

New Jersey Court of Errors and Appeals.

HENRY V. HOAGLAND,	}
<i>Plaintiff in Error.</i>	
<i>vs.</i>	
ABRAHAM VEGHTE,	
<i>Defendant in Error.</i>	

In Covenant.
Writ of Error to
Supreme Court.

STEPHEN B. RANSOM, *Attorney of Plaintiff in Error.*
MERCER BEASLEY, *Attorney of Defendant in Error.*

This action was commenced in the Circuit Court of the county of Somerset by summons returnable June 10 30th, 1857. After a trial in the Circuit Court and a verdict and judgment for the plaintiff in error, the cause was removed from the said Circuit Court into the Supreme Court by writ of Error sued out by the defendant in error. The judgment of the Circuit Court of the county of Somerset was reversed in the Supreme Court after two arguments had there.

The following is the record of the said cause in the Supreme Court, containing the pleadings, the judgment of the Circuit Court, assignment of errors in Supreme 20 Court, and the judgment of the Supreme Court thereon:

ABRAHAM VEGHTE,

vs.

HENRY V. HOAGLAND.

} In Error, to
Somerset County.
} Reversal.

MERCER BEASLEY, *Attorney.*

As yet of the term of February, A. D., eighteen hundred and fifty-nine.

Witness HENRY W. GREEN, Esquire,

Chief Justice.

CHAS. P. SMITH, *Clerk.*

10 Be it remembered, that heretofore, to wit, on the tenth day of February, A. D., eighteen hundred and fifty-nine, the State of New Jersey sent its writ close, to the Judges of the Circuit Court of the County of Somerset, in the words following, to wit :

NEW JERSEY, *to wit:*

[L. S.] The State of New Jersey, to the Judges of the Circuit Court of the county of Somerset, Greeting :

Because in the record and proceedings, and also, in
20 the rendering of judgment, in a certain plaint, which was before our said Circuit Court, between Henry V. Hoagland, plaintiff, and Abraham Veghte, defendant, in a plea of covenant, manifest error hath intervened, as is said, to the great damage of the said Abraham Veghte, as by his complaint, we are informed : We being, therefore, willing that the error, if any, should in due manner be corrected, and the parties aforesaid, have full and speedy justice done, in this behalf, do command you, that if the judgment thereof be given, then, the record
30 and proceedings aforesaid, with all and singular, the

matters relating thereto, under your seal, distinctly and openly, you send, and this writ, so that you have the same before our Justices of our Supreme Court of Judicature, at Trenton, on the fourth Tuesday of February, instant; that the record and proceedings aforesaid, being inspected, we may further do, in that behalf, for correcting the same errors, what of right, and according to the Constitution and Laws of this State ought to be done.

Witness his Honor, Henry W. Green, Chief Justice, at 10
Trenton, aforesaid, the tenth day of February, in the year eighteen hundred and fifty-nine,

G. H. BROWN, *Attorney*.

CHA'S. P. SMITH, *Clerk*.

Which said writ was afterwards, to wit, at the term of February, A. D., eighteen hundred and fifty-nine, by the Judges aforesaid, returned, with a certain schedule thereto annexed, as follows:

Somerset County Circuit Court of the term of September, in the year of our Lord one thousand eight 20
hundred and fifty-eight.

SOMERSET COUNTY, *ss.*:

Henry V. Hoagland puts in his place Stephen B. Ransom, his attorney, against Abraham Veghte, in a plea of covenant broken.

SOMERSET COUNTY, *ss.*:

Abraham Veghte puts in his place George H. Brown, his attorney, at the suit of Henry V. Hoagland in a plea of covenant broken.

Somerset County Circuit Court of the thirtieth day of 30
June, as yet of the term of April, in the year of our Lord one thousand eight hundred and fifty-seven.

SOMERSET COUNTY, ss.:

Abraham Veghte, the defendant in this suit, was summoned to answer unto Henry V. Hoagland, the plaintiff therein, of a plea of a breach of covenant:

And thereupon, the said plaintiff, by Stephen B. Ransom, his attorney, complains against the said defendant: For that whereas, heretofore, to wit: on the twenty-third day of July, in the year of our Lord one thousand eight hundred and thirty-eight, at Bridgewater, in the county
 10 of Somerset, and within the jurisdiction of this court, by a certain article of agreement, then and there made between the said Henry V. Hoagland of the one part, and the said Abraham Veghte of the other part, which said article of agreement, sealed with the seal of the said Abraham Veghte, the said plaintiff now brings here into court, the date whereof is a certain day and year therein named, to wit, the same day and year as aforesaid; the said plaintiff, for, and in consideration of the sum of one
 20 dollar, to him paid by the said Abraham Veghte, did covenant and agree, to and with the said Abraham Veghte, to allow the said Abraham Veghte full power, authority and permission to erect a mill dam on the land of the said plaintiff, at Griggstown, in the said county of Somerset, opposite a certain place, called the Tavern, and at the bend of the Millstone River, and also full power, authority and permission to stop a large ditch, that then led from above the dam of the mill, then formerly, in the possession of William C. Elmendorf, to a point below the dam.

30 And the said Abraham Veghte did therein and thereby covenant and agree to stop up the said last-mentioned ditch, provided it should be found to his interest to do so. And that he should dig a ditch from the above-mentioned ditch through the low lands of the said plaintiff, to fall into the river below the said new dam. And the said plaintiff did therein and thereby further cove-

nant and agree with the said defendant to grant to him
 the said defendant full power, authority, and permission
 to dig the said last-mentioned ditch ; and further, that
 he, the said defendant, should have full power, authori-
 ty, and permission to go upon the lands of the said
 plaintiff with wagons, horses, and workmen, as might
 be necessary to comple the said dam, and the stopping
 up and digging of the said ditches, and such other work
 as might be necessary in the construction of his mill,
 and the appurtenances thereunto. And it was therein and 10
 thereby further mutually agreed by and between the
 said plaintiff and defendant, that all damages sustained
 by the said plaintiff, by reason of the privileges and
 authority therein granted to the said defendant, should be
 paid by the defendant to the said plaintiff, which damages
 were to be appraised by two disinterested persons, one
 selected by each of the parties to the said article of
 agreement, and in case the two selected could not agree
 that they should choose a third man, whose report, or
 the report of any two of them, should be final and con- 20
 clusive between the said parties, as by the said articles
 of agreement, a copy of which is hereunto annexed and
 made part of this declaration, reference being thereunto
 had, will more fully appear. And the said plaintiff, in
 fact, saith, that at the time of the making of the said
 articles of agreement hereinbefore mentioned, he, the
 said plaintiff, was and still is lawfully seized and pos-
 sessed of a certain tract of wood, arable, and meadow
 land, containing about one hundred and seventy acres of
 land, with the appurtenances, situate in the township of 30
 Montgomery, in the county of Somerset aforesaid, lying
 along and upon the said creek or river, commonly called
 the Millstone River, abutting toward the north on the
 lands of Brewer Wyckoff, and on the said Millstone River,
 toward the east on the said Millstone River, toward
 the south on the said Millstone River, and on lands of
 John S. Hoagland and Abraham C. Beekman, and to-

ward the west on lands of Peter L. Hoagland, and being the same lands referred to in the said articles of agreement hereinbefore set forth. And the said plaintiff, in fact, further saith, that he, the said plaintiff, hath well and truly performed and fulfilled all and singular the covenants and agreements in the said article of agreement mentioned, on his part and behalf to be done and performed. And that he did permit the said defendant to erect, and that the said Abraham Veghte did erect, the

10 said mill dam on the said land of the said plaintiff, hereinbefore set forth, at Griggstown aforesaid, in the county aforesaid, opposite the said tavern, and at the said bend in the said Millstone River. And also, that the said plaintiff did permit the said defendant to stop up, and the said defendant did stop up, the said large ditch that led from above the dam of the mill, formerly in possession of William C. Elmendorf, across the said lands of the said plaintiff, to a point below the said dam. And that the said defendant did dig

20 a ditch on the said lands of the said plaintiff, from the said last mentioned ditch through the low lands of the said plaintiff, to fall into the river below the said new dam. And the said plaintiff, in fact, further saith, that he, the said plaintiff, did permit the said defendant to go upon, and the said defendant did thereupon go upon, the said lands of the said plaintiff, with wagons, horses, and workmen, and complete the said dam, and stop up and dig the said ditches, and do such other work as was necessary in the construction of his said mill, and the appurtenances, to wit: on the day and year last aforesaid,

30 at Bridgewater aforesaid.

And the said plaintiff, in fact, further saith, that by reason of the erection of the said mill dam, by the said defendant, on the said land of the said plaintiff, and the filling up and digging of the said ditches by the said defendant, as aforesaid, the waters of the said Millstone River, which, before then, used to flow in their accus-

tomed channel, along the boundary of the said tract of
 land of the said plaintiff, were turned out of their said
 accustomed channel, and caused to flow over and upon,
 and overflow the said lands of the said plaintiff, for a long
 space of time, to wit: from the twenty-second day of
 November, in the year of our Lord one thousand eight
 hundred and forty-nine, until the time of the commence-
 ment of this suit, and thereby, then and there, greatly
 injured and spoiled the said wood, arable and meadow
 land of the said plaintiff, and washed away large quanti- 10
 ties of the soil of the said plaintiff's said land, and greatly
 water-soaked and soured the remainder of the said arable
 and meadow land, and injured, spoiled and destroyed the
 grasses, crops and herbage then growing on the said land,
 and rendered the said land wholly unfit for cultivation
 during all that time; and washed large ditches through
 the said land, and washed away and destroyed the
 fences, posts and rails of the said plaintiff, then being
 upon the said land; and killed, destroyed, and washed
 away the trees then standing, being and growing upon 20
 the said land; and washed and carried away and
 destroyed the sheep, cattle, horses and hogs of the said
 plaintiff, then being upon and depasturing the said lands
 of the said plaintiff; and washed, carried and deposited
 upon the said land of the said plaintiff, large quantities
 of earth, gravel, stones, and other materials and matter,
 during all the time aforesaid, to wit: from the said twenty-
 second day of November, in the year of our Lord one
 thousand eight hundred and forty-nine, hitherto, and
 while the said plaintiff was seized and possessed thereof, 30
 as aforesaid; whereby the said plaintiff, during all that
 time, hath been deprived of the use and benefit of his
 said arable, meadow and wood land, in so beneficial a
 manner as he would otherwise have used and enjoyed
 the same, had not the said mill dam been built, and the
 said ditches stopped up and dug by the said defendant,
 as aforesaid, and hath sustained damages, by reason of the

premises, to a large amount, to wit: to the amount of two thousand dollars, which the said defendant was, by the terms of said agreement, bound to pay to the said plaintiff, whereof the said defendant, afterwards, and before the commencement of this suit, to wit, on the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and fifty-five, to wit, at Bridgewater aforesaid, had notice, and was then and there requested by the said plaintiff, to pay him, the said plaintiff, the said damages, as aforesaid, so as aforesaid sustained by the said plaintiff. And the said plaintiff, in fact, further says, that the said defendant did not then and there pay, nor hath he at any time since, hitherto, paid the said damages so sustained by the said plaintiff, as aforesaid, or any part thereof, to the said plaintiff, contrary to the tenor and effect of the said article of agreement, and of the covenant of the said defendant in that behalf, made, as aforesaid; but the same are, and every part thereof is still in arrear, and unpaid to the said plaintiff, to wit, at Bridgewater, aforesaid. And the said plaintiff, in fact, further saith, that afterwards, to wit, on the day and year last aforesaid, to wit, at Bridgewater aforesaid, he, the said plaintiff, selected and appointed David Dunn, Esquire, a disinterested person, to act with such person as the said defendant might select and appoint to appraise the said damages, so as aforesaid sustained by the said plaintiff, by reason of the erection of the said mill dam, and stopping up, and digging the said ditches by the said defendant, as aforesaid, and then and there requested the said defendant to select another disinterested person to act with the said David Dunn, under, and by virtue of the said article of agreement in appraising and ascertaining the amount of the said damages, so as aforesaid sustained by the said plaintiff, of which said selection of the said David Dunn, by the said plaintiff, for the purpose aforesaid, the said defendant then had notice, to wit, at Bridgewater afore-

said. And the said plaintiff, in fact, further says, that the said defendant afterwards, to wit, on the day and year last aforesaid, to wit, at Bridgewater aforesaid, wholly refused, and still doth refuse, although often requested, to select a person to act with the said David Dunn, so selected by the said plaintiff, or with any other person to be selected by the said plaintiff, in the appraisement of the said damages, so as aforesaid sustained by the said plaintiff, contrary to the form and effect of the said article of agreement, and the said covenant of him, 10 the said defendant, by him in that behalf made, as aforesaid, to wit, at Bridgewater aforesaid. And the said plaintiff saith, that he, the said defendant, hath not kept with him the covenants so made between them, as aforesaid, but hath broken the same, and to keep the same with the said plaintiff hath hitherto wholly refused, and still doth refuse, to the damage of the plaintiff, of two thousand dollars, and therefore he brings suit, &c.

The following is a copy of the article of agreement 20 referred to in the foregoing declaration, and made a part thereof :

Article of Agreement, made and entered into, this 23d day of July, in the year of our Lord, one thousand eight hundred and thirty-eight, between Henry V. Hoagland, of the township of Montgomery, in the county of Somerset, and state of New Jersey, of the one part, and Abraham Veght, of the township of Franklin, in the county and state aforesaid, of the other part, as follows, to wit: The said Henry V. Hoagland, for, and in consideration of the sum of one dollar, to him paid (the receipt whereof is hereby acknowledged,) by the said 30 Abraham Veghte, both for himself, his heirs, executors, and administrators, covenant and agree, to and with the said Abraham Veghte, his executors, administrators, and assigns, to allow the said Abraham Veghte full power, authority, and permission to erect a mill dam

on the lands of the said Henry V. Hoagland, at Griggstown, in the county aforesaid, opposite the Tavern, and at the bend of the Millstone River; and, also, full power, authority, and permission to stop a large ditch that leads from above the dam of the mill, formerly in possession of William C. Elmendorf, at a point below the dam. And the said Abraham Veghte hereby agrees for himself, his executors, administrators, and assigns, to stop up said ditch, provided it shall be found to be his interest

10 to do so. And, further, that he, the said Abraham Veghte, shall dig a ditch from the above-mentioned ditch, through the low lands of the said Henry V. Hoagland, to fall into the river below the new dam. And the said Henry V. Hoagland hereby, for himself, his heirs, executors and administrators, agrees with the said Abraham Veghte, his executors, administrators and assigns, to grant to him full power, authority and permission to dig the said last-mentioned ditch. And further, that he, the

20 said Abraham Veghte, shall have full power, authority and permission to go upon the land of the said Henry V. Hoagland, with wagons, horses and workmen, as may be necessary to complete the said dam, and the stopping up and digging of the said ditches, and such other work as may be necessary in the construction of his mill and the appurtenances thereto. And it is hereby further mutually agreed between the said parties, that all damages sustained by the said Henry V. Hoagland, by reason of the privilege and authority herein granted to the said Abraham Veghte, shall be paid by the said

30 Abraham Veghte, which damages are to be appraised by two disinterested persons, one selected by each of the parties, and in case the two thus selected cannot agree, that they shall choose a third, when reportor, the report of any two of them, shall be final and conclusive between the parties.

In witness whereof the said parties hereunto set their

hands and seals, this 23d day of July, in the year of our Lord, one thousand eight hundred and thirty-eight.

Signed, sealed and delivered in the presence of

ABRAHAM VEGHTE, [L. s.]

HENRY V. HOAGLAND. [L. s.]

And the said defendant, by George H. Brown, his attorney, comes and defends the wrong and injury, when, &c., and says, that always, after the sealing and making of the said article of agreement, to the day of the commencement of this suit, he hath fulfilled, performed and kept all and singular the covenants and agreements on the part of him, the said defendant, to be fulfilled, performed and kept, and according to the force, form and effect of the said article of agreement, and of this he puts himself upon the country, &c. 10

And for a further plea in this behalf, by leave of the Court here, for this purpose, first had and obtained, the defendant says, that the plaintiff ought not to have or maintain his aforesaid action thereof against him, because as to the breach of covenant, above supposed to be made in this, that the defendant has not paid all the damages sustained by the plaintiff, by reason of the erection of the said dam, and the stopping of the said big ditch, and digging the said new ditch, the defendant says, that afterwards, to wit, on the twenty-second day of November, in the year eighteen hundred and forty-nine, at Bridgewater aforesaid, he, the defendant, paid to the plaintiff all the said damages, so sustained by him, to wit, the sum of three hundred and ninety-three dollars, and of this he puts himself upon the country, &c. 20 30

And for a further plea in this behalf, by like leave of the Court, the defendant says, that the plaintiff ought not to have or maintain his aforesaid action thereof, against him, because he says, that after the making of

the said article of agreement in the declaration mentioned, and before the commencement of this suit, to wit, on the first day of October, in the year eighteen hundred and forty-five, at Bridgewater aforesaid, in pursuance of the said article of agreement, they, the said plaintiff and defendant, mutually agreed to select two disinterested persons, to assess the damages therein mentioned, one by each of the said parties, and the plaintiff thereupon selected one Elijah Stout, and the defendant one Ferdinand S. Schenck, as arbitrators, to assess the said damages.

And the defendant further says, that afterwards, to wit, on the thirteenth day of October, in the year last aforesaid, at Bridgewater aforesaid, the said arbitrators having duly examined and considered the subject matter of the said damages, in the said article of agreement mentioned and described, did then and there make and publish their award, in writing, under their hands, of and concerning the premises: And thereby, then and there award and declare, of and concerning the damages so referred to them, that they estimated and assessed the damages and loss sustained by the plaintiff, by the erection of the said mill dam, up to the said thirteenth day of October, in the year last aforesaid, as follows, to wit: two acres and a half of said meadow lot, so washed away, and broken, as to be waste, or valueless, which, estimating at sixty dollars per acre, the value of the land before the soil was broken or injured, makes one hundred and fifty dollars; one acre, damaged in part, twenty-five dollars. Interest on the above, with other damages, one hundred dollars. And the defendant further says, that the said several sums of money, so assessed, amount to the sum of two hundred and seventy-five dollars, which said, last mentioned sum of money was then and there awarded, by the said arbitrators, to be due from the defendant, to the plaintiff, of all which, the plaintiff, afterwards, to wit, on the day and year last aforesaid, at

Bridgewater aforesaid, had due notice. And the defendant, thereupon, then and there, paid to the plaintiff the said sum of two hundred and seventy-five dollars, and this, he, the defendant, is ready to verify : wherefore he prays judgment, if the plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

And for a further plea in this behalf, by like leave of the Court, the defendant says, that the plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that after the making of 10 the said article of agreement, in the said declaration mentioned, and before the commencement of this suit, to wit, on the sixteenth day of August, in the year eighteen hundred and forty-seven, at Bridgewater aforesaid, they, the said plaintiff and defendant, mutually agreed to select two other disinterested persons to assess the damages, in the said article of agreement mentioned, and the plaintiff thereupon selected one Martin S. Garretson, and the defendant one Peter A. Voorhees, as arbitrators, to assess the said last-mentioned damages, and 20 the said Martin S. Garretson and Peter A. Voorhees not being able to agree, they then, pursuant to the said agreement, chose Nicholas Van Winkle, to act with them in assessing the said last-mentioned damages.

And the said defendant further says, that afterwards, to wit, on the twenty-second day of October, in the year eighteen hundred and forty-seven, at Bridgewater aforesaid, the said Martin S. Garretson, Peter A. Voorhees, and Nicholas Van Winkle, arbitrators as aforesaid, having duly examined and considered the subject matter 30 of the said damages so referred to them, did then and there make and publish their award in writing, under their hands, of and concerning the premises, and did thereby, then and there, among other things, award and declare, of and concerning the damages so referred to

them, in the words and figures, and to the tenor and effect following, that is to say :

We, the said Martin S. Garretson, Peter A. Voorhees, and Nicholas Van Winkle, do, to the best of their judgment, estimate and assess the damage and loss sustained by Henry V. Hoagland, in the piece of meadow land, by the erection of the said mill dam, from the thirteenth day of October, A. D., 1845, until this day, October 22d, 1847, as follows: One-tenth part of an acre of land
 10 along the ditch leading from the big ditch to the river, below the mill dam, and along the angle of land below the fence, leading from the mill pond to the above-named ditch, so washed away as to be waste or valueless, which, estimating at \$60 per acre, the value of the land before the soil was broken or washed away, makes \$6.00. One acre of land, called the green flat, in round meadow, where the above-mentioned ditch passes down to the river, damaged in part, together with all other damage done to said meadow lot, up to this date,
 20 \$49.50-\$55.50.

We, the subscribers selected, as hereinbefore mentioned, do make report that we find due to Henry V. Hoagland the sum of fifty-five dollars and fifty cents, as per statement above. And so the defendant says that the said arbitrators then and there awarded to the plaintiff the said sum of fifty-five dollars and fifty cents for the said damages, to them submitted and referred as aforesaid, of all of which, the plaintiff afterwards, to wit, on the day and year last aforesaid, at Bridgewater aforesaid, had due notice, and the defendant thereupon paid
 30 to the plaintiff the said sum of fifty-five dollars and fifty cents. And this he is ready to verify. Wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him, etc.

And for a further plea in this behalf, by like leave of

the Court, the said defendant says, that the plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that after making of the last above-mentioned award, to wit, on the twenty-ninth day of October, in the year 1849, at Bridgewater aforesaid, the plaintiff alleging that he had sustained further damages, by reason of the erection of the said dam, and digging of the said ditch, in the said agreement mentioned, the plaintiff and defendant mutually agreed to select two other disinterested persons to assess the damages which had been done to the lands of the plaintiff in said article of agreement mentioned, by reason of the building of said dam and digging of said ditch, to wit, the damages arising therefrom since the 22d day of October, 1847. And the plaintiff thereupon selected Joseph Thompson, and the defendant one William A. Voorhees, arbitrators, to assess the last-mentioned damages. And the said Joseph Thompson and William A. Voorhees, not being able to agree, pursuant to the said articles of agreement, chose Ralph Voorhees, to act with them in assessing the said damages last mentioned. And the defendant further says that afterwards, to wit, on the twenty-second day of November, in the year 1849, at Bridgewater aforesaid, the said Joseph Thompson, William A. Voorhees, and Ralph Voorhees, arbitrators as aforesaid, having duly examined and considered the subject matter of the said damages so referred to them, did then and there make and publish their award, in writing under their hands, of and concerning the premises, and did thereby, then and there award and declare, of and concerning the damages so referred to them, in the words and figures, and to the tenor and effect following, that is to say: We, the said Joseph Thompson, William A. Voorhees, and Ralph Voorhees, arbitrators as aforesaid, do, to the best of our judgment, skill, and understanding, estimate and assess the damage and loss sustained by Henry V. Hoagland,

in the piece of meadow land, by the erection of the said mill dam, from the twenty-second day of October, A. D., eighteen hundred and forty-seven, (the date of the last award between said parties) until this day, viz., the twenty-second day of November, A. D., eighteen hundred and forty-nine, at the sum of seventy-seven dollars and eighty-eight cents, a part of which sum is by us assessed on lands which former arbitrators had valued, in their assessment and award, at sixty dollars
 10 per acre.

We, the present arbitrators, considering and estimating the difference between the interest of said moneys, so assessed and awarded as aforesaid, and the value of the crops which said land would have produced to the said Hoagland if not so damaged, to be fifteen dollars and thirty-eight cents, and for all other damages done to said lands by reason of the erection of said mill dam, we do assess the sum of sixty-two dollars and fifty cents. And we do award that the said Abraham Veghte do pay
 20 to the said Henry V. Hoagland the said sum of seventy-seven dollars and eighty cents, on or before the first day of December next, of all which the plaintiff afterwards, to wit, on the day and year last aforesaid, at Bridgewater aforesaid, had due notice. And the defendant thereupon paid to the plaintiff so much of the damages so awarded as he was legally bound to pay, to wit, the said sum of sixty-two dollars and fifty cents. And the defendant further says, that the whole subject matter of damages mentioned in the said article of agreement was submit-
 30 ted to the said last-mentioned arbitrators, and that their said award of damages is final and conclusive between the parties. And this he is ready to verify ; wherefore he, the defendant, prays judgment, if the plaintiff ought to have or maintain his aforesaid action thereof, against him, &c.

And for a further plea in this behalf, by like leave of

the Court, the defendant says that the plaintiff ought not to have or maintain his aforesaid action thereof, against him, because, as to the breach of covenant by the defendant, above supposed to be made, in this, that the plaintiff selected the said David Dunn to assess further damages under the said article of agreement, and that the defendant refused to select another disinterested person to act with the said David Dunn in assessing such damages, he says, that the selection of the said David Dunn by the plaintiff was made after the above-mentioned 10 several awards had been made and paid by the defendant, as is above, in the third, fourth and fifth pleas of the defendant, particularly stated and set forth; and the said plaintiff refused at the time, when, &c., although requested to do so by the defendant, to make any further specification of the further damages claimed by him, or in the submission of the question of damages again to arbitration, under the said article of agreement so proposed by him, to limit the same to such matters as had not been arbitrated and determined finally between the parties. 20

And that, therefore, the defendant refused to join in another arbitration and assessment of damages, under the said articles of agreement, unless the submission was specially made of such supposed damages as had not been assessed in favor of the plaintiff in the awards made and paid by the defendant, as above stated, to wit, at Bridgwater aforesaid. And this he is ready to verify; wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him, &c. 30

And the said plaintiff, as to the pleas of the said defendant, by him, first and secondly, above pleaded, and whereof he hath put himself upon the country, doth the like. And the said plaintiff, as to the said pleas of the said defendant by him, thirdly, fourthly, fifthly and

lastly, above pleaded, saith, that the same, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having or maintaining his aforesaid action thereof against the said defendant, and that he, the said plaintiff, is not bound by law to answer the same, and this, the said plaintiff is ready to verify. Wherefore, by reason of the insufficiency of the said several pleas in this behalf, the said
 10 plaintiff prays judgment, and his damages, by him sustained, on occasion of the said breaches of covenant, in the said declaration mentioned, to be adjudged to him, &c.

And the said Abraham Veghte saith, that his said pleas by him, thirdly, fourthly, fifthly and lastly, above pleaded, and the matters therein contained, in manner and form, as the same are above pleaded and set forth, are sufficient, in law, to bar and preclude the said Henry V. Hoagland from having or maintaining his aforesaid
 20 action against him. And he, the said Abraham Veghte, is ready to verify and prove the same, when, and in such manner as the said Court here shall direct and award. Wherefore, inasmuch as the said Henry V. Hoagland hath not answered the said pleas, nor hitherto, in any manner, denied the same, the said Abraham Veghte prays judgment, and that the said Henry V. Hoagland may be barred from having or maintaining his aforesaid action thereof against him, the said Abraham Veghte. And now, at the April term of said Court, in the year of
 30 our Lord, one thousand eight hundred and fifty-eight, the above declaration, pleas and demurrer having been by the said Court seen and inspected ; and the arguments of the counsel of the respective parties thereon being by the Court now here heard, and the same being fully understood, and mature deliberation being thereupon had ; and it now appearing to the Court that the said pleas,

by the said Abraham Veghte, thirdly, fourthly, fifthly, and lastly, above pleaded, and the matter therein contained, are not sufficient, in law, to bar or preclude the said Henry V. Hoagland from having or maintaining his aforesaid action thereof, against the said Abraham Veghte, it is ordered, that the said demurrer to the said pleas be in all things sustained, and the said pleas overruled, with costs, to be taxed.

Therefore, the Sheriff of the county of Somerset, aforesaid, is commanded that he cause to come here, 10
before our judge of the Circuit Court to be holden at Bridgewater, in and for said county, on the first Tuesday of September, in the year of our Lord, one thousand eight hundred and fifty-eight, twelve, &c., by whom, &c. And who neither, &c., to recognize, &c. Because, as well, &c., the same day is given to the parties here. At which day, here, come as well the said Henry V. Hoagland, by his attorney aforesaid, as the said Abraham Veghte by his said attorney. And the Sheriff of the said county, that is to say, Elias Hoagland, Esquire, 20
now returneth before the same court, at Bridgewater aforesaid, the same writ of *venire facias* to him, in form aforesaid directed, together with a panel of the names of the jurors to the same annexed, in all things served and executed. And the jurors thereupon empaneled, and drawn by ballot, according to the form of the statute, &c., and called over, likewise come, who, to speak the truth of the premises within contained, being elected, tried and sworn on their oath, say, that the said Abraham Veghte is guilty of the breach of the covenant within 30
laid to his charge, in manner and form, as the said Henry V. Hoagland hath within complained against him. And they assess the damages of the said Henry V. Hoagland, by reason thereof, over and above his costs and charges by him, about his suit, in this behalf expended, to the sum of five hundred dollars.

Therefore, it is considered that the said Henry V. Hoagland do recover against the said Abraham Veghte, his damages, amounting to the sum of five hundred dollars, in form aforesaid assessed; and also, the sum of ninety-seven dollars and sixty-two cents for his costs and charges by him, about his suit, in that behalf expended, by the court now here, adjudged to the said Henry V. Hoagland, and with his assent; which damages, costs and charges, in the whole, amount to the sum of five hundred and ninety-seven dollars and sixty-two cents. And
 10 the said Abraham, in mercy, &c.

Judgment signed, September 8, 1858.

DANIEL HAINES.

STATE OF NEW JERSEY, } ss.:
 Somerset County, }

I, Samuel S. Hartwell, Clerk of the Circuit Court of said county, do hereby certify, that the above is a true copy of the judgment and proceedings, in the case aforesaid, of record, in my office.

20 In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, this eighteenth day of February, in the year of our Lord, one thousand eight hundred and fifty-nine.

[L. s.]

SAMUEL S. HARTWELL,

Clerk.

I hereby certify, that the above are record and proceedings, duly exemplified, named in the annexed writ; and I hereby, make return thereof to the Justices of the Supreme Court, as by the said writ, I am commanded.

30 Dated February 24, 1859.

DANIEL HAINES,

Judge, &c.

Afterwards, to wit, on the fourth Tuesday of February, in the year of our Lord, eighteen hundred and fifty-nine,

before the Justices of the Supreme Court of Judicature, of the state of New Jersey, at Trenton, comes the said Abraham Veghte, by George H. Brown, his attorney, and says, that in the record and proceedings aforesaid, and also, in giving the judgment aforesaid, there is manifest error in this, to wit: that the declaration aforesaid, and the matters therein contained, are not sufficient in law, for the said Henry V. Hoagland to have or maintain his aforesaid action thereof, against the said Abraham Veghte.

10

There is also error in this, to wit, that by the record aforesaid, it appears, that upon the demurrer to the third, fourth, fifth and last pleas, pleaded by the said Abraham Veghte to the said declaration, and the issue in law thereupon joined, judgment was given, that the said pleas, in form aforesaid pleaded, were not sufficient in law to bar the said Henry V. Hoagland from having and maintaining his said action against the said Abraham Veghte, whereas, by the law of the land, the said judgment ought to have been, that the said pleas were sufficient in law to bar the said Henry V. Hoagland from having or maintaining his said action against the said Abraham Veghte.

20

And there is also error in this, that on the trial of the said cause, the said Judge, before whom the same was tried, charged the jury in the words following, that is to say: "that the defendant was bound, under his agreement, to select an arbitrator, on receiving the notice given by the plaintiff, and that the refusal by the plaintiff to specify more particularly than is done in said notice, what damages he claimed, was no justification for his, defendant's, declining to do so." Whereas, by the law of the land, the refusal of the plaintiff to specify what damage he claimed, was a justification for the defendant's refusal to select an arbitrator; therefore, in this, there is manifest error.

30

And there is also error in this, that on the trial of the said cause, the said Abraham Veghte, by his counsel, called upon the Court to charge the jury, that the damage to be assessed are those arising in consequence of the dam, to the freehold, and not for the loss of, or damage to the crops, which the land might have produced, if not soaked or otherwise injured, which charge the said judge declined to give, whereas, by the law of the land, the said judge ought so to have charged the jury: therefore,
 10 in this, there is manifest error.

And there is error, also, in this, that by the record aforesaid, it appears, that the judgment aforesaid, in form aforesaid given, was given for the said Henry V. Hoagland, against the said Abraham Veghte; whereas, by the law of the land, the said judgment ought to have been given for the said Abraham Veghte, and against the said Henry V. Hoagland.

And the said Abraham Veghte prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed,
 20 annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost, by occasion of the said judgment, &c.

And hereupon, afterwards, that is to say, on the fourth Tuesday of February, in the year of our Lord, one thousand eight hundred and fifty-nine, in the said term of February, the said Henry V. Hoagland, by Ransom & Brown, his attorneys, comes into court, here, and says, there is no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he
 30 prays, that the court now here, may proceed to examine, as well the record and proceedings aforesaid, as the matters aforesaid, assigned for error, and that the judgment aforesaid, given, may in all things be affirmed, &c.

But because our said court now here, is not yet ad-

vised what judgment to give, of and upon the premises, a day is therefore given, to wit, until the twenty-eighth day of February, A. D., eighteen hundred and sixty-one, to hear judgment thereon. At which day, before our said court, come the parties aforesaid, by their respective attorneys, to wit, Mercer Beasley, Esquire, who, by order of our said court now here, is substituted for George H. Brown, Esq., and Stephen B. Ransom, Esq., attorney aforesaid; whereupon, as well the record and proceedings aforesaid, and the judgment aforesaid, in form aforesaid 10 given, as the matters aforesaid, by the said Abraham Veghte, above, for error assigned, being seen, and by the said court now here, fully understood, and mature deliberation being thereupon had, it appears to said court now here, that in the record and proceedings aforesaid, and also, in giving the judgment aforesaid, there is manifest error. And it further appears, that the said pleas by the said Abraham Veghte, thirdly, fourthly, fifthly and lastly above pleaded, in manner and form aforesaid, and the matters therein contained, are sufficient in law to 20 bar the said Henry V. Hoagland from having or maintaining his said action against the said Abraham Veghte. Therefore it is considered, that the judgment aforesaid, for the errors in the record and proceedings aforesaid, be reversed, annulled, and altogether held for nothing, and that the said Abraham Veghte be restored to all things which he hath lost, by reason of the said judgment, and that the said Henry V. Hoagland take nothing by his said writ, but that he be in mercy, &c. And the said Abraham Veghte go thereof, without a day, &c. 30

Judgment signed as of the twenty-eight day of February, A. D., eighteen hundred and sixty-one (1861).

E. W. WHELPLEY.

A true copy of the record of judgment in the foregoing case.

CHARLES P. SMITH,
Clerk.

On the trial of the cause in the Somerset County Circuit Court, before his Honor Daniel Haines, the following Bills of Exceptions were allowed and sealed:

SOMERSET COUNTY CIRCUIT COURT.

ABRAHAM VEGHTE;

adsm.

HENRY V. HOAGLAND.

In case.

Be it remembered, that at a Circuit Court held at Bridgewater, in and for the county of Somerset, on the seventh day of September, in the year eighteen hundred and fifty-eight, before the Honorable Daniel Haines, one of the Justices of the Supreme Court, came on to be tried before a jury of the county duly empaneled and sworn, the issue joined between the said Henry V. Hoagland, plaintiff, and Abraham Veghte, defendant, (*pro ut* the pleadings,) at which day come the parties aforesaid and their respective attorneys; and upon the trial of the said issue the plaintiff proved his title to the premises in question, through the will of his father, Christopher Hoagland, who had been in possession for more than twenty years prior to his death, in the year
 10
 20 eighteen hundred and

The plaintiff also proved and offered in evidence a map of the meadow alleged to be injured by the dam of the defendant, made from actual survey, in March, eighteen hundred and fifty-eight; the black line representing the old big ditch, and the blue line the new big ditch. The plaintiff also offered evidence to prove that the quantity of broken and useless land at the time of the commencement of this suit was considerably greater than at the date of the last award made between the parties, viz., November the twenty-second, eighteen
 30

hundred and forty-nine, that the quality of the crops had deteriorated since the same date, and that the action of the water caused by the erection of the dam had permanently injured the freehold by washing the surface and by soakage. The plaintiff further offered in evidence the summons issued in the case, (*pro ut* the same,) an award made by Joseph Thompson and others, dated November the twenty-second, eighteen hundred and forty-nine, (*pro ut* the same,) a notice to appoint an arbitrator, under the agreement set forth in the declaration, and the defendant's answer to it, dated the notice, May the twenty-eight, A. D., eighteen hundred and fifty-five, and answer July the twenty-eight, A. D., eighteen hundred and fifty-five, (*pro ut* the same.) 10

The plaintiff having rested his case, the defendant moved that he be non-suited, which motion was overruled by the Court.

The defendant then offered evidence to disprove the several matters for which the plaintiff claimed damages as above stated. The defendant also offered in evidence 20 the award first made under the agreement dated October the thirteenth, eighteen hundred and forty-five, by F. S. Schenck and Elijah Stout (*pro ut* the same.) Also the second award under same agreement, by Peter A. Voorhees and others, dated October the twenty-second, eighteen hundred and forty-seven, (*pro ut* the same.) Also a map of the premises, made by William Lytle, deceased, (*pro ut* the same.)

The cause having been rested on both sides, the said Judge then charged the jury among other things— 30

That the defendant was bound under his agreement to select an arbitror on receiving the notice given by the plaintiff, and that the refusal by the plaintiff to specify more particularly than is done in said notice what

damages he claimed, was no justification for his, defendant's, declining to do so.

To which charge of the Judge the defendant excepted, and prayed that this, his bill of exceptions, might be sealed, and it is sealed accordingly.

The defendant then asked the Court to charge the jury that the damages to be assessed are those arising in consequence of the dam to the freehold, and not for the loss of or damage to crops which the land might
10 have produced if not soaked or otherwise injured.

Which charge he declined to give.

And thereupon the defendant excepted, and prayed that this, his bill of exceptions, might be sealed, and it is sealed accordingly.

On the return of the Writ of Error in the Court of Errors and Appeals the plaintiff in error assigned errors as follows :

N. J. COURT OF ERRORS AND APPEALS.

20	HENRY V. HOAGLAND, <i>Plaintiff in Error.</i> <i>vs.</i> ABRAHAM VEGHTE, <i>Defendant in Error.</i>	}	Assignment of Errors.
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Afterwards, that is to say, on the nineteenth day of March, in the year of our Lord, one thousand eight hundred and sixty-one, before the judges of the Court of Errors and Appeals of the State of New Jersey, at Trenton, comes the said Henry V. Hoagland by Stephen B. Ransom, his attorney, and says that in reversing the
30 judgment aforesaid, there is manifest error in this, to

wit : that the said judgment was reversed in the Supreme Court of Judicature of the State of New Jersey, whereas by the law of the land the said judgment ought to have been affirmed ; therefore, in that there is manifest error. And the said Henry V. Hoagland prays that the said judgment of reversal so given by the said Supreme Court of Judicature of the State of New Jersey as aforesaid, may be reversed, annulled, and altogether holden for nought, and that the judgment of the said Circuit Court of the County of Somerset aforesaid, may in all things be affirmed, and that he may be restored to all things which he has lost by occasion of the said reversal, &c. 10

S. B. RANSOM,

*Attorney for and of Counsel with the
said Plaintiff in Error.*

The defendant in error has filed the common joinder in error.

The following is the opinion of the Supreme Court in this case, delivered by Chief Justice WHELPLEY, and and concurred in by Justices Ogden and Van Dyke. 20

SUPREME COURT.

FEB. TERM, 1861.

ABRAHAM VEGHTE,

vs.

HENRY V. HOAGLAND.

} Error to
Somerset Circuit.

BROWN & BEASLEY, *Attorneys for Plaintiff.*

RANSOM & FIELD, *Attorneys for Defendant.*

WHELPLEY, C. J.

This case comes before the Court by writ of error to the Somerset Circuit Court. The judgment was in 30

favor of the defendant in error for damages sustained by
 breach of an agreement under seal, entered into be-
 tween the parties on the 23d July, 1838, by which
 Hoagland, in consideration of one dollar, covenanted to
 allow Veghte full power, authority, and permission to
 erect a mill dam on the land of Hoagland, at Griggs-
 town, in Somerset county, at a bend of the Millstone
 River, and full power, authority, and permission to stop
 a large ditch that then led from above the dam of the
 10 mill formerly in the possession of William C. Elman-
 dorf, to a point below the dam, and Veghte agreed to stop
 up the said ditch, provided it should be found to his in-
 terest to do so; and that he should dig a ditch from the
 above-mentioned ditch through the low lands of the
 plaintiff, to fall into the river below the said new dam,
 and the plaintiff agreed to grant to defendant full power,
 and authority, and permission to dig the said last-men-
 tioned ditch; and further that defendant should have
 authority and permission to go upon the land of the
 20 plaintiff with wagons, horses, and workmen, as might
 be necessary to complete the said dam, and the stopping
 up and digging of the said ditches, and such other work
 as might be necessary in the construction of his mill
 and the appurtenances thereunto; and it was agreed
 between the parties that all damages sustained by the
 said plaintiff, by reason of the privileges and authority
 therein granted to the defendant, should be paid by the
 defendant to the plaintiff, which damages were to be
 appraised by two disinterested persons, one selected by
 30 each of the parties to the agreement, a third to be se-
 lected by the two, in case of their disagreement. The
 report of any two of them to be final and conclusive
 between the parties.

To this declaration the defendant filed six pleas, to
 the third, fourth, fifth, and sixth of which the plaintiff
 demurred. The demurrer was sustained as to all the

pleas demurred to, and after a trial upon the issues joined upon the first and second pleas, and verdict for the plaintiff, the case is brought here, and errors assigned upon the judgment on the issues of law, and upon the charge of the Court to the jury.

The declaration sets forth, as a breach of the agreement, that the plaintiff permitted the defendant to erect, and that he did erect, the mill dam as stipulated, and that the defendant stopped up the ditch and dug the other ditch specified in the agreement, and that the defendant went upon the lands of plaintiff with wagons, horses, and workmen, and completed the dam, and stopped up and dug the ditches, and did such other work as was necessary in the construction of the mill and its appurtenances, that by reason thereof the waters of the Millstone were made to overflow the lands of the plaintiff from the 22d November, 1849, to the commencement of the suit, whereby the lands of the plaintiff were greatly injured by water soaking and washing away, and the fences on the land were carried away, and the horses and cattle of plaintiff pasturing the lands were carried away *per quod*, the plaintiff sustained damages in manner aforesaid, and the plaintiff was thereby deprived of the use of his lands from the 25th November, 1849, to the commencement of this suit.

That the defendant on the 28th May, 1855, was requested to pay the damages sustained, and refused to do so; that on that day plaintiff selected under the agreement David Dunn, to appraise the said damages, and requested the defendant to select another person to act with him as specified in the agreement, and that the defendant neglected and refused and still neglects and refuses to do so.

The third plea is in bar of the action, and sets up the appointment under the agreement on the 1st October,

1845, of persons to assess the damages as in the agreement prescribed and an award made by them on the thirteenth day of October, 1854, in writing, of and concerning the premises, and that they awarded of and concerning the damages referred to them for damages and loss sustained by the plaintiff by the erection of the said mill dam, up to the 13th October, 1845, as follows: Two acres and a half of the said meadow lot washed away so as to be valueless, \$150.00. One acre damaged
 10 in part, \$25.00. Other damages, \$100.00. This plea avers payment of this award to the plaintiff.

Without stating in detail the allegations of the three other pleas demurred to, it is sufficient here to say that the fourth and fifth pleas set up the making of two subsequent awards, and the payment of the moneys awarded to the plaintiff by defendant.

The last plea sets up as a bar that the plaintiff refused on request of the defendant to limit the submission to damages not included in the former awards, and
 20 that for that reason defendant refused to appoint an arbitrator.

The main point relied upon for the reversal of the judgment goes to the merits of the plaintiff's case, and will be first considered.

1. That the damages contemplated by the agreement were entire, the subject matter of one submission, and one award, which should be final between the parties.

30 2. That although the award on the face was only for the damages sustained up to a certain time, by reason of the acts done under the agreement, yet it was final as to all damages submitted, or which might have been submitted, to the arbitrament of the persons chosen to assess the damages.

The agreement was for the sale of certain privileges by the plaintiff to the defendant.

The erection of a mill dam on the lands of plaintiff.

The stopage of a certain ditch on the plaintiff's land.

The cutting of a new ditch over the plaintiff's low lands.

The doing upon the plaintiff's land of all work necessary to complete the dam, stop up and dig the ditches, and all other work necessary in the construction of defendant's mill.

The parties were not able to agree as to the price to be paid for these privileges, and agreed to leave the assessment of the price of these privileges to arbitrators, who were to appraise all damages sustained by the plaintiff; by reason of the privileges and authority granted to the defendant, the award was to be final and conclusive between the parties. 10

The damages sustained by reason of the privileges granted, was the extent to which the value of the plaintiff's land was impaired by having these burthens imposed on them, by having them exposed to the damages in evident to the exercise and enjoyment of such privileges. 20

The plaintiff parted with these privileges, and the defendant acquired them irrevocably as soon as the agreement was executed.

No time is fixed when the appraisement was to be made, or the privileges exercised. As soon as the burthen was fastened upon the plaintiff's lands, their value was injured; he sustained damage. He could not sell them with this incumbrance upon them without a diminution of the price; no reason is perceived why he could not have immediately called for an appraisement of his damages sustained by the granting of the privileges. 30

If the plaintiff's right to the appraisement was not

complete as soon as the privileges passed, when did it arise. Might he call for an appraisement, day by day, as the work progressed, or must he wait till all the work was done, all the privileges had been enjoyed.

It is manifest, that we must adopt one of the three periods as the time, when the right accrued. The last would be unfair to the plaintiff; the second would be grossly unjust and oppressive to the defendant; the first would be just to both.

- 10 The privileges were an entirety. The design was to enable the defendant to put his mill in operation and carry it on.

The defendant was to be put in a better plight than that of one engaged in a continued trespass.

The damages are spoken of as one sum, to be paid at one time, and that payment to be final and conclusive.

But one appointment of arbitrators is provided for, but one award.

- 20 Nor is the phrase, damages sustained, indicative of another intent, even when considered separate from the context.

That term has received a judicial construction in a case analogous in many of its leading features to the present.—*Van Schonk v. The Delaware and Raritan Canal Company*, Spencer, 249.

As to the second point:

- 30 Was the award, although partial on its face, conclusive as to all the matters submitted, that is, the price of the privileges granted.

This is to be determined upon the legal operation of

an award made under such a submission, where the money has been accepted as money awarded, under the stipulation that it was to be final and conclusive between the parties. No agreement is set forth, that such an award was made, in pursuance of any agreement of the parties different from that in the covenant, nor is it conceded, that this would make any difference if it were so.

For ought that appears, the plaintiff claimed damages for all the injury to his lands, caused by the granting of the privileges. It does not appear on the award, why 10 the arbitrators limited the scope of their award, or that they did not decide that the damages awarded were all that could be compensated under the agreement.

In making the award, the principal of giving the annual damage, arising from the loss of the use of the land, if adopted, was not adhered to. They gave the whole value of two and a half acres, and the partial value of one acre, and for other damages, one hundred dollars. What these were, whether past or prospective, to the annual or absolute value of the land, does not appear. 20

The bar set up is the agreement to arbitrate the submission unqualified in its terms; the award, giving all damages up to a certain time, the payment of the money.

The demurrer admits all these facts.

I think the plea as pleaded a good bar.

The award is conclusive as to all the matters referred, they are *res adjudicatae*.

In *Kendall v. Stokes*, 3 Howard, 97, Chief Justice Taney remarks: Can a party after reference, an award, 30 and the receipt of the money awarded, maintain a suit on the original cause of action, upon the ground that he had

not proved before the referee all the damages he had sustained; or that his damages exceeded the amount which the arbitrator awarded. We think not. The rule on that subject is well settled. It has been decided in many cases, and is clearly stated in *Lumn v. Murray*, 9 B. and C., 780.

In that case, Lord Tenterden delivering the judgment of the King's Bench said, in the case of *Smith v. Johnson*, 15 East. 213: Lord Ellenborough lays it down that
 10 where all matters in difference are referred, the party, as to every matter included in the scope of such reference, ought to come forward with his whole case. It was the duty of the plaintiff to bring it before the arbitrator if he meant to insist upon it as a matter in difference, and he cannot now make it the subject matter of a fresh suit.

In *Fidler v. Cooper*, 19 Wend. 280, *Bronson J.*, the award properly made in pursuance of the authority conferred on the arbitrators is conclusive as to all matters
 20 to which the submission extends, whether any particular matter included in the submission was laid before the arbitrators or not.

Wheeler v. Van Houten, 12 Johns. 311.

Ravee v. Farmer, 4 T. Rep. 146, and *Golightly v. Jelico*, only establish the principle that where the submission does not include all demands, but only such as are in difference, parole evidence may be received to show to what the submission extended, what matters were in difference; this is only to apply the submission
 30 to the subject matter.

The English cases may be considered uniform, that the award is final as to all matters to which the submission refers.

Nor does the error of the arbitrators or the parties as

to the legal effect of the submission limit the operation of the award in a court of law.—Van Schank *v.* Delaware and Raritan Canal Company, Spencer, 249; Wheeler *v.* Van Houten, 12 Johns. 311.

Sound policy requires that the conclusiveness of judgment and awards, as to all matters within the issue, should be maintained.

The award and submission are the best evidence what the arbitrators passed upon. To permit proof that matters within the submission were not allowed, opens a 10 wide door for fraud, perjury and oppressive litigation.

The award in this case can hardly be said to be in fact for part only of the plaintiff's damages.

The declaration alleges that all the privileges granted had been exercised before the request to appoint an arbitrator. The dam had been built, the ditch stopped, and the other opened, and the mill had been completed. The record does not show that any act was done under the agreement, after the making of the award pleaded. Nor is there any averment of any damage sustained after 20 the award.

Why should not the award and payment be considered *prima facie*, at least a bar to the recovery of any damages, until it is shown that some accrued after the award made.

The damages being by the agreement entire, an award upon them, although part were omitted, extinguishes the whole. An entire claim cannot be split up into several causes of action.—Baker's Execu. *v.* Baker, 4 Dutcher. 30

The third plea was a good bar to the action. The judgment of the court below should, for that reason, be reversed.

APPENDIX.

I.

First award made between the parties, dated October 13th, 1845, exhibited in bill of exceptions :

Whereas, Henry V. Hoagland, of the township of Montgomery, county of Somerset, and state of New Jersey, and Abraham Veghte, of the township of Franklin, county and state aforesaid, did by written agreement, dated the 23d day of July, in the year of our Lord, one
 10 thousand eight hundred and thirty-eight, bind each other to the performance of certain acts and things therein specified, amongst which are : first, the said Henry V. Hoagland, for and in consideration of the sum of one dollar, to him paid (the receipt whereof is hereby acknowledged) by the said Abraham Veghte, doth for himself, his heirs, executors and administrators, covenant and agree to and with the said Abraham Veghte, his executors, administrators and assigns, to allow to the said Abraham Veghte full power, authority and permission,
 20 to erect a mill dam on the land of the said Henry V. Hoagland, at Griggstown, in the county aforesaid, opposite the Tavern, and at the bend of the Millstone River; and also full power, authority and permission, to stop a large ditch that leads from above the dam of the mill, formerly in possession of William C. Elmandorf, to a point below the dam. And the said Abraham Veghte hereby agrees, for himself, his executors, administrators and assigns, to stop up said ditch, provided it shall be found to be his interest to do so. And further, that the
 30 said Abraham Veghte shall dig a ditch through the low lands of the said Henry V. Hoagland, to fall into the river below the new dam.

And the said Henry V. Hoagland hereby, for himself,

his heirs, executors and administrators, agrees with the said Abraham Veghte, his executors, administrators and assigns, to grant to him full power, authority and permission, to dig the said last-mentioned ditch. *And further, that he, the said Abraham Veghte, shall have full power, authority and permission, to go upon the land of the said Henry V. Hoagland with wagons, horses and workmen, as may be necessary to complete the said dam and the stopping up and digging of the said ditches, and such other work as may be necessary in the construction of his mill and the appurtenances thereto. And it is hereby further mutually agreed between the said parties, that all damages sustained by the said Henry V. Hoagland, by reason of the privileges and authority herein granted to the said Abraham Veghte, shall be paid by the said Abraham Veghte, which damages are to be assessed by two disinterested persons, one selected by each of the parties; and further, it is agreed that "The report shall be final and conclusive between the parties." In conformity with the stipulations in the foregoing articles of agreement, *the said Abraham Veghte having erected the mill dam and done and performed other work specified in the articles before-mentioned.* And in accordance with the provisions of the said articles of agreement, the said parties respectively selected on the part of Henry V. Hoagland, Elijah Stout; on the part of Abraham Veghte, Ferdinand S. Schenck, (both of the township of Franklin, county of Somerset and state of New Jersey), to assess the damages which, in their judgment, had been done to the piece of meadow ground specified in the said articles of agreement. It was agreed by the parties, that the persons selected should meet on Monday, the first day of October, at the house of Henry V. Hoagland, at 10 o'clock, A. M. Pursuant to notice, the said Elijah Stout and Ferdinand S. Schenck, at the time and place designated, came together, and in the presence of the said parties to the agreement before-mentioned, proceeded to the investigation of the

matters to them submitted, and having viewed the said
 meadow lots and made some progress, adjourned to meet
 again on the sixth instant, at the same time and place.
 Pursuant to adjournment they again met, the parties being
 present, at which time it was mutually agreed by the
 said Henry V. Hoagland and Abraham Veghte, the said
 parties to the articles of agreement as aforesaid, that the
 said Elijah Stout and Ferdinand S. Schenck, selected by
 the parties as aforesaid, should make an assessment of
 10 the damages done to said meadow lot from the time of
 the erection of the mill dam to the date of the report to
 be made, and presented by the subscribers; the said
 Elijah Stout and Ferdinand S. Schenck, selected as afore-
 said, again viewed the premises in the presence of the
 said parties, and having heard the statements and allega-
 tions of the said Henry V. Hoagland and Abraham Veghte,
 respectively, together with several witnesses, by them
 presented in corroboration of their respective statements,
 again adjourned to meet at the same place at 2 o'clock,
 20 P. M., on this day, October the 13th, 1845. On the day
 specified above, Elijah Stout and Ferdinand S. Schenck
 met at 2 o'clock, P. M., at the house of Henry V. Hoag-
 land as previously agreed, and having again carefully and
 particularly examined the damages done to said meadow
 lot, do to the best of their judgment estimate and assess
 the damages and loss sustained by Henry V. Hoagland
 in the said piece of meadow land by the erection of said
 mill dam up to this day, October 13th, 1845, as follows:

30	Two acres and a half of said meadow-lot so washed away and broken as to be waste or valueless, which, estimating at \$60 per acre, the value of the land before the soil was broken or injured, makes	\$150.00
	One acre damaged in part	25.00
	Interest on the above, with other damages	100.00
		\$275.00

We, the subscribers, selected by Henry V. Hoagland and Abraham Veghte for the purpose aforesaid, do make report, that we do find due to Henry V. Hoagland the sum of two hundred and seventy-five dollars, as per statement above. Witness our hand, the 13th day of October, 1845.

ELIJAH STOUT,
FERDINAND S. SCHENCK.

II.

Second award made between the parties, dated October 22d, 1847, exhibited in bill of exceptions: 10

Whereas, Henry V. Hoagland, of the township of Montgomery, county of Somerset, and state of New Jersey, and Abraham Veghte, of the township of Franklin, county and state aforesaid, did, by written agreement, bearing date the twenty-third day of July, in the year of our Lord, one thousand eight hundred and thirty-eight, bind each other to the performance of certain acts and things specified, as follows, to wit: The said Henry V. Hoagland, for and in consideration of the sum of one dollar to him paid (the receipt whereof is hereby acknowledged), by the said Abraham Veghte, doth for himself, his heirs, executors and administrators, covenant and agree to and with the said Abraham Veghte, his executors, administrators and assigns, to allow to the said Abraham Veghte full power, authority and permission to erect a mill dam on the land of the said Henry V. Hoagland, at Griggstown, in the county aforesaid, opposite the tavern, and at the bend of the Millstone River, and also full power, authority and permission to stop a large ditch that leads from above the dam of the mill formerly in the possession of William C. Elmendorf, to a point below the dam. And the said Abraham Veghte hereby agrees, for himself, his executors, administrators and as-

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signs, to stop up said ditch, provided it shall be found his interest to do so. And further, that he, the said Abraham Veghte, shall dig a ditch from the above-mentioned ditch, through the low lands of the said Henry V. Hoagland, to fall into the river below the new dam. And the said Henry V. Hoagland hereby, for himself, his heirs, executors and administrators, agrees with the said Abraham Veghte, his executors, administrators and assigns, to grant to him full power, authority and permission
 10 to dig the last-mentioned ditch. And further, that he, the said Abraham Veghte, shall have full power, authority and permission to go upon the land of the said Henry V. Hoagland, with wagons, horses and workmen, as may be necessary to complete the said dam, and the stopping up and the digging of the said ditches, and such other work as may be necessary in the construction of his mill and the appurtenances thereto. And it is hereby further mutually agreed between the said parties that all damages sustained by the said Henry V. Hoagland, by reason of
 20 the privileges and authority herein granted to the said Abraham Veghte, shall be paid by the said Abraham Veghte, which damages are to be assessed by two disinterested persons, one selected by each of the parties. And in case the two so selected cannot agree, that they shall choose a third, whose report, or the report of any two of them, shall be final and conclusive between the parties.

In conformity with the stipulations in the foregoing articles of agreement, the said Abraham Veghte having
 30 erected the mill dam, and done and performed the work specified in the articles before-mentioned; and in accordance with the provisions of the said articles of agreement, the said parties respectively selected, on the part Henry V. Hoagland, Elijah Stout, on the part of Abraham Veghte, Ferdinand S. Schenck, both of the township of Franklin, county and State aforesaid, to assess the

damages which in their judgment had been done to the piece of meadow ground, specified in the said articles of agreement. And at a meeting held at the house of the said Henry V. Hoagland, on the 6th day of October, A. D., 1845, it was mutually agreed by the said parties to the articles of agreement as aforesaid, that the said Elijah Stout and Ferdinand S. Schenck, so selected by the parties as aforesaid, should make an assessment of the damages done to the said meadow lot from the time of the erection of the mill dam to the date of the report to be made and presented by them. The said Elijah Stout and Ferdinand S. Schenck, selected as aforesaid, having viewed the premises in the presence of the parties, and having heard the statements and allegations of the said Henry V. Hoagland and Abraham Veghte respectively, together with the testimony of several witnesses by them offered in corroboration of their respective statements, held their last meeting at the house of the said Henry V. Hoagland, on the 13th day of October, A. D., 1845, at 2 o'clock, P.M., and having again carefully and particularly examined the damage done to said meadow lots, do, to the best of their judgment, estimate and assess the damage and loss sustained by Henry V. Hoagland, in the said piece of meadow land, by the erection of said mill dam, up to this day, October 13th, 1845, as follows :

Two acres and a half of said meadow lot, so washed away and broken as to be waste or valueless, which, estimating at \$60 per acre, the value of the land before the soil was broken or injured, makes	30
One acre damaged in part	25.00
Interest on the above, with other damages,	100.00
	\$275.00

Whereas, the said Henry V. Hoagland considers that he has sustained loss in the yearly product of said meadow lot, with other damage, in consequence of the said mill dam being an obstruction in the Millstone River, since the time to which the said Elijah Stout and Ferdinand S. Schenck, selected as aforesaid, made their report of damages sustained by Henry V. Hoagland, to wit, October 13th, 1845. Therefore, in accordance with the provisions of the said articles of agreement, the said

10 parties respectively selected, on the part of Henry V. Hoagland, Martin S. Garretson—on the part of Abraham Veghte, Peter A. Voorhees, both of the township of Franklin, county and state aforesaid, to assess the damages which, in their judgment, had been done to the piece of meadow ground specified in the said articles of agreement. It was agreed by the parties that the persons selected should meet on Wednesday, the eighteenth day of August, 1847, at the schoolhouse, near the said Henry V. Hoagland's, at 2 o'clock, P. M. Pursuant to

20 notice, the said Martin S. Garretson, and Peter A. Voorhees, at the time and place designated, came together, and after being duly sworn, faithfully and fairly to hear and examine the matters in difference between the said parties, and to make a true award, according to the best of their skill and ability, in the presence of the parties aforesaid, to the agreement hereinbefore mentioned, proceeded to the investigation of the matters to them submitted, and made some progress, adjourned to meet again on the 20th day of August, 1847, at 9 o'clock,

30 A. M., at the same place. Pursuant to adjournment, they again met. The parties being present, they viewed the premises, and having heard the statements and allegations of the said Henry V. Hoagland and Abraham Veghte respectively, together with the testimony of several witnesses, by them offered in corroboration of their respective statements, again adjourned, to meet at the same place, on Saturday, the 28th. of August afore-

said, at 2 o'clock, P. M. Met at 2 o'clock, P. M., as previously agreed, at the schoolhouse, and adjourned to meet at the same place on Monday, the 30th of August aforesaid, at 5 o'clock, P. M. Met on Monday, the 30th, according to adjournment, and after deliberation and consultation, there being a difference of opinion between the said Martin S. Garretson and Peter A. Voorhees, they took time to deliberate, and met according to notice on the 20th day of September, A. D., 1847, at the store of Elnathan More, Esq., Griggstown, and in accordance 10 with the provisions of the articles of agreement above mentioned, and by virtue of the power delegated to them under that agreement, the above named Martin S. Garretson, and Peter Voorhees, selected and chose Nicholas Van Wickle, of the township of Franklin, county and state aforesaid, as the third person to act with them in ascertaining and assessing the damages done to the meadow lot of the said Henry V. Hoagland (the appointment of the said Nicholas Van Wickle being made in the presence of the respective parties, they approved 20 of and concurred in said appointment.) It was agreed by the parties that the persons selected should meet Tuesday, the 28th day of September, A. D., 1847, on the premises, at 10 o'clock, A. M., to view the same. Pursuant to notice, the said Martin S. Garretson, Peter A. Voorhees, and Nicholas Van Wickle, at the time and place designated, came together, and in the presence of the parties aforesaid, to the agreement above mentioned, proceeded to view the premises, and after viewing the same, met at the schoolhouse, near the said Henry V. 30 Hoagland's, and proceeded to the investigation of the matters to them submitted, after being duly sworn, faithfully and fairly to hear and examine the matters in difference between the said parties, and to make a true award, according to the best of their skill and ability, and having made some progress, adjourned to meet again on Wednesday, the 29th day of September aforesaid, at

9 o'clock, A. M., at the same place. Pursuant to adjournment, they again met, the parties being present, and after hearing the statement and allegations of the said Henry V. Hoagland and Abraham Veghte, respectively, together with the testimony of several witnesses, by them offered in corroboration of their respective statements, again adjourned, to meet on Wednesday, the 6th day of October, 1847, on the meadow, to examine and again view the same. On the day above named, the said Martin S.

10 Garretson, Peter A. Voorhees, and Nicholas Van Wickle, met on the premises, as previously agreed, and having again carefully and particularly examined the damage done to said meadow lot, notified the parties that they had adjourned to meet at the house of William M. Baker, Six Mile Run, on Friday, the 22d day of October, 1847, at 2 o'clock, P. M. Met at the house of William M. Baker, according to adjournment, and after having carefully examined the matter of difference submitted to

20 them, and taken into consideration the allegations and statements of the respective parties, together with the testimony of witnesses offered by them, we, the said Martin S. Garretson, Peter A. Voorhees, and Nicholas Van Wickle do, to the best of their judgment, estimate and assess the damage and loss sustained by Henry V. Hoagland in the piece of meadow land by the erection of said mill dam, from the 13th day of October, A. D., 1845, until this day, October 22d, 1847, as follows:

One tenth part of an acre of land along the ditch leading from the big ditch to the river below the mill

30 dam, and along the angle of land below the fence, leading from the mill pond to the above named ditch, so washed away as to be waste or valueless, which, estimating at \$60.00 per acre, the value of the land before the soil was broken or washed away, makes . \$6.00

One acre of land called the green flats, in round meadow, where the above mentioned

Brought over . . .	\$6.00
ditch passes down to the river, damaged in part, together with all other damage done to said meadow lot up to this date . . .	\$49.50
	\$55.50

We, the subscribers, selected as hereinbefore mentioned, do make report that we find due to Henry V. Hoagland the sum of fifty-five dollars and fifty cents, as per statement above.

Witness our hands, the 22d day of October, 1847.

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MARTIN S. GARRETSON,
PETER A. VOORHEES,
NICHOLAS VAN WICKLE.

The words "damaged in part" were interlined before the signatures were affixed.

Received, November 1st, 1847, of Abraham Veghte, fifty-five dollars and fifty cents, being the amount of the above award.

CHRISTOPHER C. HOAGLAND,
FOR HENRY V. HOAGLAND.

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III.

Third award made between the parties, dated November 22, 1849, exhibited in bill of exceptions :

Award between Henry V. Hoagland and Abraham Veghte, both of the county of Somerset and state of New Jersey, made this twenty-second day of November, in the year of our Lord eighteen hundred and forty-nine. The aforesaid parties having, by a written agreement, bearing date the twenty-third day of July, in the year of our Lord, one thousand eight hundred and thirty-eight, bound each other to the performance of certain

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acts and things therein specified and particularly set forth as follows, viz :

“ The said Henry V. Hoagland, for and in consideration of the sum of one dollar, to him paid (the receipt whereof is hereby acknowledged) by the said Abraham Veghte, doth for himself, his heirs, executors and administrators covenant and agree, to and with the said Abraham Veghte, his executors, administrators and assigns, to allow to the said Abraham Veghte full power, authority and permission to erect a mill dam on the land of the
 10 said Henry V. Hoagland, at Griggstown, in the county aforesaid, opposite the tavern, and at the bend of the Millstone River ; and also full power, authority and permission to stop a large ditch that leads from above the dam of the mill, formerly in the possession of William C. Elmandorf, to a point below the dam. And the said Abraham Veghte hereby agrees, for himself, his executors, administrators and assigns, to stop up said ditch, provided it shall be found his interest to do so. And
 20 further, that he, the said Abraham Veghte, shall dig a ditch from the above-mentioned ditch through the low lands of the said Henry V. Hoagland, to fall into the river below the new dam ; and the said Henry V. Hoagland hereby, for himself, his heirs, executors and administrators, agree with the said Abraham Veghte, his executors, administrators and assigns, to grant to him full power, authority and permission to dig the last-mentioned ditch ; and further, that he, the said Abraham Veghte, shall have full power, authority and permission to go
 30 upon the land of the said Henry V. Hoagland with wagons, horses and workmen, as may be necessary to complete the said dam, and the stopping up and the digging of the said ditches, and such other work as may be necessary in the construction of his mill and the appurtenances thereto. And it is hereby further mutually agreed between the said parties, that all the damages

sustained by the said Henry V. Hoagland, by reason of the privileges and authority herein granted to the said Abraham Veghte, shall be paid by the said Abraham Veghte, which damages are to be assessed by two disinterested persons, one selected by each of the parties. And in case the two so selected cannot agree, that they shall choose a third, whose report or the report of any two of them shall be final and conclusive between the parties."

In conformity with the aforesaid articles of agree- 10
ment, the said parties respectively selected on the part of Henry V. Hoagland, Joseph Thompson, of the township of Reading, in the county of Hunterdon—on the part of Abraham Veghte, William A. Voorhees, of the township of Franklin, county of Somerset, to assess the damages which, in their judgment, had been done to the lands of said Hoagland, specified in said articles of agreement, by reason of the building of said mill dam and the digging of said ditch, to wit, the damages arising therefrom since the twenty-second day of October, A.D., 20
eighteen hundred and forty-seven. Agreeably to notice the said William A. Voorhees and the said Joseph Thompson met upon the meadow land of said Henry V. Hoagland, said to be damaged so as aforesaid, on Monday, the twenty-ninth day of October last, at ten o'clock in the forenoon, and after viewing a part of said meadow land, met at the house of the said Henry V. Hoagland, in the township of Montgomery, and in the presence of the said Henry V. Hoagland and of the said Abraham Veghte, the said William A. Voorhees and the said 30
Joseph Thompson did each take an oath before John S. Hoagland, Esq., one of the justices of the peace in and for said county of Somerset, faithfully and fairly to hear and examine the cause in question and make a just and true award, according to the best of his skill and understanding; and after having been duly sworn as aforesaid, it

was agreed upon by said arbitrators, in the presence of the parties, not to proceed to an investigation of the matters in difference at that time, in order to give the said Abraham Veghte an opportunity to procure the attendance of his witnesses ; and the said arbitrators did, then and there, in the presence of the parties, and with their consent, agree to adjourn, to meet again at the schoolhouse, near the said Henry V. Hoagland's, in the township of Montgomery, in the county of Somerset

10 aforesaid, on Monday, the twelfth day of November inst., at nine o'clock, A. M. And it was further agreed between the said parties and the said arbitrators, that each party should invite Ralph Voorhees, of the township of Franklin, in the county of Somerset aforesaid, to meet at the schoolhouse on the said twelfth day of November, to act as the third arbitrator, if necessary, in case of disagreement of the said William A. Voorhees and the said Joseph Thompson. Pursuant to adjournment, the said parties and the said arbitrators again met on the

20 twelfth day of November instant, at the schoolhouse aforesaid, and the said Ralph Voorhees then being present, he was duly sworn before the said John S. Hoagland, Justice of the Peace as aforesaid, faithfully and fairly, to hear and examine the cause in question, and, (if called upon by the other arbitrators in case of their disagreement,) make a just and true report, according to the best of his skill and understanding ; and being so convened, as aforesaid, the said arbitrators did proceed to an investigation of the matters submitted.

30 And the said William A. Voorhees, and the said Joseph Thompson, disagreeing about the manner of proceeding with said investigation, they did call upon and associate with them, agreeably to the expressed wishes of said parties, the aforesaid Ralph Voorhees. And the said arbitrators having heard the allegations and proofs of the parties, did again adjourn, to meet again on said meadow land, so said to be damaged as aforesaid, on the morning

of the thirteenth of November instant, at sunrise. And pursuant to adjournment did meet at the time and place aforesaid, in the presence of said parties, and having viewed said premises, and heard such further statements as said parties did choose to make, the said arbitrators did then adjourn to meet again to consider said matters so shown and proven, at the court-house in Bridgewater, in said county, on Wednesday, the twenty-first day of November instant, at eleven o'clock, A.M., and in accordance with said adjournment the said arbitrators did meet at the time and place last mentioned; and did proceed carefully to examine the allegations and proofs of said parties, and not being able to complete said examination and make the award on that day, did adjourn to meet again this twenty-second day of November, at the court-house aforesaid, at eleven o'clock, A.M., and having met agreeably to adjournment at the time and place last aforesaid, did complete the investigation of said evidence and allegations, and having carefully examined the matters of difference submitted to them, and considered the allegations and proofs of the parties, we, the said Joseph Thompson, William A. Voorhees, and Ralph Voorhees, arbitrators as aforesaid, do, to the best of our judgment, skill, and understanding, estimate and assess the damage and loss sustained by Henry V. Hoagland in the piece of meadow land, by the erection of said mill dam, from the twenty-second day of October, A. D., eighteen hundred and forty-seven (the date of the last award between said parties), until this day, viz, the twenty-second day of November, A. D., eighteen hundred and forty-nine, at the sum of seventy-seven dollars and eighty-eight cents, a part of which sum is by us assessed on lands which former arbitrators had valued in their assessment, and award at sixty dollars per acre; we, the present arbitrators, considering and estimating the difference between the interest of said moneys as assessed and awarded as aforesaid, and the value of the crops

which said lands would have produced to the said Hoagland, if not so damaged. to be fifteen dollars and thirty-eight cents, and for all other damages done to said lands by reason of the erection of said mill dam, we do assess the sum of sixty-two dollars and fifty cents. And we do award that the said Abraham Veghte do pay to the said Henry V. Hoagland, the said sum of seventy-seven dollars and eighty-eight cents, on or before the first day of December next. And we do further award that the
 10 said Veghte and the said Hoagland do each pay to the said Ralph Voorhees, the sum of four dollars, as his fees on this arbitration, and that each party pay the arbitrator selected by him, and his own costs of this arbitration.

In witness whereof, we have hereto set our hands this twenty-second day of November, A. D., 1849 (nine).

JOSEPH THOMPSON, }
 WM. A. VOORHEES, } Arbitrators.
 RALPH VOORHEES. }

N. B.—The word “anual,” on the foregoing page,
 20 erased before signing.

IV.

Notice to Abraham Veghte, by Henry V. Hoagland, to select an arbitrator under agreement to assess further damages, exhibited in the bill of exceptions :

SIR,—

Please to take notice that under the agreement entered into between us, bearing date the 23d day of July, A.D., 1838, I have selected David Dunn, Esquire, of Somerville, in the county of Somerset, as an arbitrator to act
 30 with such person as you may choose under the said agreement, in assessing and determining the damages which my meadow, situate in the township of Mont-

gomery, in the county of Somerset and state of New Jersey, and bounded on the north and east by the Millstone River, on the south by the said Millstone River and lands of John S. Hoagland, and on the west by my upland and lands of Abraham C. Beekman, has sustained since the twenty-second day of November, A. D., 1849, the date of the last award between us, by reason of the erection and maintaining the mill dam mentioned in the said agreement, by you across the said Millstone River. And you are hereby requested to select a person to act with 10 the said David Dunn, under the said agreement, for the purpose of making the said assessment.

Dated May 28, 1855.

HENRY V. HOAGLAND,

By S. B. RANSOM, *his Attorney.*

To ABRAHAM VEGHTE, Esq., or to GEORGE H. BROWN, Esq., *his Attorney.*

V.

Answer of Abraham Veghte to the preceding notice, endorsed on the back of the same, exhibited in the bill 20 of exceptions :

In answer to the within notice, I have to say that Mr. Veghte claims, that for the damages occasioned by the dam, final damages, including the whole value of the land injured, have been awarded and paid. Mr. Veghte will not therefore agree to a general reference, or to any reference, without a specification of the damages now claimed, excluding such as have been heretofore awarded and paid.

G. H. BROWN,

Att'y of Abraham Veghte. 30

July 28, 1855.

