, in, and to the same, to the intent that the lands hereby conveyed may be discharged from the said mortgage, and that the rest of the lands in the said mortgage specified, may remain to the said party of the first part, as heretofore. To have and to 20 hold the lands and premises hereby released and conveyed to the said party of the second part, his heirs and assigns, to his or their only proper use, benefit, and behoof for ever, free, clear, and discharged of and from all lien and claim, under and by virtue of the Indenture of Mortgage aforesaid.

In witness whereof, I have hereunto set my hand and seal, on the day and year first above written.

JOHN VAN VORST.

Signed, sealed, and delivered in the presence of

JACOB WEART.

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

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Be it remembered, that on this sixth day of April, in the year of our Lord one thousand eight hundred and sixty-one, before me, Jacob Weart, one of the Masters of the Court of Chancery in said State, personally appeared John Van Vorst, who is, I am satisfied, the person named in, and who executed the foregoing release; and I having first made known unto him the contents thereof, he did thereupon acknowledge that he signed, sealed, and delivered the same, as his voluntary act and deed, for the uses and purposes therein expressed.

JACOB WEART,

Master in Chancery, N. J.

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Exhibit X, No. 6, on the part of the defendant, David S. Manners.

John Van Vorst, to Charles G. Sisson and Abraham O. Zabriskie; Assignment, dated May 3d, 18—.

Know all men by these presents, that I, John Van Vorst, of the city of Jersey City, New Jersey, of the first part, in consideration of the sum of eighteen thousand seven hundred dollars, lawful money of the United States, to me in hand paid by Charles G. Sisson and Abraham O. Zabriskie, of the second part, at or before the 10
the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, a certain indenture of mortgage bearing date the thirteenth day of September, in the year one thousand eight hundred and fifty-six, made by Robert Gilchrist to me, and recorded in the office of the clerk of the county of Hudson, in Liber 17, of Mortgages, pages 153, 154, and 155, from the lien of which mortgage
20 I have released to David S. Manners one undivided twentieth of the mortgaged premises. Also, the land in the said mortgage described; together with the bonds or obligations therein described, except the bonds of David S. Manners and Moses Taylor, which are paid; and the money due, and to grow due thereon, with the interest, to have and to hold the same unto the said party of the second part, their heirs and assigns, for their own use, subject only to the proviso in the said indenture of mortgage mentioned; and I do hereby make, constitute, and appoint the said party of the second part, my true and lawful attorneys, irrevocable in my
30 name or otherwise, but at their proper costs and charges, to have, use, and take, all lawful ways and means of the recovery of the said money and interest, and in case of payment, to discharge the same fully, as I might or could do if these presents were not made.

In witness whereof I have hereunto set my hand and seal, the third day of May, in the year one thousand eight hundred and . .

Sealed and delivered in the presence of

JOHN VAN VORST. [L. S.]

The words "except the bonds of David S. Manners and Moses Taylor, which are paid," first interlined.

L. ZABRISKIE.

New Jersey, Hudson County, ss.

I, Enos A. Skillman, one of the Masters in Chancery of New Jersey, do hereby certify that, on this twenty-second day of May, A. D. 1861, before me personally appeared Lanning Zabriskie, who, being by me duly sworn on his oath, saith, that he knows John Van Vorst to be the within named grantor; that he saw him sign, seal, and deliver the said deed, as his voluntary act and deed, and that said deponent at the same subscribed his name thereto as attesting witness thereof.

E. A. SKILLMAN, 10
Master in Chancery, N. J.

Received in the office and recorded May 28th, 1861.

State of New Jersey, Hudson County, ss.

I, Robert Gilchrist, clerk of Hudson county, aforesaid, and clerk of the Circuit Court and Court of Common Pleas, holden in and for said county, do hereby certify the foregoing to be a true and correct copy, from the record thereof, of a certain assignment of mortgage, and the acknowledgment thereto, as the same are recorded in Liber 6 of assignments, pages 141 and 142, on the 28th 20 day of May, 1861.

In witness whereof I have hereunto set my hand and the seal of said courts and county, this eleventh day of June, one thousand eight hundred and sixty-two (1862), by

R. GILCHRIST, *Clerk.*

Exhibit X, No. 1, on the part of the defendant, David S. Manners.

John B. Coles and wife, William F. Coles and wife, and others, 30 to Andrew Clerk. Deed dated January 2d, 1854; Recorded January 18, 1854, in the clerk's office of Hudson county, in Liber 36 of Deeds, page 131, etc., conveying

"All that certain piece or parcel of land situate, lying, and being in the second and fourth wards of Jersey City, county of Hudson, and state of New Jersey, bounded and described as follows: beginning at a point on the westerly side of Provost street, distant twenty-five feet; northerly, from the north-westerly corner of Provost and Morgan streets, thence running (1) westerly, parallel with Morgan 40

street, fifty feet; thence (2) northerly, parallel with Provost street, seventy-five (75) feet; thence (3) westerly, parallel with Bay or Michigan street, one hundred and twenty-five (125) feet; thence (4) northerly, parallel with Provost street, to the centre line of Bay or Michigan street; thence (5) westerly along the centre line of Bay or Michigan street, one hundred and twenty-five (125) feet; thence (6) northerly, parallel with Prospect street, one hundred and thirty (130) feet; thence (7) westerly, parallel with South Eighth or Booraem street, fifty (50) feet; thence (8) northerly, 10 parallel with Prospect street, to the centre line of Booraem street; thence (9) westerly, along said last mentioned line, to the centre line of Prospect street; thence (10) northerly, along the centre line of Prospect street, to the centre line of South Seventh street; thence (11) south-easterly, along, or to and along the line of high-water mark of Harsimus Bay or Cove, as the same runs, to the land now or late of William Smith; thence (12) westerly to the point or place of beginning; and also all the estate, right, title, and interest whatsoever of the said parties of the first, second, third, and fourth parts, and all the estate, right, title, and interest which the 20 said Isaac W. Coles had owned or held, or of which he was seized at the time of his death, of, in, to, any and all the lands, and lands under water, below high-water mark, of the Harsimus River, or Harsimus Bay or Cove, lying easterly of, and in front of the lands above described, and lying southerly of the centre line of South Seventh street; and the said parties of the first, second, third, and fourth parts, for themselves, their respective heirs, successors, and assigns, hereby expressly reserve all their rights as riparian or shore owners, or otherwise, in and to all lands under water lying northerly of the said centre line of South Seventh street, any thing 30 hereinbefore contained to the contrary thereof notwithstanding."

Exhibit M, No. 2, on the part of the defendant, David S. Mannors.

Assessment for taxes for lands under water.

This is to certify that David S. Mannors was assessed for the annual taxes for the years respectively named :

1856—lot 366, Morris street block 14, Hill's map.

lots 483 and 491, Bergen street, block 17, Hill's map.

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lots 553, 554, 567, 568, block 20, Hill's map.

lots 671 and 672, block 23, Hill's map.

lots 733 and 734, block 26, Hill's map.

1857—lot 366, Morris street, block 14, Hill's map.

lots 483 and 491, Bergen street, block 17, Hill's map.

lots 553, 554, 567, 569, block 20, Hill's map.

lots 671 and 672, block 23, Hill's map.

1858, 1859, 1860, 1861, same as above assessed for 1856.

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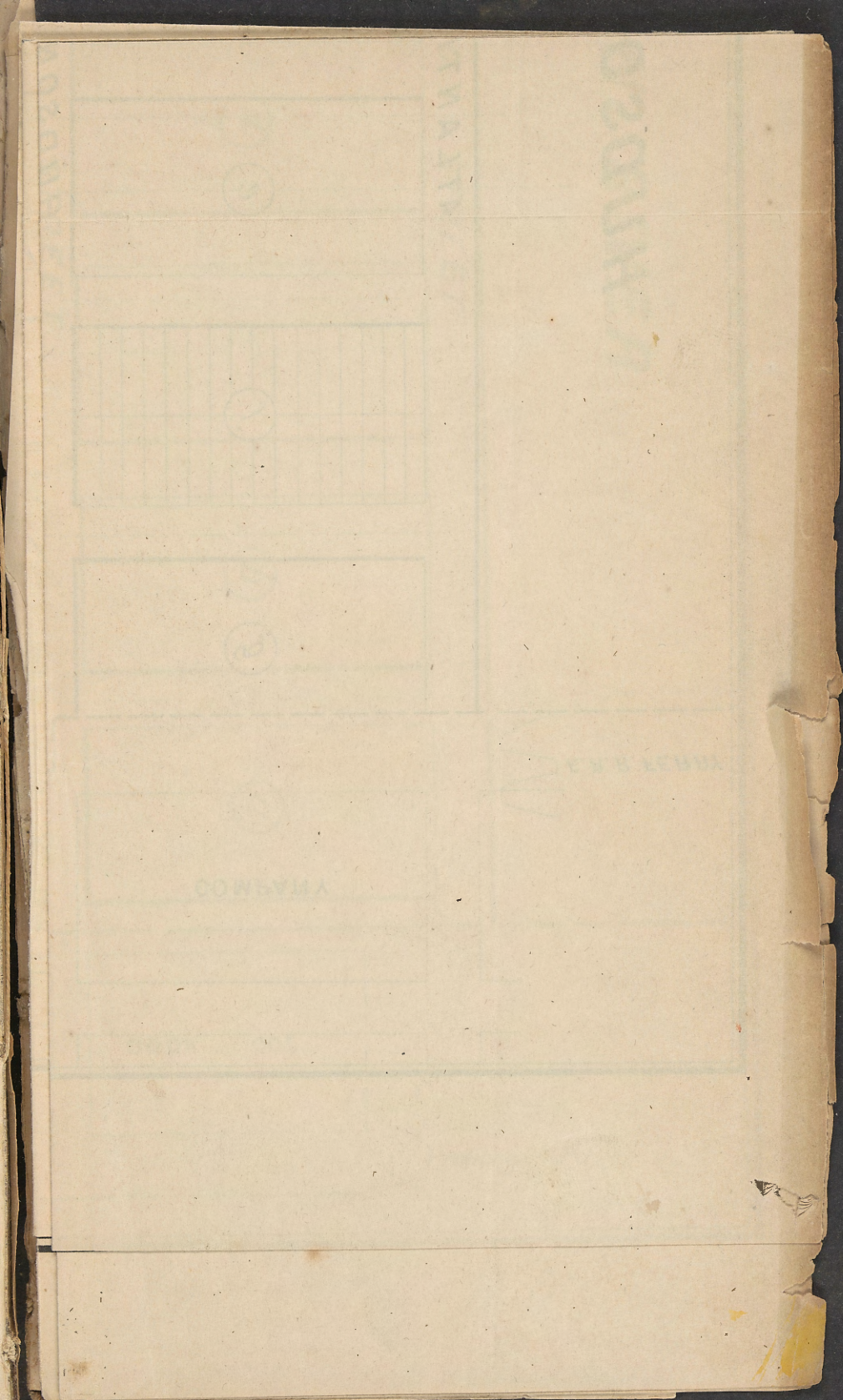
In testimony whereof I have hereunto set my hand as city clerk, and have affixed the corporate seal of the mayor and common council of Jersey City, this seventh day of July, one thousand eight hundred and sixty-two.

GEO. W. CASSEDY,

City Clerk of Jersey City.

Exhibit No. 3, on the part of the defendant, David S. Manners.

Declaration of sale of Mayor and Common Council of Jersey 20 City, dated September 20, 1855, of property sold for taxes, by the single lot, under water, and disconnected from the shore, in the South Cove of Jersey City.



HUDSON RIVER

