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BILL OF COMPLAINT AND AFFIDAVITS.

Filed July 22, 1930.

In Chancery of New Jersey

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The complainant, William T. Baird, of the Village of South Orange, County of Essex and State of New Jersey, individually and as a Trustee in Dissolution of the Meadow Land Society of South Orange, a corporation, duly authorized to act in this behalf for said Trustees, respectfully shows that:

1. Complainant resides at 212 Scotland Road, in the Village of South Orange, Essex County, New Jersey, and is a freeholder and taxpayer of said village and county. Complainant has been a resident of said Village of South Orange continuously for more than forty years last past, and has been at all times deeply interested in the development, growth and welfare of said community. The Village of South Orange has a population of about 14,000 persons, composed almost entirely, with the exception of a small business center serving the needs of the community, of private homes and residential districts. Said community has been for many years, and still is, a beautiful, quiet and orderly residential community.

2. On or about the year 1924, and prior thereto, the Meadow Land Society of South Orange, a corporation, was the owner of large tracts of land in the said Village of South Orange, located at or near the center thereof, a part of which

were leased to the South Orange Field Club. A golf course, tennis courts and clubhouse were maintained thereon, or on a part of said tracts of land, by said South Orange Field Club. All of the lands owned by said Meadow Land Society, and particularly that part thereof hereinafter mentioned, had always been maintained and kept in an orderly manner as a large, open tract, attractive in appearance, well suited to the quiet dignity of the community and the residential areas which bordered upon it.

3. Meadow Land Society, a corporation, the owner of said lands, was a stock company, and on or about the year 1924 complainant became and was its President and one of its directors and the owner of about eighty per cent. of its capital stock. Its lands, comprising about thirty-seven acres, situated at or near the center of said Village as aforesaid, were of the fair market value of about $500,000.00, but were at that time assessed by the Village for tax purposes at a nominal value of $72,850.00. Complainant, owning about eighty per cent. of the stock of said corporation as aforesaid, instead of disposing of said lands in such manner that the full market value thereof might be realized, desired to make a gift of them to the Village of South Orange for the purposes hereinafter mentioned, that is, provided they should always be used and enjoyed by the public as a public park or as a public playground, and to that end complainant procured the consent of the remaining stockholders of Meadow Land Society to such gift, and initiated the necessary corporate action and legal proceedings. It was complainant's purpose and intention to make a gift of said lands to the public at large, so that

all parts thereof (with the exception of certain outlying small tracts not suited to said purposes and not covered in the deed by the restrictions hereinafter mentioned) might be at all times open for the use of the public as a public park or public playground. In particular, it was complainant's purpose and intention that no part of said lands should be used by a private group or association to the exclusion of others or of the public at large, at any time. The officers, directors and stockholders of Meadow Land Society, and complainant in particular, were willing to make said sale for the nominal money consideration above-mentioned, only upon the further and greater consideration that the lands so conveyed should be used solely for public park or public playground purposes. The trustees of the Village of South Orange were ready, willing and anxious to acquire said lands for the municipality upon said terms and subject to said conditions and restrictions. As the result of complainant's efforts, an agreement for the sale of said lands by Meadow Land Society to the Village of South Orange was entered into, dated January 21, 1924 (which agreement is in complainant's possession ready to be produced as and when required), for the consideration of $72,850.00, being the assessed value of said lands instead of their market value of about $500,000.00. The agreement of sale contained the following provisions:

> "It is further understood and agreed that said conveyance shall be made upon condition and subject to the restriction that the premises above described shall be used solely as a public park or playground or for public park or public playground purposes."

Pursuant to the agreement, by deed dated March 28, 1924, recorded April 16, 1924, in Essex County Register's Office in Book L-70 of deeds for said county, page 121, etc., said lands and premises were conveyed to the Village of South Orange for the consideration aforesaid. The deed contains the following recital after the descriptions of the first four tracts constituting the bulk of the lands so conveyed, to wit:

> "The four tracts above described are conveyed upon condition and subject to the restriction that the premises above described shall be used solely for public park and/or public playground purposes."

Complainant shows that the premises hereinafter referred to, now being used as a baseball field in violation of said condition and restriction, are included therein, and subject to the full force and effect thereof. Complainant shows that said gift of said land to the Village of South Orange constituted on his part as the largest stockholder of Meadow Land Society a gift of approximately $340,000.00, and on the part of the remainder of its stockholders a gift of approximately $85,000.00. Complainant shows that it was his purpose and intention, as well as that of the other donors of said lands, to preserve the character of the Village of South Orange as a high-class residential community and to benefit the residents of said Village in particular and the public generally, in making said gift and conveyance subject to the conditions and restrictions above referred to.

4. Thereafter Meadow Land Society of South Orange, a corporation, was duly dissolved. Its directors at the time of dissolution were: William

T. Baird, Collier W. Baird, John S. Allen, Robert S. Sinclair, Morris W. Mead, James Marshall and H. C. Hoskier, who are now its Trustees in Dissolution. At a meeting of said Trustees, duly called and held on the 21st day of July, 1930, a resolution was duly passed authorizing this suit and directing complainant to institute the same in behalf of said Trustees.

5. Complainant further shows that after the conveyance of said lands to the Village of South Orange, the trustees of said Village transferred or attempted to transfer the control of said lands or a part thereof to the Board of Recreation Commissioners of said Village, which Board consists of the following persons, to wit: Carleton Greene, Chairman, W. A. Manda, Joseph A. Carter, James A. Mandeville and Mrs. James A. Whelan. Under the control of said Board, and with the knowledge and consent of the trustees of said Village, a part of said lands known as Cameron Field, so conveyed by Meadow Land Society, is now being used exclusively for the benefit of a certain club or organization known as the South Orange Baseball Club, of which club one Albert Leitch is manager. The Board of Recreation Commissioners has caused said part of said lands to be enclosed in a high wire fence, and the residents of South Orange and the public generally are at all times, or for the greater part of the time, excluded from the use and enjoyment of said grounds. During a part of the year 1929 and now, since the opening of the 1930 baseball season, on Sundays and other days on said grounds professional or semi-professional baseball games are held and an admission fee is charged, no one being ad-

mitted to the grounds to witness said games without payment of an admission fee of fifty cents. On said days, also, large canvas coverings are attached to the fence, so that no one outside of the grounds may witness said contests.

6. Complainant alleges and charges the fact to be that said baseball grounds, under the direction and control of said Board of Recreation Commissioners as aforesaid, are being used exclusively for the benefit of said South Orange Baseball Club or other private clubs or associations in violation of the letter and spirit of the conditions and restrictions in said deed above referred to. The gate receipts taken in at said games have been in times past, and, so far as known to complainant, now are handled and received by the representative of said South Orange Baseball Club and deposited in bank in his name. The proceeds of said gate receipts are used to pay professional baseball players and otherwise to promote the activities and interest of said baseball club. Complainant shows that said Board of Recreation Commissioners may allege or pretend that the proceeds of said games are being used to improve, maintain or police said public playground, but complainant charges the fact to be that in reality and primarily the proceeds of said games are being used to further the interest of said baseball club or other similar private associations. The cost and expense of preparing the baseball grounds, paying professionals and staging said contests far exceeds any money benefit which may ultimately remain in the hands of said Recreation Commissioners for improving, maintaining or policing said grounds. The Commissioners do

not arrange and provide for the games, but this is done by the baseball club. Nor does the Village of South Orange receive a fair proportion of the gate receipts. Complainant shows that in any event the charging of admission to said grounds is not necessary in order to provide revenue for improving, maintaining or policing the grounds, as the Village of South Orange is well able through its tax budget to care for said grounds when devoted to the public park or public playground purposes for which they were dedicated. Said baseball games are widely advertised by the baseball club in the local and out-of-town newspapers, with the result that hundreds of persons not residents of the Village or even of neighboring communities, but coming from great distances, attend said games. Hundreds of automobiles are driven in and upon the public playground and remain parked thereon for many hours at a time.

7. Complainant shows and charges that the conveyance of said lands by the Meadow Land Society and its stockholders to the Village of South Orange for the nominal consideration above stated, and upon the conditions and restrictions above referred to, constituted a conveyance and gift solely to said Village, upon the limitations expressed in the deed; and that the transfer or attempted transfer of the control of said grounds to its Board of Recreation Commissioners was unauthorized and ultra vires; and that the use now being made of said lands, and the regulations being enforced in regard thereto whereby the public is excluded, and all of the activities above referred to, are unauthorized, ultra vires, and in violation of the condi-

tions, covenants and restrictions contained in the deed from the Meadow Land Society to the Village of South Orange, and are contrary to the purpose and intention of those who dedicated said grounds, as well as of those who accepted said deed on behalf of the Village.

8. Complainant shows that said Sunday baseball games to which admission is charged have been scheduled and advertised for the remainder of the season of 1930, extending throughout the summer and part of the coming fall, and that said Board of Recreation Commissioners and said South Orange Baseball Club intend to continue to use said grounds for professional baseball games on Sunday, to which admission will be charged, and intend to continue to use said lands in violation of the covenants, conditions and restrictions aforesaid.

9. Complainant charges that the lands conveyed by Meadow Land Society of South Orange to the Village of South Orange were dedicated for a specific and defined purpose, that is, to be used only for public park and public playground purposes, and that neither the Village of South Orange nor its Board of Recreation Commissioners nor any persons, clubs or associations, have the power or right to use said lands for any other purposes than the ones so designated. Complainant charges that the use now being made of a part of said lands as above described is a direct violation of the conditions and the restrictions contained in said deed of conveyance, and is unlawful.

10. Complainant further shows that he has frequently and in a friendly manner, by letter

and by personal interviews, requested the trustees of the Village of South Orange and the members of the Board of Recreation Commissioners to discontinue the use of said grounds for professional and semi-professional baseball games on Sundays to which admission is charged, but that said trustees and said commissioners have failed, neglected and refused to heed and comply with complainant's reasonable requests.

SECOND CAUSE OF ACTION.

1. Complainant here repeats the allegations of paragraphs 1 through 10 of the Bill of Complaint, and makes them part of the Second Cause of Action as though set forth at length.

2. Complainant further shows that said Sunday professional or semi-professional baseball games being held on said grounds, to which admission is charged, constitute a nuisance and menace the peace, dignity and order of the community. Due to the extensive advertising given to each game in the public press in which other special events are often featured by way of added attraction, large crowds of people gather from all parts of the state and often from beyond the borders of the state. The keen rivalry of the contests produces much noisy applause on the part of the spectators, such as shouting, screaming, whistling and other boisterous noises, which may be heard at a great distance, and are annoying and disturbing to the residents of South Orange living in the vicinity who desire to enjoy a peaceful, quiet and orderly Sunday such as they have been accustomed to enjoy in the past. Great crowds of people collect together at said baseball games in the center of the Village. Auto-

mobiles are parked thickly in the Village streets, on the road passing the ball field, and over and upon the lands so dedicated to public park and public playground purposes. Vendors of all sorts are attracted to the assemblage. After a game has been played, and the crowds have dispersed, there remains on said ball field and on the public park and playground areas adjoining and on the streets a litter of papers, boxes, discarded cigar and cigarette stubs and refuse of all sorts which often remains for several days and is scattered to greater distances, until finally, with much labor, and at the expense of the municipality, the grounds are again cleaned and made presentable and usable for public park and playground purposes.

3. Complainant shows and charges that the holding of said professional or semi-professional baseball games on Sundays, to which admission is charged, constitutes a public and private nuisance, and is contrary to the purpose and intention of those who dedicated said grounds, and is a direct violation of the conditions and restrictions contained in the deed above referred to; and, further, that the holding of said games is a menace to the peace, order and desirability, as a residential community, of said Village of South Orange, and tends to deteriorate the market values of properties in the vicinity and throughout the Village of South Orange generally. In particular, the value of complainant's property is injuriously affected and lessened thereby. Complainant, as a resident, freeholder and taxpayer of said Village of South Orange, and as a member of the public at large is entitled to have and enjoy the use of said lands in the manner

contemplated by the deed of dedication, and is entitled to have the conditions and restrictions in said deed enforced, and for that purpose to invoke the aid of this honorable Court.

THIRD CAUSE OF ACTION.

1. Complainant here repeats the allegations of paragraphs 1 through 10 of the Bill of Complaint and paragraph 2 of the "Second Cause of Action," and makes them part of the Third Cause of Action as though set forth at length.

2. Complainant shows that he resides at 212 Scotland Road, South Orange, N. J., a short distance away from Cameron Field, on which said baseball games are being held. The shouting, screaming and other boisterous noises caused by the holding of said baseball games on Sunday afternoons are clearly audible at complainant's residence, and annoy and disturb complainant and the members of his family, and interrupt and destroy their peace, quiet and enjoyment of the day. At times, said disturbances are so great that it becomes necessary to close the windows on certain exposures of complainant's dwelling house in order to exclude to some extent, so far as possible, the clamor and noise which disturb complainant and the members of his family.

3. Complainant shows and charges that the holding of said professional or semi-professional baseball games on Sundays, to which admission is charged, constitutes a private nuisance which may be abated at the suit of complainant or any other resident of the Village of South Orange aggrieved or annoyed thereby.

Complainant is without adequate remedy in the courts of law, and therefore prays:

1. That the Village of South Orange, a municipal corporation; the Board of Recreation Commissioners of the Village of South Orange, Carleton Greene, Chairman; and South Orange Baseball Club, Albert Leitch, Manager; who are the defendants in this suit, do answer this Bill of Complaint and all matters therein contained.

2. That the Village of South Orange, a municipal corporation, its officers, agents, servants and representatives; the Board of Recreation Commissioners of the Village of South Orange, to wit, Carleton Greene, Chairman, W. A. Manda, Joseph A. Carter, James A. Mandeville, Secretary, Mrs. James A. Whelan, their agents, servants and representatives; the South Orange Baseball Club, Albert Leitch, its manager, and its officers, agents, members, players or representatives; be enjoined and restrained from permitting, holding, playing, taking part in or promoting professional or semi-professional baseball games to which an admission fee is charged, or any game, entertainment or exhibition to which an admission fee is charged, on Sundays, or on any other days, on any part of the tracts of land described as the first four tracts in the deed from Meadow Land Society of South Orange, a corporation, to the Village of South Orange, dated March 28, 1924, and recorded in Essex County Register's Office in Book L-70 of deeds for said county, at page 120, etc., and more particularly on that part thereof which has been added to and included in the baseball field known as Cameron Field; and from doing any act or exercising any authority, management or con-

trol over the same, or making any use thereof whereby the rights therein of the public to have, use and enjoy the same as a public park or public playground shall be in anywise diminished, interfered with or destroyed.

3. That said defendants may be enjoined and restrained from making, permitting, allowing or causing noises and disturbances, shouting, screaming, whistling or other noises and sounds, caused by the holding of said professional or semi-professional baseball games on Sundays to which admission is charged, which disturb and destroy the rest and quiet of complainant and his family on Sundays, and are destructive of the peace, order and attractiveness of the Village of South Orange as a residential community.

4. That this court decree that said defendants have violated and are violating the conditions and restrictions contained in the deed above mentioned, whereby the premises in question were transferred and conveyed to said Village of South Orange, and that the uses now being made by them of said lands are not within the intent and meaning of said conditions and restrictions, or of those who dedicated said lands, but are forbidden and prohibited thereby.

5. That this court decree that said defendants are permitting and maintaining a nuisance, which disturbs and destroys complainant's rest and quiet, and that defendants be enjoined from so doing.

6. That this court decree that said defendants make discovery of all of their acts in connection with the holding of said professional or semi-professional baseball games on Sundays to which

admission is charged, and disclose by whom and for what purposes the admission fees so charged and collected are being received and used, and to whom and for what purposes money so received is being disbursed or paid, and the cost of maintaining said baseball field for the purposes aforesaid.

7. That this court decree that the transfer of the control by the Village of South Orange to its Board of Recreation Commissioners, of that part of the baseball field known as Cameron Field which was included in the conveyance by Meadow Land Society of South Orange, was unauthorized and without warrant in law, and that the control thereof be re-transferred to said Village of South Orange.

8. That a writ of subpoena do issue out of this honorable Court commanding said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

HARRISON & ROCHE,
Solicitors for and of counsel
with Complainant.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

WILLIAM T. BAIRD, of full age, being duly sworn according to law deposes and says:

1. I reside at No. 212 Scotland Road in the Village of South Orange, Essex County, New Jersey. I have resided in said Village of South Orange for upwards of forty years and I am a freeholder and taxpayer in said Village and

County. I have been, at all times, deeply interested in the development, growth and welfare of said community. The Village of South Orange has a population of about fourteen thousand persons, composed almost entirely, with the exception of a small business center serving the needs of the community, of private houses and residential districts. Said community has been for many years, and still is, a quiet, beautiful and orderly residential community.

2. On or about the year 1924, and for many years prior thereto, Meadowland Society of South Orange, a corporation, was the owner of a large tract of land comprising about thirty-seven acres in the Village of South Orange, located at or near the center thereof. The said lands had, for many years, been used by the lessee, South Orange Field Club, as a golf course and for other athletic purposes. Said lands had always been maintained and kept in an orderly manner as a large open tract, attractive in appearance and well suited to the quiet dignity of the community and the residential areas which bordered upon it.

3. On or about the year 1924, I became and was the owner of about eighty per cent. of the capital stock of said Meadowland Society, a corporation. At that time said lands were of the fair market value of more than Five Hundred Thousand Dollars, although they were then assessed by the said Village of South Orange for tax purposes, at a nominal value of Seventy-two Thousand Eight Hundred and Fifty Dollars. Being the owner, as above stated, of the controlling interest in said Meadowland Society, it was my purpose, intention and desire to make

a gift of said lands to said Village of South Orange, provided that said lands should always be used and enjoyed for public park and for public playground purposes. To that end I procured the consent of the remaining stockholders of said Meadowland Society to the transfer and conveyance of said lands to the Village of South Orange for such purposes, for the nominal consideration of Seventy-two Thousand Eight Hundred and Fifty Dollars, being the assessed value of said lands as above stated. I initiated the necessary corporate action on the part of Meadowland Society and the necessary legal proceedings and negotiated with the Trustees of the Village of South Orange, who were ready, willing and anxious to acquire said lands for the municipality, upon the terms, and subject to the conditions and restrictions above mentioned and for the nominal consideration above stated. It was my purpose and intention and that of the other stockholders of Meadowland Society to make a gift of said lands to the public at large, so that all parts thereof (with certain minor exceptions consisting of small outlying tracts not suited to said purposes) might be at all times open for the use of the public as a public park or public playground. In particular, it was our purpose and intention that no part of said lands should be used by a private group or association to the exclusion of others, or of the public at large at any time.

4. On or about January 21, 1924, an agreement for the sale of said lands by Meadowland Society to the Village of South Orange was entered into for the consideration above stated,

which agreement of sale contained the following provisions:

> "It is further understood and agreed that said conveyance shall be made upon condition and subject to the restriction that the premises above described shall be used solely as a public park or playground or for public park or public playground purposes."

Pursuant to the terms of said agreement, by deed dated March 28, 1924, recorded April 16, 1924, in the Essex County Register's Office in Book L 70 of Deeds of said County, page 120, said lands and premises were conveyed to said Village of South Orange. Said deed contains the following recital after the descriptions of the first four tracts, which tracts constitute the bulk of the lands conveyed, to wit:

> "The four tracts above described are conveyed upon condition and subject to the restriction that the premises above described shall be used solely for public park and/or public playground purposes."

The premises hereinafter more particularly referred to now being used as a baseball field in violation of said covenants, are included in the four tracts above mentioned. As the largest stockholder of said Meadowland Society the transfer of said lands for the nominal consideration above mentioned represented a gift on my part to the Village of South Orange, of the value of approximately Three Hundred and Forty Thousand Dollars, and on the part of the remaining stockholders of said Meadowland Society, of approximately Eighty-five Thousand Dollars.

5. After said conveyance, the Trustees of the Village of South Orange transferred the care, custody and control of said lands to the Board of Recreation Commissioners of said Village, which Board is now composed of the following members: Carleton Greene, Chairman, W. A. Manda, Joseph A. Carter, James A. Mandeville and Mrs. James A. Whelan. Under the control of said Board of Recreation Commissioners and with the knowledge and consent of the Trustees of said Village, a part of said lands so conveyed, known as Cameron Field, are now being used exclusively for the benefit of a certain club or organization known as the South Orange Baseball Club of which club one Albert Leitch is manager. Said Board of Recreation Commissioners has caused or permitted the said part of said lands to be enclosed in a high wire fence and the residents of South Orange and the public generally are excluded from the use and enjoyment of said grounds. During the year 1929, the said baseball field began to be used on Sundays and other days for professional and semi-professional ball games, to which an admission fee was charged. Said baseball grounds have continued to be so used during the 1930 baseball season and it is the intention of said Board of Recreation Commissioners and said South Orange Baseball Club to continue to use said grounds during the summer and fall for these professional or semi-professional baseball games on Sundays, to which an admission fee of fifty cents is being charged. On such days, large canvas coverings are attached to the fence so that no one outside of the grounds may witness the baseball games. The said grounds are being used exclusively for the benefit of said South

Orange Baseball Club, or other private clubs or associations in violation of the letter and spirit of the conditions and restrictions in the said deed above referred to. The gate receipts from said games have in times past and so far as is known to this deponent now are taken by the representative of said South Orange Baseball Club and deposited in the bank in his name. Said gate receipts are used to pay professional baseball players and otherwise promote the activities and interests of said baseball club. Said baseball games are widely advertised in the local and out-of-town newspapers. Hundreds of persons, not residents of the Village of South Orange, or neighboring communities, but coming from great distances, attend said games. Hundreds of automobiles drive in and upon said public playground and remain parked thereon for many hours at a time. Said games menace the peace, dignity and order of the community. Due to the extensive advertising given to each game in the public press, in which other special events are often featured by way of added attractions, large crowds of people gather from all parts of the State. The keen rivalry of the contests produces much noisy applause on the part of the spectators such as shouting, screaming, whistling and other boisterous noises which are heard at great distances and annoy and disturb the residents of South Orange living in the vicinity who desire to enjoy a peaceful, quiet and orderly Sunday, as in the past. Great crowds of people, many of them of a type that may be described as undesirable, collect together at said ball games in the center of the Village. Automobiles are parked thickly in the Village streets on the road passing said ball field and over and upon

the lands so dedicated to public park and public playground purposes. Venders of all sorts are attracted to the assemblage. After the game has been played and the crowds have dispersed, there remains a litter of papers, boxes and other refuse of all sorts over said grounds and in the streets. My residence is situated on Scotland Road about a quarter of a mile east of said baseball ground. On Sunday afternoons, when said games are being played, the noises and confusion and disturbance caused by said games are plainly audible at my house and destroy the rest and comfort of myself and the members of my family. Said noises and disturbances are also clearly audible at the residences of my sons on Ridgewood Road, South Orange, situated about a half mile to the northwest of said baseball field and disturb their peace, quiet and enjoyment of the day. The holding of said professional or semi-professional baseball games on Sundays, to which admission is charged, constitutes a public and private nuisance and is a menace to the peace and order of the community and is contrary to the purposes and intention of those who dedicated said grounds and a direct violation of the conditions and restrictions in the deed above referred to.

6. I have frequently, in person and by letter, complained to the Trustees of the Village of South Orange and to members of the Board of Recreation Commissioners and requested that said professional or semi-professional baseball games on Sundays, to which admission is charged, be discontinued. My requests and complaints have been ignored and said authorities refuse and continue to refuse to discontinue the practice of holding said baseball games and of

permitting said South Orange Baseball Club to have the exclusive use of said baseball field.

WILLIAM T. BAIRD.

Sworn and subscribed to before me this 17th day of July, 1930.

(SEAL) JOSEPH F. DRUDY,
Notary Public of N. J.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

PHILIP N. MILLER, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I reside at Number 234 Irving Avenue, in the Village of South Orange, Essex County, New Jersey, and I have served three terms, six years in all, as a Trustee of the Village of South Orange. During all of said period I was Chairman of the Finance Committee of the Board of Trustees. In the years 1923 and 1924, while serving as such Trustee, I was appointed Chairman of a special committee of said Board of Trustees to negotiate with representatives of the Meadow Land Society of South Orange, a corporation, for the acquisition by the Village of all the real estate of said Meadow Land Society, consisting of about 37 acres of land at or near the center of said Village. For many years said lands had been owned by the Meadow Land Society and leased by the South Orange Field Club, which kept and maintained said lands as a golf course and for other athletic purposes. Said lands had always been kept open and in good order, in keeping with

the character of the Village of South Orange. The Trustees of said Village were particularly anxious to acquire said lands in order that they might continue to be kept open and unbuilt upon as a public park or for public playground purposes.

2. Mr. William T. Baird, complainant in this suit, for many years a resident and taxpayer in said Village, was, at the time we were negotiating for the purchase of said lands, the holder of the controlling interest in the stock of the Meadow Land Society, and my dealings with it were largely through him. Mr. Baird and the other stockholders of Meadow Land Society desired to make a gift to the Village of South Orange and offered to convey said lands for the assessed value thereof, to wit, $72,850.00. During all of the negotiations, however, Mr. Baird and the other stockholders of Meadow Land Society insisted upon a covenant in the agreement and in the deed to the effect that said lands should always be used as a public park or public playground, and clauses to that effect were inserted in both the agreement of sale and in the deed to the Village of South Orange. The Trustees of said Village were likewise particularly desirous of having said lands always remain solely for public park or public playground purposes. It was not the intention or the desire at the time that said transaction was closed, either on the part of the representatives of the Village of South Orange or of the Meadow Land Society, that any part of said lands should be used for professional games or for any kind of exhibitions to which admission would be charged, so that the public should be excluded from the use of any part of said grounds as a public park

or public playground. Upon said conditions and subject to said restrictions, for the nominal consideration above mentioned, the lands in question were conveyed to the Village of South Orange on or about April 16, 1924. Subsequently the Board of Trustees transferred the care, custody and control of such portions of said lands as were added to and made a part of Cameron Field, to the Board of Recreation Commissioners of said Village, of which Board Mr. Carleton Greene is chairman. During the year 1929 professional or semi-professional baseball games, to which admission was charged, were held on a part of said lands so conveyed by Meadow Land Society known as Cameron Field, said games usually being played on Sunday afternoons. A high wire fence has been erected around said field, and the public generally is excluded from the use or enjoyment thereof, not only on days on which professional baseball games are held, but throughout the week. On Sunday and on other days when admission is charged, canvas coverings are fastened to the wire fence, so that the public may not witness the contest. The gate receipts taken in at said ball games are used to pay professional ball players. The games are widely advertised in the public press, and great crowds are attracted to them and congregate on Sunday afternoons on said ball field in the center of the Village. I believe that the majority of those attending said ball games do not come from the Village of South Orange, but from other municipalities in Essex County or other parts of the State of New Jersey. The object and purpose of these games appears to be to attract as many people as possible to the ball field in order to obtain more gate receipts, and thus

increase the salaries paid to the professional baseball players. In my opinion, such use of said grounds is a direct violation of the conditions and restrictions under which the premises in question were conveyed to the Village of South Orange and contrary to the purpose and intent of those who gave the lands to the Village, as well as of those who received said lands on behalf of the Village. It seems very clear to me that said baseball field is not being used for the benefit of the residents of the Village of South Orange or for the benefit of the public as a park or playground. Said baseball field appears to be used for the exclusive benefit of the South Orange Baseball Club, a private organization which uses said field as its home grounds and to which it invites rival professional or semi-professional baseball teams for the purpose of playing the games from which the revenue is derived for the payment of its expenses and the salaries of its professional ball players. Obviously, this professionalism is contrary to the letter and spirit, true intent and meaning, of the conditions and restrictions imposed upon the use of the land by its donors.

3. The Village of South Orange has been in the past, and is now, a residential community, having a population of about 14,000. It has always been a quiet and orderly community. These Sunday baseball games, to which admission is charged as above mentioned, attract to the center of the Village a great crowd of people, most of whom, as above stated, come from outlying towns, cities or counties. A great deal of noise, applause, shouting and other disturbances take place at these games. Hundreds of automobiles are parked over said public play-

grounds and in the Village streets. After these games, all kinds of refuse remains upon the ground. These games menace the peace, order and dignity of the community and the enjoyment of it by its residents, and constitute a nuisance, both public and private.

4. These professional baseball games on Sundays, to which admission is charged, have been held regularly each Sunday during the 1930 baseball season and have been extensively advertised to continue during the remainder of the summer and fall season. I believe that said Board of Recreation Commissioners and said South Orange Baseball Club intend to continue to hold said contests each Sunday afternoon during the remainder of the summer and fall.

PHILIP N. MILLER.

Subscribed and sworn to before me
this 17th day of July, 1930.

(SEAL) ROBERT F. DARBY,
Notary Public of New Jersey.
My commission expires Dec. 20th, 1932.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

ARTHUR A. KRAEUTER, of full age, being duly sworn according to law, deposes and says:

1. I reside at No. 117 Vose avenue, South Orange, New Jersey. I have resided in said Village of South Orange for about 20 years last past and have always been deeply interested in the development, welfare and best interests of said community. My residence, in which I live

with my family, is within a few hundred feet of the baseball grounds known as Cameron Field.

2. The Village of South Orange consists of about 14,000 inhabitants. Said Village is distinctly of the residential type, being composed almost entirely of private residences and residential areas, with the exception of a small part thereof consisting of a business district necessary to serve the needs of the community. Heretofore said Village of South Orange, and particularly that part thereof adjacent to my residence, has always been quiet and orderly and desirable for residential purposes.

3. During the year 1929 and now during the year 1930, under the direction and control of the Board of Recreation Commissioners of the Village of South Orange, a part of the public park or public playground conveyed a few years ago by Meadow Land Society to the Village of South Orange has been used for professional or semi-professional baseball games on Sunday to which admission is charged. Said baseball games consist of contests between a local club known as the South Orange Baseball Club and other baseball teams brought to the premises. Said baseball games are widely advertised in the public press, and thousands of people coming from surrounding municipalities in Essex County and from other places in the State of New Jersey and elsewhere attend said ball games. As a result of the keen rivalry which develops between the contending baseball teams, a terrible racket, commotion, shouting, whistling and other noise is created. So much noise and confusion results from the holding of said baseball games to which admission is charged on Sundays, that I and the

members of my family and our neighbors are deprived of the enjoyment of peace, quiet and order as in the past. These features were the one which in particular brought me and my family to the Village of South Orange as a place of residence. Automobiles by the hundreds bring persons to attend said baseball games and are parked in the streets and over and upon the public park and playground in great numbers. After said baseball games, the grounds are littered with refuse of all sorts consisting of papers, boxes, cigar and cigarette stubs and other refuse, which remain in and about said premises adjacent to my residence for days after said contests. Many persons of an undesirable type are attracted to said baseball games and join in the crowds which attend them.

4. The Board of Recreation Commissioners of the Village of South Orange in control of said lands dedicated by Meadow Land Society of South Orange solely for public park and public playground purposes have enclosed the baseball field in a high wire fence, and the public generally are excluded therefrom and from the use and enjoyment thereof, not only on Sundays when said professional baseball games are held, but throughout the week. On Sundays or on other days when games are held to which admission is charged, large canvas coverings are attached to the fence about said ball grounds so that the public may not witness the games being played therein. The customary admission fee to such games is 50c.

5. I state that under the direction and control of the present Board of Recreation Commissioners of the Village of South Orange, said grounds

are being used in violation of the conditions and restrictions pursuant to which said lands were acquired by the Village of South Orange.

6. I further state, as above shown, that the Sunday professional ball games which have been held in the past and are now being held, for the reasons above stated, constitute a public and private nuisance and destroy the peace, quiet and enjoyment of the day by myself and family and all of the residents of South Orange residing in the vicinity of said baseball field. Future similar baseball games to continue during the remainder of the summer and the coming fall have been widely advertised, and it is the intention of said Board of Recreation Commissioners and said South Orange Baseball Club to continue to use and control said grounds in violation of said restrictive covenants pursuant to which the land in question was dedicated and transferred to the Village of South Orange. They intend to continue to destroy the peace, quiet and enjoyment of myself and my family and our neighbors as residents of said Village of South Orange, and intend to continue to menace the character, standing and desirability for residential purposes of said Village of South Orange.

A. A. KRAEUTER.

Sworn and subscribed to before me
this 3rd day of July, 1930.

(L. S.) ROBERT F. DARBY,
Notary Public of New Jersey.
My commission expires Dec. 20th, 1932.

Complainant's Affidavits—Charles F. Eisele.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

CHARLES F. EISELE, of full age, being duly sworn according to law, upon his oath deposes and says:

I reside at 300 Ridgewood Road, in the Village of South Orange, Essex County, New Jersey. I have been in the real estate business in and about said County of Essex for twenty years last past. My place of business is at 9 Clinton Street, Newark, New Jersey, with Eisele Realty Co., a corporation.

I am familiar with the values of real estate in the City of Newark and throughout the Oranges, including the Village of South Orange, where I now reside.

My residence above mentioned adjoins, on the north, a tract of land now belonging to the Village of South Orange, located at or near the center of said Village, which land formerly belonged to Meadow Land Society of South Orange, a corporation. Said tract of land consists of about 37 acres, and was formerly used by South Orange Field Club, as lessee of the Meadow Land Society, as a golf course. I am informed that the transfer of said property to the Village of South Orange took place on or about March, 1924. Said tract of land was and is very advantageously situated for real estate development purposes, and is centrally located. From my experience as a real estate operator throughout the County of Essex, and from my knowledge of real estate values in the Village of South Orange, I state that, in my opinion, said 37 acres of land so conveyed by said Meadow Land Society to the Village of South Orange were reasonably worth at the time of said conveyance upwards of $400,000.00. In my

opinion, this is a conservative value for said land, as the amount to be realized therefrom, if said tract were used for development purposes, would probably be far in excess of $400,000.00. Although real estate values at the present time are depressed, I am of the opinion that even at the present time said lands are reasonably worth upwards of $400,000.00.

CHARLES F. EISELE.

Subscribed and sworn to before me
this 9th day of July, 1930.

ANDREW W. O'ROURKE,
Notary Public of New Jersey.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.:

COLLIER W. BAIRD, of full age, being duly sworn according to law, upon his oath deposes and says:

I reside at Number 285 North Ridgewood Road, South Orange, New Jersey. At the time of the dissolution of Meadow Land Society of South Orange, a corporation, in the year 1924, I was a director of said Meadow Land Society, and I am now one of its Trustees in Dissolution. The other Trustees in Dissolution of said Meadow Land Society are: William T. Baird, John S. Allen, Robert S. Sinclair, Morris W. Mead, James Marshall and H. C. Hoskier.

Pursuant to due notice to said Trustees in Dissolution, a meeting of said Trustees was duly held at my residence, Number 285 North Ridgewood Road, South Orange, New Jersey, on Monday, July 21, 1930, at which meeting a quorum of said Trustees was present. At said meeting

a motion was duly made, seconded and unanimously carried, authorizing the instituting of a suit in the Court of Chancery of New Jersey or elsewhere for the purpose of upholding and enforcing the conditions and restrictions contained in the deed from said Meadow Land Society of South Orange to the Village of South Orange, which deed is dated March 28, 1924, and by which deed said Meadow Land Society conveyed all of its real estate in the Village of South Orange to the Village. At said meeting it appeared to the Trustees that the conditions and restrictions contained in said deed, to the effect that said lands so conveyed should be used solely as a public park or playground or for public park or public playground purposes, were being violated in that, under the control of the Board of Recreation Commissioners of said Village, or otherwise, professional or semi-professional baseball games to which admission is charged, had been held and were being held on a part of said lands.

Mr. William T. Baird, one of the Trustees in Dissolution, was duly authorized and empowered to file a bill in the Court of Chancery or to take any other action which he might deem advisable, for himself and the other Trustees in Dissolution of said Meadow Land Society for the purpose of upholding and enforcing said conditions and restrictions, as aforesaid, and restraining by injunction, or otherwise, any further violation of said conditions and restrictions.

COLLIER W. BAIRD.

Subscribed and sworn to before me
this 21st day of July, 1930.

ANDREW W. O'ROURKE,
Notary Public of New Jersey.

ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINT.

Filed July 22, 1930.

IN CHANCERY OF NEW JERSEY.

Between	
WILLIAM T. BAIRD, individually and as Trustee, etc., *Complainant,*	*On Bill, &c.*
and	*Order to Show Cause with Temporary Restraint.*
BOARD OF RECREATION COMMISSIONERS OF THE VILLAGE OF SOUTH ORANGE, *et als., Defendants.*	

Upon reading and filing the bill of complaint in the above-entitled cause and the affidavits annexed thereto,

IT IS, on this 22nd day of July, 1930, on motion of Harrison & Roche, solicitors for complainant, ORDERED that the defendants, The Village of South Orange, a municipal corporation; the Board of Recreation Commissioners of the Village of South Orange, Carleton Greene, Chairman; and South Orange Baseball Club, Albert Leitch, Manager; show cause before the Chancellor on the 29th day of July, 1930, at 10 o'clock in the forenoon of that day (daylight saving time), in the Chancery Chambers, 1060 Broad street, Newark, New Jersey, why a preliminary injunction should not issue in accordance with the prayer of the bill of complaint.

Order to Show Cause with Temporary Restraint.

It Is Further Ordered that in the meantime and until the further order of this Court, the defendants, The Village of South Orange, a municipal corporation; the Board of Recreation Commissioners of the Village of South Orange, Carleton Greene, Chairman; and South Orange Baseball Club, Albert Leitch, Manager, their officers, agents, servants, members, players and representatives, be, and they hereby are, enjoined and restrained from permitting, holding, playing, taking part in or promoting professional or semi-professional baseball games to which an admission fee is charged, or any game, entertainment or exhibition to which an admission fee is charged, on Sundays, or on any other days, on any part of the tracts of land described as the first four tracts in the deed from Meadow Land Society of South Orange, a corporation, to the Village of South Orange, dated March 28, 1924, and recorded in Essex County Register's Office in Book L-70 of deeds for said county, at page 120, etc., and more particularly on that part thereof which has been added to and included in the baseball field known as Cameron Field; and from doing any act or exercising any authority, management or control over the same, or making any use thereof whereby the rights therein of the public to have, use and enjoy the same as a public park or public playground shall be in anywise diminished, interfered with or destroyed.

It Is Further Ordered that true copies (which need not be certified except by the solicitors for the complainant) of the bill of complaint and affidavits thereto annexed and of this order be served as follows: (a) Upon the defendant, The Village of South Orange, a municipal corporation, by service upon the Clerk or some other

officer or representative of said Village; (b) Upon the defendant, Board of Recreation Commissioners of the Village of South Orange, by service upon its Chairman, Carleton Greene, or any member of said Board; (c) Upon the defendant, South Orange Baseball Club (copy of order only), by service upon its manager, Albert Leitch, or any member of said Baseball Club, within three days from the date hereof.

It Is Further Ordered that the complainant have leave to read additional affidavits upon the return of this order, provided copies thereof shall have been served upon each defendant who shall have appeared in this cause, at least two days prior to the return of this order.

E. R. WALKER,
C.

Respectfully advised,

Alonzo Church,
V.-C.

A true copy.

Harrison & Roche,
Solicitors of Complainant.

DEFENDANTS' AFFIDAVITS.

Filed July 29, 1930.

IN CHANCERY OF NEW JERSEY.

Between WILLIAM T. BAIRD, individually and as Trustee, etc., *Complainant,* *and* BOARD OF RECREATION COMMISSIONERS OF THE VILLAGE OF SOUTH ORANGE, *et als., Defendants.*	*On Bill, &c.* *Affidavit.*

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.:

W. A. MANDA, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I reside at 20 Scotland Road, South Orange, N. J., and have resided in said village for thirty-six years last past and have always been deeply interested in the development, welfare and best interests of said community. I am engaged in the horticultural business and for a number of years have been very much interested in beautifying the Village of South Orange and have made many donations of plants and shrubbery and have given much of my time to the work of providing good outdoor wholesome amusement for those citizens of South Orange who desire to take advantage of our playgrounds.

2. I am a member of the Board of Recreation Commissioners of South Orange and at the present time am acting president of said board. I have been a member of said board for eight years. I took a major interest in having the Village of South Orange acquire by purchase the lands of the Meadowland Society, one of the complainants in this suit. At the time this land was purchased, it was irregular in shape, a small part of which was hilly and for the most part low swamp land with no drainage facilities and after every rain storm the property was flooded. It also was a breeder of mosquitos. Part of the land purchased from said society, consisting of about one acre, was added to the existing playground owned by the Village of South Orange a few years ago. This property constituted part of the old ninth hole of the South Orange Field Golf Course and after every rain storm was a veritable swamp. The Board of Recreation Commissioners spent considerable money in draining this property, beautifying it, and filling in and making it a part of one of the most beautiful baseball diamonds in this country.

3. I have read the bill of complaint filed in this cause and the affidavits annexed and state that the same contain numerous mis-statements and untruths. The statement that this property is used by a private organization for private purposes is contrary to the fact, absolutely untrue and without foundation. The Sunday baseball games for which admission is charged and which is the basis of complaint is operated, conducted and controlled in every way by the Board of Recreation Commissioners of which I am a member and strictly in accordance with Chapter 308

P. L. 1911 and paragraph 11 of Article 36 Chapter 152 P. L. 1917, which laws provide as follows:

> "7. Said board of playground commissioners in order to provide the funds, in whole or in part, necessary to improve, maintain and police the playgrounds or recreation places under its control, shall have the power and authority to arrange and provide for the giving of out-door exhibitions, concerts, games and contests, and the power and authority to use and employ said playgrounds or recreation places for the purpose of giving thereon out-door exhibitions, concerts, games and contests and the said board shall have the power and authority to charge and collect a reasonable admission fee for each person entering such playground or recreation place during the time or times when the same is being used or employed for such purpose: *provided, however,* that the said board shall not use or employ any such playground or recreation place for such purpose for a greater period than eight hours in any week, nor on more than two days in any one week and when such playground or recreation place is used for such purpose no admission fee shall be charged or collected from children under twelve years of age."

All moneys derived from admissions charged for these games are collected and disbursed under the control of the Board of Recreation Commissioners. Any profit derived from these exhibitions are used for the maintenance and upkeep of the playground.

4. The statement contained in the bill of complaint and the affidavits attached thereto, particularly the affidavit of Philip N. Miller to the effect that a high wire fence has been erected around the playground in order to keep out and prevent the citizens of the Village of South Orange from using said playground on Sundays as well as on other days in the week is absolutely false. At the time the premises in question were purchased from the Meadowland Society there existed and has always existed since the time the Village of South Orange acquired the playground a wire fence around the same not for the purpose of keeping any citizen of South Orange out of the playground but for the purpose of controlling the entrances to the playground so that undesirable persons not citizens of the Village of South Orange could be kept out. When the Board of Trustees of the Village of South Orange turned over by resolution dated March 19, 1928, one acre of the land purchased from the Meadowland Society this fence was moved from its then boundary to the present boundary line on Mead street absolutely for the purpose above stated.

5. I have attended the baseball games practically every Sunday of this year. The games are conducted in a very orderly manner, well policed and well controlled. There is no unusual noise, no vendors are permitted within or without the grounds, no undesirable element is attracted to these games and the statement that most of the spectators are from out-of-town is untrue. Due to my long residence in the community, while I do not know people by name I know their faces, and I know it to be absolutely the fact that these exhibitions provide clean,

wholesome outdoor amusement for from fifteen hundred to three thousand citizens of the Village of South Orange.

6. In regard to the admission charge, no citizen of the Village of South Orange is excluded from the exhibitions because he or she may not have the price of admission. In addition the tennis courts and all other facilities of the playground and the remaining thirty-six acres acquired from the Meadowland Society are open for use by citizens of the Village of South Orange during those exhibitions so that practically only one acre of the land acquired from said society is being used for the purpose of the baseball games.

7. The statement in the bill of complaint and the affidavits attached thereto that this land at the time it was purchased by the Village of South Orange was worth between four and five hundred thousand dollars is ridiculous. While I am not a real estate expert, I own considerable real estate in the Village of South Orange and am familiar with values of property within its confine.

8. In my opinion the playground is being used absolutely within the spirit and intent of the laws of our state, the decisions of our courts and within the meaning of the covenant expressed in the deed from the Meadowland Society. It would be unconscionable to deprive those citizens of the Village of South Orange, who cannot afford an automobile or a summer home or a golf club such as the complainants and those who have signed affidavits in this matter possess, and who desire to enjoy a good, clean and sportsmanlike game of baseball conducted in an orderly and well managed fashion on Sunday afternoon, merely to

satisfy the whims of a few people who hate to see their neighbors less fortunately situated enjoy themselves.

W. A. MANDA.

Sworn and subscribed to before me,
this 24th day of July, 1930.

ROBERT O. BENTLEY, JR.,
An Attorney at Law of New Jersey.

IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

HARRY J. SCHNELL, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am President of the Board of Trustees of the Village of South Orange and have always been vitally interested in the development, welfare and best interests of said community. I have devoted many years to the affairs of the village without compensation not only as its President, but as Village Trustee, President of the Public Library for many years and have been prominently identified with every public project which had for its object the welfare and comfort of the citizens of South Orange.

2. I have read the bill of complaint filed in this cause and the affidavits attached. The statements contained therein to the effect that the playground is used by the South Orange Baseball Club for private purposes is absolutely untrue.

As a result of complaints received from residents of South Orange, I made a personal investigation and found that these games are being conducted by the Board of Recreation Commissioners strictly in accordance with the law.

3. On Sunday, July 12, 1930, I drove past the playground while a baseball game was in progress, my purpose being to observe conditions at first hand, particularly the complaint that the parking of cars obstructed traffic. I found no such condition. On the contrary, I found that traffic was not obstructed in any way; that the cars were properly parked under the supervision of the police department and that the statement contained in the bill of complaint and the affidavits attached to the effect that the contests produce much noisy applause on the part of the spectators such as shouting, screaming, whistling and other boisterous noises is not the fact. The statement contained in the affidavit of Philip N. Miller to the effect that citizens of the Village of South Orange are excluded from the playground not only on Sundays but on other days of the week is contrary to the fact. As Village President I would not permit such a condition to exist.

4. The baseball games conducted on Sundays throughout the baseball season provide a goodly number of the citizens of the Village of South Orange with clean, wholesome amusement. They are a part of community life and do not in any way constitute a nuisance as alleged.

HARRY J. SCHNELL.

Sworn and subscribed to before me
this 28th day of July, 1930.

S. O. COEYMAN,
(L. S.) Notary Public of New Jersey.
My commission expires March 22, 1931.

IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

PETER A. SMITH, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I reside at 66 Stanley Road, South Orange, and have been a resident of said community for twenty years. I am a member of the Board of Trustees of the Village of South Orange and have been such for three years. I am a member of the Park Committee which has supervision over approximately thirty-six acres of land conveyed by the Meadowland Society to the Village of South Orange. I have always been deeply interested in the development, welfare and best interests of said community and have been prominently identified with every project which had for its object the welfare of the citizens of South Orange.

2. I have been very much interested in furnishing the citizens of South Orange with the type of amusement which I think they desire. For the past two or three years I have been very much interested in the baseball games which are played at the playground on Sunday. On account of my personal interest in baseball I have been

in close contact with the Board of Recreation Commissioners under whose direction and control the games are played. I have attended many of these games and find that they are conducted in a very orderly manner. The statements in the bill of complaint and affidavits attached to the effect that the games attract outsiders and a noisy crowd of people; that traffic is impeded by the parking of cars; that the grounds are covered with waste matter and that the games are conducted for the private benefit of the South Orange Baseball Club are untrue. As a member of the governing body, I would not permit these conditions to exist without making a protest. I can say from personal observation that no nuisance is created; that the games are conducted strictly in accordance with the law and that they provide clean wholesome outdoor amusement for the citizens of South Orange.

PETER A. SMITH.

Sworn and subscribed to before me
this 28th day of July, 1930.

S. O. COEYMAN,
(L. S.) Notary Public of New Jersey.
My commission expires March 22, 1931.

IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

FRANKLIN R. SANFORD, JR., of full age, being duly sworn according to law, upon his oath deposes and says:

1. I reside at 281 South Ridgewood Road, South Orange, and have been a resident of the said community for thirty years. I am a member of the Board of Trustees of the said village and have been such for three years. I have always been deeply interested in the development, welfare and best interests of said community and have been prominently identified with every project which had for its object the welfare of the citizens of South Orange. I have always been deeply interested in the development, welfare and best interests of said community and have been prominently identified with every project which had for its object the welfare of the citizens of South Orange.

2. I have been very much interested in furnishing the citizens of South Orange with the type of amusement which I think they desire. For the past two or three years I have been very much interested in the baseball games which are played at the playground on Sunday. On account of my personal interest in baseball I have been in close contact with the Board of Recreation Commissioners under whose direction and control the games are played. I have attended many of these games and find that they are conducted in a very orderly manner. The statements in the bill of complaint and affidavits attached to the effect that the games attract out-

siders and a noisy crowd of people; that traffic is impeded by the parking of cars; that the grounds are covered with waste matter and that the games are conducted for the private benefit of the South Orange Baseball Club are untrue. As a member of the governing body, I would not permit these conditions to exist without making a protest. I can say from personal observation that no nuisance is created; that the games are conducted strictly in accordance with the law and that they provide clean, wholesome outdoor amusement for the citizens of South Orange.

FRANKLIN R. SANFORD, JR.

Sworn and subscribed to before me
this 29th day of July, 1930.

EDWARD E. KUEBLER,
An Attorney of Law of New Jersey.

IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

JOSEPH A. CARTER, of full age, being duly sworn according to law upon his oath, deposes and says:

1. I reside at 301 Academy Street, South Orange, New Jersey, and have resided in said village all of my life, namely forty-four years. I am a member of the Board of Recreation Commissioners of the Village of South Orange, and have been such for four years. I have always been vitally interested in the development, welfare and best interests of said community. I

have devoted many years to the work of providing clean, wholesome amusement for the citizens of South Orange.

2. I have read the bill of complaint with affidavits attached filed in this cause and state that the same are full of falsehoods and mis-statements of fact. As a member of the Board of Recreation Commissioners, I have complete charge of arranging the baseball exhibitions conducted at the playground in South Orange, objection to which has been raised in this case. The statement that said playground is used by the South Orange Baseball Club for its private benefit is absolutely false. To my knowledge no such club exists. The games are conducted absolutely in accordance with Chapter 308 P. L. 1911 and paragraph 11 of Article 36, Chapter 152 P. L. 1917. All moneys collected for these games are collected by the Playground Commissioners or their duly authorized representatives, and the disbursement of said moneys is under the control and direction of said commissioners, and any profit derived from said exhibitions is used for the maintenance and upkeep of the playground as provided by law.

3. The statement contained in the bill of complaint and the affidavits attached thereto, particularly the affidavit of Philip N. Miller, to the effect that a high wire fence has been erected around the playground in order to keep out and prevent the citizens of the Village of South Orange from using said playground on Sunday as well as on other days of the week, is absolutely false. At the time the premises in question were purchased from the Meadowland Society there existed and has always existed since the time the Village of

South Orange acquired the playground, a wire fence around the same, not for the purpose of keeping any citizen of South Orange out of the playground, but for the purpose of controlling the entrances to the playground so that undesirable persons not citizens of the Village of South Orange could be kept out. When the Board of Trustees of the Village of South Orange turned over by resolution dated March 19, 1928, one acre of the land purchased from the Meadowland Society, this fence was moved from its then boundary to the present boundary line on Mead street, absolutely for the purpose above stated.

4. I have attended the baseball games every Sunday of this year. The games are conducted in a very orderly manner, well policed and well controlled. There is no unusual noise, no vendors are permitted within or without the grounds, no undesirable element is attracted to these games and the statement that most of the spectators are from out-of-town is untrue. Due to my long residence in the community, while I do not know people by name, I know their faces and I know it to be absolutely the fact that these exhibitions provide clean, wholesome outdoor amusement for from fifteen hundred to three thousand citizens of the Village of South Orange.

5. In regard to the admission charge, no citizen of the Village of South Orange is excluded from the exhibitions because he or she may not have the price of admission. In addition the tennis courts and all other facilities of the playground and the remaining thirty-six acres acquired from the Meadowland Society are open for use by citizens of the Village of South Orange during these exhibitions, so that practically only

one acre of the land acquired from said society is being used for the purpose of the baseball game.

6. In my opinion the playground is being used absolutely within the spirit and intent of the laws of our state, the decisions of our courts and within the meaning of the covenant expressed in the deed from the Meadowland Society. It would be unconscionable to deprive those citizens of the Village of South Orange, who cannot afford an automobile or summer home or a golf club, such as the complainants and those who have signed affidavits in this matter possess, and who desire to enjoy a good, clean and sportsmanlike game of baseball conducted in an orderly and well-managed fashion on Sunday afternoon, merely to satisfy the whims of a few people who hate to see their neighbors less fortunately situated enjoy themselves.

7. The allegation in the bill of complaint that the streets surrounding the playground are obstructed with automobiles is untrue. Due to the cooperation of the Police Department the parking situation is well handled and under absolute control. There is no undue congestion and no motorist is hampered in driving through the adjoining streets. There is no extraordinary accumulations of refuse matter as a result of these games. The only rubbish that can possibly collect is some empty cigarette packages and discarded souvenier programs and burnt cigarettes. All of these things are immediately collected after the games by the employees of the Playground Commissioner.

JOSEPH A. CARTER.

Sworn and subscribed to before me
this 25th day of July, 1930.

(L. S.) SEYMOUR O. COEYMAN.
Notary Public of New Jersey.
My commission expires March 22, 1931.

IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

JOSEPH FARRELL, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I reside at the Cameron Field Playground, South Orange, and have been a resident of said village for twenty-four years. I am an employee of the Board of Recreation Commissioners of the Village of South Orange as General Supervisor and Custodian of the playground. As part of my duties I attend all of the baseball games conducted every Sunday during the baseball season by the Playground Commissioners and under their supervision take charge of paying the players and the visiting team. I have attended all of the games played during the present season. No admission is charged to children under thirteen years of age and no citizen of the Village of South Orange is excluded from these games by reason of the fact that he has not the price of admission. The remainder of the playground is open to the citizens of South Orange for the playing of other forms of amusement. Various citizens use the tennis courts, the swings, the playhouse, etc. These places are not shut off from the playing field.

2. The baseball games are conducted in an orderly manner. The noise is kept to a minimum The parking of cars is supervised by the police department and there is no obstruction of traffic. Immediately after the game the grounds are cleared of all waste material and the expense involved is paid out of the proceeds received from the baseball games.

3. I have read the bill of complaint filed in this cause and the affidavits attached and state that the allegations contained therein to the effect that the games are conducted solely for the benefit of the South Orange Baseball Club and that the citizens of the Village of South Orange are deprived of the use of the field not only on Sundays but on the other days of the week are absolutely false. Every part of the field is open to the citizens of South Orange who are entitled to use the same at any time, provided that they abide by the rules and regulations adopted by the Board of Recreation Commissioners for the use of the field.

JOSEPH J. FARRELL.

Sworn and subscribed to before me
this 26th day of July, 1930.

(L. S.) S. O. COEYMAN,
Notary Public of New Jersey.
My Commission expires March 22, 1931.

IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

GEORGE H. BECKER, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I reside at 230 Wyoming avenue, South Orange and have resided in said community all of my life, namely thirty-nine years. My home is two blocks away from the playground where baseball games are conducted every Sunday. I am engaged in the real estate and building business and during the past ten or twelve years have erected either individually or in conjunction with my brother over one hundred homes. I now own considerable real estate in the Village of South Orange and am probably one of its largest taxpayers. I am now and have always been deeply interested in the development, welfare and best interests of said community.

2. I served as a member of the Board of Trustees of the Village of South Orange for thirteen years, nine years as a trustee and four years as its president without compensation. I have also been prominently identified with every public project which had for its object the welfare of the citizens of South Orange. I was a member of the special committee of the Village of South Orange which negotiated the purchase of the thirty-seven acres of land from the Meadowland Society which were conveyed to the Village of South Orange in 1924 while I was a member of the governing body. I was at the various conferences with the officials of the Meadowland Society which led up to the purchase of this

property and at no time was anything said that the property in question or any part thereof could not be used for Sunday baseball games at which an admission would be charged.

3. I have attended many of these baseball games and it is my view that the same do not constitute a nuisance in any way. They are operated and controlled by the Board of Recreation Commissioners in an orderly manner. They attract a goodly number of the citizens and taxpayers of the Village of South Orange and provide clean wholesome outdoor amusement for those who attend.

4. I have read the statement contained in the affidavit of Philip N. Miller who at that time was a member of the governing body and Chairman of the Special Committee referred to herein. His statement that the playground is now being used for a purpose not intended by those who accepted the conveyance on behalf of the Village is in my opinion erroneous. It is my opinion that the playground at the present time is not being used for any purpose that violates the covenant in the deed.

GEORGE H. BECKER.

Sworn and subscribed to before me,
this 18th day of July, 1930.

SAMUEL P. WATSON,
(L. S.) Notary Public of New Jersey.

IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } ss.:

ALBERT LEITCH, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I reside at
and am one of the defendants mentioned in the bill of complaint in this cause of action.

2. I am a member of the South Orange Baseball Team which plays baseball every Sunday at the South Orange Playground under the jurisdiction and control of the Board of Recreation Commissioners of the Village of South Orange. I have read the statements in the bill of complaint and affidavits attached to the effect that I am the manager of the baseball club and that the games in question are run solely for the private benefit of that club. These statements are absolutely untrue. I am not the manager of the South Orange Baseball Club. As far as I am concerned, I do not know whether such a club exists. At the beginning of the baseball season of this year, I was engaged by the Board of Recreation Commissioners to play shortstop on the baseball team which the commissioners were organizing to conduct baseball games during the season of 1930. I have been paid each week by a representative of the commissioners for my services and outside of being a player, I have absolutely no other connection with the team and have nothing to do with arranging its schedule.

3. The games are conducted in an orderly manner. There is no loud shouting, whistling or

screaming which can possibly constitute a nuisance as alleged in the bill of complaint.

ALBERT J. LEITCH.

Sworn and subscribed to before me,
this 28th day of July, 1930.

EDWARD E. KUEBLER,
An Attorney at Law of New Jersey.

IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

ELBERT B. FISHER, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I reside at 165 Vose avenue in the Village of South Orange and have been a resident of said community for about twenty years. My home is about 300 feet from the Cameron Field Playground. I have always been vitally interested in the development, welfare and best interests of South Orange.

2. I have attended several of the baseball games played at the playground on Sunday under the control of the Board of Recreation Commissioners. These games are conducted in an orderly and clean manner. They attract a goodly number of the citizens of the Village who enjoy these games. I have never seen any disturbances and have not observed any shouting, screaming, whistling or other boisterous noises as alleged in the bill of complaint. These games do not produce anywhere near the disturbance which is

created by the railroad trains which pass between my home and the playground. It is my opinion that these games do not constitute a nuisance by any stretch of the imagination and provide those who attend with clean wholesome outdoor amusement.

ELBERT B. FISHER.

Sworn and subscribed to before me,
this 28th day of July, 1930.

S. O. COEYMAN,
Notary Public of New Jersey.
(SEAL) My Commission expires March 22, 1931.

IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

EDWIN B. FLEMING, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I reside at 163 Vose avenue, in the Village of South Orange and have been a resident of said community for about thirty-five years. My home is about 300 feet from the Cameron Field Playground. I have always been vitally interested in the development, welfare and best interests of South Orange.

2. I have attended several of the baseball games played at the playground on Sunday under the control of the Board of Recreation Commissioners. These games are conducted in an orderly and clean manner. They attract a goodly num-

ber of the citizens of the Village who enjoy these games. I have never seen any disturbances and have not observed any shouting, screaming, whistling or other boisterous noises as alleged in the bill of complaint. These games do not produce anywhere near the disturbance which is created by the railroad trains which pass between my home and the playground. It is my opinion that these games do not constitute a nuisance by any stretch of the imagination and provide those who attend with clean, wholesome outdoor amusement.

EDWIN B. FLEMING.

Sworn and subscribed to before me,
this 28th day of July, 1930.

S. O. COEYMAN,
Notary Public of New Jersey.
(SEAL) My Commission expires March 22, 1931.

IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

GEORGE H. PEGRAM, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I reside at 223 Vose avenue in the Village of South Orange and have been a resident of said community for about twenty years. My home is about 200 feet from the Cameron Field Playground. I have always been vitally interested in the development, welfare and best interests of South Orange.

2. I have attended several of the baseball games played at the playground on Sunday under the control of the Board of Recreation Commissioners. These games are conducted in an orderly and clean manner. They attract a goodly number of the citizens of the Village who enjoy these games. I have never seen any disturbances and have not observed any shouting, screaming, whistling or other boisterous noises as alleged in the bill of complaint. These games do not produce anywhere near the disturbance which is created by the railroad trains which pass between my home and the playground. It is my opinion that these games do not constitute a nuisance by any stretch of the imagination and provide those who attend with clean wholesome outdoor amusement.

GEORGE H. PEGRAM.

Sworn and subscribed to before
me, this 28th day of July,
1930.

S. O. COEYMAN,
Notary Public of New Jersey.
(SEAL) My Commission expires March 22, 1931.

IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } ss.:

PATRICK J. MAGUIRE, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I reside at No. 215 Academy street, South Orange, and have been a resident of the com-

munity all of my life, namely, 54 years. I am employed by the Village of South Orange as Chief of the Police Department.

2. I have attended all of the baseball games played at the playground under the jurisdiction and control of the Board of Recreation Commissioners and state that said games are conducted in an orderly manner. I have appointed sufficient men of the police department to properly police the grounds both outside and inside and to take charge of the parking of cars. These games do not constitute a nuisance in any shape or form but on the contrary provide clean wholesome amusement for a great number of the citizens of the Village.

3. I have read the statements in the bill of complaint filed in this cause and the affidavits attached to the effect that there is considerable noise at these games and that vendors are attracted, who in the selling of their wares create a disturbance. These statements are absolutely untrue. No vendors are permitted either in the field or outside of the field or anywhere else in the Village of South Orange.

PATRICK J. MAGUIRE.

Sworn and subscribed to before
me, this 26th day of July, 1930.

S. O. COEYMAN,
(L. S.) Notary Public of New Jersey.

IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.:

LOUIS PETO, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am employed by the Village of South Orange as a member of the Police Department.

2. At the direction of Patrick J. Maguire, Chief of the Police Department, I have attended the baseball games played at the playground on Sundays during the present baseball season for the purpose of keeping order. These games are conducted in an orderly manner and the noise is kept to a minimum. No disturbance has been created and I have had very little to do in performing my duty.

LOUIS PETO.

Sworn and subscribed to before me
this 26th day of July, 1930.

S. O. COEYMAN,
(L. S.) Notary Public of New Jersey.
My Commission expires March 22, 1931.

IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

JOHN LESTER, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am employed by the Village of South Orange as a member of the Police Department.

2. At the direction of Patrick J. Maguire, Chief of the Police Department of the Village of South Orange, I have been detailed to look after the parking of cars at the South Orange Playground while the baseball games played on Sunday are in progress. I have supervised the parking of these cars and also have charge of general traffic in the neighborhood of the playground. The cars have been parked in orderly manner in such a way that traffic has not been impeded. My duties necessarily keep me outside of the playground and as a result I have been in a position to observe whether any unnecessary noise or shouting exists while the games are in progress. It is my opinion that this noise is not unusual and is kept to a minimum. I have not observed any disturbance of any kind while these games are in progress and in my judgment the same do not constitute a nuisance.

JOHN LESTER.

Sworn and subscribed to before me
this 26th day of July, 1930.

S. O. COEYMAN,
(L. S.) Notary Public of New Jersey.
My Commission expires March 22, 1931.

Defendants' Affidavits—Maurice Fennesey.

IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

MAURICE FENNESEY, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am employed by the Village of South Orange as a member of the Police Department.

2. At the direction of Patrick J. Maguire, Chief of the Police Department, I have attended the baseball games played at the playground on Sundays during the present baseball season for the purpose of keeping order. These games are conducted in an orderly manner and the noise is kept to a minimum. No disturbance has been created and I have had very little to do in performing my duty.

MAURICE FENNESEY.

Sworn and subscribed to before me
this 26th day of July, 1930.

S. O. COEYMAN,
(L. S.) Notary Public of New Jersey.
My Commission expires March 22, 1931.

ORDER.

Filed July 29, 1930.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM T. BAIRD, individually and as Trustee, etc., *Complainant,*

and

BOARD OF RECREATION COMMISSIONERS OF THE VILLAGE OF SOUTH ORANGE, *et als., Defendants.*

On Bill, &c.

Order.

This matter being opened to the Court by August Roche, Jr., Esquire, of Harrison & Roche, solicitors for complainant, in the presence of Thomas E. Fitzsimmons, Esquire, of Riker & Riker, solicitors for the defendants, on the return of a rule to show cause issued out of this court on the twenty-second day of July, 1930, as to why a preliminary injunction should not issue restraining the defendants in accordance with the prayer of the bill of complaint filed in this cause, and the Court having heard the argument of counsel, it is on this twenty-ninth day of July, 1930,

ORDERED that the application for a preliminary restraint be denied.

Order.

And It Is Further Ordered that complainant pay to Riker & Riker, solicitors for the defendants, the sum of Dollars as a counsel fee.

E. R. WALKER,
C.

Respectfully advised,

Alonzo Church,
V.-C.

ANSWER.

Filed August 12, 1930.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM T. BAIRD, individually and as Trustee, etc., *Complainant,*

and

BOARD OF RECREATION COMMISSIONERS OF THE VILLAGE OF SOUTH ORANGE, *et als., Defendants.*

On Bill, &c.

Answer.

The defendants answering the bill of complaint filed in the above cause say that:

FIRST CAUSE OF ACTION.

1. They admit paragraph 1 of the bill of complaint excepting that portion which states that complainant has been at all times deeply interested in the development, growth and welfare of said community. Said clause is a conclusion and defendants have no knowledge concerning same.

2. Defendants admit paragraph 2.

3. Defendants deny paragraph 3 with the exception of that portion which states that the lands in question were purchased by the Village of South Orange for the sum of $72,850, and that the deed referred to in said paragraph contained the restriction mentioned therein.

Answer.

4. They admit paragraph 4.

5. Defendants admit that portion of paragraph 5 of the complaint which states that control over part of the lands in question was placed in the hands of the Board of Recreation Commissioners of the Village of South Orange by authority of law. Defendants deny the remaining allegations of said paragraph.

6. They deny paragraph 6.

7. They deny paragraph 7.

8. Defendants deny that the lands in question are being used in violation of the covenants, conditions and restrictions in the deed of conveyance.

9. They deny paragraph 9.

10. Defendants admit that complainant has on one or two occasions protested against the use of said grounds for Sunday baseball games to which an admission is charged.

SECOND CAUSE OF ACTION.

1. Defendants here repeat the answers to paragraph 1 through 10 of the bill of complaint and make them part of their defense to the second cause of action as though they were set forth here at length.

2. Defendants deny paragraph 2 of the second cause of action.

3. Defendants deny paragraph 3 of the second cause of action.

Answer.

THIRD CAUSE OF ACTION.

1. Complainant here repeats the answers to paragraphs 1 through 10 of the bill of complaint and paragraph 2 of the second cause of action and make them part of their defense to the third cause of action as though set forth at length.

2. Defendants deny paragraph 2 of the third cause of action.

3. Defendants deny paragraph 3 of the third cause of action.

RIKER & RIKER,
Solicitors for Defendants.

REPLICATION.

Filed August 18, 1930.

IN CHANCERY OF NEW JERSEY.

Between WILLIAM T. BAIRD, individually and as Trustee, etc., *Complainant,* *and* BOARD OF RECREATION COMMISSIONERS OF THE VILLAGE OF SOUTH ORANGE, *et als.*, *Defendants.*	*On Bill, &c.* *Replication.*

The complainant joins issue on the answer of the defendants.

HARRISON & ROCHE,
Solicitors for Complainant.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM T. BAIRD, individually and as Trustee, etc.,
Complainant,

and

BOARD OF RECREATION COMMISSIONERS OF THE VILLAGE OF SOUTH ORANGE,
Defendant.

Transcript of shorthand notes of testimony taken in the above-entitled cause before his Honor, Alonzo Church, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on December 4, 1930, in the presence of Messrs. Harrison & Roche for complainant and Messrs. Riker & Riker (by Mr. Fitzsimmons) for defendant.

Mr. Roche: May it please the Court, this is a case which was before your Honor in a preliminary stage in July.

At that time, a restraint was granted against certain baseball games being played in South Orange, which was subsequently dissolved. Now, the bill of complaint in this case is filed by Mr. Baird as an individual and as one of the trustees in dissolution of the Meadow Land Society of South Orange.

The Meadow Land Society, in 1924, conveyed to the Village of South Orange a large tract of

land consisting of 38 acres, or thereabouts, and inserted in the deed that that land was conveyed to the Village solely upon condition and subject to the restriction that it should be used only for public park and/or public playground purposes. For that reason and because of that condition and restriction, and, I would say, agreement, the land was sold to the Village by the Meadow Land Society for a very nominal sum, which was the assessed value of $72,000, whereas, it was really worth around $400,000 or more.

In other words, the conveyance so dedicated constituted a gift of some $300,000 on the part of the stockholders of the Meadow Land Society. And the complainant in this case was the holder of about 80 per cent. of the stock of the Meadow Land Society.

Now, contrary to the purpose and intention of the dedication, a part of this property has passed into the hands of the Board of Recreation Commissioners of the Village of South Orange. The conveyance, of course, was to the Village itself. The transfer to the Board was under the authority of the Act of 1909 or 1911, creating boards of recreation commissioners that may take charge of certain parcels of lands conveyed, &c., and under the control over them.

Part of the land has been enclosed in a high wire fence, along which are put canvas coverings, and on certain days, particularly on Sundays, games to which admission is charged are conducted and held on these grounds, and the players are not players of the community, but are paid, professional ball players, who come in there to make the contest with some outside teams.

Now, we say that that constitutes a violation of the covenant restriction and agreement, viola-

tion of the trust under which the Village of South Orange received this land, and we ask that it be enjoined.

Now, in addition to that, we have in our bill of complaint the charge that the conducting of these baseball games, to which large crowds of people are attracted, so many, in fact, that automobiles clutter the street in the middle of the Village of Souh Orange on a Sunday afternoon, and venders of all sorts gather around (there is a great noise and litter.) That this constitutes a nuisance and, under the cases in this state, there is no question but what such a nuisance, particularly when the nuisance occurs on a Sunday, will be enjoined by this Court—by anybody who suffers by the disturbance.

Now, I have abundance of authority on the subject, but we can take that up later.

Mr. Fitzsimmons: If the Court please, I am moving to strike out—strike it from the record.

Mr. Roche: I object to the motion, may it please the Court, if Mr. Fitzsimmons is going to make a motion to strike out, I would like to say that not only has there been an answer filed in this case, but the notice was given to me two days ago, two days before final hearing and, under the rules of this Court and the statute, the notice must be a five-day notice. That is the first thing. And the second thing is that, under the decisions, a motion to strike cannot be made after an answer has been filed.

The Court: That seems to dispose of that one.

Mr. Fitzsimmons: This Court has, on many occasions when counsel has opened, eliminated from the bill features which are not legally

pleaded, despite the fact that any answer was filed.

The reason that a motion was not made at the time was that your Honor was leaving town immediately and the time did not permit. However, I am perfectly satisfied to go along on the questions involved, except to say this, that, on the return day of the motion for an injunction, your Honor stated that, as far as you were concerned, the nuisance question was not at issue for the reason that in the bill of complaint Mr. Baird states that he does not object to Sunday baseball as such, but merely to the charging of admission, and that, if a thing is a nuisance, certainly the charging of admission or the elimination of the charge of admission would not take it out of that class.

I also desire to call attention of the Court to the fact that, if the nuisance question is eliminated, Mr. Baird would have no standing in court as an individual to enforce this covenant, the covenant that is attempted to be enforced by a corporation, which was dissolved in 1924, and that, under the statute which modifies the common law and permits directors to survive for the purpose of winding up the ordinary affairs of a corporation, it is my contention that this is not an ordinary affair of that corporation, six years after the conveyance was made and with no revertor clause in the contract.

Further than that, the complainant, if it has any right, has a remedy at law. I am calling these matters to the attention of the Court because there have been decisions on the subject.

I recall Heller *v.* South Orange, where Vice-Chancellor Backes dismissed the bill of complaint

on a ground which was neither raised nor thought of by either counsel in the case, on his own examination of the pleadings, after it was at issue.

Now, as to the merits of the case, it is our contention, first—(interrupted).

The Court: Are you pressing your motion to strike out the bill?

Mr. Fitzsimmons: Yes, sir.

The Court: I will deny it.

Mr. Fitzsimmons: All right, sir.

As to the issues involved, it is our contention that Mr. Baird, who lives a quarter of a mile from the property, is not affected in any way, at least, his property is not affected by the playing of baseball on Sunday.

The cases are numerous, particularly the case of Cronin *v.* Bloemecke and McMillian *v.* Kuehnle, a case cited by the Court of Appeals, that in order for any individual to come in this court on the question of nuisance, even though that nuisance may be public in character, he must prove damage to his property of so serious a nature that it interferes with his quiet and peaceful enjoyment of his property.

There is no allegation in the bill of complaint that these crowds, the baseball crowds, run over Mr. Baird's own property and that vile and indecent language occurs outside of his property. It is a quarter of a mile away. The only thing in here is that there may be a little noise, and I think the Court can see that a quarter of a mile away it would be hardly audible.

The main issue, as I see it, is the question of the covenant. The covenant is as stated by Mr. Roche, and the Village of South Orange, the governing body, has the right, under the Play-

grounds Act of 1911, and under the Home Rule Act, to transfer the supervision of any of its properties secured for playground or park purposes, to the Board of Recreation Commissiones, and which they have done by the resolution.

That authority cannot be attacked here. It must be attacked by a certiorari.

Now, the baseball games, during the current year of 1930, have been operated in accordance with the Playground Act, which provides that the Commissioners can conduct games, exhibitions and contests, not more than two days a week or more than eight hours, at which an admission may be charged. The Board, through one of its committees, has conducted these games during the season, and we contend that it is within the power of the Board to so conduct those games, under its supervision, and any proceeds derived from those games must be turned over to the municipality for the playground account, and that has been done in this case.

Now, the bill of complaint sets forth certain things concerning the season of 1929. I contend that what happened in 1929 is out of this case, beyond the issue, that they are in laches, and no complaint was made by Mr. Baird, or anyone else, until after the 1929 season had concluded, and the games during 1930 have been conducted in accordance with the statute.

The Court: Is there any testimony to be taken?

Mr. Roche: Yes, there is.

In answer to Mr. Fitzsimmons, I would just like to say that two of the legal points involved here, to which I will call your Honor's attention, are these: "Neither the legislature nor a munici-

pality may abridge the right of a dedicator to have the land used in the manner and for the purpose for which he intended the dedication." There are many authorities on that point.

Another one: "Land acquired by a municipality by deed of gift or otherwise, subject to certain uses, must be distinguished from land acquired under the exercise of the power of eminent domain and for which full compensation has been paid."

One of my points will be that, if the Village of South Orange wants this land and thinks it has authority to use it as it pleases, under the terms of the Act appointing recreation commissioners, it must condemn it, take it over.

The Court: Well, let us have the testimony and then we can argue the legal questions by memorandum.

Mr. Roche: Mr. Baird, will you take the stand?

WILLIAM T. BAIRD, called and sworn for complainant, testified as follows:

Direct examination by Mr. Roche.

Q Mr. Baird, where do you reside? A South Orange.

Q Essex County, New Jersey? A Yes.

Q And what address? A 212 Scotland Road.

Q And how long have you resided there? A About 40 years.

Q What kind of a town is the Village of South Orange?

Mr. Fitzsimmons: I object, your Honor. It makes no difference. It is irrelevant to the issue what kind of a town South Orange is.

The Court: I will allow it. I think we are all pretty familiar with the character of South Orange, but, if he wants to get it on the record, it is all right.

Mr. Roche: As a residential community.

Just answer the question.

The Witness: It is a residential community.

Q How many residents are there in the Village of South Orange? A I am not personally advised. I understand the Village authorities say there is about 14,000.

Mr. Fitzsimmons: I object, unless Mr. Baird knows what the census shows.

The Court: Yes.

Q Do you know what the census shows? A I have not seen the figures.

Q Is the community largely single family dwelling houses? A Yes, sir.

Q How near to the land formerly owned by the Meadow Land Society, and in particular that part of it which is now being used for the baseball games, do you reside? A About 700 feet.

Q About 700 feet? A We are about 100 feet above it.

Q Mr Baird, were you connected with the Meadow Land Society of South Orange, in any way, on or about the year 1924? A Yes, sir.

Q What were you? A I was its president.

Q Did the Meadow Land Society own land in South Orange? A It did.

Q Is this a sketch showing the land owned by it?

Mr. Roche: I showed you this, Mr. Fitzsimmons.

Mr. Fitzsimmons: I will admit the sketch, but I want the article underneath, if you are going to put it in evidence, cut off.

A Yes, that is a sketch of the land formerly owned by the Meadow Land Society.

Q And what is this paper I show you with this sketch on it? A I got it from the Sunday Evening Call—rather, the Sunday Call, January 27, 1924.

Q And what is that article underneath the sketch?

Mr. Fitzsimmons: I object to the article.

The Court: Wait a minute. Let us find out what it is.

The Witness: It is a statement by the Village president, Mr. Hunt, the then Village president.

Q In connection with the purchase of these lands? A In connection with the purchase of the land.

Mr. Roche: Well, I offer the sketch and the article attached.

Mr. Fitzsimmons: I object to the article being introduced in evidence, on the ground that it has no bearing on the case. The Village of South Orange is not bound by any newspaper article. It is not proper evidence.

The Court: I will allow it.

I am inclined to agree with Mr. Fitzsimmons, but I will allow it for what it is worth.

I think that you should get Mr. Hunt to come down and verify his statement.

Mr. Roche: Well, Mr. Miller is here, who was chairman of the committee in charge and, subject to verification by Mr. Miller, will your Honor admit it?

Mr. Fitzsimmons: I object to it.

The Court: I don't see how Mr. Miller can verify Mr. Hunt. The question is, did Mr. Hunt really say that, did Mr. Hunt really say that and in what capacity did he speak?

Mr. Roche: I think, rather than have any doubt about it, I would rather take off that article.

The Court: I will allow the whole thing to go in, but I will reserve my decision as to whether I am going to give it any evidential weight.

Mr. Fitzsimmons: I want my objection noted to any parts of the article going in.

(Article marked Exhibit C. 1.)

Q Now, Mr. Baird, showing you this sketch, which has been marked Exhibit C. 1, will you indicate which tract is being used for these baseball games? A Tract No. 3.

Q Tract No. 3 on the sketch.

Mr. Roche: And, if your Honor cares to look at this, this is the tract right here (indicating). There are four tracts and (this is one of the) also other small, outlying tracts. We are only concerned with four.

Q Did you have charge of the negotiations with the Village of South Orange, leading up to the sale of this land? A Yes, sir.

Q And about how much land was owned by the Meadow Land Society? A About 37 acres.

Q And what were your negotiations with the Village?

Mr. Fitzsimmons: I object to any testimony as to negotiations with the Village of South Orange, or the value of the property, on the ground that it is irrelevant, immaterial, and the property was sold to the Village for $72,000, under an agreement of sale, not a gift, and the deed speaks for itself. Negotiations prior to the execution of the deed are not admissible.

The Court: I will allow it. You may answer the question.

A I did not understand the question.

Q I say, what were your negotiations with the Village? A I negotiated almost entirely with Mr. Philip Miller.

Q Who was he? A He was chairman of the finance committee, at that time, the Village finance committee.

Q And what was the result of your negotiations? A The result was that we agreed to turn over the property to the Village for the nominal —for the assessed value, which was a nominal price.

Q How much was that? A About $72,000.

Q Is this the original signed copy of the agreement, to which you have referred, with the Village of South Orange? A Yes, sir.

Mr. Roche: No objection to that, is there?

Mr. Fitzsimmons: The agreement itself?

Mr. Roche: Yes.

Mr. Fitzsimmons: No.

(Agreement marked Exhibit C. 2.)

Q I call your attention, Mr. Baird, to page 7 of the agreement, which reads as follows:

"It is further understood and agreed that said conveyance shall be made upon condition and subject to the restriction that the premises above described shall be used solely as a public park or playground or for public park or public playground purposes."

Q Is that correct? A Yes, sir.

Q What was said about that in your negotiations with the Village of South Orange?

Mr. Fitzsimmons: If the Court please, I don't want to be in a position of getting up and objecting to all of these questions, if the Court will permit me a general objection on the record.

The Court: State your objection for the record.

Mr. Fitzsimmons: My objection is to any evidence concerning the negotiations which led up to this sale, or to any evidence as to the value of the property, other than the price the Village of South Orange paid for it, on the ground that it is irrelevant and immaterial to the issue, that the deed is the best evidence of the price and the value of the property.

The Court: Well, the— what would you say about a deed, whose consideration was one dollar?

Mr. Fitzsimmons: You cannot go behind it. You can show one dollar and other valuable consideration. You cannot go behind a deed.

The Court: All right. I will allow the testimony.

Mr. Roche: Will you read the question, please?

(Question read as follows:

"What was said about that in your negotiations with the Village of South Orange?")

A I talked with Mr. Miller about that clause, calling his attention to the clause in the deed to the Field Club, which had the use of the ground for many years. In that lease we always put the clause that no games should be played of a boisterous nature or that would be offensive to the residents surrounding the ground, but it was thought that it was unnecessary to put any more restrictive clause than that already cited, because the trustees of the Village were supposed to be men that were interested in the Village and would not do anything to harm it.

Q Well, now, Mr. Baird, was the property subsequently conveyed, pursuant to the agreement, to the Village of South Orange, on or about March 28, 1924? A Yes, sir.

Mr. Roche: No objection to the offer of that certified copy of the deed, is there?

Mr. Fitzsimmons: None whatever.

(Certified copy of deed marked Exhibit C. 3.)

Q Reading from Exhibit C. 3, the deed, we find the following: "The four tracts above de-

scribed are conveyed upon condition and subject to the restriction that the premises above described shall be used solely for public park and/or public playground purposes." Was that in the deed, as you recall it? A Yes, sir.

Q And I call your attention to the fact that the restriction in the deed covers four tracts, whereas in the agreement it covers all of the land. Can you explain that? A There was some outlying lots north of the large plots that could not be included in a park, so that we exempted those from that restriction.

Q They are these smaller tracts marked on the map 5, 6, 7, 8, 9 and 10, are they not? A Yes, sir.

Q Mr. Baird, what has been done, since the conveyance by the Village authorities or the Board of Recreation Commissioners, to tract 3 on this sketch? A They have spent a great deal of money on leveling it up and making what might be called a first-class baseball diamond. They have also surrounded it, as you stated a while ago, with a high fence, except for the embankment. Of course, the embankment on the east protects that edge.

Q The embankment on the east is the railroad? A The railroad.

Q And what occurs there? A They are playing professional baseball there Sunday afternoons, from early spring to late fall.

Q Can you describe the character of those games? A I can only say that they are very noisy, boisterous and a nuisance to the whole neighborhood.

Mr. Fitzsimmons: I object to the—.

The Court: Yes, you cannot— that is a—.

Mr. Fitzsimmons: —conclusion.

The Court: Yes, in your opinion, they are a nuisance. What we are trying to find out today is whether they are a nuisance or not.

Q Well, state what you have heard or observed yourself? A Well, from my house, the noise and confusion is very disagreeable. It is not like a noise that is continuous, but we sit there of a Sunday afternoon and, suddenly, there will be a tremendous shouting, as always takes place when a particular move is made in a baseball game, and it is so disturbing that guests that I have had at my house have requested me to allow them to go into the house where we could talk peaceably. The result of it also is that it attracts numerous people from without the county. I counted on two Sunday afternoons, as nearly as I could, and there were between six and seven hundred cars parked on those streets. They parked them even up on our side street. People come, and I believe a large percentage of these cars are, from without the county. These games are advertised everywhere. It has gotten so it is nothing but a professional baseball center and it is a nuisance that I think should be abated.

Q Do they charge admission to these games? A Yes.

Q From your own observation, do you know whether any other use is made of that part of the land marked Plot 3 on this map? A I know of no other use.

The Court: Are these games played only on Sunday?

The Witness: Only on Sunday, sir.

The Court: I thought Mr. Fitzsimmons said that the law permitted them to play twice a week.

Mr. Fitzsimmons: That is right.

The Court: But as a matter of fact, you only play on Sundays?

Mr. Fitzsimmons: That is, the games conducted by the Board of Recreation Commissioners, to which an admission is charged. The rest of the week is open to the public for general playground purposes.

The Court: All right. Proceed, Mr. Roche.

The Witness: But no other team is allowed to play there.

Q Mr. Baird, you stated that the consideration of $72,850 was nominal. What do you mean by that? A I mean that the land, at that time, the real estate men told me, at that time, that the lands were worth as much as four and five hundred thousand dollars.

Q Well, why did you, a stockholder and president of the Meadow Land Society, sell for less than the value of the ground? A Because it was my desire to give to the South Orange Village lands that would forever be a beautiful public park or playground.

Q Well, you say public park or playground. Was it your intention that professional baseball exhibitions should be played there?

Mr. Fitzsimmons: I object to the question. It is a leading question.

Mr. Roche: May it please the Court, the reason why I ask it is that, under these de-

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cisions, the intent and purpose of the donor is controlling.

The Court: I will allow it.

Q You may answer the question. A We had no thought of such a thing, did not think, for a moment, that such games would be allowed. If I may, I might add, your Honor, that we have no objection—we had no objection then, we have no objection now to the young men of the Village, or, you might say, the young women, going there Sundays and playing games, just as we allowed them to play golf, when we took the golf club, but it is this outside professional work that we do object to.

Q What is the admission fee charged to these games? A Fifty cents.

Q Do you know how many games are played there on a Sunday, whether more than one game is played there on Sunday? A On some Sundays there are two.

Q They call them "double headers?" A Double headers, yes.

Q And at what hours do those games start? A The public press said it started, as I recollect, at one-thirty.

Q You don't know of your own knowledge? A I don't know of my own knowledge.

Q Do you know what is done with the proceeds collected at the gate? A No, sir.

Q Do you know how much the professional ball players receive? A No, sir.

Q Was the Meadow Land Society of South Orange a stock company? A Yes, sir.

Q How much of that stock did you own, at the time of the conveyance? A About 80 per cent.

Q How many shares were there in all, do you recall? A No, sir, I do not recall the exact number of shares.

Q You owned about 80 per cent. of the stock? A About 80 per cent.

Q Now, can you describe, more completely, the disturbances caused by these baseball games, of which you complain? A I do not quite understand you.

Q Can you describe, more completely—can you tell us exactly what happened? What are the noises which disturb you? A Why, it is the shouting that always takes place at a baseball game. If I may say, I took dinner one Sunday with my son, whose residence is at the north end of the field, of the park grounds, between a quarter and half mile away. After dinner, we went out in his back lawn and, suddenly, there was a shouting that I thought was in front of the house, and I jumped up and I said: "What is all that noise?" "Well," my son said, "that is the baseball game down there on the ground." When I went out in the street, then it was clear—it came from that direction, but up there on that hillside it was just as though it was out in the street in front of the house. It is the same at my house. Sound always travels upward and it is much more clearly heard from above than from on the level.

Q Do these noises disturb the peace and quiet of your Sunday at home? A They certainly do.

Q Have they caused you to go indoors, closing the windows, in order to keep the noise out? A I went in one Sunday afternoon, when I had friends there, and went into my library, which was on the east side of the house and away from

the westerly exposure, where the noise is easily heard.

Q Who were the other officers of the Meadow Land Society, at the time of this conveyance? A My son, Collier W. Baird, was vice-president; Mr. John S. Allen was secretary; and I was president and treasurer.

Q Subsequently, was the Meadow Land Society formally dissolved? A Yes.

Q Do you recall who the directors were, at the time of that dissolution? A They were myself and my son, Mr. John S. Allen, Mr. Robert Sinclair, Mr. James Marshall, Mr. Morris Mead.

Q H. C. Hoskier? A Mr. Hoskier. I cannot remember any others.

Q There were seven in all? A Yes, sir.

Q And, prior to the bringing of this suit, the directors, as trustees in dissolution, met, did they not, to authorize the bringing of this suit? A Yes, prior to the dissolution, they authorized this suit, the directors.

Q Prior to the bringing of this suit, they met to authorize a suit.

The Witness: If your Honor please, I would like to state that I spent about four years trying to get control of this stock. I not only had to deal with people here, but as far as China, Switzerland. I spent a great deal of time. In fact, I think I must have written hundreds of letters and spent a great deal for legal expenses, and I thought I was doing South Orange a great favor, when I was able to so control that stock that I could turn it over to the Village for public uses.

Q And for a nominal consideration? A Yes, sir.

Mr. Roche: That is all.

Cross examination by Mr. Fitzsimmons.

Q Baird—

The Court: We will take a recess for about five minutes.

(Short recess.)

The Court: Proceed, Mr. Fitzsimmons.

Q Mr. Baird, the part of the 37 acres—38 acres which was conveyed by the Meadow Land Society, and which was being used by the Playground Commissioners, is very small, isn't it, as compared to the whole? A You certainly wouldn't want a large tract for a baseball diamond.

The Court: No.

Q Answer the question. It is a very small piece, isn't it? A It is small, compared with the 37 acres, yes, sir.

Q Less than an acre, isn't it? A I cannot say, Mr. Fitzsimmons.

Q Now, when the—(interrupted). A Excuse me. I will say that it is more than an acre. 200 x 200, roughly, is an acre, but this plot is 500 feet long on one side and 408.3 on the other, and 292 feet wide at the railroad end, and 210 feet wide at the other end, so that there is an acre and a half to three-quarters.

Q Well, now, the balance of the acreage is being used for public purposes, is it not? A

Well, I would say it is not being used at all at present. They are developing it, I understand.

Q It is being developed along that line, isn't it? A I don't know what the plans are.

Q Yes. Now, when did the negotiations for the sale of this property start? A I cannot remember the date. The deed, I think, is dated in 1924.

Q And when did the negotiations start? A I think, some—probably five or six or seven months before, I talked informally with Mr. Miller several times sometime before.

Q How much stock did you have in this corporation when it was originally issued? A I think it was five shares.

Q Five shares. What was the par value of that stock? A Fifty dollars.

Q How much did you pay for the stock? A I cannot remember all of the sums which were paid. Some seventy, some eighty. I cannot remember now.

Q And when did you start to acquire a larger portion of the stock? A I was elected president in, I think it was 1918 or 1919; at that time, I found, on looking over the records, that there were 47 estates holding stock, and it was practically all in the original holders' name. In one case, for instance, the Pulsford family, Mr. Pulsford bought that stock when the society was formed, in 1889 he died, leaving his estate to his wife. She died, leaving it to five children, some of them died, leaving it to their children, and nothing had been done with that stock. It cost me—it took me over two years to get that stock cleared, and I don't know now what my legal expense was, but, as I stated some time ago, we had to send those papers to China, to Mass-

achusetts, to Switzerland, and, when they came back, we got them signed by the various heirs in South Orange.

Q And when did you acquire that stock from the Pulsford heirs, finally? A I think it was about 1923.

Q And how much did you pay for the stock?

Mr. Roche: Well, I object, may it please the Court. I have not objected so far, but I hold that this is entirely immaterial, what Mr. Baird paid for the stock.

Mr. Fitzsimmons: Mr. Roche has opened the door, and the Court has permitted testimony that this is a gift. I am going to prove that Mr. Baird—that it was not a gift, that the stock was acquired over a period of years, at a low price, and with the understanding that the whole thing was going to be turned over to the Village without cost. I think it very relevant.

The Court: I will allow the question.

Q How much did you pay the Pulsford estate for the stock, Mr. Baird? A I don't remember, Mr. Fitzsimmons.

Q See if you cannot—(interrupted). A I will give you this information.

Q See if you cannot refresh your memory? A I will be perfectly frank with you and tell you, if you want me to, just what the cost price was.

Q I am interested now, Mr. Baird, and I would like to have you answer my question, how much did you pay the Pulsford estate for that stock? A I don't remember now.

Q Was it $100 a share? A I cannot remember at all. I bought so much of it that I do not remember.

Q What was the average price that you paid for the acquirement of this stock over a period of years? A I don't know.

Q You don't remember? A No.

Q Was any stock donated without compensation? A No, sir, not a share.

Q Did you—(interrupted).

The Court: Have you got a record of how many shares you bought and what you paid for the total?

The Witness: Not now, sir, no, sir.

Q Did you go to Mr. J. Charles O'Brien and ask him to turn over his stock to you, without compensation? A I—

Q —for the purpose of acquiring the stock and transferring the property to the village? A I cannot remember any particular instance, Mr. Fitzsimmons. I do not even remember, now, if Mr. O'Brien was a stockholder.

Q Isn't it a fact that Mr. O'Brien stated that he would not turn the stocks over to you, that he would donate his stock to the Village? A If Mr. O'Brien makes that statement, I would believe it.

Q You know that Mr. O'Brien did turn his stock over to the Village of South Orange without compensation? A No.

Q Well, Mr. Baird, how much was paid for this property, originally, by the Meadow Land Society? A I don't know.

Q Haven't you any idea how much it cost? A I do not remember. I think it was—well, it would be simply guesswork, now, Mr. Fitzsimmons.

Q Now, this property, for a number of years, was used by the Village of South Orange for a club as a golf links, was it not? A Yes, sir.

Q And under a lease whereby that club paid the Meadow Land Society one dollar a year plus taxes? A They paid the carrying charges.

Q Carrying charges. Now, Mr. Baird, isn't it a fact that, as far back as fifteen years ago, you signified an intention of having this land donated to the Village of South Orange for a park and playground, without compensation? A I never heard of that.

Q You never expressed that intent? A It would be—it would have been foolish, because the then stockholders and officers would not consent to such a thing.

Q Did the stockholders ever have any intent of selling this land for building lots? A They not only had the intent, but they mapped it out, and appointed a committee to fix prices.

Q Isn't it a fact that, some years ago, the Village of South Orange— that objection was made that this property was under-assessed? A Why, the tax assessors in South Orange informed us, several times, that the County people were at them constantly about it, that the assessment ought to be raised two or three hundred thousand dollars, but they kept it down because it was being used by the young men of the Village as a playground, and it was always my idea that it should ever be used that way.

Q Wasn't it kept down because it was intended that the Village of South Orange was going to buy in that property? A Oh, no.

Q Now, didn't the Village of South Orange pass an ordinance, or, at least, introduce an ordinance, to prohibit the playing of golf on that

property, on the ground that it was dangerous? A I never heard of it.

Q Didn't you, or some of the other officers of the corporation, request the Board not to pass that ordinance, on the ground that it would kill the South Orange Field Club? A No, I had nothing to do with the Field Club. I was not an officer.

Q Now, how many of these baseball games did you personally attend? A None.

Q You knew that the games were being played, during the baseball season of 1928, did you not? A I was away.

Q What is that? A I was away from about May to the latter part of September.

Q And you are away practically that time every summer, are you not, Mr. Baird? A Yes.

Q So that, during the season of 1928 and 1929, the actual playing season, you made no objection, either individually or as a director of the Meadow Land Society, against the playing of baseball games, did you? A Not in writing.

Q Did you make any verbally, prior to the end of the 1929 season? A Yes, sir, I spoke to several of the trustees of the Village, arguing with them that it was wrong, tried to—

Q When did you do that? A —get them to stop it.

Q When did you do that and to whom did you state it? A Well, in one instance, I remember speaking to Mr. Sanford—.

Q When— A —at the Downtown Club.

Q When was that? A I can't remember the exact date.

Q Well, now— A It was in the Fall of 1929.

Q It was after the close of the season, was it not? A No, it was not.

Q Was it in October? A I cannot remember whether it was September or October.

Q Now, Mr. Baird, the first objection that you made to these baseball games was after the two games in 1929, in October, when some big league baseball stars were brought there for those particular games; isn't that so? A That is the first written objection.

Q And isn't it a fact that the only time that you were unreasonably disturbed in your home was during the playing of those particular games, those two games, in 1929, the end of the season? A Well, they were all disturbing.

Q What is that? A They were all disturbing. I was particularly disturbed at those games, because it brought such a—

Q Large crowd? A —tremendous crowd in the street. It was blocking the whole streets.

Q Now, during the season of 1930, when did you go away to your summer home? A The second day of July.

Q The second day of July. And when did you return? A Immediately after Labor Day.

Q So that there was no disturbance during that period, was there, to you personally? A You mean, while I was away.

Q Yes? A No, naturally not.

Q No. Prior to July 2nd, was there any unusual noise at the games, other than occasional hand clapping? A The same noises that we always heard going on, the applause and yelling that always takes place in baseball games.

Q Were you forced, during the season of 1930, the baseball season of 1930, were you forced, at any time, to leave your porch and go

in the house as the result of noises coming from the ball game, during 1930? A I would not say I was forced, at that time, I would say, I went in because of the disturbance.

Q What Sundays did that happen, how many times? A It was—I cannot remember the dates now.

Q Well, was it many times? A About two or three times. It was usually—I will say, frankly, usually when I had friends with me.

Q And you had friends there, during the 1930 baseball season? A Yes, several times.

Q That was prior to July 2nd, and after Labor Day? A Yes, sir.

Q The crowds which collected at the games, at least, the parking of cars, that did not affect your private property any, did it, on Scotland Road? A It affects it indirectly, because it makes such a disturbance on the streets, and it affects the property in all that region.

Q Did any of those cars park in front of your house? A Not in front of it. The next block was full.

Q Did any of the people attending the game cross your property? A No.

Q Were there any baseballs batted into your property? A No.

Q You do not object to the playing of Sunday baseball on this field, do you, Mr. Baird? A Not by the village young men.

Q And, if those South Orange young men make the same noise, would you object? A They could not.

Q What is that? A They could not. There would not be any such crowd.

Q Do you know there would not be any such crowd if there was no admission? A I am satis-

fied there could not be, because these games are advertised; they are professional and advertised all over the County.

Q And that makes additional noise, because they are having some professional players, does it? A Yes, and the character of the people that come there.

Q Mr. Baird, do the Lackawanna trains make any noise passing there, on Sunday? A Certainly they do, but that is a right-of-way.

Q Just a minute. Do they annoy you? A They certainly do.

Q Do they compel you to go into your house? A Not now.

Q Not now, not since the electrification? A No.

Q But, prior to the electrification, and during the season of 1930, didn't the Lackawanna trains disturb your peace and quiet? A There are comparatively few trains Sunday afternoon. You hardly notice them.

Q All day Sunday and Sunday night there are trains, are there not? A Very few.

Q How many? A I don't know how many, but I know a great many were laid off.

Q This noise you complain of, is it continuous, or is it occasional? A Why, it is worse when it is occasional. You will be sitting quietly there, and, all of a sudden, there is a tremendous shouting takes place that startles you, and you wonder what it is all about.

Q You live on a thoroughfare, Scotland Road is a main thoroughfare between Orange and South Orange. Is that true? A Yes, sir.

Q And there is heavy traffic there on Sunday in automobiles? A Automobiles, but they make no noise.

Q Automobiles don't make any noise? A Trucks do.

Q And the automobiles do not bother you? A You cannot hear them, these days.

Q Or the Lackawanna trains do not bother you? A No.

Q Now, Mr. Baird, you testified that no other teams are permitted to use this ground. Do you mean, on Sunday afternoons or at any time during the week? A I referred particularly to Sunday, and—(interrupted).

Q Sunday afternoons? A —also, I make the same remark, during the week, I passed—(interrupted).

Q Do you know of any case where boys or girls were prevented from using this field during the week? A No, but I pass there sometimes two or three times a day, and I know what is going on.

Q Do you know of any case where they were refused permission to use it? A Yes.

Q Who? A The captain of the police baseball team told me that he applied for the use of the ground to play a match against the Maplewood police team, and could not get permission.

Q Did he say whether any one else had the field for that day? A No.

Q Did you try to find out whether anybody else had the use of the field for that day? A He did not—he said he applied for the use of it any day that would be convenient. He did not apply for any specific date.

Q Haven't you seen children playing in that playground during the week? A Once in a while, yes.

Q You are not there every day? A I pass there nearly every day, but children are not baseball players.

Q The swimming—(interrupted). A We want the children to play.

Q The swimming pool, at the end of this property, at the end of the old playground property, is being used during the summer every day, is it not, and at night? A Why, certainly.

Q And the tennis courts? A I don't know much about the tennis courts.

Q Do you know of any case where, during a baseball game, any child was refused permission to use the tennis courts, at the end of this field, south of the southerly end? A I don't know anything about it.

Q Did you complain about this noise and the playing of Sunday baseball, at any time prior to the Fall of 1929, either verbally or in writing—protest? A I don't quite get—

Q I say, did you protest, either verbally or in writing to any of the municipal officials, about these baseball games, and the noise incident thereto, prior to the Fall of 1929? A I simply protested against those professional baseball games being held.

Q I say, you did not do that, prior to the Fall of 1929, did you? A Not in writing, no.

The Court: Did you verbally?

The Witness: No, sir.

The Court: Before 1929?

The Witness: Oh, before—

Q Before the Fall of 1929, when you spoke to Mr. Sanford? A No, I cannot say that I did, before 1929.

Q So that you sat by, during the season of 1928 and 1929, up to October, and said nothing, did you? A I said nothing at that time.

Q No. You made no protest. As a matter of fact, Mr. Baird, the first protest from you came as a result of these two particular games where big league stars, including Babe Ruth, were brought to South Orange, and that did bring a large crowd. Isn't that so? A Why, I made a written protest in the late Fall of 1929.

Q Late Fall of 1929, yes. Mr. Baird, you say that there were six or seven hundred cars parked on streets surrounding— A Yes.

Q —the baseball field. Did you count those yourself? A I counted them myself. I made the estimates. I did not count every individual car, but I started from the north end of the park ground on Ridgewood Road. They were parked all the way down along that road, way down below the turn, I couldn't see beyond.

Q When did you do that? A That was on two Sundays. I don't remember the dates.

Q What games, do you know? A I think what you call those double-headers, or House of David people, those mountebank people—

Q That was the House of David? A Mead street, from Ridgewood Road all over the way to Vose avenue was parked entirely on one side; Meadow Brook Lane from Mead street all up farther than I could see, Meadow Brook Lane, over a thousand feet, they were parked in toward Vose avenue, they were parked both sides solid as far as I could see down towards South Orange avenue, and they were parked up on Raymond avenue, the side street of our place.

Q Just for those two particular games that you speak of, the House of David double-header? A I don't know—those are the two games.

Q You did not check the cars or notice the people coming to the games, when they had just an ordinary game, did you? A No.

Q And the parking of those cars did not interfere with your gaining access to your particular property on Scotland Road, did it? A No, but they interfered with my going across, as I do every Sunday, to my son's residence on Ridgewood Road.

Q Are you blocked from getting past? A Last year, there were times when I could not get through.

Q This year, during the season of 1930, I am talking about? A No, this year they were more careful, and only allowed them—early in the games they allowed them to park on one side; later on, as the traffic, you might say, of cars, coming in stock, then they allowed them to park on the other side.

Q Did you ever make a complaint to the police regarding the parking of these cars? A No.

Q Now, you have stated that one Sunday you were taking dinner with your son, on Ridgewood Road, and you were attracted by this unusual noise. When was that? A That was along in October.

Q That was the day that the House of David was playing? A I don't know.

Q They had a big crowd that day? A Yes, they had quite a crowd.

Mr. Fitzsimmons: That is all.

The Court: That is all.

Re-direct examination by Mr. Roche.

Q Mr. Baird, just one question, please. Just sit down a minute. How soon after the disturbances, of which you have complained, and the use

of this property, which you have complained of, came to your notice, did you protest about it? A (Witness pauses.)

Q How soon after these things came to your notice, did you protest about them? A I think the—my recollection—the first protest was early in the Fall of 1929.

Q Well, how soon after these things began to come to your notice, did you protest, that is what I mean? A It was not brought particularly to my attention until that time.

Q I see. A Because, prior to that time, they did not advertise them so much, did not attract the crowds.

Q In other words— A It was done—

Q It became worse and worse? A It was done more quietly, and did not disturb me. It was only commencing in the Fall of 1929 that these things were—that the advertising took place that drew a tremendous crowd there that attracted my attention.

Q You were actually blocked, in the year 1929, in trying to drive through these streets to your son's? A I was. I had to turn around and go around through Montrose avenue to get over to Ridgewood road.

Q To whom did you write your letter of protest, in the late Fall of 1929? A To the president of the village.

Q Who was he? A Mr. Schnell.

Q Mr. Schnell? A Mr. Harry J. Schnell.

Q Mr. Harry J. Schnell, president of the Village? A Yes.

Mr. Roche: That is all.

Re-cross examination by Mr. Fitzsimmons.

Q That letter was not written in October, was it? I understood you to say that you spoke to Mr. Sanford. A I cannot remember the date of it now, Mr. Fitzsimmons.

Mr. Fitzsimmons: That is all.

The Court: That is all, sir.

WILLIAM C. FIEDLER, sworn for complainant, testified as follows:

Direct examination by Mr. Roche.

Mr. Fitzsimmons: Counsel says the purpose is to qualify Mr. Fiedler as an expert on real estate in South Orange. I admit his qualifications as an expert, and object to any testimony that he may give regarding the value of the property, for the reasons already stated: You cannot go behind a written instrument.

The Court: Proceed, Mr. Roche.

Q Mr. Fiedler, where do you reside? A In South Orange, Ridgewood Road.

Q Near the public land which was conveyed by the Meadow Land Society to the Village of South Orange? A Directly opposite.

Q What is your business? A Real estate.

Mr. Roche: And his qualifications have been admitted, may it please the Court.

Q Now, have you made an appraisal of the value of property conveyed by the Meadow Land

Society to the Village of South Orange, in 1924? A As of 1924, yes.

Q Yes, as of March, 1924. What is your estimate? A $478,787.

Q Will you tell us, briefly, how you arrive at that as the fair market value of these premises, in March, 1924? A I divided the tract into several plots, A, B, C, D, E, F, G, H, I, K, L and so on. Do you want me to go through the— (interrupted).

Q Just briefly, Mr. Fiedler. A I have it all itemized, if you want the figures.

Q Is it on a front-foot basis? A Front-foot basis, that which fronts on a street, and square-foot basis, that which is in the rear and is not on a street.

Q And will you look, please, at that sketch before you, marked Exhibit C. 1, I think it is? A Yes.

Q The dimensions which you used in making your estimate are as shown on that sketch, I believe, are they not? A I presume they are.

Q You might examine that sketch and tell us whether that is the property you estimated on. A I think that is it.

Mr. Roche: Yes. That is all.

Cross examination by Mr. Fitzsimmons.

Q Mr. Fiedler, is that a price which a developer would pay for this property, who was going to come in and put streets through, and so forth? A I think so.

Q And you did not consider it as acreage, did you? A No.

Q Was it all— A I did, in arriving at my conclusions, but I have got my figures on the front-foot basis and square-foot basis.

Q Now, this 37, 38 acres there, considering that property on an acreage basis, on prices for which acreage was being sold in South Orange at that time, comparable property, how much an acre would you say that property is worth? A $14,000 or $15,000.

Q Do you know of any property in South Orange that sold for $14,000 or $15,000 an acre, comparable to this, in 1924, or within a reasonable period before that? A Prior to that, I made a sale to Philip J. Bowers, it was not acreage, but it was a large tract.

Q That was on a street? A The street had been cut through, yes.

Q Yes. Do you know how much the Lovett & Woodhouse properties were sold for, around 1924, originally? A To them?

Q No, to the previous purchaser? A I made both of those sales.

Q Who purchased the property from Mr. Lovett? A Philip J. Bowers.

Q Mr. Lovett put the streets through, did he not? A I think the street was through, yes, sir.

Q How many— A Sold that for forty dollars a front foot, subject to street assessments.

Q And that piece that Mr. Lovett sold to Philip J. Bowers ran from Ridgewood Road to Wyoming avenue? A Ridgewood road to Wyoming avenue, that is right.

Q How many feet of frontage were in the tract? A I don't recall that exactly. I should judge—I don't know.

Q Well, it was at least a couple of thousand feet, wasn't it? A Yes, I guess so; yes. I think 1,800 feet.

Q How much did Mr. Bowers pay for that tract? A He paid forty dollars a front foot, subject to an eight dollar street assessment.

Q $72,000 on the basis of $18 a foot? A I think he paid a hundred thousand dollars.

Q A hundred thousand dollars? A It is a long while before 1924.

Q How long? A Two or three years, I think.

Q Do you know of any others—do you know of any acreage in the immediate vicinity that sold for $14,000 or $15,000 an acre in South Orange? A At that time?

Q Yes, or a reasonable time prior thereto? A Well, recently—

Q Before 1924? A I cannot recall any that was sold at acreage prices, no.

Q The mountain property, west of Wyoming avenue, did not bring any such price as that, did it? A Some of it did.

Q $14,000 or $15,000? A At that time, Wyoming avenue—was Wyoming avenue open at that time. I don't remember it.

Q Yes, it was. I am talking about acreage. A I don't know.

Q You know that Mr. Becker did not pay any such price as that above Wyoming avenue? A That was up in the mountains.

Q And that was the only acreage that was sold around that time, was it not? A About that time, yes.

Q There were not many sales of large tracts, were there? A Well, it was not opened.

Q No, so that, in arriving at a figure of $14,000 or $15,000 an acre, you are basing that on the frontage involved, are you not, the price per front foot? A That is the way I have made my calculation, on a front-foot basis.

Q Eliminating the front-foot basis, and considering the sale of property in South Orange, acreage, in 1924, would you say this property was worth $14,000 or $15,000 an acre? A I think so, yes.

Q You have no sales to back that up? A No, but most of this is on streets—was on streets even at that time.

Mr. Fitzsimmons: That is all.

Re-direct examination by Mr. Roche.

Q Mr. Fiedler, where is this property located with respect to the center of the Village of South Orange? A It is immediately north of the center, northwest.

Q It is centrally located? A Yes.

Mr. Roche: That is all.

The Court: How much is it worth now?

The Witness: I beg your pardon?

The Court: How much do you think the fair market value is as of today?

The Witness: I think, even in this market, it is worth more.

The Court: Well, how much more?

The Witness: Probably 25 or 50 per cent. more.

The Court: That would make it worth about seven hundred to eight hundred thousand dollars?

The Witness: Six or seven hundred thousand dollars.

The Court: Are there any large tracts in South Orange of such acreage, I mean, within the Village?

The Witness: Not in that center.

The Court: That is all.

Re-cross examination by Mr. Fitzsimmons.

Q Now, Mr. Fiedler, how much a foot do you value Ridgewood Road frontage at? A $100, that is, with a depth of 200 feet.

Q How much on Mead street? A Sixty dollars.

Q And you think you could sell this property —could have sold it for $100 a foot to a developer in 1924? A Yes, sir.

Mr. Fitzsimmons: That is all.

The Court: It would appear it was very modestly taxed.

Mr. Roche: Mr. Taylor.

FRANK H. TAYLOR, sworn for complainant, testified as follows:

Direct examination by Mr. Roche:

Mr. Fitzsimmons: Mr. Taylor's qualifications are admitted, but I have the same objection to his testimony.

Q Mr. Taylor, you reside in East Orange? A I do, yes, sir.

Q And you are in the real estate business? A I am, yes.

Q And have been for many years? A Over 45.

Q And you have bought and sold land in South Orange? A I have, yes, sir.

The Court: Well, Mr. Fitzsimmons admits his qualifications.

Mr. Roche: Yes, sir.

Q Mr. Taylor, have you made an appraisal of the real estate which was conveyed by the Meadow Land Society of South Orange to the village of South Orange, in March, 1924? A As of March, 1924, yes, sir.

Q I show you Exhibit C. 1, being a sketch of the property in question, and ask you if that is the property you estimated on? A Yes, sir, it is.

Q And what, Mr. Taylor, in your opinion, was the fair market value of that property in March, 1924? A $401,484.

Q Will you state, briefly, how you arrived at that value? A I took the available street frontage at the estimated appraisal value of so much per front foot, allowing for a depth on Ridgewood Road of 250 feet, from Mead street 200 feet, Meadow Brook Lane, 150 to 200 feet, and Mead street 270 feet. The plot that had practically no frontage, why, I figured on a square-foot basis, on a basis of 1/3 the value of the land immediately in the front. Arriving at that total, I divided the acreage of the plot into my sum total of $401,000, gave me a value of $10,850 per acre, including, however, the plots known as plots 5, 6, 7, 8, 9 and 10, which were on separate streets, and not part of the playground, so that deducting those particular plots, my valuation of the playground would be $382,944.

Mr. Roche: May it please the Court, all of the land of the Meadow Land Society was conveyed, not only these playgrounds, but these other outlying tracts.

The Court: Yes, I understand. Is that all?

Mr. Roche: That is all.

Cross examination by Mr. Fitzsimmons.

Q Now, Mr. Taylor, isn't it a fact that certain parts of this land were subject to being flooded, around 1924, because of no drainage? A I played golf over it, at that time. I cannot quite recall it. It is true it is below—a portion of it is below the grade of Ridgewood Road, and the Lackawanna embankment, but the Rahway branch of the river ran through there. It may be possible that a portion of it was flooded. It might be possible.

Q You remember the ninth hole— A I beg your pardon?

Q —you remember the ninth hole of the golf course? A I am a poor golfer.

Q Well, the ninth hole— A Oh, I think I do remember about where it is.

Q The ninth hole, at least, part of the ninth hole is the part which the playground commissioners are now using for baseball. That is east of the brook, that is this plot 3 right here? A Yes, plot 3.

Q And the tee used to be just west of the brook. Now, do you remember that piece of land which is now being used by the playground commissioners, do you remember the condition of that? Very low, wasn't it? A I cannot say that I positively remember, but I know there is a portion of the land there that was low. Now, which particular part I cannot recall.

Q Isn't it a fact that after every rain storm they could not play on the ninth hole for a long while? A Yes, sir, I think that is true.

Q How much was that land worth, that little piece which is now being used for baseball, as of that time, considering the drainage condition? A $24,480. That was on Mead street.

Q Mead street between the railroad and the brook? A Between the railroad and the brook.

Q Now, when you made that appraisal, when you put that figure down, did you consider the fact that the property was flooded? A I consider that it was low land, but I did not consider the fact that it was flooded all the time, no.

Q Suppose it is true that particular piece of land was flooded after every rain storm, to such an extent you could not play golf on it for several days, would your value be the same? A No. I am inclined to think I would make an allowance of probably what the cost would be to fill it, which might possibly be in the neighborhood of five or ten dollars a foot.

Q And what would be your value of this little piece, after making that allowance? A Well, I would deduct a reasonable amount for the filling, which would probably be in the neighborhood of $10 a foot, 408 feet front; $4,000 from $24,000, makes $20,000. I think that would be reasonable, if I was assured it was in that condition which you say.

Q And, in arriving at your figures, you did not consider this land as acreage, did you? A I say, I reconciled the acreage against the price; after figuring to obtain the value of acreage, you have got to take the value of the available street frontage, and, if there is no street frontage and it is rear acreage, why, then, it steps back into

zones, according to the value of the front land, you have got to take a value from somewheres, you have got to take your value from your street frontage, and it depends on how close the road is, the value of that frontage.

By Mr. Roche.

Q Just one more question. Are you acquainted with the character of the Village of South Orange? A I am, yes, sir.

Q What kind of a place is it? A It is a high-class, residential neighborhood, town.

Q In your opinion, Mr. Taylor, what effect upon the values of properties will the playing of professional ball—to which admission is charged, and to which great crowds are gathered—have on this property?

Mr. Fitzsimmons: I object to the question, on the ground it is irrelevant, particularly unless the witness is asked what damage would occur to Mr. Baird's property on Scotland Road. This is not a public question. It is purely a question of Mr. Baird. I think the question, if it is going to be permitted, should be limited to depreciation of Mr. Baird's property two blocks away.

The Court: I will allow the question.

The Witness: Will you please repeat the question?

(Question read as follows:)

"Q In your opinion, Mr. Taylor, what effect upon the values of property will the playing of professional ball—to which admission is charged, and to which great crowds are gathered—have on this property?"

A My opinion is that the playing of professional games on Sunday in a neighborhood of that character depreciates the value of property at least a third.

Q Well, do you know where Mr. Baird, the complainant in this case, resides, at 212 Scotland Road? A Yes, I know where that is.

Q And would you say that would be true at his property? A No, I would not; too far away.

Q Well, would it depreciate it to any extent? A To people acquiring homes of that character, I think it would be a detriment and depreciate the value of all property in that neighborhood. How much is impossible for me to say, because I have not had any like experience, but I know, as a real estate man, that in a high-class neighborhood, professional sports on Sunday, where there is large crowds congregating, depreciates the value of the real estate in the vicinity.

Mr. Roche: That is all.

A (Continuing) In my opinion.

Cross examination by Mr. Fitzsimmons.

Q Mr. Taylor, do you know of any properties on either Vose avenue, Scotland Road, or Ridgewood Road that have depreciated in value as a result of playing Sunday baseball? A No, sir.

Mr. Fitzsimmons: That is all.

Mr. Roche: That is all.

The Court: I think we better take a recess. It is ten minutes to one. Will you want to start another witness?

Mr. Roche: Whatever your Honor says about that.

The Court: You cannot finish another witness, and cross examine him in ten minutes.

Mr. Roche: We will wait until two o'clock.

The Court: Two o'clock, then.

(Noon recess.)

PHILIP N. MILLER, sworn for complainant, testified as follows:

Direct examination by Mr. Roche.

Q Mr. Miller, where do you reside? A 234 Irving avenue, South Orange.

Q How long have you resided in South Orange? A Eighteen years.

Q Did you have any connection with the government of South Orange in the year 1924? A Yes, I was a member of the Board of Trustees.

Q And were you chairman of any committee? A I was Chairman of the Finance Committee and Chairman of the Special Committee which was appointed to negotiate for the acquisition of the Meadow Land property.

Q For how many terms did you serve as a trustee in the Village of South Orange? A Three terms of two years each.

Q Six years in all? A Yes.

Q Now, will you tell us, briefly, of the negotiations which you, on behalf of the Village of South Orange, had with the Meadow Land Society for the purchase of these lands?

Mr. Fitzsimmons: I object to the testimony, for the reasons previously stated.

The Court: Proceed, Mr. Roche.

The Witness: I started negotiations with Mr. Baird, who was president of the Meadow Land Society, several months before the contract for the acquisition of the land was finally negotiated.

Q And what was said about price or about conditions, or what-not? A Well, the matter of price was not discussed in all the early negotiations at all. The question Mr. Baird raised was, first, whether the village should own as much property as 37 to 38 acres then owned by the Meadow Land Society, and, secondly, what they would do with the property after, if they did acquire it, and I tried my best to persuade him that the acquisition of the land was the proper thing for the village, so we could preserve the open space in the heart of the village, and park and playground facilities for the generations to come, and, acting on that theory, Mr. Baird finally said that he would agree to the sale, and, when the question of price was discussed, that took but a minute, because Mr. Baird said he would agree to sell the property, as president of the Meadow Land Society, as far as he could legally commit the Society, that he would agree to sell the property for the assessed valuation.

Q What was that, $72,000? A Yes.

Q Was the sale actually consummated? A Yes.

Q Do you recall anything about the restrictions and covenants which went into the deed to the village? A I do.

Q What was said about that? A Mr. Baird was, naturally, I thought, very insistent that the acquisition by the village should be so restricted that the property would be kept as an open park and playground for the village as a whole, and it was the intention to have such a restriction put in the deed.

Q Speaking for the Village of South Orange and the committee, of which you were chairman, at that time, was it clearly understood that the lands were taken upon condition and subject to the restriction that the premises shall be used solely for public park, and, or public playground purposes? A As all the property was so taken, except the outlying parcel—

Q Yes. A —which has been described heretofore.

Mr. Roche: Do you have any objection to these minutes being offered?

Mr. Fitzsimmons: Except I do not see their relevancy. I have no objection to you proving your case in that way.

The Court: Mr. Fitzsimmons has entered his general objection to this line of testimony, so you can proceed. His objection applies to this, to all of it.

Mr. Roche: The minutes, if it please the Court, are recorded in these large books, and, instead of offering those books, I would like to use these minutes.

Mr. Fitzsimmons: I have no objection to that.

Mr. Roche: That is what I mean.

Mr. Fitzsimmons: No, no.

Q I show you the minutes of the regular meeting of the Board of Trustees of the Village of South Orange—

Mr. Fitzsimmons: On the first page.

Q —held on Monday evening, January 21, 1924, containing a letter which you wrote—a report which you made to Mr. Hunt, the then president of the village. Will you kindly look at that and tell us whether that is your report of the acquisition of these lands? A Yes, it is.

Mr. Roche: I offer the minutes.

Mr. Fitzsimmons: I have no objection to the entry in that form, rather than having it proved in the regular way, but object to its admission.

(Minutes marked Exhibit C. 4.)

Q In this letter which you have identified, Mr. Miller, you say, among other things, "We feel that in acquiring this property in the heart of the village at so reasonable a price, we have gone a long way towards providing the people with adequate park and playground facilities. By retaining this open space, which has meant so much to the village, we take a great step towards maintaining the residential character of our community. We should take this opportunity of expressing our thanks and appreciation of the generous and public spirited attitude of Mr. Baird, who owns the majority of the stock in the Society. With his cooperation we are now able to continue in permanent form the wishes of the founders of this Society, who acquired the property without thought of personal gain, in

order to keep an open space in our midst." You wrote that? A Yes, sir, I did.

Q And that was your report of the negotiations. Now, Mr. Miller, have you, within the last year, observed how a part of this land is being used by the village, or the Board of Recreation Commissioners? A Yes.

Q When did you make an examination of the field? A On a Sunday, early in October, Sunday afternoon, early in October, I went down to see one of these ball games, of which I had heard so much.

Q Did you actually go into the game? A I did not enter the grounds, no. I stood on Mead street and listened to the noise and observed the canvas covering that hid the field from the public's gaze.

Q Where was that canvas covering? A Along the wire fence that runs along that portion of Cameron Field, which abuts on Mead street.

Q Was that wire fence there when you were a member of the Board of Trustees of the village? A I cannot say.

Q Tell us what you heard and saw while this game was going on. A Well, there were some temporary bleachers erected on the portion of the field that abuts on Mead street, and there was an awful lot of stamping of feet and yelling and shouting; a great many cars parked around; so, of course, this was early in October, towards the end of the season, and I do not suppose the crowd was as big then as it may have been at other times.

Q Was the playground being used, in your opinion, for the purposes for which it was acquired by the village?

Mr. Fitzsimmons: I object. It calls for a legal conclusion.

The Court: I think, Mr. Fitzsimmons is right. You can ask him how it was used, and then it is for the Court to decide whether that is the proper use. I will sustain the objection.

Q Was the ground enclosed? A Yes.

Q Was there a ticket booth for the sale tickets and admission stand? A I saw a box in which the tickets—canceled tickets were dropped, but I cannot remember that I saw a booth.

Q Did you try to get in? A No.

Q What kind of a noise was it you heard? A Well, the noise that I remember mostly was the stamping of feet on the boards of the bleachers.

Q Was that a loud noise? A Very loud.

Q This playground is how located with respect to the surrounding village? Is it in the center or in the outskirts of it? A In the center of the village—not the exact geographical center, but the approximate center.

Q Was this particular piece, known as Tract 3 on the sketch which has been introduced and marked C. 1, transferred, during your administration, to the Board of Recreation Commissioners? A Well, the title, of course, was not transferred; the control and management of the piece was added to the original Cameron Field, which had been purchased some years before and as such, only for management purposes, it was so transferred to the Board of Recreation Commissioners.

Q Was it your purpose, as Chairman of this Committee which acquired these lands for the village under these restrictions, to stage pro-

fessional baseball games to which admission was charged?

Mr. Fitzsimmons: I object.

The Court: That is all right. He can state what his purpose was.

Mr. Fitzsimmons: It does not bind the village.

Q You may answer that. A The purpose was certainly not to ever hold professional ball games on any portion of the land acquired from the Meadow Land Society.

Mr. Roche: That is all.

Cross examination by Mr. Fitzsimmons.

Q Mr. Miller, when did you get off the Board of Trustees? A Either 1926 or 1927, I cannot remember which year. I don't want to be held to that, Mr. Fitzsimmons. I am not—perhaps your father could tell.

Q Well, prior to February, 1924, did you know of any negotiations with Mr. Baird, or the Meadow Land Society, for the acquiring of this property? A As far as I know, there were none.

Q When you started to negotiate, didn't you have the understanding that this land was going to be donated for the village without cost? A I most certainly did not. In fact, I was told exactly the contrary.

Q Isn't it a fact that, while you were a member of the governing body, the village intended to condemn the property, which is now being used for the baseball field, the old ninth hole, east of the brook, to add to the then existing play-

ground? A No, that did not happen while I was a member. If I may amplify my answer, if it is proper, your father showed me this morning that such action had been contemplated, he said, in 1911, but I was not then on the Board.

Q Now, while you were a member of the Board of Trustees, the work of adding this piece of property, known as 3 on Exhibit C. 1, that was turned over to the playground commissioners and added to the existing playground, wasn't it? A I want it clearly understood it was simply the management of it.

Q That is right, turned over for playground purposes? A The management—

Q Yes. A —of that land was turned over, not the land itself.

Q And, at that time, and during your administration, there was a fence separating the existing playground from the piece which was purchased from the Meadow Land Society. Isn't that so? Wasn't there a fence separating the two properties? A I think there was.

Q Isn't it a fact there was a fence all around the playground and at all times during your administration? A You mean, the original Cameron Field?

Q Yes. It was fenced along the brook, wasn't it? A I think so.

Q It was fenced along the railroad on the east? A I don't see why there would have been any fence there.

Q Well, did you ever go down and look? A No, I am not sure whether there was a fence or not.

Q There was a fence along the northerly boundary of the playground, separating it from the present property? A Yes, sir.

Q The piece of property purchased from the Meadow Land Society? A Yes, I think there was.

Q Now, who else were on the committee with you, the special committee to negotiate this sale? A Well, Mr. Baird was one of the members, and I forget the third.

Q Now, during your negotiations, was anything ever said that Sunday baseball, at which admission would be charged, would not be permissible, either by Mr. Baird, or by the committee, of which you were chairman? A I do not think the question of professional ball, to which admission would be charged, was ever discussed.

Q Was ever discussed. In fact, it was not thought of, was it? A Well, I would rather put it, it was never contemplated that any Board of Trustees would ever do any such thing in the Village of South Orange as to hold professional ball games on that property.

Q During your administration, isn't it a fact that ball games were played on this very same field— A Columbia High School.

Q —in the Fall of 1924, 1925 and 1926, at which an admission was charged, by a private club? A By the Columbia High School, football games are the only ones I ever remember held on Cameron Field.

Q Didn't the South Orange Football Club, of which Mr. Stout was captain, play there on Sundays, during the football season, while you were on the Board of Trustees? A I do not remember any such games.

Q Will you say that they were not? A No. I say, I don't remember. I never knew of any such games.

Q Well, the field was used by the South Orange High School football and baseball teams, was it not? A Yes, sir.

Q And admission was charged to those games during the week, of course? A Well, I suppose so, I imagine so, but I don't remember definitely.

Q So that the question of admission, during the week, would be proper, in your judgment? A It depends on what kind of a performance is being given, as to whether it was amateur or professional.

Q I see. Now, wouldn't a football game—wouldn't there be as much noise from a football game, with the cheering, particularly a high school game, as from a professional baseball game, or semi-professional baseball? A Well, I could not judge the quantity of noise. Personally it would not be as objectionable to me as the sort of noise you get with the stamping of feet on bleachers, and the cat-calls, and the general rowdy sort of things you get with this type of game.

Q When did you go to visit the field for the purpose of seeing what was happening there? A Early in October, 1930.

Q In October, 1930. Do you know what team was on there playing that day? A I haven't any idea.

Q You, as a member of the Board of Trustees, voted to turn this property over to the Playground Commissioners for management and control? A I did.

Q Did you, at that time, tell the Commissioners that Sunday baseball could not be played, at which admission was to be charged? A No. At that time?

Q Yes. A No.

Q Wasn't it your intention, as a member of the Board of Trustees, and voting for the resolution, the Commissioners should conduct or operate the field in accordance with the law? A It is self-evident.

Q Now, at the time these restrictions were placed in the deed, isn't it a fact that the reason why the restrictions were placed in the deed was to prevent the village from selling the property for another purpose, at some future time? A That was a factor, but it was not the only one. I have already testified as to what the major factor was.

Q And, by not selling it, to keep it as a park and playground? A Sure.

Q But there was no discussion as to the limitation of the use, was there? A Yes. Yes, we talked to Mr. Baird that the use should be limited to the public use as a park and playground.

Q A public park and a public playground? A Surely.

Q Nothing else? A No. I have already explained that.

Q Yes. I want to make sure nothing else was said. A Nothing else was said, that I can remember.

Mr. Fitzsimmons: That is all.

Mr. Roche: That is all. Mr. Marshall.

JAMES MARSHALL, sworn for complainant, testified as follows:

Direct examination by Mr. Roche.

Q Mr. Marshall, where do you reside? A I reside on Vose avenue, South Orange.

Q Is that near this baseball ground? A Yes, very near.

Q About how many feet away, would you say? A I would think not over 300, 350 feet from what you call the home plate.

Q How long have you resided there? A I think, about 38 years.

Q Do you own your own home there? A I do.

Q Do you pay taxes in South Orange? A I have right along.

Q Did you ever go to one of these ball games? A Once.

Q When was that, Mr. Marshall? A I think in the Spring of this year, sir.

Q Did you pay to get in? A I did.

Q How much? A Fifty cents a person. There were several with me. I paid fifty cents a head.

Q What day was it? A Sunday, I think, sir.

Q Are all of these games played on Sunday? A So far as I know.

Q Mr. Marshall, are you disturbed by the playing of these games?

Mr. Fitzsimmons: I object, your Honor, on this ground, that under the decision of the Court of Errors and Appeals in McMillan vs. Kuehnle, 78 Eq. 251, Chief Justice Gummere, speaking for the Court, said: "Affidavits made by others"—I think the same applies

to testimony—"who are not parties to the litigation, are annexed to the bill, and show that the affiants, as well as the complainants and their families, are interfered with in the enjoyment of the peace and quiet of their homes by the noises complained of. These affidavits, however, are of no special value in determining the propriety of the order appealed from, for the bill is not filed on behalf of the public to restrain a public nuisance, but by two citizens to obtain relief by injunction against the special nuisance to their respective dwelling houses caused by the noises of the crowds which attend these Sunday games."

I do not believe the fact that this noise, or any other element, coming from these Sunday baseball games, affecting Mr. Marshall, can have any bearing on any alleged nuisance to Mr. Baird. I therefore object to that testimony.

Mr. Roche: I will withdraw it. May it please the Court, I will change the form of it.

Q Mr. Marshall, will you tell us, please, what noises or other disturbances you hear when Sunday games are conducted?

Mr. Fitzsimmons: I object to that, for the same reason.

The Court: I will allow it.

Q You may answer the question. A The noises are those habitual to a considerable gathering of people, whose feelings, for the moment, are highly emotional.

Q Are the noises loud? A Yes, or they would not be heard readily.

Q Shouting? A Shouting, cheering, whooping.

Q Can you hear the umpire's voice? A Very clearly.

Q Can you hear stamping? A Not so much of that, sir, but you hear hand clapping and cheers, criticisms, verbal criticisms.

Q What have you to say as to the number of automobiles which crowd into the streets on those days? A There are very many of them, sir, and they occupy pretty much all the available space. My house, as you may remember, is at the head of Mead street, the junction of Mead street and Vose avenue. Both sides of Mead street are, frequently, occupied almost exclusively by automobiles. There is a very considerable degree of parking automobiles along both sides of Vose avenue. It brings a very sharp difference between the restful quiet, that was habitual in that neighborhood in the village, to one of turmoil, confusion, excitement.

Q On Sundays? A On Sundays, at the time the games are held.

Q Do the automobiles extend all the way from Vose avenue along Mead street to Ridgewood Road? A Yes.

Q And are they parked along the Meadow Brook Lane also? A Very considerably, sir, particularly at the junction of Meadow Brook Lane and Mead street.

Q Do you know how many automobiles, on the average, come to those games? A I have not counted them, sir, but there seems to be a considerable number of them.

Q Would you say, hundreds? A I would say there were several hundreds.

Q Have you observed any particular things in connection with these games, such as—(interrupted).

Mr. Fitzsimmons: I object to any leading or suggestive questions.

The Court: Yes.

Mr. Roche: All right. I will withdraw it.

The Court: What have you observed, Mr. Marshall?

Q Do you remember a game with the House of David? A I think there was more than one game with that organization.

Q Did you hear any of those people? A I was not in attendance, as I remember, sir, at the time they played.

Q Do you remember a game with a colored team? A I remember there were games with a team called the "Red Caps" of something or other, I think, somewhere in Pennsylvania.

Q What did you observe in connection with that game? A Well, it brought more than the usual number of colored citizens in that vicinity. They brought their cars and parked them in front of the house and used that space, and used it objectionably.

Q Is there a fence along this playground, or, ball field, rather? Is there a fence along this ball field? A Yes. You mean, between it and the street?

Q Yes. A Yes.

Q And a covering on the fence? A Yes, on the upper part of it.

Q To prevent people looking in? A I don't know the purpose.

Mr. Fitzsimmons: I object. That calls for a conclusion.

Mr. Roche: Yes. I withdraw that.

Q And there is a covering on the fence. Is that right? A There is a canvas.

Q A canvas covering.

Mr. Roche: That is all.

The Witness: Thank you.

Cross examination by Mr. Fitzsimmons.

Q Mr. Marshall, did you ever complain to the governing body or to the police as to the parking of cars? A I have complained to the president of the village, several times, about it, sir.

Q When? A I cannot mention the date to you, positively, but either just before or just after these games have been held.

Q And hasn't the parking condition been greatly remedied, during the season of 1930, over what it was a year ago? A I have not thought so, sir.

Q You say you attended one of the games, early this year? A I did.

Q Did you applaud any good plays that occurred that day? A I am a man; perhaps I did, sir.

Q Did you shout? A Possibly I did, sir.

Q So that, at that game there was no more shouting or noise beyond which you would get at any baseball game, when a good play occurred, was there? A I do not—

The Court: That is a very difficult question to answer.

Mr. Roche: I didn't hear it, may it please your Honor.

The Court: I do not think anybody can answer that. There is more noise in one game than there is in another.

The Witness: I do not remember any startling phase.

Q The noise was not continuous, was it? A No—

Q It only occurred when there was a special play, good play, isn't that true? A Some exciting cause had to be the—(interrupted).

Q Something to cheer about. Generally, aren't the games conducted in an orderly manner? A I don't think I can answer that question, sir.

Q Why? A I presume they are, because they occur, and the police are there to supervise them, but they never have broken up in a row, so far as I know.

Q No rowdyism? A I would not say that, sir.

Q Did you see any evidence of rowdyism? A In the one game that I saw, no.

Q Now, you spoke about attracting a lot of colored people to the game when a colored team played. Is there any objection to colored people attending a baseball game? A I haven't any, sir, but I do not want them as guests on my front lawn.

Q Were they on your front lawn? A They were, or, on the pathway, right in front of the house.

Q On the sidewalk? A On the sidewalk, yes.

Q Any objection to colored people walking on the sidewalk? A None at all, sir, but as I told you, I do not want them on Sunday afternoon.

Q Oh, I see, the colored people are all right during the week? A No, sir, but they are not to be found there during the week.

Mr. Fitzsimmons: That is all.

The Court: As I understand you, these colored people came into your grounds?

The Witness: I do not think, Judge, I said they came in the grounds. I did not mean that, sir. Possibly they did, if they got out of their car. They brought a large conveyance, an automobile, and parked it directly in front of the house.

The Court: That is all, sir.

Mr. Roche: Oh, Mr. Marshall, just one question.

Re-direct examination by Mr. Roche.

Q You have been a member—you have served as a member of the Board of Education of the Village of South Orange, have you not? A Yes, sir.

Q For how many years? A I think I was on the Board eleven years, sir.

Mr. Roche: Yes, thank you. Mr. Kraeuter.

ARTHUR A. KRAEUTER, sworn on behalf of complainant, testified as follows:

Direct examination by Mr. Roche.

Q Mr. Kraeuter, where do you reside? A 117 Vose avenue.

Q South Orange? A South Orange.

Q Is that far from this ball ground? A Four to five hundred feet.

Q Four or five hundred feet? A Well, three to five hundred feet.

Q Have you attended any of these ball games, professional ball games, played there? A I have not.

Q Will you describe the conditions, as you observed them, on Sunday, when these ball games are being played?

Mr. Fitzsimmons: I want to note my objection, sir, to this testimony.

Q Will you describe, briefly, please, the conditions as you observed them, on days when Sunday baseball games were played? A Why, it brings to our village from outlying places a great number of people. Just how many I am unable to say.

Q Any automobiles? A Yes, sir. There are quite a few automobiles.

Q Parked around the streets? A Naturally.

Q Have you ever counted them, Mr. Kraeuter? A Never.

Q Do you remember a game at which Babe Ruth attended? A I know there was such a game.

Q Were you—

Mr. Fitzsimmons: If the Court please, I object to any testimony regarding the 1929 baseball season as too remote, and the complainant is guilty of laches in bringing any action regarding 1929.

The Court: That is a matter of argument after we take the testimony. I will allow it.

Q Do you recall that game, Mr. Kraeuter? A I do.

Q Would you, briefly, describe the noise and other conditions which you heard or observed? A Well, at that game there was an unusual amount of noise.

Q There was what, you say? A At that game there was an unusual amount of noise.

Q Yes. Well, what do you mean by that? Can you tell us what kind of noise there was? A Well, there was great shouting, which you could naturally expect, if there were good plays made and when there were star players playing.

Q Any stamping of feet, tooting of horns, anything like that? A Why, there was. I didn't hear the stamping. I think I live too far away to hear the stamping of feet. Of course, there is great shouting.

Q How many people? A I haven't any idea.

Q Did you go to the game? A I did not.

Q How long have these games been going on? A Two, three, four years. Three, four years.

Mr. Roche: That is all.

Mr. Fitzsimmons: Just a minute, Mr. Kraeuter.

Cross examination by Mr. Fitzsimmons.

Q During the 1930 baseball season, Mr. Kraeuter, has there been any exceptional noise and annoyance, this year? A No; I must say, it has been quieter this year than it has been in previous years.

Q And you wrote a letter of protest to the governing body of the village in November, 1929, after the Babe Ruth game? A I did.

Q And as a result of that protest, or, since that protest, isn't it a fact that the conditions are entirely different? A Why, I don't know as I am in a position to say that I noticed when it took place, but, as I said before, I am under the impression there is not nearly the noise there to-day that there was at that time.

Q It was just those two big games that the noise was exceptional? A No, not only those two big games, no. I cannot agree with you there. At each baseball game there was plenty of objectionable noise, but at that one game, about which I wrote, there was an exceptional lot of noise.

Q You would not—(interrupted).

A But I do think the noise this year has been less, not entirely eliminated, by any means, but I do feel that it has been less than in previous years.

Mr. Fitzsimmons: That is all.

The Court: That is all, sir.

Mr. Roche: Mr. Collier Baird.

COLLIER W. BAIRD, sworn for the complainant, testified as follows:

Direct examination by Mr. Roche.

Q Mr. Baird, you are the son of Mr. William T. Baird, the complainant in this case? A Yes.

Q And where do you reside? A At 285 Ridgewood road, in South Orange.

Q You were the Secretary of the Meadow Land Society at the time it sold its lands to the village of South Orange? A I was.

Q And do you recall a meeting of the Trustees—

Mr. Fitzsimmons: I will admit that, Mr. Roche.

Mr. Roche: This resolution—I will just offer this resolution, showing that the meeting was held just before this suit was instituted, authorizing the bringing of the suit.

The Court: All right. It is admitted. Let it be marked.

(Resolution marked Exhibit C. 5.)

Q Mr. Baird, where do you live in South Orange? A As I said, on Ridgewood road.

Q What number? A 285.

Q Is that some distance from the ball grounds? A About, I would say, about 300 to 400 yards.

Q Did you hear the noises from the Sunday ball games there? A I did.

Q I beg your pardon? A Yes.

Q Now, Mr. Baird, have you attended any of these games? A Yes, I attended one, some time in August, this year, I think it was.

Q Did you count the automobiles there, at that time? A Yes, I did. At the north end of the field, not at the south end, or on Vose avenue, I was merely around the Mead avenue entrance.

Q How many were there? A 227.

Q Would say that you had counted half, or more or less than half? A Well, that was probably pretty close to all the automobiles there were there at that game.

Q How many of those did you observe from the license plates were Essex County cars?

Mr. Fitzsimmons: I object, on the ground that it is immaterial, it doesn't make any difference whether they were from Essex County or any other county.

The Court: I will allow it.

Q You may answer it. A I think I can answer it easier the other way around, if you don't mind. I think there were about—I have the exact number here. (Witness refers to paper.) Fifty-four from outside the County.

Q Fifty-four? A From outside the County.

Q Yes. Do you know how many people were in attendance at that game? A I don't know from my own count, I can only say from what I asked one of the officials.

Q What official? A Mr. Henderson.

Mr. Roche: Have you any objection?

Mr. Fitzsimmons: No.

Q What did he say? A The next morning, he said there were about 700 to 750 paid attendance.

Q Describe, if you will, the conditions obtaining at that baseball game. A Outside the field, it was fairly well regulated, the cars were lined along Meadow Brook Lane closely, and there were some parked in the new field, where the old skating pond was, across from the baseball field. At that game the—what do you call it—Mead street was fairly well free; inside the field it was not a large crowd, apparently; I should say there might have been a thousand to twelve hundred people, all told.

Q Was there any noise? A Yes, sir.

Q What kind? A Oh, shouting, when somebody hit the ball, or razzing the umpire, and so forth.

Q Did you pay admission to get into the game? A I did.

Q What was the answer, "I did"? A I did.

Q How much admission? A Fifty cents.

Q Are these photographs which you took, Mr. Baird, showing the fence along the ball ground? A Yes, sir.

Q When did you take those? A Well, I think they were taken a week ago last Sunday.

Q Last week, in November, 1930? A Yes, sir.

Mr. Roche: No objection, Mr. Fitzsimmons? I offer these four photographs, may it please the Court, showing the condition of the fence, and so forth.

(Four photographs marked Exhibits C. 6, 7, 8 and 9.)

Q Mr. Baird, do these photographs correctly show conditions as they existed at the time of the ball game which you attended? A No. They are nothing like that at all.

Q Well, how do they differ? A Well, at that time, there was a screen of some fabric along the fence, and there were large portable, I should say, bleachers inside, along the fence here, and extending at right angles to it along the foul line.

Q What teams were playing that day? A I believe there was a team called the Doherty Silk Sox, or something like that, from Paterson. I am not sure exactly of the name.

Q And what other team, what team was it playing against? A South Orange.

Q What is the South Orange baseball team, do you know? A I haven't the slightest idea.

Q Do you know who were playing on that team? A No.

Q Do you know whether any of the men playing on the South Orange team were South Orange residents? A That I can't say. I don't know any of them.

Q How often have you passed by on Sundays when these baseball games were going on? A Quite often.

The Court: That doesn't mean anything.

Mr. Roche: I beg pardon?

The Court: "Quite often" means nothing.

The Witness: Well, I have passed by—I should answer it in another way—then, I have passed by probably one Sunday out of every three during the summer time. I have not been away in two summers.

Q And what do you observe or hear as you go by these ball games? A Well, there is a crowd, and shouting, as previously told of.

Q On every occasion do you observe the same thing? A Some to a lesser, and some to a greater degree.

Mr. Roche: That is all.

Mr. Fitzsimmons: That is all. No questions.

The Court: That is all.

Mr. Roche: Is Mr. Leitch here?

Mr. Fitzsimmons: Yes.

ALBERT J. LEITCH, sworn for complainant, testified as follows:

Direct examination by Mr. Roche.

Q Mr. Leitch, where do you reside? A West Orange.

Q Are you a ball player? A Yes, sir.

Q Do you play on the South Orange baseball team? A Yes, sir.

Q For how many years have you played on it? A Two years.

Q Are you the manager of the team? A On the field.

Q What do you mean by "on the field," Mr. Leitch? A I simply have charge of the ball players on the field.

Q Are you paid? A Yes, sir.

Q You are a professional ball player? A Not professional, a semi-professional. A professional is an everyday baseball player.

Q What is that? A A professional is an everyday baseball player; a semi-professional is

one that plays Saturday and Sunday and gets paid for it.

Q Did you get paid every time you played for South Orange? A Yes, sir.

Q Who are the other men on the team, Mr. Leitch? A The names of them?

Q Yes. A A man by the name of Ralston, catcher.

The Court: Where does he live?

The Witness: He lives in Philadelphia.

The Court: Well, now, how about the pitcher?

The Witness: Sedgwick.

The Court: What?

The Witness: Sedgwick.

The Court: Where does he live?

The Witness: Some place in Connecticut, I believe, Bridgeport.

The Court: The first base?

The Witness: Copeland.

The Court: Second base?

The Witness: McEntee, I believe, in Newark, I am not positive.

The Court: Third base?

The Witness: McEnrow, Newark.

The Court: Shortstop?

The Witness: That is myself, from West Orange.

The Court: Back field?

The Witness: Left field is Plesnick, Newark; center field is Shetlich, Newark, and the rightfielder, I am not positive where he lives.

The Court: What is his name?

The Witness: We had several different ones. I just cannot recall what his name was, offhand.

The Court: All right.

Q Are they all paid? A Yes, sir.

Q And, I think, not one of them you have mentioned lives in South Orange? A Not that I know of.

Q Have you any substitutes? A Yes, sir.

Q Who are they? A We had a man by the name of Lang, lived in South Orange, and a substitute catcher from Passaic, I believe.

Q Is this your picture in The Record? A Yes, sir.

Mr. Roche: Is there any objection to introducing this record?

Mr. Fitzsimmons: Yes, I have an objection, unless the article written in the Record was authorized by Mr. Leitch.

The Court: What is the purpose of offering it?

Mr. Roche: Well, if it please the Court, I have a number of copies of this Record here. I can establish them by proper evidence later on, but I don't know whether your Honor will want to receive them or not. I would like to have them go in evidence, to show not only the advertising, but the public interest outside which is created by these articles in the newspapers.

The Court: I think it is proper to introduce them, if it is to show that— What is the Record? Is that the South Orange paper?

Mr. Roche: Yes, the South Orange Record.

The Court: That would not necessarily indicate the—advertisements in there would be more likely to be for South Orange people, it seems to me. If you have any advertisements in papers that are not published in South Orange, that is another matter. That has a local circulation, pure and simple.

Mr. Roche: Yes, that is true.

The Court: Then, I cannot see how you can prove that it gets any outsiders by that. I have no objection to your introducing them in evidence, but I think they fail in the purpose for which you intend them.

Mr. Roche: Well, for the time being, I will withdraw the offer.

Q Mr. Leitch, do you always play your games on this piece of ground in the Village of South Orange? A This last year, we played all our games there.

Q I beg pardon? A I say, this last year, we played all our games there.

Q And with what teams have you had games scheduled, during the last year? A Well, I can mention some of them. They are too numerous for me to remember them all.

Q Well, what were some of the most important ones? A Well, the Doherty Silk Sox.

Q Doherty Silk Sox? A Doherty Silk Sox.

Q Where did they come from? A Paterson.

Q House of David? A House of David.

Q How many games did you play with the House of David? A I am not positive.

The Court: I thought the House of David was in Jerusalem. Where is it?

The Witness: They have a traveling ball club.

Q Do you play double-headers? A Occasionally.

Q What does that mean, "double-header"? A It means, two ball games.

Q When do you start the first one? A Generally, say, from quarter to two to two o'clock.

Q And the second one about four, or four-thirty? A According to when the first one is over.

Q Do you charge double admission on those games? A I don't know anything about the charging. I have nothing to do with that.

Q What is the House of David? A That I don't know.

Q What kind of ball players are they? A Very good.

Mr. Fitzsimmons: They have whiskers.

The Court: Are they professional ball players or semi-professional?

The Witness: They play every day. I guess they are professional ball players. They are not in any league.

Q Did they bring a clown with them? A They did.

Q And what did the clown do? A He clowned, as would be expected.

Q During the ball game? A Yes, sir.

Q And in between the ball game? A Yes.

Q Did you play a team of colored ball players? A Yes, sir.

Q What was that? A The Pennsylvania Red Caps.

Q Did you play more than one game with them? A I believe we did.

Q How many people witnessed these games as a rule? A I don't know.

Q Are the bleachers crowded? A Fairly well packed, yes.

Q Do you remember the day Babe Ruth attended one of these ball games? A Yes, sir.

Q What did he do, give an exhibition? A He played in the ball game with us.

Q Was there an extra big crowd there that day? A Yes, sir.

Q When was that? A I don't remember the exact date.

Q Have you had any other special features, during the year 1930, that you remember? A No, sir. That Babe Ruth game was not in 1930.

Q 1929? A 1929.

Mr. Roche: That is all.

Cross examination by Mr. Fitzsimmons.

Q Mr. Leitch, you have nothing to do with hiring the other players, have you? A No, sir.

Q And you get paid by the Recreation Commissioners? A Yes.

Q By check or cash? A Check.

Q That is handed to you by a representative of the Board of Recreation Commissioners? A Yes, sir.

Q Who hands you your check? A Mr. Farrell.

Q And what position does Mr. Farrell hold? A He is something in the Commission. I don't know exactly what he is.

Q Is he in charge of the field? A He is in charge of the playground, yes.

Q Do you have anything to do with arranging the schedule? A No, sir.

Q Who arranges the schedule? A Mr. Carter, I believe.

Q Is Mr. Carter a member of the Board of Recreation Commissioners? A Yes, sir.

Q Have you received any additional money other than your weekly pay? A No, sir.

Q Any split-up at the end of the season? A No, sir.

Q In the bill of complaint, it is stated that you are manager of the South Orange Baseball Club. Is that so? A If you call running the ball players on the field as manager. Field manager, you might say, but it is really captain of the ball club.

Q You have charge of taking the pitcher out and putting him in? A Exactly.

Q Removing the players from the game? A Exactly.

Mr. Fitzsimmons: That is all.

The Court: That is all.

Re-direct examination by Mr. Roche.

Q Just one more question, Mr. Leitch. Does any other ball team except your ball team ever use those grounds? A Yes, sir.

Q What team? A I witnessed the St. Benedicts, Central—or, the St. Benedicts, Seton Hall, game there one day.

Q Is that the only time? A I played there at least a dozen times on our bank baseball club.

Q What bank? A National Newark and Essex.

Q During 1930? A Yes, sir.

The Court: That is in Newark, isn't it?

The Witness: Yes, sir, but we play up there, the National Newark and Essex.

Mr. Roche: That is all. Mr. Greene, Carleton Greene.

CARLETON GREENE, sworn for complainant, testified as follows:

Direct examination by Mr. Roche.

Q Mr. Greene, you are the Chairman of the Board of Recreation Commissioners of the Village of South Orange? A President.

Q President of the Board. And you have general charge of this ball field, we are talking about, known as the Cameron Field, in South Orange? A The Board has charge of this field.

Q The Board. Well, have you personal charge of it more than any other member of the Board? A No.

Q Who has personal charge of it for the Board? A We have a chairman of the Grounds Committee.

Q Who is he? A Mr. Manda.

Q Mr. Manda. Well, who takes in the money received from the professional ball games? A Ticket takers employed by the Commission.

Q Who are they, do you know? A No, I don't know.

Q Do you know in whose name the money received by your Board is deposited? A I don't know the name of the account in the bank.

The Court: Deposited to the credit of the Recreation Commissioners, I suppose, isn't it?

The Witness: We had a special fund that was contributed by the citizens and was turned over to the Recreation Commissioners, and I don't know the name of the account. It was deposited by the Board of Recreation Commissioners.

Q Do you have anything to do with paying the ball players, who play on the South Orange Baseball Team? A No.

Q Who has charge of that? A Mr. Carter.

Q Beg pardon? A Mr. Carter.

Q This ball field is set apart, is it not, for the use of this ball team? A Not at all.

Q What other team uses it? A I have seen other teams from the boys' clubs in the community house, the South Orange schools, the village employes, policemen, firemen, street department, various small boys' teams. It is in no way set apart for the use of this team. It is used constantly by all others that apply for—(interrupted).

The Court: Can anybody apply for it on Sunday?

The Witness: They can apply for it, but if there is to be a game by the team employed by the Commission, naturally, they cannot play on Sunday afternoons.

Q As a matter of fact, Mr. Greene, has any other team, except this ball team, of which Mr. Leitch is manager, played there on Sunday?

Mr. Fitzsimmons: I object. Mr. Leitch decidedly said he was not the manager, he was merely manager on the field.

Q Mr. Leitch—I don't care how you describe it.

The Court: Well, Mr. Leitch is captain, call it.

The Witness: I cannot remember whether any team, other than this team, has played there on any Sunday afternoon, because it goes back for—ever since the ground was turned over to the Commission, and my memory does not—would not cover that point.

Q Do you know if any other team has played there on Sunday, during this past year, 1930? A No, I do not personally know.

Q Of course, Mr. Greene, as chairman of the board, you are familiar with the provisions of the Act creating your board, to the effect that all moneys received by your board must be turned over to the village treasurer, are you not? A (Witness nods yes.)

Q Do you know whether the moneys received by you are in fact turned over to the village treasurer? A I believe they are, at the end of the season; they have been deposited in the savings—in the South Orange Trust Company during the summer; that is the fund that was turned over to us from the citizens.

Q Do you have charge of that fund? A No.

Q Who is the treasurer? A The treasurer of the Playground Commission?

Q Yes. A There isn't any.

Q Who handles the money? A Mr. Carter.

Q Mr. Carter? A Chairman of the Baseball Committee.

Mr. Roche: That is all.

Cross examination by Mr. Fitzsimmons.

Q Now, Mr. Greene, do you know of any case where citizens of South Orange were excluded from this ball field during the week, on week days? A No.

Q The field was open on every other day but Sunday afternoon— A Yes.

Q —to the citizens? And, isn't it a fact that, during the playing of baseball games at the northerly end of the field, the southerly end of the field where the tennis courts are, are used all the time while the game is going on? Isn't that a fact? A Yes.

Mr. Fitzsimmons: That is all.

The Court: That is all, sir.

Mr. Roche: That is all, Mr. Greene. Thank you.

Is Mr. Henderson here?

HAROLD D. HENDERSON, sworn for complainant, testified as follows:

Direct examination by Mr. Roche.

Q Mr. Henderson, where do you live? A 420 Wilden Place, South Orange.

Q And where are you employed? A South Orange Trust Company.

Q Have you been in charge of the gate receipts from these ball games? A For the year 1930 only.

Q 1930. Who was in charge before that? A Mr. Kernan. No, Mr. Kernan has never had anything to do with except being ticket agent under my supervision for the year 1930.

Q What do you do, stand at the gate and take in the money? A Sometimes I do, and sometimes I don't. I have full charge of taking the money at the gate. Sometimes I act as agent, sometimes I hire somebody else in my place.

Q What do you do with the money, after you take it in? A Deposit it in the South Orange Trust Company.

Q In whose name? A The title of the account is, "South Orange Village Board of Recreation Commissioners, Baseball Committee."

Q Who has power to sign checks on that account? A Mr. Seymour O. Coeyman, the treasurer of the Commission, or myself, the assistant treasurer.

Q Did you say Mr. Coeyman was on the commission? A No, the treasurer of this committee, baseball committee.

Q What committee? A The title of the account which I just read, the South Orange Village Board of Recreation Commissioners, Baseball Committee.

The Court: Well, is this committee composed of the Recreation Commissioners, or is it a committee outside of the commissioners?

The Witness: It is a committee composed of three of the commissioners, with Mr. Coeyman and myself as the two officers in charge of funds, making five members altogether.

Q But you are not of the commission? A Not of the commission.

Q Or Mr. Coeyman is not of the commission? A Mr. Coeyman is not of the commission.

Q But all the moneys are drawn on checks drawn by Mr. Coeyman. Is that right? A All moneys, during the playing season—all bills were paid by checks signed by either Mr. Coeyman or myself, during the playing season.

Q Have you a statement there of receipts taken in at these ball games? A I have a statement of the entire account for the year, showing the total receipts and statement of the receipts.

Mr. Fitzsimmons: Pardon me. I object—

The Witness: Pardon me.

Mr. Fitzsimmons: (Continuing)—to any evidence as to receipts and disbursements of the Playground Commissioners, on the ground that equity has no jurisdiction, as decided by Vice-Chancellor Backes in Harrison against Montclair, followed by Vice-Chancellor Berry in the Seagirt case. That has been an elemental principle, if you are going along, as Mr. Roche indicates it in his bill of complaint, demanding an accounting from a municipal body, the Supreme Court has absolute jurisdiction.

The Court: I will allow it. This committee is not a committee of a municipal corporation, apparently. It is a mongrel committee of a sub-committee of a municipal corporation.

Mr. Fitzsimmons: That is not the fact. Mr. Henderson was asked to bring with him the authority for the opening of this account, and if that is introduced in evidence, it shows a resolution of the commissioners, authorizing the baseball committee to conduct these games and to make all necessary arrangements. Now, the committee has the power to employ a treasurer or employ a gateman, ticket taker, or anything else, and the resolution with the bank said that no checks shall be paid out without the approval of the baseball committee of the commission.

Mr. Roche: May it please the Court, the Statute, Section 6, 1911, provides that all money received by the Commissioners shall be turned over to the city treasurer and by him disbursed. There is no authority under the law, so far as I have been able to discover, for the collection and disbursement of these moneys by anybody other than the city treasurer.

The Court: I will allow the question.

Mr. Roche: What was the question?

Q (Read as follows:) "Have you a statement there of receipts taken in at these ball games?" A I have a statement of each game, yes, during the year 1930.

The Court: You don't want each item, do you?

Q What is the total?

The Witness: Also, I have a recapitulation of the whole season.

Q What is the total for the entire season? A Total receipts?

Q Yes. A $14,320.16.

Q And what are the total disbursements? A The total disbursements, including the cash balance, which would naturally be the same—cash balance of $313.81, so the disbursements would be the first amount less that.

Q I don't quite understand that. You had $313 left on hand out of $14,000 taken in? A That is the amount left in the treasury, which has been turned over to the Village of South Orange.

Q And the $14,000, practically the whole of it, has been spent upon your check, or the check of Mr. Coeyman? A Yes, sir.

Q Is the answer "Yes, sir"? A Yes, sir.

Q What did you spend it for? A Expenses of the games.

Q Well, tell us all about them. A Well, what do you want, an itemized report of each game?

Q What is the heaviest item of expense? A The heaviest item of expense in each game is the guarantee to the opposing team, or the salaries of the home players, depending on what the guarantee might be.

Q About how much does that amount to? A Well, there is a great variance, according to the

type of teams playing; running down all the figures of the games, I would say the average total expenses per game ran between three and four hundred dollars, unless there was a larger attraction, which cost more money.

Q Did you advertise these games? A I have nothing to do with the advertising.

Q Have you spent any money for advertising? A I have paid all bills O. K'd, O. K'd and given to me by the Recreation Commission, which includes some bills for advertising, if you want that.

Q How much have you spent for the advertising? A Advertising, do you want the total, or separate items?

Q Total. A Approximately $180.

Q Do you know with what papers you advertised? A The Newark Evening News, Newark Star Eagle, and there has been no bill handed to me that I have paid to any other paper but those two.

Q Can you, briefly, summarize the other expenses which you paid, Mr. Henderson? A Making up the total? You are interested, I presume, in the total of $14,000?

Q That is right. How is it made up? A There were 25 games, and, as I said, an average of four to five hundred dollars a game.

Q Yes. A With the exception of the game, which was held at the Newark Bears' stadium, in which Mr. Ruth and Mr. Gehrig participated, where the expenses total up $2,900.

Q I don't understand that. You mean, the Board of Recreation Commissioners in South Orange, through yourself, paid out $2,900 for a game played somewhere else? A Yes, sir.

Q Well, say that again, please. I don't understand it.

The Court: I don't, either.

The Witness: The game was played at the Newark Bears' stadium.

Q Now, what game was this? A A game between the South Orange Club and a team of All Stars, and Ruth and Gehrig participated in the game.

Q A game between what? A A team of All Star players and the South Orange Baseball Club.

Q Well, now, so far, we have not been able to discover what is the South Orange Baseball Club. Can you tell us?

The Court: Are those the players that Mr. Leitch has named?

The Witness: The players that Mr. Leitch has named, that is correct.

Q And they are known as the South Orange Baseball Team? A Actually what they are known as I couldn't say.

Q Well, you have them designated in your book there as the South Orange Baseball Club. Is that the way it appears on your record? A My record is of the account of the title which I read to you before. I have no other.

Q I don't mean the title, I mean those particular items. A Those particular items I merely have listed as one of the games in which that team participated in.

Q The South Orange Baseball Club? A I don't use any such designation. It was not necessary to designate them as any particular person, in making out my report. It is merely one of the games of the season.

Q Between, you said, the South Orange Baseball Club and an All Star team in which Babe Ruth participated? A That is right.

Q And that game was held at the Newark Bears' stadium? A That is right.

The Court: And it cost South Orange $2,900?

The Witness: No. That was the expense of the game. The receipts more than offset the expenses.

The Court: I see.

Q Well, what were the expenses? A Of that game?

Q Yes. A $2,912.

Q What for? A Salaries to the teams, exclusive of Ruth and Gehrig, $287; a guarantee to Ruth and Gehrig of 50% of the gate receipts, $1,719.35.

Q Who gave that guarantee? A I am not in a position to say.

Q Well, it is marked "Guarantee" on your book, isn't it? A What is that?

Q I say, it is marked "Guarantee" on your book? A That is correct.

Q That is a guarantee by the Board of Recreation Commissioners of South Orange? A The Commissioner would have to answer that.

The Court: He has already testified that —somebody has testified that this committee is composed of three—

Mr. Roche: Two.

The Court: —Recreation Commissioners, plus two outsiders.

Q Go on.

The Court: How many Recreation Commissioners are there?

Mr. Roche: Five, may it please the Court.

The Court: Then, the majority of the Recreation Commissioners is on this committee.

Mr. Roche: I think that is right.

Q Just go on, Mr. Henderson. A Newark International Stadium, 20% of the gate receipts for the cost of hiring the stadium, $687.90; the rest of the expenses were all minor, as you can see, all small expenses, such as umpires, ticket men, special police, score board men, ushers and so forth.

Q Can you explain why those items for holding a game at the Newark Bears' stadium appear on the books of account of the Recreation Commissioners of the Village of South Orange? A These are not the books of the Recreation Commissioners of the Village of South Orange.

Q Whose books are they? A They are the books of that baseball committee which was appointed at the beginning of the season.

Q By whom? A By the Recreation Commission of the Village of South Orange, according to a resolution I have in my hands.

Q To handle the money received from these games, is that right? A Right.

Q And am I correct in concluding that what you have told us means that out of the money received from these games in South Orange, $2,900 was spent to pay for a game at the Newark Bears' stadium. Is that right? A No, sir, entirely incorrect.

The Court: No, because the receipts for this game were more than the expenditures. How much were the recipts?

The Witness: $3,439.50.

Q Where did that go? A Where did that go? It went into the same account, naturally.

The Court: $3,400, you say?

The Witness: $3,439.50.

The Court: Well, they made about $500.

The Witness: $486.95.

The Court: About $500?

The Witness: Correct.

Q When was that game held? A October 12, 1930.

Q Was that a Sunday? A Yes, sir.

Q Was any game played at South Orange on that day? A I haven't any idea. I was not in South Orange.

Q Well, you are in charge of these gate receipts, don't you know whether there were any gate receipts on that day? A You asked me if there was any game in South Orange. I don't know. This team, of course, did not play in South Orange.

Q Did any other team play on those grounds that day? A I haven't the slightest idea.

Q Is that the only Sunday during the season that the South Orange Baseball Club played away from its home grounds? A That is correct—no—only Sunday, that is correct.

Q The only Sunday? A Yes.

The Court: Did they play away from their home grounds on week days?

The Witness: I believe they participated in one game in Brooklyn, a twilight game—I don't know whether it was a twilight game or whether they played it as night baseball.

The Court: Was that financed by the Recreation Commission?

The Witness: No, that was financed by the home team.

The Court: Did it go into that account?

The Witness: Did not affect it in the slightest.

Q Then, the South Orange Baseball Club played on the home grounds every Sunday during the season, except this one? A Except that one, and one day, one postponed game for rain.

Q Did they play during any week days? A Not in the season of 1930.

Q Not during 1930? A Not in 1930.

Q Did any other teams play there? A When?

Q During the season of 1930? A Any day during the season?

Q Yes. A Frequently.

Q When? A I am not in a position to give dates, but I witnessed various ball games of various times on that field and on Sunday in Cameron Field on a separate diamond. There are three diamonds there. There was always two other games going on of local South Orange clubs; also, the Seton Hall-St. Benedicts game was played in a week day on the same field.

Q During the week, is there any ball playing on that diamond, as a rule? A Oh, yes. I just stated there is frequently ball games there during the week.

The Court: How is it on Sunday? Is there any playing by any team other than the South Orange team on Sunday on this diamond?

The Witness: There has not been, to the best of my knowledge, this season.

Q How is permission obtained for playing a ball game on that diamond? A I have nothing to do with the procuring of such permission, so I cannot answer that.

Q Is there any other item of disbursements on that list showing how the $14,000 was spent? A No. Twenty-five games at $400 apiece, plus the $3,000, practically, for this one game, totals pretty nearly $14,000. The rest of it are all small items for advertising, which I read to you, and various equipments necessary to be purchased, base balls and so forth.

Q The equipment purchased was used only by the South Orange Baseball Club, is that right? A The only equipment, yes, sir, this year, that was purchased and paid out of this year's funds for base balls.

Q For the South Orange— A For the games participated in by that club on Sundays.

Q For no other purpose? A No other purpose.

Q About how much did that item amount to? A I only have a bill which I have paid for base balls, for the first six dozen base balls. I am not in a position to answer since then, merely they were purchased May 3rd; I have paid for no other base balls out of the fund.

Q No other equipment paid for out of the fund? A Nothing except trivial expense, like cash boxes, $6; posters.

Q Uniforms? A Uniforms were used from last year. I don't know when they were paid for, or how they were paid for. No new uniforms were purchased this year.

Q Do you know in whose name that account was carried last year? A Last year the title of the account of the South Orange Trust ledger is for "South Orange Baseball Club."

Q In the name of the South Orange Baseball Club? A Yes.

Q Who had charge of and control over it in 1929? A Harry J. Snell, Seymour Coeyman, treasurer.

Q How much were the total receipts in 1929? A I have no record of the total receipts in 1929. I had nothing to do with the organization.

Mr. Roche: That is all.

Cross examination by Mr. Fitzsimmons.

Q Mr.—(interrupted).

The Court: Now, just let me ask you, Mr. Henderson, you say that your total profit was $335, about?

The Witness: No. No, I didn't say total profit.

The Court: Well, the difference between disbursements and receipts.

The Witness: I said that there was a cash balance.

The Court: Well, what is the cash balance?

The Witness: $313.81 was cash balance turned over at the end of the season to the Village of South Orange.

The Court: Yes. And your cash balance from your Newark game was $500, about?

The Witness: That is correct.

The Court: What?

The Witness: That is right.

The Court: From that it is apparent, if they had not had this outside game, there would have been a deficit of about between $150 and $200. That is all.

Re-direct examination by Mr. Roche.

Q Did you start with a balance? A Yes, sir.

Q How much balance did you start with? A $736.76.

Q Then you started with $736 and ended with $313? A That is correct.

Q That is a loss of some $400? A That is correct.

Mr. Roche: That is all.

Re-cross examination by Mr. Fitzsimmons.

Q Mr. Henderson, you are employed by the Baseball Committee, are you not? A Yes, sir.

Q Recreation Commission? A Yes, sir.

Q And you are paid for your service? A Yes, sir.

Q You are not a member of that committee, are you? A Not of the committee, no.

Q No. All you do is to take in the money and deposit it and pay it out? A Correct.

Q And did you ever pay any check out without the approval of the Baseball Committee? A No, sir.

Q That is in accordance with a resolution which was deposited with the bank? A That is correct.

Q When was it deposited? When was it dated? A April 14, 1930.

Mr. Fitzsimmons: That is all.

Re-direct examination by Mr. Roche.

Q That resolution you have referred to was a resolution of the Board of Recreation Commissioners, was it not? A That is correct.

Re-cross examination by Mr. Fitzsimmons.

Q You have a letter from the Baseball Committee, have you not, authorizing the account to be opened in that manner? A That is right.

Mr. Fitzsimmons: That is all.

Mr. Roche: Is Mr. Frank Fenner here?

The Court: As I understand it, you said these moneys must be paid to and disbursed by the village treasurer?

Mr. Roche: Yes. If you could have the laws of 1911— May I get them?

The Court: I will get the Sergeant-at-Arms to get that.

Mr. Roche: And the Laws of 1914, 1911 and 1914.

FRANK FENNER, sworn for complainant, testified as follows:

Direct examination by Mr. Roche.

Q Mr. Fenner, you are the treasurer of South Orange? A Of the—

Q You are the treasurer of the Village of South Orange? A Yes, sir.

Q And for how many years have you been treasurer? A Twenty-four years.

Q Have you brought with you your records, showing the amount that you have received from the Board of Recreation Commissioners, during the years 1929 and 1930? A No—you mean, from the baseball?

Q Yes, any moneys received from the Board of Recreation Commissioners of the Village of South Orange—any moneys received? A You mean, from the appropriation account?

Q No, not appropriated by the Council. I don't mean that. I mean received directly from the Board of Recreation Commissioners? A No, I haven't any.

Q You have not any receipts? A No.

Q Is that right? A Yes.

Q You have no receipts from the Board of Recreation Commissioners? A Well, I have for this year.

Q How much? A This item of $313.81, I received that.

Q That is all? A Yes, sir.

Q That is all you have received this year?

The Court: Well, is that all you have received in any year?

The Witness: Well, I received from the Playground Commissioners small amounts for tennis and baseball on there—I think, about $65, this year.

Q Some $65 from odds and ends, tennis fees? A From the Playground Commission.

Q I beg your pardon? A From the Cameron Field Playground.

Q What was that for, fees paid for playing tennis, for instance? A Tennis and baseball.

Q Yes. Apart from any— A Apart from this $313.

Q Now, were these other fees received directly by you as they were taken in? A They were—they were given to me by Mr. Farrell.

Q Who is Mr. Farrell? A He is the instructor of the Cameron Field Playground.

Q The instructor? A Yes.

Q And it was he who gave you the fees? A He brought me the money.

Q Now, where did the $313.81 come from? A That came from Mr. Henderson, the bank.

Q From Mr. Henderson at the bank? A Yes.

The Court: Now, Mr. Roche, find out if he got any similar sums in 1929, 1928, while all this baseball has been going on.

Q Did you receive any similar sums from Mr. Henderson, or anybody else, at the bank, during the year 1929 and 1928? A No, sir, not that I know of.

Q You did not receive anything during those years? A No.

Q Mr. Fenner, did you bring with you a statement of the expenses to which the village has been put in connection with the maintaining and constructing of this baseball field? A I have the check from the—(interrupted).

Mr. Fitzsimmons: If the Court please, I object to any evidence as to the cost of equipping the Cameron Field Playground, which was turned over to the Commissioners by the Board of Trustees, and which has been used for the acquiring of a field and construction of it, such as back stop, fixing the diamond, and all other expenses which are ordinary expenses of the municipality and of the Commission, aside from this baseball, it is beyond the issue in this case.

The Court: What Mr. Roche is trying to find out, as I understand it, is how much it cost to improve this enclosed space. That is perfectly proper, and I will allow it, but, of course, you are not bringing in the cost of the rest of the playground.

Mr. Roche: Just this.

The Court: Just the enclosed space.

Mr. Roche: It is Plot No. 3 on the map, may it please the Court.

The Court: Yes.

Q Mr. Fenner, can you just give us the total expenditures for this one baseball field, during the years 1928, 1929 and 1930? A That is re-grading—

Q Yes, reconditioning the ground, building the back stops, bleachers, and all that sort of thing. Just summarize that for the three years? A That was $11,900—$11,924.42.

Q What year was that? A Well, that was for 1928 and '29. 1928 and 1929.

Q In 1928—(interrupted).

The Court: Well, how about 1930, or hasn't that account been closed yet?

Mr. Roche: I am going to ask him that, sir. I don't know.

Q How about 1930, Mr. Fenner? A I haven't the—1930, that, I think, would be paid out of the appropriation.

Q Haven't you any record of any expenses? A Not of that—those expenses.

Q Have you no—(interrupted).

The Court: Were there no expenses for this field in 1930 at all?

The Witness: Why, yes, sir.

The Court: Haven't you got any account there that would show it?

The Witness: I had such a short time to get this up, but I have got the—(interrupted).

Mr. Roche: If the Court please, Mr. Fitzsimmons, the village clerk, is here. I think he could probably assist Mr. Fenner in finding these statements.

Will you assist Mr. Fenner?

Mr. Fitzsimmons: (Village clerk.) Surely.

Mr. Roche: I might, in the meantime, call your Honor's attention to the provision of the Statute creating the Board of Recreation Commissioners: "All moneys received by the said Board shall be paid over to the city treasurer, and by him kept in a special fund

which shall be under the control of said Board and used only for the purpose of defraying the expenses of improving, maintaining, or policing the playgrounds and recreation places of said municipality, and other expenses of said Board," but the point is that all moneys received by said Board shall be paid over to the city treasurer.

The Court: Why does it say "city treasurer"? Does that Act apply to villages?

Mr. Roche: This is the Act under which they were appointed: "Municipality," it says, the town, township, borough, village, or other municipality of this State. It just uses the one word rather than put them all in.

The Court: All right.

Mr. Roche: And that was amended in P. L. 1914, page 148, but there is no change in it.

Mr. Fitzsimmons: (Village clerk.) Your Honor, I would say that the auditor of the village, Mr. Perry, prepared this statement from Mr. Fenner's record. The subpoena that came from Mr. Roche came a day or two ago, and it practically kept—

Mr. Roche: Monday, on Monday.

Mr. Fitzsimmons: (Village clerk.) Yes, but it necessitated practically a transcript of the records of the individual items for that time. Now, Mr. Perry has made up these sheets and has noted on them, "Cameron Field playground re-grading," he calls it sheet No. 1. The total cost of the re-grading of Cameron Field shows here to be $7,068.44.

The Court: Well, is that the enclosed portion?

Mr. Fitzsimmons: (Village clerk.) That is what—(interrupted).

The Court: What?

Mr. Fitzsimmons: (Village clerk.) I am just reading from these statements. I have not seen these before, your Honor. This says for January 30, 1928.

The Court: Now, I will tell you, Mr. Roche, you have some more witnesses, haven't you?

Mr. Roche: I think this will be all for us.

The Court: This will be the end of your case, but, of course, Mr. Fitzsimmons has some more.

Mr. Fitzsimmons: It will take another full day.

The Court: Now, we will stop here and let Mr. Fitzsimmons go over these things and get it straight, and you tell him what you want and he will have it here at the next session, and then we won't have to wait here and analyze it.

Mr. Roche: He has that in the subpoena. It is all in the subpoena.

The Court: Well, you help him out and tell him what you want. He is perfectly willing to give it to you.

Mr. Fitzsimmons: (Village clerk.) I have all the information in these sheets, but I cannot analyze it.

The Court: Of course, you cannot in such a short time.

Discussion.

Mr. Fitzsimmons: These figures, if the Court please, cover the whole re-grading of the piece taken over.

The Court: I know, I understand that, and all we are interested in is the fenced-in piece. We want to know how much that cost. Now, it seems to me that they did not get any profit from this baseball thing, except the $313 the last year.

Mr. Roche: They started with $736 and ended with $313.

Mr. Fitzsimmons: That was not the village money.

Mr. Roche: In a special account that should have been turned over to the treasurer.

Mr. Fitzsimmons: The $700 is money—(interrupted).

The Court: Don't you think it would be well, in the meantime, to pursue that? It seems they have been playing baseball for 1930, 1929, 1928—how long back?

Mr. Roche: That is all, those three years. We did not know they were playing in 1928 at all, these games, we only learned of it in 1929.

The Court: Very well, let us find out how much it cost in 1928, and who deposited the money and where, and who drew it out, and the same in 1929. We must have it all. If you are going to have it at all, you want it complete.

Mr. Roche: The same in 1930, wouldn't your Honor say?

The Court: Yes, the same in 1930.

Mr. Fitzsimmons: If the Court please—(interrupted).

The Court: Of course, it is all over your objection, I understand that, Mr. Fitzsimmons.

Mr. Fitzsimmons: I think you have a misunderstanding. In 1929, these games were not properly conducted by the Board of Recreation Commissioners, we admit that, and, after the protest of Mr. Kraeuter and Mr. Baird, the village was advised in an opinion by me that baseball was not being properly conducted in 1929 and 1928 in accordance with the Statute, and that in order to conduct them they must comply with the Act of 1911, and that is what was done in 1930.

The Court: Well, I want a statement of the baseball account since they began to charge admission; 1928, 1929 and 1930, I understand are the years.

Mr. Roche: Correct.

The Court: That is what I would like to find out, whatever account they are, it doesn't make any difference, and Mr. Fitzsimmons probably knows all about that, and he can bring it here the next time.

Now, Mr. Salmon will give you another date.

Mr. Fitzsimmons: If the Court please, I would like to make application, at this time, that, within a reasonable time, Mr. Baird, whose memory was very hazy this morning as to certain facts, which I think I have a right to put in evidence, deliver to me for inspection the stock books and check books

of the Meadow Land Society, so I can find out what this land cost him. The Court has admitted evidence as to its value.

The Court: I suppose you could serve him with a notice to produce.

Mr. Fitzsimmons: I would like to have a chance to examine him, within a reasonable time, before the next hearing.

The Court: Is there any objection to that?

Mr. Baird: I don't know of any objection, your Honor, if I have them. I haven't them in—(interrupted).

Mr. Roche: I object to the books and records of the Meadow Land Society on the ground that they are irrelevant and immaterial and outside the issues involved.

The Court: Well, I am letting all your evidence in over the violent objection of Mr. Fitzsimmons. Now, I don't see why I should not let his in over your objection. If you have got the books, show them to him. Whether or not it is immaterial is a matter of argument, of course.

SECOND DAY.

Transcript of shorthand notes of testimony taken in the above-entitled cause on January 2, 1931, at the office of Riker & Riker, Federal Trust Bldg., Newark, N. J., in the presence of Auguste Roche, Jr., for complainant; Thomas L. Fitzsimmons for defendant.

GEORGE H. BECKER, called on behalf of the defendants, being duly sworn according to law, deposes and says:

Direct examination by Mr. Fitzsimmons.

Q Mr. Becker, where do you live? A South Orange.

Q How long have you lived in South Orange? A Since birth, 39 years.

Q What is your business? A Operator and developer.

Q Real estate? A Indirectly.

Q How long have you been so engaged? A 22 years.

Mr. Roche: I am satisfied that Mr. Becker knows as much as anybody about real estate in the Village of South Orange. I am disposed to admit his qualifications.

Mr. Fitzsimmons: The qualifications of Mr. Becker as to his knowledge of real estate in the Village of South Orange are admitted.

Q Mr. Becker, were you a member of the governing body of the Village of South Orange at any time? A I was.

Q For how long? A Thirteen years.

Q As trustee or as village president? A As both.

Q Both? A As both.

Q How long were you trustee? A Nine years.

Q Beginning when? A 1916.

Q So that you became president of the Village of South Orange in 1925? A That is correct.

Q And you served for four years? A That is correct.

Q Were you a member of the governing body at the time the Village of South Orange purchased 78 acres of land, more or less, from the Meadowland Society? A 38. You said 78.

Q 38 acres, more or less? A I was.

Q Were you a member of the special committee appointed to negotiate that purchase? A I was.

Q Who was the chairman of that committee? A Philip N. Miller.

Q Were you present at some of the meetings which that committee had with officials of the Meadowland Society? A Only one to my knowledge.

Q Who represented the Meadowland Society in that meeting? A William T. Baird.

Q Did you discuss the matter of this purchase with the committee and with the Board of Trustees at any time around 1923 or '24? A On several occasions.

Q Was anything ever said concerning the playing of baseball on Sunday, at which admission should be charged? A Not to my knowledge.

Q Did Mr. Baird, or any one else, representing the Meadowland Society, ever make a statement that Sunday baseball should not be played at which admission should be charged? A No.

Q Mr. Becker, I show you Exhibit D. 1, purporting to be a map of the property purchased from the Meadowland Society, and some adjoining property owned by the Village of South Orange, and ask you if you made an appraisal of this property as of March, 1924? Did you make an appraisal of that? A I did.

Q Will you state what is your estimate of the value of that property as of that time, and tell how you arrived at it? A Do you wish me to tell what the property is worth from the angle of the developer, or what I think it is worth by a method of selling it off in separate parcels?

Q First, as to the method of selling it off in separate parcels, then I will follow that up later? A At the time the village was negotiating with Mr. Baird, Mr. Hunt, who was then president of the village, asked me what, in my opinion, the property was worth. I told him, after computing the acreage and the amount, of front feet then available and which could be produced, that I would be willing to pay approximately $250,000 for the property. I told Mr. Hunt and the Board of Trustees that it would undoubtedly bring more money if it was sold off in separate parcels, which, however, would require some length of time. In the operating business it is nationally recognized that a subdivider can only pay between twenty and forty per cent. of what he ultimately expects to get for the property. This, of course, would be according to the price of property, its location, the topography, the amount of streets already improved, in connection with the

property. This particular property contains approximately 40 acres. Ultimately an operator could expect to get about $18,000 an acre fully improved. I could afford to pay for this particular property, in my opinion, about $6,000 an acre. If we were to endeavor to compute the value of the property on a basis of existing frontage and the prospects or possibility of additional frontage, I would say that we could undoubtedly figure the property to be worth approximately $100,000 more.

Q Now, from the standpoint of buying this property in bulk, approximately 38 acres, in one sale, how much would you say that property is worth, or was worth in March, 1924, per acre? A Approximately $6,000 an acre. That is all an operator could afford to pay for it.

Q In March, 1924, Mr. Becker, were you a member of the South Orange Field Club? A Yes.

Q Were you on the Board of Governors of that club, or the Board of Directors? A Yes.

Q Were you aware of the fact that the South Orange Field Club had a lease on the property, dated July 1, 1923, to run for a period of ten years? A Yes.

Q Would the fact that a lease existed on this property in March, 1924, which had about nine years to run—would that affect the value of the property?

Mr. Roche: I object to that. I want the objection noted on the record, too. The question calls for a conclusion and is improper, unless it appears that such lease is on the property.

The Witness: That depends upon the terms of the lease. If the lease provided that the property was to be free of taxes for nine years, and that a rental could be charged sufficient to carry the property, it would materially affect the value. Of course, an operator being in the business of developing property would not want to wait nine years to start operations, and, therefore, it would greatly limit the sale of the property.

Q Mr. Becker, assuming that such lease existed whereby a golf club had the right to use this property for nine more years, what would be the value of this property as of March, 1924? A The average operator could not afford to purchase this property if such lease existed.

Q Now, Mr. Becker, you remember the old playground known as Cameron Field as it existed prior to the purchase of this property from the Meadowland Society? A I do.

Q Do you remember whether there was a backstop and grandstand on it? A There was.

Q Do you remember whether there was a fence around it, at least, on the side near to Mead street? A There was.

Q Do you remember whether baseball and football games were played there on Sundays? A They were played on Sundays.

Q Do you remember whether any admission was charged? A I don't remember.

Q Have you attended any of the baseball games that were played on the present Cameron Field during the season of 1929 and 1930? A On several occasions.

Q Were the games orderly conducted, or not? A The ones I attended were.

Q How far do you live from this property? A I live on the corner of Redmond Road and Wyoming avenue.

Q How far is that away, approximately, in blocks? A Two blocks.

Mr. Roche: Would it be half a mile or more?

The Witness: Approximately half a mile.

Q That is up on the mountain side, west of this property? A That is correct.

Q Does the noise from these teams interfere with your peace and quiet on Sunday afternoon in your home? A No.

Q Did you, while you were on the Board of Trustees, or as president of the village, receive any complaints concerning the playing of these games, from citizens? A I do not recall having ever received them.

Mr. Fitzsimmons: That is all.

Cross examination by Mr. Roche.

Q How many meetings between the representatives of the Meadow Land Society and the committee appointed by the village to acquire this land, did you attend? A One.

Q Do you recall, Mr. Becker, whether that was the first meeting or the last meeting? A It was both first and last. As I remember it, there was only one meeting held with the entire committee, consisting of Mr. Miller as chairman, Mr. Byrd and myself and Mr. Baird.

Q Do you remember the date of that meeting? A I do not.

Q Do you know how long before the contract was signed? A I don't recall that.

Q Were there further negotiations between Mr. Miller as chairman of the committee and the Meadow Land Society after that meeting? A There were.

Q Did you see the contract for the purchase and sale of the property at the time it was signed by the village? A I remember discussing the details of the same with the entire Board.

Q But you do not recall reading over the contract, do you? A It is not possible for me to remember.

Q The answer is that it is not possible for you to remember? A It is not possible for me to remember.

Q Mr. Hunt was at that time president of the village, was he not? A That is right.

Q Do you recall having examined the deed from the Meadow Land Society to the village before it was delivered pursuant to the contract? A No.

Q Mr. Becker, in making your estimate of the value of this real estate, have you estimated the frontage on the streets as they actually existed at the time of the sale? A I have.

Q And upon that basis what value do you fix upon the property? First, tell us how many feet the property has on Ridgewood Road. A The frontage on Ridgewood Road is divided into two sections; one, south of Mead street, being 573 feet in frontage, and the other north of Mead street, being 1,041 feet in frontage.

Q How much was that worth at the time, in your opinion, per foot? A In my opinion, this property was worth approximately $75 per front foot.

Q Now, what have you to say about the Mead street frontage? There is a frontage on both sides there. A The frontage on Mead street has three separate values: The portion between Ridgewood Road and Meadow Lane, in my opinion, is worth approximately $65 per front foot.

Q You say "is worth." Do you mean "was worth?" A Was worth.

Q Was worth in March, 1924? A That is right. Was worth, approximately, $65.

Q You are speaking of both sides of the street. A I mean both sides of the street.

Q On one side there is some 520 feet, and on the other side 473 feet. You have to take off some depth here. A Yes. We would have to take off, approximately, 150.

Q Take off 150 feet on each side. That is west of the property. A The portion on the south side of Mead street between the brook and the Lackawanna Railroad was worth, approximately, $50 per front foot. The portion on the north side between the brook and the west line of the former Field Club property was worth, approximately, $40 per front foot.

Q On the west side—on the north side? A On the north side. It is three feet below the sidewalk.

Q $40? A $40.

Q Why do you put less on that than on the opposite side? A Because of the fact that it would require a fill of approximately three feet.

Q That covers Mead street. How about the Meadowbrook Lane? A The property on the west side of Meadowbrook Lane between Mead street and Meadowbrook Place, totaling, approxi-

mately, 1,020, was worth, in my opinion, $50 per front foot.

Q That is 1,020 feet on each side? A No. On the other side, there is nothing here. The railroad track runs along here. I said on the west side.

Q On the west side, $50 a foot. What have you to say about the east side of Meadowbrook Lane? A I was unable to place any value on the property on the east side of Meadowbrook Lane, only by using it in conjunction with a development of the entire property between Meadowbrook place and Mead street, and between the railroad and the line of the Rahway River.

Q Do you, Mr. Becker, place no value at all on the land fronting on the east side of Meadowbrook Lane? A As I have said, this property must be used in connection with the development of the entire plot before mentioned, in order to secure the greatest amount of value of the same.

Q We have covered all but Meadowbrook place. What have you to say about the frontage on Meadowbrook place? A The frontage on Meadowbrook place, in my opinion, was worth $40 per front foot.

Q In addition to these values per front foot which you have set on the property, how do you value the interior land which is not, under the present layout, immediately susceptible of development? How do you arrive at the value for the interior land? A As I have stated before, a developer in placing a value upon a certain piece of property, takes many things into consideration, and in valuing the interior land he must take into consideration the topography of

same. If it is low, he must see a chance of obtaining fill from some other point on the property which he proposes developing. All of the interior land has a considerable value, but an operator would be able to get more out of it than any other person, and it would all depend upon the ability to have the streets put through by the municipality.

Q Wouldn't you say, then, that land is worth more when you have taken into consideration the frontages, to an average operator or developer, than $250,000, which you put on it? A I have said what I believe the value of the frontage on these various streets to be. However, an operator could not afford to pay these prices if he were to purchase same in bulk. In other words, I could not afford to pay $75 per front foot for the 1,600 feet frontage on Ridgewood Road.

Q Land has sold, on Ridgewood Road in the immediate vicinity, for more than that, hasn't it, Mr. Becker? A I believe that is correct.

Q Do you know what land actually sold for in 1924 on Ridgewood Road? A The only land I recall being sold in 1924 was the land purchased by the Baldwin Construction Company, and I understood that they figured the land was purchased by them at a price approximating $75 per front foot.

Q The sale you refer to was a tract of many acres, was it not? A It consisted of approximately ten or fifteen acres.

Q Do you know what Mr. Eisele, who lives on Ridgewood Road, adjoining the premises in question on the north, paid for his lot? A I do not.

Q Mr. Becker, in your estimation of the value of this land, you have considered only the tracts

which you have thus far referred to; am I right? A That is all.

Q Now, did you know that in addition to the tracts to which you have already referred, six other tracts were conveyed by the Meadow Land Society to the Village of South Orange in March, 1924, in the same deed? A I understood that we had purchased some additional land fronting on Clark street and Meeker street; there were some odd parcels there we considered selling at the time.

Q I show you Exhibit C. 1, the tract marked 5 has about 700 feet on Clark street, with a depth varying from 105 to 150, I think it is. A I remember the property, I thought it was separate from this. I don't see it on this map at all.

Q Also this tract marked 6, which is the whole block between Clark and Meeker streets. A All right.

Q Also the 7th tract. A Yes. That is this one.

Q That is a 50-foot lot, is it not? A That is correct, 8 is a 50-foot lot.

Q 150 feet deep. Eight is a 50-foot lot 150 feet deep, and 9 is two 50-foot lots. It is 100 feet across instead of 50 feet. It is two 50-foot lots. A That is right.

Q That is 9 and 10, which is away over here (indicating). It is not on this map. The 10th tract was right there (indicating). Those six additional tracts are worth about how much, or were worth how much? A Altogether?

Q Altogether, yes. A Approximately, $55,000.

Q Approximately, $55,000? A Yes.

Q Mr. Becker, I show you six photographs, and ask you if they are true representations of parts of the tract in question? A They are.

Mr. Roche: We will have them marked for identification.

Q This land is very centrally located, is it not, Mr. Becker? A Yes, very.

Q Convenient to the railroad stations? A Yes.

Q The Mountain Station and the South Orange Station? A Yes.

Q And near the center of the village? A Yes.

Q And readily susceptible of development? A Yes.

Q Don't you think, Mr. Becker, that your estimate of $6,000 per acre is low? Don't you think the average builder would pay more than that? A Not if he were to purchase the entire property. I would be willing to pay much more than $6,000 an acre for certain parcels.

Q Well, every parcel has a frontage, has it not, and every parcel is easily developed; isn't that so? A Every parcel has a frontage, but it will require considerable planning, and so forth, to make the interior of each parcel available.

Q Now, Mr. Becker, about this lease to which your attention has been called, when you were on the Board of Trustees of the village, do you recall any complaints about golf being played on this property by the Field Club? A Yes.

Q And do you know whether the Village of South Orange forbade, or was about to forbid, the playing of golf there?

Mr. Fitzsimmons: I object to the question, and ask that my objection be noted, on the ground that in the absence of any official action by the governing body, the evidence is

not admissible. Mr. Becker is not competent to say what the Board intended to do.

Q Can you answer? A Yes.

Q Answer it, over the objection.

Mr. Fitzsimmons: First, had they forbade it. He asked it in two parts.

A On a number of occasions, the Board of Trustees discussed the advisability of prohibiting the playing of golf on this property.

Q Was it ever prohibited by the village?

Mr. Fitzsimmons: Up to 1924.

Q (Continuing.) —up to 1924, or subsequently? A I believe so.

Q You do not know of your own knowledge whether it was prohibited or not? A I do not know. I think they did after I was off the Board.

Q Is that right? A Yes. I am not positive about it.

Q Do you know, as a matter of fact, when the Field Club stopped playing golf there? Are they playing golf there now? A I think about 1927.

Q Are they playing golf there now? A No.

Q How long has the Field Club been off the property? A Approximately, three years.

Q Have you ever seen the Field Club lease? A I listened to the reading of certain provisions in it.

Q At your home on Wyoming avenue, at the corner of Redmond, do you hear sounds of baseball games on Sunday afternoons? A No.

Q Have you ever heard any noise from the baseball games on Sunday afternoons? A I don't recall ever having heard them.

Mr. Roche: That is all.

Re-direct examination by Mr. Fitzsimmons.

Q Mr. Becker, you are familiar with the character of the neighborhood surrounding this property on the north and west, are you not—the type of development? A I am.

Q Would you say that this property, purchased from the Meadow Land Society, would lend itself to the same type of development as exists to the north and to the west of it? A No.

Q In your judgment, as a developer, what type of development would this property attract? A The property fronting on Ridgewood Road would attract a development somewhat similar to the type of houses existing on the west side of Ridgewood Road. The balance of the property, in my opinion, would have to be developed in a type of development similar to the University Courts development which I developed on South Orange avenue opposite Seton Hall College.

Mr. Fitzsimmons: That is all.

Re-cross examination by Mr. Roche.

Q What kind of development is that? A That development is a development of 60 to 80 feet plots with houses built thereon, to cost from fifteen to twenty thousand dollars.

Q Single family houses? A Single family houses.

Q There is more money in that type of development to the operator and developer, is there not, Mr. Becker, than in the larger and more expensive types which you have described as being along Ridgewood Road? A That would depend entirely upon the rapidity with which the development moved.

Q As a general rule, there is more money in a small single family house than there is in a large residence? A That has not been my experience. I have found that there is more money to be made both in the land and in the construction of a home in a higher priced development.

Subscribed and sworn to before me
on this day of January, 1931.

THIRD DAY.

January 8, 1931.

Transcript of shorthand notes of testimony taken in the above-entitled cause in the presence of the Court and counsel as before.

Mr. Roche: I will recall Mr. Baird for the purpose of questioning him.

WILLIAM T. BAIRD, recalled.

The Court: Mr. Baird has been sworn.

Direct examination by Mr. Roche.

Q Mr. Baird, I think you stated at the last hearing that you were the owner of about eighty

per cent. of the stock of the Meadow Land Society. Do you want to correct that statement? A Yes, I would like to. At the time the society was dissolved, I owned, or controlled, about eighty per cent.—I voted a little over eighty per cent., and in the years that elapsed it gradually—it is fixed in my mind—that eighty per cent. was fixed in my mind, and that was the figure that I stated, but Mr. Fitzsimmons at the last hearing asked me about the records, and I then recollected that in my house somewhere were the records of the society, and, on hunting them up, I found that, while that figure was correct as owning or controlling, it was not actually correct as to my owning of stock.

Q About how much did you actually own? A About sixty per cent.

Q Mr. Baird, something was said at the last hearing, about your protest to the village authoritions, when you ascertained that these baseball games were going on, to which admission was charged. I show you a copy of a letter, addressed to Mr. Harry J. Schnell, president, Village Hall, South Orange, New Jersey, dated December 2, 1929, signed William T. Baird, and I ask you if that is a true copy of your letter of protest? A Yes, it is.

Mr. Roche: There is no objection, if the Court please, to that being offered and received in evidence.

The Court: Let it be marked.

(Letter dated December 2, 1929, marked Exhibit C. 10.)

Q On or about June 16, 1930, you caused your attorneys, Harrison & Roche, to write another

letter of protest to Mr. Carleton Greene, Chairman of the Board of Recreation Commissioners? A I did.

Q This is a copy of that letter (showing witness letter)? A Yes.

Mr. Roche: There is no objection, if the Court please, to the offer and receipt of this copy of the letter of Harrison & Roche, dated June 16, 1930, to Carleton Greene, Chairman of the Board of Recreation Commissioners.

(Letter of June 16, 1930, marked Exhibit C. 11.)

Mr. Roche: That is all from Mr. Baird.

Cross examination by Mr. Fitzsimmons.

Q Now, Mr. Baird, you say that you were mistaken in your idea that you owned eighty per cent. of this stock, and now you say it was sixty per cent., is that right? A (Witness nods yes.)

Q Are you sure it was sixty per cent.? A I said about.

Q Now, I show you a book called the journal of the Meadow Land Society and ask you is that what it purports to be, namely the financial book of the society? A Yes, it has "journal" on the outside, but it is really a cash book.

Q Cash book. Now, I will refer you to page nine of this cash book and ask you to tell how many shares are set opposite the name William T. Baird? A There is two forty-five there, and then—

Q Just a minute. A —you will find, if I may explain—(interrupted).

Q Just a minute. I will ask the questions. Two forty-five? A Yes.

Q And the cash book shows that you received how much money for the two hundred and forty-five shares? A $25,112.50.

Q $25,112.50. Now, at the bottom of the page, opposite numeral 16, how many shares for Mr. W. T. Baird? A There is one.

Q And how much did you receive for it? A $102.50.

Q $102.50. And on page 11 of the cash book under number 31, I ask you how many shares are set there for Mr. Baird? A There is two.

Q And how much did you receive for it? A Two hundred five.

Q $205? Now, the amount of money which you just testified to as receiving for the stock, that was the initial liquidating dividend, was it not? A Well, I didn't look particularly at that.

Q In May, 1924? A If that is the first payment, it was the initial, yes.

Q First payment. That is what it says here on page 9. A Yes.

Q And, subsequently, there was a final dividend, was there not? A Yes.

Q Do you know, Mr. Baird, how many shares were issued and outstanding at the time this corporation was dissolved in 1924? A 718.

Q 718. And you had 248 shares in your name at that time, isn't that right? A I think that is right.

Q That is not sixty per cent., is it? A No, but I had sixty per cent.—

Q Just a minute. A Well.

Q That is not sixty per cent. of the stock issued and outstanding, is it? A No, but that don't represent what I own.

Q Just a minute. It is about forty per cent., isn't it, a little less than forty per cent.? A Perhaps so.

Q How many shares of stock did you purchase, originally, Mr. Baird, back in 1902 or 1903, I think was the first time you purchased any stock? A I think it was two shares.

Q Two shares, and you paid $50 a share for it, did you not? A Yes.

Q Right. Now, subsequently you purchased other stock. Is that true? A Yes.

Q Do you remember purchasing stock—do you remember what you paid, the average price you paid for stock in these—

Mr. Roche: Of course, I object, may it please the Court, I did not want to interrupt Mr. Fitzsimmons, but it seems to me the price paid for this stock of Mr. Baird's is very immaterial to the issue. We are only concerned here, it seems to me, in determining what the village paid for the land, as compared to the reasonable market value of the land at that time.

The Court: That seems to be the issue.

Mr. Roche: Now, how this is part of the issue, I don't know, and I object to it for that reason.

Mr. Fitzsimmons: May it please the Court, Mr. Roche objected at the last hearing to this evidence, and your Honor overruled the objection and allowed the question, and at page 31 when Mr. Baird could not remember any of this information, the Court said, "Have you got a record of how many shares you bought and what you paid for the total," admitting the evidence. Now, Mr.

Baird could not remember at that time, what he paid for the stock. The Court had determined it was evidential, at least, should be admitted.

The Court: No, I didn't say it was evidential.

Mr. Fitzsimmons: I say, at least, it should be admitted.

The Court: I will admit it, but I will say, as I said at the last hearing, I think it is immaterial.

Mr. Fitzsimmons: That may be, but I am trying to develop something and later the Court may determine it is evidential.

The Court: All right.

Mr. Fitzsimmons: I presume I can continue?

The Court: Yes.

Q Do you remember, Mr. Baird, what was the average price you paid for the balance of your stock? A No, I do not.

Q Would you say it was more than $35 a share? A Oh, yes, yes.

Q What? A I don't know. I know it was more than that.

Q Well, now, Mr. Baird, I show you a letter dated October 3, 1921, written on the stationery of Baird Rubber Trading Company, addressed to Mr. Charles H. Ingersoll, and ask you if you signed that letter? A Yes, I did.

Mr. Fitzsimmons: I want to offer that letter in evidence.

Mr. Roche: Well, I object, may it please the Court, for the same reason that I am objecting to the whole line.

The Court: It should be marked for identification.

Mr. Fitzsimmons: Mark it for identification D. 1.

(Letter of October 3rd marked Exhibit D. 1 for identification.)

Q Mr. Baird, in that letter you state you have paid—(interrupted).

The Court: You cannot—it is not in evidence, yet. You have got to introduce it before you read it.

Mr. Fitzsimmons: I will offer it in evidence. I now offer it in evidence.

The Court: It is not the proper time to offer it in evidence. You must get Mr. Ingersoll to say he received it.

Mr. Fitzsimmons: Mr. Baird has admitted he wrote the letter.

The Court: It is marked for identification.

Q Well, now, Mr. Baird, did you write Mr. Ingersoll that you paid all of the other stockholders thirty-five dollars a share and that you could not pay him any more?

Mr. Roche: I object, if the Court please.

The Court: I will sustain the objection.

Q I show you a letter dated April 25, 1921, addressed to Mr. Ingersoll and ask you if you wrote that letter? A Village of South Orange, yes.

Mr. Fitzsimmons: Mark it for identification.

(Letter of April 25, 1921, marked D. 2 for identification.)

Q Mr. Baird, did you ever make the statement to the stockholders of the Meadow Land Society that you were acquiring the stock for the purpose of turning it over to either the Essex County Park Commission, the land, or the Village of South Orange? A I cannot recollect back there now what I did then.

Q Didn't you make that statement in this letter? A Yes.

Q Why did you just say you never made the statement?

The Court: You cannot cross examine him on the letter until it is in evidence.

Mr. Fitzsimmons: I can test the credibility of this witness. He makes the statement right here now that he never made the statement, after reading this letter.

The Witness: Excuse me, but I did not—

The Court: Wait a minute. You cannot cross examine him on the letter until it is in evidence. You can ask him if he made the statement and then—(interrupted).

Q Do you still say that you never made that statement? A No, I did not say that. I said I could not remember.

Q Did you just read your letter? A Yes. You asked me about other letters.

Q You have just read, Mr. Baird, the last letter which I showed you, addressed to Mr.

Ingersoll, April 25, 1921. I show it to you again, to refresh your memory.

The Court: You need not answer the question. I have already explained when the letter is in evidence you can cross examine on it.

Mr. Fitzsimmons: It seems to me the Court should be interested in having this man tell the truth. The evidence has been admitted that he denied, in open court, that he has paid more than fifty dollars a share. We have evidence that he paid thirty-five.

The Witness: Excuse me, I did not.

The Court: Now, wait a minute. Do not answer the question.

Q Mr. Baird, do you know how much you paid, the aggregate price you paid for your 248 shares of stock? A No.

Q Do you know how much you have received for your holdings in the Meadow Land Society? A No.

Q Have you tried to find out? A I have no record to find out.

Mr. Fitzsimmons: Have you got that newspaper clipping that was in evidence?

(Clipping produced by Mr. Roche.)

Q Now, Mr. Baird, most of the stock which you acquired in the Meadow Land Society, outside of your original purchase, was obtained in 1921, 1922 and 1923, was it not, the greater portion of it? A I think so.

Q You think so. At the time that you were acquiring this stock, 1921, 1922 and 1923, did you

tell any of the stockholders, to whom you wrote for the stock, that this property was worth between four and five hundred thousand dollars, and that it was the intention of the directors of the society to sell the property to a developer? A No.

Q No. Some of this stock which you acquired, Mr. Baird was obtained by you at thirty-five dollars a share in 1923, when you were negotiating with the Village of South Orange for a price which brought more than one hundred dollars a share, weren't you? A I don't think so.

Q You don't think so? A No.

Q Do you know when you acquired the stock from Lucy Yaw, trustee? A I never acquired any.

Q You never acquired any? A It was on the final list.

Q What is that? A Her name appears on the final list of stockholders.

Q You acquired stock from H. H. Hart, did you not? A No. His name is on the final list—or, the estate name.

Q When did you acquire Mr. Ingersoll's stock? A I don't remember.

Mr. Fitzsimmons: Is that stock book here?

(Book produced by Mr. Roche.)

Q Mr. Baird, is this the stock book of the Meadow Land Society? A Yes.

Q I will ask you to look at the assignment attached to stock certificate 226, and ask when that assignment was executed, dated right here (indicating)? A Well, the transfer is signed December 22nd—December 16, 1922.

Q December 16, 1922? A Yes.

Q And you had it transferred in 1924? A I don't remember.

Q Yes. It was dated 1922. And, at that time, weren't you in conference with Mr. Miller concerning the sale of this property to the Village of South Orange? A No.

Q You were not? A No.

Q Do you remember when you acquired the stock from the James E. Pulsford Estate? A No. I remember that it took them two years to clear it up.

Q In writing to the Pulsfords did you tell them the stock was worth in excess of $500 a share, based upon what you thought the property was worth? A I didn't know anything about the worth of the property at that time.

Q Isn't it a fact that, in 1922, you wrote letters to stockholders, stating that this stock was worthless, had no market value? A Yes.

Q But you did not tell them that the corporation had assets in excess of $400,000, did you? A No.

Q No. Do you remember buying some stock from Allerton D. Hitch? A No, I can't remember. If you want me to refer to the list I have here, I can probably tell you.

Q On the list which you gave me, Mr. Baird, you stated, "Bought five shares of stock from Mr. Mandeville." A I don't remember giving you a list.

Q You don't remember giving me a list? Well, your attorney gave it to me. A What was your question?

Q Do you remember buying some stock from Mr. Mandeville? A If your Honor please, I don't know this list.

Q Well, Mr. Baird, your attorney gave it to me. A I will refer to a list of my own, if you will permit me to.

Q All right.

Mr. Fitzsimmons: Didn't you give me this?

Mr. Roche: (Nods yes.)

Mr. Fitzsimmons: Sure.

Q It is on your list. A Excuse me, if you will ask me that question again?

Q I say, did you buy any stock from Mr. Mandeville? A No, I bought some from Mrs. Mandeville.

Q Or, Mrs. Mandeville. How many shares of stock? A I bought it from—as I understood it, it was her husband's estate.

Q And when did you buy that? A I don't know; I don't remember.

Q Do you remember, Mr. Baird, at what price the lands of the Meadow Land Society were carried on the books of the corporation, each year, from 1911 until you sold it? A No.

Q I show you a treasurer's statement, dated April 1, 1911, on page 103 of the cash book, and ask you to give us the items, the amounts at which this land was carried, 1911? A $28,205.

Q That is including improvements—was it not? A Including improvements, yes.

Q How much was it without improvements? A $22,370.

Q Now, I will show you a treasurer's statement, dated April 1, 1912, on page 107, and ask you how much land was carried there, first, as to land itself, and, second, with the improvements. A $22,370 and $7,700.

Q Making a total. A $30,070.

Q $30,070. I show you a treasurer's statement, April 1, 1913, on page 111 of the journal and ask you to give us the same information. A $22,370 and $7,769. The costs of the land were never changed, so far as I know.

Q And also the treasurer's statement for April 1, 1914, practically the same, is it not? A Excuse me. You will find it the same right through.

Q The same right through to 1924? A Certainly.

The Court: Are these books introduced in evidence?

Mr. Roche: No, sir.

The Court: Why are you examining on them?

Mr. Fitzsimmons: Merely showing him statements and asking him about them. There has been no objection.

The Court: No, there was no objection.

Mr. Roche: I made a general objection, may it please the Court, to this line of examination.

The Court: That is not the way to prove these things.

Mr. Fitzsimmons: Counsel did not object.

Mr. Roche: I object to it, if the Court please.

The Court: Well, I will sustain the objection, then.

Mr. Fitzsimmons: That is all.

Re-direct examination by Mr. Roche.

Q Mr. Baird, you wanted to explain your statement that the record shows you to be the owner of 248 shares of stock. That is less than forty per cent. of the total amount of stock? A Yes.

Q That you stated you were, in fact, the owner of about sixty per cent. of the stock? A Yes. I had placed for convenience quite a—about 150 or 160 shares in my children's names.

Q So that, with the stock standing in your own name, amounted to approximately sixty per cent. A Yes. And then I held some stock that had not been transferred.

Q Yes? A Not much.

Q I think you were asked if you wrote a letter, stating that the stock was valueless. Do you recall whether you were asked that? A No.

The Court: What do you mean by "No?" You never wrote such a letter?

The Witness: I thought he asked me if I had been asked that question. I thought he meant if I had been asked that question.

Q Didn't Mr. Fitzsimmons ask you if you wrote a letter to the effect that the stock of the Meadow Land Society was valueless? A I never wrote such a letter.

Q Did you make special efforts to acquire this stock for yourself, this stock of the Meadow Land Society? What was your object?

The Court: He has not answered the question.

Mr. Roche: I didn't know whether he understood the question.

The Court: You were asked if you made special effort to acquire the stock.

The Witness: Yes, I did.

Q For what purpose? A My first purpose, my principal purpose was to get rid of those estates. We could not hold meetings. I acquired stock from thirty-seven estates. There were forty-seven estates when I started in to acquire the stock. We could not hold meetings in '21 or '22, we could not get a majority.

Q And how long did it take you to get this stock together which had been owned by estates? A About three or four years.

Q Did you ever make efforts to acquire the stock cheaply? Was that your purpose? A That was not my purpose, setting out. Naturally, I did not pay any more for it than I had to.

Q When was this land acquired by the Meadow Land Society, do you know, Mr. Baird? A At different times. The largest portion was acquired about 1990.

Q 1890? A I mean, 1890.

Q About 1890? A About 1890.

Q And the values carried on the books are cost values as of that date? A Yes.

Q As of that date? A Yes, that is that portion of it. Then, later on, there were other portions of it, and there were—they were always carried at the original cost price.

Q Yes. Mr. Baird, why didn't you protest about these baseball games before December 2, 1929? A Why, the first year there was no reason to protest. I supposed their past play was continuing. There was no confusion, there

was practically no enclosure, no gate money being asked for, and I supposed it was the same kind of games that they had been playing there for years. We wanted them to play and have an enjoyable time, the young men of the village, and, during 1928 there was no confusion and no noise. The same thing applied to the early part of 1929, there was no—practically no enclosure, an open field.

Q When did you first ascertain that professional baseball games to which admission was charged, were being held— A Not until—

Q —on these grounds. A —the Fall of 1929.

Q And how soon thereafter did you write your letter, which has been offered in evidence? How soon? You say in the Fall you ascertained that these games were being held, and I ask you how soon after you ascertained that did you write the letter? A I think it was about a couple of months.

Q And, in the meantime, had you protested to anyone about the games? A I talked to various friends in the village about it, and I talked to one or two of the village trustees.

Mr. Roche: That is all.

Re-cross examination by Mr. Fitzsimmons.

Q Mr. Baird, you say that you did not want to pay any more than you had to for this stock. Did you, as president of this corporation, tell the executors of these various estates that this land was worth four to five hundred thousand dollars and that there were only 718 shares outstanding? A I was not president of the corporation until 1923, I think it was.

Q In your testimony, at the last hearing, you said 1918 or 1919. A No. As president? No.

Q Well, did you as a director—well, why didn't you as a director tell the executors of these various estates, holding stock in this corporation that the land was worth between four and five hundred thousand dollars, and that there were only 718 shares outstanding? A Well, in the first place, when I was buying the stock, the land was not worth more than thirty to thirty-five dollars a foot.

Q When was that? A Along in 1921 or 1922.

Q 1921 and 1922? A I offered them thirty-five dollars a foot about that time.

Q And, in 1924, it jumped? A Yes, it did.

Q To four to five hundred thousand dollars? A No, not to four or five hundred a foot.

Q No, I mean, for the whole thing. Now, you stated, before, that you never told any stockholders that it was your intention to turn this property over to the Village of South Orange, am I correct? A No, I never did. I have a recollection—I know I did talk to Mr. Sinclair, several times, about turning it over to the Essex County Park Commission, and he told me the last time I talked to him, I think was some time along 1921 or 1922, and he told me that they had then decided that they would not take over any more isolated property, but I would have been glad to turn my shares over to the Essex County Park, but I never had any thought that the village would want to buy it, did not think that they could afford it.

Q Did you at that time— Am I correct in my recollection that you did not tell any of the stockholders that you were going to turn this over to the Village of South Orange when you asked

them to sell their stock to you? A No, I could not promise anything. I could promise my own stock, perhaps, but—

Q Yes. A —I never promised that the Society would turn the properties over to the Village of South Orange.

Q Now, I will show you a letter dated November 15, 1927, addressed to the Board of Trustees of the Village of South Orange and ask you if you wrote that letter? A Yes.

Mr. Fitzsimmons: Any objection to this going in?

Mr. Roche: Yes, I object.

The Court: You will have to mark it for identification.

Mr. Fitzsimmons: All right.

(Letter dated November 15, 1927, marked D. 3 for identification.)

Mr. Fitzsimmons: I will offer the letter in evidence.

The Court: Well, you cannot do it now. You have got to produce the man who received the letter.

Mr. Fitzsimmons: To save time, instead of putting Mr. Baird back.

Mr. Roche: I object to it.

The Court: Mr. Roche objects and you cannot introduce it in evidence.

Mr. Fitzsimmons: I will call him back again. I thought as long as he was on there we could get rid of him.

Mr. Roche: Is that all from Mr. Baird?

Mr. Fitzsimmons. That is all.

The Court: That is all, Mr. Baird.

Mr. Roche: Mr. Fitzsimmons.

MICHAEL A. FITZSIMMONS, sworn for defendants.

Direct examination by Mr. Roche.

Q Mr. Fitzsimmons, you are the clerk of the Village of South Orange? A Yes.

Q And you attended here at the last hearing, when Mr. Fenner, the treasurer, was on the stand? A Yes.

Q And at the Court's request have you brought the records showing the cost of improving the baseball field? A I have brought a transcript taken from the record.

Q Yes. Will you tell us what the figures show, please? A I have a copy of an ordinance, which was passed by the Board of Trustees of the Village of South Orange on August 20, 1928, which provides for the appropriation of money for the purpose of paying the cost and expense for the improvement of land bounded by Mead street, the east branch of the Rahway River, northerly boundary line of Cameron Field and the lands of the Delaware, Lackawanna & Western Railroad Company, Cameron Field playground, property of the Village of South Orange. This ordinance appropriates the sum of $11,000.

Q Well, that land which you have just described, is that part of the ball field which was acquired from the Meadow Land Society, is it not? A Yes.

Q I find—

The Court: Well, now, wait a minute. Is this map in evidence?

Mr. Roche: It has not been offered yet. I have no objection to it.

The Court: Do you want to offer it. Who is to offer it?

Mr. Fitzsimmons: I am going to offer it in our case.

The Court: Suppose we put it in now? Mr. Fitzsimmons can talk more intelligently. Let it be marked.

(Map marked Exhibit D. 4.)

Mr. Roche: The tract to which Mr. Fitzsimmons has just referred to, if it please the Court, is this one marked C in pink?

The Court: Yes.

Mr. Roche: The railroad is here, Mead street, the old Rahway River, and this is the old Cameron Field.

Q Go right ahead. A I find from the treasurer's record, disbursements in connection with the improvement of that portion described noted "Item One," removing the—(interrupted).

The Court: Do we want all the items or just the total?

Mr. Roche: You didn't tell us what the total appropriation was.

The Witness: The total appropriation was $11,000.

Mr. Roche: Well, I would like to have the items.

The Court: All right.

The Witness: Item 1, removing 12 trees, 404 feet 30 inches concrete pipe at $2.10 per foot; taking down 404 feet of fence on

northerly part of old field; carting top soil and clay from old field, Club Pond filling and grading, installing drains under baseball diamond, 210 feet tarvia walk 15 inches wide, planting 365 plants and trees, seeds, fertilizing and labor, total $7,157.98.

Item 2, cost of diamond, $933.39.

Item 3, baseball backstop, $550; stands made to order $263; portable stands $667.70, five sections; electric lights $75; wire fence along Mead street, $663.21, to the canvas for fence, $316.80.

Item 3, totals $2,535.71.

The total items 1, 2 and 3, the total cost, $10,627.03.

Q Yes.

Mr. Roche: Have you any objection to the offer of these minutes of March, 1928?

Mr. Fitzsimmons: I will consent to the—(interrupted).

The Court: To what?

Mr. Fitzsimmons: To the offer of Mr. Roche to put the minutes of these meetings in evidence, in the manner in which he desires to present them, but I object to their sufficiency.

The Court: What are they? What is this offer?

Mr. Roche: Well, may it please the Court, the only minutes which have been offered so far are the minutes of the meeting held January 21, 1924, at which meeting the trustees entered into the agreement with the Meadow Land Society for these lands.

Now, subsequently, in March, 1928, the trustees transferred that portion of the lands in question which I have indicated at this C on the map, and shaded in pink, to the Board of Recreation Commissioners, and I just want to get the record in showing that transfer.

Mr. Fitzsimmons: I have no objection.

The Court: Mr. Fitzsimmons does not object to the form of the offer, but he objects, on what ground?

Mr. Fitzsimmons: I withdraw the objection, now.

The Court: All right, by consent let it go in.

(Minutes marked C. 12.)

Mr. Roche: That is all, Mr. Fitzsimmons.

The Court: Now, Mr. Fitzsimmons was asked to furnish us with more details as to the way in which this fund for the professional baseball team was handled.

Mr. Roche: If the Court please, I do not think your Honor meant Mr. Fitzsimmons. Mr. Schnell is here, who handled that fund in 1928.

Mr. Fitzsimmons: 1929.

Mr. Roche: 1929. There was no fund in 1928 and no games were played.

The Court: Oh, I thought Mr. Fitzsimmons was going to help us out.

Mr. Roche: No, he cannot. That is true, is it not, Mr. Fitzsimmons?

The Witness: Yes. The only evidence I have from the treasurer's books is in reference—I made a note on this statement that I

find and, I think—December 2nd "Received from Harold G. Henderson, acting for Cameron Field Playground Commission, proceeds from baseball games $313.81." That is December 2, 1930.

Mr. Roche: We have that in.

The Witness: That is the only record.

The Court: Yes, we had that. All right. That is going to be put in by somebody else.

Mr. Roche: Yes.

The Court: Do you want to cross examine?

Mr. Fitzsimmons: No, no questions.

The Court: That is all, Mr. Fitzsimmons.

Mr. Roche: Mr. Schnell, will you take your records with you, please.

HARRY J. SCHNELL, recalled.

Direct examination by Mr. Roche.

Q Mr. Schnell, you are the present president of the Village of South Orange? A I am.

Q And you have been such for a year or more, a year or two? A Since the 1st of May, 1929.

Q Yes. Now, in the year 1929, did you have any connection with this so-called South Orange Base Ball Club? A I was the treasurer for a part of that time.

Q And did you handle the funds taken in at the gates? A I did not. The funds were handled by the assistant treasurer. The detail of the handling of the funds were not looked after by me.

Q Were you at that time a member of the Board of Recreation Commissioners— A I was not.

Q —of the Village of South Orange? Pardon me? A I was not.

Q Well, was this land then under the control of the Board at that time, the Board of Recreation Commissioners? A Do you mean the land on which baseball is being played?

Q In 1929, yes, in the year—(interrupted). A It was—they had the responsibility of the direction and the handling of that land, yes.

Q Well, what was your connection with the operation of this baseball club? A I served as treasurer of the South Orange Baseball Club, having been asked to do so early in the year.

Q But you were not a member of the Board of Recreation Commissioners? A I was not.

Q Well, as treasurer what were your duties, Mr. Schnell? A I had the responsibility of the cash balances, and made—and assumed that responsibility.

Q Did you keep books? A And the books, as I said, were kept by the Assistant Treasurer, the record.

The Court: Who is he?

The Witness: Mr. Seymour O. Coeyman.

Q Well, have you the books with you? A I have not.

Mr. Fitzsimmons: We have a statement of disbursements prepared by Coeyman.

Q Have you that statement with you? A What statement?

Q The statement of the receipts and disbursements? A Yes.

Q Who signed checks, did you or Mr. Coeyman? A I believe that some of the checks were signed by me in the beginning. In fact, all of the checks were handled by me in the beginning of the activity of the South Orange Baseball Club early in 1929. Those checks came to me and were deposited by me and the detail was looked after by me. It became more or less burdensome and the account being kept at the bank, at which Mr. Coeyman is an official, why, he was requested to, and did act as Assistant Treasurer and he kept the records, sending me the statements of the account as and when I requested such statements.

The Court: In whose name was the money deposited?

The Witness: South Orange Baseball Club and checks were signed by me or Mr. Coeyman.

Q But, neither you nor Mr. Coeyman were members of the Board of Recreation Commissioners, were you? A We were not.

Q Who collected the receipts at the gate, when a baseball game was held? A You mean the individual?

Q Yes. A Who collected the money?

Q Yes. A That I don't know. Someone appointed by the Recreation Commission or the baseball club.

Q Who turned the money over to you as treasurer? A The money was—

Q I will change that to "receipts." Who turned the receipts over to you as treasurer—in-

stead of "money"? A In some instances, when I was there, at the end of a ball game, the money was turned over to me. As a matter of fact, I helped count the money several times, and I took the receipts myself and turned them over to—deposited them in the next day.

Q Mr. Schnell, will you please refer to the statement showing the receipts from these baseball games, during the year 1929, and the disbursements?

Mr. Fitzsimmons: If the Court please, I object to any evidence as to receipts and disbursements in 1929, for the reason that neither the Village of South Orange nor the Board of Recreation Commissioners had anything to do with it. We admit that in 1929—have admitted in our answer, that the games were conducted by a club, known as the South Orange Baseball Club. We had nothing to do with it.

The Court: I will allow the evidence.

The Witness: Will you read the question, please?

(Question read as follows: "Mr. Schnell, will you please refer to the statement showing the receipts from these baseball games during the year 1929 and the disbursements?")

A Yes.

Q Well, how much did you take in? A This statement bears date November 7, 1929. Under the heading "Receipts"—there are two classifications. First "Contributions" $1,045, and then the detailed receipts from each game, totalling $13,372.34; a total receipt of $14,417.34.

Q What became of that money; how was it spent? A The disbursements, as indicated on this statement, amounted to $13,004.56.

Q What was the money spent for? A For games and expenses, uniforms, baseballs, printing, and so forth.

Q And salaries of the players? A Well, under the heading of "Expenses of games" that includes the salaries of the players.

Q About how large an item is that? A Well, the games before me here, the first game, May 11th, expense of the game was $448.80. I have—(interrupted).

Q What were the receipts of that game, do you know? A Yes. $342. I don't know the receipts of the game, but that is the corresponding date, and I am assuming that is the same date.

Q Well, that was the salary expense for one game only, four hundred and some dollars? A Salary and other incidental expenses in connection with the holding the game. I have not the breakdown for this expense item.

Q What other expense besides salary did you have? A Well, they are—any care taker, the paying of special guards about the place.

Q Well, those were very small items, were they not? A Well, without this statement before me, Mr. Roche—I should be glad to get the detail and breakdown—I will not attempt to say now what the detail of that is.

The Court: Where are the books? Are there any books?

The Witness: Yes.

The Court: Where are they?

The Witness: The South Orange Trust Company, in the hands of the—they are at the South Orange Trust Company.

The Court: They ought to be produced.

Mr. Roche: I requested Mr. Fitzsimmons to do so and called his attention to your Honor's request, especially, in the evidence the other day in which you said that we must have it all. "If you are going to have it at all you want it complete," are your Honor's words. That was your Honor's direction.

The Court: Well, I will direct the books be produced. There is no use going on with Mr. Schnell until the books are here. I will reserve you that right when the books arrive.

Mr. Roche: Well—

Mr. Fitzsimmons: Mr. Schnell has brought the statement, Mr. Roche, but I told you the other day on the phone he had mainly the receipts and disbursements.

The Court: I want the books.

Mr. Fitzsimmons: That was all I was asked to bring.

The Court: All right. I want the books produced in court.

Mr. Fitzsimmons: If there are any books, you may have them.

Mr. Roche: That is all for Mr. Schnell now.

The Court: That is all. You might introduce this summary.

Mr. Roche: Well, will you let us have the summary?

I will offer that in evidence. We may be able to—(interrupted).

The Court: No, the books must be produced, Mr. Roche. Let the summary be marked.

The Witness: This is not the summary in detail. The summary is in the record.

Mr. Roche: I offer the paper marked "South Orange Baseball Association, treasurer's report, November 7, 1929," showing total receipts $14,417.34 and total disbursements $13,004.56.

Mr. Fitzsimmons: I am informed by Mr. Henderson, who is assistant treasurer of the South Orange Trust Company, that there are not any books. What they have done, they have envelopes with receipts for every dollar that was spent, and a statement of the bank account showing the money received. Of course, this was the South Orange Baseball Club in 1929.

If the Court desires the presentatior of those receipts, we can produce them, but they did not keep any bookkeeping system.

I think your list there would give the information.

The Court: How did you get that statement?

The Witness: I have had that in my possession from the time of its date, sir.

Mr. Fitzsimmons: November, 1929.

The Witness: November, 1929.

The Court: I think, whatever records there are, regarding this fund, should be produced in Court.

Here is a fund of $14,000 which, apparently, should have been administered by the

village, and now it appears that we have not any books.

Mr. Fitzsimmons: That is not so. "It should have been administered by the village." The testimony in the case, on direct examination, is that in 1929 they—these games, were operated by a private club and the Village of South Orange, or any official, had nothing to do with it, and I resent any intimation that they did or that they misspent any of that fund.

The Court: I did not say that they misspent any of the fund.

Mr. Fitzsimmons: Well—

The Court: If these baseball games were played for money on public property, the money should have been administered by the village, and I direct that whatever records there are in this matter be produced in court.

Mr. Fitzsimmons: We will produce them.

Mr. Roche: Mr. Henderson, have you the records you had here last time? Will you please take the stand?

(Report marked Exhibit C. 13.)

HAROLD D. HENDERSON, recalled.

Direct examination by Mr. Roche.

Q Mr. Henderson, you have already testified that you acted as treasurer during the year 1930.
A Assistant treasurer.
Q Assistant treasurer during the year 1930 of the so-called South Orange Baseball Club,

under the direction of the Board of Recreation Commissioners? A That is correct.

Q But not being a member of that body. A That is correct.

Q Now, what records have you there showing the receipts and disbursements from these baseball games? A A complete record of the receipts and disbursements of each game, together with a statement of the entire fund, from the date the balance was turned over to start the season until we turned the balance over at the end of the season.

Q You have already testified to how much that balance was? A That is correct.

Q What is this (showing witness paper)? A That is the top of the statement; each game is underneath it.

Mr. Roche: I offer the paper marked "Statement, South Orange Village Board of Recreation Commissioners, Baseball Committee," dated December 2, 1930, showing receipts of $14,320 and disbursements $14,320, included in that is cash on hand $313.81, together with—

The Court: Well, let Mr. Fitzsimmons register his objection to that before you start on anything else.

Mr. Fitzsimmons: Did you offer it in evidence?

The Court: Yes. I understood him to offer it in evidence.

Mr. Roche: I want to offer the sheets that are attached, it all goes together.

The Court: All right.

Mr. Fitzsimmons: I object to it—

The Court: Wait a minute: Let him get his whole offer in.

Mr. Fitzsimmons: Oh, pardon me.

Mr. Roche: With 25 separate sheets attached, marked "Game 1 to Game 25."

The Court: Now.

Mr. Fitzsimmons: I object on the ground stated at the last hearing, that they are not evidential, they are irrelevant to the issue, and that, if any attempt is made here to dispute the expenditures of moneys in South Orange or other municipalities, it should be in the Supreme Court.

The Court: I will allow it.

(Statement marked Exhibit C. 13.)

Q What else have you got here? A These are ledger sheets of the South Orange Trust Company, showing the opening of the account and the amount specified and the closing of the account, and also a statement, which is a copy of this.

Mr. Roche: May it please the Court, unless your Honor desires to have these in evidence—they are the bank statements—I think all the information is on these sheets, is it not?

The Witness: That is correct

That is merely the checking off the checks by the bank, showing a reconcilation between the two.

Mr. Roche: I will offer all these bank statements.

The Court: I think, if you offer any, you ought to offer all. That has been my ruling right along.

Mr. Fitzsimmons: The same objection.

The Court: The same objection and the same ruling.

Mr. Roche: I offer five bank statements.

The Witness: Bank ledger sheets.

Mr. Roche: Bank ledger sheets, marked "South Orange Baseball Club, Mr. S. O. Coeyman, assistant treasurer."

The Witness: Pardon me. That first sheet is the 1929 sheet.

The Court: Let that go in, too.

The Witness: The other sheets are the 1930 sheets.

Mr. Roche: "This sheet being for 1929," that would be in parentheses. And four sheets marked "South Orange Village Board of Recreation Commissioners, Baseball Committee." I will offer them all as one exhibit.

The Court: Are they originals?

The Witness: Originals.

The Court: Don't you think counsel better consent to have copies of them? They ought to go back to the bank.

Mr. Roche: Yes.

The Witness: Well, I have the bank statements here. Those were the ledger sheets. These are statements which the bank furnished to counsel.

The Court: Those are something which you made up—have you the bank statements on them?

The Witness: That is correct.

Mr. Roche: Well—

The Witness: Those are the same, only they are month by month. That is for 1930, with the exception of the fact that the December sheet is not there; I neglected to attach it to it. It shows one or two entries.

Mr. Roche: The December sheet is not here.

The Witness: It is there in the ledger sheet, not in the statement sheet.

Mr. Roche: Well, I will include, if it please the Court, in my last offer, the bank account statement sheets.

The Witness: Correct.

Mr. Roche: Thirteen in number to go with the ledger sheets.

(Bank statement sheets, etc., marked Exhibit C. 14.)

The Court: The same objection?

Mr. Fitzsimmons: The same objection.

The Court: The same objection, the same ruling.

Q Now, have you any other records there, Mr. Henderson, relating to the baseball situation? A The authorization from the Village Board of Recreation Commissioners of the South Orange Trust, together with the signature card, signed in the years 1929 and 1930, authorizing the bank to make the payments.

Mr. Roche: I offer two signature cards, one dated April, 1929, the other dated April, 1930.

Mr. Fitzsimmons: I object to the one dated April, 1929, which is made out "South

Orange Baseball Club." I object to that one on the ground it is—(interrupted).

The Court: For the same reason?

Mr. Fitzsimmons: For the same reason, as frequently stated.

The Court: All right; the same ruling.

(Two signature cards marked Exhibit C. 15.)

Mr. Roche: I offer a resolution of the Board of Recreation Commissioners of the Village of South Orange, made at its meeting of April 14, 1930, signed "Joseph A. Carter, Acting Secretary."

Mr. Fitzsimmons: No objection.

Mr. Roche: No objection.

The Court: No objection to this?

Mr. Fitzsimmons: No.

The Court: Let it be marked.

(Resolution of April 14, 1930, marked Exhibit C. 16.)

Mr. Roche: What became of the first batch?

The Witness: There (indicating).

Q Referring to Exhibit C. 13, showing receipts and disbursements for the year 1930, can you tell us, offhand, how much went for salaries to these baseball players? A As a total? Not without totaling them up. Each game is listed separately.

Q Let me see them. A Each game shows the salaries there.

The Court: Isn't that a matter of argument after all?

Mr. Roche: I think so.

The Court: All you have to do is to do a sum in mathematics and you can find out.

I judge from Mr. Schnell that the largest part of this expense was for salaries.

The Witness: That is not quite correct.

The Court: What?

The Witness: That is not correct. There is one very great expense that was not taken into consideration.

The Court: What is it?

The Witness: That is guarantee to opposing teams.

Mr. Roche: Guarantee to opposing teams?

The Court: Yes. That and salaries made up—

The Witness: That is correct.

The Court: —most of the expenses.

The Witness: Yes.

Mr. Roche: That is all.

Cross examination by Mr. Fitzsimmons.

Q Mr. Henderson, you were not employed as treasurer of the South Orange Baseball Club, were you? A No, sir.

Q And as far as you know there was not any South Orange Baseball Club during the 1930 season, was there? A No, sir.

Q The accounts in the bank—

The Court: This is 1929.

Mr. Fitzsimmons: I am talking about 1930.

The Witness: Oh, pardon me.

Mr. Fitzsimmons: Mr. Roche asked him a very tricky question there and got him mixed up.

Mr. Roche: I did not mean to be tricky.

Mr. Fitzsimmons: He said "Under the—"(interrupted).

The Court: You should not criticize counsel that way. That is very unfair.

Mr. Roche: It was not intended to be tricky, I will assure the Court.

Q Mr. Roche asked you if you did not testify that you were treasurer of the South Orange Baseball Club under the jurisdiction of the Board of Recreation Commissioners, and you answered "Yes." Is that true? A Yes, sir.

Q You were employed by the South Orange Baseball Club? A No. It is true that I answered "Yes."

Q Well, is that—is your answer correct? A The exact title of the account would be—according to the exact title the account was carried, the answer would be incorrect.

Q And were you employed by the South Orange Baseball Club? A By the South Orange Baseball Club, no.

Q You were employed as treasurer of the Baseball Committee of the Recreation Commissioners, were you not? A That is correct—assistant treasurer.

Q And the funds deposited in the South Orange Trust Company were subject to disbursements over the supervision of the Baseball Committee of that body, isn't that true? A That is correct.

Mr. Fitzsimmons: That is all.

The Court: That is all, sir.

Mr. Roche: That is all. I rest.

The Court: You say you rest, Mr. Roche?

Mr. Roche: Yes, sir.

Mr. Fitzsimmons: May it please the Court, I move, at this time, for a dismissal of the bill.

The Court: Well, now, Mr. Fitzsimmons, you know the rule in Chancery; if you move for a dismissal of this bill, and I deny the motion, you are precluded from offering any evidence.

Mr. Fitzsimmons: I can reserve my right.

The Court: No, not under the rules of the Court of Chancery. If you make the motion and I deny it, you are precluded from offering any evidence.

Mr. Fitzsimmons: Then I won't make it. I will call Mr. Smith.

PETER A. SMITH, sworn for defendants.

Direct examination by Mr. Fitzsimmons.

Q Mr. Smith, where do you live? A South Orange Village.

Q How long have you lived there? A Since 1910.

Q Are you a member of the governing body of the Village of South Orange? A Yes.

Q How long have you been such? A Since May 1, 1927.

Q During the baseball season of 1929, did you have any connection with a club known as the South Orange Baseball Club? A Yes.

Q In what capacity? A As president.

Q Did the Board of Recreation Commissioners of the Village of South Orange have anything to do with that club in 1929? A Nothing.

Q Or any other time? A No.

Q Who conducted the games during the season of 1929? A South Orange Baseball Club.

Q Did you, as president of that club, ask the Board of Recreation Commissioners for permission to use the field? A Yes.

Q The South Orange Baseball Club conducted these games in 1930? A No.

Q Who conducted them in 1930? A The Board of Recreation Commissioners.

Q Did you, as president of the South Orange Baseball Club, make application to use the field, in 1930, for baseball? A Yes.

Q What happened that you did not go on and use it? A We withdrew our application.

Q Why? A Because of an opinion which you gave, as to the right of the Baseball Club to charge for baseball games.

Q And—

The Court: Well, what was that opinion?

Mr. Fitzsimmons: What is that?

The Court: What was that opinion? You referred to it at the last hearing. What did you decide?

Mr. Fitzsimmons: After the protest received from Mr. Kraeuter, which was testified to at the first hearing, and Mr. Baird, regarding the playing of games in 1929, those letters were referred to me and an opinion requested.

I advised the governing body of the Recreation Commissioners that the games as

played in 1929 were not conducted in accordance with the statute—that is admitted in our answer—and that the Commissioners could not permit the use of the field by outside organizations and permit them to charge admission.

I pointed out that, under the Playground Act, it was my opinion that if these games were conducted not exceeding twice a week, or more than eight hours, a reasonable admission could be charged, provided they were conducted and operated by the Board of Recreation Commission in accordance with the statute.

That is why the South Orange Baseball Club did not use the field in 1930.

The Court: Now, was there any surplus in 1929?

The Witness: Yes, sir.

The Court: Where did that go?

The Witness: That was turned over to the Board of Recreation Commissioners.

The Court: Well, why did you turn it over to the Recreation Commissioners, if they did not have anything to do with it?

The Witness: Why, the surplus that we had, Vice-Chancellor, after 1929, since we were not to operate any further, we hadn't any use for, and we donated it to the Board of Recreation Commissioners.

Q And most of that money had been donated by citizens early in the year, had it not? A Over a thousand dollars of it.

Q Yes. And those citizens who desired their money back were paid, were they not? A Yes, sir.

Q Mr. Smith, have you attended any of the games in 1929 and 1930? A Yes.

Q How were those games conducted? A In an orderly manner.

Q Any unnecessary noise?

The Court: Well, Mr. Fitzsimmons, that is entirely too general a question. Ask him what it was, and I think it is for the Court to say whether it was necessary or unnecessary.

Q What did you observe at these games as to how they were conducted? A As I said, they were conducted in an orderly manner.

Q Well, can you enlarge upon that? A Why, I would say, generally, they were good baseball games, with whatever applause usually goes with a good baseball game.

Q Did you notice, outside of the grounds, on surrounding streets, that traffic was blocked by reason of the cars being parked? A No.

Q Was there good police protection there? A Yes.

Q Did you notice the grounds after the baseball games were over? A Yes.

Q Were they cleaned up within a reasonable time? A Yes.

Q Kept in good condition? A Yes, sir.

Mr. Fitzsimmons: That is all.

Cross examination by Mr. Roche.

Q How many games did you attend, in 1929, Mr. Smith? A About six.

Q How many games did you attend in 1930? A About the same number.

Q That is six out of twenty-five games? A Yes, I am away all summer long, Mr. Roche.

Q And were you in attendance on the day when Babe Ruth was the special feature of the baseball? A Part of the time, yes.

Q Was there much noise at that game, such as clapping and applauding and shouting? A Well, can you tell me how much "much" is?

Q How far away do you live from this baseball field? A At 66 Stanley Road, which, I should judge, is about a mile and a half from the baseball field.

Q About a mile and a half away? A Yes, sir.

Q Well, as you approached the game on the day Babe Ruth was there, did you hear the noise from some distance away from the ball field? A Why, I was there when it started, so there was not any noise going on as I approached.

Q Were there lots of people there? A Yes, sir.

Q Many automobiles? A Yes.

Q And did you observe whether many of these cars came from out of the county or not? A No.

Q It was Sunday afternoon? A Yes.

Q How many people were there? A I could not estimate.

Q Were you there the day the Red Caps played? A No.

Q What was it? Baltimore Red Caps— A Pennsylvania Red Caps. No, I did not see that game.

The Court : Well, how about the House of David?

Q Yes. Were you there when the House of David was there? A Yes, in 1929, yes, and part of the first game in 1930.

Q Was there a big crowd there when the House of David played? A To which game do you refer?

Q Well, in 1929? A Yes.

Q Was there a big crowd when the House of David played? A Not as big, I would judge—that is only recollection—as it was in 1929.

Q Was there any noise and shouting at either of those games? A Yes.

Mr. Roche: That is all.

The Court: That is all, sir.

Mr. Fitzsimmons: Mr. Schnell.

HARRY J. SCHNELL, recalled.

Direct examination by Mr. Fitzsimmons.

Q Mr. Schnell, how long have you lived in South Orange? A Upwards of twenty years.

Q Were you ever on the governing body, before your present term? A I was.

Q When was that? A About fourteen years ago, I think.

Q And have you been identified with any of the civic projects in South Orange other than your present position? A Yes, with—

Q And what were they? A Many of them: in practically every civic activity for some fifteen years, I have either been a member of or chairman of the various committees. I was a member—I have been a member of the library

board for about fifteen years and was its president for perhaps eight or nine years of that time. I was chairman of the various drives, Red Cross and those drives of that kind. I have been identified with practically all the civic activities. I have been a member of the executive committee, and for many years I was president of the Citizens' Party League. I am chairman of the drive to get funds for the Orange Memorial Hospital.

Q And, being engaged in all of those activities, are you interested in the welfare and comfort of the citizens of South Orange?

Mr. Roche: I object—

A It has always been my desire to be.

Mr. Roche: —to that. It seems to me it is improper and calls for a conclusion.

The Court: It seems to me quite important that, if Mr. Schnell has been in all these eleemosynary movements, he is interested.

Mr. Fitzsimmons: I will withdraw it.

Q Now, Mr. Schnell, who conducted baseball on the Cameron field playground, tract C, during the season of 1930? A The Board of Recreation Commissioners.

Q And had you asked the Village Counsel for an opinion as to whether or not a private club could use the ground? A I transmitted to counsel a letter I had received from Mr. Kraeuter, I think, under date of November 7, 1929, with respect to the baseball game of the previous Sunday and I transmitted that letter to counsel for an opinion on the general subject of Sunday baseball and the legality of playing ball.

The Court: I will take a short recess.

(Short recess.)

The Court: All right, Mr. Fitzsimmons.

Q Did you request counsel for an opinion? A I did, sir.

Q I show you a copy of letter dated November 15, 1929, signed by Village Counsel and ask you if you received the original of that? A I did.

Mr. Fitzsimmons: I will offer that in evidence.

Mr. Roche: I have no objection to Mr. Fitzsimmons' opinion.

(Opinion marked Exhibit D. 5.)

Q And as a result of that opinion, were these games conducted by the Board of Recreation Commissioners in 1930 or by some other organization? A They were conducted entirely under the direction and control and supervision of the Board of Recreation Commissioners.

Q That was done, after you received letters from Mr. Kraeuter and Mr. Baird, and after the close of the 1929 season, is that right? A That was done for the baseball season ensuing 1930.

Q Now, Mr. Schnell, is the Village of South Orange spending money to develop the rest of the property purchased from the Meadow Land Society? A It is.

Q How much is being spent, do you know?

Mr. Roche: I object to that. I think it is entirely immaterial. I do not want to press my objection if your Honor would like to hear about it.

The Court: I will allow it and I will decide on the materiality of it, later.

A In 1929, by ordinance, we spent, if my memory serves me correctly, in the neighborhood of $15,000. In 1930, an ordinance for the improvement of the section—that is, Section C, which is designated on the map as the baseball field, we appropriated by ordinance the sum of $24,000, and contracts have been awarded to an amount, I believe, of $20,000, as against which, perhaps, eight or nine thousand dollars have been spent up to the present time.

Q Now, Mr. Schnell, did you attend any of the baseball games during the season of 1930? A I have attended some of them, yes, sir.

Q And tell the Court what you observed as to the conduct of those games. A During the entire season—baseball season of 1930, I made it my special duty to pass through that section of the village, for the purpose of general observation as to conditions which had been complained of, and I entered the grounds and attended, perhaps, five or six of the games during 1930, but practically every Sunday I passed through the section, going through Mead street and stopping at the entrance to the baseball field, for the purpose of satisfying myself as to the general conditions surrounding the playing of Sunday baseball.

Q Did you find that the streets were blocked so that traffic was impeded? A On the contrary, I found that they were not blocked. That was one of the purposes of my visits.

Q Were the parking of cars properly regulated in your judgment? A Yes.

Q As you approached the ground, did you notice any unusual noise, rowdyism? A Absolutely no rowdyism. There was some noise that would be attendant upon a game of baseball. The noise was more or less intermittent.

Q And were the games which you attended conducted in an orderly manner? A Yes, sir.

Q Did you notice whether or not there was any loud and profane language spoken at those games? A I never heard a profane word uttered at the games—any of them.

Q Now, is this baseball field, outside of Sunday afternoon, used by any other people in South Orange? A Yes, it is there available for the use of anyone who have a right to. Of course, under the direction of the Recreation Commissioners.

Q And do you remember whether or not, prior to the purchase of this property from the Meadow Land Society, there was a fence separating Tract C from the old Cameron Field Playground? A I do.

Q Isn't it a fact that a fence existed around the playground for years prior to 1924? A Yes, sir.

Q Did you notice when you were attending the games, whether the tennis courts at the southerly end of the field were being used, while the baseball games were being played? A I know that to be a fact.

Q Yes. Did the Village of South Orange purchase any other land in the immediate vicinity of the old playground for park or public playground purposes? A The Village of South Orange acquired a strip, I think, designated as Section C.

Q Section G. A May I look at the map? Yes.

Q How many acres? A 3.24 acres.

Q And how much was purchased? A From the estate of Tillou, the heirs of the estate of Tillou.

Q Do you know when it was purchased? A Yes, September, 1924; September 2, 1924.

Q And that was after the purchase from the Meadow Land Society, was it not? A Yes, it was.

Q What was the price that the Village of South Orange paid for that property? A I think it was $9,600. The price is set forth here (witness looks at map). Yes, $9,600.

Q Any other piece there which was purchased? A Yes, there was a piece that cost more. Let's see where it is; that in Section B.

Q Section what? A Section B. 1.97 acre.

Q 1.97 acre. And was there a house on that property? A Yes.

Q Is that house still occupied? A Yes, it is occupied as the headquarters of the Recreation Commissioners and is the home of the supervisor and his family.

Q And do you know how much money the village paid for that property? A I have looked it up. $15,000, I think.

Q $15,000, including the house? A Yes.

Q And that property was added to the playground also, was it not? A It was.

Q Now, Mr. Schnell, out of the thirty-six or thirty-seven acres purchased from the Meadow Land Society, the only portion turned over to the playground commissioners is tract C, is that correct? A Yes, sir.

Q The balance of the property is controlled or is supervised by whom? A Why, the Board of Trustees of the Village of South Orange under

the immediate direction of the committee on parks of our board.

Q Now, prior to the letter of Mr. Kraeuter in November, 1929, and the letter of Mr. Baird in December, 1929, did you receive any protest from any citizen of the Village of South Orange against the playing of Sunday baseball at which admission should be charged? A No, I did not.

Q And, during the season of 1930, outside of the letter written by Mr. Baird's attorney, was any protest made to you or to the Board of Trustees? A I should say, not, to the best of my knowledge and belief, no such protest was made.

Mr. Fitzsimmons: That is all.

Cross examination by Mr. Roche.

Q And, Mr. Schnell, you say you attended games quite regularly in the year of 1930? A I said I attended five or six of the games, but I said that I, practically, every Sunday, went through the streets there and observed the conditions surrounding Sunday baseball.

Q Admission was charged to the games, was it not? A Yes.

Q Do you know when the fence was erected along Mead street to enclose the baseball diamond? A Now you are speaking of the outer fence. I have testified to the inner fence that was along the—that has been there for many years. You are speaking of the fence—(interrupted).

Q I am speaking of the new fence, Mead street? A Outside. Yes, that fence was erected —let me see—well, I think in the early part of

1930, Mr. Roche. I can give you the exact date by looking it up.

Q And you observed the canvas stretched along this fence when games were going on? A Yes, I did.

Q Could you see into the game with the canvas on the fence? A I did not attempt to look through the canvas. The purpose of the canvas was not necessarily to keep people from looking in to the games and getting perhaps a free view of the game. It was rather to prevent any congestion along the streets which might render it dangerous for those people who would be standing there or automobiles passing up and down Mead street.

Q Did you attend the Babe Ruth game? A In 1929?

Q Yes. A I did.

Q Was there a big crowd there? A Yes, quite a large crowd.

Q And a lot of noise? A There was none—there was more noise than usual at that game, and it was the noise at that particular game that brought forth the protest, and, as I have testified, prior to that time, no protest of any kind had ever been made to me as president, nor to our governing body.

Q Does anyone else besides the South Orange Baseball Club use that baseball diamond regularly? A The record of the use of the baseball diamond can be furnished. I have not charged it as one of my responsibilities to ascertain that detail.

Q Well, I mean— A Although I know that other activities are engaged in in that particular field and other ball games have been played.

Q Well, the South Orange Baseball Club, so-called, has the regular use of this diamond every Sunday afternoon, hasn't it? A No, I beg your pardon. The South Orange Baseball Club has no regular use of it. The South Orange Baseball Club ceased to exist, as Mr. Smith has testified, and the entire charge of the baseball games is by the Recreation Commissioners and they hire their own players and make their own arrangements.

Q It is the same organization, isn't it, Mr. Schnell? A Oh, no. What do you mean?

Q The same organization. A The same as what, sir?

Q The same as in 1929. A Oh, no.

Q When it was called the South Orange Baseball Club? A Oh, no, not at all.

The Court: Do these players, hired by the Recreation Commissioners, these players, do they use it every single Sunday afternoon?

The Witness: The games were played there, sir. The players of the South Orange group played against such teams as the Recreation Commissioners may have arranged a contest with.

The Court: Yes, but this same set of players that you hired play there every Sunday during the season, do they?

The Witness: Pretty much so, yes. Of course there are different players each Sunday.

Q Well, the team is managed by the witness who was on the stand at the last hearing—I have forgotten his name.

Mr. Fitzsimmons: Abby Leitch.

Q Yes, Abby Leitch. A Mr. Leitch testified he was the field manager, he was the manager on the field. He said that he was not the manager of the baseball team. He was simply the field manager on the field.

Q Well, he gets the men together, does he not? A That I don't know. I think the Recreation Commissioners get the men together and when they are—the game is actually in play Mr. Leitch has charge of it.

Q Abby Leitch had charge in '29 when you were treasurer, did he not, Mr. Schnell? A Abby—Mr. Leitch played on the team, Mr. Roche. I don't know whether Mr. Leitch was then the field manager or not.

Q Yes. No other organization, so far as you know, has the regular use of that diamond? A No.

Q The Tillou tract was sold. A The Tillou tract—

Q The Tillou tract, to which you have referred, was sold, and at its assessed value, was it not? A I—

Q In the same way as the Meadow Land Society lands were sold at their assessed value? A I have not—I would have to verify that. I don't know. I would have to refer to the records. I would be glad to do so.

Mr. Roche: That is all.

The Court: That is all, sir.

Mr. Roche: Mr. Miller.

PHILIP N. MILLER, recalled.

Direct examination by Mr. Fitzsimmons.

Q Mr. Miller, at the last hearing you testified that, in you negotiations with Mr. Baird, nothing was said about making a gift of his stock to the Village of South Orange, is that right? Do you remember that? A I don't remember any such statement, no.

Q I ask you, now, during your negotiations with Mr. Baird for the purchase of this property, was there anything said about giving the property to the Village of South Orange? A Nothing, no, that I remember.

Q Mr. Baird ever say anything about acquiring the stock as a gift? A Mr. Baird acquiring the stock by gift?

Q No. The village acquiring the stock by gift. A No. I remember nothing said about the village acquiring the stock by gift.

Q Do you remember when you first started to negotiate for this property with Mr. Baird, how long prior to the sale, in March, 1924? A Oh, the negotiations lasted almost a year, if I remember correctly.

Q Almost a year. Now, I show you a letter dated December 19, 1922, addressed to the Clerk of the Village of South Orange and ask you if you wrote that letter. A Well, that is my signature so I therefore wrote the letter, but I had forgotten about it.

Mr. Fitzsimmons: I offer the letter in evidence.

(Letter dated December 19, 1922, marked in evidence D. 6.)

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Mr. Roche: Well, I will object to it, I have not had time to read it carefully, may it please the Court, but I will object to it on the ground that it is incompetent, irrelevant and immaterial.

The Court: Do you want it to be marked for identification and then have the Village testify to the receipt of it?

Mr. Roche: I don't care about that.

The Court: Then you merely waive the formality of marking it for identification, but object to it as to its irrelevance?

Mr. Roche: Yes.

The Court: I will allow it.

(Letter already marked Exhibit D. 6.)

Q Now, Mr. Miller, in that letter, do you refer to the acquiring of this stock by gift? A Mr. Fitzsimmons, you will really have to let me read it a little more carefully. I have really forgotten the letter entirely.

Mr. Fitzsimmons: I will read it to you.

The letter says: "My thoughts in connection with this association are that if the village has the power to acquire, either by gift or purchase, any part of the stock of this association, we might be able to do it more economically than by attempting to condemn the land owned. It seems clear to me that condemnation proceedings, in attempting to acquire the land, would cost us a great deal of money; but my talks with Mr. Baird, the president and owner of over half the stock of the association, indicate that we could acquire perhaps two-thirds of the stock

either by gift or by an expenditure not in excess of the par value of the shares, viz., $50.

The total shares outstanding or about 720 which at $50 each equals about $36,000. If we could acquire $24,000 or two-thirds, by gift or at prices not to exceed par, we would then have sufficient control of the association, as I understand its charter, to start liquidation proceedings. If this were a corporation organized for profit, I understand that the Court would place a value on the minority shares outstanding; and the majority which would be the village, would have to put up a bond to pay this minority interest on demand. What I want to know is, whether this procedure would be followed in the case of a non-profit association. If so, it is my feeling that the Court would not be inclined to place anywhere near as high a value on this minority interest as would result in condemnation proceedings.

The intent of the incorporators to keep this as an open space in the village; the inability of the minority interest to make any profit out of their holdings; the poor drainage of the low part of the land; the lack of streets through the property, etc., seem to me would all be factors which would enter into the judgment of the Court.

I think we should get Mr. Riker's opinion on this whole situation, and I trust that it may be a constructive one, in that he will tell us what he recommends to be the best procedure to acquire this property. I would be very glad to meet with him and you at any

convenient time, if he thinks that will be helpful."

Q Now, from that letter would you say that you discussed the possibility of obtaining this stock of Mr. Baird's by gift? A Well, evidently I must have.

Q Yes. A But I don't remember such a conversation.

Q And, at that time, you did not think much of the value of this land, did you, with the low drainage, etc?

The Court: Well, now, Mr. Fitzsimmons.

Mr. Roche: I object.

A I certainly—(interrupted).

Mr. Roche: Mr. Miller is not a real estate expert.

Mr. Fitzsimmons: I am only referring to his letter.

The Witness: I am perfectly willing to testify.

The Court: The letter speaks for itself, Mr. Fitzsimmons. He seems to think it is worth about $36,000.

The Witness: No, pardon me, Mr. Vice-Chancellor, you must understand very well that I had a tremendously high opinion of the value of the land, but, as a representative of the village, and entrusted with the negotiations to acquire it, obviously, it was my duty to acquire it just as cheaply as I possibly could.

Q At that time, or after you wrote that letter, you received an opinion from the Village Counsel, did you not? A I can't remember.

Q Didn't you receive a letter stating that the municipality could not accept stock in a corporation and suggesting that Mr. Baird trustee his stock? A I don't remember.

Q (Continuing.) Until after condemnation proceedings? A I don't remember such a letter.

Mr. Fitzsimmons: That is all.

The Court: Any cross?

Cross examination by Mr. Roche.

Q What is the date of that letter, Mr. Miller?

Mr. Fitzsimmons: 1922.

A December 19, 1922.

Q Well, that was some time before you actually began negotiating with the Meadow Land Society, was it not? A Well, as I have testified, I had conversations with Mr. Baird, extending, at least, over a year. At first, they were very general. Mr. Baird, very conscientiously, I think, questioned somewhat, first, whether the village could afford to buy this land, and, secondly, whether it was advisable for the village to own this large tract. Frankly, my greatest difficulty —not exactly difficulty, but the matter which Mr. Baird and I talked about the most was in my attempt to persuade him that it was a proper thing for the village to own this land, and, once he was persuaded of that, the question of exactly what the village should pay was not discussed at all until towards the end of the negotiations, as I remember it.

Q And that all resulted in the agreement dated January, 1924? A Yes.

Q That has been offered in evidence in this case? A Yes. When Mr. Baird finally was persuaded it was in his opinion the proper thing for the village to do, we very quickly settled that the fair thing to do was to pay the assessed value for the land.

Mr. Roche: That is all.

The Court: That is all, sir.

Mr. Fitzsimmons: Mr. Baird.

WILLIAM T. BAIRD, recalled.

Examined by Mr. Fitzsimmons.

Mr. Fitzsimmons: I cannot find that letter.

Mr. Roche: Which one do you want?

Mr. Fitzsimmons: The one I showed him this morning.

(Letter produced by Mr. Roche.)

Q Mr. Baird, I again show you—(interrupted).

The Court: Is this marked for identification?

Mr. Fitzsimmons: Yes.

The Court: Then, you have to prove it, first, before you put it in, because Mr. Roche objects. Maybe he will waive—

Mr. Fitzsimmons: I am just—

Mr. Roche: That is signed by Mr. Baird?

The Court: Is that an exhibit or marked for identification?

Mr. Fitzsimmons: It is marked for identification.

The Court: Then you will have to prove it was received, if Mr. Roche insists upon it, before you cross examine on it—or before you examine on it.

Mr. Fitzsimmons: I can do that and put my father on, if you want. Mr. Baird's signature is on it.

The Court: If you waive that.

Mr. Roche: I will waive that.

The Court: Very well, then, let it be marked in evidence and you can examine on it.

Mr. Roche: Well, I object to its offer in evidence.

The Court: Well, of course— Go on.

Mr. Roche: I want my objection, of course.

The Court: I understand that. I am allowing it to be offered in evidence.

(Letter formerly marked D. 3 for identification now marked Exhibit D. 3.)

Q Mr. Baird, you have testified you wrote this letter, dated November 15, 1927. A Yes.

Q On the second page, first paragraph, you say: "I then suggested that the only way to handle the situation is for two or three men to get together, contribute a sufficient amount and buy in all the floating stock. This plan was not adopted, but later on, after Mr. Allen and

Mr. Ward had passed away, I, finding that there were then about fifty estates holding stock and that it was impossible to hold annual meetings, proceeded to buy in the stock, stating frankly to the stockholders that my purpose was to turn the property over to the village for a park or for playground purposes." That is what you wrote in 1927, and that is what you told the stockholders, Mr. Baird, isn't it, when you asked them to sell you their stock, back in 1921 and 1922 and 1923. A I always felt that the village ought to have the park, that that property—(interrupted).

Q I am asking you, isn't it a fact that you told the stockholders, when you asked them to sell their stock? A I think I told quite a number of them that the village ought to have it, and I probably proceeded in that direction.

Q Didn't you tell them what you said in this letter, that you were going to turn it over? A No, I never—well, if you mean turning it over for nothing, then it never entered my mind to do that.

Mr. Fitzsimmons: Do you waive having Mr. Ingersoll here to say he received those letters and object to their going in, in the same manner, to prevent him coming here to testify?

Mr. Roche: Well, may it please the Court, here is a letter dated—

Mr. Fitzsimmons: Two of them.

Mr. Roche: Both of them, one dated April 25, 1921, and the other dated October 3, 1921—

The Court: Well, you are only asked to respond to the question, these having been marked for identification, whether you in-

sist that the formal rule be carried out and the person who was supposed to have received them testify he actually did receive them?

Mr. Roche: Mr. Baird's signature is on the letters, and I do not feel inclined to object.

The Court: All right, then. Let Mr. Fitzsimmons make the offer, and then you can object.

Mr. Roche: Yes.

Mr. Fitzsimmons: I offer letter dated October 25, 1921—

The Court: Now, wait a minute. Put on the objection.

Mr. Roche: I object to—(interrupted).

Mr. Fitzsimmons: Suppose I offer both of them.

The Court: All right.

Mr. Fitzsimmons: —and October 3, 1921, both addressed to Mr. Charles H. Ingersoll, and signed by Mr. William T. Baird.

Mr. Roche: I object to both letters, on the ground that they are incompetent and immaterial to the issues involved in this case, and, on the further ground, that, being dated in '21, they are too remote.

The Court: I will receive the letters and reserve my decision on their materiality, until I come to the final decision.

(Letters formerly marked D. 1 and D. 2 for identification, now marked Exhibits D. 1 and D. 2.)

Q Now, Mr. Baird, in your letter of April 25, 1921, you say to Mr. Ingersoll: "I am in receipt

of your favor of the 20th instant and in reply beg to state that there is practically no market value that can be placed on the Meadow Land Society stock.

The present holders who are residents of the village, have in mind that sooner or later they hope that the Essex County Park Commission will accept their holdings of stock as a gift and make a public park of all, or a greater portion of the land now controlled by the Society.

At present there are twenty-five or thirty estates holding stock in the Society and my greatest effort is being spent towards getting these holdings cleared up, the present position being that the meetings of the stockholders cannot be held, due to the large holdings of the estate.

I cannot, in fairness to the Estates from which I have purchased stock, offer you more than $35 per share, and, as a matter of fact, this being $70 at a par value of $100, I feel that under present financial conditions, it is a high price as the money can readily be invested at ruling rates and in the course of a few years produce a much larger amount than can ever be obtained through the liquidation of the property held by the Society." Signed by you, with a note at the bottom: "Mr. Lovatt who lives on the mountain just offered me his fifteen shares at thirty-five and I bought it." Now, that is true, Mr. Baird, that you paid all of those thirty-five or forty estates no more than $35 a share for the holdings, is that right? A No, not at that time, I wouldn't pay more than that, but later on I paid a great deal more.

Q Now, your letter states, up to that time, you acquired stock from a great number of estates and paid thirty-five dollars. A Yes.

Q And, up until that time, you had not paid any more, had you? A I don't think the letters state so.

Q Then you did not. Now, your letter of October 3, 1921, said: "Upon receipt of your letter of April 20th last, stating that you had three shares of stock in the Meadow Land Society of South Orange, I wrote you on April 25th in reference to same outlining the position of the Society and offering you the same price that I had paid to other holders in the Society, namely $35 per share." The rest of the letter is not material to what I am bringing out—so that up until October 3, 1921, you did not pay more than thirty-five dollars a share, did you? A I don't think so.

Q No. Now, in 1923 you bought some stock from the South Orange Public Library, didn't you? A I think so.

Q Five shares? A I think so.

Q Do you remember how much you paid for it? A No, I don't remember. My impression is I paid fifty. I am not sure.

Q You paid par for it, $250? A Yes, I think I paid fifty.

Q That is right.

Mr. Fitzsimmons: That is all.

The Court: Cross?

Mr. Fitzsimmons: I say, that is all.

The Court: I asked Mr. Roche if he wants to cross examine.

Cross examination by Mr. Roche.

Q Mr. Baird, have you ever tried to calculate whether or not you made a profit on the stock

of the Meadow Land Society, which you acquired, from time to time? A Why, Mr. Roche, that question was not in my mind. I did this greatly as a pleasure. At that time, I was in receipt of a very large income and what I paid for this stock did not bother me at all, and I really don't remember whether I made any profit or not. I did not keep any record of it, but I will say that I had —repeat what I said a while ago, that I would gladly have given all my stock to the Essex County Park Commission, because I thought they could take care of that land a great deal better than I could. I offered it to Mr. Sinclair several times.

Mr. Roche: That is all.

The Court: That is all.

Mr. Fitzsimmons: Mr. Connolly.

RAYMOND CONNOLLY, sworn for defendants.

Direct examination by Mr. Fitzsimmons.

Q Mr. Connolly, where do you live? A Corner of Comstock Place and Vose Place, South Orange.

Q And how far is that located from the Cameron Field Playground where baseball is played on Sunday? A About two blocks.

Q Do you live any nearer to that property than Mr. Baird? Of course, you know where Mr. Baird lives? A Yes.

Q And do you live any nearer or are you further away? A No, I am nearer.

Q Nearer. And you attended the baseball games there on Sunday during the season of 1930? A Yes, sir, a good many.

Q And have you been home on Sundays, when games were played there, with your friends? A Yes, sir.

Q Do you know whether those games are conducted in an orderly manner or not? A Why, sufficiently so that I went there myself with some of my boys and several young girls.

Q Does the noise from the games bother you at your home on Sunday afternoons? A I don't think so.

Q What can you say as to the regulations around the ball field for parking, and so forth? A I thought they were very good. You were not allowed to park any position that would impede traffic on the highways.

Q How were the games conducted inside the grounds? A I did have one or two complaints, did make complaint during the last year, to the village, on account of having some outside beggars there and some outside vendors; otherwise it was orderly.

Q And, after your complaint, that condition was eliminated, wasn't it? A Immediately.

Q Yes. And that took place only on one or two Sundays, did it not? A That is all; two.

Mr. Fitzsimmons: That is all.

Cross examination by Mr. Roche.

Q Do they have peanut vendors and hot dog salesmen around there? A They did, Mr. Roche, yes. When I complained of them they did have them; they did not during the last part of the year.

Q How many people from out of the Village of South Orange attend those games? A I couldn't tell you the proportion, but there were quite a few from outside.

Q A good many come from outside? A Yes, a good many.

Q How often did you go to the games, Mr. Connolly? A I would say, I averaged, at least, every other Sunday during 1930.

Q And during '29 did you attend the games? A Not as frequently. I attended some of them, yes.

Q There was some congestion in automobile traffic during '29, was there not? A Well, I would say my recollection is that the Playground Commission erected the fence on Mead street, then they were able to control, or did control the traffic situation there better than it was prior to the erection of the fence, yes.

Q That fence was erected in the spring of 1930, was it not? A Yes, I believe so, as I recall, or the early summer.

Q Does the attendant—

The Court: When was your bill filed?

Mr. Roche: It was filed after that, may it please the Court.

The Court: All right.

Mr. Roche: It was filed in June, 1930, I think it was.

Q The attendance varies at these games, does it, sometimes a greater number attend? A Yes.

Q Than at others? A Yes. There was a fair average, but there were some games attended more largely than others by considerable.

Q How many attended the games, would you say, on all afternoons? A I would say the average attendance is around 3,000, 2,500 people.

Q Do you recall the Babe Ruth game? A Yes, I do.

Q Was there a bigger crowd there then? A Oh, yes, materially larger.

Q And was there much noise there that day? A Well, naturally, a celebrity, in the eyes of the average boys, as Babe Ruth is, why, it was—it would cause much enthusiasm, much hand clapping, and so forth, but that was not offensive to us.

Q Do you recall any other games at which large crowds gathered? A Well, I don't think—at all the appearances of the House of David team there was more of a crowd on hand. They seemed to be a sort of unusual attraction.

Q And lots of those people come from out of town, do they not? A Yes, I would say to me it was objectionable that the management did go to such an extent to attract outside people. It was not really necessary, but it made it more or less uncomfortable for those who were in town and should have had the best advantage.

Q You felt crowded out as a resident of the village, then? A No; I always had a seat; never was crowded out; I always had a seat.

Mr. Roche: That is all.

The Court: That is all. I think we will adjourn for lunch. Will you be able to finish this afternoon?

Mr. Roche: Oh, I think so.

Mr. Fitzsimmons: I hope so.

The Court: I have got an appointment in the Prudential Building at four o'clock, so

we will have to adjourn this a little before four in order for me to get up there.

Mr. Fitzsimmons: I will try to get through.

NOON RECESS.

RAYMOND T. MARSHALL, sworn for defendants.

Direct examination by Mr. Fitzsimmons.

Mr. Fitzsimmons: I have asked Mr. Roche to consent to the admission in evidence without formal proof on the lease existing between the Meadow Land Society and the South Orange Field Club, but he wants to object to its going in evidence on the ground it is immaterial or something.

Mr. Roche: I object to the lease on the ground it is immaterial.

The Court: Do you object to the regularity of the order?

Mr. Roche: Of the order of the admission?

The Court: Of the offer.

Mr. Roche: Of the offer? No, I do not.

The Court: All right.

Mr. Roche: I would like to add this: I would like the right to recall Mr. Baird in rebuttal on this lease now being offered for the first time.

Mr. Fitzsimmons: The only purpose of the lease is to fix, in my judgment, the value of the property.

The Court: I will admit it.

Mr. Roche: May my objection be noted?

The Court: Your objection is that it is immaterial?

Mr. Roche: Yes, that is right.

(Lease marked Exhibit D. 7.)

Q Mr. Marshall, where do you live? A South Orange.

Q How long have you lived in South Orange? A About twenty years.

Q Are you connected with government of the Village of South Orange in any way? A President of the Board of Tax Assessors.

Q And how long have you been president of that body? A About sixteen or seventeen years.

Q And were you on the Board of Tax Commissioners in 1923 and 1924? A I was.

Q And you were one of the assessors that placed assessments for the year 1923 on this property of $70,300? A I was.

Q Did you, at that time, believe this property to be worth—

Mr. Roche: Oh, I object. If we are going to qualify Mr. Marshall as an expert as to what was the worth or value of this land, I insist on his properly qualifying him.

The Court: Yes, he should be qualified as an expert, if you want him to—(interrupted).

Q Mr. Marshall, why did you assess this property at $70,300?

Mr. Roche: I object, may it please your Honor. That is not the point.

The Court: No. You can show the fact that he assessed it at $70,000. Now, whether or not that is the true value of it depends on expert testimony. If this man is a real estate expert, he can testify; otherwise, not.

Mr. Fitzsimmons: I think, the fact Mr. Marshall has been assessor for sixteen years is—(interrupted).

The Court: Well, bring it out.

Mr. Fitzsimmons: He just testified to it.

Q You say you have been on the board for sixteen years? A Sixteen or seventeen years.

Q Sixteen or seventeen years as an assessor. Have you familiarized yourself with the value of properties in the Village of South Orange?

Mr. Roche: That I object to, may it please the Court.

May it please the Court, may I call your Honor's attention to the rule as laid down in the case, very recent case of the Park Commission against Brokaw, which cites the rule in Ross *v.* Palisades Interstate Park.

The most material circumstances forming this qualification of expert witnesses as to land value consists of the fact either that they have themselves made sales or purchases of other similar lands in the neighborhood of the land in question, within recent periods, or that they have knowledge of such sales by others.

Until he has qualified in that manner, he is not qualified to testify to the values.

The Court: Well, Mr. Fitzsimmons can go ahead and attempt to qualify him.

Q Mr. Marshall—

Mr. Fitzsimmons: I am not trying to qualify this witness as an expert.

Q Mr. Marshall—

Mr. Roche: You are not trying to?

Mr. Fitzsimmons: No, I am not trying to.

Q Mr. Marshall, how did you arrive at your assessment of $70,300?

Mr. Roche: I object to that, may it please the Court.

The Court: Yes. If he is not an expert, all you have to do is to say he assessed it at $70,000.

Mr. Fitzsimmons: I think he can tell us how he arrived at it.

The Court: That is not necessary.

Mr. Fitzsimmons: Well, it is evidential to show how these plots were arranged and how he arrived at this figure.

The Court: I do not think so.

Mr. Fitzsimmons: I understand, then, the objection is sustained?

The Court: Yes, sir. Why don't you ask him if he assessed property in South Orange at its true value?

Mr. Fitzsimmons: I think I did. I will ask him now.

Q In your opinion was—(interrupted).

Mr. Roche: Well, I object to that "in his opinion."

The Court: No.

Q Did you assess this property at its true value, the property purchased from the Meadow Land Society? A Under the law of the State, the Board of Assessments takes an oath, which they file in duplicate with the County Board, stating that they have assessed the property.

The Court: That does not answer the question.

The Witness: (Continuing). And that they have assessed it, to the best of their knowledge and belief, it is the assessed and true value.

Q Did you do that? A Naturally, if I signed the oath.

The Court: Then you got it in.

Q Was that assessment ever questioned by the Essex County Tax Board? A Which assessment are you speaking of?

Q The assessment of $70,300 on this property. A The assessments, they were every year; which year?

Q 1923. A To my knowledge, the 1923 assessment was not questioned.

Q Was the assessment for 1922 of the same amount or a different amount? A Without the assessment rules before me, I could not answer the question, though they were from year to year usually upwards. I would have to see the assessment rules.

Q Did the Essex County Tax Board at any time question the amount of your assessments on

this property? A I think, in 1917 or 1918, the members of the Board, unofficially, brought it to our attention as being at that time—what the assessed value was at that time I don't know—brought it to the attention of the local board that they thought the assessment was low, and I believe that we increased the assessed value of the property to meet their views, or more in line with their views. I should have to turn back to the record to find it out.

Q Did you ever receive any protest from the citizens of South Orange, owning property in the vicinity, that this assessment was too low? A No.

Mr. Roche: I object to that, if the Court please. I think it is going too far afield. Is it material?

The Court: No, it is not material, because, naturally, they would not object to a low assessment. What they generally object to is a high assessment.

Mr. Fitzsimmons: That is all.

Mr. Roche: No questions.

The Court: No questions, that is all.

Mr. Fitzsimmons: Mr. Johnson.

STEPHEN S. JOHNSON, sworn for defendants.

Direct examination by Mr. Fitzsimmons.

Q Where do you live, Mr. Johnson? A I live in the Village of South Orange.

Q And how long have you lived there? A About thirty-two years.

Q What is your business? A Real estate and insurance.

Q Have you sold and purchased properties in the Village of South Orange? A I have.

Q Have you sold properties in the vicinity of property owned by the Meadow Land Society? A I have sold a great deal of property to the east of the Lackawanna tracks.

Q And are you familiar with the values of property on Ridgewood Road, South Orange? A I think so.

Q Are you familiar with the values of property on Vose avenue? A I think so.

Q And how long did you say you were engaged in the real estate business? A Why, about—well, ever since I have been in business—about thirty odd years.

Q About thirty years. And, during that time, you have sold and purchased properties in the Village of South Orange comparable to the property purchased from the Meadow Land Society? A Most of it east of the Lackawanna tracks.

Q Would you say it was comparable property? A Well, it is different kind of property.

Q Are you on the Board of Assessors in the town? A I have been a member of that board for nearly twenty-eight years.

Q And you were a member of that board at the time this property was assessed at $70,300 in 1923? A I was.

Q Did you assess this property at its true value? A Well, that is a question. True value it a pretty hard matter to determine. True value means what a property would bring at a bona fide private sale. The physical conditions of this piece was such that it would be difficult for any man to establish exactly what the true value was.

As you know, it is a piece of property that has good pieces in it and bad pieces in it. A lot of it is under water, at times, and, all during my experience as an assessor of the Village of South Orange, this Meadow Land Society has always been a great deal of worry to us: To me, first, when I was alone, and, second, when we became a board; it was hard to determine what it was worth.

Q Well, now, as a real estate expert, would you value this property at $400,000?

Mr. Roche: Now, if it please the—(interrupted).

The Court: No, ask him what he would value it at.

Mr. Roche: May I record my objection before the question is answered? I—

The Court: This man is not only an assessor, but he says he has bought and sold land there for thirty-eight years.

Mr. Roche: Well, under the rule, may it please the Court, the purchases or sales made by the witness should be of similar land in the neighborhood—(interrupted).

The Court: That only affects his credibility, Mr. Roche.

Mr. Roche: Well, it means—(interrupted).

The Court: On cross examination you can bring that out. This man is a real estate man. We are forgetting about the assessor part of it now. He is a real estate man, he has been in business in South Orange for thirty-eight years—

The Witness: Twenty-eight.

The Court: —twenty-eight, and I think he is competent to testify. As to what value his opinion may have depends on your cross examining him, finding out whether he knows anything about this particular class of property.

Mr. Roche: Well, that is the only thing. My point was that he has not shown us that he has purchased similar land, meaning, large tracts.

The Court: I think he has qualified himself sufficiently to be asked the question, what is the value of this land in his opinion.

Q Mr. Johnson, as a real estate expert, in your judgment, what was the value of this property purchased from the Meadow Land Society by the Village of South Orange in March, 1924? A Well, our board—(interrupted).

Q What is your opinion? A I think from one hundred to one hundred twenty-five thousand dollars.

The Court: Do you mean to say that you think it was worth then $125,000?

The Witness: Worth from $100,000 to $125,000.

The Court: Then why did you assess it at $70,300?

The Witness: Well, we had always understood that this property was to be used for—was to be held intact for the benefit of the village, and it was—(interrupted).

The Court: Well, you took an oath to assess it at its true value.

The Witness: Well, I say, true value—(interrupted).

The Court: Well, did you?

The Witness: Yes, I did.

The Court: Well, it seems to me that you put yourself in rather a serious situation before the Court, because, either in one situation or the other, you have come pretty near perjury.

The Witness: Well, I am very sorry, if that is the case.

The Court: You swear now that it was worth, at that time, one hundred twenty-five.

The Witness: From one hundred to one hundred twenty-five thousand dollars.

The Court: Yes. And, when you assessed it, you swore to assess it at its true value, which you put at $70,000, I think.

The Witness: Well, the value—(interrupted).

The Court: There is no use of going further with this witness.

Mr. Fitzsimmons: Well, if the Court please, I do not think it fair to make the statement that this witness has perjured himself.

The Court: Well, I—(interrupted).

Mr. Fitzsimmons: It is a known fact, throughout the State, that, for assessable purposes, there is a difference between true value and market value.

The Court: The constitution of the State of New Jersey says that property shall be assessed at its true value, and he took an oath so to assess it and he assessed it at $70,000. Now, he comes in here and says the true value of it is between one hundred and

one hundred and twenty-five, and, I will be very polite, either one of his statements—either one or the other of his statements is incorrect, and, therefore, as far as I am concerned, his further testimony is useless.

Mr. Fitzsimmons: I say, yes, the statute says true value. He has not stated that in 1924, in his opinion, the true value was one hundred or one hundred twenty-five thousand dollars. I will ask him what the value was, not the true value, and have him tell us the difference between true value and market value.

The Court: You can ask him all the questions you want to, but, I say, as far as his testimony impressing me any further, why, I shall not be impressed with it.

Q Mr. Johnson, in 1923, were you aware of a lease existing between the Meadow Land Society and the South Orange Field Club, marked Exhibit D. 7? A No; I never knew there was such a thing.

Q You didn't know there was such a lease? A No, I did not.

Q Did you know the property was being used by the South Orange Field Club for a golf course? A Yes, I knew that, but I didn't know there was a lease.

Q Would the fact that in July, 1923, a lease existed, which had ten years to run—would that affect the value of this property—with no surrender clause in the lease—would that affect the value of the property, in your opinion?

Mr. Roche: I object, if the Court please. I think the—(interrupted).

Mr. Fitzsimmons: I am offering it in evidence.

Mr. Roche: I think the offer—(interrupted).

The Court: Well, Mr. Fitzsimmons has offered it in evidence.

Mr. Fitzsimmons: I did offer it this morning.

Mr. Roche: The fifth clause of the lease provides that "If, by municipal action, the club is prevented from using the grounds hereby leased for golf purposes then, and in that event, this lease may, at the option of the club, be annulled and cancelled, upon notice in writing to said Society."

Mr. Fitzsimmons: Yes, municipal action.

Mr. Roche: Your termination clause is there.

Mr. Fitzsimmons: I will ask the witness a question.

(Last question read as follows: "Would the fact that in July, 1923, a lease existed, which had ten years to run—would that affect the value of this property—with no surrender clause in the lease—would that affect the value of the property, in your opinion?")

A I think it might.

Q Would the property be salable with such a lease on it, in your opinion? A Well, of course, you could make a sale subject to that lease, but I think it would hinder the sale, in many cases.

Mr. Fitzsimmons: That is all.

Cross examination by Mr. Roche.

Q Mr. Johnson, in giving your estimate of the value of this property, as of March, 1924, as a real estate man, and not as a tax assessor, did you take into consideration all the frontage of this property on all the streets? A Why, we must have, Mr. Roche. The principal frontages it had were Ridgewood Road and Mead street and the frontage along Meadowbrook Lane.

Q I am asking you now— A We took it—

Q Your opinion as a real estate expert. A We took it practically at so much an acre.

Q When you say "we," do you refer to the Board of Assessors? A Yes, to the Board of Assessors. We always worked together.

Q I am trying to distinguish between your position as one of the members of the Board of Assessors and your position as a real estate operator, a man who buys and sells real estate? A Well, I was only interested in this as an assessor.

Q Well, then, all that you have said, today, is from your standpoint as one of the assessors— A Yes.

Q —in the Village of South Orange? A Yes.

Mr. Roche: That is all.

Mr. Fitzsimmons: That is all. Mr. O'Brien.

The Court: I say, right now, that I shall pay very little attention to the testimony of this witness.

Now he has confined himself to his view as an assessor, and, when, he assessed the property as an assessor, he says it was worth $70,000. Now, he comes in and says as an

assessor it is worth from one hundred to one hundred and fifty thousand dollars.

More than all that, I think it is—from my knowledge of condemnation proceedings, land values and assessments, if land in South Orange is assessed at its full value, as required by the constitution, it is probably unique as a municipality in this State.

JOHN F. O'BRIEN, sworn for defendants.

Direct examination by Mr. Fitzsimmons.

Q Mr. O'Brien, where do you live? A South Orange.

Q What is your business? A Real estate dealer.

Q And how long have you been engaged in the sale of real estate? A Oh, about eighteen years.

Q And have you made sales of properties in the vicinity of the property sold by the Meadow Land Society to the Village of South Orange? A Yes, sir.

Q Properties that were comparable to that property? A Yes, sir.

Q Where did you make those sales? A Oh, throughout the various sections of the village, at the time I was developing the Tuxedo Park section, which is about three-quarters of a mile away, a land development.

Q And are you familiar with any sales of property on Ridgewood Road? A Yes, I was familiar with a sale on Ridgewood Road.

The Court: What is the character of Tuxedo Park? That is up on the hill, isn't it?

The Witness: That is out towards the Newark end of the village.

The Court: High ground, all of it?

The Witness: High ground, yes, sir.

The Court: And this is all swamp land, or a very large part of it?

The Witness: Yes, sir.

Q The Ridgewood frontage is not swamp land, is it? A No; the Ridgewood frontage is good land.

Q Have you made any sales in the vicinity of this property? A Yes, I made sales on Redmond Road.

Q Redmond Road is directly west of this property, isn't it? A Directly west of it, yes. Beech Spring Road.

Q Is that directly opposite on the west, too? A Yes, that is directly opposite on the west.

Q Now, at the request of the defendant in this suit, did you make an appraisal of this property, as of March, 1924?

Mr. Roche: Well, I object, may it please the Court, until the witness tells us that he has made sales and purchases of similar lands, meaning acreage in the neighborhood.

The Court: I have already ruled on that. I think he is sufficiently qualified to give his opinion, which you can combat on cross examination.

A Yes, sir.

Q You have. Will you tell us what value you put on the property and how you arrived at it? A I appraised property—the value of this property—I might say, here, that I appraised it on the basis of 32.88 acres and I appraised the value on it in 1924 of $180,055.

Q How did you arrive at it? A Well, this property is more or less a difficult property to appraise. At first blush, it is a very nice looking piece of real estate, but, when you go into it with a view to finding out the value or the price at which it can be sold, it presents a different picture, and, in order to make as careful an appraisal as possible, I did not go at it on an acreage basis, because, to appraise it on an acreage basis would be unfair to the land. There is too much road frontage. In appraising it I separated the pieces as it is shown on that map there (indicating map on wall) I appraised the tract F along Ridgewood Road on the basis of fifty dollars a foot for its entire length, both F and E. The Mead street frontage I appraised at forty dollars a foot, between the brook and Ridgewood Road, Meadbrook Lane I appraised at twenty-five dollars— May I have recourse to my notes?

Q Surely. A Yes. Tract F there is a frontage of 573 feet for a depth of 150 feet, I appraised that property as being worth $150 a foot. On the Mead street frontage of Tract F there is a 370 foot front, I appraised at forty dollars a foot. Tract E, the Redmond Road frontage. I assessed 1,041 feet at fifty dollars a foot. The Mead street frontage 323 feet at forty dollars a foot. Meadowbrook Land 870 feet frontage at $25 a foot. Meadowbrook Place 225 feet, up as far as Hillside Place there, at thirty dollars a

foot. Now, in addition to that—well, I will go over the available frontage. Tract D, which is that large piece at the bottom of the map on Mead street, I found 340 front feet, the depth of 150 feet. I assessed that at twenty dollars a foot. And Meadowbrook Place, at the other end of that property, I appraised at twenty dollars a foot. Now, that is taking the available frontage. As far as the interior of the tracts are concerned, I appraised the remainder of Tract F at a thousand dollars an acre, so that in Tract F I find we have 3.85 acres unavailable. I appraised that at thirty-eight fifty. Tract E, after taking out the frontage that we had, 3.22 acres undeveloped, that has a value of $2,000 an acre. That interior acreage there is a little better than the interior acreage in F. In D I valued the interior there, the remaining land there at a thousand dollars an acre, and that is coming down to C, that is the last tract there on the left that is colored. There is a frontage there of 500 feet on Mead street with an average depth of 250 feet. I appraised that at fifteen dollars a foot, for a value of $7,500. Now, adding up those values, both the frontage that might be salable and the undeveloped portions of those tracts, I reach a value of $180,055.

The Court: Well, is that as of this particular date?

The Witness: Yes, sir.

And in arriving at that figure did you take into consideration the right of way which runs diagonally across the property, twenty feet wide?

A Oh, yes.

Q You did? A In reaching this result, I took into consideration all the physical conditions on this land that would interfere or prove a resistance to the ultimate sale of the property to the ultimate buyer. As I said before, to look at this acreage cursorily, or without noticing it, one would be impressed with the fact that it might be a pretty good piece of acreage, but looking at it with the eyes of a developer, aside from frontage, and, possibly the whole, or the most of the whole of the Tract E, this is one of the poorest, most uninviting pieces of land that I have ever looked at, for this reason, that here is a tract of 11.89 acres—

Q Which tract is that? A That is Tract D. That aside from this frontage and that frontage is—

Q Name the streets? A Aside from the frontage on—

The Court: Mead?

The Witness: —Mead street and Meadowbrook Place is practically, from the developing standpoint, useless, because you have bad sections of property, a sixteen inch water main here and a twenty-inch water main over there (indicating). Now, no scheme of development I could think of could be applied to that property that the ultimate sale would not be affected by these two drains. Then you have the added resistance of the railroad, you have the added resistance of a piece of land here that the developer would not control; some development might go on that corner that would injure the entire development. In addition to that you have this open brook. You have as in

1924 you had a trolley line there that was a detriment. Here all of this property was, after a heavy rainfall, under water; but the main detriments to this tract of land are the things there now, or, were there in 1924, that would prove a resistance in the ultimate sale to the individual buyer. The same holds good for this piece. Looking at this tract of land—

Q Name the tract? A Tract B. Looking at this tract of land from Ridgewood Road, one would be impressed by the fact that it is a good looking piece of land, but, here, again, there is a sixteen inch water main, here a twenty inch water main, there, low land. This was very low in 1924, right through here. You had this same street railway. You had the open brook. This tract of land here Tract C, was entirely under water, as I remember it, in 1924, so that the whole land, the whole—of course, another resistance to this tract, that is, again looking at it in the eyes of a developer, is the fact that it adjoins a playground; that would be a resistance to selling any houses afterwards. I am looking at it—I am looking forward to the time that the developer would put houses on it and sell the houses to buyers.

Q Now, Mr. O'Brien, I understand from your testimony that it is based on the property as it then stood. A Yes, sir.

Q Is that right? A Yes.

Q We have in evidence a ten-year lease, dated July 1, 1923, to terminate December 31, 1933, with no surrender clause, as far as the owner of the property is concerned. Having that thought in mind, would the existence of that lease affect

the value of this property from a sales standpoint? A Oh, very much so.

Q Considering that lease, what would be your value of this property as of March, 1924? A Well, I think that lease would make the property practically unsalable. Of course, I don't mean to say that that would take away value, but I think it would be very difficult to sell that tract of land with that lease without a cancellation clause on it. I would estimate that the presence of that lease would reduce the value of the property to $100,000.

Q To $100,000? A To $100,000.

Q Mr. O'Brien, have you been engaged in the development of any properties? A Yes, sir.

Q Where? A At Tuxedo Park, and I bought—(interrupted).

Q How many acres were developed there? A Seventy-eight.

Q Seventy-eight. Any others? A Well, I bought tracts of land, and sold, before I came to the developing stage. I am engaged now in the development of a big tract of land out in the country.

Q Where is that located? A Budd Lake.

Q And is it necessary to put streets through it? A Oh, yes.

Q And put in the usual improvements as sewers and water, and so forth? A Yes. Well, up there we don't have sewers, we have septic tanks.

Q And you are familiar with the cost or developing property? A Yes.

Q Are you a member of the real estate board of the City of Newark? A Yes, sir.

Q Did you ever serve in an official capacity on the board? A Yes, I was president of the board in 1929.

Q President of the board in 1929.

Mr. Fitzsimmons: That is all.

Cross examination by Mr. Roche.

Q Mr. O'Brien, how far from the center of the Village of South Orange is this land? A From the center?

Q Yes. A Well, I would say about—it depends on how you went. It could be half a mile, it could be a quarter of a mile.

Q About a quarter of a mile. Did you estimate on the acreage basis in arriving at your figure? A I estimated on both the acreage basis and the front foot value of available frontage.

Q Now, in 1924, March, 1924, was land in South Orange worth more or less than it is now? A Than it is now?

Q Than it is now. A Vacant land?

Q Any kind of land, real estate generally, is the market lower now or higher than it was in 1924?

Mr. Fitzsimmons: I object to any testimony as to value now. This is limited to 1924.

The Court: I will sustain the objection.

Q Did I understand you to say that your value was a thousand dollars an acre? A Yes, sir, for the undeveloped portions of these tracts.

Q Do you mean to tell us that you could, in 1924, buy an acre of land in South Orange for a thousand dollars? A Well, not one acre—yes, it was possible; as a matter of fact, it was done.

Q Within a quarter of a mile of the center of the Village? A Yes, sir.

The Court: For how much?

Q For a thousand dollars? A For a thousand dollars.

Q Yes. A Why, yes, this kind of land.

Q Well, where have you sold or bought land for a thousand dollars an acre, within a quarter of a mile of the center of the Village of South Orange? A Well, I did not.

Q You did not. A No.

Q You did not sell it and you did not buy it, did you? A No.

Q Don't you think that really sounds ridiculous to say a thousand dollars an acre? A Why, no. As a matter of fact, Mr. Roche, the—(interrupted).

Q Well, tell us if you have bought or sold land for a thousand dollars within a quarter of a mile from the center of the Village of South Orange? I don't want any explanations, I just— A Oh, no.

Q —want to know whether you have or not. A No, I have not.

Q Now, in answer to an inquiry by the Court, you said that this land was mostly swamp land? A Yes, sir.

Q Will you please indicate where there is any swamp on any part of this land? A Well, when the Court said "Swamp land" I imagined he meant swampy land. Any land that has an overflow or any existing water course is swampy land in the eyes of a real estate developer.

Q What part of this land is overflowed by a water course? A Why, we are talking now as of

1924. All of—practically all of this land—some of this land, practically all of that land (indicating).

Q Well, there is a trolley line, and there was in 1924, right through the center of it, wasn't there? A Yes, and at one time they had to take passengers out of that trolley line in boats.

Q And the reason for that was that it got dammed up at South Orange avenue. Wasn't that the reason for it? A I don't know what the reason was, but I know they did it.

Q Well, now, by swamp land you mean land that is soggy when you walk on it. Isn't that what you mean by swamp land? A By swamp land I mean land that would cause wet cellars if a builder built on it. After all, that is the only thing that a developer thinks about is, what the man he is going to sell the house to has to say about the things that are there then.

Q Can't a builder put a dry cellar in any kind of land if he makes it dry? A If he makes it dry.

Q Certainly. So that is not the test, is it? Now, what part of the land is swamp so that you sink into it when you walk, any of it—when you walk over it? A Why, any of that portion that I indicated, any of the portion that is affected by the overflow of that brook you would sink into.

Q When it is overflowed with water? A Yes, sir.

Q But not at other times? A Well, naturally not at other times. Of course, understand, I have not walked over that land trying to sink into it at any particular time.

Q In 1924, it was a golf course, was it? A Golf course, yes, sir.

Q People walked over it every day? A Yes, sir.

Q Played golf on it? A Yes.

Q Can you play golf in a swamp? A Well, now, I don't say they played every day, after a rain storm, in some portions of it. Now, my understanding— Of course, I don't know about it personally—

The Court: Now, don't tell us anything you don't know.

Q They played golf on it in 1924 at the time you made your estimate of the value— A Yes.

Q —as of the time. It is meadowland, isn't it, Mr. O'Brien? A Oh, I don't know that I would call it meadowland. As a matter of fact, I don't know just what you would call meadowland.

Q And, once or twice, there was a flow over a part of it because the stream was blocked up under the bridge at South Orange avenue, isn't that right? A I don't know why. I don't know why it overflowed, what the overflow was caused by. I don't know anything about the dam being there, as a matter of fact.

Q Isn't it a fact that the only part that was the least bit swampy was that tract in pink, shaded in pink? A Oh, no.

Q Where the old ninth hole of the golf course used to be? A Oh, no. No, that was just a little worse than the rest of it.

Q But they played golf on it, didn't they? A They played golf, I suppose, in the dry weather.

Q They had a golf hole there on it, didn't they? A Yes. Sometimes they could not use it, Mr. Roche.

Q Since that time it has been all filled in, hasn't it? A Yes, sir.

Q They are playing baseball on it now? A Yes.

Q It is not swampy now, is it? A I don't know. I have not looked at it.

Q So you think land in March, 1924, was worth fifty dollars a foot on Ridgewood Road? A Yes, sir.

Q And don't you believe that any developer would have jumped at the chance of getting those four acres shown on that map shaded in pink for $250,000? A No, sir; no developer that made a careful study of that tract of land and knew the danger of the physical conditions that were there in 1924 would have jumped at $250,000.

Q You have spoken of some water mains. Can't you erect a house over those water mains? A Yes, unless the mains are not—are too shallow.

Q Well, do you know whether they are too shallow or not? A I don't know, but it doesn't make any difference to me whether—if they are too shallow, of course, the land is not then usable at all, but it doesn't make any difference to me, as far as the value is concerned, whether you can build a house over it or not.

Q You know— A Because the damage is done, or caused just as much by the presence of the main.

Q Do you know whether or not those mains may be removed? A I don't know.

Q You don't know what kind of an agreement exists for the mains, do you? A No, I assumed that—(interrupted).

The Court: Well, don't assume anything. You don't know.

The Witness: I don't know.

The Court: They certainly were there when you made your estimate?

The Witness: Yes, sir.

Q Now, do you know who was actually occupying the land in March, 1924? A Why, the South Orange Field Club, I believe.

Q And when did the South Orange Field Club get off the property?

Mr. Fitzsimmons: I object.

The Court: Yes, Mr. Roche, we are confining ourselves to a certain time in 1924, and, if they were there then, why that goes to the value, and whether they started after that it makes no difference.

Q In making your estimate, Mr. O'Brien, you, of course, considered, I assume, only the four tracts shaded in pink? A Yes, that is right.

Q You did not consider the other tracts in the deed from the Meadow Land Society to the village, Tracts 5, 6, 7, 8, 9 and 10 in that deed, did you? A They are the detached pieces?

Q Yes. A I did not, because my understanding is they are just tax titles.

Mr. Roche: Yes. That is all.

Re-direct examination by Mr. Fitzsimmons.

Q Now, Mr. O'Brien, doesn't the danger of a person building a house over a right of way, a sixteen-inch water main right of way, consist in the fact that the owner of that ground—

Mr. Roche: I—

Mr. Fitzsimmons: What is it?

Mr. Roche: I cannot object until you have finished the question.

Q —the danger consists in the fact that the owner of the property may come in and tear out your property?

Mr. Roche: I object to that, may it please the Court.

The Court: It is entirely too leading, I will sustain the objection.

Q Now, property on the mountain beyond the Redmond Road tract that was sold, or purchased, rather, by Mr. Becker around 1922 to 1924, wasn't it? A Yes, I think that was the time.

The Court: Well, do you know?

The Witness: No, I do not.

Q You don't know?

The Court: Then don't tell it.

Q Do you know anything about the price paid for it per acre? A No, I do not, not the Becker price.

Q Do you know anything about the prices per acre for land sold two blocks away, west of Wyoming avenue? A Yes, the Highland Road tract bought by the Baldwin Construction Comany, right opposite, sold for three thousand an acre.

The Court: How do you know that?

The Witness: I know from the Baldwin people that bought it.

The Court: Somebody told you?

The Witness: Yes, sir.

The Court: Strike it out; hearsay.

Mr. Fitzsimmons: That is all.

Mr. Roche: Just one—

The Court: Now, as I understand, there are some detached pieces?

Mr. Roche: Yes, they are shown.

The Court: Well, they must have some value.

Mr. Roche: Well, they have. If the Court please, if I may interject this at this time: About a week ago Mr. Fitzsimmons and I consented to the examination of Mr. George Becker, who is president of the Village and who is a real estate operator, and his values given at that time on this property were $250,000—he himself is a builder—for these four main tracts, and, when I called his attention to the outlying tracts, the other six tracts in the deed, he added $58,000, so his estimate was $308,000.

The Court: Is that in the testimony before me?

Mr. Roche: That is in the testimony.

The Court: I think you ought to ask Mr. O'Brien—it is only fair to Mr. O'Brien to ask him if he thinks these outlying pieces—were these outlying pieces included in the $70,000 transfer?

Mr. Roche: Yes, sir.

The Court: Well, then we ought to have a value on that.

Mr. Roche: He doesn't know, he says.

The Court: You don't know the value of those outlying pieces, is that it?

The Witness: Well, I could estimate the value, but my understanding is that the tax title of the whole of them have since been redeemed, which proves they have—(interrupted).

Mr. Fitzsimmons: Three of them are tax titles, your Honor.

Mr. Roche: Well—

Mr. Fitzsimmons: We will prove there has been a redemption of one.

The Court: All right. I only say that this man has given an estimate on part of the property, not all of it.

Mr. Roche: That is right.

Q Mr. O'Brien, can you estimate the value of those detached lots, those that we had good title to?

Mr. Roche: Well, if the Court please, I object to that reference to these tax titles not being good titles. So far as I know, the tax titles are as good as any other titles made by the Meadow Land Society, but it is true that one of these lots, a very small one, and part of another lot, were recited in the deed as being tax titles. Now, out of the six additional tracts, two of them, one wholly and the other partly tax titles—

The Court: Then I suppose we will have to assume the other four are good titles?

Mr. Roche: Yes.

Mr. Fitzsimmons: I will bring that out with subsequent witnesses in regard to tax

titles. That is all, Mr. O'Brien. Mr. Redfern.

IRA T. REDFERN, sworn for defendants.

Direct examination by Mr. Fitzsimmons.

Q Mr. Redfern, you are the Village Engineer for South Orange? A Yes, sir.

Q And how long have you been engineer? A Twenty-one years.

Q Did you make this map which is in evidence? A I did. It was made in my office under my supervision by a draftsman in my office.

Q And, as engineer, were you familiar, in 1924, with the physical condition of the property purchased by the village from the Meadow Land Society? A I was.

Q What was the physical condition of that property, designating the facts, please? A I have a blue print here that, if I could refer to, I think I could explain much clearer the physical condition.

The Court: Is there any objection to his using that, Mr. Roche?

Mr. Roche: No, none whatever.

(Witness puts map up on wall.)

The Witness: That is a cross section blue print on the same scale as the original map. The elevations taken completely over area C, F and E, and a part of area D. The section of the property colored in white is the portion of the property which is susceptible to flooding, during high water, and

twice, in 1927, once on the first of August—first of July, and once on the first of August. This line outlined in white is the pond where the water stood over that entire area. It also covered down here over Cameron Field.

The Court: Well, that happened after 1924?

The Witness: It happened in 1923, not quite as far as this, and once in 1917, to my knowledge.

Now, the entire tract west of Ridgewood Road, as shown on this map, tract marked D, on the original map and the tract marked C, was used as a golf course. During the summer there were three of the holes, on a nine-hole golf course, that were frequently out of use because of the soft, muddy condition of the ground, soggy. The number nine hole of the golf course, which was in Tract C, was always out of commission in wet weather.

Q Mr. Redfern, isn't it a fact that those parts, which you just designated, were, for many years prior to 1924, and until the village filled up the ground, continually under water after rain storms?

The Court: Well, now, I don't like to correct you, Mr. Fitzsimmons, but that is a very leading question. It only requires an answer yes or no.

Q What was the condition of this property that you have just designated, prior to 1924, and after 1924? A Well, if I understand your question, I will answer it.

Q The general condition. A The general condition, in dry weather, the property was all usable for the purpose of a golf course and general field club purposes, but, in wet weather, every rain storm, eliminating a part of Section D for use; the southerly section, part of Section D, was never used at any time prior to 1928 except for a skating rink in the winter time. Three-quarters of the westerly portion of Section D was not usable after every rain and the easterly portions of Sections G and F, the bulk of it, for one hundred feet along the tract was just boggy and was never usable at any time of the year.

Q Mr. Redfern, was this map made in your office under your supervision? A Yes.

Mr. Fitzsimmons: I offer it in evidence.

Mr. Roche: I have no objection.

(Map marked Exhibit D. 7.)

Q Does this show the same (handing white paper to witness)? A That is the original of the blue print.

Q Now, Mr. Redfern, was the overflowing of the brook in August, 1927, caused by the breaking down of any dam at South Orange avenue? A No.

Q Isn't it a fact that after every heavy rain the brook overflowed on this property? A Practically every heavy rain it overflowed, some portion of it.

Mr. Fitzsimmons: That is all.

Cross examination by Mr. Roche.

Q The overflow was caused by the brook damming up at South Orange avenue, wasn't it, Mr. Redfern? A No.

Q What was it caused by? A Why, the flow of water down the brook, after every—after a heavy rain, the flooding of the area first occurred at Meadowbrook place and then again at Mead street, until these areas as shown on the map were flooded, and, as they converged down at the opening south of the bridge opening under South Orange avenue, then, and only at that time did the culvert or bridge under South Orange avenue help to back up the water, but the flooding occurred on these areas many times before the bridge under South Orange avenue was filled.

Q The most serious floods were caused by damming of the brook at South Orange avenue, isn't that so? A I do not think any serious flood was caused by the damming of the brook at South Orange avenue.

Q Wouldn't the whole situation be easily remedied by putting a proper drain through there? A No, sir; it would not.

Q Why not? A Well, because you get your —under your present conditions today, and in all the years that I have known it, your flooding starts fifteen hundred feet upstream from South Orange avenue.

Q Well, couldn't all that water be put in a large drain and carried through the property? A Yes, but that means a large drain all the way through, not at South Orange avenue alone.

Q Well, I mean, all through the property. A Could be, yes, no question about that; that is an engineering matter.

Q If that were so, if a drain were put in there, then the land would be entirely dry, wouldn't it? A No, sir.

Q Why not? A Well, because some of the land is low, right today.

Q Well— A It is so low that it would have to be filled in, even after a drain was put in or an adequate channel provided.

Q Well, you are referring now to a small strip of land along the brook just opposite the ball ground area, are you not? A No, I am thinking of the property in 1924: A large portion of Section D which was originally known as the old race track, part of the field club property. I am thinking of three-quarters of the area of Section C and a strip approximately one hundred feet wide on the west side of the trolley tracks in Section F.

Q Yes, is that Section F or what is it called? F, I see. Mr. Redfern, I show you these six photographs and ask you if they are true representations of the property in question? A They all represent some portions—each represents some portion of the property in question.

Mr. Roche: I will have them marked for identification, may it please the Court.

The Court: Unless Mr. Fitzsimmons wants to waive the formality.

Mr. Roche: Do you mind if they go in as exhibits?

Mr. Fitzsimmons: You mean instead of having the photographer come in?

Mr. Roche: No. Mr. Baird took them.

Mr. Fitzsimmons: I have no objection to their going in, without having them formally

proved by Mr. Baird, who took them, but I do object to their being used as evidence.

The Court: Why?

Mr. Fitzsimmons: We have maps here to show the contour.

The Court: I will allow them to be offered for what they are worth.

Mr. Roche: As a true representation of some part of the property.

The Court: Yes, but at what time?

Mr. Roche: Well, these are—

The Court: When were they taken?

Q There has been no change, Mr. Redfern, in the character of the land, from 1924, down to the present time, with the exception of Tract C which has been filled in? A There has been a change and those photographs show the changes. They do not represent the property as it existed in 1924, not all of them.

Mr. Fitzsimmons: I object.

Q Any change in the contour of the land? A There has been a change in the contour of it rather considerably.

Q Which one? A One photograph particularly is glaring.

The Court: In what respect?

The Witness: The photograph with the writing on the back. "Along stream at north end of grounds, showing house along bank of stream," that photograph, the contour of the ground has changed nearly three feet.

Q You mean, filled in? A Filled in nearly three feet.

Q There are trees growing there, are there not? A Yes; and an examination of those trees on the ground, today, you will find stone parapets, or walls, built around them to retain them, to keep them alive.

Mr. Fitzsimmons: I object.

The Court: Mr. Fitzsimmons objects and I think his objection proper. If they are photographs that were taken in 1924, that is all right, but if there is any dispute about the change of conditions between 1924 and 1927 I won't allow them.

Q Well, the others are all true representations of the conditions as they were in 1924, are they not, Mr. Redfern? A Not entirely, Mr. Roche.

Q Which ones should be omitted on that account? A Another one says, "north east corner of Meadowbrook Lane and Meadowbrook Place," the same conditions apply to that one as the first one.

Q You mean it has been filled in? A It has been filled in and regraded. I must be frank, Mr. Roche, I frankly see differences in all of them.

Q You see differences in all of them? A I do; I am sorry.

The Court: Now, it is the same objection and I decline to allow them.

Mr. Roche: No further questions.

The Court: That is all, sir.

Re-direct examination by Mr. Fitzsimmons.

Q Mr. Redfern, are you familiar as assessor in the Village of South Orange, with these detached lots, known as Tracts 7, 8, 9 and 10 and this one on Meeker and Clark street? A Yes, I am very familiar with all of that property.

Q And can you tell us which of those tracts was known as the Olds tract? A The one in the upper right-hand corner and marked 346 Tract 10, I believe it is; I cannot see it from here. Tract 10, isn't it?

Q Tract 10. A Tract 10, that is the one.

Q And do you know which tracts were known as Mount Tract? A Part of Tract 6.

Q Part of Tract 6? A The part of Tract 6 was fronting on Meadowbrook Place and the depth on Clark and Meeker streets of 212 feet.

Q That was the Mount Tract? A That was the H. Mount property.

Q And which property was Topham? A I don't know.

Q Do you know which property was the Emma Smith property? A No. I did know, but I have forgotten.

Mr. Fitzsimmons: That is all.

The Court: That is all, sir.

Mr. Roche: That is all.

MICHAEL FITZSIMMONS, recalled.

Examined by Mr. Fitzsimmons.

Q Mr. Fitzsimmons, does the Village of South Orange still own Tract 10 shown on this map up here? A No.

Q Formerly owned by Cassie Olds? A No.

Q What happened to that piece of property? A It was redeemed by the heirs of Cassie E. Olds, after counsel had attempted to go through foreclosure proceedings of the right of redemption of property—of the property having been purchased by the Village of South Orange from the Meadow Land Society, it being a tax title, the property was redeemed by the heirs of Olds.

Q The village purchased that from the Meadow Land Society for its assessed valuation? A For its assessed valuation.

Q How much did the village get for it when it was sold?

The Court: I don't think it makes any difference.

Q How much was it redeemed for?

Mr. Roche: I am going to object to this line of examination in its entirety and I do so object now. I think it is entirely immaterial to show what the Village of South Orange got for it.

The Court: Yes. That doesn't make any difference.

Mr. Fitzsimmons: If the Court please, an attempt is made—has been made to place

a valuation on those properties in 1924. Now in the contract of sale which provides that the Meadow Land Society would turn those tax lots over to the Village and assign a tax sale certificate, this particular tax sale certificate was the ordinary one for two years, at the end of which time the Village, to perfect title, would have to foreclose, the equity redemption so that the people had the right to come in and redeem them, I think the fact that this property was a tax title and that if the Meadow Land Society foreclosed it the same result would have obtained and it could not possibly be worth what a piece of property with a clear title would be worth.

The Court: That is perfectly true; you have shown it is a tax title, but what the village got it for and then sold it for makes no difference. They may have given it away.

Mr. Fitzsimmons: It makes a difference. It shows the value was not as represented to the Court of a tax title. When Mr. Roche refers to a tax title being as good as a title where it is obtained by conveyance, I think he refers to where there has been a foreclosure of the equity redemption.

The Court: We all know a tax title is a tax title. This one does not seem to have been worth much of anything.

Mr. Fitzsimmons: And I think I am entitled to show that we got the taxes on it, by this witness.

Q Now, Mr. Fitzsimmons, you remember the Mount tract, part of number 6? A Yes.

Q The Village of South Orange gave a deed for that, or was it a tax sale certificate? A Tax title certificate.

Q Tax title certificate. Has the equity of redemption been foreclosed on that? A No.

Q How long a period was that tax title for? A It was sold to the Meadow Land Society for a period of thirty years.

Q Thirty years? A Yes.

Q Do you remember when it was sold? A I couldn't say positively, but from— I know it was sold some time beyond eighteen years ago.

Q Now, you are clerk of the Village of South Orange? A Yes.

Q And, as clerk, do you receive the communications which are to be transmitted to the Board of Trustees? A I receive such as are mailed to me.

Q Yes. Did you receive a petition from citizens of South Orange requesting the Board of Trustees to permit Sunday baseball? A Yes.

Mr. Roche: Oh, I object to that, may it please the Court.

The Court: I will sustain the objection.

Q Did the Board of Trustees receive any communication concerning the playing of Sunday baseball?

Mr. Roche: Well, I object to that.

The Court: I will sustain the objection. The question here is the interpretation of the clause in this deed and it doesn't make any difference what the citizens have written, the question is what was the contract between the Village and Mr. Baird?

Mr. Fitzsimmons: The reason—the purpose of introducing that evidence was to show that, to a number of citizens of the town, this was not a nuisance. The question of nuisance is in here.

The Court: Well, you brought your witnesses to testify that they were not disturbed.

Mr. Fitzsimmons: Yes.

The Court: But, whether or not the citizens en masse wanted Sunday baseball has nothing to do with it. The question is, what did that clause in that deed mean?

Mr. Fitzsimmons: That has been my contention from the beginning.

The Court: I have given you both great latitude.

Mr. Fitzsimmons: Yes, you have.

The Court: But I think this really is too far outside the limit.

Mr. Fitzsimmons: All right. That is all. Mr. Carter.

Mr. Roche: That is all, Mr. Fitzsimmons.

JOSEPH A. CARTER, sworn for defendants.

Direct examination by Mr. Fitzsimmons.

Q Mr. Carter, where do you live? A South Orange.

Q And how long have you lived there? A All my life.

Q How many years? A Forty-four.

Q And are you a member of the Board of Recreation Commissioners? A I am.

Q During the baseball season of 1929, did the Board of Recreation Commissioners have anything to do with the operation of baseball on Cameron Field playground? A Only to give permission to the South Orange Baseball Club.

Q To play there? A To play there.

Q Did you have any connection in 1929 with the South Orange Baseball Club? A Why, not as a commissioner.

Q But you are interested in baseball? A Always.

Q Now, during the season of 1930, under whose control have these games been conducted? A The South Orange Village Board of Recreation Commissioners.

Q A committee appointed? A A baseball committee, yes.

Q And who composed the baseball committee? A Myself, Mr. Manda, Mr. Farrell.

Q And who managed the team? A I do.

Q Who secured the opposing teams to come there and play? A I did.

Q Who engaged the players to perform for the team which the Board of Recreation Commissioners organized? A I did.

Q Did your committee engage Mr. Henderson—or Mr. Coeyman as treasurer and Mr. Henderson as assistant treasurer? A Of the baseball funds.

Q Of the baseball funds? A Yes, sir.

Q And who collected the money? A They did.

Q Under their supervision? A Under their supervision.

Q And where was the money deposited? A In the South Orange Trust Company.

Q In whose account? A The Board of Recreation Commissioners of the Village of South Orange Baseball Committee.

Q And how were those funds disbursed? A By check.

Q On whose authorization? A Mine and Mr. Manda and Mr. Farrell.

Q Were receipts obtained for all moneys distributed? A Yes.

Q Now, during the season of 1930 were any children excluded from the baseball field on Sunday afternoon, when the games were being played, under the age of thirteen years? A At no time.

Q And is the field used by others than this baseball team during the baseball season? A Yes.

Q How often? A Every day, practically.

The Court: Except—

Q Except Sundays?

The Court: Except Sundays.

The Witness: Sometimes on Sunday.

The Court: You mean when this particular baseball team is playing somewhere else, is that it?

The Witness: No; in the mornings and, at one time, we had the Kiwanis Club at—the Kiwanis Club had the grounds.

Q Now, is the south end of the field where the tennis courts are located being used while the baseball games are being conducted? A

Practically all the time, morning and afternoon, up to dark.

Q Is the swimming pool used during the summer months, hot months, during the day and night? A The swimming pool is used during the week days, morning, afternoon and evening.

Q Do you know of any case where anyone having the right to use the playground was prevented from doing so, at any time during the 1930 baseball season, other than Sunday afternoons when the baseball team was playing? A No. The baseball field is open to anybody at any time during the baseball games all other activities are going on in the playground. They come right in through the gate at the baseball field, where you enter the baseball field, and go to their swings and trapezes and various activities—tennis.

Q Did you ever exclude— do you know of any citizen of South Orange being excluded from the baseball games because they did not have the price of admission? A To the contrary, we let hundreds in. There are more people probably come in—there are more people come in than do pay—come in free.

Q Have you yourself ever invited them to come in when they did not have the money A I have—I am at the gate practically every Sunday and go—and tell them to come in.

Q Now, I show you a souvenir baseball program and ask you if that was compiled under your—or at your request? A Yes, it was.

Mr. Fitzsimmons: I offer that in evidence.

Mr. Roche: I have no objection.

(Souvenir program marked Exhibit D. 8.)

Q Now, Mr. Carter—(interrupted).

The Court: You say, it doesn't make any difference whether they pay or not, they can come in, is that the idea?

The Witness: It makes a lot of difference, Vice-Chancellor. We have to get enough funds to provide the Recreation Committee funds to pay for the cost of it. However, if they haven't the money, we let them in.

The Court: In other words, you get in enough to pay the expenses and then—and let all the rest in free, is that the idea?

The Witness: We let those in that have not the money.

The Court: How about the fellows that come first?

The Witness: Well, I think, the majority of them come there expecting to pay and willing to pay.

Q You have had citizens donate money for baseball, haven't you? A Yes, we have.

Q Now, at the time the Village of South Orange purchased the property from the Meadow Land Society and turned over Tract C to the Commissioners, what was the condition of the field? A It was very low. We were thinking at one time of putting a pond there, a skating pond, it was icy in the winter time as it was and the children did skate there; it was very low.

Q And the Commissioners had to spend quite some money to— A To field in that tract.

Q —fill in that acreage. Now, the backstop, which was purchased, is that being used by those who desire to use the playground during the week or any other time? A Yes, sir.

Q Was any of this expense, which was testified, I mean, the sum of about $11,000—was that expended for the benefit of any particular private club? A We had no particular private club in view at all, when we spent that money. We just made it available for playground use.

Q Did the Board of Recreation Commissioners ever request the Village of South Orange to obtain that property for playground purposes? A It did before I became a member.

Q I see. Now are you connected with the Maplewood Record, the South Orange and Maplewood Record? A Yes, sir.

Q I show you a photograph, shown in an issue of that periodical on August 5, 1927, and ask you what it shows? A It shows part of the playground under water. I remember at the time it was—it would be over my head if I were to stand in it.

Q Does it show any of the property which the Village of South Orange purchased from the Meadow Land Society? A It does, all the property except the brook, which runs through, was purchased from the Meadowland Society.

Mr. Fitzsimmons: Any objection to this going in evidence?

Mr. Roche: Does this show conditions existing in March, 1924?

The Court: What is the date of it?

The Witness: That was—

Mr. Fitzsimmons: 1927, but your Honor has—

New Jersey State Library

Mr. Roche: I object to it.

The Court: I will sustain the objection. Besides, that is not the proper way to prove a photograph.

Mr. Fitzsimmons: I know that, but we admitted Mr. Roche's photograph and I thought he would do the same with me.

The Court: No, we did not. We excluded them.

Mr. Fitzsimmons: I consented, if you recall—and the testimony shows it—to a map but objected to the article. That is all.

Mr. Roche: Just one minute, Mr. Carter.

Cross examination by Mr. Roche.

Q How long have the Commissioners had jurisdiction of this part of the old Meadow Land Society property? A The other part of Cameron Field?

Q Yes. A I should say the spring of 1929.

Q Or, when you took it over? A I think so.

Q Yes. Well, when were you thinking of making a pond there? Was it after that? A Right after we took it over.

Q You were playing ball there in '29, weren't you? A No. We took it in 1928. We filled it in in 1928. It was then—it was in the spring of 1928 that we took it over.

Q How much did you take in during 1930, last year, on admission fees?

The Court: Well, that is all in evidence, I think, about $14,000.

Mr. Fitzsimmons: That is right.

Q Well, do I understand, then, that you went in—do you think, then, you let in about as many for nothing as you charged to get in? A More.

Q Do you mean, children under thirteen? A Including children.

Q If I went there, being a resident of East Orange, would you let me in for nothing? A Not if I knew you were from East Orange.

Q Suppose I said I lived in South Orange? A I really thought you did.

Q Well, if I said that, would I get in free? A Yes.

Q Do you ask everyone who comes to the gate where they live? A No, we do not.

Q You just take their money? A Take their money, if they give it to us.

Q There is a gate, isn't there, an entrance? A There is no gate, there is an opening.

Q Do you sell tickets? A Yes.

Q What other organization besides this so-called South Orange Baseball Club has the regular use of that field? A A regular use of it, now, there is all sorts of children's organizations. I will tell you some of them.

Q Regular use, I said. A Well, they are regular.

Q When? A At all times. The thing is going on every day, practically.

Q Do they have one day a week reserved for them, any of these organization? A Mr. Farrell can tell you better about the particular days that they play; he is supervisor of the playground.

Q Well, let me ask you, not Mr. Farrell. Do you know of any other organization which has a regular day per week on the field? A Yes, I do.

Q Which one is that? A The Panthers.

Q Who are they? A It is a community house team.

Q When do they play? A On Tuesday.

Q What are they, boys? A Boys, colored boys.

Q And they play in the morning? A No, they play in the evening, afternoon.

Q Any admission charged for that? A (Witness nods no.) I will give you some more if—(interrupted).

The Court: Mr. Roche asked if they charged admission for that.

The Witness: I said, no. And we also had there playing the Cardinals, the St. Luke—(interrupted).

Q Now, wait a minute. I said "regular use," recurring, not once—(interrupted). A Yes, regular: The Police Department, the Street Department, the Ridgewoods, the Junior High School—both junior high schools during the school time, of course, the Hillsides, that is a club of boys from the Montrose section.

The Court: Each one of these have a specific day and hour through the season?

The Witness: They have days, yes, afternoons; they get it for an afternoon. The police—(interrupted).

The Court: Well, they come in the place and get a permit and the first one that comes gets the permit?

The Witness: That is it, exactly.

The Court: That is the way it used to be when I was secretary of the Park Commission.

The Witness: We have some we give regular. Now, the Police Department—Mr. John Lester wrote us a letter and asked us for permission to have that field on Saturdays, and the records show that we sent him a letter giving it to him on Saturdays, with the exception of three Saturdays, and on those the Girl Scouts, the Rotary Club and the Boys' Week Rally was held.

Q Mr. Carter, you said that Mr. Henderson and Mr. Coeyman acted as treasurers under the orders of the board? A That is true.

Q Did they sign checks or did you sign checks? A They signed checks on our orders, provided—we o.k.'ed it.

Q But they had the power, that is, Mr. Coeyman or Mr. Henderson had the power to withdraw money by checks signed by them? A Only on our—at our request.

The Court: But they actually signed the checks?

The Witness: They signed the checks, yes.

The Court: And their names were registered?

The Witness: Their name was registered, but they didn't give out the check.

Re-direct examination by Mr. Fitzsimmons.

Q But both of those men, Mr. Henderson and Mr. Coeyman, have positions of trust at the South Orange Trust Company? A Mr. Coeyman is treasurer and secretary; Mr. Henderson is assistant treasurer and assistant secretay.

Q Mr. Carter, just one more question: Are these seats that the playground commissioners have made portable seats, are they? A Yes.

Q Are those loaned out at any time to any other organization in South Orange? A Yes, they are used at all times when we are not using them by the Board of Education for their playground.

Q At Underhill Field? A At Underhill Field.

Mr. Fitzsimmons: That is all.

Mr. Roche: That is all.

The Court: That is all, sir.

PATRICK J. MAGUIRE, sworn for defendants.

Direct examination by Mr. Fitzsimmons.

Q You are the Chief of Police of South Orange? A Yes, sir.

Q How long have you been chief? A Seven years.

Q And, before that, were you a member of the department? A For twenty-four—

Q Yes. Now, did you attend any of the baseball games played at Cameron Field playground in the season of 1930? A I did.

Q Did you attend them during 1929? A I did.

Q How many times did you go there on an average? A I went about ten times in 1929, about six in 1930.

Q And did you notice how the games were conducted? A I did.

Q How were they conducted? A Very orderly.

Q Was there any peanut vendor there in 1930? A No, sir.

Q Any hot dog vendors there in 1930? A No, sir.

Q Did you, as Chief of Police, either in 1929 or 1930, during the baseball season or afterwards, receive any complaints from citizens of South Orange that these games were a nuisance? A No, sir.

Q Did you receive any complaints from anyone that the parking of cars impeded traffic? A No, sir.

Q Did you personally supervise, or did you supervise through your department the parking of cars? A Yes, sir.

Q Did Mr. Baird ever write to you? A No, sir.

Q Did he ever speak to you about it? A No, sir.

Q At these games during the season of 1930, was there any loud shouting and noise making? A Not loud. There was some clapping and applause.

Q Just when a good play occurred? A Just when a good play occurred, yes.

Mr. Fitzsimmons: That is all.

Cross examination by Mr. Roche.

Q You attended these games in your official capacity as Chief of Police? A I did, yes.

Mr. Roche: That is all.

Mr. Fitzsimmons: Mr. Manda.

Albert A. Manda, for Defendants, direct.

ALBERT A. MANDA, sworn for defendants.

Direct examination by Mr. Fitzsimmons.

Q Mr. Manda, what is your business? A Horticulturist.

Q How long have you been so engaged? A Fifty-eight years.

Q And are you a member of the Board of Recreation Commissioners of South Orange? A Yes.

Q And were you on the baseball committee appointed— A Yes, sir.

Q —to conduct baseball games in 1930? A Yes, sir.

Q Were those games conducted by your committee? A Yes.

Q As far as you know, did any club known as the South Orange Baseball Club have anything to do with baseball in 1930? A No, sir; entirely under the control of the Recreation Commission.

Q And you and Mr. Carter supervised the conduct of the games? A Yes, sir.

Q Did you have any requests from citizens that recreation of that kind be supplied? A Yes, sir.

Q Was that the reason you had the games? A Yes, sir.

Q Now, from your experience, Mr. Manda, as a horticulturist, and dealing a lot with ground, tell the Court the condition of Tract C, which is the tract we are using, when it was turned over to the Recreation Commissioners in 1928. A The two-thirds of it was a swamp, and, in fact, it had been used as a skating pond before we had it—had a regular skating field, that is

when we used to flood our regular ground to make it a skating pond. This was an auxiliary or sometimes used in preference to our flooded field.

Q And did the commissioners have to spend money to grade it? A Yes, sir, had to be filled.

Q And was that money spent for any particular club? A No, sir; that was spent for the citizens of South Orange.

Q And you simply moved the playground from its former line over to Mead street, did you not? A Yes, and moved the baseball ground in further, because there was not room enough where it originally existed on the old Cameron Field.

Q Did you attend many of these games during the season of 1930? A I don't think that I missed more than two or three.

Q And how were they conducted? A Well, I have seen games all my life. When I was at Harvard, connected at Harvard, I saw the college games and I have not seen any more noise, nor not as much noise as any college game, or even a Salvation Army meeting or colored congregation.

Q In other words, the games were as quiet as possible, in your judgment? A Quiet, simply the public naturally would let vent their expression of delight or disappointment, which I do not think is against the law.

Mr. Fitzsimmons: That is all.

Cross examination by Mr. Roche.

Mr. Roche: No questions.

Mr. Fitzsimmons: Mr. Farrell. This is the last witness. I will make it short.

JOSEPH J. FARRELL, sworn for defendants.

Direct examination by Mr. Fitzsimmons.

Q Mr. Farrell, are you supervisor of Cameron Field playground? A I am.

Q And are you on the baseball committee of the Recreation Commissioners? A I am.

Q Did you have anything to do with the supervision of baseball during the 1930 season? A I did.

Q What did you do? A Well, I seen that there were no vendors, for one thing, seen that the diamond and everything was in shape.

Q Did you pay the players for the commissioners? A I did, I gave them their checks.

Q Did you go to Mr. Coeyman and get the money? A Mr. Henderson used to give me the money.

Q Mr. Henderson. Now, is this field used exclusively for this baseball team? A No, sir.

Q Outside of Sunday afternoon is the field used by other citizens in South Orange? A Yes.

Q Other organizations have the right to use it? A Yes.

Q Is it a rule they have to come to you for a permit to use it at any time? A Well, if they want it for certain days in the week steady, why, they do; if they just want it for one day, why, we would let them go there.

Q Any organization desiring to use the field makes arrangements with you? A That is right.

Q During these baseball games the rest of the field is being used? A Used.

Mr. Roche: That is all, no questions.

The Court: That is all.

Mr. Fitzsimmons: If the Court please, I have another witness, but it is merely corroboration of the two commissioners, so I won't put him on. We will rest.

Mr. Roche: I understand your Honor wants to leave?

The Court: I have to go because I have another hearing at four o'clock in the Prudential building.

Mr. Roche: There is a short rebuttal of Mr. Baird. It will only be a few minutes, but I am wondering if we could not consent to take his testimony, as he is going away in about a week, the same as we took Mr. Becker's.

The Court: All right.

Mr. Roche: It will only take about ten or fifteen minutes.

The Court: How long do you want to file your memorandums?

Mr. Roche: Well, mine is practically ready, excepting the facts. I am all ready and am ready to file a brief within twenty-four hours.

The Court: Well, I think Mr. Fitzsimmons ought to have more than twenty-four hours. How long do you think you ought to have?

Mr. Fitzsimmons: Why, I think—are you ready to serve me with your brief?

Mr. Roche: As soon as—

The Court: Well, I usually require counsel to exchange briefs within two weeks,

then each one can have an additional week for a reply brief, if necessary.

Mr. Fitzsimmons: That is satisfactory.

Mr. Roche: That will be from the time we take Mr. Baird's testimony?

The Court: Yes.

IN CHANCERY OF NEW JERSEY.

January 12, 1931.

Between

WILLIAM T. BAIRD,
Complainant,

and

BOARD OF RECREATION COMMISSIONERS OF THE VILLAGE OF SOUTH ORANGE,
Defendant.

Transcript of shorthand notes of testimony taken in the above entitled cause before the official stenographer at the Chancery Chambers, Newark, New Jersey, on January 12, 1931, at 1:00 P. M., in the presence of August Roche, Jr., for complainant; Thomas Fitzsimmons for defendant.

WILLIAM T. BAIRD, recalled.

Examined by Mr. Roche.

Mr. Roche: Mr. William T. Baird is called as a witness in rebuttal and his testi-

mony taken before Mr. Roger E. Salmon, Court stenographer, by consent.

Q Mr. Baird, did you negotiate the lease with the field club, which is marked Exhibit D. 7 in this case? I show you the lease. A Yes.

Q The lease is dated November 23, 1923. Were negotiations pending at that time with the Village of South Orange for the purchase of this land?

Mr. Fitzsimmons: I object; immaterial. I ask my objection be noted.

Q You may answer the question. A Yes.

Q Can you tell us about the negotiating of this lease dated November 23, 1923?

Mr. Fitzsimmons: I object on the ground that the lease speaks for itself and ask my objection be noted.

Q Can you tell us about that, Mr. Baird? A The president and several members of the Board of Directors of the field club spoke to me about their position, as they know the negotiations were going on and they told me that they would put considerable money on to the lands and improvements, such as tennis courts and new greens, and so forth, and, after talking the matter over with them and with—and including Mr. George Becker, who was then a director of the field club, it was agreed by all of us that the lands could not be used very long for golf purposes, as it was becoming very dangerous, driven balls having struck a number of persons.

Mr. Fitzsimmons: I also want to register an objection to this particular part of the

testimony on the ground that it is not binding on the Village of South Orange; unless it can be proved that the Village had passed an ordinance prohibiting golf at that particular time, the evidence is not admissible.

All right, Mr. Baird; pardon me for the interruption.

Q Now, let me ask you this: The George Becker, to whom you have referred, has been called as a witness in this case, has he not? A He has.

Q And was, at that time, also a member of the board of trustees of the Village of South Orange? A Yes.

Q As well as a member of the field club board? A Yes.

Q Was this lease made in view of the fact that a sale to the Village was contemplated?

Mr. Fitzsimmons: I—

A Yes.

Mr. Fitzsimmons: I object to that question on the ground it is immaterial and irrelevant.

Q In the agreement between the Meadow Land Society and the Village of South Orange, marked Exhibit C. 2, on page 5 thereof, there are certain provisions for payment by the Village of South Orange to the field club of certain sums, in case the lease is terminated. Do you know, of your own knowledge, whether the lease was terminated?

Mr. Fitzsimmons: I object to the testimony on the ground that the agreement is merged in the deed and that, in addition, the testimony is irrelevant.

Q You may answer the question. Do you know whether the lease was terminated? A Yes, it was terminated.

Mr. Fitzsimmons: As of what date, Mr. Roche?

Q Well, when? A I can't remember the exact date. I think it was in 1926 or 1927.

Q And, pursuant to the provisions contained in the agreement, was money paid by the Village to the field club, or vice versa? A It was, vice versa.

Q That is, the field club paid the Village some money? A Yes.

Q Had there been a lease with the field club prior to the lease of November 24, 1923? A Yes.

Q How much more time had the former lease to run, do you recall? A I cannot remember that.

Q Mr. Baird, I call your attention to this map, offered by Mr. Redfern, and marked Exhibit D. blank, and call your attention to the fact that a lake appears on Tract F. Was there a lake there in March, 1924? A No.

Q What were these four tracts marked C, D, E and F used for in March, 1924? A For this golf course.

Q And did you frequently play golf over these tracts? A Yes.

Q Now, briefly, describe the physical condition of the land in those four tracts. A You mean, the condition of—

Q Wetness or dryness? A This portion?

Q E. A Tract E was always dry—down in this corner.

Q Indicating the easterly corner? A The northeast corner.

Q The northeast corner? A Of Tract E, after heavy rains water usually gathered there right along there and they had a long plank went over. The tee was on this—(interrupted).

Q Planked over the brook? A No. The tee was to the west of the brook, right about here (indicating), and the green was up here (indicating), so that all we did there was to walk over the plank and on to the dry ground, which rose quite rapidly.

Q Tract F? A There was a ditch here (indicating) to carry off the surface water.

Q Just a minute so we can get this on the record. As to Tract F, if you will put that in, as to Tract F there was a ditch? A There was a ditch came down about through the middle of that tract.

Mr. Fitzsimmons: From Ridgewood Road?

The Witness: From Ridgewood Road.

Mr. Fitzsimmons: To the brook.

The Witness: Yes, to the brook, and the water from that ditch backed, seemed to back up here quite often. There was a bunker here (indicating) and we usually went around there, around to that side of it. Here, after heavy rains, we had to jump over, the ditch was really quite filled up there. Never any trouble here (indicating).

Q Well, that is not ours. A Well, I know; I won't go into that.

Q No. A We used it, that is what I mean, the ninth tee was about fifty yards to the west of the brook. Well, I should say forty to fifty yards. Now, on this—

Q Now, on Tract C. A On Tract C after a heavy rain there is usually standing water here (indicating).

Q In the middle of the tract? A In the middle of the tract, but it was usually dry here (indicating) and it was always dry along here (indicating).

Q When you say "here," of course, the Court will have to read this, you see, and will not be able to tell where you mean. A Yes. It was usually dry.

Q On the westerly end? A On the westerly end, and always dry along the—

Q Northerly part? A I mean, the Mead street side, the green being here (indicating).

Q At the east end? A At the east end. I played constantly, after rains, and I scarcely remember a time when we were prevented from playing because that was the only difficult place on the course and that we could always walk around.

Q (Indicating the center of Tract C.) A Yes.

Q Indicating the center of Tract C. Was Tract D in dry condition? A Tract D, the second green, was at the westerly—I mean, at the southerly end, near the old skating pond, and, sometimes, after a heavy rain, there would be water in this section, practically—well, it can't be the middle—it was to the left—somewhat to the left of the green approaching—about the middle of the tract, roughly, about the middle.

But that all disappeared within a day or two after a rain.

Q Now, Mr. Baird, Mr. Redfern testified as to floods and offered in evidence a contour map, marked Exhibit D. blank, showing the points to which he says water covered this land, upon flood occasions. Do you recall any floods, on or about March, 1924, or prior thereto? A No. No flood to prevent us playing on the golf course.

Q You mean prior to 1924? A 1924, or prior thereto.

Q Do you ever recall having seen water as far as the westerly side of this shaded area on this side? A Only in 1927.

Q Only in the year 1927? A Yes.

Q And what time of the year was that? A I cannot recall the month.

Q What did you observe in 1927? A You mean—

Q As to the water, as to the flood. A Well, the water, at that time, I think this properly represents the portion that was flooded at that time. It went over quite a little into this field into these tracts, and also on to this tract (indicating).

Q Indicating tracts—well, they are not marked on that map, are they? (Indicating)— A Tract, I would say the lower portion of—

Q This is D. (Indicating)— A Tract D was flooded, I should say, as far back as one hundred yards.

Q From the brook? A From the brook. Tract E irregularly, some places fifty yards and some places as much as one hundred yards back, I think. Tract C was pretty well flooded back to near the green; and Tract F, as I recollect it, was flooded probably back, probably seventy-

five to a hundred yards. I will modify that, if I may. I should say, not more than seventy-five yards.

Q Now, did you observe yourself, at the time of that flood in 1927, any obstruction at the ridge over the brook?

Mr. Fitzsimmons: I object as leading.

Q At Mead Street.

Mr. Roche: Well, I will withdraw the question. Just strike out the question.

Q What else did you observe with regard to this flooding there? A At that time of that flood the stream was in very bad condition; no effort had been made for several years to clear it of obstructions; the banks were caved in, here and there, all along through the meadow lands. In order to flood the skating pond, which was just to the west of the field club building, a dam was placed across the brook to raise the water and at the southerly edge of Tract C there was a building erected for the activities on Cameron Field. That building was practically on the edge of this stream, the current coming down there had washed away the earth from the foundation of that building for eight or ten feet back. The earth was washed to the other side of the stream and across it forming, practically, a bar there, the water above that obstruction being the deepest water in the stream through those lands. I saw myself logs, boxes, barrels and all kinds of debris that came down the stream, here and there, all through the stream. The chief cause of that heavy flood was

this dam that was there to flood the skating pond and this obstruction that that building caused, at the lower edge of Tract C, as well as the obstructions all through the entire course of the stream.

Q How long have you been familiar with those lands and played golf over them, Mr. Baird? A Since the field club was formed, many years ago, I think twenty-five or thirty years ago.

Q During that period of time have you ever seen another condition of flood similar to the condition in 1927? A Neither before that nor since.

Q Did the condition of wetness, which you have described, occur after rains or was it present at all times? A No, it was only after heavy rains.

Q And, when the weather was dry, what was the condition of the land on these four tracts? A Well, I say, within a day or two after a rain that water would disappear. There was no trouble with it at all.

Q Was any of that land swampy? I mean, by "swampy" land which was boggy, or soft, no matter whether conditions were wet or dry? A The only part of that description was down here, running across to the Tillou property, down in here where we did not play, where no effort had been made to drain it, the southeast corner, you might say, west line here we did not try to use.

Q Indicating the extreme southeast corner of Tract F. Is that right? A Yes.

Q That was the only swampy part of all of these tracts? A There was at one time what you might call swampy land in the southerly

edge of Tract C, but the ditch was dug through there that after that kept it fairly dry, except after heavy rain.

Mr. Roche: Now, do you object to these pictures?

Mr. Fitzsimmons: Yes, I have objected to those and still do object.

Mr. Roche: Well, now, let's see.

Q Tell us, briefly, Mr. Baird, what was done to clear the stream of obstructions after that flood? A After that flood the Village had all of the obstructions taken out of the stream; they put in a big, what I would call a tractor shovel and it went from one end of the property to the other, scooping out the bed of the stream, straightening out all the sharp angles, cutting down the banks and putting it in altogether first-class condition, and they also put in concrete walls.

Q Along the stream? A Along the stream here and there wherever they thought the worst conditions prevailed, with the result that has not been flooded since.

Q Well, I show you—(interrupted). A I should say this did not represent the stream at all in 1924.

Q Let us get that on record. A It was just full of sharp angles, all through here to here (indicating).

Mr. Roche: The witness indicates on the map the brook marked "The Rahway River." Now, did you get his testimony?

Witness: From the north end of the ground to Mead street.

Q From here to here, from the north end of the grounds to Mead street, are these two photographs, which I show you, true representations of part of Tracts E and D, in March, 1924?

Mr. Fitzsimmons: I object, because the Court has already refused the admission of these photographs in evidence.

Mr. Roche: Well, the fact that Mr. Redfern said they were not does not make it so.

Mr. Fitzsimmons: The Court refused to admit them. It is on the record.

Mr. Roche: They were not offered.

Mr. Fitzsimmons: I think they were.

Mr. Roche: I asked him to identify them. Well, I am not particular. (To witness): What is your answer, for the purpose of the record? I have not offered them yet.

A Yes.

Q The answer is "Yes?" A Yes.

Q Your son took those pictures, Mr. Baird? A Yes.

Q Recently? A Yes.

Q Within the last ten days, two weeks? A Within the last two weeks.

Q Within the last two weeks? A Within the last two weeks.

Mr. Roche: Now, I would like to have them marked, but I don't want to take any advantage of Mr. Fitzsimmons, the Court not being here, can we mark them and let the Court pass on them?

Mr. Fitzsimmons: Why, yes, you can have them marked. You had them marked for identification.

Mr. Roche: No, they have not been marked at all. You see, Mr. Redfern stated

that they were not true representations of March, 1924.

Mr. Fitzsimmons: I objected to their being admitted in evidence and the Court refused them. That is my recollection.

Mr. Roche: I do not think they are very important. I would like to have them marked and held in reservation for the Court to pass upon.

Mr. Fitzsimmons: All right.

Mr. Roche: We can have them marked and held for the Court to pass upon. I do not want him to see them if they are not properly offered. That is all.

(Two pictures marked identification A and B.)

Cross examination by Mr. Fitzsimmons.

Q Now, Mr. Baird, at the time of the flood, 1927, you have spoken about, the grounds were still being used as a golf course, were they not?

(Discussion off the record.)

A I cannot be sure of that, Mr. Fitzsimmons.

Q Is your answer you don't remember? A I don't remember.

Q Now, is there any change in the physical appearance or character of this property, between March, 1924, and the time of the flood in 1927? A I think not.

Q You think not. Now, isn't it a fact that the dam, which you spoke about in the Rahway River just west of what is now stated on the map to be "tennis courts under construction" in Tract D, was there in 1924 and used for the flooding of that area for the field club? A Yes.

Q That dam was there in 1924? A Yes.

Q And, prior to 1924, there had not been any big flood caused by that dam being there, had there? A No, not that I know of.

Q No? A I don't—I think I testified that I didn't know of any flood.

Q Yes. A Prior to that.

Q Now, isn't it a fact that the portion called "tennis courts" which was—I mean, the tennis courts fronting on Mead street, tennis courts under construction, facing on Mead street—that land was always soggy and wet? A No, I think not, Mr. Fitzsimmons. There was a ditch along here that carried off the water and it was wet very often after heavy rains, but we used to walk across here continually.

Q But it was low ground, was it not? A It was low.

Q Low land? A Low land.

Q And the westerly portion of Tract C was always low land? A This, you mean?

Q Yes. A It was not as low as it was here (indicating). It was peculiar there.

Q The westerly portion was low and the center portion was lower, wasn't it? A Yes, yes.

Q And the easterly portion, where the green was, was high? A Yes.

Q Yes. Up against the railroad. A That is right.

Q Now, do you know whether or not the South Orange Field Club lease which you have testified about was abrogated as the result of any action by the Village of South Orange, or was it abrogated at the request of the field club? A I don't know.

Mr. Fitzsimmons: You don't know. That is all.

Mr. Roche: That is all.

Now, we would like to get the testimony that Mr. Becker gave.

STIPULATION.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between	
WILLIAM T. BAIRD, individually and as a Trustee, etc., *Complainant-Respondent,*	*On Appeal from Court of Chancery.*
and	
BOARD OF RECREATION COMMISSIONERS OF THE VILLAGE OF SOUTH ORANGE, *et als., Defendants-Appellants.*	*Stipulation.*

It is hereby stipulated and agreed by and between Harrison & Roche, solicitors of complainant-appellee, and Riker & Riker, solicitors for defendants-appellants, that in printing the State of the Case on the appeal of the above-entitled matter the hereinafter mentioned exhibits need not be printed in full but as herein stated:

1. Exhibit C. 1. Print sketch. Omit printed article. It is further stipulated that the reasons assigned for reversal in paragraph N of the petition of appeal are waived and will not be urged on the argument of this appeal as a ground for reversal.

2. Exhibit C. 2. Abstract Agreement of Sale reciting restrictive covenant and clause conveying premises subject to leases held by South Orange Field Club.

Stipulation.

3. Exhibit C. 3. Abstract deed reciting restrictive covenant and clause conveying premises subject to leases held by South Orange Field Club.

4. Exhibit C. 4. Print extract from minutes of regular meeting of Board of Trustees of the Village of South Orange Monday January 21, 1924 as appears on page 13.

5. Exhibit C. 12. Print extract from minutes of regular meeting of Board of Trustees of Village of South Orange Monday March 19, 1928 as appears on page 6.

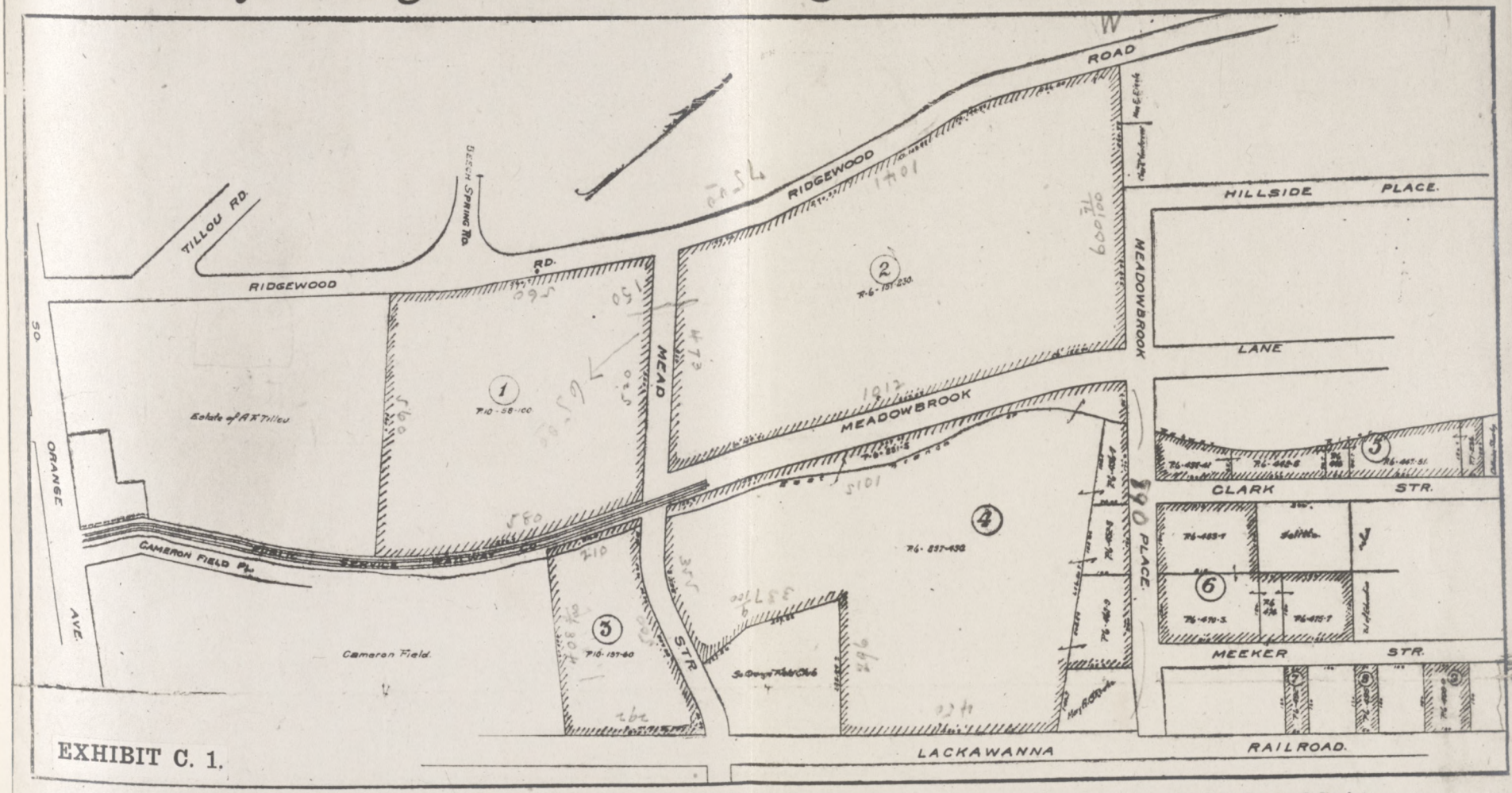
6. Exhibit C. 14. This exhibit consisting of bank statements issued by South Orange Trust Company for the year 1930 in the name of South Orange Board of Recreation Commissioners Baseball Committee, Mr. S. O. Coeyman, Treasurer, 53 South Orange avenue, South Orange, N. J., need not be printed.

7. Exhibit D. 8. Print pages 1 and 2 eliminating from page 1 picture and names of members of baseball team.

HARRISON & ROCHE,
Solicitors of Complainant-Appellee.

RIKER & RIKER,
Solicitors of Defendants-Appellants.

Purchase of South Orange Field Club Course and Adjoining Land by Village Will Assure Big Park and Playground Project



Shaded portion shows property to be taken over by South Oran ge for park and playground purposes, an agreement with Meadowland Society.

Exhibit C. 1.

Exhibit C. 2.

EXHIBIT C. 2.

ARTICLES OF AGREEMENT.

Between THE MEADOW LAND SOCIETY OF SOUTH ORANGE, a corporation, *and* VILLAGE OF SOUTH ORANGE, a municipal corporation,	*Dated January 21, 1924.* *Consd. $72,850.*

Conveys premises in the Village of South Orange, County of Essex and State of New Jersey.

Being the same premises mentioned in the bill of complaint.

Recites, page 5, paragraph 3,—"This conveyance to be subject also to two leases between said Meadow Land Society of South Orange and the South Orange Field Club, a corporation, which leases are dated November 1923, and are for terms of ten years from July 1, 1923 to June 30, 1933. It is covenanted and agreed by said party of the second part that in case said Field Club shall be, by ordinance of the Village of South Orange, or otherwise, prevented from continuing the use of said leased premises as a golf course, then and in that case, said Village of South Orange hereby agrees to compensate said Field Club for the value of the unexpired term of its leases, the amount to be paid by said Village of South Orange to said Field Club under this provision to be settled by mutual agreement and arrived at as nearly as may be in the following

Exhibit C. 2.

manner by adding together all the sums of money spent by said Field Club from time to time beginning July 1st 1922 and continuing during the terms of said leases for permanent betterments or improvements on the leased premises (as distinguished from ordinary carrying charges) such as new tees or greens for its golf course or improvements to the land; the part of said sum total so obtained which is to be paid by said Village of South Orange to said Field Club to be in the same proportion, to the whole sum as the unexpired terms of said leases shall bear to the whole term of years from July 1st 1922 to July 1st 1933. In case said Village of South Orange and said Field Club are unable to agree, then each one shall name an arbitrator, said two arbitrators to select a third, and the decision of said arbitrators shall be final.

Recites—page 7 paragraph 1. "It is further understood and agreed that said conveyance shall be made upon condition and subject to the restriction that the premises above described shall be used solely as a public park or playground or for public park or public playground purposes."

Exhibit C. 3.

EXHIBIT C. 3.

WARRANTY DEED

The Meadow Land Society of South Orange, to The Village of South Orange	Dated March 28, 1924. Ack. March 28, 1924. Recd. Apr. 16, 1924. Consd. $71,300.

Conveys premises in Village of South Orange, County of Essex and State of New Jersey.

Being same premises mentioned in bill of complaint.

Recites, page 2 end of second paragraph—entitled "Fourth Tract", the four tracts above described are conveyed upon condition and subject to the restriction that the premises above described shall be used solely for public park and/or public playground purposes.

Recites, page 4 middle of second paragraph, this conveyance is also made subject to two leases between said The Meadow Land Society of South Orange, a corporation, and the South Orange Field Club, a corporation, which leases are dated November 1923 and are for terms of ten years from July 1, 1923 to June 30, 1933.

EXHIBIT C. 4.

Mr. Miller presented the following report:

January 22, 1924.

Mr. W. S. Hunt, President,
Village of South Orange.

Dr. Mr. Hunt:

About three months ago by authority of the Board of Trustees, sitting as a committee of the whole, you appointed a Committee of the Board of Trustees, consisting of Messrs. Becker, Bird and Miller, to discuss with the officers of the Meadow Land Society the question of the purchase of all their property in the Village of South Orange for park and playground purposes.

This Committee is very glad to report that these negotiations have resulted in Articles of Agreement between the Village of South Orange and Meadow Land Society which provide, briefly, that the Village shall acquire all of the property of the Society in the Village for approximately $72,000, or about the present assessed valuation of the property.

These Articles of Agreement have been approved by the counsel of the Village and by the counsel of Meadow Land Society and have been signed by Mr. W. T. Baird, President of Meadow Land Society, acting under authority of his Board of Directors.

We feel that in acquiring this property in the heart of the Village at so reasonable a price we have gone a long way towards providing the people with adequate park and playground facilities. By retaining this open space, which has meant so much to the Village, we take a great

Exhibit C. 4.

step towards maintaining the residential character of our community.

We shall take this opportunity of expressing our thanks and appreciation of the generous and public-spirited attitude of Mr. Baird, who owns a majority of the stock of the Society. With his co-operation we are now able to continue in permanent form the wishes of the founders of the Society who acquired this property without thought of personal gain in order to keep an open space in our midst.

Respectfully submitted,
(Signed) PHILIP N. MILLER,
For the Committee.

On motion of Mr. Miller the following was adopted:

Resolved, that the President and Clerk be and hereby are authorized to execute the agreement presented by a Committee of this Board, consisting of Messrs. Miller, Becker and Bird, between the Meadow Land Society of South Orange, a corporation of the State of New Jersey and the Village of South Orange, a municipal corporation of the State of New Jersey for the acquiring of lands of the said Meadow Land Society by the said Village of South Orange as described in said agreement. The sum to be paid for said lands being $72,850.

Exhibit C. 5.

EXHIBIT C. 5.

Minutes of special meeting of the Trustees of Meadow Land Society of South Orange held on Monday, July 21, 1930, at 8 P. M. (Daylight Saving Time), at the residence of Collier W. Baird, Number 285 North Ridgewood Road, South Orange, New Jersey, pursuant to due notice given to all of the trustees, namely: William T. Baird, Collier W. Baird, John S. Allen, Robert S. Sinclair, Morris W. Mead, James Marshall and H. C. Hoskier. Present: William T. Baird, Jr. (for William T. Baird), Collier W. Baird, Morris W. Mead, Robert S. Sinclair, constituting a quorum of said Trustees.

It was regularly moved, seconded and carried that Mr. Robert S. Sinclair act as Chairman and Mr. Collier W. Baird as Secretary of the meeting.

The following preambles and resolutions were regularly moved, seconded and unanimously adopted:

It appearing that by its deed dated March 28, 1924, Meadow Land Society of South Orange conveyed all of its real estate in the Village of South Orange, which includes a part of the tract or field now known as Cameron Field, to said Village for the nominal consideration of Seventy-two Thousand Eight Hundred and Fifty Dollars ($72,850.00), but expressly subject to the following conditions and restrictions, "upon condition and subject to the restriction that the premises above described shall be used solely for public park and/or public playground purposes"; it having been the intention and purpose of the officers, directors and stockholders of said Meadow Land Society, in making said convey-

Exhibit C. 5.

ance or gift to said Village, to create a public park or public playground to be enjoyed by all residents of South Orange alike and by the public generally.

And it appearing that said lands known as Cameron Field are now being used for the holding of professional or semi-professional baseball games, to which admission is charged, on Sundays and other days, contrary to said restrictions and contrary to the intent, purpose and meaning of the donors of said lands.

NOW, THEREFORE, BE IT RESOLVED, that the Trustees in Dissolution of said Meadow Land Society institute or cause to be instituted a suit in the Court of Chancery of New Jersey or elsewhere for the purpose of enforcing said conditions and restrictions and enjoining further violations thereof, and that Mr. William T. Baird, formerly the president of Meadow Land Society, be, and he hereby is, authorized and directed in his own name, as one of said Trustees, or in the names of all of said Trustees, to institute said suit or suits or to take such other appropriate action or proceedings as in his opinion may be necessary or proper for said purposes.

July 21, 1930.

COLLIER W. BAIRD,
Secy.



EXHIBIT C. 6.



EXHIBIT C. 7.



EXHIBIT C. 8.



EXHIBIT C. 9.

Exhibits C. 6, C. 7, C. 8, C. 9.

Exhibit C. 10.

EXHIBIT C. 10.

COPY.

December 2, 1929.

Mr. Harry J. Schnell,
President
Village Hall,
South Orange, N. J.

Dear Mr. Schnell:

May I refer to a situation that has given me considerable anxiety. I noted that at a recent meeting of the Trustees they refused to grant a license to the moving picture theatre to open the theatre on Sunday afternoons and charge an admittance, the Trustees refusing to grant this license because they felt they had no right to do so under the State laws.

On the contrary, approval apparently was given to have semi-professional baseball games on Sunday afternoons on the playgrounds, thus causing a babel of confusion and what I might call a riotous exhibition, which I feel was not only wrong, but not in accord with what has been the rule in the past in regard to games on the meadowlands turned over to the Village by the Meadowland Society.

To show that I have not been opposed to enjoyable games on those grounds on Sunday, I can cite the fact that when the Field Club petitioned the Meadowland Society to be allowed to play golf and tennis on Sunday, we unanimously voted to grant their petition, but with the proviso that no game should be played or should golf or tennis be played in a boisterous manner that would give offence to those surrounding the meadowlands, and the residents of the Village who are in-

terested in quietness and peace on the Sabbath day.

You are probably aware of the excitement, confusion and babble of noise caused by the baseball games played on the playgrounds during the past fall. The last one was particularly annoying and undignified. The noise from the shouting and cries could be distinctly heard at my home, and having reason to visit my sons on Ridgewood Road during the afternoon, I found that it was almost impossible to go through Mead Street safely even though four or five police officers were taking care of the traffic. On arriving at the homes of my sons at the north end of the meadowlands, the noise of the shouting could be heard as distinctly there as at my home on Scotland Road.

I think I am safe in estimating that there were at least six or seven hundred cars parked on Mead Street, Vose Avenue, Ridgewood Road, and even on Raymond Avenue from Vose Avenue to Scotland Road. Residents of those streets have told me that they could scarcely get through the street due to the enormous number of cars parked on both sides. On Mead Street, west of the stream, cars were parked not only on each side of the street, but two or three rows deep on the grass of the meadowland. Certainly it was never contemplated that these lands would be used as a parking place for automobiles on Sunday afternoon.

While I have not asked for legal opinion on this situation, I am of the opinion that any former stockholder of the Meadowland Society, or any taxpayer could take action against such exhibitions as have taken place during the past fall on Sunday afternoons, and knowing your desire to

Exhibit C. 11.

have South Orange continue as the quiet, respectable home town that it has always been, I feel that you will use your influence to stop such exhibitions in the future. Certainly if it is illegal to operate a quiet, respectable movie theatre on Sunday afternoon, it certainly must be illegal to allow semi-professional baseball games to be held, with an admission fee charged as high as $1.00 to adults.

Very truly yours,

(signed) Wm. T. Baird.

wtb.h

EXHIBIT C. 11.

June 16, 1930.

Mr. Carleton Greene, Chairman of the Board of Recreation Commissioners of the Village of South Orange,
151 Meadowbrook Place,
South Orange, New Jersey.

Dear Sir:—

Mr. William T. Baird, of 212 Scotland Road, South Orange, New Jersey, has consulted us in the matter of the use to which the property formerly owned by the Meadow Land Society of South Orange, which was transferred to the Village of South Orange on or about April 16, 1924, is being put by the Village of South Orange under the supervision and direction of the Board of Recreation Commissioners, of which board you are chairman.

At the time of the transfer of the property in question in 1924, Mr. Baird was the person chiefly

Exhibit C. 11.

interested in the Meadow Land Society of South Orange, inasmuch as he was at that time the owner of about eighty per cent. of its capital stock. The land in question, as you know, was then, and is now, very valuable from the standpoint of a land development scheme and could have been sold for that purpose or developed in that manner had it been so desired. In the judgment of Mr. Hunt, then president of the village, the land in question, if sold for development purposes, was worth about $500,000.00. Instead of disposing of the property in the manner in which it would have produced the largest amount of money possible, it was offered to the Village of South Orange at its nominal, assessed value of $72,850.00. This, as above shown, entailed a money sacrifice exceeding $400,000.00. The Village of South Orange accepted the offer, and, in the negotiations which took place leading up to the agreement of sale and the giving of the deed, Mr. Baird and the other directors of Meadow Land Society insisted upon imposing only one condition upon this gift to the village, which was that the property should be used only for public park or playground purposes. After negotiations, the restriction was finally inserted in the deed to the Village of South Orange as follows, which restriction covers all of the larger tracts included in the conveyance from the Meadow Land Society and in particular the tract of land on which the baseball field hereinafter referred to is now maintained, that is:— "The four tracts above described are conveyed upon condition and subject to the restriction that the premises above described shall be used solely for public park and/or public playground purposes." It was the intention of the directors of Meadow Land

Exhibit C. 11.

Page 2. June 16, 1930.
Mr Carleton Greene.

Society and, we believe, the intention of those representatives of the Village of South Orange who negotiated with them and who accepted the deed on behalf of the village, that the premises conveyed should thereafter be used as stated in the deed, solely for public park and public playground purposes, that is to say, the lands conveyed were to remain for all time for the use and benefit of the public at large and not for the use, benefit or special privilege of a small group hereinafter referred to.

During the year 1929, a part of the public playground so dedicated by Meadow Land Society began to be used by a certain club or organization for the purpose of holding professional or semi-professional baseball games on Sunday, and is now being so used, to which games admission is charged. Furthermore, special attractions or events were and are being arranged and widely advertised. Due to the energy and activity of those interested in the baseball club which conducts its Sunday games on the playground and the wide advertising given to the Sunday afternoon events, the purpose and object of the gift of the grounds to the village have been defeated, and the force of the restrictive covenants in the deed annulled. Instead of a playground to be enjoyed by the public at large and in particular by all of the residents of the Village of South Orange, crowds gather on the playground, drawn from various parts of Essex County and even from other parts of the state, for the purpose of witnessing a baseball game in which professionals participate and a keen rivalry develops, which produces a great deal of shouting and clamoring

Exhibit C. 11.

and disturbances of all kinds, and entirely excludes the general public, not only from the use of that particular playground, but also from the use of the other tracts of land immediately adjoining. Hundreds of automobiles enter the premises and are parked in the street, on the playgrounds and on the public park grounds. Vendors of all sorts are attracted to the assemblage, and a scene is presented which is at total variance with the purpose or object for which the gift was made. The noise of these gatherings is disturbing to residents of the Village of South Orange in the vicinity of the playground, and a general nuisance is created, in no wise in keeping with the character, conduct and standing of the community.

It is not only Mr. Baird's purpose and intention, but the purpose and intention of many residents of South Orange, to bring about a discon-

tinuance of these professional or semi-professional Sunday baseball games to which admission is charged.

We have conferred with Mr. Thomas E. Fitzsimmons, attorney for the Village of South Orange, and have made an examination of the law relating to public parks and playgrounds and the powers and duties of the municipalities and of boards of recreation commissioners. We can find no warrant or authority in our statutes or cases for the holding of these professional and semi-professional baseball games to which admission is being charged. A situation is created whereby a public playground, instead of being

Exhibit C. 11.

used for public purposes, is being devoted to private uses for the benefit of a private club or organization. We contend that such a use is contrary to both the letter and spirit of the law.

But, in addition to the prohibitions of the statutes, it seems to us very clear that the covenant and condition under which the conveyance was made by the Meadow Land Society to the Village of South Orange, as recited in the deed, has been violated. The use to which the playground is being put is not for "public park and/or public playground purposes." We hold that the covenants in the deed to the Village of South Orange are being violated by the holding of the contests thereon, in the manner above mentioned, to which contests admission is being charged.

Mr. Baird, on December 2, 1929, addressed a letter, in which he complained about the use to which the playgrounds were being put, to Mr. Harry J. Schnell, President of the Village of South Orange. No reply was received to this letter excepting a formal acknowledgment. In March, 1930, Mr. Fitzsimmons, Village Clerk, wrote, stating that Mr. Baird's letter had been read to the trustees and referred to your board for reply. Again, on May 12, 1930, Mr. Baird addressed another letter to you, as Chairman of the Board of Recreation Commissioners, but up to the present time no reply has been received.

We respectfully request a reply within 10 days to this communication. There is no desire on Mr. Baird's part to make unreasonable or unnecessary demands or to interfere with the complete use and enjoyment of the playgrounds included

Exhibit C. 12.

Page 4. June 16, 1930.
Mr Carleton Greene.

in the gift to the Village of South Orange. On the other hand, he rightly desires, and insists upon, a use of the lands so given by him to the village, for the purposes for which they were given and not otherwise.

Yours truly,
Signed (HARRISON & ROCHE.)

AR/NLF

EXHIBIT C. 12.

On motion of Mr. Smith, the following was adopted:

Resolved, That the land owned by the Village of South Orange bounded by easterly line of the East Branch of the Rahway River, southerly side of Mead Street, westerly side of the lands of the Delaware, Lackawanna Railroad Co. and the northerly line of the land of the Village of South Orange known as Cameron Field be and hereby is made part of Cameron Field Playground, and be it further

Resolved, That the Clerk be and hereby is directed to send a certified copy of this resolution to the Board of Recreation Commissioners of the Village of South Orange.

EXHIBIT C. 13.

EXPENSES OF GAMES—SEASON OF 1929—Compiled by S. O. Coeyman, Asst. Treas.

Played on	Players	Umpires	Police	Guarantees	Boys	Misc.	Totals
May 11th.	$ 225.00	$ 10.00	$ Nil	$ 213.80	$ Nil	$ Nil	$ 448.80
May 25th.	195.00	5.00	Nil	Nil (League)	Nil	Nil	200.00
May 30th.	102.00	Nil	Nil	Nil (League)	Nil	Nil	102.00
Jun 2nd.	126.50	5.00	5.00	50.00	.75	Nil	187.25
Jun 9th.	125.00	5.00	13.00	Nil (League)	Nil	7.58	150.58
Jun 16th.	131.00	5.00	15.00	250.00	.25	Nil	401.25
Jun 23rd.	120.00	5.00	13.00	42.25	.25	Nil	180.50
Jun 30th.	130.00	9.00	13.00	250.00	.25	Nil	402.25
Jul 7th.	258.00	7.50	6.00	275.00	Nil	Nil	546.50
Jul 14th.	164.00	13.00	10.50	125.00	1.25	.75	314.50
Jul 17th.	50.00	Nil	3.00	Nil (League)	.25	Nil	53.25
Jul 21st.	129.00	13.00	13.00	100.00	.50	Nil	255.50
Jul 23rd.	71.00	3.50	10.00	53.50	.50	10.49	148.99
Jul. 28th.	125.00	21.00	11.00	100.00	.50	Nil	257.50
Jul 31st.	120.00	5.00	2.50	50.00	.67	Nil	178.17
Aug 4th.	127.00	21.00	8.50	58.30	.50	Nil	215.30
Aug. 18th.	151.00	32.00	- 8.00	200.00	1.00	Nil	392.00
Aug 25th.	129.00	21.00	8.50	166.00	3.60	Nil	328.10
Sep 1st.	125.00	21.00	5.00	60.00	1.00	Nil	212.00
Sep. 8th.	77.00	13.00	5.00	55.00	Nil	Nil	150.00
Sep 15th.	269.00	21.00	17.00	291.95	2.00	Nil	600.95
Sep 22nd.	229.00	13.00	11.00	232.50	Nil	Nil	485.50
Sep 29th.	239.00	21.00	13.00	158.00	1.25	Nil	432.25
Oct 6th.	120.00	13.00	8.00	60.00	1.00	Nil	202.00
Oct 13th.	269.00	21.00	9.00	180.75	2.50	2.50	484.75
Oct 20th.	155.00	13.00	20.00	2,341.00	4.00	12.00	2,545.00
Oct 27th.	189.00	21.00	100.00	1,826.00	8.75	40.00	2,184.75
Totals	$4,150.50	$338.00	$328.00	$7,139.05	$30.77	$73.32	$12,059.64

Exhibit C. 13.

SOUTH ORANGE BASEBALL ASSOCIATION

TREASURER'S REPORT

Nov. 7, 1929.

RECEIPTS

Contributions				$ 1,045.00
From games				
May 11 & 12	—	$ 342.00	Silk Sox	
May 26th.	—	174.00	League	
June 2nd.	—	141.50	Erie	
June 9th.	—	123.45	League	
June 16th.	—	413.50	House of David	
June 23rd.	—	103.50	League	
June 30th.	—	363.00	House of David	
July 7th.	—	550.50	Stars of Cuba	
July 14th.	—	308.50	Penn. Red Caps	
July 21st.	—	368.50	Pittston Miners	
July 23rd.	—	107.99	Penn. Red Caps	
July 28th.	—	223.20	New Brunswick	
July 31st.	—	100.00	Bacharach	
Aug. 4th.	—	308.50	Havana Stars	
Aug. 18th.	—	345.75	Bloomer Girls & N. Y. Colored Giants	
Aug. 25th.	—	379.40	Silk Sox	
Sept. 1st.	—	174.00	Wilmington	
Sept. 8th.	—	136.00	Penn. Red Caps	
Sept. 15th.	—	767.75	Maplewood	
Sept. 21st.	—	285.50	Cuban Stars	
Sept. 29th.	—	383.50	Orange	
Oct. 6th.	—	225.05	Astoria	
Oct. 13th.	—	490.00	Maplewood	
Oct. 20th.	—	3,529.25	Silk Sox	
Oct. 28th.	—	3,028.00	New Brunswick	
				13,372.34
				$14,417.34

DISBURSEMENTS

Expenses of games					
May 11	$448.80		Jul 31	178.17	
May 25	200.00		Aug 4	215.30	
May 30	102.00		Aug 18	392.00	
Jun 2	187.25		Aug 25	328.10	
Jun 9	150.58		Sep 1	212.00	
Jun 16	401.25		Sep 8	150.00	
Jun 23	180.50		Sep 15	600.95	
Jun 30	402.25		Sep 21	485.50	
Jul 7	546.50		Sep 29	432.25	
Jul. 14	314.50		Oct 6	202.00	
Jul 17	53.25		Oct. 13	484.75	
Jul 21	255.50		Oct 20	2,545.00	
Jul 23	148.99		Oct 28	2,184.75	
Jul 28	257.50				
					$12,059.64

Exhibit C. 13.

Uniforms	223.00
Baseballs, bats, socks & caps	368.25
Printing	235.00
Muslin	32.17
Rain Insurance	76.50
Pictures	10.00
	$13,004.56
Balance on hand November 7, 1929	1,412.78
	$14,417.34

S. O. COEYMAN, Assistant Treasurer.

STATEMENT

SOUTH ORANGE VILLAGE BOARD OF RECREATION
COMMISSION BASEBALL COMMITTEE
DECEMBER 2, 1930

RECEIPTS

Cash received from 1929 Accounts	$ 737.76
" " " Games to date	12,959.90
" " " Program and Donations	622.50
	$14,320.16

DISBURSEMENTS

First Game	$ 406.00
Second "	461.50
Third "	32.00
Fourth "	543.50
Fifth "	409.65
Sixth "	300.00
Seventh "	400.00
Ninth "	328.00
Tenth "	391.50
Eleventh "	324.00
Twelfth "	553.50
Thirteenth "	382.50
Fourteenth "	305.00
Fifteenth "	324.50
Sixteenth "	372.50
Seventeenth "	365.50
Eighteenth "	742.50
Nineteenth "	415.00
Twentieth "	540.50
Twenty-first "	966.75
Twenty-second "	920.50
Twenty-third "	674.00
Twenty-fourth "	2,912.65
Twenty-fifth "	381.50
Nat Strong (Services as per agreement in securing Ruth and Gehrig, last game 1929)	75.00
Two Cash Boxes	6.00
Three Weeks' Tickets and Posters	39.00
Advertising (Distributing signs) H. J. Sutton	90.00
" (" ") A. MacLockwood	10.00
" (Newark Star-Eagle)	9.80

Exhibit C. 13.

Baseballs (Six Dozen)	75.00
Typing Special Reports	5.00
Banner (Carlton Sporting Goods Co.)	15.00
Check #450 for Salary to Ferguson 10/6/30 drawn for $40.00—was $50.00	10.00
South Orange Record Publishing Co. (Printing 3,000 programs)	120.00
Jos. Peploski (Arrangements & expenses for game with All Polish Team)	15.00
John McEntee (Circulating Posters for 3 weeks)	10.00
Advertising Bill (Newark Evening News)	73.50
Cash on Hand December 2, 1930	313.81
	$14,320.16

GAME I

May 4

PITTSTON MINERS

Receipts

At Gate	$ 246.00

Disbursements

Opposing team (Pittston Miners)	$150.00	
Salaries to players	186.00	
Salaries to Umpires	18.00	
Salaries to Ticket Agents	8.00	
Special Officers & Misc. ground expense	19.00	
Baseballs	25.00	
	$406.00	
		406.00
Total Loss		$ 160.00

Exhibit C. 13.

GAME II

May 11

PHILADELPHIA HEBREWS

Receipts

At Gate	$ 287.25

Disbursements

Opposing team (Philadelphia Hebrews)	$200.00	
Salaries to players	186.00	
Salaries to Umpires	18.00	
Salaries to Ticket Agents	8.00	
Special Officers & Misc. ground Expense	24.50	
Baseballs	25.00	
	$461.50	
		$461.50
Total Loss		$ 174.25

No Game

GAME III

May 18

DOHERTY SILK SOX

Receipts

At Gate	$ 6.50

Disbursements

Opposing team (Traveling Expenses)	$ 15.00	
Expenses to Sedgwidi	10.00	
Expenses to Ralston	6.00	
Expenses to Groundkeeper	1.00	
	$ 32.00	
		$ 32.00
Total Loss		$ 25.50

Exhibit C. 13.

GAME IV

May 25

CUBAN STARS

Receipts

At Gate		$ 298.25

Disbursements

Opposing team	$300.00	
Salaries to Players	174.00	
Salaries to Umpires	18.00	
Salaries to Ticket Agents	8.00	
Special Officers and Misc. Ground Expenses	18.50	
Baseballs	25.00	
	$543.50	
		543.50
Total Loss		$ 245.25

GAME V

June 1

DOHERTY SILK SOX

Receipts

At Gate		$ 476.00

Disbursements

Opposing Team	$190.40	
Salaries to players	174.00	
Salaries to Umpires	18.00	
Salaries to Ticket Agents	8.00	
Special Officers and Misc. Ground Expenses	19.25	
	$409.65	
		$409.65
Total Profit		$ 66.35

Exhibit C. 13.

GAME VI

June 8

COLLEGE POINT

Receipts

At Gate		$ 318.50

Disbursements

Opposing Team	$ 75.00	
Salaries to Players	174.00	
Salaries to Umpires	18.00	
Salaries to Ticket Agents	8.00	
Special Officers & Misc. Ground Exp.	25.00	
	$300.00	
		$300.00
Total Profit		$ 18.50

GAME VII

June 15

BRONCHOES

Receipts

At Gate		$ 398.50

Disbursements

Opposing Team	$175.00	
Salaries to Players	174.00	
Salaries to Umpires	18.00	
Salaries to Ticket Agents	8.00	
Special Officers & Misc. Ground Exp.	25.00	
	$400.00	
		400.00
Total Loss		$ 1.50

Exhibit C. 13.

GAME VIII

MAPLEWOOD

June 22

Expenses $200.00—paid for by Kiwanis Club of Maplewood.

GAME IX

June 29

BAYONNE

Receipts

At Gate		$ 254.00

Disbursements

Opposing Team	$ 85.00	
Salaries to Players	197.00	
Salaries to Umpires	18.00	
Salaries to Ticket Agents	8.00	
Special Officers & Misc. Ground Exp.	20.00	
	$328.00	
		328.00
Total Loss		$ 74.00

Exhibit C. 13.

GAME X

July 6

DOHERTY SILK SOX

Receipts

At Gate		$ 299.00

Disbursements

Opposing Team	$150.00	
Salaries to Players	197.00	
Salaries to Umpires	18.00	
Salaries to Ticket Agents	8.00	
Special Officers & Misc. Ground Exp.	18.50	
	$391.50	
		391.50
Total Loss		$ 92.50

GAME XI

July 13

LONG ISLAND CITY

Receipts

At Gate		$ 215.50

Disbursements

Opposing Team	$ 75.00	
Salaries to Players	197.00	
Salaries to Umpires	18.00	
Salaries to Ticket Agents	8.00	
Special Officers & Misc. Ground Exp.	26.00	
	$324.00	
		$324.00
Total Loss		$ 108.50

Exhibit C. 13.

GAME XII

July 20

HILLSIDE COLORED GIANTS

Receipts

At Gate		$ 467.50

Disbursements

Opposing Team	$300.00	
Salaries to Players	197.00	
Salaries to Umpires	28.00	
Salaries to Ticket Agents	8.00	
Special Officers & Misc. Ground Exp.	20.50	
	$553.50	
		553.50
Total Loss		$ 86.00

GAME XIII

July 27

PENN. RED CAPS

Receipts

At Gate		$ 380.70

Disbursements

Opposing Team	$150.00	
Salaries to Players	182.00	
Salaries to Umpires	20.00	
Salaries to Ticket Agents	8.00	
Special Officers & Misc. Ground Exp.	22.50	
	$382.50	
		382.50
Total Loss		$ 1.80

Exhibit C. 13.

GAME XIV

Aug. 3

LONG ISLAND CITY

Receipts

At Gate		$ 210.50

Disbursements

Opposing Team	$ 75.00	
Salaries to Players	182.00	
Salaries to Umpires	20.00	
Salaries to Ticket Agents	8.00	
Special Officers & Misc. Ground Expenses	20.00	
	$305.00	
		305.00
Total Loss		$ 105.50

GAME XV

Aug. 10

FLORIDA

Receipts

At Gate		$ 366.25

Disbursements

Opposing Team	$100.00	
Salaries to Players	182.00	
Salaries to Umpires	20.00	
Salaries to Ticket Agents	8.00	
Special Officers & Misc. Ground Expenses	14.50	
	$324.50	
		324.50
Total Profit		$ 41.75

Exhibit C. 13.

GAME XVI

Aug. 17

PENN. RED CAPS

Receipts

At Gate		$ 309.75

Disbursements

Opposing Team	$150.00	
Salaries to Players	182.00	
Salaries to Umpires	20.00	
Salaries to Ticket Agents	8.00	
Special Officers & Misc. Ground Expenses	12.50	
	$372.50	
		372.50
Total Loss		$ 62.75

GAME XVII

Aug. 24

DOHERTY SILK SOX

Receipts

At Gate		$ 357.50

Disbursements

Opposing Team	$150.00	
Salaries to Players	182.00	
Salaries to Umpires	20.00	
Salaries to Ticket Agents	8.00	
Special Officers & Miscellaneous Ground Expense	5.50	
	$365.50	
		365.50
Total Loss		$ 8.00

Exhibit C. 13.

GAME XVIII

Aug. 31

SHINKO KOBE

Receipts

At Gate		$ 878.00

Disbursements

Opposing Team	$500.00	
Salaries to Players	192.00	
Salaries to Umpires	20.00	
Salaries to Ticket Agents	9.00	
Special Officers and Miscellaneous Ground Expense	21.50	
	$742.50	
		742.50
Total Profit		$ 135.50

GAME XIX

Sept. 7

FRANKFORD

Receipts

At Gate		$ 316.50

Disbursements

Opposing Team	$175.00	
Salaries to Players	197.00	
Salaries to Umpires	20.00	
Salaries to Ticket Agents	8.00	
Special Officers and Miscellaneous Ground Expense	15.00	
	$415.00	
		415.00
Total Loss		$ 98.50

Exhibit C. 13.

GAME XX

Sept. 14

PENN. RED CAPS

Receipts

At Gate		$ 392.00

Disbursements

Opposing Team	$225.00	
Salaries to Players	247.00	
Salaries to Umpires	45.00	
Salaries to Ticket Agents	13.00	
Special Officers and Miscellaneous Ground Expense	10.50	
	540.50	
		540.50
Total Loss		$ 148.50

DOUBLE HEADER

GAME XXI

Sept. 21

HOUSE OF DAVID

Receipts

At Gate		$1,250.00
From Joseph A. Carter		15.00
		$1,265.00

Disbursements

Opposing Team	$630.25	
Salaries to Players	257.00	
Salaries to Umpires	45.00	
Salaries to Ticket Agents	10.00	
Miscellaneous Ground Expense	24.50	
	$966.75	
		966.75
Total Profit		$ 298.25

Exhibit C. 13.

GAME XXII

Sept. 28

ROYAL COLORED GIANTS

Receipts

At Gate	$1,021.50

Disbursements

Opposing Team	$510.75	
Salaries to Players	324.00	
Salaries to Umpires	45.00	
Salaries to Ticket Agents	10.00	
Miscellaneous Ground Expense	25.75	
Advertising	5.00	
	$920.50	
		920.50
Total Profit		$ 201.00

GAME XXIII

Oct. 5

HOUSE OF DAVID

Receipts

At Gate	$ 598.95

Disbursements

Opposing Team	$300.00	
Salaries to Players	309.00	
Salaries to Umpires	30.00	
Salaries to Ticket Agents	10.00	
Miscellaneous Ground Expense	25.00	
	$674.00	
		674.00
Total Loss		$ 75.05

Exhibit C. 13.

GAME XXIV

Oct. 12

RUTH AND GEHRIG

Receipts

At Gate	$3,439.50

Disbursements

Both Teams' Salaries	$ 287.00	
Ruth and Gehrig (50% of Receipts)	1,719.75	
Newark International League Baseball Club (Park) 20% of Receipts	687.90	
Umpires	20.00	
South Orange Ticket Men	34.00	
Newark Club Ticket Men	8.00	
Special Police of Newark	36.00	
Score Board Men	7.00	
Ushers	12.00	
Cleaning Field	8.00	
Nat Strong (Services in procuring Ruth and Gehrig)	75.00	
Sign and Poster (M. J. Wigert)	18.00	
	$2,912.65	
		2,912.65
Total Profit		$ 526.85

Exhibit C. 13.

GAME XXV

Oct. 19

MAPLEWOOD

Receipts

At Gate		$ 156.75

Disbursements

Salaries to Home Team	$224.00	
Salaries to Umpires	45.00	
Salaries to Ticket Agents	10.00	
Miscellaneous Ground Expenses	2.50	
Check to Maplewood Kiwanis	100.00	
	$381.50	
		381.50
Total Loss		$ 224.75

Exhibit C. 15.

EXHIBIT C. 15.

SO. ORANGE TRUST CO., SOUTH ORANGE, N. J.

DATE Apr. 30, 1930

NAME SOUTH ORANGE VILLAGE BOARD OF RECREATION COMMISSIONERS—

ADDRESS BASE-BALL COMMITTEE.

Business..... Introduced by Peter A. Smith

Please find below duly authorized signatures which you will recognize in the payment of funds or the transaction of other business on our account.

S. O. COEYMAN, Treasurer
H. D. Henderson, Asst. Treasurer

Corporation..... Number of Signatures Required *1*
Partnership..... Papers Filed by.....
Trade Name..... New Account .....
Individual..... Change in Signature..
Initial Deposit $.....

Exhibit C. 16.

SO. ORANGE TRUST CO., SOUTH ORANGE, N. J.

NAME South Orange DATE April 1929
ADDRESS Baseball Club
Business..... Introduced by H. J. Schnell

Please find below duly authorized signatures which you will recognize in the payment of funds or the transaction of other business on our account.

Harry J. Schnell—Treasurer
S. O. Coeyman—Asst. Treasurer

Corporation..... Number of Signatures Required *1*
Partnership..... Papers Filed by.....
Trade Name..... New Account .....
Individual..... Change in Signature..
Initial Deposit $.....

EXHIBIT C. 16.

COPY

April 14, 1930.

South Orange Trust Co.,
South Orange, N. J.

Gentlemen:

At a meeting of the Board of Recreation Commissioners of the Village of South Orange held on April 14, 1930, at which the following members of the board were present: Messrs. Greene, Manda, Carter and Mrs. Whelan, a resolution was adopted, of which the following is a true copy:

"WHEREAS in the judgment of the Board of Recreation Commissioners of the Village of South Orange it is deemed ad-

Exhibit C. 16.

visable to provide recreation and amusement for the inhabitants of this Village and,

WHEREAS in order to provide said recreation and amusement it is necessary that a charge be made for the purpose of defraying a part of the expense arising therefrom, therefore,

BE IT RESOLVED that this board fix an admission charge of fifty cents for each person desiring to witness each game of baseball to be played on one of the days of the week, provided, however that no admission be charged to children under the age of thirteen years, And be it further,

RESOLVED that the Chairman of the committee on structures and equipment, the chairman of the committee on grounds, and supervisor be and hereby are authorized to provide the necessary arrangements for carrying out the provisions of this resolution. And be it further,

RESOLVED that all monies secured as proceeds from such baseball exhibitions be disposed of as provided by Chapter 308, of the laws of 1911."

Exhibit D. 1.

EXHIBIT D. 1.

BAIRD RUBBER & TRADING CO.
9-15 MURRAY STREET,
NEW YORK, October 3, 1921.

Mr. Charles H. Ingersoll,
New York City.

Dear Sir:—

Upon receipt of your letter of April 20th last, stating that you had three shares of stock in the Meadowland Society of South Orange, I wrote you on April 25th in reference to same, outlining the position of the Society and offering you the same price that I had paid to other holders in the Society, namely, $35.00 per share.

Owing to the fact that over forty holdings of the stock are in the hands of estates and also that a great many former residents of South Orange, like yourself, have left the Village, it has been impossible to get a quorum for years past with a result that no meetings of stockholders have been held.

It would be a favor to the local stockholders of the Society if you would kindly consider the matter and advise me whether or not you wish to dispose of your shares.

Very truly yours,

WM. T. BAIRD

WTB/I

Exhibit D. 2.

EXHIBIT D. 2.

BAIRD RUBBER & TRADING CO.
9-15 MURRAY STREET,

NEW YORK, April 25, 1921.

Mr. Charles H. Ingersoll,
315 Fourth Avenue,
New York City.

Re: stock Meadowland Society.

Dear Mr. Ingersoll:—

I am in receipt of your favor of the 20th instant and in reply beg to state that there is practically no market value that can be placed on the Meadowland Society stock.

The present holders who are residents of the Village, have in mind that sooner or later they hope that the Essex County Park Commission will accept their holdings of stock as a gift and make a public park of all or a greater portion of the land now controlled by the Society.

At present there are twenty-five or thirty estates holding stock in the Society and my greatest effort is being bent toward getting these holdings cleared up, the present position being that meetings of the stockholders cannot be held due to the large holdings of the estates.

I cannot, in fairness to the Estates from which I have purchased stock, offer you more than $35.00 per share and as a matter of fact this being $70.00 at a par value of $100., I feel that under present financial conditions, it is a high price, as the money can readily be invested at ruling rates and in the course of a few years produce a much larger amount than can ever be

Exhibit D. 3.

obtained through the liquidation of the property held by the Society.

Very truly yours,

WM. T. BAIRD

WTB/I

Mr. Lovatt who lives on the mountain just offered me his 15 shares at 35 and I bought it

W. T. B.

EXHIBIT D. 3.

212 Scotland Road,
South Orange, N. J.
November 15, 1927.

President and Trustees
of the Village of South Orange,
South Orange,
New Jersey.

Gentlemen:

My attention having been called to Mr. Spencer Miller's suggestion that the lands of the Meadowland Society I was instrumental in turning over to the Village be named for the Allen family, I beg leave to give my views to you on the question, but in order to do so I will give a short sketch of the Meadowland Society.

This Society was formed in 1889 and then acquired the lower lands called the meadow lands, each side of the stream that runs through the valley; the upper lands along Ridgewood Road being acquired about 1906.

I came to South Orange in 1890, became a director of the Society in 1891 and continued as a

director and president until the Society was dissolved in 1924.

In order that the Society could be maintained without expense in carrying the lands, the Field Club was formed and the lands leased to the Club, the rental being the amount of the tax assessed each year by the Village and any assessments for improvements.

For a long time after the Society was formed there were comparatively few residents on the mountain side. Gradually, houses were built here and there, particularly along Ridgewood Road, and it became apparent that the lands owned by the Society on Ridgewood Road would gradually become quite valuable.

Owing to the fact that the Village was surrounded by open spaces and by the wooded mountain, it was not realized that the Village would need all the Society lands for park or playground purposes. It was, therefore, the plan of the directors of the Society that sooner or later the lots on Ridgewood Road could be sold in order to as far as possible reimburse the stockholders for their outlay.

Gradually, the original subscribers to stock passed away and about the year 1914 it was found that about thirty estates were holding stock in the Society and it became somewhat difficult to obtain sufficient proxies to hold the annual meetings. A largely attended meeting was held at the residence of Mr. Ward to consider this situation and a plan was then presented to trustee the stock in perpetuity, the trustees to have authority to handle the stock and the property according to their best judgment. I strenuously objected to the plan presented, and presented an opinion by

Exhibit D. 3.

Mr. Albert Wall advising against it, and the plan was dropped.

I then suggested that the only way to handle the situation was for two or three men to get together, contribute a sufficient amount and buy in all the floating stock. This plan was not adopted, but later on after Mr. Allen and Mr. Ward had passed away I, finding that there were then about fifty estates holding stock and that it was impossible to hold annual meetings, proceeded to buy in the stock stating frankly to the stockholders that my purpose was to turn the property over to the Village for park or playground purposes. It took me about four years to purchase two-thirds of the stock and in 1924 I was instrumental in having the Society turn the property over to the Village, for the value at which it was assessed for taxes.

My recollection is that at the time the Village accepted the property Mr. Hunt, then Village president, expressed the opinion that the lands were worth at least $500,000.

Under the circumstances, I feel there is no one in South Orange that has a greater privilege, if such a privilege exists, to suggest a name for this beautiful property when it is made into a park than I. Consider for a moment, the practical side of giving it a family name. Referring to the telephone directory, there are about fifty Allen names listed, of which about twenty percent are in South Orange. Imagine twenty years have passed and there will probably be twice that number listed in the telephone book. By that time few of the present generation will be here. Who then will know for whom the park was named? It is embarrassing to discuss the

Exhibit D. 3.

name of old friends, but under the circumstances it seems necessary.

The same remarks apply to any family name that might be given to the park. Now consider names of parks in other localities. It is not within my knowledge that a family name has been given to the principal park in any municipality; in Boston their great park is named "Boston Commons"; in New York, the large park in the northerly part of the city "Bronx Park", the central part of the city "Central Park", the southerly part of the city "Battery Park"; in Newark, the northerly park is named for the stream that runs through it "Branch Brook", the southerly park "Wequaic Park"; in Orange, it is "Orange Park."

I, therefore, urge that the lands be named "South Orange Park" or to perpetuate the service of the Meadowland Society, name it "Meadowland Park."

Faithfully yours,

WM. T. BAIRD

wtb:ms.

Exhibit D. 4.

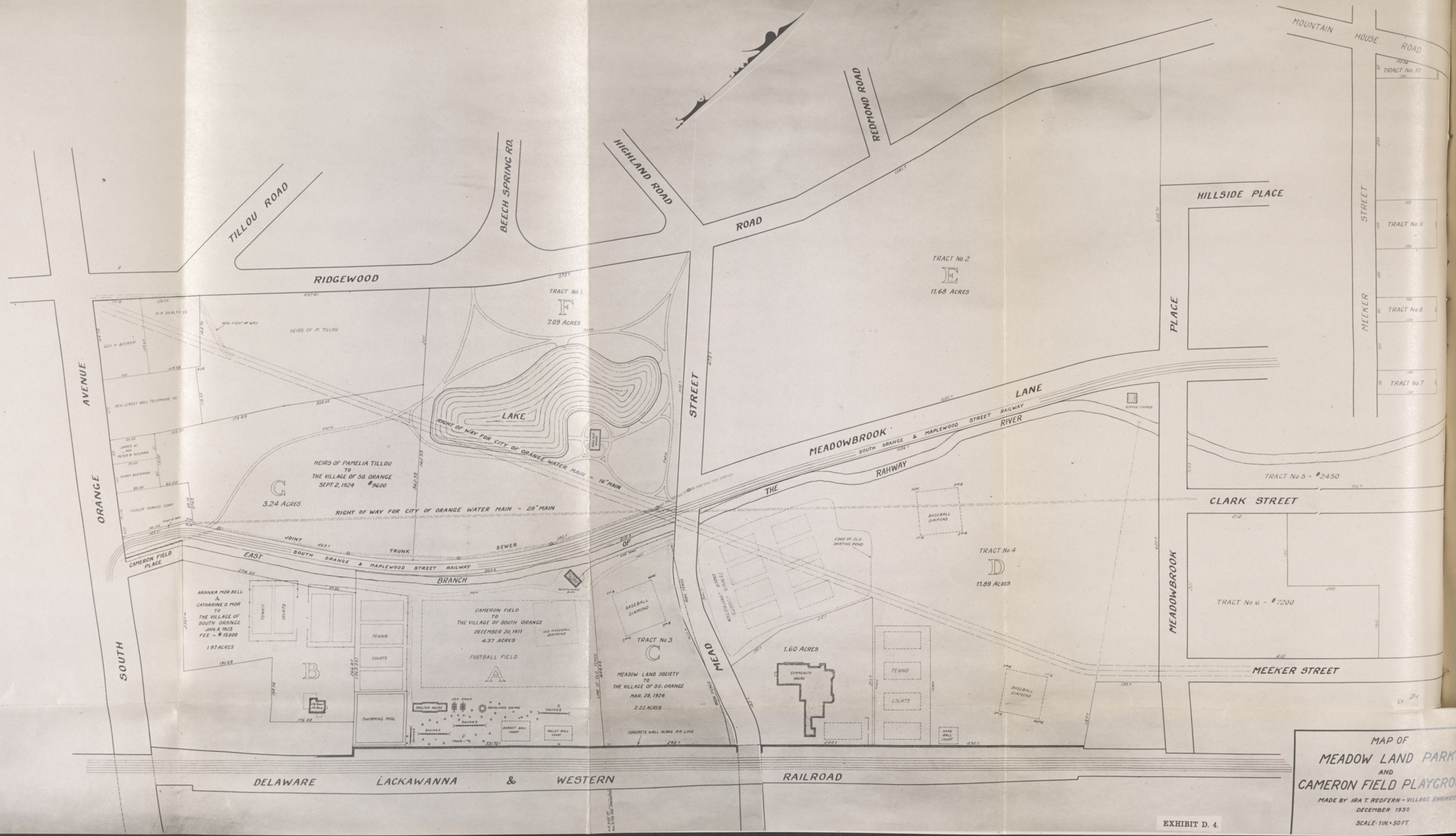


EXHIBIT D. 4.

MAP OF
MEADOW LAND PARK
AND
CAMERON FIELD PLAYGROUND
MADE BY IRA T. REDFERN - VILLAGE ENGINEER
DECEMBER 1930
SCALE: 1 IN. = 50 FT.

Exhibit D. 5.

EXHIBIT D. 5.

COPY

November 15, 1929.

Mr. Harry J. Schnell,
Warwick Avenue,
South Orange, N. J.

Dear Mr. Schnell:

In reply to your favor of the twelfth instant in which you request an opinion as to whether or not either the Board of Recreation Commissioners or the Village Board of Trustees can legally lease village property for the playing of baseball and football games on Sunday, I wish to advise as follows:

The act concerning playgrounds authorizing the appointment of a Playground Commission (Volume 2 Cumulative Supplement Section 136-3650B) provides in Section 7 that the Playground Commissioners may in order to provide the funds in whole or in part necessary to improve, maintain and police the playground arrange for and provide for the giving of outdoor exhibits and games and to charge and collect a reasonable admission fee provided that no more than eight hours of any week and no more than two days in any week are used and no admission fee may be charged for children under twelve years of age. There being no other provision in the act, it is apparent that the present use of the playground as outlined in your letter is not authorized by the above law, which provides that the Playground Commissioners themselves arrange for the games and collect the fee.

In this connection, however, I desire to call attention to the fact that the Home Rule Act

Exhibit D. 5.

(Section 136-3601) and the following sections particularly (136-3613) empowers the governing body to lease, rent or hire privileges in any public park upon such terms and conditions as it prescribes. This is to be, however, to the highest responsible bidder and may be made only after advertising in some paper circulating in the municipality at least ten days prior to the reception of the bids. It, therefore, follows that under ordinary circumstances and assuming that the playing of football and baseball games on Sunday is legal that the Board of Trustees could extend to those desiring to have baseball games in the park or any proprty acquired for park and or playground purposes the privilege of doing so in the manner above indicated. This could also be done in connection with property acquired for playground purposes only because under the Home Rule Act the control of the playground now vested in the Playground Commission can be reassumed by the Board of Trustees by appropriate resolution.

Regarding the playing of baseball on Sunday, I wish to advise that the Vice and Immorality Act provides among other things as follows:

> "That no playing of football, fives, nine pins, quoits or any other kind of playing, sport, pastimes or diversions shall be performed, used or practiced by any person or persons within this state on the Christian Sabbath or the first day of the week commonly called Sunday."

While it might seem that the strict construction of this act might be held by a court not to govern baseball games, it appears that by the case of Hermitage v. City of Camden 135 Atl. 661

Exhibit D. 5.

that baseball games have been held to be within the meaning of this section of the above act.

It is, therefore, my opinion that any action on the part of the Board of Recreation Commissioners or the Board of Trustees entering into an arrangement with persons desiring to have games played on Sunday is illegal and will be subject to being set aside upon the application of persons aggrieved thereby.

It appears from your letter that the Board of Recreation Commissioners has assumed the jurisdiction of the playground in question. As this property was acquired by the Village of South Orange for park and or playground purposes I wish to advise that the jurisdiction over this property is vested solely in the Board of Trustees and I direct your attention to a previous opinion rendered by me on this subject at the request of Mr. Smith.

While on this subject of Sunday amusements, I might just as well at this time pass on the question which no doubt will be urged upon the Board of Trustees by individuals or organizations who desire to circumvent the statute in question by urging that permits be granted with the understanding that a portion or all of the proceeds derived be donated to certain charities thereby coming within the exception to the Vice and Immorality Act, which excludes "works of necessity and charity from its operation". The meaning of this exception was determined by Vice Chancellor Backes in the case of Rosenberg v. Arrowsmith et al in 82, Equity 570, and I quote herewith the syllabus:

> "1. Where the complainant illegally maintained a moving picture show on Sunday, he was not entitled to an injunction restraining

the police authorities in closing his show from reading a proclamation against riots to complainant's audiences on the ground that there was no riot, since in the enforcement of the law the fact that the police, without warning, employed an inappropriate measure merely incidental to a lawful act did not cause harm to complainant which could be the subject of an injunction.

"2. The operation of a moving picture show on Sunday is a 'worldly employment or business' in violation of 4 Comp. Stat. 1910 p. 5712, prohibiting worldly employment or business, interludes, and plays, fiddling or other music for the sake of merriment on Sunday.

"3. Where the operation of a moving picture show was prohibited by 4. Comp. Stat 1910, p. 5712, the fact that the proceeds of a certain performance were donated to charity did not make the operation of the show a work of necessity or charity within the exception of the law."

In addition, the Vice Chancellor on page 571 makes the following observation:

"The act except 'works of necessity and charity from its operation.' The complainant claims to come within this exemption because, as he alleges, the proceeds of a certain performance are to be donated by him to charity, and asks that as to this particular exhibition an injunction issue against police interference. The difficulty with this position is that the statute permits works of charity and does not exempt prohibited acts merely because the proceeds or results may be de-

Exhibit D. 6.

voted to charity. If the meaning of the statute were as the complainant contends, then any licensed saloon keeper could defy the Sunday selling law by offering to give the proceeds of his sales to the poor".

I trust that the above explains fully what you have in mind.

Very truly yours,

(signed) Thos. E. Fitzsimmons

TEF-H

EXHIBIT D. 6.

PHILIP N. MILLER AND COMPANY
Accountants and Auditors
30 Pine Street
New York

December 19, 1922

Mr. M. A. Fitzsimmons
Village Clerk
Village Hall
South Orange, N. J.

Subject: *MEADOW LAND ASSOCIATION*

Dear Sir:

My thoughts in connection with this Association are that if the Village has the power to acquire, either by gift or purchase, any part of the stock of this Association, we might be able to do it more economically than by attempting to condemn the land owner. It seems clear to me that condemnation proceedings, in attempting to acquire the land, would cost us a great deal of money; but my talks with Mr. Baird, the president and owner

Exhibit D. 6.

of over half the stock of the Association, indicate that we could acquire perhaps two-thirds of the stock either by gift or by an expenditure not in excess of the par value of the shares, viz., $50. The total shares outstanding are about 720, which at $50. each equals about $36,000. If we could acquire $24,000., or two-thirds, by gift or at prices not to exceed par, we would then have sufficient control of the Association, as I understand its charter, to start liquidation proceedings. If this were a corporation organized for profit, I understand that the Court would place a value on the minority shares outstanding; and the majority, which would be the Village, would have to put up a bond to pay this minority interest on demand. What I want to know is, whether this procedure would be followed in the case of a non-profit association. If so, it is my feeling that the Court would not be inclined to place anywhere near as high a value on this minority interest as would result in condemnation proceedings.

The intent of the incorporators to keep this as an open space in the Village; the inability of the minority interests to make any profit out of their holdings; the poor drainage of the low part of the land, the lack of streets through the property, etc., seem to me would all be factors which would enter into the judgment of the Court.

I think we should get Mr. Riker's opinion on this whole situation, and I trust that it may be a constructive one, in that he will tell us what he recommends to be the best procedure to acquire this property. I would be very glad to meet with him and you, at any convenient time, if he thinks that will be helpful.

Yours very truly,

PHILIP N. MILLER

Exhibit D. 7. Lease.

EXHIBIT D. 7.

LEASE.

THIS INDENTURE made the 23rd day of November, in the year of our Lord, one thousand nine hundred and twenty three,

BETWEEN "THE MEADOW LAND SOCIETY OF SOUTH ORANGE," a corporation duly organized under and by virtue of the laws of the State of New Jersey, Party of the First Part; And "THE SOUTH ORANGE FIELD CLUB," a like corporation, Party of the Second Part;

(each having its principal office in the Village of South Orange, in the County of Essex, and State of New Jersey).

WITNESSETH,

FIRST,—It is hereby stipulated and agreed that the lease heretofore existing between the parties hereto for the lands and premises hereinafter described, be and the same hereby is cancelled, terminated and made void.

SECOND,—That said Society doth hereby demise and lease to said Club all its lands in the said Village of South Orange lying between the Delaware, Lackawanna and Western Railroad on the Southeast, and the east branch of the Rahway River on the Northwest; the northeast line of the Cameron Field Public Play Ground on the Southwest, and the line of West Turrell Avenue on the Northeast, with the appurtenances and the sole and uninterrupted use and occupation for the term of ten (10) years from the first day of July, 1923, to December 31, 1933, at a rental of Two Hundred and Fifty Dollars ($250.) per year, payable semi-annually in advance, on the first day of June and December of each year;

provided that if the taxes and assessments upon said premises for any year shall exceed the sum of Two Hundred and Fifty Dollars ($250.), then the rental for that year shall be the amount of the taxes and assessments.

It is understood and agreed that should any assessment now levied or hereafter levied upon the lands hereby leased, or any part or portion thereof, be payable in yearly installments, then and in that case, the said party of the second part shall pay as such portion of said additional rent which may become due by reason of assessments against the premises hereby demised only the installment or portion of said assessment, together with interest, on the date when such installment or portion of said assessment becomes due, and the said party of the second part shall not pay or be responsible for any installment or portion which does not become due and payable during the continuance of this agreement.

THIRD,—AND IT IS FURTHER UNDERSTOOD AND AGREED by and between the parties hereto, that said Club shall have the right to erect upon said premises such building or buildings as may be necessary for the purposes of said Club, which building or buildings shall be and remain the property of the Club, and the taxes thereon shall be paid by said Club; provided that the elevations of such proposed building or buildings shall be submitted to, and the external appearance thereof approved by, the Lease and Grounds Committee of said Society, before the erection thereof. Within thirty days after the termination of this Lease said Club shall have the right to remove all its buildings and personal property from said demised premises,

and shall leave the said premises free and clear of any unsightly encumbrances.

FOURTH,—AND SAID CLUB FURTHER AGREES that during said demised term it will not cut down, nor cause, suffer or procure to be cut down, any tree upon said premises without the consent of the Lease and Grounds Committee of said Society, in writing, for that purpose first had and obtained; that it will maintain said premises free from nuisances and in accordance with the Ordinances of the Village of South Orange and the Board of Health of said Village; nor will it without the consent of the Board of Directors of said Society relet or underlet the whole or any part of said demised premises, nor assign this Lease, nor use or permit any part of said premises to be used for gambling or gambling games, horse racing, liquor selling, or for any purpose foreign to the objects of said Club; nor will it allow (except upon permission of said Society) said premises or any part thereof to be open on Sunday, and then only for the sports of Golf; Tennis, excluding tournaments with outside clubs; and skating, excluding hockey matches; and under such restrictions imposed by the Club as will prevent such sports being objectionable to the neighborhood; and that if rent shall remain due and unpaid, or if said premises shall become vacant during said term, or if there shall be any default or violation of any of the covenants herein contained on the part of said Club to be kept and performed, it shall be lawful for the Said Society to re-enter said premises and remove all persons therefrom, and that at the expiration of said term said Club will quit and surrender said premises to said Society; it being understood

and agreed that this Lease is personal to said Club and that no other person or persons or corporation shall gain any rights in said premises by the act or failure to act of said Club, or by the operation of the law or otherwise howsoever.

FIFTH,—If, by municipal action, the Club is prevented from using the grounds hereby leased for Golf purposes, then and in that event, this lease may, at the option of the Club, be annulled and cancelled upon notice in writing to said Society.

IN WITNESS WHEREOF, the said parties hereto have in duplicate caused their corporate seals to be respectively hereto affixed, and attested by their respective Secretaries, and these presents to be signed by their respective Presidents, the day and year first above written.

THE MEADOW LAND SOCIETY OF SOUTH ORANGE

By Wm. T. Baird,
President

(SEAL)

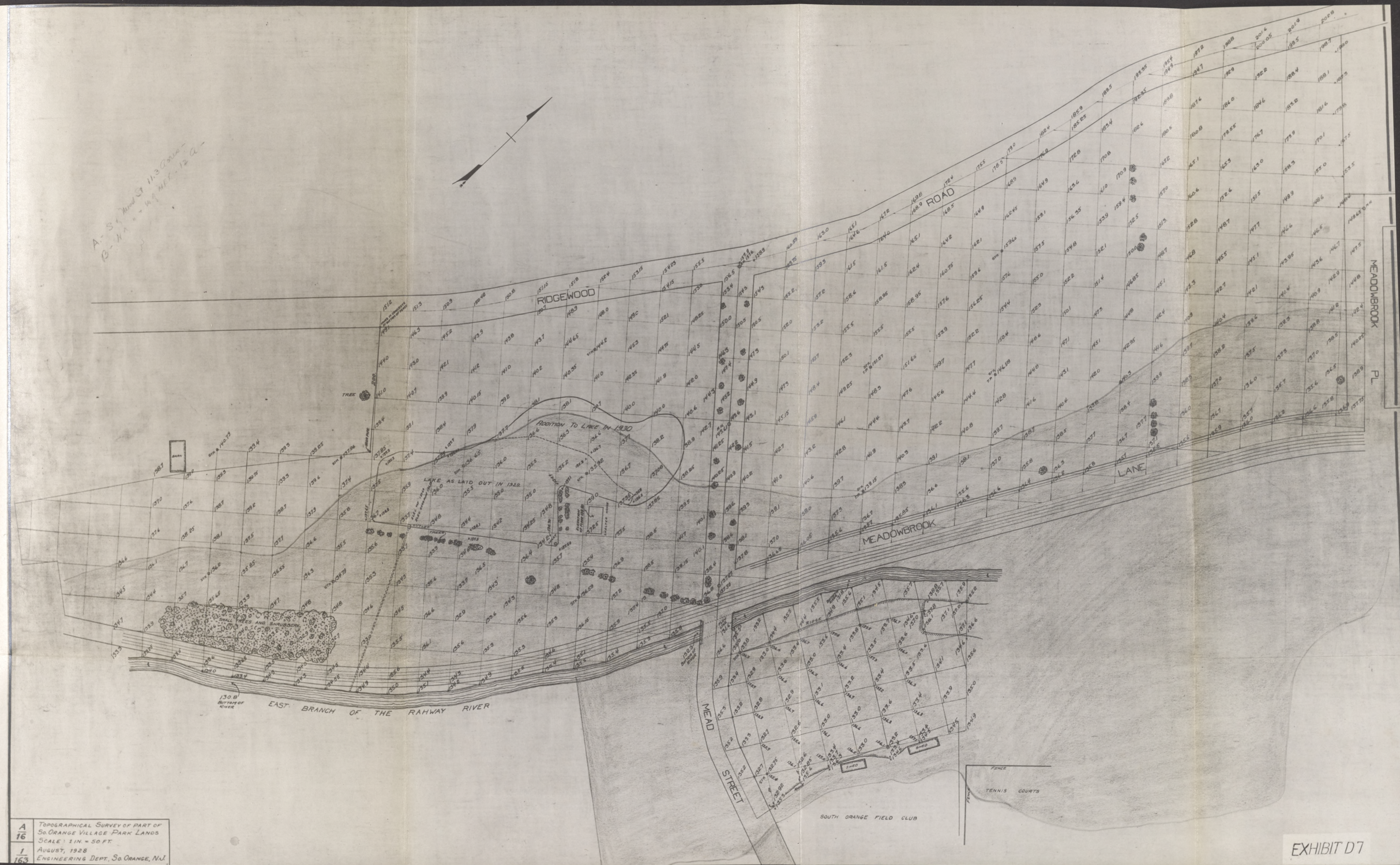
Attest:
John S. Allen
Secretary

THE SOUTH ORANGE FIELD CLUB

By W. T. Baird Jr.
President

(SEAL)

Attest:
W H Thompson
Secretary



A/16	TOPOGRAPHICAL SURVEY OF PART OF SO. ORANGE VILLAGE PARK LANDS SCALE: 1 IN. = 50 FT.
1/163	AUGUST, 1928 ENGINEERING DEPT., SO. ORANGE, N.J.

EXHIBIT D7

Ex

Exhibit D. 7. Map.

Exhibit D. 8.

EXHIBIT D. 8.

SOUVENIR BASEBALL PROGRAM

Cameron Field Playground

VILLAGE OF SOUTH ORANGE

BOARD OF RECREATION COMMISSIONERS

CARLETON GREENE, President — JAMES A. MANDEVILLE, Secretary

W. A. MANDA — JOSEPH A. CARTER

MRS. JAMES A. WHELAN

These baseball exhibitions are provided by and under the direction of the Board of Recreation Commissioners of the Village of South Orange in accordance with the playground law (Paragraph 7, Chapter 308, Public Laws of 1911) to meet a demand for such recreation by residents of the community. The board requests the spectators to avoid making any unnecessary noises during the games. The proceeds of these exhibitions are used entirely for playground purposes as provided by law.

THE FOLLOWING RESIDENTS AND BUSINESS FOLK OF SOUTH ORANGE HAVE CONTRIBUTED TOWARD THE SUCCESS OF THESE BALL GAMES

Mr. and Mrs. George H. Becker
Mr. and Mrs. Thomas J. McNally
Dr. and Mrs. Anthony A. Nork
Mr. and Mrs. Charles Kenny
Judge and Mrs. John S. Magee
Mr. and Mrs. Eugene F. Kinkead
Mr. and Mrs. Bruno G. Ostermann
Mr. and Mrs. Edwin B. Fleming
Mr. and Mrs. Fred J. Kemp

Exhibit D. 8.

Mr. and Mrs. Patrick J. Maguire
Mr. and Mrs. Charles Kassinger
Mr. and Mrs. John Newman
Mr. and Mrs. Victor J. Lang
Mr. and Mrs. Daniel F. Scully
Mr. and Mrs. Francis A. Rhatican
Mr. and Mrs. John F. O'Brien
Mr. Daniel L. Noonan
Mr. John Noonan
Mr. Michael Noonan
Miss Margaret Nonan
Mr. Ira H. Ball
Mr. and Mrs. Gustave Steck
Mr. John Merck
Mr. and Mrs. James Newman
Mr. Peter P. Newman
Mr. Seymour O. Coeyman
Mr. and Mrs. Peter A. Smith
Mr. and Mrs. Charles R. Piper
Mr. John Rhatican
Mr. Cornelius P. Nolan
Mr. and Mrs. Alexander Beatrice
Mr. and Mrs. Edward J. Duggan
Mr. John McManus
Dr. and Mrs. Joseph C. Kelley
Mr. and Mrs. Thomas Petrozzello
Mr. and Mrs. Robert Morrison
Mr. and Mrs. Herman Minkowitz
Mr. and Mrs. Valentine J. Hill
Mr. and Mrs. Joseph J. Turner
Mr. and Mrs. C. Frank Briggs
Mr. and Mrs. Willard B. Halsey
Mr. and Mrs. Horace A. Stoneham
Mr. and Mrs. James A. Lally
Mr. and Mrs. Clifford R. Vanderhoof
Mr. and Mrs. James A. Whelan
Mr. and Mrs. Joseph Scott

Exhibit D. 8.

Mr. and Mrs. Joseph Selitto
Mr. and Mrs. Irving Sickley
Mr. Daniel B. Decker
Mr. and Mrs. Olin D. Sickley
Mr. and Mrs. W. A. Manda
Mr. Patrick Paul
Mr. William P. Kane
Mr. Thomas McKenna
Mr. and Mrs. Fred Cohen
Mr. David Cohen
Mr. John A. Dohm
Mr. and Mrs. Louis Coppola
Mr. Boniface Damiano
Mr. George Garrabrant
Mr. John Turbett
Mr. Richard Kernan
Mr. Leo Conklin
Mr. Louis Kernan
Mrs. M. A. Lange
Mr. and Mrs. Robert P. Carter
Mr. and Mrs. James A. Mandeville
Mr. and Mrs. Robert N. Magee
Mr. and Mrs. Bartholomew Kernan
Mr. and Mrs. George Gifford
Mr. and Mrs. Frank Soemer
Mr. and Mrs. Edward S. Davis
Mr. and Mrs. Thomas L. McGuire
Mr. and Mrs. James Pescatore
Mr. and Mrs. Henry Tuohy
Mr. and Mrs. Alexander J. Lockwood
Mr. and Mrs. John Waterfield
Mr. and Mrs. Alfred H. Bataille
Mr. and Mrs. Patrick Burke
Mr. and Mrs. William Burke
Mr. Robert E. Savage
Mr. Edward Burke
Mr. and Mrs. George Harms

Exhibit D. 8.

Mr. and Mrs. Nicholas A. Chasse
Mr. Herman Tublitz
Mr. and Mrs. Thomas J. Keenan
Mr. and Mrs. Anthony Preston
Mr. and Mrs. Arnold Ziegler
Mr. and Mrs. Peter J. Kernan
Mr. and Mrs. Joseph Smith
Mr. and Mrs. William Smith
Mr. and Mrs. James B. Deerin
Mr. and Mrs. Patrick J. White
Mr. and Mrs. David McCullough
Mr. and Mrs. Andrew J. Healy
Mr. and Mrs. Frederick A. Helmlinger
Mr. and Mrs. Anthony Mercadante
Mr. and Mrs. John R. Preston
Mr. and Mrs. John Deitch
Mr. Anthony Nickl
Mr. and Mrs. Bert Gifford
Mr. and Mrs. James Lepre
Mr. Andrew F. Newman
Dr. H. W. Huff
Mr. and Mrs. Raymond Connolly
Mr. James Smith
Mr. George Smith
Mr. Generoso Damiano
Mr. Charles Drischel
Mr. Clifford Gould
Mr. and Mrs. George H. Pegram
Mr. and Mrs. John J. Magovern
Mr. Attilio Orsi, Jr.
Mr. and Mrs. A. J. Nippert
Mr. Albert I. Schulte
Mr. and Mrs. Charles Nelson
Mr. Frank P. Mayr
Mr. Louis Maier
Mr. David H. Jones
Mr. Charles H. Licks

Exhibit D. 8.

Mr. Thomas Jones
Mr. Harry Jones
Mr. John Candelmo
Mr. and Mrs. W. J. Garmany
Mr. Anthony Sereno
Mr. and Mrs. Truman W. Drew
Miss Dora Geisel
Mr. Albert Voss
Mr. Sol Bellin
Mr. Alexander MacKenzie
Mr. James DeCicco
Mr. and Mrs. John Kaiser
Mr. and Mrs. Peter McCamley
Mr. and Mrs. Rudolph Andres
Mr. and Mrs. Joseph Stieve
Mr. and Mrs. Edward Oertzen
Mr. and Mrs. Lawrence J. Keefe
Mr. Owen Keefe
Mr. and Mrs. Michael Loprete
Mr. Harold Henderson
Mr. and Mrs. Anthony Beatrice
Mr. Joseph F. McGinity
Mr. and Mrs. F. R. Sandford, Jr.
Mr. and Mrs. Louis Peto
Mr. and Mrs. Gennaro Lepre
Mr. and Mrs. Fred Rodell
Mr. Ernest Van Iderstine
Mr. Wright McElroy
Mr. Walter Wiesmiller
Mr. George G. Salmon
Mr. and Mrs. James Curley
Mr. and Mrs. John McCabe
Mr. and Mrs. Owen Carroll
Mr. Edmond V. O'Brien
Mr. Jay Mecadon
Mr. William Hogan
Mr. James A. O'Neill

Exhibit D. 8.

Mr. and Mrs. Ambrose J. Walsh
Mr. John Stieve
Mr. and Mrs. Theodore Stieve
Mr. A. J. Hogan
Dr. and Mrs. Hugh F. Cook
Mr. Harold Hart
Mr. James Padula
Mr. Robert Manda
Mr. Albert Manda
Mr. Joseph Newman
Mr. and Mrs. James Skeffington
Mr. and Mrs. Patrick J. Skeffingtin
Mr. William Kernan
Mr. William Condren
Mr. Stephen Loughran
Mr. and Mrs. Benjamin C. Helmlinger
Mr. and Mrs. James Preston
Mr. Harold Sickley
Mr. Salvatore Palmisano
Mr. Harry Palma
Mr. Thomas Mercandante
Mr. Charles A. Kirkland
Mr. Arthur Becker
Mr. Charles E. Allen
Mr. Carleton Greene
Mr. George Allsopp
Mr. Carl Stiastny
Mr. Eugene W. Farrell
Mr. Cyril C. Baldwin
Mr. Edward J. Berry
Mr. Engene J. O'Keefe
Mr. Frank J. Foyle
Mr. and Mrs. John McGuire
Mr. Frank O'Rourke
Mr. John Kelly
Mr. Samuel Titterington
Mr. Charles Bing

Exhibit D. 8.

Mr. William Magliaro
Mr. and Mrs. Robert Fleming
Mr. John A. Matthews
Mr. Henry Winkler
Mr. Edward H. Wright
Mr. and Mrs. Joseph A. Carter
Mr. George Cohen
Miss Edna Steck
Mr. Lee Bowman
Mr. Frederick Carroll
Mr. and Mrs. Anthony D'Annunzio
Mr. and Mrs. P. McCahery
Mr. Joseph Passenger
Dr. Raymond C. Sheridan
Mr. William Parry
Mr. Elbert B. Fisher
Mr. William Bracken
Mr. Richard A. McDonough
Mr. Milton Dedrick

OPINION OF VICE-CHANCELLOR.

Filed March 12, 1931.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM T. BAIRD, Individually and as a Trustee, etc., *Complainant,*

and

BOARD OF RECREATION COMMISSIONERS OF THE VILLAGE OF SOUTH ORANGE, *et als., Defendants.*

Opinion.

Messrs. Harrison & Roche, for complainant.

Messrs. Riker & Riker, for defendants.

SYLLABUS.

I. Where two statutes are under consideration, they should be so construed that both, if possible, may be sustained.

II. Chapter 308, Pamphlet Laws of 1911, provides that games to which admission is charged may be held on public playgrounds on not more than two days in each week. The Vice & Immorality Act (Compiled Statutes, Vol. 4, p. 5712), prohibits the playing of all games on Sunday. The Act of 1911, therefore, means that games as aforesaid may be played on any two days in the week except Sunday.

III. In construing a deed of conveyance, the presumption is that the grantor and grantee in-

tended the land to be used only for lawful purposes.

IV. The words "public park" or "public playground" carry no idea of restriction to any part of the public or to any specific number of persons. They mean an area of land devoted exclusively to the use of the public, that is to all.

V. A municipality may use land conveyed to it only as provided in the deed of dedication.

VI. Whereas the Legislature may vary the use of land acquired by a municipality in fee or by eminent domain, it cannot vary or destroy restrictions in a deed conveying land to a municipality: Nor can the municipality do so.

VII. A grantor may enforce in equity the designated use of the land, and his intent is controlling.

VIII. The acceptance by a municipality of a conveyance of land constitutes an acceptance of the restrictions in the deed of conveyance.

IX. Equity will enjoin the playing of baseball games on Sunday, even though constituting a public nuisance, at the suit of individuals living in the neighborhood, if it appear that the attendant noise and disorderly conduct amount to a nuisance.

CHURCH, *V.-C.*

This bill is filed to enjoin the playing of professional baseball games, to which admission is charged, on a portion of the land transferred in 1924 by the Meadow Land Society of South Orange, a corporation, to the Village of South Orange. The games have been regularly played on Sunday. In 1930 twenty-five occurred, all on Sunday afternoon, and all on the premises in

question, save one which was played at the Newark Bears Stadium. They were conducted by an organization now or formerly known as the South Orange Baseball Club. All of the members of this baseball team are professional players who do not reside in South Orange. They were paid for their services out of the receipts from the games. Prominent professional baseball teams were hired to oppose the South Orange Baseball Club, and sometimes noted individual baseball stars, as for example, Babe Ruth. The game at the Newark Bears Stadium seems to have been arranged in order to prevent a deficit in the finances of the Club.

The deed to the Village of South Orange covers about thirty-eight acres of land near the center of the village.

The bill is filed by William T. Baird, individually and as a Trustee in Dissolution of the Meadow Land Society of South Orange. The corporation duly authorized him to file the bill in its behalf by a resolution of its directors acting as Trustees in Dissolution.

The defendants named in the bill are, the Village of South Orange, grantee in the deed; the Board of Recreation Commissioners of South Orange; Carleton Greene, Chairman, and South Orange Baseball Club, Albert Leitch, Manager.

Three causes of action are alleged. First, complainant, acting for the Meadow Land Society, prays that the defendants be enjoined from violating the restrictions covering the land in question. The covenant reads as follows:

> "It is further understood and agreed that said conveyance shall be made upon condition and subject to the restriction that the

premises above described shall be used solely as a public park or playground or for public park or public playground purposes."

Second, complainant, as a resident and taxpayer of the Village and as a member of the public at large, and whose property is injuriously affected by the violation of this restriction, seeks to enforce the covenant and restrain its violation because it inures to his benefit and that of the public at large.

Third, complainant, as a private citizen, seeks to restrain these Sunday baseball games because the peace, quiet and enjoyment of his home on Sunday afternoons are disturbed and destroyed.

The question of the consideration for the deed was considered at some length at the hearing and it has a bearing on the case for this reason. If the money paid was less by a considerable amount than the actual value of the land, it strengthens the complainant's contention that the restrictions were an inducement to the transference of the land and were an integral part of the consideration itself. Although I believe that the restrictions should in any event be enforced according to their true intent and purpose.

The Village paid $71,300 for the property. Complainant called two real estate experts of unquestioned ability and reputation. One testified that the property at the time of the transfer was worth in round figures $475,000; the other's valuation was in round numbers $400,000. One of defendants' witnesses gave the value at $300,000; another at $180,000. There was still another witness for the defendants, to whose testimony I attach no weight whatever. The reason for this is that he was one of the village

assessors. He testified that after taking the oath to assess property according to the Constitution, he fixed the value at about $72,000. He then, after taking an oath before me, stated that the true value at the time of his assessment was at least $50,000 higher. It is apparent that his sworn estimate was at one time or the other incorrect and therefore none of his testimony is of any value. From the admissible testimony, it is plain that $71,300 was far below the market value of the land. Taking the lowest valuation given by a witness for the defendant it was less than half its value, and taking the highest, less than one-fourth. The lowest testimony for complainant makes it less than one-fifth. It seems clear, therefore, that there was consideration in addition to the money paid, which led the Meadow Land Society to convey to the Village. That additional consideration was, I believe, the restrictive covenant above alluded to. Complainant testified that he had sought for years to acquire the stock of the Society that he might be able to have the land devoted to some public use. He offered it to the Essex County Park Commission for park purposes. When that Board declined to accept it, he opened negotiations with the Village of South Orange. The negotiations were conducted with Mr. Philip N. Miller, Chairman of the Special Committee of the Board of Trustees appointed for that purpose. Mr. Miller's testimony is important as a contemporaneous interpretation of the understanding of the Village as to the meaning of the restrictive covenant. In his report to the Trustees Mr. Miller said: "We have gone a long way toward providing the people with adequate park and playground facilities. By retaining this open

space which has meant so much to the Village, we take a great step toward maintaining the residential character of our community." Mr. Miller then testified as to a visit he made to the ball field on a Sunday afternoon in October, 1930. He saw a fence covered with canvas shutting off the field from general view. He heard yelling, shouting and stamping. He said, alluding to the purpose to which the Village would devote the land: "The purpose was certainly not to ever hold professional ball games on any portion of the land acquired from the Meadow Land Society."

After the conveyance of the land to the Village the Trustees transferred a portion of it to the Board of Recreation Commissioners in March, 1928. This was done pursuant to the authority of Chapter 308, Pamphlet Laws of 1911, p. 666, and the amendatory acts. In 1929 the Recreation Commissioners gave the use of the ground to the South Orange Baseball Club. There was and is no legal authority for this. Mr. Harry J. Schnell was the treasurer of the Club, although he had at the time no connection with the Village Trustees or the Recreation Commission. This Club used the public ground and played professional ball games for which admission was charged. The gate receipts for that year totaled $13,372.34. They were received and disbursed by Mr. Schnell or by a Mr. Coeyman, who likewise had no connection with the village government. This profit made from use of the public lands was almost entirely spent on salaries of players, guarantees to teams, etc. There was no control over the fund by anyone connected with the village government. In 1930 the Village Counsel advised the Trustees that the method theretofore followed in

the conduct of the games was illegal. He suggested, however, that Sunday games could be played under paragraph 7, Chapter 308, Pamphlet Laws of 1911, which reads as follows:

> "Said board of playground commissioners, in order to provide the funds, in whole or in part, necessary to improve, maintain and police the playgrounds or recreation places under its control, shall have the power and authority to arrange and provide for the giving of out-door exhibitions, concerts, games and contests, and the power and authority to use and employ said playgrounds or recreation places for the purpose of giving thereon out-door exhibitions, concerts, games and contests, and the said board shall have the power and authority to charge and collect a reasonable admission fee for each person entering such playground or recreation place during the time or times when the same is being used or employed for such purposes; provided, however, that the said board shall not use or employ any such playground or recreation place for such purpose for a greater period than eight hours in any week, nor on more than two days in any one week, and when any such playground or recreation place is used for such purpose no admission fee shall be charged or collected from children under twelve years of age."

I cannot agree to the proposition that this statute authorizes the playing of games on Sunday. It provides for games under certain conditions to be played for a period not greater than eight hours in each week, nor on more than two days in any one week. There is no specific permission to include Sunday as one of those two

days. On the other hand, the Vice and Immorality Act (Compiled Statutes, Vol. 4, p. 5712, sec. 1) specifically prohibits the playing of games on Sunday. It is one of the fundamental rules in the construction of statutes that when two are considered they shall be so construed that both, if possible, may be sustained. I do not believe the Legislature intended in this indirect way to repeal the Vice and Immorality Act. The proper meaning to be given the act of 1911 is that the days specified therein are any week days and do not include Sundays.

Acting under advice of counsel, the Sunday games were continued under the direction of the Board of Recreation Commissioners. As I have said, during 1930 twenty-five games were played, all but one on the premises covered by the restriction. That one occurred at the Newark Bears Stadium. The ball field was fenced in and a canvas covered the fence to prevent the public from looking in. $14,320.16 was collected as admissions. All of this save $313.81 was spent on salaries of players and guarantees to opposing teams. As there was a balance of $736.76 from the admittedly illegal games of 1929, there was a net loss of over $400 in 1930. The expenses of the game at the Newark Stadium were $2,912. This included a guarantee of $1,719 to two famous professional baseball stars, Babe Ruth and Gehrig. By what legal authority this guarantee was given does not appear. Books were produced by one Henderson, who says he was assistant treasurer of the fund. In these books the item is marked "guarantee." Henderson denied that the books are those of the Recreation Commission. Counsel for the defendants, however, stated on the record that the games were conducted by

the Recreation Commission. It seems clear that no legal authority existed for pledging the credit of the Village, either directly or indirectly, to stage a professional game by professional players, none of whom were residents of South Orange, on grounds in the City of Newark. All the money was taken in and disbursed by employees of the Recreation Commission—not themselves members of that board or of the Board of Village Trustees. Chapter 308, Pamphlet Laws of 1911, on which defendants rely as their authority for conducting these games in the manner above described, provides, Section 6, that all money received by the Board of Recreation Commissioners shall be paid to the village treasurer and by him disbursed. This was not done. The act further provides, Section 7, that admission fees shall be charged only for the purpose of improving, maintaining and policing the playground. None of the money collected at these games was so used. It was all used to pay professional players, guarantee expenses of opposing teams, salaries of employees of the Board for their services in connection with the games, and incidental expenses such as advertising in newspapers outside the Village, etc. The evidence shows that large crowds attended the games. Many automobiles were parked in the streets and on the playground adjoining the field. That there was loud shouting, yelling and stamping, especially when an outside team called "The House of David" appeared, accompanied by a clown who performed during the game: or when "The Philadelphia Red Caps" arrived with hot dog and peanut vendors, or when the illustrious Babe Ruth performed in the presence of howling hundreds. For these performances a part of the

public lands of South Orange was used, fenced in and shut off from public view—land that was restricted "solely for public park or public playground purposes." I have no difficulty in believing that the peace, rest and quiet of complainant and his supporting witnesses and that of the public, on Sunday afternoons, were thus disturbed.

I cannot believe that the Legislature under the Act of 1911 intended to permit the municipalities of this State to enter into the business of professional baseball owners, to hire professional teams and to use municipal land for the purpose of financing such undertakings. No such authority is given under the Act. The conduct of the games in 1929 was admittedly illegal. Their conduct in 1930 was just as much so. If exhibitions of this character are permitted, what is to prevent the fencing in of still larger areas, the hiring of more noted players and the building of more imposing grand stands?

The restrictive clause, as I have said, reads: "It is further understood and agreed that said conveyance shall be made upon condition and subject to the restriction that the premises above described shall be used solely as a public park or playground or for public park or public playground purposes."

I cannot presume that the complainant grantor intended to permit defendant grantee to commit the unlawful acts above described. The presumption, on the contrary, is that he meant that the land should be used only for lawful purposes. He has testified that he did not contemplate such acts and the restriction was to guard against them. He is corroborated by Mr. Miller who conducted the negotiations for the acquirement of

the land on the part of the grantee, the Village of South Orange.

I conclude that the playing of games on this property on Sunday is unlawful and a violation of the covenant in the deed of conveyance, and should be permanently enjoined.

The next question to be considered is whether the restriction I have quoted from the deed of conveyance permits the playing of games to which admission is charged on any day or any part of the land conveyed, which is fenced off from public view and to which the public may not have free access without payment of a fee.

In the case of *Price* v. *Inhabitants of Plainfield,* 40 N. J. Law 608, the Court of Errors and Appeals construed the meaning of the word "park" written on a filed map. It was contended that the word dedicated it to the public. The Court said, third paragraph of syllabus: "The word 'park' written upon a block on a map of city property indicates a public use." At page 613 Mr. Justice Reed said: "If the words 'public park' had been upon it, no question would have arisen." The words "public park" appear in the restriction under discussion. The learned Justice then proceeds to discuss the meaning of "park" —without the word "public"—as follows:

> "But a park in a city means to the sense of every person a place open to every one. It carries no idea of restriction to any part of the public or to any specific number of persons. Restrictions as to time of entrance or behavior of those entering are conceivable, but the idea that any class of the community is to be excluded, would not be entertained primarily by any person in connec-

> tion with the idea of a park within the limits of a city. That it was to be a place of public resort, would be the impression which any person would receive, by looking at the map in this case, delineating a tract of sixty acres, with streets, and a square or block, upon which is marked "Park."

It will, therefore, be apparent that our highest court has defined for us the words used in the restrictive covenant in this case and has held that it carries no idea of restriction to any part of the public or to any specific number of persons. In the case of *Strock* v. *East Orange,* 80 N. J. Law 619, cited by both counsel for complainant and counsel for defendants, Mr. Justice Parker, speaking for the Supreme Court, adopts the same general definition. He says, at page 622: "The playground, after all, is nothing but a modified park, a place for public resort and recreation * * *." He further says in effect that when the land is acquired in fee by a municipality and fully paid for, there may be by legislative act considerable latitude exercised by the authorities in furnishing or arranging for special facilities to certain portions of the public. He, however, points out, on page 623, that the question of dedication does not arise in the case he is considering. The decision, therefore, is germane to the case before me only as it reiterates the definition given in *Price* v. *Inhabitants of Plainfield, supra,* by the Court of Errors and Appeals, that a playground is a modified park, and therefore is, like a park, a place for public resort and recreation.

In *Corpus Juris,* Vol. 46, page 1373, the word "park" is defined as "an extensive area of land

devoted exclusively to the use of the public and to be ornamented and embellished." Citing *Buffalo, etc., R. Co.* v. *Hoyer,* 147 App. Div. 205, 132 N. Y. S. 31, 34: "An open or inclosed tract of land for the comfort and enjoyment of the inhabitants of the city or town in which it is located." Citing *Archer* v. *Salinas City,* 93 Cal. 43, 50, 28 P. 839, 16 I. R. A. 145 (*Quot Ramstad* v. *Carr,* 31 N. D. 504, 154 N. W. 195, 200): "An open space intended for the recreation and enjoyment of the public." Citing *Archer* v. *Salinas City,* 93 Cal. 43, 50, 28 P. 839, 16 L. R. A. 145 (*Quot Frauenthal* v. *Slaten,* 91 Ark. 350, 357).

Bouvier's Law Dictionary, Vol. 3, page 2455, defines a public park or playground as follows:

> "A pleasure ground in or near a city, set apart for the recreation of the public. * * * A place for the resort of the public for recreation, air and light; a place open for everyone. Price *v.* Plainfield, 40 N. J. Law, 613. See Archer *v.* Salinas City, 93 Cal. 43, 28 Pac. 839, 16 L. R. A. 145."

In *Riverside* v. *MacLain,* 210 Ill. 308, 66 L. R. A. 288, 102 Am. St. Rep. 164, 71 N. E. 408, the Court said:

> "A park is a 'place for the resort of the public for recreation, air and light.' Price *v.* Plainfield, 40 N. J. L. 613. 'A park is a piece of ground in a city or village set apart for ornament, or to afford the benefit of air, exercise or amusement.' 17 A. M. & Eng. Enc. Law, 407. The title to these premises is vested in the Village of Riverside, as trustee for the public, and the uses to which the premises may be devoted are limited to uses as a park or common."

It is clear, therefore, from the decisions I have cited in our own courts and from cases in sister states that the restriction contained in the deed of conveyance, according to the legal interpretation generally put upon the words contained in it, limits the use of the land conveyed to the enjoyment of the public at large and does not contemplate or permit the segregation of any part of it for games at which portions of the public are admitted on payment of admission fees.

Such being the meaning of the restrictive words, it follows that the Village can use the land conveyed only as provided in the deed of dedication:

> "If a dedication is made for a specific or a defined purpose, neither the legislature, a municipality, or its successor, nor the general public has any power to use the property for any other purpose than the one designated, whether such use be public or private, and whether the dedication is a common law or a statutory dedication, and this rule is not affected by the fact that the changed use may be advantageous to the public." 18 *Corpus Juris,* 127. "They cannot sell the lands so dedicated, nor release or extinguish the uses for which they were dedicated, nor employ them in any way variant from the purposes for which they were designed." *Fessler* v. *Town of Union,* 67 N. J. Eq. 14, at page 23, citing Methodist Church *v.* Hoboken, 33 N. J. L. 13, at page 19.
>
> "The owner may in the act of dedication declare the specific public use to which he intended the donation, and it will remain subject to such specific use; but when the

dedication is completed, the owner cannot thereafter revoke it or restrict or change the uses to which it was made." *Methodist Church* v. *Hoboken, supra.*

"An owner making a dedication of land to the public has the right to specify the particular use to which the land is to be devoted, to impose such restrictions as he sees fit on such use, and the land cannot be applied to any other use, nor can the restrictions be destroyed." *Streuber* v. *City of Alton*, 149 N. E. 577; 319 Ill. 43.

The contention of the defendants that the Legislature by the Act of 1911, supra, could and did authorize the Village to change the use for which this land was by deed dedicated, is not sound. It confuses the rights which arise where an absolute fee is taken with those which exist when the property is dedicated to public uses. I express no opinion as to whether the Legislature may change the use of land taken in fee or condemnation. It cannot, however, change the use to which land is restricted in a deed of conveyance to a municipality. Nor can the municipality do so.

"Where the absolute fee in lands is acquired by a municipal corporation, although with an expressed intention of using it for a special purpose, the property acquired may be applied by legislative authority to a wholly different public object, but where the grant to the corporation is only for a specified use, the grantor retains the reversionary estate." *Newark* v. *Watson*, 56 N. J. L. 667, at page 674.

"The general principle of law on the subject is that municipal property is subject to legislative authority. When property is put in trust in the hands of such a corporation the effect is to prevent the corporation from perverting, at its own will, such property to other uses; but when the uses are public, and not derived from private grant, they are liable to be modified or changed, with the concurrence of the law-making power." *Newark* v. *Stockton*, 44 N. J. Eq. 179, page 186.

"The general rule undoubtedly is that the Legislature itself does not possess the power to authorize the property dedicated for a particular purpose to be used for a purpose inconsistent with the purpose for which it was dedicated, unless in the exercise of the power of eminent domain, and that it has no authority, in such a case, to authorize a sale of the property. And statutes authorizing a sale by a municipality of land held for public use, when not needed for such use have been held not to apply to property dedicated by the owner to the public." *McQuillin Municipal Corporations,* Second Edition, Vol. 4, Sec. 1733, page 611.

Dillon on Municipal Corporations, Fifth Edition, Vol. 3, page 1759 (from Sec. 1103):

"If the municipal corporation holds the full title to the ground for public uses, without restriction, the legislature may doubtless direct and regulate the purposes for which the public may use it."

Page 1761 (from Sec. 1104):

"It is therefore not possible to do more than to affirm that while the general rule is that the legislative dominion over the uses of public property is plenary, it is also true, as is more fully shown elsewhere, that there may be rights in the dedicator or in the abutting owner of such a nature—that is, property rights and rights resting upon contract—that they cannot be destroyed, and of which he can only be deprived by the exercise of the right of eminent domain—that is to say, on being justly compensated therefor."

In *Jacksonville* v. *Jacksonville Railroad Co.*, 67 Ill. 540, the Court said:

"It would scarcely be contended that the city, holding the property merely as trustee, could divert the trust, divide the square into lots, and sell and convey them to private individuals, to be appropriated to such purposes as they might desire. The conveyance would be an absolute nullity, and the act would be abhorrent to every principle of right. It would be a gross perversion of a trust, which should be prevented by the interposition of a court of equity. If the municipality could not divert the property, neither could the legislature. The power of the latter is not unlimited, and cannot be exercised to interfere with trust estates and vested rights."

In the case of *Portland & W. V. R. Co.* v. *Portland*, 12 Pac. 265, it was held:

"To this property thus dedicated to the public use the dominion of the legislature is

attached but its power over it is not supreme. It might regulate its use or promote its improvement, but it could not divert or subject it to any use clearly inconsistent with the purposes of its dedication. To do that would violate the contract of dedication and any person interested would be authorized to institute proper proceedings to enjoin it."

In *Riverside* v. *MacLain,* 210 Ill. 308, 66 L. R. A. 288, 102 Am. St. Rep. 164, 71 N. E. 408, it was held:

"Statutory authority given a municipality to put driveways through parks relates only to parks created by a municipality or park commissioners and not to parks dedicated at common law."

In *Warren* v. *Lyons City,* 22 Iowa 351, the Court said:

"Why may I not affix the terms, designate the uses and purposes, upon and for which I give to the public my farm or my lots? And upon what principle of law or morals is it that the legislature can say that this property may, at the option of the trustee, be used for another and different purpose?"

In *Cummings* v. *St. Louis,* 90 Mo. 259, 2 S. W. 130, the opinion of the Court was

that the legislature had no right to extend or enlarge the use of property dedicated by proprietors of land for public use as a common, and it could not as against the proprietors or those owning property nearby, authorize a sale of such property.

LeClercq v. *Gallipolis,* 7 Ohio 219, 28 Am. Dec. 641, holds that where land is dedicated by a pro-

prietor for a public square, and held in trust for such purpose, the legislature has no power, as against the inhabitants of the town where the land is situated, to authorize a lease of the property for other purposes.

Hill v. *Borough of Belmar*, 3 N. J. Misc. Reports, 254, at page 256:

"The result of these suits and the testimony before us show conclusively that there was a dedication of the tract in question as and for a public park, and that the purchaser of lots purchased upon such representation, and that the plot would be kept open, insuring an unobstructed view of the ocean.

"Under such circumstances, the right of possession vests in the municipality, which holds a sort of secondary title in trust for the purposes of the dedication, while the bare legal title remains in the dedicator in trust for the use expressly or impliedly declared in the dedication. Fessler *v.* Town of Union, 67 N. J. Eq. 14, 56 A. 272; Jersey City *v.* Morris Canal, 12 N. J. Eq. 547; Bayonne *v.* Ford, 43 N. J. Law 296; Methodist Church *v.* Hoboken, 19 N. J. Eq. 355; Price *v.* Plainfield, 40 N. J. Law 608.

"We are of the opinion that the use to which it is proposed to put this land is a use other and adverse to the purposes of the dedication. A park or public square cannot be said to be the same as a public swimming pool. Much testimony was devoted by respondent in the attempt to show that the construction of the proposed pool and its appurtenances would not materially obstruct a view of the ocean, nor exclude the public, but

the fact remains that such use is not reconcilable with the use of a park or public square.

"We conclude, therefore, that such proposed use is unauthorized and ultra vires, and for that reason the ordinance must be set aside. * * *"

It should be observed that in this case as in the one before me now, an attempt was made to exclude at least a portion of the public from a public park.

In the case of *United States* v. *Illinois Central R. N. Co.*, 26 Fed. Cas. 461, the Court said, at page 463:

"There may be, perhaps, some force in the argument which declares that when property is dedicated generally to the public, without specifying the particular purpose, the public may use it for one purpose at one time and for another at a different time, but where the owner of property dedicates it to a particular public purpose, being not inconsistent with the law or public policy, I deny the right of the state or of the municipality to divert it from that purpose, except under the general authority which the public has to take property for public uses, which is sometimes termed the right of eminent domain. If an individual shall grant a lot of land or square in a city, for the purpose of constructing a school house upon it, or a church, or an institution of science, or for any useful public purpose, that property cannot be taken, as I apprehend, by the public except in the same way that any property can be taken."

Methodist Episcopal Church of Camden v. *Penna. R. R. Co.* 48, N. J. Eq. 452:

In this case the Court of Chancery (Pitney, *V.-C.*) enjoined the defendant from interfering with the rights of the complainant in a certain street which had been dedicated to be kept open for the use of complainant and others. The Court says, at pages 454-455:

> "This right cannot be either destroyed or substantially impaired by legislative action, except upon the constitutional condition of making compensation."

In the case of *Codman* v. *Crocker* (203 Mass. 146, 89 N. E. 177), 25 L. R. A., New Series, page 980, at page 989, the Court stated:

> "This was virtually a decision that such a use was not a violation of the quasi trust under which the legal title is held. It does not disregard the doctrine relied on by the plaintiffs, that, where property is dedicated by donors to be public use for a particular purpose, it cannot, at least without the exercise of the paramount right of eminent domain, be appropriated to a use of a different character, in disregard of the trust under which it is held, and in violation of the rights of the donors and their legal representatives. Cary Library *v.* Bliss, 151 Mass. 364, 375, 376, 7 L. R. A. 765, 25 N. E. 92; Howe *v.* Lowell, 171 Mass. 575, 51 N. E. 536; Louisville & N. R. Co. *v.* Cincinnati, 76 Ohio St. 481, 504, 506, 81 N. E. 983; St. Paul *v.* Chicago, M. & St. P. R. Co., 63 Minn. 330-352, 34 L. R. A. 184, 63 N. W. 267, 65 N. W. 649, 68 N. W. 458; Jacksonville *v.* Jacksonville R. Co., 67 Ill. 540, 543, 544; Riverside *v.* Mac-

Lain, 210 Ill. 308, 66 L. R. A. 288, 102 Am. St. Rep. 174, 71 N. E. 408."

The right of the complainant to proceed in this court to enforce the terms of the dedication and to prevent the use of the property for any other purposes is clear.

18 *Corpus Juris,* page 130, says:

"Dedicator and His Representatives. The dedicator has such an interest in the property dedicated as entitles him to enforce the uses for which the dedication was made and to prevent a diversion therefrom, whether against the dedicatee or some third person who is interfering with the use of the property for the purposes for which it was dedicated, or against both acting in conjunction, and in case of the death of the dedicator his representatives or his grantees, expressly or by implication as abutting owners, succeed to his rights."

Riverside v. *MacLain,* 210 Ill. 308, 66 L. R. A. 288, 102 Am. St. Rep. 164, 71 N. E. 408, holds:

"A deviation from such use by the village is a violation of its duties as trustee for the public, and will result in damage to the property of appellees, and destroy their easement in the park. Where a park is thus cut up by the extension of a street through its middle, its use for purposes of pleasure, recreation, and amusement will be destroyed. Where such a tract has been dedicated and accepted as a public park, and adjudicated to be such, the municipality has no power to convert any portion of it into a public highway, because such use is inconsistent with and destructive of its use as a park.

* * * A distinction is to be made between cases where a public square is dedicated without restriction and cases where the dedication is restricted to a particular purpose. In the former case, any reasonable public use may be made of the square, but in the latter, it must be devoted to the particular purpose indicated by the dedicator. Where land is dedicated for a public park and common, it cannot be said that the construction of an elevated driveway amounting in fact to nothing more than an approach to a railroad track, and only a little over 100 feet long, is an act which amounts to keeping the park open for purposes of recreation and amusement. A distinction is also to be observed between cases where the facts show that a public park has been created and established by a municipality, under statutory provisions, and cases where the land has been dedicated for the purposes of the park by the original owner thereof. A pleasure driveway may be a legitimate feature of a public park created and established by a municipality, but in a dedicated park it is always a question of the intention of the donor."

Rowzee v. *Pierce,* 75 Miss. 846, 40 L. R. A. 402, 65 Am. St. Rep. 625, 23 So. 307:

"So, land dedicated for public use as an ornamental park exclusively cannot be used as a site for a schoolhouse."

Board of Education v. *Kansas City,* 62 Kan. 374, 63 Pac. 600:

"And land dedicated for other public purposes, evidently a public park, cannot be ap-

propriated by the city council for school purposes."

It was held in *McCullough* v. *Board of Education,* 51 Cal. 418, that the purposes for which public squares may be used are those defined by positive law, and that the erection of schoolhouses thereon was not one of the purposes provided for.

25 *L. R. A., New Series, at page* 980 (Note):

"Whether or not a particular use of land dedicated for squares, parks, and commons amounts to a diversion from the use for which it was dedicated, depends upon the circumstances of the dedication, and the intention of the parties making it, and is, therefore, largely a question of fact.

A different construction is placed upon dedications made by individuals from those made by the public. The former are construed strictly according to the terms of the grant, while in the latter cases a less strict construction is adopted. Spires *v.* Los Angeles, 150 Cal. 64, 87 Pac. 1026, 11 A. & E. Ann. Cas. 465; Riverside *v.* MacLain, 210 Ill. 308, 66 L. R. A. 288, 102 Am. St. Rep. 164, 71 N. E. 408."

Howe v. *Lowell,* 171 Mass. 575, 51 N. E. 536:

"And the maintenance of a pumping station upon land constitutes a breach of a condition in a deed thereof to the city that 'it shall be improved, dedicated, and forever used by the grantee as and for a common, park, or boulevard, and for no other purpose.' "

Flaten v. *Moorhead,* 51 Minn. 518, 19 L. R. A. 195, 53 N. W. 807, where the clause "said tract of land hereby conveyed to be forever held and used as a public park," followed the description in a deed to a municipality, the municipality did not acquire an absolute title in fee, and an order refusing an injunction to restrain the erection of a jail on the land was reversed.

In *Church* v. *Portland,* 18 Or. 73, 6 L. R. A. 259, 22 Pac. 528, the Court said:

> "The blocks were indicated on the map as public squares, which implied, of course, that they were to be enjoyed as such by the public at large, and not be appropriated and used by the city in the management and conduct of its affairs. The use of them in the way proposed would necessarily exclude the public from the use of them except for the transaction of city business; but that privilege can be enjoyed wherever the buildings may be located. The act of building the city hall in question would virtually be a purpresture. The city would be making that several to itself which ought to common to many."

In *Princeville* v. *Auten,* 77 Ill. 325, the finding was that

> "the mere fact that a block of ground was dedicated by the original proprietors of a town for a 'public square' does not confer upon the village trustees authority to appropriate it, in whole or in part, as a site for a town hall, against the wishes of any citizen interested."

New Jersey State Library

McQuillin Municipal Corporations, Second Edition, Vol. 4, Section 1738, page 602:

> "One who has dedicated property to public use, whether by a statutory or common-law dedication, has nevertheless such an interest as entitles him to sue to restrain the municipality from diverting it to any other use not consistent with the use for which dedicated, and he may bring a like suit against a third person who is so using it."

The Village accepted the deed from the grantor, and entered into possession and control. It, therefore, accepted the restriction contained in the deed.

Dodge and Bliss Co. v. *The Mayor, etc., of Jersey City,* 105 N. J. Eq. 545:

> "The acceptance of deeds which pass land subject to a public use constitutes an assent by the grantee to the devotion of the land thereto."

At page 554, the Court, referring to the deed taken by complainant, says:

> "And that acceptance operated as an assent by the grantee to the devotion of the land to any public uses defined in or arising from the language of the deed," citing Camden *v.* McAndrews & Forbes Co., 85 85 N. J. L. 260 (78 N. J. Eq. 244); and Earle *v.* Mayor, etc. of New Brunswick, 38 N. J. L. 47.

In the *Camden* v. *McAndrews case, supra,* Justice Parker, speaking for the Court of Errors and Appeals, says, at page 266:

> "True, the deed was not made by the land company as grantor, but it was accepted by it as grantee, and that acceptance operated

as an assent by the grantee to the devotion of the land to any public uses defined in or arising from the language of the deed. Mayor, etc. of Jersey City *v.* Morris Canal Co., 1 Beas. 547; New Jersey, etc. Railroad Co. *v.* Drummond, 16 Vroom 511; affirmed, 17*Id.* 644; Central Railroad Co. *v.* Elizabeth, 8 Id. 432."

Earle v. *Mayor, etc. of New Brunswick, supra,* at page 51:

"The grantee of a deed inter partes whereby an estate is conveyed, is bound by the conditions, covenants and stipulations therein, on his part, although it is only signed by the grantor. His acceptance of the deed is such assent to its terms as will render it binding on him."

In *Borough of Spring Lake* v. *Polak,* 76 N. J. Eq. 212, the Court held:

"But little affirmative action is required to indicate an intention to accept a dedication of property to public use."

Citing many New Jersey cases.

The complainant having, as I have said, the right to proceed in this Court, it follows as a matter of course that this Court has jurisdiction to enjoin the violation of the restriction.

Dillon on Municipal Corporations, Fifth Edition, Vol. 3, Sec. 1106:

"Property unconditionally dedicated to public use, or to a particular use, does not revert to the original owner except where the execution of the use becomes impossible. If the dedicated property be appropriated to an unauthorized use, equity will cause the

trust to be observed or the obstructions removed. But if the property is no longer devoted to the public uses to which it has been dedicated, and such public uses are no longer possible of execution, the fee will revert to the dedicator released from the easement of the public."

McQuillin Municipal Corporations, Second Edition, Vol. 4, Sec. 1731, at page 609:

"Diverting of property to another and inconsistent use is a misuser, and may be enjoined."

And Sec. 1737, at page 619:

"And the only remedy for misuser, it seems, is by seeking equitable relief to compel a specific execution of the trust by restraining the municipality, or by causing the removal of the obstruction."

The nuisance created by playing games on Sunday may be abated at the instance of any citizen living in the neighborhood if it appear that the noise and disorderly conduct amount to a nuisance in that neighborhood.

Cronin v. *Bloemecke,* 58 N. J. Eq. 313:

"The mere fact that crowds of disorderly persons upon the highways, drawn there by entertainments given by a third person upon his own lands for pecuniary profit, are a public nuisance, does not deprive a private person of relief by injunction against a special nuisance to his dwelling-house by reason of such disorderly crowds."

Gilbough v. *West Side Amusement Co.,* 64 N. J. Eq. 27:

"The noise caused by the shouts, cheers and stamping of feet of spectators at Sunday

ball games, even though constituting a public nuisance, which may be dealt with as such, will be enjoined at the suit of individuals living in the neighborhood; it being such as to appreciably disturb their rest and quiet."

McMillan v. *Kuehnle*, 76 N. J. Eq. 256:

"The playing of baseball on Sundays will be enjoined if it be made to appear that the noise and disorderly conduct attendant upon the games being held forth amounts to a nuisance in the neighborhood, whereby the peace and quiet of the Sabbath is disturbed and the rest which the complainants are entitled to enjoy on that day is appreciably affected; each case must stand or fall on the question of nuisance or no nuisance, as the court of chancery has no jurisdiction to enforce, by injunction, the Sunday laws, so called.

"Noises which are not nuisances on a week-day may be nuisances when made on a Sunday, if they have the effect of disturbing that quiet and rest which the citizen is entitled to have for his recuperation; and the fact that such noises are forbidden by the laws of the land (the Sunday laws) takes away any defence for the making of them on Sunday even though they be but slight."

The order in this case granting a preliminary injunction was reversed by the Court of Errors and Appeals on the ground that "a preliminary injunction ought not to be ordered unless from the pressure of an urgent necessity, and unless the injury or damage to be prevented, during the pendency of the suit, is in an equitable point of

view of a character to cause irreparable injury." It only dealt, however, with a preliminary injunction and did not deny the general principle as stated in the court below that such a case was one for equitable relief upon final hearing.

The complainant, as a trustee of the Meadow Land Society, has a right to maintain this action.

In the case of *Joachim* v. *Belfus*, 107 N. J. Eq. 240, at page 245, Vice-Chancellor Backes said:

> "Upon the dissolution of the Weequahic Park company the title to the easement remained in the company. Dissolution of the company did not work an abandonment of the easement. Upon dissolution of a corporation, its corporate existence continues for the winding up of its affairs and conveying its real estate. In activity a corporation is managed by a board of directors; in dissolution by a board of trustees—the former directors. The board of trustees winds up its affairs and conveys its real estate, the title to which remains in the corporation meanwhile. Sections 52, 53, 54, Corporation Act. Comp. Stat. 1634."

Furthermore, the contention that he has no such right cannot now be made. It came too late. The defendants filed their answer, making no objection to the pleadings or to the right of complainant to institute the suit. Nor was a motion made to dismiss the bill of complaint. Months elapsed before the case was reached on final hearing. Our Chancery Act (P. L. 1915, p. 196, sec. 59; Ch. Rule 75; Objections to Pleadings) provides: "All objections to pleadings must be made by motion. Five days' notice of

such motion must be given within the time limited for filing an answering pleading, and the notice must state the particular grounds of objection." In the case of *Tipton* v. *Randall,* 87 N. J. Eq. 387, Chancellor Walker held that a party will not be permitted to move to strike out after he has pleaded to the merits. I quote from the Chancellor's opinion: "* * * it follows that the motion to dismiss the bill in this case, made after the time for answering had expired and when an answer already put in had been overruled, with permission only to file an amended answer, came too late, and the complainants had a right to disregard it * * *." Cites English cases and 31 Cyc. 275, and *Hand* v. *Hand,* 60 N. J. Eq. 518.

I said at the hearing, and I now reiterate, that the decision of this case, in my opinion, depends mainly, if not entirely, upon the interpretation of the restrictive clause in the deed of conveyance. However, I allowed the fullest latitude to counsel in order that they might present whatever evidence seemed to them germane, and I have endeavored to discuss and decide all the points raised in the briefs submitted.

My conclusion is that the deed from the Meadow Land Society to the Village of South Orange restricts the use of the land to public park and public playground purposes; that the meaning of the restriction is that the land shall be used by the general public and that no part of it shall be segregated and used for games to which admission is charged on any day of the week. I will, therefore, advise a decree permanently enjoining the defendants according to the prayer of complainant's bill.

FINAL DECREE.

Filed March 26, 1931.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM T. BAIRD, individually and as a Trustee etc., *Complainant,*

and

BOARD OF RECREATION COMMISSIONERS OF THE VILLAGE OF SOUTH ORANGE, *et als., Defendants.*

On Bill, &c.

Final Decree.

This cause coming on to be heard in the presence of Harrison and Roche, Esqs., solicitors for complainant, and Riker & Riker, Esqs., solicitors for defendants, and the Court having examined the pleadings and having taken proofs in open court and heard and considered the arguments of counsel thereon and read and considered the briefs submitted by counsel for the respective parties, and it appearing to the satisfaction of the Court that the deed mentioned in the bill of complaint from Meadow Land Society of South Orange, a corporation, to The Village of South Orange, dated March 28, 1924, and recorded in Essex County Register's Office in Book L-70 of Deeds for said County, at page 120 etc., whereby certain premises more particularly therein described and mentioned, and set forth in the bill of complaint, contained the following covenants, conditions and restrictions: "The four tracts

above described are conveyed upon condition and subject to the restriction that the premises above described shall be used solely for public park and/or public playground purposes''; and it further appearing that the defendants, The Village of South Orange, a municipal corporation, the Board of Recreation Commissioners of the Village of South Orange, and an organization now or formerly known as South Orange Baseball Club, their agents, servants and representatives, have violated and intend to continue to violate the said covenants, conditions and restrictions contained in said deed, by playing or permitting certain professional or semi-professional baseball games to which an admission is charged, to be played on Sundays and at divers other times on portions of the aforesaid premises, and that the uses now being made by the defendants of said lands are not within the intent and meaning of the said conditions and restrictions or of those who dedicated said lands, but are forbidden and prohibited thereby and constitute violations thereof; and it further appearing that the said defendants have been using or permitting said premises or certain parts thereof to be used in such a manner as to annoy complainant and disturb his rest and that of the members of his family, and to interrupt and destroy their peace, quiet and enjoyment, particularly on Sundays, by playing or permitting said professional or semi-professional games to be played on Sundays and at divers other times, the playing of which games constitute a private nuisance; and it appearing that the complainant individully and as a member of the public at large for whose benefit said covenants, conditions and restrictions were made, and as a Trustee in Dissolution

of the Meadow Land Society of South Orange, a corporation, duly authorized to act in this behalf for said Trustee, is entitled to the relief prayed for by him in his bill of complaint filed herein;

It Is on this 25th day of March, 1931 Ordered, Adjudged and Decreed, that the said defendants, The Village of South Orange, a municipal corporation, the Board of Recreation Commissioners of the Village of South Orange, and said organization now or formerly known as the South Orange Baseball Club, their officers, agents, servants, members, players and representatives, and each and every one of them, be and they hereby are enjoined and restrained from permitting, holding, playing, taking part in, or promoting professional or semi-professional baseball games to which an admission fee is charged, or any game, entertainment or exhibition to which an admission fee is charged, on Sundays, or on any other days, on any part of the tracts of land described as the first four tracts in the deed from Meadow Land Society of South Orange, a corporation, to The Village of South Orange, dated March 28, 1924, and recorded in Essex County Register's Office in Book L-70 of Deeds for said County at page 120 etc., and more particularly on that part thereof which has been added to and included in the baseball field known as Cameron Field; and from doing any act or exercising any authority, management or control over the same, or making any use thereof whereby the rights therein of the public to have, use and enjoy the same as a public park or public playground shall be in anywise diminished, interfered with or destroyed; and further, that said defendants and each and every one of them be and they hereby are enjoined and commanded

henceforth and forever to desist and refrain from using or permitting the aforesaid lands to be used in such a manner as to annoy and disturb the rest of complainant and his family and to interrupt and destroy their peace, quiet and enjoyment on Sundays or any other days, by playing or permitting said professional or semi-professional baseball games to be played on Sundays or other days;

And It Is Further Ordered, that the said defendants, The Village of South Orange, a municipal corporation, the Board of Recreation Commissioners of the Village of South Orange and said organization now or formerly known as the South Orange Baseball Club, defendants herein, pay to the complainant the costs of this suit to be taxed, together with a counsel fee of $1,000.00, which is hereby allowed to said complainant.

E. R. WALKER,
C.

Respectfully advised,

Alonzo Church,
V.-C.

NOTICE OF APPEAL.

Filed March 28, 1931.

IN CHANCERY OF NEW JERSEY.

Between	
WILLIAM T. BAIRD, individually and as a Trustee etc., *Complainant,*	*On Bill, &c.*
and	*Notice of Appeal.*
BOARD OF RECREATION COMMISSIONERS OF THE VILLAGE OF SOUTH ORANGE, *et als., Defendants.*	

The defendants, Board of Recreation Commissioners of the Village of South Orange,*et als.,* hereby appeal from the final decree made in the above-entitled cause on March 25, 1931, by Edwin Robert Walker, Chancellor of the State of New Jersey, on advice of Vice-Chancellor Alonzo Church, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

Dated March 27, 1931.

RIKER & RIKER,

Solicitors for and of Counsel with Defendants.

I conceive there is good cause for appeal in the above-entitled cause.

THOS. E. FITZSIMMONS,
Of Counsel with Defendants.

PETITION OF APPEAL.

Filed April 16, 1931.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between	
WILLIAM T. BAIRD, individually and as a Trustee etc., *Complainant-Respondent,*	*On Appeal from Court of Chancery.*
and	
BOARD OF RECREATION COMMISSIONERS OF THE VILLAGE OF SOUTH ORANGE, *et als., Defendants-Appellants.*	*Petition of Appeal.*

To the Honorable, the Court of Errors and Appeals, the Court of Last Resort in all Causes:

The petition of the Village of South Orange, a Municipal Corporation, the Board of Recreation Commissioners of the Village of South Orange, Carleton Greene, Chairman, and South Orange Baseball Club, Albert Leitch, Manager, the appellants in the above-entitled cause, respectfully show:

1. The petitioners find themselves aggrieved of a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, advised by Vice-Chancellor Church, bearing date the twenty-fifth day of March, 1931, in a certain cause in said Court of Chancery wherein William T. Baird, individually and as a trustee in dissolution, etc.,

was complainant, and your petitioners were defendants, in this respect, to wit, that the said decree adjudges that the said defendants, The Village of South Orange, a municipal corporation, the Board of Recreation Commissioners of the Village of South Orange and said organization, now or formerly known as the South Orange Baseball Club, their officers, agents, servants, members, players and representatives, and each and every one of them, be and they hereby are enjoined and restrained from permitting, holding, playing, taking part in, or promoting professional or semi-professional baseball games to which an admission fee is charged, or any game, entertainment or exhibition to which an admission fee is charged, on Sundays, or on any other days, on any part of the tracts of land described as the first four tracts in the deed from Meadow Land Society of South Orange, a corporation, to The Village of South Orange, dated March 28, 1924, and recorded in Essex County Register's Office in Book L-70 of Deeds for said County at page 120, etc., and more particularly on that part thereof which has been added to and included in the baseball field known as Cameron Field; and from doing any act or exercising any authority, management or control over the same, or making any use thereof whereby the rights therein of the public to have, use and enjoy the same as a public park or public playground shall be in anywise diminished, interfered with or destroyed; and further that said defendants and each and every one of them be and they hereby are enjoined and commanded henceforth and forever to desist and refrain from using or permitting the aforesaid lands to be used in such a manner as to annoy and disturb the rest of

complainant and his family and to interrupt and destroy their peace, quiet and enjoyment on Sundays or any other days, by playing or permitting said professional or semi-professional baseball games to be played on Sundays or other days.

And the said decree further adjudges that the said defendants, The Village of South Orange, a municipal corporation, the Board of Recreation Commissioners of the Village of South Orange and said organization now or formerly known as the South Orange Baseball Club, defendants herein, pay to the complainant the costs of this suit to be taxed together with a counsel fee of $1,000.00 which is hereby allowed to said complainant.

2. And your petitioners appeal from the whole of the decree of the Chancellor upon the ground that the same is erroneous in that:

(a) The Court of Chancery had no jurisdiction to consider the Vice and Immorality Act (Comp. Stat. Vol. 4, page 5712) in the suit under consideration.

(b) The Court of Chancery erred in deciding that paragraph 7 Chapter 308 P. L. 1911 limited the playing of games to which an admission is charged to any two days in the week except Sunday.

(c) The Court of Chancery erred in ignoring the provisions of paragraph 11, Article 36, Chapter 152 P. L. 1917 and the amendments thereto and supplements thereof.

(d) The Court of Chancery erred in denying the motion of petitioners to dismiss the bill of complaint.

(e) The Court of Chancery had no jurisdiction to entertain a suit by surviving trustee in dissolution of the Meadow Land Society as that corporation had wound up its ordinary affairs.

(f) The Court of Chancery erred in holding that the acts complained of constituted a private nuisance.

(g) The Court of Chancery erred in permitting testimony to alter or vary the terms of the deed executed by the Meadow Land Society to the Village of South Orange, which testimony appears in the following questions and answers directed to William T. Baird:

Q. What were your negotiations with the Village?

A. I did not understand the question.

Q. I say, what were your negotiations with the Village?

A. I negotiated almost entirely with Mr. Philip Miller.

Q. Who was he?

A. He was Chairman of the Finance Committee at that time, the Village Finance Committee.

Q. And what was the result of your negotiations?

A. The result was that we agreed to turn over the property to the Village for the nominal—for the assessed value, which was a nominal price.

Q. How much was that?

A. About $72,000.

Q. Is this the original signed copy of the agreement to which you have referred with the Village of South Orange?

A. Yes, sir.

Q. I call your attention, Mr. Baird, to page 7 of the agreement, which reads as follows: "It is further understood and agreed that said conveyance shall be made upon condition and subject to the restriction that the premises above described shall be used solely as a public park or playground or for public park or public playground purposes." Is that correct?

A. Yes, sir.

Q. What was said about that in your negotiations with the Village of South Orange?

A. I talked with Mr. Miller about that clause, calling his attention to the clause in the lease to the Field Club, which had the use of the ground for many years. In that lease we always put the clause that no games should be played of a boisterous nature or that would be offensive to the residents surrounding the ground, but it was thought that it was unnecessary to put any more restrictive clause than that already cited because the trustees of the village were supposed to be men who were interested in the Village and would not do anything to harm it.

Q. Mr. Baird, you stated that the consideration of $72,850., was nominal—what do you mean by that?

A. I mean that the land, at that time, the real estate man told me, at that time, that the lands were worth as much as $400,000., to $500,000.

Q. But why did you a stockholder and president of the Meadow Land Society sell for less than the value of the ground?

A. Because it was my desire to give to the South Orange Village lands that would forever be a beautiful public park or playground.

Q. Well, you say public park or playground—was it your intention that professional baseball exhibitions should be played there?

A. We had no thought of such a thing, did not think for a moment that such games would be allowed.

Q. Mr. Baird, did you negotiate the lease with the Field Club which is marked Ex D-7 in this case? I show you the lease.

A. Yes.

Q. The lease is dated November 23, 1923. Were negotiations pending at that time with the Village of South Orange for the purchase of this land?

A. Yes.

Q. Can you tell me about the negotiating of this lease dated November 23, 1923?

A. The president and several members of the Board of Directors of the Field Club spoke to me about their position as they knew the negotiations were going on and they told me that they would put considerable money on to the lands and improvements such as tennis courts and new greens, etc., and after talking the matter over with them and including Mr. George Becker, who was then a director of the Field Club, it was agreed by all of us that the lands could not be used very long for golf purposes as it was becoming very dangerous, driven balls having struck a number of persons.

Q. Now let me ask you then:—the George Becker to whom you have referred has been called as a witness in this case, has he not?

A. He has.

Q. And was at that time also a member of the Board of Trustees of the Village of South Orange?

A. Yes.

Q. As well as a member of the Field Club Board?

A. Yes.

Q. Was this lease made in view of the fact that a sale to the Village was contemplated?

A. Yes.

Q. In the agreement between the Meadow Land Society and the Village of South Orange marked Ex. C. 2 on page 5 thereof, there are certain provisions for the payment by the Village of South Orange to the Field Club of certain sums in case the lease is terminated, do you know of your own knowledge whether the lease was terminated?

A. Yes, it was terminated.

Q. Well, when?

A. I can't remember the exact date. I think it was in 1926 or 1927.

Q. And pursuant to the provisions contained in the agreement, was money paid by the Village to the Field Club or vice versa?

A. It was, vice versa.

Q. That is, the Village paid the Field Club some money?

A. Yes.

Q. Had there been a lease with the Field Club prior to the lease of November 24, 1923.

A. Yes.

Q. How much more time had the former lease to run, do you recall?

A. I cannot remember that.

(h) The Court erred in permitting testimony as to the value of the land in question represented by the following questions and answers of complainant's witness, William C. Fiedler, as the same was immaterial to the issue:

Q. Now, have you made an appraisal of the value of the property conveyed by the Meadow Land Society to the Village of South Orange in 1924?

A. As of 1924, yes.

Q. Yes, as of March, 1924, what is your estimate?

A. $478,787.

(i) The Court erred in permitting testimony as to the value of the land in question represented by the following questions and answers of complainant's witness, Frank H. Taylor, as the same was immaterial to the issue:

Q. Mr. Taylor, have you made an appraisal of the real estate which was conveyed by the Meadow Land Society of South Orange to the Village of South Orange in March, 1924?

A. As of March, 1924, yes, sir.

Q. I show you Ex. C. 1, being a sketch of the property in question and ask you if that is the property you estimated on?

A. Yes, sir, it is.

Q. And what, Mr. Taylor, in your opinion was the fair market value of that property in March, 1924?

A. $401,484.

Q. In your opinion, Mr. Taylor, what effect on the value of the property would the playing of professional baseball to which an admission is charged and to which great crowds are gathered have on the property?

A. My opinion is that the playing of professional games on Sunday in a neighborhood of that character depreciates the value of property at least a third.

(j) The Court erred in permitting the testimony of the complainant's witness, Philip N. Miller, concerning the negotiations leading up to the sale of the property to the Village of South Orange. The questions and answers are as follows:

Q. Now, will you tell us briefly of the negotiations which you on behalf of the Village of South Orange had with the Meadowland Society for the purchase of these lands?

A. I started negotiations with Mr. Baird, who was then president of the Meadow Land Society, several months before the contract for the acquisition of the land was finally negotiated.

Q. And what was said about price or about conditions or what not?

A. Well, the matter of price was not discussed in all of the early negotiations at all. The question Mr. Baird raised was—first, whether the Village should own as much property as 37 to 38 acres then owned by the Meadow Land Society, and, secondly, what they would do with the property after,

if they did acquire it. I tried my best to persuade him that the acquisition of the land was the proper thing for the village so we could preserve the open space in the heart of the village and park and playground facilities for the generations to come and acting on that theory Mr. Baird finally said that he would agree to the sale, and when the question of price was discussed that took but a minute because Mr. Baird said that he would agree to sell the property, as president of the Meadow Land Society, as far as he could legally permit the society—that he would agree to sell the property for the assessed valuation.

Q. What was that, $72,000?

A. Yes.

Q. Do you recall anything about the restrictions and covenants which went into the deed to the village?

A. I do.

Q. What was said about that?

A. Mr. Baird was, naturally, I thought, very insistent that the acquisition by the village should be so restricted that the property would be kept as an open park and playground for the village as a whole and it was the intention to have such a restriction put in the deed.

Q. Speaking for the Village of South Orange and the Committee of which you were chairman at that time, was it clearly understood that the lands were taken upon condition and subject to the restriction that the premises should be used solely for public park and/or public playground purposes?

A. As all the property was so taken, except the outlying parcel.

Q. I show you the minutes of the regular meeting of the Board of Directors of the Village of South Orange held on Monday evening, January 21, 1924, containing a letter which you wrote—a report which you made to Mr. Hunt, the then president of the village. Will you kindly look at that and tell us whether that is your report of the acquisition of these lands?

A. Yes, it is.

Note—Minutes offered in evidence and marked Ex. C. 4 over objection.

Q. Was it your purpose, as Chairman of this Committee which acquired these lands for the village under these restrictions, to stage professional baseball games to which admission was charged?

A. The purpose was certainly not to ever hold professional ball games on any portion of the land acquired from the Meadowland Society.

(k) The Court of Chancery had no jurisdiction to permit the testimony of complainant's witness, Harold D. Henderson, for the purpose of showing what was done with the profits received from the baseball games. Said testimony is represented by the following questions and answers:

Q. Have you a statement there of receipts taken in at these ball games?

A. I have a statement of the entire account for the year showing a total receipt and statement of the receipts.

Q. What is the total for the entire season?

A. Total receipts?

Q. Yes.

A. $14,320.16.

Q. And what are the total disbursements?

A. Total disbursements, including the cash balance, which would naturally be the same—cash balance of $313.81, so the disbursements would be the first amount less than.

Q. I don't quite understand that. You had $313 left on hand out of $14,000 taken in?

A. That is the amount left in the treasury which has been turned over to the Village of South Orange.

Q. And the $14,000, practically the whole of it has been spent upon your check or the check of Mr. Coeyman?

A. Yes.

Q. What did you spend it for?

A. Expenses of the games.

Q. Well, tell us all about them.

A. Well, what do you want—an itemized report of each game?

Q. What is the heaviest item of expense?

A. The heaviest item of expense of each game is the guarantee of the opposing team or the salaries of the home players, depending upon what the guarantee might be.

(l) The Court of Chancery had no jurisdiction to compel the Village of South Orange to account for moneys received and disbursed by it.

(m) The Court of Chancery erred in permitting the following questions to be asked of complainant's witness, Harry J. Schnell:

Q. Mr. Schnell, will you please refer to the statement showing the receipts from

these baseball games during the year 1929 and the disbursements.

A. Yes.

Q. Well, how much did you take in?

A. This statement appears dated November 7, 1929, under the heading, "Receipts." There are two classifications, first—"Contributions, $1,045," and then the detailed receipts from each game totaling $13,372.34; a total receipt of $14,417.34.

Q. What became of that money? How was it spent?

A. The disbursements as indicated on this statement amounted to $13,004.56.

Q. What was the money spent for?

A. For games and expenses, uniforms, baseballs, printing, etc.

Q. And salaries of the players?

A. Well, under the heading of "Expenses of Games" that includes the salaries of the players.

Q. How large an item was that?

A. The games before me here—the first game, May 11, expense of the game was $448.80.

Q. What were the receipts of that game —do you know?

A. Yes, $342. I don't know the receipts of the game, but that is the corresponding date and I am assuming that that is the same date.

Q. Well, what was the salary expense for one game—only four hundred and some dollars?

A. Salary and other incidental expenses in connection with the holding of the game.

I have not the break down for that expense item.

Q. What other expenses, beside salary, did you have?

A. Well, they are—any caretaker, the paying of special guards about the place.

(n) The Court of Chancery erred in admitting in evidence that part of Ex. C. 1 which contains a newspaper article on the ground that the same was irrelevant, immaterial and not competent evidence in the case.

(o) The Court of Chancery erred in admitting in evidence Ex. C. 4 on the ground that the same was irrelevant, immaterial and not competent evidence in the case.

(p) The Court of Chancery erred in admitting in evidence Ex. C. 13 on the ground that the same was irrelevant, immaterial and not competent evidence in the case.

(q) The Court of Chancery erred in admitting in evidence Exhibit C. 14 on the ground that the same was irrelevant, immaterial and not competent evidence in the case.

Petitioners, therefore, pray that the said decree of the said Chancellor, advised by Vice-Chancellor Church, may be wholly set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper.

RIKER & RIKER,
Solicitors for Defendants-Appellants.

THOS. E. FITZSIMMONS,
Of Counsel.

18.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

WILLIAM T. BAIRD, individually and as Trustee, etc., *Complainant-Respondent,*

and

BOARD OF RECREATION COMMISSIONERS OF THE VILLAGE OF SOUTH ORANGE, *et als., Defendants-Appellants.*

On Bill, &c.

On Appeal from the Court of Chancery.

BRIEF FOR COMPLAINANT-RESPONDENT.

Statement of Facts.

The facts, as found by the learned Vice-Chancellor who heard the case, are set forth at length in the opinion of the Court of Chancery (S. of C., p. 386, l. 31 to p. 394, l. 11; reported in 108 N. J. Eq. 91). However, for completeness, and in order to supply the references to the supporting testimony, the facts are here repeated as briefly as possible.

This suit is brought to enjoin the playing of professional baseball games to which an admission charge is made, on a certain part of a large tract of land transferred in March 1924 by The Meadow Land Society of South Orange, a corporation, to The Village of South Orange. The games have been regularly played on Sundays in the afternoons (see testimony of A. J. Leitch S. of C., p. 137 to p. 144; and Ex. C. 13, pp. 340-356—statements showing dates on which the twenty-five baseball games of the 1930 season

were played) by an organization now or formerly known as "The South Orange Baseball Club." All the members of this baseball organization are professional players residing outside of the Village of South Orange and all of the twenty-five games played during the 1930 baseball season were played on Sunday afternoons on the premises in question except one game which was played at the Newark Bears Stadium (see testimony of A. B. Leitch above referred to and testimony of H. D. Henderson, S. of C., p. 148, l. 9, *et seq.*).

The deed to The Village of South Orange (Ex. C. 3, S. of C., p. 326) describes ten tracts in all, the first four tracts being large contiguous tracts over which The South Orange Field Club formerly maintained a nine-hole golf course. The land described in the deed comprised about thirty-eight acres of land in all, situated near the center of the Village of South Orange, the southerly part less than one-quarter of a mile from the center, bounded (roughly) on the west by Ridgewood Road, on the north by Meadowbrook Place, on the east by the D., L. & W. R. R. Co., on the south by the old Cameron Field and the Tillou tract.

The bill of complaint is filed by William T. Baird, individually, and as a Trustee in Dissolution of The Meadow Land Society of South Orange, a corporation, duly authorized to file the bill in its behalf by resolution of its directors acting as Trustees in Dissolution at a meeting of the Trustees duly called and held July 21, 1930 (Ex. C. 5, S. of C., p. 329; and Bill of Complaint, p. 5, ll. 4-8). The defendants named in the bill of complaint are The Village of South Orange, grantee in the deed above referred to,

The Board of Recreation Commissioners of The Village of South Orange, Carleton Greene, Chairman, and South Orange Baseball Club, Albert Leitch, Manager.

There are three causes of action in the bill of complaint: by the first, complainant, acting for and on behalf of The Meadow Land Society, the grantor in the deed to the Village, asks that the defendants be enjoined and restrained from violating the express covenants, conditions and restrictions covering the first four tracts contained in the deed, which include the premises in question; by the second, complainant, as a long-time resident of The Village of South Orange and a taxpayer therein, and as a member of the public at large entitled to the benefit of the covenants, and whose property is injuriously affected by a violation of them, asks that these covenants and conditions which enure to his benefit and that of the public generally, and which are being violated, be enforced, and the defendants restrained; and by the third, complainant, as a private citizen and resident of the Village of South Orange, states that the peace, quiet and enjoyment of his home on Sunday afternoons is disturbed and destroyed by the holding of these baseball games, and seeks to enjoin the defendants from committing a private nuisance as to him.

The covenants to which reference has been made are of vital importance in this controversy. The agreement of sale between The Meadow Land Society and The Village of South Orange (Ex. C. 2, S. of C., p. 324) expresses the covenants as follows (see p. 7 of the agreement): "*It is further understood and agreed that said conveyance shall be made upon condition and*

subject to the restriction that the premises above described shall be used solely as a public park or playground or for public park or public playground purposes." The deed (Ex. C. 3, S. of C., p. 326) sets them forth as follows (see p. 2 of the deed): *"The four tracts above described are conveyed upon condition and subject to the restriction that the premises above described shall be used solely for public park and/or public playground purposes."*

Another important element in the case, though one by no means dispositive of the issues, is the amount of consideration in money (or rather the total lack of an adequate money consideration) which was paid by the Village for the land, it appearing that only a nominal consideration of $71,300.00 (S. of C., Ex. C. 3; and testimony of W. T. Baird, p. 78, l. 35) was paid, although the land was reasonably worth upwards of $300,000.00 or $400,000.00. The covenants and restrictions above quoted, limiting the use of the land, were the inducement for the nominal consideration in money, and constituted the real consideration in the minds of complainant and the other officers, directors and stockholders of The Meadow Land Society. As to the value of the lands conveyed, it clearly appears from all the evidence produced on the subject, both by the complainant and by the defendants, that the land was worth at the time of the sale, March 1924, in excess of $300,000.00 or $400,000.00. Complainant's witness, William C. Fiedler, for many years engaged in the real estate business, and residing in South Orange near the lands in question, testified that they were worth in March 1924, $478,787.00 (S. of C., p. 102, l. 4), and in answer to questions by the Court (S. of C., p. 105, ll. 30-35), stated that

the lands are now worth probably twenty-five to fifty per cent. more, or $600,000.00 to $700,000.00. Frank H. Taylor, another witness called by complainant, a real estate expert having been for many years engaged in that business in the Oranges, testified that the lands were of the fair market value in March 1924 of $401,-484.00 (S. of C., p. 107, l. 17), and fixed a value on the park or playground plots alone of $382,944.00 (p. 107, l. 35). Mr. Taylor also testified (S. of C., p. 111, l. 1) that the playing of professional baseball games on Sunday in such a high-class residential neighborhood would depreciate the values of property at least one-third. Defendants' own witness, George H. Becker, an old-time resident and a real estate operator of long experience in South Orange, for many years a member of the Village Board of Trustees and at one time Village President, testified that the four tracts alone constituting the public park or public playground lots were worth at the lowest estimate $250,000.00 (p. 173, l. 28), and perhaps $100,000.00 more (p. 174, l. 13), and that the value of the outlying tracts was approximately $55,000.00 (p. 181, l. 36), so that his lowest estimate for all the land is $305,000.00.

Complainant, William T. Baird, owned and controlled about eighty per cent. of the stock of The Meadow Land Society (p. 186, ll. 3-18). For years he had sought to acquire stock, particularly from the many estates which owned stock (p. 199, ll. 10-16), in order that The Meadow Land Society might function and in order that eventually, through his control, the land might be devoted to some public use. His object was not to make a profit on his share holdings. On the contrary, he offered his stock

several times to Mr. Sinclair, of The Essex County Park Commission (p. 248, ll. 2-18) for the establishment of a county park.

The negotiations between The Meadow Land Society and The Village of South Orange were conducted on the one hand by Mr. William T. Baird, complainant, and on the other by Mr. Philip N. Miller, Chairman of the special committee appointed by the Village Board of Trustees (p. 78, ll. 22-29). Mr. Miller (p. 112, ll. 28-33; p. 113, l. 12; p. 114, l. 10) explains the purposes and objects for which the land was acquired by the Village, and quotes from his report to the Village Board (p. 115, l. 22; p. 116, l. 2 and Ex. C. 4, pp. 327-328). Mr. Miller says, "We have gone a long way toward providing the people with adequate park and playground facilities. By retaining this open space which has meant so much to the Village, we take a great step towards maintaining the residential character of our community, etc." Mr. Miller (p. 116, l. 2; p. 118, l. 18) describes his visit to the ball ground on a Sunday afternoon early in October 1930. He heard the noise and saw the canvas covering along the fence; he heard yelling, shouting and stamping, and saw many cars parked around. Mr. Miller, testifying as to the use to which the land so purchased by the Village would be put, states (p. 118, ll. 12-16): "The purpose was certainly *not* to ever hold professional ball games on any portion of the land acquired from The Meadow Land Society." His testimony as the official representative at that time of the municipality furnishes complete corroboration of complainant's statements regarding the purposes and objects prompting the transaction and the uses to which the land might be put, within the meaning

of the conditions and restrictions contained in the deed (for Mr. Miller's report in full see Ex. C. 4, offered at p. 115, l. 21, taken from the Minutes of the Village Board of Trustees—see Stipulation, p. 322, l. 5; see also Mr. Baird's testimony, p. 80, ll. 16-27 and p. 84, ll. 8-18, p. 86, ll. 29-40, p. 189, l. 38 to p. 190, l. 12).

After the conveyance in March 1924 to the Village, by resolution of the Board of Trustees, the control and management of a certain part of the premises, namely, that part with which we are concerned in this suit, containing between one and one-half and two acres of land (p. 87, ll. 32-38), was transferred to the Board of Recreation Commissioners of The Village of South Orange (see Ex. C. 12, offered at p. 206, at p. 6 of the Minutes) claiming to act pursuant to the authority conferred by Chapter 308, P. L. 1911, p. 686, as amended P. L. 1912, p. 473, P. L. 1914, p. 148, P. L. 1915, p. 409. This resolution was passed in March 1928. Apparently no professional ball games were played in 1928, but in 1929 the Board of Recreation Commissioners, by what authority we are not informed, gave the use of the ground to an organization known as "The South Orange Baseball Club," of which Mr. Harry J. Schnell was treasurer (p. 208, l. 17), although at that time he was neither a trustee of the Village nor a member of the Board of Recreation Commissioners. Later on (p. 207, l. 28), Mr. Schnell became Village President. This baseball club played professional ball games and charged admission, the receipts so taken in being used exclusively, it appears, for the benefit of the players, who were paid salaries, and the money was received and spent by Mr. Schnell as treasurer or by a Mr. Coeyman, his assistant, who likewise had no

connection with the Village government, without the knowledge, control or authority of any official of the Village or any member of the Board of Recreation Commissioners (see p. 210, ll. 15-24, the admission made by defendants' attorney). No explanation or excuse was offered or given by anyone of this unlawful use of public lands for private gain or for private purposes. During the year 1929 gate receipts totaled $13,372.34 (p. 210, l. 40; see also Ex. C. 13, p. 214, the statement or report of the 1929 receipts and disbursements). Clearly the defendants, some or all of them, are accountable to the public for the money so received from the use of public lands. In the year 1930, having been advised by counsel that the games had not been properly conducted in the year 1929 (see statement of counsel, p. 169, ll. 9-20 and p. 223, l. 33 to p. 224, l. 19), a different scheme or plan was adopted, whereby the same baseball organization, now without a name, was operated directly by the Board of Recreation Commissioners. Under the new arrangement, during the year 1930 twenty-five games (some of them "double headers") were played during the season, all on Sunday afternoons and all on the premises in question except one, which was played at Newark Bears Stadium (see testimony of H. D. Henderson, p. 152, ll. 28-34 and p. 156, ll. 33-37). $14,320.16 of gate receipts was taken in during the season (p. 151, l. 13), and all of this was spent except $313.81 (p. 151, l. 22), but as there was on hand at the beginning of the season $736.76 (p. 160, l. 18), there resulted a net loss of about $423.00. The games cost, on the average, mainly for salaries of players and guarantees to opposing teams, about $400.00 (p. 158, l. 17). The expenses of the game at the Newark Bears

Stadium were $2,912.00 (p. 154, l. 19), which included a guarantee of $1,719.35 to Ruth and Gehrig. By what authority this guarantee was given could not be developed from the testimony. The item was marked "Guarantee" on the books kept by the witness Henderson (p. 154, l. 29), but he denies that the books are those of the Recreation Commissioners (p. 155, l. 25), in apparent direct contradiction to the statement made on the record by counsel for the defendants that the games were held directly by the Commissioners. From these facts the conclusion is inescapable that the credit of The Village of South Orange was pledged (or that an attempt was made to pledge it by the Recreation Commissioners) to the extent of at least $2,912.00 to guarantee the expenses of a ball game played by professional ball players, none of whom were residents of the Village of South Orange, in the City of Newark, without the slightest pretense of legal authority for so doing. All of the money taken in as gate receipts was disbursed upon the check of the witness Henderson, Assistant Treasurer, or one Seymour C. Coeyman, Treasurer of the Commission, although neither one was a member of the Commission or connected in any way with the government of The Village of South Orange (p. 148, l. 30 to p. 149, l. 20; see also Ex. C. 13, offered at p. 214, consisting of twenty-five separate sheets showing receipts and disbursements of each game, and Ex. C. 14, offered at p. 218, the bank ledger sheets of the baseball account). The situation in 1930, then, seems to have been about as follows: the same professional ball team which used the grounds for its exclusive benefit in 1929 continued to use them in 1930, but under the fiction that the Board of Recreation Commis-

sioners, instead of The South Orange Baseball Club, was staging the games. The money was taken in and disbursed by so-called employees of the Board of Recreation Commissioners not themselves members of the Board; the money was used entirely to pay professional ball players and to pay and guarantee expenses of the opposing teams, for advertising, equipment and other incidental expenses of holding the games, and in one instance, to extend a guarantee to the famous ball players, Ruth and Gehrig, at a game played at the Newark Bears Stadium in Newark. It is unnecessary to comment further upon the situation thus created. Even if there had been imposed no restrictive covenants by the deed, the Board could not, under the authority of the act creating it, so conduct the games. Chapter 308, P. L. 1911, p. 666, Section 6, provides that all money received by the Board of Recreation Commissioners shall be paid to the City Treasurer and by him disbursed. The act further provides, Section 7, p. 670, that admission fees shall be charged only for the purpose of improving, maintaining and policing the playground under the jurisdiction of the Board. It appears that not a dollar of the money so taken in at these games has been so used. The only persons benefited by the gate receipts were the professional ball players and the employees of the Board paid for their services in connection with the games.

In August 1928 the Trustees and The Village of South Orange appropriated $11,000.00 for the improvement of the baseball field (p. 203, ll. 19-31). $10,627.03 was actually spent (p. 205, l. 17) in improving the land, making the diamond, furnishing back stop and stands, erecting a fence along Mead street and procuring a canvas cover-

ing for the fence, etc. (see p. 204, l. 38 to p. 205, l. 15).

The admission fee charged to these games is 50 cents (p. 84, l. 20). Large crowds attend the games, hundreds of automobiles, many from without the county, are parked in the streets, at times blocking the streets, and on the playground adjoining the ball field. Loud and disturbing shouting, stamping, yelling, etc., occurs (see testimony of William T. Baird, p. 85, l. 15 to p. 86, l. 2; p. 93, ll. 18-23; p. 100, ll. 20-30; and testimony of James Marshall, who resides about 350 feet away from the baseball field, p. 123, l. 14 and l. 26; p. 124, l. 37 to p. 126, l. 33; testimony of A. A. Kraeuter, p. 131, ll. 23-30; and of C. W. Baird, p. 134, ll. 9-27; p. 135, ll. 16-22; p. 136, ll. 1-8; p. 136, l. 39 to p. 137, l. 3; and see photographs, Exs. C. 6, 7, 8 and 9; see also testimony of defendants' witness, Raymond Connolly, p. 249, l. 36 to p. 251, l. 28). Mr. Connolly states that hot dog and peanut vendors were present at the games, and testifies as to the erection of the fence, the crowds attending the games, etc. It also appears from all this testimony that special features were staged in connection with the games, calculated to attract large and noisy crowds, such as the games with the baseball team known as "The House of David," which brought a clown who performed during the games, and those with the colored team, The Philadelphia Red Caps, and the occasion when Babe Ruth attended and played, etc., etc. The noise and confusion of these games disturbed complainant's peace, rest and quiet at home on Sunday afternoons, often making it necessary to move with his guests inside his house away from the noise (p. 85, l. 34;

p. 86, l. 2). Complainant protested promptly to the Village authorities about these disturbances (p. 186, ll. 25-35 and p. 199, l. 36; p. 200, l. 28; and Ex. C. 10, p. 332, complainant's letter to Mr. Harry J. Schnell, Village President; also Ex. C. 11, p. 334, letter of complainant's attorneys to Carleton Greene, Chairman of the Board of Recreation Commissioners).

* * * * * * * *

From the foregoing summary of the facts in this case it appears that complainant took upon himself the burden of acquiring capital stock of The Meadow Land Society of South Orange, particularly stock held by estates which was never represented at stockholders' meetings, so that the corporation could function and in order to obtain control and then transfer the land at a nominal consideration, for public uses, to the municipality. What the complainant sought to accomplish was to dedicate the lands to *public* uses and therefore the restrictive covenants above quoted were inserted in both the agreement of sale and the deed. The lands can be used "solely for *public park* and/or *public playground* purposes." To fence in a part of the ground, to stretch canvas coverings along the fence so that outsiders may not see into the grounds, to charge admission, to stage professional baseball games thereon, and that, too, with players who are non-residents of the Village, by advertising extensively and holding special features calculated to (and which actually do) attract large crowds from outside of the Village and County—these are actions which are entirely repugnant to the idea of a *public* park or *public* playground and are directly violative of the covenants in the deed and of the intent

and purpose of both the grantor and grantee named in the deed of dedication. As said by complainant (p. 84, l. 8), "We had no thought of such a thing, did not think for a moment that such games would be allowed," and as said by Mr. P. N. Miller, Trustee representing The Village of South Orange (p. 118, ll. 13-16), "The purpose was certainly *not* to ever hold professional ball games upon any part of the land acquired from The Meadow Land Society." While up to the time of the entry of the final decree in the Court of Chancery, the defendants were staging these professional baseball games on about two acres of land out of a total of about thirty-eight acres conveyed, if what they were doing is permissible under the covenants in the deed, then they may, if they so desire, stage as many separate professional baseball games on the lands as can be accommodated, and play them all at the same time or at different times, on Sundays or other days, thus totally destroying the effect of the restrictive covenants and effectively prohibiting the use of the grounds as a public park or public playground.

Upon these facts, supported by the law applicable to the case as hereinafter referred to, the Court of Chancery rendered its decision (see Opinion, S. of C., p. 385 to p. 415), sustaining all of complainant's contentions and granting the relief sought (see Final Decree, S. of C., p. 416 to p. 419). It should be noted that the bill of complaint does not contain a prayer for an accounting and that neither the decision of the Court of Chancery nor the final decree mentions an accounting, although appellants ((1) of the Grounds of Appeal, S. of C., p. 432, and Point VII of appellant's brief) argue that a

Court of Chancery has no jurisdiction to compel a municipality to account.

We shall endeavor, first, to answer seriatim the points made in appellants' brief. The petition of appeal sets forth grounds of appeal, (a) through (q) inclusive, seventeen in all. We are unable, after careful study of appellants' brief, to find any argument sustaining the following grounds of appeal, to wit, (d), (j), (k), (m), (n), (o), (p), (q). We conclude, therefore, that these grounds of appeal have been abandoned and shall meet only those points argued in appellants' brief.

POINT I.

Under Point I of his brief, appellants' counsel states that the Court of Chancery has no jurisdiction to consider violations of the Vice and Immorality Act.

In answer to this contention, we call attention, first, to the following statement in the opinion of the Court of Chancery:

> "I said at the hearing, and I now reiterate, that the decision of this case in my opinion, depends mainly, if not entirely, upon the interpretation of the restrictive clause in the deed of conveyance" (S. of C., p. 415, ll. 20 to 25).

The bill of complaint in this cause was filed primarily to enforce covenants, conditions and restrictions in a deed and to protect the property rights of complainant and others thereby established and reserved, but in the case of *Green* v. *Piper*, 80 N. J. Eq. 288, cited and relied upon by appellants, the Court says at p. 290:

> "Courts of equity, on proper occasion, interfere to protect property rights, and for

> this purpose sometimes interfere when the acts complained of are crimes; but they never exercise a jurisdiction based solely on the right of a suitor or citizen to prevent the commission of a crime or its continuance." Cases cited.

So also in the case of *McMillan* v. *Kuehnle,* 76 N. J. Eq. 256, it was held as follows:

> "Noises which are not nuisances on a week-day may be nuisances when made on a Sunday, if they have the effect of disturbing that quiet and rest which the citizen is entitled to have for his recuperation; and the fact that such noises are forbidden by the laws of the land (the Sunday laws) takes away any defence for the making of them on Sunday even though they be but slight."

The Court in this case, in considering the effect of the Vice and Immorality Act, properly did so as an incident to the main issues involved in the case in accordance with the foregoing authorities. We do not contend that the Court of Chancery would have had jurisdiction in this case had the question of a violation of the Vice and Immorality Act been the only question involved. This was the situation in the case of *Ocean City Association* v. *Schurch,* 57 N. J. Eq. 268, relied upon by appellants, which is distinguishable from the case at bar. The Ocean City case holds that equity will not grant relief where the act complained of constitutes a crime only. The Court in the opinion in the case at bar says (S. of C., p. 394, l. 32 to p. 395, l. 10):

> "I cannot presume that the complainant grantor intended to permit defendant grantee to commit the unlawful acts above described. The presumption, on the contrary, is that he meant that the land should be used only for lawful purposes. He has testified that he did not contemplate such acts and the restriction was to guard against

them. He is corroborated by Mr. Miller who conducted the negotiations for the acquirement of the land on the part of the grantee, the Village of South Orange.

I conclude that the playing of games on this property on Sunday is unlawful and a violation of the covenant in the deed of conveyance, and should be permanently enjoined."

The following authorities are also submitted on this point:

Bouvier's Law Dictionary, Vol. 3, p. 2680:

"Presumptions are favored which tend to give validity to acts—1 Mann. & R. 668; 3 Camp. 432; 7 B. & C. 573; Tilson *v.* Thompson, 10 Pick. 359; Ripple *v.* Ripple, 1 Rawle (Pa.) 386; People *v.* McElroy, 72 Mich. 446; 40 N. W. 750; 2 L. R. A. 609; State *v.* Peterson, 38 Minn. 143, 36 N. W. 443.

State v. *Morristown,* 33 N. J. L. 57, at p. 67:

"Omnia praesumuntur rite acta."

Mayor, etc. ads. *State,* 32 N. J. L. 453, at p. 458:

"Every reasonable intendment is to be made in favor of the conduct of those who are clothed with a public trust, and are acting in the line of their duty. * * * The general rule is that where a person is required to do a certain act, the omission of which would make him guilty of a culpable neglect of duty, it ought to be intended that he has duly performed it, unless the contrary be shown."

Jones on Evidence, 2nd Ed. p. 15, §13:

"In the ordinary transactions of life fairness and honesty are presumed and conveyances, sales, and contracts generally are presumed to have been made in good faith until the contrary appears."

Note 25. "It is also presumed that every person has conformed to the laws until contrary appears."

p. 16, Note 27. "No presumption that acts have been done for which the law imposes a penalty. Sidney *v.* Sidney, 3 Will (P) 270; Scholes *v.* Hilton, 10 M & W 15; or that the law has been violated. Savier *v.* Chipman, 1 Mich. 116; Timson *v.* Moulton, 3 Cush. 269; Hewlett *v.* Hewlett, 4 Edw. Ch. (N. Y.) 7; or will be violated, Johnson *v.* Farwell, 7 Me. 370.

Wigmore on Evidence, 2nd Ed. Vol. 5, §2534, pp. 543, 544.

On this phase of the case, the Court below (Opinion, p. 395, ll. 3 to 6) says:

> "I conclude that the playing of games on this property on Sunday is unlawful *and a violation of the covenant in the deed of conveyance* and should be permanently enjoined."

The Court did not base his opinion alone on the violation of the Vice and Immorality Act. And the learned Vice-Chancellor then goes on to say (S. of C., p. 395, ll. 10 to 18):

> "The next question to be considered is whether the restriction I have quoted from the deed of conveyance permits the playing of games to which admission is charged *on any day* or any part of the land conveyed, which is fenced off from public view and to which the public may not have access without payment of a fee."

Under this heading also appellants contend that the court below disregarded the provisions of Chapter 308, P. L. 1911, and of the "Home Rule Act," Chapter 152, P. L. 1917. The answer to this is that the legislature cannot abridge, vary or destroy the restriction as to use contained in the deed. The authorities for this statement

are abundantly set forth in the opinion of the court below (S. of C., p. 399, l. 17 to p. 405, l. 15). The authorities are also collected and cited below at page 30 of this brief.

POINT II.

Under Point II of their brief, appellants make a general and broad assertion, namely, that it was not the intent of the legislature to prevent the playing of baseball games on Sunday in the parks or playgrounds of this State. We repeat that, with such a statement, right or wrong, we are not concerned. As the court below said in its opinion (S. of C., p. 399, ll. 17 to 29):

> "The contention of the defendants that the Legislature by the Act of 1911, supra, could and did authorize the Village to change the use for which this land was by deed dedicated, is not sound. It confuses the rights which arise where an absolute fee is taken with those which exist when the property is dedicated to public uses. I express no opinion as to whether the Legislature may change the use of land taken in fee or condemnation. It cannot, however, change the use to which land is restricted in a deed of conveyance to a municipality. Nor can the municipality do so."

The authorities above referred to under Point I afford a complete answer to appellants' argument under Point II.

The court below in construing the provisions of Chapter 308, P. L. 1911, p. 666, and the provisions of the Vice and Immorality Act, Comp. Stat. Vol. 4, p. 5712, §1, says (S. of C., p. 392, ll. 3 to 15):

> "It is one of the fundamental rules in the construction of statutes that when two are

considered they shall be so construed that both, if possible, may be sustained. I do not believe the Legislature intended in this indirect way to repeal the Vice and Immorality Act. The proper meaning to be given the act of 1911 is that the days specified therein are any week days and do not include Sundays."

POINT III.

Appellants contend that there was not sufficient evidence of a private nuisance to complainant, Baird, to warrant relief in equity. The court below, however, found otherwise (Opinion, p. 394, ll. 4 to 8):

> "I have no difficulty in believing that the peace, rest and quiet of complainant and his supporting witnesses and that of the public on Sunday afternoons, was thus disturbed."

The facts on which this statement was based are pointed out in the statement of facts above. The law on the subject is set forth at length in the opinion of the court below (p. 412, l. 23 to p. 414, l. 5), including the case of *Cronin* v. *Bloemecke,* 58 N. J. Eq. 313, cited in appellants' brief, and the authorities are collected below at page 33 of this brief. There was ample evidence in the case to warrant the Court in abating the private nuisance to complainant, Baird.

We cannot pass by Point III of appellants' brief without commenting upon the remarks contained in the last paragraph, beginning at the bottom of page 16 and ending in the middle of page 17. We do not recall, nor does the record anywhere disclose, the offer to stipulate therein referred to, nor do we understand the reference made to the manner in which the case was tried.

POINT IV.

In appellants' brief, Point IV is entitled as follows: "The covenant referred to in the bill of complaint has not been violated." The grounds of appeal as set forth in the petition of appeal (S. of C., p. 423, l. 24 to p. 434, l. 28) do not set forth a heading or a subject matter entitled as above. The appellate court will not consider, and appellants cannot argue on appeal, any matter not set forth in the grounds of appeal.

> *Engelhart* v. *Schroeder,* 92 N. J. Eq., p. 663;
>
> *Cumberland Lumber Co.* v. *Clinton Hill Lumber Mfg. Co.,* 57 N. J. Eq., p. 627;
>
> *Kocher's Chancery Practice,* p. 787:
>
> "On an appeal to the Court of Errors and Appeals, matters which do not appear to have been adjudicated in the court below and which are not complained of in the petition of appeal will not be considered," and cases cited under footnote 41.

We submit that all of Point IV of appellants' brief should, therefore, be disregarded (pp. 17 to 35 of the brief). However, reserving to respondent all of his rights in the premises, we will comment briefly on Point IV.

The first few pages under this point appear to be a review of the methods adopted by defendants in the conduct of the baseball games, its alleged justification under existing statutes, and an attack upon respondent because he did not seek a remedy by certiorari in the Supreme Court instead of by injunction in the Court of Chancery. Appellants continually lose sight of the fact that the bill in the case at bar was filed not to review an ordinance but to protect and enforce covenants and restrictions in a deed.

We quote again from the opinion in the court below (S. of C., p. 411, ll. 28 to 32):

> "The complainant, having, as I have said, the right to proceed in this court, it follows as a matter of course that this court has jurisdiction to enjoin the violation of the restriction." Citing authorities.

In the case of *E. M. Harrison Market* v. *Town of Montclair,* 105 N. J. Eq. 222, quoted on page 20 of appellants' brief, Vice-Chancellor Backes in refusing to review an ordinance, holding that the proper remedy is by certiorari at law, points out that equity will protect rights asserted under a dedication, citing *Morris Canal Co.* v. *Jersey City,* 12 N. J. Eq. 252. The case of *Strock* v. *East Orange,* 80 N. J. L. 619, quoted at length at page 21 of appellants' brief, is referred to by the court below (Opinion, p. 396, ll. 16 to 38). As Justice Parker points out in his opinion in the Strock case, the question of dedication did not arise in that case. The consideration paid for the land by the Village of South Orange is commented upon at page 23 of appellants' brief and objection made to the admission of testimony to show the true value of the land. Complainant offered this testimony to show that the restrictions in the deed constituted an integral part of the consideration itself. The court below comments on the question of consideration (Opinion, S. of C., p. 388, ll. 19 to 29) but adds, "Although I believe that the restrictions should in any event be enforced according to their true intent and purpose." The argument and statements at pages 24 to 27 of appellants' brief referring to the manner in which complainant, Mr. William T. Baird, acquired the stock of the Meadow Land Society and the price he paid for it, are entirely immaterial to the issues involved,

and in our opinion, uncalled for, particularly the characterization of Mr. Baird's testimony as "full of contradiction, evasion and misstatements." Complainant's counsel repeatedly objected to such testimony, but the trial court said (S. of C., p. 190, ll. 12 to 14), "I will admit it, but I will say, as I said at the last hearing, I think it is immaterial." As to the real market value of the property transferred (pp. 28 and 29 of appellants' brief), we respectfully call attention to the statement of the facts hereinabove set forth. It is clear from the testimony that the land was worth at least $300,000.00 more than was paid for it. Counsel for appellants states (Brief, p. 29, third paragraph) that the case of *Godfrey* v. *Atlantic City,* 95 N. J. Eq. 183; 122 Atl. 613, is dispositive of the question involved in this case regarding the violation of the covenant, but the following are the facts in the Godfrey case. The covenant sought to be enforced provided that upon breach the land should revert absolutely to the grantors. The application was for a *preliminary* injunction. The structure to be erected was only a temporary grandstand to seat spectators at a parade. The Court (Ingersoll, *V.-C.*) said at page 186:

> "The bill of complaint is not by a grantor of any of the lands on which the temporary stands are to be erected, nor is it filed on behalf of the public. Godfrey's interest is therefore remote and infinitesimal, is more or less technical, and therefore not sufficient to call for a *temporary* injunction."

It seems to us unnecessary to comment further upon this case upon which counsel for appellants relies. It is altogether different from the case at bar. So in the case of *Green* v. *Piper,* 88 N. J. Eq. 288, cited at length at page 31 (bottom)

and pages 32 and 33 of appellants' brief, the Court says at page 290:

> "This bill is not for the protection of any property rights of any of the complainants, but is essentially a bill by a citizen and taxpayer of a municipal corporation—first, to compel by injunction the municipal officers to perform a duty of enforcing public laws and, second, to enjoin the lessees of the municipality from violating the criminal laws of the state in their occupation of the lands leased by the city. In neither aspect of the case has a court of equity power to grant the relief asked."

The case of *Methodist Church* v. *Hoboken,* 33 N. J. L. 13, cited at length at page 33 (bottom) and pages 34 and 35 of appellants' brief, is relied upon by complainant and is cited in the opinion of the court below (S. of C., p. 398, l. 36 to p. 399, l. 4); so also the case of *Hill* v. *Belmar,* 3 N. J. Misc. Rep. 254; 127 Atl. 789, quoted at length in the opinion of the court below (S. of C., p. 403, l. 6 to p. 404, l. 14).

POINT V.

Complainant, William T. Baird, brings this suit both individually and as a Trustee in Dissolution of The Meadow Land Society of South Orange, the grantor in the deed of conveyance to the Village of South Orange.

Paragraph 4 of the bill of complaint (S. of C., p. 4, l. 37; p. 5, l. 11) alleges that the trustees of The Meadow Land Society duly met on the 21st day of July, 1930, and passed a resolution authorizing the suit and directing complainant to institute it in behalf of said trustees (see also Resolution, Ex. C. 5, pp. 329 and 330). Section 53 of the General Corporation Act (2 Comp. Stat.

1910, p. 1634) provides, among other things, that all corporations after dissolution shall be continued bodies corporate for the purpose of prosecuting and defending suits by or against them and of enabling them to settle and close their affairs, and Section 54 gives the directors, as trustees, full power to settle corporate affairs, etc., and to meet and act under the by-laws of the corporation.

The case of *Joachim* v. *Belfus,* 107 N. J. Eq. 240, is in point, and is quoted in the opinion of the court below (S. of C., p. 414, ll. 12-29). The cases cited in appellants' brief under this point sustain, rather than contradict, the right of the Trustees in Dissolution of The Meadow Land Society to bring this suit. Furthermore, as pointed out in the opinion of the court below (S. of C., p. 414, l. 30-p. 415, l. 19), any objection to the right of the complainant in his capacity as trustee to bring this suit should have been made before answer filed. A motion to dismiss the bill of complaint was made by appellants' counsel at the opening of the case (S. of C., p. 70, l. 22-p. 71, l. 20). The motion was properly refused (Chancery Act, P. L. 1915, p. 196, Section 59; Chancery Rule 75; *Tipton* v. *Randall,* 87 N. J. Eq. 387; 31 Cyc. 275; *Hand* v. *Hand,* 60 N. J. Eq. 518).

Appellants' counsel, under this point, apparently argues that because The Meadow Land Society has been dissolved, the covenants and restrictions in the deed have become unenforceable and meaningless. The obvious inequity of such an argument needs no citation of authority. It is not reasonable to suppose that the covenants and restrictions in the deed cannot be enforced merely because the corporation grantor,

The Meadow Land Society of South Orange, is now represented by Trustees in Dissolution.

POINT VI.

Complainant introduced evidence to show that the consideration actually paid by The Village of South Orange for the land which it purchased from The Meadow Land Society was nominal, and far less than the actual fair market value of the property at the time of the conveyance.

The purpose of offering such testimony is obvious, and is referred to in the opinion of the court below (S. of C., p. 388, ll. 19-29), the point being that the real inducement which led to the sale of the land for a nominal consideration was the restrictive covenants in the deed. As the court below says (Opinion, p. 389, ll. 18-23): "It seems clear, therefore, that there was consideration in addition to the money paid which led The Meadow Land Society to convey to the Village. That additional consideration was, I believe, the restrictive covenant above alluded to." We respectfully submit, therefore, that the testimony objected to by appellants, set forth under Point VI of appellants' brief (pp. 41 and 42 as far as the references on that page, three paragraphs from the bottom) was properly admitted. For the same reason, the testimony of William C. Fiedler and Frank H. Taylor (p. 44 of appellants' brief), experts produced by the complainant, was properly admitted. As to the testimony beginning at the third paragraph from the bottom of page 42 of appellants' brief and continuing to the top of page 44, this testimony was taken by consent of counsel before the official court stenographer in the absence of the Court (S. of C., p. 308,

ll. 28-34). Whatever objections were at that time made to the testimony so offered were not brought to the attention of the Court, and the Court did not rule upon them.

Under this point appellants cite the leading case of *Naumberg* v. *Young,* 44 N. J. L. 331, and two later cases to the same effect—both cases at law. A court of equity is not as strictly bound by the rules concerning the admission of evidence as a court of law. In *Stoutenburgh* v. *Tompkins,* 9 N. J. Eq., p. 332, it was held:

> "If follows that however closely the court may be disposed to adhere to the salutary rule of law, that parol evidence is not admissible to vary, contradict or control a written instrument, it must necessarily exercise much more liberality in admitting evidence in order to reach the equity of the case, than would be allowed by a court of law."

So, also, in the case of *O'Brien* v. *Paterson Brewing and Malting Co.,* 69 N. J. Eq., p. 117, at p. 129, the Court says:

> "It has been said that the rule sustaining the sanctity of written contracts against parol evidence is as strictly maintained in equity as at law, but I cannot admit the accuracy of that statement.
>
> I have made a careful examination of the authorities upon that subject and find they do not sustain it, except in the matter of the true construction of a contract. But when we come to the inquiring into the objects and purposes of a writing, equity is more liberal, and will not permit a written contract to be used for purposes for which it was not intended."

In the case of *Giberson* v. *First National Bank, Spring Lake,* 100 N. J. Eq., p. 502 at p. 505, the Court says:

> "It is equally true, however, that numerous cases have arisen in the courts of equity of this state in which parol evidence has been admitted respecting the rights of the parties under written instruments, including promissory notes, which would not have been admitted had the issue been framed at law, the courts in such cases uniformly distinguishing between parol evidence to vary a written instrument and parol evidence showing facts which control its operation." Authorities cited.

Again, at p. 508 the Court says:

> "The truth is that the parol evidence rule has been applied or disregarded in courts of equity as the ends of justice required. Like all other legal rules, it is, in equity, no bar to justice."

As was said in the case of *Journal Plaza Holding Co.* v. *J. H. L. Co.,* 107 N. J. Eq. 14, at p. 16:

> "It is well settled, that when the language of a written contract is ambiguous or otherwise doubtful, parol evidence is admissible, not to contradict or vary the terms of a written agreement, but to explain how it was to be carried out, as such evidence may be very convincing to show the real intent of the parties. Willis *v.* Fernald, 33 N. J. Law 206; Suffern and Galloway *v.* Butler, 21 N. J. Eq. 410."

Also the case of *Basic Iron Ore Co.* v. *Dahlke,* 103 N. J. L., p. 635, at p. 638:

> "The cardinal rule for the construction of a written contract is to ascertain and give effect to the mutual intention of the parties. 6 R. C. L. 835, §225; 13 Corp. Jur. 521, §482 (2). So, to ascertain the intention of the parties, if more than one construction of the language used is possible,

> the circumstances surrounding the transaction may be considered, as well as the written document. Fletcher *v.* Interstate Chemical Co., 94 N. J. L. 332; 6 R. C. L. 849, §239."

So, in the case at bar, the testimony of complainant and others was offered and received in order to explain the purpose and intention of the restrictive covenant in the deed which is the basis of this suit. We respectfully submit that the evidence was properly admitted by the Vice-Chancellor and that no harm has resulted to appellants by reason thereof.

POINT VII.

In answer to Point VII of appellants' brief, pp. 47 and 48, we submit that the bill of complaint does not contain a prayer for an accounting, and that the final decree of the Court of Chancery does not order or direct an accounting. Exhibit C. 13 referred to by appellants, being detailed statements of the receipts and disbursements taken in at the baseball games held during the years 1929 and 1930, was offered to show the dates on which these ball games were played, the character of the games, with whom played, and the fact that the money received was spent not to improve the playground, but to pay salaries of players, give guaranties to well-known baseball experts and for purposes otherwise improper and inconsistent with the intent of the parties as to the use of the land under the restrictive covenants in the deed.

* * * * * * * *

In view of the desultory character of the foregoing points and authorities, it seems advisable, for the sake of clearness, to restate the law

applicable to complainant's case. However, the law is so thoroughly expounded, reviewed and quoted in the opinion of the court below (S. of C., p. 385 through p. 415), that we shall here attempt only a brief summary of the cases under appropriate headings.

THE LEGAL DEFINITION AND MEANING OF PUBLIC PARK AND PUBLIC PLAYGROUND.

Price *vs.* Plainfield, 40 N. J. L. 608 at p. 613;

Strock *vs.* East Orange, 80 N. J. L. 619 at p. 622;

46 Corpus Juris 1373—and cases cited;

Bouvier's Law Dictionary, Vol 3, p. 2455;

Riverside *vs.* MacLean, 210 Ill. 308; 66 L. R. A. 288, 102 Am. St. Rep. 164, 71 N. E. 408;

Perrin *vs.* N. Y. Central R. R. Co., 36 N. Y. 120 at p. 124;

Shoemaker *vs.* U. S., 147 U. S. 297, 37 L. Ed. 184.

THE VILLAGE OF SOUTH ORANGE HAS AUTHORITY TO USE THE LAND GRANTED BY THE MEADOW LAND SOCIETY ONLY AS PROVIDED IN THE DEED OF DEDICATION.

18 C. J. 127;

Fessler *vs.* Town of Union, 67 N. J. Eq. 14, at p. 23;

Methodist Church *vs.* Hoboken, 33 N. J. L. 13, at p. 19;

Streuber *vs.* City of Alton, 149 N. E. 577; 319 Ill. 43;

Stoudinger *vs.* Newark, 28 N. J. Eq. 187;

Spring Lake *vs.* Polak, 76 N. J. Eq. 212;

Newark *vs.* Watson, 56 N. J. L. 667;

Newark *vs.* Stockton, 44 N. J. Eq. 186;

Bozarth *vs.* Egg Harbor, 89 N. J. Eq. 26;
Hill *vs.* Belmar, 3 N. J. Misc. 254;
United States *vs.* Illinois Central R. R. Co., 26 Fed. Case 461.

NEITHER THE LEGISLATURE NOR A MUNICIPALITY MAY ABRIDGE THE RIGHT OF A DEDICATOR TO HAVE THE LAND USED IN THE MANNER AND FOR THE PURPOSE FOR WHICH HE INTENDED.

Newark *vs.* Watson, 56 N. J. L. 667, at p. 674;
Newark *vs.* Stockton, 44 N. J. Eq. 179, at p. 186;
McQuillin Municipal Corporations, Second Edition, Vol. 4, Sec. 1733, p. 611.
Dillon on Municipal Corporations, Fifth Edition, Vol. 3, p. 1759, Sec. 1103 and 1104;
Jacksonville *vs.* Jacksonville Railroad Co., 67 Ill. 540;
Portland & W. V. R. Co. *vs.* Portland, 12 Pac. 265;
Riverside *vs.* MacLean, 210 Ill. 308, 66 L. R. A. 288, 102 Am. St. Rep. 164, 71 N. E. 408;
Warren *vs.* Lyons City, 22 Iowa 351;
Cummings *vs.* St. Louis, 90 Mo. 259, 2 S. W. 130;
LeClercq *vs.* Gallipolis, 7 Ohio 219, 28 Am. Dec. 641;
Bozarth *vs.* Egg Harbor, 89 N. J. Eq. 26, at p. 36;
Methodist Church *vs.* Hoboken, 19 N. J. Eq. 355;
Hill, et al. *vs.* Borough of Belmar, 127 Atl. Rep. 789, at p. 790 (3 N. J. Misc. 254);
United States *vs.* Illinois Central R. R. Co., 26 Fed. Cas. 461, at p. 463;
Methodist Episcopal Church of Camden *vs.* Penna. R. R. Co., 48 N. J. Eq. 452.

LAND ACQUIRED BY A MUNICIPALITY BY DEED OF GIFT OR OTHERWISE, SUBJECT TO CERTAIN USES, MUST BE DISTINGUISHED FROM LAND ACQUIRED UNDER THE EXERCISE OF THE POWER OF EMINENT DOMAIN AND FOR WHICH FULL COMPENSATION HAS BEEN PAID.

Strock *vs.* East Orange, 80 N. J. L. 619, affirmed 82 N. J. L. 543;

Foster *vs.* Buffalo, 64 How. Pr., p. 127;

Codman *vs.* Crocker (203 Mass. 146, 89 N. E. 177) 25 L. R. A. New Series, page 980, at p. 989.

WHERE PROPERTY DEDICATED IS PUT TO A USE OTHER THAN THAT AUTHORIZED BY THE TERMS OF THE DEDICATION, THEN THE DEDICATOR OR ANY RESIDENT FREEHOLDER OR TAXPAYER OF THE CITY MAY PROCEED IN EQUITY TO ENFORCE THE DESIGNATED USE; AND THE PURPOSE OR INTENT OF THE GRANTOR OR DONOR IS CONTROLLING.

18 C. J., p. 130;

Riverside *vs.* MacLean, 210 Ill. 308, 66 L. R. A. 288, 102 Am. St. Rep. 164, 71 N. E. 408;

Rowzee *vs.* Pierce, 75 Miss. 846, 40 L. R. A. 402, 65 Am. St. Rep. 625, 23 So. 307;

Board of Education *vs.* Kansas City, 62 Kan. 374, 63 Pac. 600;

McCullough *vs.* Board of Education, 51 Cal. 418; 25 L. R. A., New Series, p. 980 (Note);

Howe *vs.* Lowell, 171 Mass. 575, 51 N. E. 536;

Flaten *vs.* Moorhead, 51 Minn. 518, 19 L. R. A. 195, 53 N. W. 807;

Church *vs.* Portland, 18 Or. 73, 6 L. R. A. 259, 22 Pac. 528;

Princeville *vs.* Auten, 77 Ill. 325;

McQuillin Municipal Corporations, Second Edition, Vol. 4, Sec. 1728, p. 602.

A DEDICATION OR GRANT MAY BE MADE SUBJECT TO A CONDITION OR RESTRICTION, AND THE ACCEPTANCE OF THAT GRANT IS AN IMPLIED ACCEPTANCE OF THE CONDITION OR RESTRICTION UPON WHICH IT IS MADE.

Dodge and Bliss *vs.* The Mayor, etc., of Jersey City, 148 Atl. Rep. 783, 105 N. J. Eq. 545;

Camden *vs.* McAndrews & Forbes Co., 85 N. J. L. 260-266, 78 N. J. Eq. 244;

Earle *vs.* Mayor, etc., of New Brunswick, 38 N. J. L. 47 at p. 51;

Tallon *vs.* Hoboken, 60 N. J. L. 212, at p. 217;

McAllister *vs.* Atlantic City, 90 N. J. Eq. 357;

Avis *vs.* Vineland, 56 N. J. L. 474;

Perth Amboy Trust Company *vs.* Perth Amboy, 75 N. J. L. 291.

EQUITY WILL ENJOIN THE VIOLATION OF CONDITIONS OR RESTRICTIONS AFFECTING THE USE OF PROPERTY.

Dillon on Municipal Corporations, Fifth Edition, Vol. 3, Sec. 1106;

McQuillin Municipal Corporations, Second Edition, Vol. 4, Sec. 1731, at p. 609;

Barclay *vs.* Howell's Lessee, 6 Pet. 496, at p. 507, 31 U. S. 477 at p. 481;

Spring Lake *vs.* Polak, 76 N. J. Eq. 212, affirmed 77 N. J. Eq. 557;

Stockton *vs.* Newark, 42 N. J. Eq. 531, affirmed 44 N. J. Eq. 186;

Riverside *vs.* MacLean, 210 Ill. 308, 66 L. R. A. 288, 102 Am. St. Rep. 164, 71 N. E. 408;

Streuber *vs.* Alton, 319 Ill. 43, 149 N. E. 577;

Portland & W. V. R. Co. *vs.* Portland, 12 Pac. 265;

Dodge *vs.* North End Improvement Association, 189 Mich. 16, 155 N. W. 438;

Higginson *vs.* Slattery, 99 N. E. 523, 212 Mass. 583, 42 L. R. A., New Series 215;

Jacksonville *vs.* Jacksonville Railroad Co., 67 Ill. 540;

Haskell *vs.* Wright, 23 N. J. Eq. 389;

Marlborough-Blenheim *vs.* Atlantic City, 98 N. J. Eq. 129;

Hulett *vs.* Sea Girt, 106 N. J. Eq. 118 at p. 129.

THE NUISANCE CREATED BY THE PLAYING OF PROFESSIONAL BALL GAMES ON SUNDAYS WILL BE ABATED BY THE COURT OF CHANCERY AT THE SUIT OF ANY INDIVIDUAL LIVING IN THE NEIGHBORHOOD AGGRIEVED THEREBY.

Cronin *vs.* Bloemecke, 58 N. J. Eq. 313;

Gilbough *vs* West Side Amusement Company, 64 N. J. Eq. 27;

Seastream *vs.* New Jersey Exhibition Co., 67 N. J. Eq. 178 at p. 184;

McMillan *vs.* Kuehnle, 76 N. J. Eq. 256.

THE COMPLAINANT, AS A TRUSTEE IN DISSOLUTION OF THE MEADOW LAND SOCIETY OF SOUTH ORANGE, HAS A RIGHT TO MAINTAIN THIS ACTION.

See authorities cited above under Point V.

THE PRESUMPTION EXISTS THAT BOTH THE GRANTOR AND GRANTEE IN THE DEED OF DEDICATION INTENDED THEIR ACTS TO BE LAWFUL.

See authorities cited above under Point I.

CONCLUSION.

Complainant-respondent, William T. Baird, Esq., a resident of the Village of South Orange, Essex County, New Jersey, for more than forty years (S. of C., p. 74, l. 36) desiring to benefit the community in which he lives, gradually acquired the controlling stock interest in The Meadow Land Society of South Orange, the owner of the lands which are the subject matter of this suit. His purpose in so doing was to donate the land and devote it to the use of the public for a park or playground (S. of C., p. 83, ll. 28 to 32). With these objects in view, he negotiated with the Village of South Orange and found its representatives ready and willing to take over the land for public park or public playground purposes. The transaction was consummated and the deed to the Village delivered containing the restrictions, covenants and conditions hereinabove quoted. It is clear from the testimony in the case that the use made of the land so conveyed by the defendants was not within the contemplation of the parties at the time the transfer was made, and it is also clear that such use is prohibited under the restrictive

covenants in the deed. The opinion of the court below contains the following succinct description of the use of these lands by the defendants (S. of C., p. 393, l. 29, to p. 394, l. 4):

> "The evidence shows that large crowds attended the games. Many automobiles were parked in the streets and on the playground adjoining the field. That there was loud shouting, yelling and stamping, especially when an outside team called 'The House of David' appeared, accompanied by a clown who performed during the game: or when 'The Philadelphia Red Caps' arrived with hot dog and peanut vendors, or when the illustrious Babe Ruth performed in the presence of howling hundreds. For these performances a part of the public lands of South Orange was used, fenced in and shut off from public view—land that was restricted 'solely for public park or public playground purposes.'"

As shown by the evidence, such a use of the lands was not contemplated by either complainant or other representatives of The Meadow Land Society or by the representatives of the Village of South Orange when it took over the land. To exclude the public from the lands or any part of them, except upon payment of an admission fee, does not meet the legal definition of a public park or public playground, or comply with the terms of the dedication in this case. If is it lawful and permissible for the defendants to exclude the public from a part of the land comprising about two acres, then the defendants may, if they so desire, exclude the public from the whole or any part of the thirty-eight-acre tract.

Complainant brings this suit in three capacities as stated in the three separate counts of the complaint; (1) as trustee in dissolution of

the grantor, The Meadow Land Society; (2) as a member of the public at large and one residing in the community entitled to enjoy the benefit of the restrictive covenants in the deed; and (3) as a private citizen and resident of South Orange against whom the defendants are committing a private nuisance. In each of these capacities he is entitled to the redress which he seeks and which was granted to him in the court below.

We respectfully submit that under the facts and law of this case, the decision and decree of the Court of Chancery should be, in all respects, affirmed with costs.

Respectfully submitted,

HARRISON & ROCHE,
Solicitors for and of Counsel
with Complainant-Respondent.

Auguste Roche, Jr.,
Of Counsel.

Dated: Newark, New Jersey.
January 27, 1932.

18

New Jersey Court of Errors and Appeals

Between

WILLIAM T. BAIRD, Individually and as Trustee, etc.,
Complainant-Respondent,

and

BOARD OF RECREATION COMMISSIONERS OF THE VILLAGE OF SOUTH ORANGE, *et als.*,
Defendants-Appellants.

On Bill, &c.

On Appeal from the Court of Chancery.

BRIEF FOR DEFENDANTS-APPELLANTS.

Facts.

This is an appeal from a decree of the Court of Chancery advised by Vice Chancellor Church, which enjoins and restrains the defendants-appellants from permitting, holding, playing, taking part in or promoting professional or semi-professional baseball games to which an admission fee is charged or any game, entertainment or exhibition to which an admission fee is charged on Sundays or on any other days on any part of the tracts of land described as the first four tracts in the deed from Meadowland Society of South Orange, a corporation, to the Village of South Orange dated March 28, 1924, and recorded in the Essex County Register's Office in Book L-70 of Deeds for said county on page 120, etc., and more particularly on that part thereof which has

been added to, and included in, the baseball field known as "Cameron Field"; and from doing any act or exercising any authority, management or control over the same or making any use thereof whereby the rights therein of the public to have, use and enjoy the same as a public park or public playground shall be in anywise diminished, interfered with or destroyed; and further, that said defendants and each and every one of them be, and they hereby are, enjoined and commanded henceforth and forever to desist and refrain from using or permitting the aforesaid lands to be used in such a manner as to annoy and destroy the rest of complainant and his family and to interrupt and destroy their peace, quiet and enjoyment on Sundays or any other days by playing or permitting said professional and semi-professional baseball games to be played on Sundays or on any other days.

On January 21, 1924, the Village of South Orange and the Meadowland Society of South Orange entered into an agreement whereby the Village agreed to purchase from said society for the sum of $72,850 all of the property of said society located in the Village of South Orange as shown on Exhibit D-4 (see S. of C., p. 366). Said contract was concluded on March 28, 1924, on which date the Meadowland Society delivered to the Village of South Orange a warranty deed for the property in question in which deed the consideration was set forth at the sum of $71,300. Said deed contained the following restrictive clause:

> "The four tracts above described are conveyed upon condition and subject to the restriction that the premises above described shall be used solely for public park and/or public playground purposes" (see Ex. C-3, S. of C., p. 326).

Subsequently, by resolution, the Board of Trustees of the Village turned over to the Board of Recreation Commissioners a small portion of the property consisting of 2.22 acres designated on Ex. D-4 (S. of C., p. 366) as Tract No. 3. The purpose of this action on the part of the governing body of the Village of South Orange was to add this particular tract to the existing playground known as "Cameron Field" thereby extending said playground from its then location to Mead Street. After the Board of Recreation Commissioners obtained control over the tract in question, considerable money was expended to improve the playground and for the purpose of moving the baseball field to a new location which covered part of the property purchased from the Meadowland Society. The effect of this was to place the infield and part of the outfield on Tract No. 3 and the remaining portion of the baseball playing space covered the property then known and constituting Cameron Feld. Another reason for making this change was to enlarge the facilities of Cameron Field and to make additional tennis courts at the southerly end.

In the Spring of 1929 the Board of Recreation Commissioners granted permission to an organization known as the South Orange Baseball Club to use the baseball field in its new location on Sunday afternoons of each week during the baseball season for the purpose of playing baseball games and also permitting said organization to charge an admission fee of fifty cents per person. These games were played from the middle of April to the middle of October, 1929, during which time no complaint was made by complainant-respondent or anyone else in regard to the conduct of said games or any other matter in connection therewith.

The first official complaint was lodged with the Board of Trustees of the Village of South Orange under date of December 2, 1929, in the form of a letter written by complainant-respondent William T. Baird to the Village President. This was after the baseball season was over. As a result of this protest the Board of Recreation Commissioners under date of April 14, 1930, passed a resolution authorizing the playing of baseball during the baseball season of 1930 under the supervision and control of said commission (see Ex. C-16, S. of C., pp. 358-359). In accordance with said resolution baseball games were played on the playground property starting the latter part of April, 1930, and no protest was registered by Mr. Baird or anyone else until June 16, 1930, when a protest was made in the form of a letter from Messrs. Harrison & Roche, attorneys for complainant-respondent, to the Chairman of the Board of Recreation Commissioners (see Ex. C-11, S. of C., pp. 334 to 339 inclusive).

The baseball games continued to be played on each Sunday afternoon and an admission fee of fifty cents was charged until the bill of complaint was filed in this cause on July 22, 1930, on which date an order to show cause with a temporary restraint was issued. In order to have this temporary restraint removed, it was necessary for counsel for the defendants-appellants to make personal application to the Chancellor, who immediately communicated with Vice Chancellor Church and the result was that the matter was re-referred to the Vice Chancellor, who removed the restraint the following day and on the return day of the order to show cause refused a temporary restraint pending final hearing.

The bill of complaint above referred to sets forth three causes of action as follows: First, that the acts complained of constitute a violation

of the restriction contained in the deed from the Meadowland Society to the Village of South Orange and that complainant-respondent William T. Baird, acting for said society, has the right to enforce the covenant; second, that complainant, as a long time resident of the Village of South Orange and a taxpayer therein, and as a member of the public at large, is entitled to the benefit of said covenant and seeks protection of his personal rights; third, that the acts complained of constitute a private nuisance to Mr. Baird.

POINT I.

The Court of Chancery has no jurisdiction to consider violations of the Vice and Immorality Act.

In the opinion of the lower Court (S. of C., pp. 391-395, inclusive), the statement is made that the Legislature did not intend, in enacting Chapter 308 P. L. 1911, to authorize the playing of games on Sunday and that the provision in paragraph 7 of said act authorizing the Board of Recreation Commissioners to arrange and provide for the giving of outdoor exhibitions, concerts, games and contests and to charge an admission fee therefor not exceeding eight hours in any week nor more than two days in any one week means every day in the week excepting Sunday. The Court then refers to the provisions of the Vice and Immorality Act and concludes that the playing of games on said property on Sunday is unlawful and constitutes a violation of the covenant in the deed of conveyance, and further decides that the complainant-grantor did not intend to permit the defendant-grantee to commit an unlawful act.

It is elemental that the Vice and Immorality Act is a penal statute and it is equally elemental

that the Court of Chancery will not enforce such a statute. In the case of *Ocean City Association* v. *Schurch,* 57 Eq. 268, the following rules are laid down in the syllabus:

> "1. A preliminary injunction will not be granted to a grantor to restrain the violation of a covenant in a deed against doing business on the premises on Sunday, where it has been openly violated for several years by defendant grantee and by other grantees of the same grantor, including his tenants, under a like covenant, and where defendant has expended large sums in improving his property in reliance on the grantor's apparent abandonment of the restriction.
>
> "2. Laches of a covenantee in seeking to enjoin breaches of the covenant are not excused on the ground that the injunction sought is to prevent the doing of business on Sunday.
>
> "3. An injunction will not be granted to restrain the breach of a covenant on the ground that the acts complained of are criminal."

The instant case is analogous in that during the baseball season of 1929 baseball games were played on the property in question every Sunday from the middle of April until the latter part of October without any protest from complainant-respondent. As previously stated, the first official protest was in the form of a letter written by Mr. Baird in December, 1929. During the season of 1930 games were likewise played from the middle of April until the middle of June, when Mr. Baird, through his attorneys, registered a protest. The evidence shows that after the Village of South Orange acquired the property from the Meadowland Society considerable sums of money were spent in preparing said property for use as a playground. It is our contention that complainant-respondent is guilty of laches in failing to

take immediate action to protect whatever rights were being violated.

In the above cited case, Vice Chancellor Grey, in his opinion on page 271, says the following:

> "The complainant insists that it is entitled to special consideration in its effort to restrain a breach of this covenant, because it is seeking to enforce the observation of the religious obligations to keep the Sabbath holy, and its application is in aid of the prohibitions of the Vice and Immorality Act against the doing of business on Sunday.
>
> "This court will aid by its remedies in the enforcing of all lawful covenants where the applicants appear to have an equitable right to their use, but it cannot excuse from the obligation of diligent application because the remedy sought would, if granted, enforce a religious duty, whether of a Christian or a Hebrew.
>
> "So far as the complainant seeks the aid of this court because the acts of the defendant are obnoxious to the Vice and Immorality Act and in the nature of a crime, there is a highest authority for the refusal to allow an injunction simply to prevent the commission of a crime. Lord Eldon, in Gee *v.* Pritchard, 2 Swanst 413, declared that the court had no jurisdiction to prevent the commission of crimes. This does not deny the preventive jurisdiction of this court to protect property from a threatened act, which, if completed, would give a right of action. Emperor of Austria *v.* Kossuth, 3 De G., F. & J. 240. But, if the act to be restrained constitutes a crime only, and is not destructive of property nor of a character which will result in pecuniary damage, an injunction will not be allowed."

In the present case, despite the testimony of Mr. Baird and the real estate experts called by complainant-respondent, it is beyond belief that his property suffered any pecuniary damage as a

result of the playing of baseball games to which an admission was charged. In this connection, it might be well to consider Mr. Baird's own testimony on this subject, which appears on line 31, State of Case, page 94:

> "Q. You do not object to the playing of Sunday baseball on this field, do you, Mr. Baird? A. Not by the village young men.
> "Q. And if those South Orange young men make the same noise, would you object? A. They could not."

These answers show, and throughout all of the testimony it appears, that the only objection in this case is to the charging of an admission fee. Nowhere in the pleadings nor in the evidence is the question of the violation of the Vice and Immorality Act raised. It is plainly evident that no estimate of the damage to Mr. Baird's property could be ascertained for the reason that there is no proof submitted tending to show that Mr. Baird attempted to sell his property and was offered a lower price than he could have obtained before the games of baseball were played.

In the case of *Green, et al.*, v. *Piper, et al.*, 80 Eq. 288, in the syllabus the following rules are laid down by Vice Chancellor Emery:

> "1. Injunction does not lie to compel public officers to perform their duties respecting enforcement of the criminal law, nor to prevent commission of crime.
>
> "2. Suit does not lie to enjoin city authorities against permitting an amusement park to be operated by the city's lessees in violation of Sunday laws, and enjoining the lessees from so conducting the park; the city not being entitled, as lessor, to enjoin illegal use of the park.
>
> "3. An ordinance relating to Sunday amusements did not become a part of a lease,

executed by the city, covering an amusement park, in the absence of any reference thereto in the lease.

"4. On bill against city authorities and the lessees of an amusement park, owned by the city, to enjoin operation of the park in violation of the Sunday laws, a court of equity will not determine whether the lease could be made by the mayor and council, instead of a park commission; complainant's remedy being to apply to the courts at law for authority to institute an action to determine the validity of the lease, as authorized by Practice Act, Sec. 44, 3 Comp. Stat. 1910, p. 4604."

The proposition stated in the above cases regarding the right of the Court of Chancery to enforce a penal statute was followed by Vice Chancellor Leaming in the case of *Ventnor City* v. *Fulmer, et al.,* 92 N. J. Eq. 478. Numerous other decisions of our courts could be cited, but we do not deem it necessary.

Another point to be considered in relation to the decree of the lower Court is the fact that it is inconsistent. It is stated in the opinion under the first paragraph of the syllabus (C. of S. 385) that where two statutes are under consideration, they should be so construed that both, if possible, may be sustained.

Paragraph 2, Chapter 308, Pamphlet Laws 1911 provides that games to which an admission is charged may be held on public playgrounds on not more than two days in each week. The Vice and Immorality Act (Comp. Stat. Vol. 4, p. 5712) prohibits the playing of games on Sunday. The Act of 1911, therefore, means that games as aforesaid may be played on any two days of the week except Sunday.

The decree of the Court of Chancery does not support the above statements. Said decree enjoins the defendants-appellants from the playing

of games to which an admission fee is charged on Sundays *or on any other days.* This shows clearly that the Court has not upheld the Act of 1911 but subordinates said act to the Vice and Immorality Act and in effect reads into the covenant in the deed something that is not there. In addition, the Court has absolutely disregarded the provisions of Paragraph 11, Article 36, Chapter 152, Pamphlet Laws 1917, known as the "Home Rule Act", which contains the identical provisions as Paragraph 7 of the Playground Act and also Paragraph 26 of Article 37 of the Home Rule Act, the last clause of which provides as follows:

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

It is our contention that the provisions of said Home Rule Act supersede all prior acts and repeal the provisions of the Vice and Immorality Act insofar as parks and playgrounds are concerned.

POINT II.

It was not the intent of the Legislature to prevent the playing of baseball games on Sunday in the parks and playgrounds of this state.

For some unknown reason the lower court has entirely ignored the provisions of Chapter 152, Laws of 1917, commonly known as the "Home Rule Act" in regard to public parks and recreation. In paragraph 11, Article 36 of said act, the

identical provisions contained in paragraph 7, Chapter 308, P. L. 1911, are included. In addition the last clause in paragraph 26 of Article 37 of the Home Rule Act provides as above quoted. In our opinion the above clause is very pertinent to the issues involved in this case and the Court's attention is especially directed to it. Has the lower court presented a liberal construction of the acts in question and has it construed said acts most liberally in favor of the municipality? We think not. On the contrary, the Court of Chancery has bent backwards in presenting a narrow view of the law. It is our contention that the Home Rule Act repeals the provisions of the Vice and Immorality Act insofar as it affects the playing of games and the giving of exhibitions, concerts, etc., on the playgrounds and parks of the various municipalities. We do not believe it was the intention of the Legislature to say that two days in any week meant the exclusion of Sunday. If it did, it would have said so, and the construction which the lower court places on the language of the Legislature in this respect by no stretch of the imagination can be called liberal.

In the case of *Public Service Railway Co.* v. *General Omnibus Co.*, 93 N. J. L. 344, our Supreme Court construes the Home Rule Act as amended and states in clear and convincing language the following rule, which will be found in the fourth paragraph of the syllabus:

> "4. The Home Rule Act (P. L. 1917, page 319 as amended) P. L. 1918, page 478, furnishes a full and complete scheme for the governing of municipalities, defining their powers and the procedure and method of enforcement."

In the opinion of the Court written by the late Justice Kalisch, the following is found at page 350:

> "We think the rule approved of by the Court of Errors and Appeals in Eldridge *v.* Philadelphia & Reading Railroad Co., 83 N. J. L. 463, 'that when the Legislature frames a new and general rule covering an entire subject matter all earlier and different rules touching the same matter are to be discarded in favor of such later rule' is peculiarly applicable to the situation created by the passage of the Home Rule Act in regard to the procedure for the passages of ordinances. To the same effect is Haynes *v.* Cape May, 52 N. J. L. 180."

See also

> *Lombardo* v. *Mayor, etc., of Lodi,* 7 N. J. Misc. Rep. 72.

In view of the above statutes and the decisions construing the same, it naturally follows that in determining whether or not the Legislature intended to prevent the playing of baseball games on Sunday on the playground in question, the provisions of the Home Rule Act are paramount and the Courts are required to liberally construe these provisions.

POINT III.

There is not sufficient evidence showing that a nuisance exists which would warrant a court of equity to grant a restraint.

In the voluminous bill of complaint filed in this cause promiscuous charges have been made in an effort to show that the baseball games in question have been conducted in such a manner as to create a nuisance to complainant, Mr. Baird. There is absolutely no evidence in the case to substantiate these charges. It appears that in December,

1929, after the baseball season for that year had been completed, the complainant, Mr. Baird, wrote a letter to the president of the Village of South Orange, calling attention to conditions which existed during the playing season of 1929, and made a protest against the continuance of said games during the 1930 playing season on the grounds above cited. It is, therefore, elemental that, so far as the season of 1929 is concerned, the complainant is guilty of laches for the reason that he stood by during the whole season of 1929 and did not make any complaint concerning the conduct of the games in question until the season had been completed. This principle is so well established by the decisions of our courts in this State that I do not intend to burden the Court with citations of these cases. I submit that all evidence concerning what happened during the baseball season of 1929 should be eliminated from any consideration whatsoever.

In regard to the season of 1930, the only evidence produced by complainant, Mr. Baird, is to the effect that on two or three occasions he was disturbed at his home, which is located a quarter of a mile away from the scene of the baseball games, because of the noise incidental thereto. It seems beyond belief that any noise emanating from the baseball field would be audible at Mr. Baird's home to such an extent that it would cause him discomfort, but, even admitting this to be true, it is not sufficient to create a nuisance, which would warrant this Court in granting a restraint. Our courts have held time and time again that in order for a private nuisance to exist facts must be shown that the property of complainant was damaged or that, as a result of said nuisance, his health was impaired.

In the case of *Cronin* v. *Bloemeke, et al.*, 58 Eq. 313, it appeared that complainant's property was

damaged by the driving of baseballs upon his grounds and the subsequent trespassing on said grounds to recover the balls, by which his use of said grounds was rendered dangerous and his peace and quiet interfered with and his property destroyed. Complaint was also made concerning the noise occurring during the game by the shouts of the players and spectators and the loud, profane and obscene language used by the players or spectators and audible at complainant's residence, together with the noise of fights and brawls during the game. Complaint was also made that large numbers of idle and disorderly persons congregated in the neighborhood of the grounds and of complainant's house while the games were in progress, which crowds by their noise, vile language and behavior disturbed the peace and quiet of the neighborhood and subjected complainant and other residents to insults and abuse if they ventured from their homes. In discussing said case Vice Chancellor Emery, at page 316, says:

> "An interlocutory injunction should not go further than to restrain the defendants pending the hearing from using or permitting to be used the premises called the 'shooting park' mentioned in the bill or any part thereof for the purpose of baseball games, so that a nuisance may be occasioned to the annoyance and injury of the complainant and his family at his residence or premises mentioned in the bill either by the driving or dropping of balls upon his premises or by trespassing from the players or spectators of the games or by profane or indecent language upon the grounds or from idle or disorderly persons in the streets collected by the games."

Continuing on page 317 at about the middle of paragraph 1, the learned Vice Chancellor says:

> "And an injunction cannot extend to nuisances created by the use on the ground of

> vile or indecent language, which is not audible at complainant's residence or the unlawful or disorderly sale of liquor upon the premises. Protection against these nuisances, if they exist, must be sought in other tribunals. The whole extent of equitable jurisdiction is the protection of a person's dwelling house or home against nuisances upon other premises *of so serious a character as to render his life therein uncomfortable.*"

In my judgment the last sentence of the above, which is italicized, clearly sets forth the law in this State. As above stated, Mr. Baird has utterly failed to show sufficient facts to warrant relief on this particular point. As a matter of fact, on cross-examination, he admitted that crowds did not congregate in front of his home; that no cars were parked in front of his property and also that no baseballs were batted into his yard. All he says is that the noise on two or three occasions disturbed his peace and quiet, although he admits that he is usually at his summer home, many miles away, from the latter part of May until after Labor Day.

As against the testimony of Mr. Baird, there is abundant proof, which was not rebutted, to the effect that the games in question were conducted in a lawful and orderly manner and that the only noise existing at said games was that noise ordinarily incident to the playing of a baseball game, namely, applauding a good play.

In this connection, the testimony of Harry J. Schnell, President of the Village of South Orange, shows that he attended many of these games; that he made it a part of his duty to not only attend the games, but also to pass by the grounds for the purpose of observing conditions from the outside. He states emphatically that the games were conducted in an orderly manner. Similar testimony was given by Peter A. Smith, Joseph A.

Carter, Albert A. Manda, Joseph J. Farrell, Raymond Connelly, George H. Becker, Carleton Greene and the Chief of Police, Patrick J. Maguire. It is rather significant that during all of the time that these games were played during the baseball seasons of 1929 and 1930 not one complaint was made by the complainant, Mr. Baird, or by anyone else to the Chief of Police. If the charges of Mr. Baird are true, why did he not avail himself of the opportunity of requesting the Police Department to afford him relief? Also, why did he wait until December, 1929, before making an official protest?

As previously pointed out, Vice Chancellor Church, on the return day of the order to show cause, made the statement in open court, which was reiterated during the hearing, that the only issue involved in the case was whether or not the covenant contained the deed from the Meadowland Society to the Village of South Orange was violated, and in the opinion (S. of C., p. 415, l. 20) the Court said the following:

> "I said at the hearing, and I now reiterate, that the decision of this case, in my opinion, depends mainly, if not entirely, upon the interpretation of the restrictive clause in the deed of conveyance. However, I allowed the fullest latitude to counsel in order that they might present whatever evidence seemed to them germane and I have endeavored to discuss and decide all the points raised in the briefs submitted."

In regard to this latter statement of the Court, these statements indicate clearly the true viewpoint of the lower Court and they show that the question of nuisance was a minor fact. In regard to the statement of the Court, to the effect that counsel were allowed the fullest latitude, the attention of this Court is directed to the fact that

such latitude was granted over the repeated protest of counsel for the defendants-appellants. As a matter of fact, we offered to stipulate that the deed contained the covenant under consideration; that part of the property was being used for the purpose of playing baseball games on Sunday, to which an admission was charged and suggested that all other extraneous matter be eliminated from consideration. This offer was refused. Further, we desired this case to be tried strictly in accordance with the law and the rules of evidence, but, when we found that the Court was permitting evidence which according to our view was beyond the issue, we naturally produced evidence to counteract that which we felt was illegal.

POINT IV.

The covenant referred to in the bill of complaint has not been violated.

The evidence shows that during the baseball season of 1929 baseball games were conducted on the property in question by the South Orange Baseball Club, a private organization, to which an admission fee was charged. It appears that neither the Board of Recreation Commissioners nor the Village of South Orange had any connection with the conduct of these games. This evidence is absolutely uncontradicted. If it is contended that this constituted a violation of the covenant in the deed, I submit that it cannot be urged in this case—first on the ground that complainant-respondent is guilty of laches and second the resolution of the Board of Recreation Commissioners granting permission to the South Orange Baseball Club to use the grounds should have been attacked by certiorari.

In regard to the playing of baseball games during the baseball season of 1930 the following facts were developed. The Board of Recreation Commissioners passed a resolution on April 14, 1930, in which it appointed a committee to conduct the baseball games during the baseball playing season. Said resolution was adopted pursuant to the authority granted by the Legislature in paragraph 7, Chapter 308, P. L. 1911, known as the "Playground Act", which provides as follows:

> "7. Said board of playground commissioners, in order to provide the funds, in whole or in part, necessary to improve, maintain and police the playgrounds, or recreation places under its control, shall have the power and authority to arrange and provide for the giving of out-door exhibitions, concerts, games and contests, and the power and authority to use and employ said playgrounds or recreation places for the purpose of giving thereon out-door exhibitions, concerts, games and contests, and the said board shall have the power and authority to charge and collect a reasonable admission fee for each person entering such playground or recreation place during the time or times when the same is being used or employed for such purposes; *provided, however,* that the said board shall not use or employ any such playground or recreation place for such purpose for a greater period than eight hours in any week, nor on more than two days in any week, and when any such playground or recreation place is used for such purpose no admission fee shall be charged or collected from children under twelve years of age."

The above power was supplemented by paragraph 11, Article 36 of Chapter 152, P. L. 1917, which contained the same provisions as the above paragraph. The testimony in the case to the effect that said games were conducted under the supervision and control of the Board of Recrea-

tion Commissioners during the baseball season of 1930 is uncontradicted. Counsel for the complainant-respondent makes the point that the proceeds of each game were not turned over to the Village Treasurer as required by paragraph 6 of the Playground Act, which reads as follows:

> "6. All moneys received by the said Board shall be paid over to the city treasurer and be by him kept in a special fund which shall be under the control of said board and used only for the purpose of defraying the expenses of improving, maintaining or policing the playground and recreation places of said municipality and other expenses of said board."

It will be noted that the above clause does not state when the money shall be turned over to the treasurer, whether it should be after each game or at the end of the season after all bills have been paid and the net amount derived from the exhibitions after the payment of all bills was ascertained. Assuming that counsel is correct in the interpretation placed on the above clause, it is our contention that any objection to the procedure followed is beyond the jurisdiction of the Court of Chancery and cannot have any bearing on the points at issue in this case. In addition, it is our contention that paragraph 6 of the Playground Act above mentioned was expressly repealed by the Home Rule Act of 1917, which is entirely silent on the subject.

The testimony shows that the Baseball Committee of the Board of Recreation Commissioners engaged the services of Seymour O. Coeyman as treasurer of the baseball fund and Harold D. Henderson as assistant treasurer. Both of these young men hold responsible positions under bond with South Orange Trust Company. An account was opneed in said bank under the name of "Base-

ball Committee of the Board of Recreation Commissioners of South Orange", and the funds received from the baseball games were deposited in this account and all bills were paid by checks which were signed by either Mr. Coeyman or Mr. Henderson under the direct supervision of the Baseball Committee of the Recreation Commissioners. At the end of the baseball season a statement of receipts and disbursements, together with a check for the net proceeds, was turned over to the Village Treasurer.

In regard to the jurisdiction of the Court of Chancery to consider the question as to what was done with the money, we submit that the cases are abundant holding that such jurisdiction does not exist. We shall not burden the Court with numerous citations, but deem it sufficient to quote the decision of Vice Chancellor Backes in *E. M. Harrison Market* v. *Town of Montclair,* 147 Atl. 502, in the first paragraph of the syllabus, says:

> "1. Certiorari is proper where municipal authorities are acting lawfully under duly enacted and authorized ordinance which invades complainant's right; Supreme Court is tribunal for supervision and correction of official proceedings of municipalities; writ of certiorari operates as stay (Home Rule Act, 2 Comp. St. Supp. 1924, page 2194, paragraph 136-2001 as amended)."

At the bottom of the first column on page 503 the Vice Chancellor quotes the following cases in support of the above principle:

> *Tucker* v. *Burlington,* 1 N. J. Eq. 282;
> *Holmes* v. *Jersey City,* 12 N. J. Eq. 299;
> *Bloomfield* v. *Glen Ridge,* 55 Eq. 505;
> *Berdan* v. *Passaic Valley Commissioners,* 82 N. J. Eq. 235, aff. 83 N. J. Eq. 340.

The above principle was also followed by Vice Chancellor Berry in *Hulett et al.* v. *Borough of Sea Girt,* 150 Atl. 202.

In the case of *Strock* v. *E. Orange,* 80 N. J. L. 619, affirmed by the Court of Errors and Appeals in 82 N. J. L. 543, the Court construed the provisions of P. L. 1907, page 279, as supplemented by P. L. 1909, page 76, which act was entitled "An Act to provide for the establishment of public playgrounds in cities of this state and the maintenance, control and management thereof". Said law contains practically the same provisions as paragraph 7 of Chapter 308 P. L. 1911. In that case, Mr. Justice Parker, in discussing the legal questions involved, says:

> "We are asked to declare this act unconstitutional on the ground previously urged as affecting the Act of 1908, namely that it authorizes the giving away of public property for private benefit, but an act of the Legislature should not be declared unconstitutional unless it is clearly so; and any reasonable construction of the act that will save it should be adopted. Such a construction, we think, is available in the present case. We think that the giving of occasional athletic exhibitions is not inconsistent with the idea of a playground, but entirely germane to it. The playground, after all, is nothing but a modified park, a place for public resort and recreation, and considerable latitude is allowed to municipal bodies in charge of parks in the matter of furnishing or arranging for special facilities to certain portions of the public in consideration of a special charge for the same. Park concessions for restaurants, boats to hire, donkey rides, rolling chairs and so on are familiar to everyone and the payment of a special charge for each of them is a matter of course. The practice of letting out concessions on public grounds for revenue purposes is expressly recognized by statute

> in the case of Seashore cities. Pamphlet Laws 1900, page 225; Pamphlet Laws 1904, page 199. See 28 Cyc. 938. So also the authorities may even exclude the general public for a time and restrict the use of the park for that period to a limited portion of the public, so long as the length of time is not unreasonable. 28 Cyc. 937. In Sherburne *v.* Portsmouth, 72 N. H. 529, a New Hampshire case, the use of a common for a baseball ground was under discussion and the court was of opinion that the test of legality was whether the use was public in accordance with the dedication and not an unreasonable use, especially as to time. We think this view is a sound one, and that it may safely be adopted for the purposes of the present case. The question of dedication as will appear presently does not arise in this case. That the proposed use is public we think satisfactorily appears. While not appropriate to the entire public it is adapted for a considerable portion of the public and intended to furnish that portion for a limited period, with legitimate recreation. It is quite as public in character as donkey rides for children and restaurants for the hungry in a park. The period of time also is strictly limited to eight hours in a week, which the Legislature by so enacting has declared to be reasonable, and which manifestly is reasonable."

The only difference between the above case and the one at issue is that in said cause the property was acquired by condemnation, while, in the instant case, said property was acquired by purchase. As I view the principle involved it makes no difference whether or not said property was condemned or purchased. The law is the same in both cases. Counsel for the complainant-respondent claims that the transaction constituted a gift; that the value of the property was considerably more than the price paid for it by the Village of South Orange and as a result has introduced tes-

timony to show that the value of the property was in excess of four hundred thousand dollars and that, therefore, it was proper for the court to permit evidence as to the intention of the donor at the time the gift was made. The court permitted this testimony but reserved the right to determine later just what evidential value would be given to it. It is my contention that such testimony was inadmissible because it attempted to vary the terms of a written instrument by verbal testimony, but assuming that counsel is right in his contention, what evidence is there in the case which shows that a gift was made? It appears that a committee appointed by the Board of Trustees of the Village of South Orange negotiated with the complainant-respondent for the purchase of the property in question. As a result of these negotiations an agreement of sale was executed by the respective parties and subsequently a deed was delivered at which time the Village of South Orange paid the Meadowland Society the sum of Seventy-two Thousand Eight Hundred Fifty Dollars. Said deed contained the restriction previously mentioned. Nowhere in the contract of sale or in the deed is there any mention of a gift. Nowhere in the above instruments nor in the testimony does it appear that anything was said at any time that Sunday baseball to which an admission should be charged could not be played. In fact, both Mr. Baird and Mr. Miller, who was chairman of the special committee negotiating this sale for the Village of South Orange, say that the proposition was never even contemplated, and, that being so, how can it now be asserted that the question was in the minds of the parties at the time the sale was made? Mr. Becker, who was a member of said committee, testifies emphatically that the question was not considered.

Has Mr. Baird the right to read into the deed something which was not in the minds of the parties? Has he the right to speak for the stockholders of the Meadowland Society? If he has, why wasn't such authority produced in the trial of this issue? Where is there a resolution passed by the directors of the Meadowland Society that a gift was being made to the Village of South Orange? Why were not some of the other sixty-seven stockholders of the Meadowland Society produced to offer testimony supporting this contention? Is this court going to restrict the right of the Village of South Orange to use the property which it purchased for the sum of Seventy-two Thousand Eight Hundred Fifty Dollars in any way which does not violate the laws of this state? How much credence can be placed in Mr. Baird's testimony or in his recollection of what happened at the time the negotiations were pending when time and time again, while he was a witness on the stand, he not only repeatedly contradicted himself, but also failed to remember facts which were very vital to a test of his credibility and also important to his allegations in the bill of complaint?

In this connection, we deem it very important to examine his testimony. Beginning on line 37, S. of C., p. 84, and following pages:

> "Q. Was the Meadow Land Society of South Orange a stock company? A. Yes, sir.
>
> Q. How much of that stock did you own at the time of the conveyance? A. About 80 per cent.
>
> Q. How many shares were there in all, do you recall? A. No, sir; I do not recall the exact number of shares.
>
> Q. You owned about 80 per cent. of the stock? A. About 80 per cent.
>
> Q. Now, when did the negotiations for the sale of this property start? A. I cannot re-

member the date. The deed, I think, is dated in 1924.

Q. And when did the negotiations start? A. I think, some—probably five or six or seven months before, I talked informally with Mr. Miller several times some time before.

Q. How much stock did you have in this corporation when it was originally issued? A. I think it was five shares.

Q. Five shares. What was the par value of that stock? A. Fifty dollars.

Q. How much did you pay for the stock? A. I cannot remember all of the sums which were paid. Some seventy, some eighty. I cannot remember now.

Q. And when did you start to acquire a larger portion of the stock? A. I was elected president in, I think it was 1918 or 1919; at that time, I found, on looking over the records, that there were 47 estates holding stock, and it was practically all in the original holders' name. In one case, for instance, the Pulsford family, Mr. Pulsford, bought that stock when the society was formed; in 1889 he died, leaving his estate to his wife. She died, leaving it to five children, some of them died, leaving it to their children, and nothing had been done with that stock. It cost me—it took me over two years to get that stock cleared, and I don't know now what my legal expense was, but, as I stated some time ago, we had to send those papers to China, to Massachusetts, to Switzerland, and, when they came back, we got them signed by the various heirs in South Orange.

Q. And when did you acquire that stock from the Pulsford heirs, finally? A. I think it was about 1923.

Q. How much did you pay for the stock?

Objection by Mr. Roche.

The Court: I will allow the question.

Q. How much did you pay the Pulsford estate for the stock, Mr. Baird? A. I don't remember, Mr. Fitzsimmons.

Q. See if you cannot— (interrupted). A. I will give you this information.

Q. See if you cannot refresh your memory? A. I will be perfectly frank with you and tell you, if you want me to, just what the cost price was.

Q. I am interested now, Mr. Baird, and I would like to have you answer my question, how much did you pay the Pulsford estate for that stock? A. I don't remember now.

Q. Was it $100 a share? A. I cannot remember at all. I bought so much of it that I do not remember.

Q. What was the average price that you paid for the acquirement of this stock over a period of years? A. I don't know.

Q. You don't remember? A. No.

Q. Was the stock donated without compensation? A. No, sir; not a share.

Q. Did you— (interrupted).

The Court: Have you got a record of how many shares you bought and what you paid for the total?

The Witness: Not now, sir, no, sir.

Q. Did you go to Mr. J. Charles O'Brien and ask him to turn over his stock to you, without compensation? A. I——

Q. —for the purpose of acquiring the stock and transferring the property to the Village? A. I cannot remember any particular instance, Mr. Fitzsimmons. I do not even remember now, if Mr. O'Brien was a stockholder.

Q. Isn't it a fact that Mr. O'Brien stated that he would not turn the stocks over to you, that he would donate his stock to the Village? A. If Mr. O'Brien makes that statement, I would believe it.

Q. You know that Mr. O'Brien did turn his stock over to the village of South Orange without compensation? A. No.

Q. Well, Mr. Baird, how much was paid for this property, originally, by the Meadow Land Society? A. I don't know."

To similar questions directed to Mr. Baird practically the same result was obtained so far as his answers were concerned. It will be noted in this testimony that Mr. Baird denied absolutely that he had ever written to stockholders stating that the stock was valueless and that he desired to obtain the same for the purpose of turning over to the Village of South Orange the property represented by the stock, yet letters were produced over his own signature showing that this was the fact. In addition it will be noted that at the hearing on December 4, 1930, Mr. Baird stated that he was elected President of the Meadowland Society in 1918 or 1919, yet at the hearing on January 8, 1931, on page 193 of the testimony at the bottom of the page he states that he was not president of the corporation until 1923.

In view of the above testimony, full of contradiction, evasion and misstatements, can this Court place any value whatsoever in any part of Mr. Baird's testimony? How can this Court believe the testimony of a witness who, in 1921, was the owner of about twenty-one shares of stock out of a total of seven hundred and eighteen and despite the fact that, as president and a director of the Meadowland Society, holding a fiduciary relationship to the stockholders of that corporation, he deliberately set out to acquire a large block of stock from stockholders, most of whom had held their stock for more than twenty years, at a price not exceeding thirty-five dollars a share, when, as a matter of fact, at that very time he was negotiating with the Village of South Orange for a price which would net him more than a hundred dollars a share?

The evidence shows that, making a liberal allowance for carrying charges, Mr. Baird's stock represented a cost of about fifteen thousand dollars, whereas on distribution he received in excess

of forty thousand dollars. Did Mr. Baird believe in 1921, 1922 and 1923, when he acquired most of his stock from the stockholders, that the land owned by the Meadowland Society was worth in excess of four hundred thousand dollars? If he did, was it not his duty to inform the stockholders of this fact and to tell them frankly that at such a price their stock would be worth close to five hundred fifty dollars a share? If Mr. Baird had any such price in mind at that time, then he perpetrated the grossest kind of fraud on these stockholders and secured their stock by misrepresentation. It certainly appears apparent to me that the Court cannot place any credence in this testimony.

What evidence is before the Court that this property was worth any such price as alleged by complainant? Mr. Fiedler says it was worth in 1924 about four hundred seventy thousand dollars. Mr. Taylor testifies that it was worth around four hundred thousand dollars, but on cross-examination admitted that this figure should be reduced on account of the condition of Tract No. 3. He was unable to say how much. It is rather singular to note that neither of these witnesses were acquainted with the fact that at the time the property was sold to the Village of South Orange a lease existed, which had about nine and a half years to run, and which lease did not contain a surrender clause, and that the only power to abrogate said lease vested in the governing body of the Village of South Orange. Why was this important factor kept from these witnesses? Why were they not recalled to rebut the testimony of witnesses produced by the defendant? The answer is obvious. Complainant knew that, if these witnesses knew of the existence of said lease, they would not have testified to such values.

In this connection the testimony of defendant's witnesses is very important. Mr. George H. Becker, who served as an official of the Village of South Orange for about fourteen years, one of the most successful developers in the State of New Jersey, testified that the existence of said lease would greatly limit the sale of the property; that the average operator could not afford to purchase the same. Mr. John F. O'Brien testified that the existence of said lease would make the property practically unsalable.

The evidence of these two witnesses is absolutely unrebutted. Which of these witnesses, assuming that value is an element in this case, is the Court going to believe? It is my contention that this Court should take judicial notice of the fact that such a lease would not only seriously affect the marketability of the property in question, but that the Village of South Orange was the only possible purchaser in 1924.

It is my opinion that the case of *Godfrey* v. *Atlantic City,* reported in 122 Atl. 613, is dispositive of the question involved in this case regarding the violation of the covenant. In that case Atlantic City in 1896 laid out and opened a public street along the ocean front of said city and erected thereon a public steel, board or plank walk. The owners of practically the entire ocean front property, through which the street was laid out, executed to the city agreements generally known as rights of way, in which the said grantors covenanted and agreed as follows:

> "that it shall and may be lawful for the party of the second part, its successors and assigns, and its agents and servants, and for any other person or persons subject to such regulations and restrictions as the party of the second part may impose, at all times to pass and repass, to use, occupy and enjoy so long as the same shall be used for the purpose of a street

and a public steel, board, or plank walk, the lands and premises therein described, together with the right to use, occupy and control the same, so long as the same shall be used for the purpose of maintaining a street and a public steel, board, or plank walk, and when the party of the second part shall cease or neglect to use the same for that purpose, it shall revert absolutely and without any condition or qualification to the grantors.

"It was also covenanted and agreed that the said 60 feet wide strip should be used for no other purpose than that of a street and a public board or steel walk, and the party of the second part covenanted and agreed that it would not place or erect, or allow to be placed or erected any buildings or structures of any kind or description on the lands described, except as above provided, and that these covenants should attach to and run with the lands and premises thereby granted, and the lands on the ocean side thereof, so long as the same should be used for the purpose of a street and public steel, board, or plank walk.

"That about the year 1900 the owners of practically all of the property along the ocean front in Atlantic City dedicated by conveyance or agreement to Atlantic City their right, title and interest in their properties lying oceanward from the landward line described in the above mentioned right of way agreements, for park purposes, subject to the condition and provisions contained in the said agreement or park deeds. That the said park agreement of deeds contain the following provisions:

" 'Fourth. That the lands hereby granted and dedicated to public use shall forever be and remain open, so that the view oceanward from the said elevated public walk, erected and to be erected as above mentioned, shall be free, open and unobstructed, and that no use shall be made of the said land by the grantee, its successors, or assigns, inconsistent with its use as a public park or place for public resort and recreation.' "

It appeared that a carnival committee of which Armand T. Nicholas was director had announced that said committee proposed to erect or construct a grandstand along the boardwalk to seat thousands of people for the purpose of viewing a parade and certain other exercises incidental to the carnival, which was at that time held annually in Atlantic City. It was alleged that said action of the carnival committee in erecting said structure and the action of the governing body of Atlantic City in permitting the same to be erected constituted a violation of the covenant in the deed that the said City of Atlantic City had ceased to use the property for the purpose for which it was dedicated, and, therefore, the land reverted to the grantors. Vice Chancellor Ingersoll, in discussing this case, quotes the rule of law laid down in *Dillon on Municipal Corporations,* Fifth Edition, Volume 3, paragraph 979:

> "That a condition subsequent will be strictly construed, citing Rose *v.* Hawley, 118 N. Y. 502, as holding that where land was conveyed to a town upon condition that it should not be used for any other purpose than as a town house (city hall) and the town rented the hall for meetings, lectures, etc., and other rooms for business purposes, the condition was not broken."

Continuing further the Vice Chancellor points out that there appears to be no case on this subject in our state. Supplementing the decision in said case, the attention of the court is again directed to the provisions of Article 37, paragraph 26, Chapter 152, P. L. 1917 (known as the "Home Rule Act"), the last clause of which is quoted elsewhere in this brief.

In the case of *Green* v. *Piper,* 80 N. J. Eq. 288, heretofore cited, the court makes the following

observations on pages 291 and 292 regarding the issues involved:

> "On the second claim to an injunction prohibiting the lessees of the municipality from illegal criminal use of the public park by violation of the Sunday law, it is plain that any power of this court to exercise jurisdiction must be based on two propositions:
>
> "First. That the city, in its capacity as the lessor and property owner, has the right to enjoin its lessees from the illegal use complained of, and, second, that on the failure of the city as such lessor and property owner to protect its property rights, a citizen and taxpayer has the right to sue for the injunction on behalf of the city, making the city a party defendant.
>
> "The complainants' case must fall, in my judgment, because the city as lessor has not, under the lease, the right to the injunction claimed. In the absence of any provision in the lease itself by which the mere unlawful use of the premises leased becomes a ground for forfeiture or injunction, or in the absence of a statute providing for the effect upon the lease of the unlawful use of the premises, there is no ground for interfering on behalf of the landlord by reason merely of such illegal use. I have not been referred to any authority for the exercise of any jurisdiction of this character. The cases in which relief of any kind is given to the lessor by reason of the illegal use of the premises are those where his protection is based either on the express restrictive covenants of the lease, or upon statutes authorizing forfeitures of the lease for such uses.
>
> "No provisions relating to the illegal use of the property were incorporated in this lease. The provisions of the ordinance then existing relating to Sunday games and plays did not, in the absence of any reference thereto in the lease, become a portion of the lease itself, and even on the assumption that by

> its mere existence it did become part of the lease, its subsequent repeal by the city itself relieved the lessees from its operation and by the act of the lessor itself. The fact that the individuals exercising at the time the legislative power and discretion of the city violated their individual duties to the public, by this repeal, and by such violation changed any property rights of the lessor arising by reason of the existence of the ordinance at the time of the lease, does not have the effect of preventing the legal operation of the repeal upon the lease, or authorize this court to decree relief based on the continued existence either in law or equity, of the section repealed, and abandoned by the lessor."

The above statements seem to be very pertinent to the case at issue. If the respective parties had in mind at the time of the execution of the contract for the conveyance and at the time of the delivery of the deed that the playing of baseball games on Sunday on the property in question, to which an admission fee was charged, was not to be permitted both instruments should have so indicated. It is our contention that the deed being silent on the subject the restriction should be strictly construed in favor of the municipality.

In the bill of complaint filed in the cause and in the testimony introduced at the hearing, counsel for the complainant-respondent alleges and attempts to prove and the Court of Chancery has sustained the point that the property was dedicated for public use. The weight of authority in this state, however, presents a contrary view. In the case of *Trustees of the Methodist Episcopal Church of Hoboken* v. *The Mayor and Common Council of The City of Hoboken,* 33 N. J. L. 13, the Supreme Court in the syllabus lays down the following rules as to what elements are necessary to constitute a dedication:

"1. It is of the essence of a dedication to public uses, that it shall be for the use of the public at large; there can be no dedication, properly speaking, to private uses.

"2. When the right of the public to the use of lands rests upon no other foundation than a dedication to public uses, the easement vests in the public; the fee remains in the original owner and may be conveyed by him to third persons, but the right of the public to the use is paramount to the title of the owner of the fee, and does not require the fee for its protection.

"3. The local corporate authorities of the city or town in which the lands dedicated are situate, have power to regulate their public use, and may be regarded as representatives of the public for the purpose of maintaining suits for the vindication of the public right; but such power is vested in them only as representatives of the public and for the protection and regulation of the public use; they cannot sell the lands so dedicated, nor release or extinguish the uses for which they were dedicated; nor employ them in any way variant from the purposes for which they were designed.

"4. After a dedication once completed, the owner of the fee cannot authorize the use of the lands for any private purpose.

"5. The owner may, in the act of dedication, declare the specific public use to which he intended the donation and it will remain subject to such specific use; but when the dedication is completed, the owner cannot thereafter revoke it, or restrict or change the uses to which it was made.

"6. When the question is, whether the way dedicated has become a public highway, so as to impose upon the public authorities the duty to amend or repair, an acceptance on their part is essential to that end. And where the question is, whether a dedication has, in fact, been made, evidence of non-acceptance by the

public authorities, or non-user by the public, is competent evidence to be considered by the jury in determining whether a dedication has been made.

"7. But an acceptance by the public authorities, or public user, is not essential to conclude the owner from his power of retraction, when his intention to permanently abandon his property, and dedicate it to public uses, is once unequivocally manifested. In that event, the right of the public to appropriate the lands to the public use, at any future time when their wants or convenience require it, immediately attaches.

"8. When the owner of lands procures them to be laid off in blocks, streets and squares, and has a map made, on which are delineated such streets and squares, which he files among the public records of the county and by reference to which he makes sales of lots, the streets and squares, as laid down on such map, become thereby dedicated to public use.

"9. The word 'square' as a term of dedication, indicates a public use, either for purposes of a free passage, or to be ornamented for grounds of pleasure, amusement, recreation or health."

See also:

Hill et al. v. *Borough of Belmar,* 127 Atl. 789.

It will be seen from the above that no dedication exists in the present case. The fee was transferred to the Village of South Orange and the consideration agreed upon was paid in cash to the Meadowland Society. Whether or not the property was worth more than the Village of South Orange paid for it is beside the point.

New Jersey State Library

POINT V.

Complainant as a surviving trustee in dissolution of the Meadowland Society has no legal or equitable right to institute this suit.

It is a well established rule of law that unless a statute otherwise provides that the effect of a dissolution of a corporation is to put an end to its existence for all purposes whatsoever and to destroy every one of the faculties possessed by it, so that thereafter it cannot make by-laws, hold meetings, make or take contracts, sue or be sued; and all debts to and from it become extinguished; all actions by or against it abate; and its real property reverts to the grantors or donors thereof or their heirs, and its personal property escheats to the crown or to the State. 14A Corpus Juris 1149-1150.

The foregoing is a statement of the general rule regarding the dissolution of corporations. As will be seen from a reading of that rule, a dissolved corporation is, in the absence of statute, dead. The New Jersey Corporation Act modified this rule to the extent that dissolved corporations, however dissolved, shall continue bodies corporate for certain purposes therein set out. The following are the pertinent sections of the said Corporation Act:

2 Comp. Stat. (1910, pp. 1634-1636).

> "53. Continuance of corporate existence for settling up business. All corporations, whether they expire by their own limitation or be annulled by the legislature or otherwise dissolved, shall be continued bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to di-

vide their capital, but not for the purpose of continuing the business for which they were established.

"54. Directors to be trustees on dissolution—powers and duties—filling vacancies on board. Upon the dissolution in any manner of any corporation, the directors shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them. They shall have power to meet and act under the by-laws of the corporation, and, under regulations to be made by a majority of said trustees, to prescribe the terms and conditions of the sale of such property, and may sell all or any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of said property. In case of a vacancy or vacancies in the board of directors of such corporation existing at the time of dissolution or occurring subsequent thereto, the surviving directors or director shall be the trustees or trustee thereof, as the case may be, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them, and to do and perform all such other acts as shall be necessary to carry out the provisions of this act relative to the winding up of the affairs of such corporation and to the distribution of its assets.

"55. Powers and liabilities of directors as trustees. The directors constituted trustees as aforesaid, shall have authority to sue for and recover the aforesaid debts and property, by the name of the corporation, and shall be suable by the same name, or in their own names or individual capacities, for the debts owing by such corporation, and shall be

> jointly and severally responsible for such debts, to the amount of money and property of the corporation which shall come to their hands or possession as such trustee."

A reading of the foregoing sections shows, it is submitted, an intention on the part of the Legislature to continue the corporate existence only insofar as necessary for settling the affairs of the corporation and winding up its existence. The following cases, which discuss the sections of the Act hereinbefore set out, also seem to limit the meaning thereof to the purposes mentioned.

In *Harris-Woodbury Lumber Co.* v. *Coffin, et al.,* 180 Fed. 257, the above sections of the New Jersey Statutes were discussed at great length, and the Court quotes the cases of *Wilson* v. *Bellow,* 30 N. J. Eq. 282; *Ackerman* v. *Halsey,* 37 N. J. Eq. 356, and *Conway* v. *Halsey,* 44 N. J. L. 462, as being in point:

> "From the foregoing cases it will be seen that the courts of other states, as well as the courts of the United States, have held that the sections of the New Jersey Statutes to which I have referred (Secs. 53, 54 and 55 of Corporation Act) provide that notwithstanding the fact that the Governor has the right by proclamation to dissolve a corporation of that state, so as to render it incapable of performing those functions necessary to the further transaction of business in which such corporation may have been engaged, yet the corporation is still kept alive for the purpose of doing those things that are essential to the final winding up of its affairs, such as transferring property, suing and being sued, etc. Figuratively speaking, the right hand of the corporation, by which it was enabled to carry on the business in which it was actively engaged, was paralyzed completely by the proclamation of the Governor—but its body was not affected thereby insofar as the exercise of those functions necessary to the perform-

> ance of the acts incident to closing out and winding up its affairs were concerned."

White Mountain Paper Co. v. *Morse & Co.* (Cir. Ct. of Appeals, 1st Cir. 1904), 127 Fed. 643, at page 645:

> "But, following the ordinary practice in nearly all, if not all, the states, the Legislature of New Jersey provided that a decree of dissolution should be, to a certain extent, only *nisi,* so that a corporation does not immediately on such a decree cease to live, but retains for a specified period a qualified existence."

American Surety Co. v. *Great White Spirit Co.* (E. & A. 1899), 58 N. J. Eq. 526, at page 530:

> "The prohibition against the use of corporate power of proclaimed defaulted corporations did not extend to their use in winding up and settling the affairs of such corporations under the provisions contained in sections 53 to 60 inclusive, of the Corporation Act of 1896. * * * By those provisions the directors of a corporation dissolved in any manner are made trustees thereof, with full powers to settle up its affairs."

In the opinion of the court below (S. of C., p. 414) the case of *Joachin* v. *Belfus,* 107 N. J. Eq. 240, decided by Vice Chancellor Backes, is quoted as being in point. We submit a contrary viewpoint. There is no question concerning the correctness of the rules of law laid down in that case because the Weequahic Park Land & Improvement Company, one of the predecessors in title of the complainant at the time of its dissolution still owned real estate and had other business affairs to wind up. In the present case there is a different situation. The evidence shows that the property in question which was conveyed by said Meadowland Society to the Village of South

Orange was the only property owned by said corporation. After the sale was consummated, the society distributed all of its assets and a voluntary dissolution was effected.

In the present case the affairs of the Meadowland Society were finally settled in 1924 and all of the money in the treasury of said corporation was distributed pro rata among the stockholders. I have been unable to find any case where trustees in dissolution have been permitted to institute a suit for the violation of a covenant contained in a deed executed under its authority prior to its dissolution several years after the dissolution has been effected. If the restriction in question contained a reverter clause to the Meadowland Society in the event that the restriction was violated at any time it might be urged that the present suit was proper. However, in this case no such clause exists.

It is, therefore, submitted that the trustees in dissolution of a corporation may not, several years after the dissolution of the corporation, maintain an action on a personal covenant contained in a deed given by the corporation during its existence for the reason that such an action is repugnant to both the letter and the spirit of that portion of the New Jersey Corporation Act which deals with the dissolution of corporations. A dissolved corporation is, at common law, dead. By statute, in derogation of the common law, such a corporation is for certain specified purposes, kept alive. The specified purposes are to wind it up and finally settle its affairs. Those purposes cannot be extended to permit it to bring an action, which, if successful, could tend to extend, rather than wind up, its existence and to increase, rather than settle its affairs.

POINT VI.

The Court erred in allowing parol testimony to be introduced in evidence which tended to change, alter and vary the terms of the deed in question.

The deed from the Meadow Land Society to the Village of South Orange states the consideration to be the sum of $71,300 and conveys the premises in question subject to the restrictive covenants hereinbefore mentioned and subject to two certain leases (Exhibit C-3, C. p. 326).

The learned Vice Chancellor over defendants' objection permitted the plaintiff, William T. Baird, to testify as follows:

> "Q. What were your negotiations with the Village? A. I did not understand the question.
>
> Q. I say, what were your negotiations with the Village? A. I negotiated almost entirely with Mr. Philip Miller.
>
> Q. Who was he? A. He was Chairman of the Finance Committee at that time, the Village Finance Committee.
>
> Q. And what was the result of your negotiations? A. The result was that we agreed to turn over the property to the Village for the nominal—for the assessed value, which was a nominal price.
>
> Q. How much was that? A. About $72,000.
>
> Q. Is this the original signed copy of the agreement to which you have referred with the Village of South Orange? A. Yes, sir." (C., p. 78, ll. 9-39.)
>
> "Q. I call your attention, Mr. Baird, to page 7 of the agreement, which reads as follows: 'It is further understood and agreed that said conveyance shall be made upon condition and subject to the restriction that the premises above described shall be used solely as a pub-

lic park or playground or for public park or public playground purposes.' Is that correct? A. Yes, sir.

Q. What was said about that in your negotiations with the Village of South Orange? A. I talked with Mr. Miller about that clause, calling his attention to the clause in the lease to the Field Club, which had the use of the ground for many years. In that lease we always put the clause that no games should be played of a boisterous nature or that would be offensive to the residents surrounding the ground, but it was thought that it was unnecessary to put any more restrictive clause than that already cited because the trustees of the village were supposed to be men who were interested in the Village and would not do anything to harm it.'' (C., p. 79, ll. 9-40.)

''Q. Mr. Baird, you stated that the consideration of $72,850, was nominal—what do you mean by that? A. I mean that the land, at that time, the real estate man told me, at that time, that the lands were worth as much as $400,000 to $500,000.

Q. But why did you, a stockholder and president of the Meadow Land Society sell for less than the value of the ground? A. Because it was my desire to give to the South Orange Village lands that would forever be a beautiful public park or playground.

Q. Well, you say public park or playground —was it your intention that professional baseball exhibitions should be played there? A. We had no thought of such a thing, did not think for a moment that such games would be allowed.'' (C., p. 83, ll. 20-35; C., p. 84, ll. 8-11.)

''Q. Mr. Baird, did you negotiate the lease with the Field Club which is marked Ex. D-7 in this case? I show you the lease. A. Yes.

Q. The lease is dated November 23, 1923. Were negotiations pending at that time with the Village of South Orange for the purchase of this land? A. Yes.

Q. Can you tell me about the negotiating of this lease dated November 23, 1923? A.

The president and several members of the Board of Directors of the Field Club spoke to me about their position as they knew the negotiations were going on and they told me that they would put considerable money onto the lands and improvements, such as tennis courts and new greens, etc., and after talking the matter over with them and including Mr. George Becker, who was then a director of the Field Club, it was agreed by all of us that the lands could not be used very long for golf purposes, as it was becoming very dangerous, driven balls having struck a number of persons.

Q. Now, let me ask you then, the George Becker to whom you have referred has been called as a witness in this case, has he not? A. He has.

Q. And was at that time also a member of the Board of Trustees of the Village of South Orange? A. Yes.

Q. As well as a member of the Field Club Board? A. Yes.

Q. Was this lease made in view of the fact that a sale to the Village was contemplated? A. Yes.

Q. In the agreement between the Meadow Land Society and the Village of South Orange marked Ex. C-2, on page 5 thereof, there are certain provisions for the payment by the Village of South Orange to the Field Club of certain sums in case the lease is terminated, do you know of your own knowledge whether the lease was terminated? A. Yes, it was terminated.

Q. Well, when? A. I can't remember the exact date. I think it was in 1926 or 1927.

Q. And pursuant to the provisions contained in the agreement, was money paid by the Village to the Field Club, or *vice versa?* A. It was, *vice versa.*

Q. That is, the Village paid the Field Club some money? A. Yes.

Q. Had there been a lease with the Field Club prior to the lease of November 24, 1923? A. Yes.

Q. How much more time had the former lease to run, do you recall? A. I cannot remember that'' (C., p. 309, ll. 8-38; C., p. 310, ll. 1-40; C., p. 311, ll. 1-28).

The Court also over defendants' objection permitted the witness, William C. Fiedler, to testify as follows:

''Q. Now, have you made an appraisal of the value of the property conveyed to the Meadow Land Society to the Village of South Orange in 1924? A. As of 1924, yes.

Q. Yes, as of March, 1924, what is your estimate? A. $478,787'' (C., p. 101, ll. 38-40; C., p. 102, ll. 1-8).

The Court also over defendants' objection permitted the witness, Frank H. Taylor, to testify as follows:

''Q. Mr. Taylor, have you made an appraisal of the real estate which was conveyed by the Meadow Land Society of South Orange to the Village of South Orange in March, 1924? A. As of March, 1924, yes, sir.

Q. I show you Ex. C-1, being a sketch of the property in question, and ask you if that is the property you estimated on? A. Yes, sir, it is.

Q. And what, Mr. Taylor, in your opinion was the fair market value of that property in March, 1924? A. $401,484'' (C., p. 107, ll. 5-18).

''Q. In your opinion, Mr. Taylor, what effect on the value of the property would the paying of professional baseball to which an admission is charged and to which great crowds are gathered have on the property? A. My opinion is that the playing of professional games on Sunday in a neighborhood of that character depreciates the value of property at least a third'' (C., p. 110, ll. 15-40; C., p. 111, ll. 1-8).

This testimony was introduced and an attempt to show (1) that the consideration of $71,300.00, as set forth in the deed, was not the true consideration but was a mere nominal consideration; (2) that the restrictive covenant rather than limiting the use of the lands was a part of the consideration for the conveyance; and (3) that by "public park" and "public playground" was meant not the accepted meaning of those words as found in the cases but a narrower or more restricted meaning which would exclude the playing of professional baseball.

And so the court below found. The learned Vice Chancellor in the course of his opinion said, at pages 388, 389:

> "The question of the consideration for the deed was considered at some length at the hearing and it has a bearing on the case for this reason. If the money paid was less by a considerable amount than the actual value of the land, it strengthens the complainant's contention that the restrictions were an inducement to the transference of the land and were an integral part of the consideration itself. Although I believe that the restrictions should in any event be enforced according to their true intent and purpose.
>
> "The Village paid $71,300 for the property. Complainant called two real estate experts of unquestioned ability and reputation. One testified that the property at the time of the transfer was worth in round figures $475,000; the other's valuation was in round numbers $400,000. One of defendants' witnesses gave the value at $300,000; another at $180,000. There was still another witness for the defendants, to whose testimony I attach no weight whatever. The reason for this is that he was one of the village assessors. He testified that after taking the oath to assess property according to the Constitution, he fixed the value at about $72,000. He then, after taking an oath before me, stated that

> the true value at the time of his assessment was at least $50,000 higher. It is apparent that his sworn estimate was at one time or the other incorrect and therefore none of his testimony is of any value. From the admissible testimony, it is plain that $71,300 was far below the market value of the land. Taking the lowest valuation given by a witness for the defendant it was less than half of its value, and taking the highest, less than one-fourth. The lowest testimony for complainant makes it less than one-fifth. It seems clear, therefore, that there was consideration in addition to the money paid, which led the Meadowland Society to convey to the Village. That additional consideration was, I believe, the restrictive covenant above alluded to."

The admission of the above quoted testimony for such a purpose, we submit, is clearly within the prohibition laid down in the case of *Naumberg* vs. *Young* (44 N. J. L. 331), and since followed by our Courts, to the effect that parol evidence of contemporaneous or prior understandings or negotiations cannot be introduced to supersede, contradict or vary the terms of valid written contracts.

See also

Wills vs. *Camden Lime Co.*, 104 N. J. L. 428;

Coglin vs. *Englewood Heights Estates*, 8 N. J. Misc. Rep. 436.

POINT VII.

The Court of Chancery has no jurisdiction to compel a municipality to account for moneys received and disbursed by it in the conduct of its internal affairs.

The lower Court illegally permitted evidence concernings moneys received and disbursed in connection with the playing of baseball games at the playground during the years 1929 and 1930, as shown by Ex. C-13 (see S. of C., pp. 340 to 356, inclusive). In the first place, neither the Village of South Orange nor the Board of Recreation Commissioners had anything to do with the conduct of baseball games during the season of 1929. The evidence is uncontradicted that during that period the games were conducted by the South Orange Baseball Club. Permission to conduct said games was granted to said club by the Board of Recreation Commissioners. If this procedure was not proper, the complainant-respondent or any other taxpayer of the Village of South Orange should have acted at that time by instituting an action in the law courts to review the resolution of said Commissioners granting the permission above indicated.

As to the receipts and disbursements for the season of 1930, the matter has been discussed in another point in this brief and will not be repeated here.

The rule is so well settled that the Court of Chancery has no right to investigate the financial transactions of any municipality that we deem it unnecessary to take the time of this Court in discussing the decisions.

The same rule applies with equal force regarding the testimony of Frank Fenner, Village Treas-

urer, and M. A. Fitzsimmons, Village Clerk, concerning expenditures of the Playground Commission for the improvement of the playground after the purchase from the Meadowland Society and the cost of equipment placed thereon. These expenditures were part of the playground budget and were perfectly proper.

Conclusion.

We respectfully submit that the Court of Chancery has gone far afield in determining the issues involved in this case. By its decree it has prevented the Village of South Orange from the free use and enjoyment of the property in question for which it paid a valuable consideration. Further, said decree prevents for all time the use of said property for games, exhibitions and concerts on Sunday to which an admission may be charged, despite the fact that the Legislature at some future time may repeal the Vice and Immorality Act. The decree goes even further than that. It enjoins the municipality against the conduct of games, exhibitions and concerts to which an admission is charged on *any* day of the week, in direct contravention of the power vested in the municipalities of this State by the Legislature. It is, therefore, respectfully urged that the decision of the Court of Chancery be reversed, with costs.

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