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NEW JERSEY  
Court of Errors and Appeals.

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*The State, The Delaware, Lackawanna  
and Western Railroad Company et al.* } *Writ*  
*Prosecutors,* } *of*  
*vs.* } *Error.*  
*The Hudson Tunnel Railroad Com-  
pany.*

Returnable third Tuesday of June, 1875.

Filed July 16, 1875.

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NEW JERSEY, ss.

[L. s.]

The State of New Jersey to the Justices of  
the Supreme Court of the State of New  
Jersey, greeting:

Forasmuch as in the record and proceedings, and also in  
the giving of judgment, in a certain plaint which was in our  
said Supreme Court before you, between The State, the Del-  
aware, Lackawanna and Western Railroad Company and  
The Morris and Essex Railroad Company, prosecutors, and  
The Hudson Tunnel Railroad Company, on certiorari, bring-<sup>10</sup>  
ing before our said Supreme Court a certain order made by  
the Honorable David A. Depue, one of the Justices of our  
said Supreme Court, on the application of the said The  
Hudson Tunnel Railroad Company, appointing Robert C.  
Bacot, James L. Ogden and John M. Cornelison commis-  
sioners to appraise the value of certain lands of the said The

Morris and Essex Railroad Company, in the possession of the said The Delaware, Lackawanna and Western Railroad Company, proposed to be taken by the said The Hudson Tunnel Railroad Company, for the construction of its tunnel and railroad, and the damages to be sustained by such taking and use, manifest error hath intervened, to the great damage of the said The Morris and Essex Railroad Company and the said The Delaware, Lackawanna and Western Railroad Company, as by their complaint we are informed.

- 10 We being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then, without delay, you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things concerning the same, to our Court of Errors and Appeals, on the third Tuesday of June, in the year eighteen hundred and seventy-five, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon
- 20 what of right and according to law ought to be done.

Witness, Theodore Runyon, our Chancellor, at Trenton, the fifth day of June, in the year eighteen hundred and seventy-five.

HENRY C. KELSEY,  
*Clerk.*

JACOB VANATTA, *Att'y.*

The answer of the Justices of the Supreme Court of New Jersey within named, the record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals, in a certain schedule to this writ annexed, as within commanded.

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M. BEASLEY,  
*Ch. Jus.* [L. s.]

*Copy of Judgment.*

## NEW JERSEY SUPREME COURT.

THE HUDSON TUNNEL RAIL- )  
ROAD COMPANY

*ads.*

THE STATE, THE DELAWARE,  
LACKAWANNA & WESTERN  
RAILROAD COMPANY AND  
THE MORRIS & ESSEX RAIL-  
ROAD COMPANY.

*On Certiorari.*

*Judgment of Dismissal.*

HENRY S. WHITE, *Attorney.*

As yet of the Term of February, A. D. eighteen hundred and seventy-five.

Witness, Mercer Beasley, Esq., Chief Justice.

BENJ. F. LEE,

*Clerk.*

New Jersey, ss.—Be it remembered, that heretofore, to wit, the Term of February, A. D. eighteen hundred and seventy-five, by our writ of certiorari, duly allowed and sealed, and directed to the Honorable David A. Depue, an Associate Justice of our said Supreme Court, a certain order of appoint-10 ment, made by the said Honorable David A. Depue, Justice, &c., made on the application of The Hudson Tunnel Railroad Company, bearing date the thirteenth day of January, A. D. eighteen hundred and seventy-five, appointing Robert C. Bacot, James L. Ogden and John M. Cornelison commissioners to appraise the value of certain lands of The Morris and Essex Railroad Company in the possession of its lessee, The Delaware, Lackawanna and Western Railroad Company, situate in Jersey City, in the county of Hudson, for the construction and use of the first named company, and all 20 damages sustained and to be sustained by such taking and use, was removed into our Supreme Court, before the Justices thereof, at Trenton, that the said Supreme Court might

further cause to be done what of right and according to law ought to be done; which said order, or a duplicate thereof, certified by the said Honorable David A. Depue, Justice, &c., and annexed to and returned with said writ, is in the words and figures following, to wit:

State of New Jersey, ss.—Whereas, on the nineteenth day of December, in the year eighteen hundred and seventy-four, The Hudson Tunnel Railroad Company, a corporation  
 10 organized under and by virtue of an act of the Legislature of the State of New Jersey entitled “An Act to authorize the formation of railroad corporations and regulate the same,” approved April 2, 1873, and an act entitled “An Act to extend the time for completion of The Hudson Tunnel Railroad,” approved March 21, 1874, made application to me, David A. Depue, one of the Justices of the Supreme Court of the State of New Jersey, by their petition in writing, setting forth, among other things, under the oath of De Witt C. Haskins, President and Agent of the said The Hudson Tun-  
 30 nel Railroad Company, that the articles of association of said company, made and executed in due form, were filed in the office of the Secretary of State on the twenty-sixth day of May, eighteen hundred and seventy-three, and that the said company requires all that strip or parcel of land situate, lying and being in Jersey City, in the County of Hudson and State of New Jersey, and described as follows: Beginning at a point fifteen feet below and under a point where the middle line of Fifteenth street (formerly called North Seventh) intersects the easterly line of Provost street, and  
 30 continuing under said middle line of Fifteenth street, on a uniform descending grade sixteen hundred and sixty-one feet to a point thirty-one feet under a point one hundred and eighty-five feet westerly from the bulkhead line of the Hudson River, as now used; thence, with the same descending grade, curving to the left, with a radius of eleven hundred and forty-six feet and twenty-eight one-hundredths of a foot, one hundred feet to a point thirty-five feet below the present surface of the street; thence, with the same descending grade, on a course five degrees northerly from the course  
 40 of Fifteenth street, eighty-five feet to the aforesaid bulkhead

line; thence, continuing under the Hudson River on the same descending grade and course, one thousand feet, more or less, to a point under the exterior line of piers established by the Board of Riparian Commissioners; thence northerly and under said pier line to a point at right angles and sixteen feet from the course last given; thence westerly, on a line ascending with the same grade, parallel with and sixteen feet from the lines heretofore described, to a point under the easterly line of Provost street; thence along under the said easterly line of Provost street sixteen feet to the point 10 or place of beginning. Together with that certain other strip or parcel of land situate, lying and being in Jersey City aforesaid, and described as follows: Commencing at the first mentioned point under said exterior line for piers, and running thence southerly, on the same grade, sixteen feet; thence westerly, upon the same ascending grade, parallel to said above described land, to a point under the middle line of Fifteenth street extended; thence along under the same to the westerly boundary of said curved line; thence easterly along said above described land to the place of begin- 20 ning. That the said railroad is to be built in a tunnel, said tunnel to be twenty-six feet wide and twenty-four feet high, inside measurement, and at no place to come nearer the surface than fifteen feet, and from that to thirty-five feet below the surface at the water. And only so much of the above described land is necessary to be taken permanently for the purposes aforesaid, as shall be occupied by the northerly part of said tunnel, with walls three feet thick, being a strip of land of the width of the above described lands, and thirty feet in depth, and the whole of which is at the easterly 30 extremity of the above described land, thirty-five feet below the surface, and from that point approaching the surface, at a uniform grade, till, at the westerly extremity of said land, it will be fifteen feet below the surface; and no part of the land first above described lying above the top of said strip above mentioned is intended to be taken, used or occupied permanently by said company in the construction and operation of their said road. That the said company also require, during the construction of said railroad, the right to occupy a portion of said Fifteenth street, dimensions to 40

be a uniform width of fifty feet, and one hundred and fifty feet in length, running back from the shore line of the Hudson River westerly along said street, for the purpose of sinking thereon a working shaft thirty feet in diameter and about sixty-five feet in depth, and to erect a temporary building over said shaft, in the construction and use of the said Hudson Tunnel Railroad upon the route determined upon; and that the said company and The Morris and Essex Railroad Company, a corporation of the State of New Jersey, 10 owner, and The Delaware, Lackawanna and Western Railroad Company, a corporation of the State of Pennsylvania, lessees, could not agree for the use or purchase of said lands, and whereof a survey has been filed in the office of the Secretary of State of the State of New Jersey; and therefore prayed that I would appoint three disinterested, impartial and judicious freeholders, who reside in the county of Hudson aforesaid, commissioners to examine and appraise the said lands and materials, and to assess the damages and the compensation to be made to the owners or the said persons 20 interested in the said real estate, pursuant to the provisions of said first mentioned act, and appoint a time and place at which I would listen to such application, and for such further or other order as might be agreeable to law, and as to the said Justice might seem just and proper.

Therefore, I, the said David A. Depue, Justice as aforesaid, did appoint and assign the fourth day of January, A. D. 1875, at ten o'clock in the forenoon, at the Court House, in the City of Newark, as the time and place for the hearing of the application made in the said petition, and the appoint- 30 ment of said commissioners, and did direct the said company to give at least ten days' notice, in writing, of the time and place so assigned, to The Morris and Essex Railroad Company and to The Delaware, Lackawanna and Western Railroad Company, by serving a copy of the said order on the president or presidents of said companies, or, in their absence, upon the secretary or secretaries, and also by publication in the Evening Journal, a newspaper printed and published in Jersey City, for a period of ten days.

And whereas, on the fourth day of January, in the year 40 eighteen hundred and seventy-five, at the Court House, in

the City of Newark, being the time and place so appointed and assigned as aforesaid, the aforesaid parties, appearing by their respective counsel, and on motion of the counsel of the Hudson Tunnel Railroad Company, permission was given the said Hudson Tunnel Railroad Company to amend their said petition, so as to make the description of the land to be taken by said Hudson Tunnel Railroad Company more definite.

And now, on the said thirteenth day of January, A. D. 1875, at the Court House, in the City of Newark, the further 10 consideration of this matter having been postponed till this time, each party having been represented by counsel at every time of hearing, I, the said David A. Depue, Justice as aforesaid, by virtue of the power and authority by law in me vested, do hereby appoint you, the said Robert C. Bacot, James L. Ogden and John M. Cornelison, three disinterested, impartial and judicious freeholders, residents of the county of Hudson aforesaid, commissioners to examine and appraise the said required land and materials, and to assess the damage, and whatever you, as such commissioners, are 20 by law authorized or required to assess, upon at least ten days' notice, in writing, of the time and place when and where you will meet and proceed to perform your duties under this appointment, being given to the said The Morris and Essex Railroad Company and the said The Delaware, Lackawanna and Western Railroad Company, by serving said notice on the president or presidents of said companies, or, in their absence, upon the secretary or secretaries.

Given under my hand and seal, this thirteenth day of January, in the year of our Lord one thousand eight hundred and seventy-five. 30

DAVID A. DEPUE,  
J. S. C. [L. s.]

And such proceedings were thereupon had, that afterwards, to wit, at the term of June, A. D. eighteen hundred and seventy-five, it was ordered and adjudged by our Supreme Court as follows, to wit:

The Court having heard the arguments of counsel, and examined the matters removed by the writ in this cause,

and duly considered the reasons filed, it is ordered that said writ be dismissed.

Entered July 13, 1875.

On motion of Henry S. White, Att'y.

Therefore it is considered that the said The Morris and Essex Railroad Company, by its lessee, The Delaware, Lackawanna and Western Railroad Company, take nothing by its said writ, but that they be in mercy, &c. And that the 10 said The Hudson Tunnel Railroad Company go thereof without day, &c. And it is further considered by the Court now here, that the said The Hudson Tunnel Railroad Company do recover against the said The Delaware, Lackawanna and Western Railroad Company and The Morris and Essex Railroad Company the sum of  
for their costs and charges by them about their defence in this behalf by the Court now here adjudged, to the said The Hudson Tunnel Railroad Company, and with their assent, according to the form of the statute in such case made and 20 provided.

Judgment signed this thirteenth day of July, A. D. eighteen hundred and seventy-five.

M. BEASLEY,

*Ch. Jus.*

I, Benj. F. Lee, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment in the above stated cause, as the same remains of record in my office.

30 [L. s.] In testimony whereof, I have hereto set my hand and seal of said Court, at Trenton, this thirteenth day of July, A. D. eighteen hundred and seventy-five.

BENJ. F. LEE,

*Clerk.*



## NEW JERSEY SUPREME COURT.

THE STATE, THE DELAWARE, LACK- AWANNA AND WESTERN RAILROAD COMPANY, <i>Prosecutors</i> , <i>vs.</i> THE HUDSON TUNNEL RAILROAD COMPANY.	}	<i>Certiorari.</i>
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NEW JERSEY, ss.

[L. s.]

The State of New Jersey to the Honorable  
 David A. Depue, an Associate Justice of  
 the Supreme Court of the State of New  
 Jersey, greeting.

We being willing, for certain reasons, to be certified of a certain order of appointment made by you, on the application of The Hudson Tunnel Railroad Company, bearing date the thirteenth day of January, eighteen hundred and seventy-five, appointing Robert C. Bacot, James L. Ogden and John M. Cornelison commissioners to appraise the value of 10 certain lands of The Morris and Essex Railroad Company, in the possession of its lessee, The Delaware, Lackawanna and Western Railroad Company, situate in Jersey City, in the county of Hudson, for the construction and use of the tunnel and railroad of said Hudson Tunnel Railroad Company, and all damages sustained by such taking and use, do command you, that the said order of appointment, as fully and entirely, with all things touching and concerning the same, as they remain before you, by whatever name they may be called, to our Supreme Court, to be held at Trenton 20 on the fourth Tuesday of February next, you certify and send, together with this writ, that we may further cause to be done what of right and according to law ought to be done.

Witness, Mercer Beasley, Esq., our Chief Justice, at Trenton, the thirteenth day of January, eighteen hundred and seventy-five.

B. F. LEE,  
*Clerk.*

JACOB VANATTA, *Att'y.*

NEW JERSEY SUPREME COURT.—The State, the Delaware, Lackawanna and Western Railroad Company, Prosecutors, vs. The Hudson Tunnel Railroad Company. *Certiorari*—Returnable 4th Tuesday of February, 1875.

JACOB VANATTA,  
*Att'y.*

Allowed, on condition that argument be brought on at the next term; the depositions already taken to be considered as taken in this cause; both parties to have leave to take additional testimony, on notice.

10 13th January, 1875.

DAVID A. DEPUE,  
*Justice Supreme Court.*

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*Petition for Appointment of Commissioners.*

NEW JERSEY SUPREME COURT.

In the Matter of the Application of the HUDSON }  
TUNNEL RAILROAD COMPANY. }

*To the Honorable David A. Depue, one of the Justices of the Supreme Court of the State of New Jersey :*

The petition of The Hudson Tunnel Railroad Company  
20 respectfully shows: That the said company is a corporation duly organized under and by virtue of an act of the Legislature of the State of New Jersey entitled "An Act to authorize the formation of railroad corporations and regulate the same," approved April 2, 1873, and an act entitled "An Act to extend the time for completion of The Hudson Tunnel Railroad," approved March 21, 1874.

That the articles of association of said company, made and executed in due form, were filed in the office of the Secretary of State of New Jersey, and said company became a  
30 body corporate, pursuant to said first mentioned act, on the

twenty-sixth day of May, in the year eighteen hundred and seventy-three.

That it is the intention of the said railroad company, in good faith, to construct and finish a railroad from and to the places named for that purpose in said articles of association, to wit: Commencing at some convenient and eligible point upon the western shore of the Hudson River, and within or near Jersey City or Hoboken, in the County of Hudson, in the State of New Jersey; and thence to run by the most direct route, under the bed of the said river, to a convenient and 10 eligible point in that part of the boundary line between the States of New Jersey and New York lying between said Jersey City or Hoboken, in said State of New Jersey, and the City of New York.

That the said company is also incorporated under the laws of the State of New York.

That ten thousand dollars for every mile of the said railroad proposed to be constructed in this State, has been, in good faith, subscribed to the capital stock, and ten per cent. thereof paid in, as required by the said first mentioned act. 20

That the said company has surveyed the line or route of its proposed road, and has made a map or survey thereof, by which such route or line is designated; and that it has located its said railroad according to such survey, and filed such map or survey in the office of the Secretary of State of the State of New Jersey.

And your petitioner shows, that so much of the following described lands of The Morris and Essex Railroad Company, a corporation of the State of New Jersey, owners, and The Delaware, Lackawanna and Western Railroad Company, a 30 corporation of the State of Pennsylvania, lessees, as are hereinafter described, as are necessary for the use of your petitioner, are required by the said The Hudson Tunnel Railroad Company, in the construction and use of its railroad upon the route determined upon, and whereof a survey has been duly filed, as above mentioned, that is to say: all that strip or parcel of land situate, lying and being in Jersey City, in the County of Hudson and State of New Jersey, and described as follows:

Beginning at a point fifteen feet below and under a point 40

where the middle line of Fifteenth (formerly called North Seventh) street intersects the easterly line of Provost street, and continuing under said middle line of Fifteenth street, on a uniform descending grade sixteen hundred and sixty-one feet to a point thirty-one feet under a point one hundred and eighty-five feet westerly from the bulkhead line of the Hudson River, as now used; thence, with the same descending grade, curving to the left, with a radius of eleven hundred and forty-six feet and twenty-eight one-hundredths of

10 a foot, one hundred feet to a point thirty-five feet below the present surface of the street; thence, with the same descending grade, on a course five degrees northerly from the course of Fifteenth street, eighty-five feet to the aforesaid bulkhead line; thence, continuing under the Hudson River on the same descending grade and curve, one thousand feet, more or less, to a point under the exterior line of piers established by the Board of Riparian Commissioners; thence northerly and under said pier line to a point at right angles and sixteen feet from the last course given; thence westerly, on a

20 line ascending with the same grade, parallel with and sixteen feet from the lines heretofore described, to a point under the easterly line of Provost street; thence along under the said easterly line of Provost street sixteen feet to the point or place of beginning. Together with that certain other strip or parcel of land situate, lying and being in Jersey City aforesaid, and described as follows: Commencing at the first mentioned point under said exterior line for piers, and running thence southerly, on the same grade, sixteen feet; thence westerly, upon the same ascending grade, parallel to

30 said above described land, to a point under the middle line of Fifteenth street extended; thence along under the same to the westerly boundary of said curved line; thence easterly along said above described land to the place of beginning. That the said railroad is to be built in a tunnel, said tunnel to be twenty-six feet wide and twenty-four feet high, inside measurement, and at no place to come nearer the surface than fifteen feet, and from that to thirty-five feet below the surface at the water. And only so much of the above described land as is necessary to be taken permanently

40 for the purposes aforesaid, shall be occupied by the north-

erly part of said tunnel, with walls three feet thick, being a strip of land of the width of the above described land, and thirty feet in depth, and the whole of which is at the easterly extremity of the above described land, thirty-five feet below the surface, and from that point approaching the surface, at a uniform grade, till, at the westerly extremity of said land, it will be fifteen feet below the surface; and no part of the land lying above the top of said strip above mentioned is understood to be taken, used or occupied permanently by said company in the construction and 10 operation of their said road. That the said company also require, during the construction of said railroad, the right to occupy a portion of said Fifteenth street, dimensions to be a uniform width of fifty feet, and one hundred and fifty feet in length, running back from the shore line of the Hudson River westerly along said street, for the purpose of sinking thereon a working shaft thirty feet in diameter and about sixty-five feet in depth, and to erect a temporary building over said shaft; the said railroad to be double track, and operated in the usual manner. 20

Your petitioner further shows, that the said The Hudson Tunnel Railroad Company, by its President and agents, have repeatedly tried to come to some agreement with The Morris and Essex Railroad Company and The Delaware, Lackawanna and Western Railroad Company, by which the said The Hudson Tunnel Railroad Company might acquire the use, or might purchase the said land and premises so required as aforesaid; but all to no purpose—they could not agree.

Your petitioner further shows, that the Board of Alder-30 men of Jersey City passed a resolution, at its meeting held on the twenty-seventh day of October, A. D. 1874, and approved by His Honor, the Mayor, on the twenty-ninth day of October, A. D. 1874, a copy of which resolution is hereto attached.

Your petitioner, therefore, with a view of acquiring the right to the said real estate for the purposes aforesaid, prays for the appointment of three disinterested, impartial and judicious freeholders, who reside in the county of Hudson, in said State of New Jersey, commissioners to examine and appraise 40

the said land and materials, and to assess the damages and the compensation to be made to the owners or persons interested in the said real estate, pursuant to the provisions of the first mentioned act, and appoint a time and place at which your Honor will hear the application of your petitioner and make the said appointment; and for such further and other order as may be agreeable to law, and as to the said Justice may seem just and proper.

10 D. C. HASKIN,  
*President and Agent of H. T. R. R. Co.*

State of New Jersey, County of Hudson, ss.

De Witt C. Haskin being duly sworn according to law, deposes and says, that he is President and Agent of The Hudson Tunnel Railroad Company, the petitioner above named; that he has read the foregoing petition by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

20 D. C. HASKIN.

Subscribed and sworn at Jersey City, this 8th day of January, A. D. 1875, before me.

A. B. BUNTING,  
*Master in Chancery of New Jersey.*

CITY CLERK'S OFFICE, CITY HALL,  
JERSEY CITY, Oct. 30th, 1874.

Dear Sir:—The annexed is a copy of a resolution passed by the Board of Aldermen of Jersey City at its meeting held on the 27th day of October, 1874, and approved by His Honor, the Mayor, on the 29th day of October, 1874.

30 Yours respectfully,  
JOHN E. SCOTT,  
*City Clerk.*

*Resolved,* That the prayer of the petition of The Hudson Tunnel Railroad Company, by D. C. Haskin, President, for permission and authority to occupy a portion of 15th street,

dimensions to be a uniform width of 50 feet and 150 feet in length, running back from the shore line of the river westerly, along 15th street, for the purpose of sinking thereon a working shaft 30 feet in diameter and about 60 feet in depth, from the bottom of which shaft the company intends to run its tunnel under the river to New York City; and to erect a temporary building over the shaft to protect the machinery, material, men, &c., employed in the work, be granted.

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*Affidavit of Service of Order.*

State of New Jersey, ss.

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Henry S. White, of full age, being duly sworn, on his oath saith, that on the twenty-first day of December, in the year eighteen hundred and seventy-four, deponent served a copy of the order hereto attached on Samuel Sloan, President of the Morris and Essex Railroad Company and President of the Delaware, Lackawanna and Western Railroad Company, personally, by showing him the original order, informing him of its contents, and leaving a copy thereof with him.

HENRY S. WHITE. 20

Subscribed and sworn at Jersey City, this second day of January, A. D. 1875, before me.

JOHN A. BLAIR,

*A Master in Chancery of New Jersey.*

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*Affidavit of Publication.*

State of New Jersey, County of Hudson, ss.

Samuel Hague being duly sworn, on his oath saith, that he is book-keeper of the Evening Journal, a daily newspaper printed and published in Jersey City, in the County and State aforesaid, and that a notice, a copy of which is here-

with annexed, was published in said newspaper for the space of ten days, commencing on the twenty-fourth day of December, eighteen hundred and seventy-four.

SAMUEL HAGUE.

Subscribed and sworn at Jersey City, this 4th day of January, A. D. 1875, before me.

JOHN A. BLAIR,

*A Master in Chancery of New Jersey.*

*Order Appointing Time and Place for Application.*

10 State of New Jersey, ss.

Whereas, on the nineteenth day of December, in the year 1874, The Hudson Tunnel Railroad Company, a corporation organized under and by virtue of an act of the Legislature of the State of New Jersey entitled "An Act to authorize the formation of railroad corporations and regulate the same," approved April 2, 1873, and an act entitled "An Act to extend the time for completion of the Hudson Tunnel Railroad," approved March 21, 1874, made application to me, David A. Depue, one of the Justices of the Supreme Court  
20 of the State of New Jersey, by their petition in writing, setting forth, among other things, under the oath of De Witt C. Haskin, President and Agent of the said The Hudson Tunnel Railroad Company, that the articles of association of said company, made and executed in due form, were filed in the office of the Secretary of State on the 26th day of May, 1873, and that the said company requires all that strip or tract of land situate, lying and being in Jersey City, in the County of Hudson and State of New Jersey, and described as follows: Beginning at a point formed by the intersection  
30 of the centre line of 16th street (and on a "Map of Jersey City, Hudson County, New Jersey, 1861, R. C. Bacot, City Surveyor," known as North 7th street) with the exterior line for piers established by the Board of Riparian Commissioners; thence running northerly along the said exterior line



for piers established by the Board of Riparian Commissioners, 22 feet; thence westerly in a line parallel with the said centre line of 15th street, 150 feet; thence southerly, and at right angles thereto, 6 feet; thence westerly and parallel with the said centre line of 15th street, about 1,750 feet, to the easterly line of Provost street; thence southerly along the said easterly line of Provost street, 16 feet to the centre line of 15th street; thence easterly along the said centre line of 15th street to the point or place of beginning; that the said railroad is to be built in a tunnel, said tunnel to be 26 10 feet wide and 24 feet high, inside measurement, and at no place to come nearer the surface than 15 feet, and from that to 35 feet at the water; that the said company also require, during the construction of said railroad, the right to occupy a portion of said 15th street, dimensions to be a uniform width of 50 feet and 150 feet in length, running back from the shored line of the Hudson River westerly along said street, for the purpose of sinking thereon a working shaft 30 feet in diameter and about 65 feet in depth, and to erect a temporary building over said shaft, in the construction and 20 use of the said Hudson Tunnel Railroad upon the route determined upon; and that the said company and the Morris and Essex Railroad Company, a corporation of the State of New Jersey, owner, and the Delaware, Lackawanna and Western Railroad Company, a corporation of the State of Pennsylvania, lessees, could not agree for the use or purchase of said land, and whereof a survey has been filed in the office of the Secretary of State of New Jersey; and therefore prayed that I would appoint three disinterested, impartial and judicious freeholders, who reside in the county of 30 Hudson aforesaid, commissioners to examine and appraise the said land and materials, and to assess the damages and the compensation to be made to the owner or persons interested in the said real estate, pursuant to the provisions of said first mentioned act, and appoint a time and place at which I would listen to such application, and for such further or other order as may be agreeable to law, and as to the said Justice might seem just and proper. Wherefore, I, the said David A. Depue, Justice as aforesaid, do appoint and assign the 4th day of January, A. D. 1875, at 10 o'clock in 40

the forenoon, at the Court House, in the City of Newark, as the time and place for the application made in said petition, and I do hereby direct the said company to give at least ten days' notice, in writing, of the time and place so assigned, to The Morris and Essex Railroad Company and to The Delaware, Lackawanna and Western Railroad Company, by serving a copy of this order on the President or Presidents of said companies, or, in their absence, upon the Secretary or Secretaries, and also by publication in the Evening Journal, 10 a newspaper printed and published in Jersey City, New Jersey, for a period of ten days.

December 19, 1874.

DAVID A. DEPUE,  
*Justice Supreme Court.*

HENRY S. WHITE, *Attorney.*

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### *Order Appointing Commissioners.*

State of New Jersey, ss.—Whereas, on the nineteenth day of December, in the year eighteen hundred and seventy-four, The Hudson Tunnel Railroad Company, a corporation 20 organized under and by virtue of an act of the Legislature of the State of New Jersey entitled “An Act to authorize the formation of railroad corporations and regulate the same,” approved April 2, 1873, and an act entitled “An Act to extend the time for completion of The Hudson Tunnel Railroad,” approved March 21, 1874, made application to me, David A. Depue, one of the Justices of the Supreme Court of the State of New Jersey, by their petition in writing, setting forth, among other things, under the oath of De Witt C. Haskin, President and Agent of the said The Hudson Tunnel Railroad Company, that the articles of association of said 30 company, made and executed in due form, were filed in the office of the Secretary of State on the twenty-sixth day of May, eighteen hundred and seventy-three, and that the said company requires all that strip or parcel of land situate, lying and being in Jersey City, County of Hudson and State of New Jersey, and described as follows :

Beginning at a point fifteen feet below and under a point where the middle line of Fifteenth street (formerly called North Seventh) intersects the easterly line of Provost street, and continuing under said middle line of Fifteenth street, on a uniform descending grade sixteen hundred and sixty-one feet to a point thirty-one feet under a point one hundred and eighty-five feet westerly from the bulkhead line of the Hudson River, as now used; thence, with the same descending grade, curving to the left, with a radius of eleven hundred and forty-six feet and twenty-eight one-hundredths of 10 a foot, one hundred feet to a point thirty-five feet below the present surface of the street; thence, with the same descending grade, on a course five degrees northerly from the course of Fifteenth street, eighty-five feet to the aforesaid bulkhead line; thence, continuing under the Hudson River on the same descending grade and course, one thousand feet, more or less, to a point under the exterior line of piers established by the Board of Riparian Commissioners; thence northerly and under said pier line to a point at right angles and sixteen feet from the course last given; thence westerly, on a 20 line ascending with the same grade, parallel with and sixteen feet from the lines heretofore described, to a point under the easterly line of Provost street; thence along under the said easterly line of Provost street sixteen feet to the point or place of beginning. Together with that certain other strip or parcel of land situate, lying and being in Jersey City aforesaid, and described as follows: Commencing at the first mentioned point under said exterior line for piers, and running thence southerly, on the same grade, sixteen feet; thence westerly, upon the same ascending grade, parallel to 30 said above described land, to a point under the middle line of Fifteenth street extended; thence along under the same to the westerly boundary of said curved line; thence easterly along said above described land to the place of beginning. That the said railroad is to be built in a tunnel, said tunnel to be twenty-six feet wide and twenty-four feet high, inside measurement, and at no place to come nearer the surface than fifteen feet, and from that to thirty-five feet below the surface at the water. And only so much of the above described land is necessary to be taken permanently 40

for the purposes aforesaid, as shall be occupied by the northerly part of said tunnel, with walls three feet thick, being a strip of land of the width of the above described land, and thirty feet in depth, and the whole of which is at the easterly extremity of the above described land, thirty-five feet below the surface, and from that point approaching the surface, at a uniform grade, till, at the westerly extremity of said land, it will be fifteen feet below the surface; and no part of the land first above described lying above the top of said strip

10 above mentioned is intended to be taken, used or occupied permanently by said company in the construction and operation of their said road. That the said company also require, during the construction of said railroad, the right to occupy a portion of said Fifteenth street, dimensions to be a uniform width of fifty feet, and one hundred and fifty feet in length, running back from the shore line of the Hudson River westerly along said street, for the purpose of sinking thereon a working shaft thirty feet in diameter and about sixty-five feet in depth, and to erect a temporary build-

20 ing over said shaft, in the construction and use of the said Hudson Tunnel Railroad upon the route determined upon; and that the said company and The Morris and Essex Railroad Company, a corporation of the State of New Jersey, owner, and The Delaware, Lackawanna and Western Railroad Company, a corporation of the State of Pennsylvania, lessees, could not agree for the use or purchase of said lands, and whereof a survey has been filed in the office of the Secretary of State of the State of New Jersey; and therefore prayed that I would appoint three disinterested, impartial

30 and judicious freeholders, who reside in the county of Hudson aforesaid, commissioners to examine and appraise the said lands and *materials*, and to assess the damages and the compensation to be made to the owners or the said persons interested in the said real estate, pursuant to the provisions of said first mentioned act, and appoint a time and place at which I would listen to such application; and for such other order as might be agreeable to law, and as to the said Justice might seem just and proper.

Therefore, I, the said David A. Depue, Justice as afore-

40 said, did appoint and assign the fourth day of January, A.

D. 1875, at ten o'clock in the forenoon, at the Court House, in the City of Newark, as the time and place for the hearing of the application made in the said petition, and the appointment of said commissioners, and did direct the said company to give at least ten days' notice, in writing, of the time and place so assigned, to The Morris and Essex Railroad Company and to The Delaware, Lackawanna and Western Railroad Company, by serving a copy of the said order on the president or presidents of said companies, or, in their absence, upon the secretary or secretaries, and also by publication in the Evening Journal, a newspaper published in Jersey City, for a period of ten days.

And whereas, on the fourth day of January, in the year eighteen hundred and seventy-five, at the Court House, in the City of Newark, being the time and place so appointed and assigned as aforesaid, the aforesaid parties, appearing by their respective counsel, and on motion of the counsel of the Hudson Tunnel Railroad Company, permission was given the said Hudson Tunnel Railroad Company to amend their said petition, so as to make the description of the land to be taken by said Hudson Tunnel Railroad Company more definite.

And now, on the said thirteenth day of January, A. D. 1875, at the Court House, in the City of Newark, the further consideration of the matter having been postponed till this time, *each party having been represented* by counsel at every time of hearing, I, the said David A. Depue, Justice as aforesaid, by virtue of the power and authority by law in me vested, do hereby appoint you, the said Robert C. Bacot, James L. Ogden and John M. Cornelison, three disinterested, impartial and judicious freeholders, residents of the county of Hudson aforesaid, commissioners to examine and appraise the said required land and materials, and to assess the damages, and whatever you, as said commissioners, are by law authorized or required to assess, upon at least ten days' notice, in writing, of the time and place when and where you will meet and proceed to perform your duties under this appointment, being given to the said The Morris and Essex Railroad Company and The Delaware, Lackawanna and Western Railroad Company, by serving

said notice on the president or presidents of said companies, or, in their absence, upon the secretary or secretaries.

Given under my hand and seal, this thirteenth day of January, in the year of our Lord one thousand eight hundred and seventy-five.

DAVID A. DEPUE,  
*Justice Supreme Court.* [L. s.]

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*Depositions.*

Before JUSTICE DEPUE.

<p>THE HUDSON TUNNEL RAILROAD COMPANY</p>	<p><i>vs.</i></p>	<p>THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY <i>et al.</i></p>
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Examination of witnesses in above case, taken before me (at  
38 Montgomery street, Jersey City), a Master and Exam-  
iner in Chancery of New Jersey, this 6th day of January,  
10 1875, in presence of Henry S. White, attorney of plaintiffs,  
and Jacob Vanatta, attorney for defendants.

*William Unruh*, a witness produced on the part of the  
defendant, being duly sworn, on his oath says:

I am a civil engineer, in the employ of the defendants;  
have been in their employ six years; am stationed at Hobo-  
ken most of the time; I am acquainted with the lands of  
the defendant adjoining the Hudson River; I have made a  
map of the shore front; I made one about three years ago,  
20 and another one about a year ago; I have the latter one  
with me.

[Paper offered in evidence, and marked *Exhibit A* on the  
part of the defendants.]

Witness says:—I made the survey upon which this map

was made—that is, I superintended them, but did not make them all myself; the line represented in red, along the centre of Fifteenth street, is the southerly line of defendants' property; the line of high water mark is not on this map; the original high water mark would be five feet easterly of and parallel with the westerly red line; the land immediately south of the defendants' property is the property of the Jersey Shore Improvement Company, I believe; I have known what is now called Fifteenth street, in Jersey City, for the past five years; it was formerly called North Seventh 10 street; the name was changed about two and a-half or three years ago; Fifteenth street has been opened, easterly, as far as Provost street; the land, that is to say, Fifteenth street, continued easterly beyond Provost street, was originally an old road leading to old California dock; that old road ran a little south of the centre—some places on the centre of Fifteenth street; the old California dock has been torn away, about a year and a-half ago; it was on the Morris and Essex property; it was about where Dock No. 9 now is on the map; it is the most southerly dock of the defendants shown 20 on the map; there was no use, to my knowledge, of that old road, except to go to and from the old California dock; it was also used to go to some of these coal docks of the defendants, if occasion required; I do not know that there were any city improvements east of Provost street; there is no grading and paving except the grading of that old road; it is filled-in land; there is a fence on that ground from the bulkhead continued around on the line of the defendants' property, except on Fifteenth street, where the fence is placed five feet northerly of the line, to allow the use of the old 30 road; the length of that fence on the line of Fifteenth street is about 1770 feet; it is a fence made by driving pile and putting on plank; it is about eight feet high, and is light; it was put there about a year ago; I located it myself; it was erected by the company's men; it was put there to prevent encroachments thereon of coal and lumber; I don't think that any of that fence on Fifteenth street has been broken or disturbed, except at the easterly end; I think about eighty feet have been taken down there, and in its place are the buildings over the shaft of the Hudson Tunnel Company; 40

I presume it was removed by some of the men in the employ of the Hudson Tunnel Company; I have not marked the location of the shaft of the Tunnel Company; it is about one hundred feet west of the bulkhead; the southerly pier and dock of the defendant, shown on the map, is used for shipping coal; there are railroad tracks on it, as shown on the map; that pier was finished somewhat over a year ago—I do not remember the exact date; five of the defendants' piers are used for coal at this time; they are the most southerly five, as shown on the map; the others north of those are used for iron and merchandise; this map does not show all the tracks now actually on the ground—it only shows the main track; the side tracks, the tracks for standing cars, are not shown; if another pier is built on the southerly side of the present most northerly pier, it will extend within a few feet of the defendants' southerly line; I mean it will come within seven feet of the defendants' southerly line—by which I mean the middle of Fifteenth street extended; those five coal docks are all in use at the present time by the company's coal business; all the company's coal business does not come to Hoboken at present time—some of it goes to Elizabethport; I think about six hundred thousand tons a year goes to Elizabethport; the company are now making improvements with the view of increasing their business at Hoboken; they are building a tunnel through Bergen Hill, rebuilding freight dock at Hoboken, and constructing a large ship canal at Hoboken; the business of the company requires an extension of the water front at Hoboken and Jersey City, to accommodate all the business.

30 Q. Is the land of the defendants, all the way down to the centre of Fifteenth street, necessary or unnecessary for the transaction of the passenger, coal and freight business of the defendants?

[Counsel for plaintiffs objects to the above question, on the ground that it is incompetent, immaterial; the witness should state fact, and not his opinion or conclusions.]

A. It is necessary, an absolute necessity at times; I am somewhat familiar with the amount of business of the defendant, being around there constantly.



And being cross-examined, he says:

The ground is used for the receiving and storing of lumber and other materials; that part of Fifteenth street immediately fronting on the river, at the dock, has been used for that purpose, extending the whole width of the north half of Fifteenth street, I think at least about two hundred feet inland—has been used at times for piling lumber; we have used it this last summer for dumping mud excavated from the slips; we have used it as a ground upon which to frame bridge and timber for other purposes, to be used along the line of the road, and no other purposes to my knowledge or recollection; I have seen a floating grocery located at the bulkhead at the eastern extremity of the north half of Fifteenth street; I cannot say how long it has been there; I cannot swear that it has been there longer than a year; I cannot say that it has not been there five years; I am not willing to swear that there was any mud deposited last year upon the north half of Fifteenth street, within a hundred feet of the bulkhead; I cannot remember the date of depositing any lumber there; I cannot say, definitely, whether there was any in 1874, but there was in 1873; within the two years there was considerable quantity of piles and dock timber—that is all the occupancy that I can remember during the years 1873 and 1874; that was both dock timber and piles; they remained there several months, and were used along the line of the road and at Hoboken; I do not think they were used to make the fence, as the fence was made of odds and ends of piles picked up anywhere; I have no distinct recollection of the occupancy of this ground by materials prior to 1873; of the residue of the north half of Fifteenth street I have no knowledge of any other occupancy than the filling in with muck and dirt taken from the slips; my idea is that we used within three hundred feet of the dock for the depositing of timber and materials; there is, to my knowledge, no other occupancy than the kind I have described in my cross-examination; it has been used—I mean the water front—at or near Fifteenth street; has been used for the receiving of material for the filling in of low lands in Jersey City and Hoboken.

Q. Describe the line and ground filled in by defendant, 40

commencing at the middle line of Fifteenth street and extending northerly.

A. The filling runs to within five feet of the centre of Fifteenth street, to within a point of about 300 feet westerly of the bulkhead; northerly, it varies, in some places running probably 150 feet.

Q. State for what purposes you have testified, in your opinion, that it was necessary for the defendants to use the north half of Fifteenth street.

10 [Question objected to by defendants' counsel.]

A. For the purpose of receiving lumber and other materials from vessels, and storage for the same, and facilities for their removal westerly.

Q. Define and describe what you mean by facilities for their removal.

A. Egress and ingress to the water front along and adjoining Fifteenth street.

Q. Would the use you have described of the north half of Fifteenth street, by defendants, be interrupted by the  
20 location and use of a tunnel from fifteen to thirty-five feet below the surface of the ground, located under Fifteenth street?

[Objected to by defendants' counsel.]

A. Probably not, after the tunnel is finished, but it would be an objection during the construction of it.

Q. If, during such construction of such tunnel, the surface of the street was not occupied or obstructed, except at the location of the shaft you have described, what interruption, if any, would result to the use by defendant of the north half  
30 of Fifteenth street?

A. The construction of the tunnel might preclude the use of piles, which might be necessary to be used in forming foundation for tracks or other structures which the company might require in order to gain access to the water front.

Q. What portion, if any, of the north half of Fifteenth street, do you state would be necessary to be occupied with piles?

A. It may be necessary to occupy the whole of it, according to the nature of the structure the company might erect.

40 Q. Is there no other way to make a solid foundation upon

a narrow strip of land, sufficient for any of the purposes you have described, than by piles?

A. Probably none so cheap.

Question repeated.

A. In that kind of land I should not recommend any other.

Question repeated.

A. There is an engineering point involved in that question I would not decide on, but probably an expensive foundation of concrete might answer. 10

Question repeated.

[Counsel for defendants objects.]

A. Yes, you might excavate to the bed rock, and build a masonry foundation.

Q. Can you state whether this fence, as described upon the southern boundary of defendants' land along Fifteenth street, was all built at the same season?

A. I believe it was.

Q. Was not the easterly 200 feet of that fence constructed during the year 1874? 20

A. It might have been; my impression is that the fence was erected during the winter of 1873 and 1874.

Q. Was not the easterly 200 feet of such fence constructed as late as June, 1874?

A. I don't remember.

Q. Have you any personal knowledge as to when the easterly 200 feet of such fence was constructed?

A. I had at the time, but do not remember the date; I was there the last few days of the finishing of the fence.

Q. Describe what filling in or improvements have been made upon Fifteenth street east of Provost street. 30

A. The only improvement was made by the company, which was the building of a bridge over a stream east of Provost street, for the accommodation of teams coming and going to the company's coal docks; there is no filling in, to my knowledge.

Q. Describe what, if any, difference in grade, exists between the surface of Fifteenth street and the lands each side of it.

A. It varies considerably, probably two feet, in some places.

Q. How much, if any, is the grade of Fifteenth street elevated above the grade of the land either side of it?

A. At places it is level with the land either side of it; at others, I presume it is somewhat lower, and still at other places somewhat higher.

Question repeated.

A. I cannot answer the question further.

10 Q. State whether or not the grade of Fifteenth street is not, much of the way, from one to two feet higher than the grade of the land south of Fifteenth street.

A. Probably so.

Question repeated.

A. Part of the way it is.

Q. What part of the way?

A. The westerly portion.

Q. What proportion of the length of the street east of Provost street?

20 A. As nearly as I can remember, about two-thirds of the whole distance from Provost street to the bulkhead.

Q. Are there any buildings erected upon the north side of Fifteenth street, east of Provost street, besides the one over the shaft?

A. One on the northeast corner of Provost and Fifteenth street.

Q. State whether there are any buildings on the south side of and adjoining Fifteenth street, east of Provost street; if yea, describe all upon both sides of the street.

30 A. There is a lumber yard on the south side, but I am not certain whether there are any buildings in it or not.

Q. In describing the location of the old road along Fifteenth street as being partly along the centre and at other places south of the centre, did you mean to describe where it had been laid out, or only the track or places traveled?

A. The track or places traveled.

WM. UNRUH.

Sworn and subscribed before me, at Jersey City, this sixth day of January, 1875.

*Andrew Reasoner*, a witness produced on the part of defendants, being duly sworn, says:

I have been in the employ of the defendants since May, 1869, and during all that time have had my office in Hoboken.

Q. What is your position, and how long have you held it?

A. Superintendent of the Morris and Essex Division, since March 1871.

Q. Are you acquainted with the lands of the defendants, 10 adjoining the shore, in Hoboken and Jersey City?

A. Yes, sir.

Q. Are you acquainted with the business of the defendants done at the eastern terminus of the road?

A. Yes, sir.

Q. At the eastern terminus, along the shore, have the defendants more land or less land than the want of their transportation business require?

[Objected to by plaintiff's counsel.]

A. They have not land enough.

20

Q. State why they have not land enough.

A. They have not enough front there for their coal and freight facilities, which they propose to increase on the first of May.

Q. What increase will there be on the first of May?

[Objected to by plaintiff's counsel.]

A. There will be at least sixty thousand tons of coal per month, the exact amount of freight I cannot say; we fetch the product of two more roads into ours on the first of May.

30

Q. Why this increased quantity of coal at that time?

A. We abandon our contract with the New Jersey Central, which takes our coal to Elizabeth.

Q. When does that contract expire?

A. It expires the last of April.

Q. Have you piers and docks enough to accommodate this increased business, at the present time?

A. No, sir, not fully.

Q. Have you any place to erect any additional piers or docks, except on the southerly side of your property?

40

A. No, sir, not in my judgment.

Q. About how long does it usually require to build or rebuild piers such as you have there?

A. The building of a new coal pier can be done in about five months, with economy; the rebuilding, the time cannot be definitely stated; it depends on the condition of the pier and the amount of work put on it—probably about six months, on an average.

Q. Can you tell us about how long one of those piers last, 10 or about how often they have to be rebuilt?

A. We have just torn down one, this last fall, that had been seven years in use.

Q. Did you tear it down because it had to be rebuilt, and for the purpose of rebuilding it?

A. Yes, sir.

Q. While a pier is being rebuilt is it available for the purpose of your transportation business?

A. No, sir, not when you have to repile.

Q. If you know, state when the fence near the southerly 20 line of your property was erected, and by whose order was it erected?

A. We commenced it in the latter part of 1873—finished it in the fore part of 1874; we worked at it at intervals; drove the posts with the pile driver when we had nothing else to do; it was built by my order.

Q. Are your company now making any improvements with a view to using your shore front in your transportation business? if so, state what they are, about when they were commenced, and the probable cost of them.

30 A. They are making improvement for that purpose; commenced last spring on a canal 4,000 feet in length, 100 feet wide, carries 16 feet of water, in order to stock coal, pig iron and merchandise, so as to relieve our upper docks, that we may use our upper dock for a ferry; this involves the necessity of our removing our machine shops and engine houses seven miles west; the probable cost won't be far from two million dollars; we are building a tunnel through Bergen Hill; the approaches, right of way and construction of said tunnel will probably cost two and a-half million dollars, 40 with the alteration of the tracks leading to it.

Q. When was that tunnel commenced?

A. A year ago last fall.

Q. Why do you not continue to use the Bergen tunnel instead of building a new one?

A. Because we were subject to such delays in the transportation of our passengers and freight; and we found if we increased our product we would be obliged to have a tunnel of our own.

And being cross-examined, he says: 10

Q. What use do you make of the north half of Fifteenth street?

A. At the present time we are not using the north half of Fifteenth street; we have used the shore end of Fifteenth street considerable.

Q. For what purpose have you used the shore end of Fifteenth street?

A. We have used it to draw out and store piles on, and the old materials from the California dock were stored there until we shipped them away and used them for other purposes. 20

Q. Are not the docks of the defendants sufficiently large for the use of its transportation business?

A. Not at all times; no, sir.

Q. When the docks along the ship canal, as proposed, are perfected, would the defendants still need all of the defendants' docks, now used along the river front, for purposes of transportation?

A. They will, yes, sir, for the purposes of transportation, receiving and delivery. 30

Q. Describe the location of the pier which you state that the defendants contemplate constructing south of the most southerly pier owned by defendant.

A. It would be in the neighborhood of about 150 feet below the other one, down stream; we have not conformed to a uniform width between piers, or of piers depending on the kind of business we intended to use them for.

Q. Describe how near to the middle line of Fifteenth street extended easterly into the river.

A. I could not tell the exact distance. 40

And being re-examined in chief:

Q. Have you advised the President to build an additional pier, and if so, when and why?

[Objected to by plaintiff's counsel.]

A. I did; it was in the spring of 1874; it was after the finishing of the southerly pier; we had a consultation about tearing down the pier that we had torn down, and making the canal improvements that we are now at work at; we talked over the termination of the contract with the New  
10 Jersey Central Railroad; I urged him to build another pier at once, because lumber was cheap, labor was cheap; that if we terminated the contract then, we could not handle the product without additional facilities; his answer was, "It's very hard times; I can't see where I can raise the money; we must screw and twist along until we get that transportation money, and then we would build the pier."

[What the President said was objected to by plaintiff's counsel before it was stated.]

Q. Did you then think the additional pier necessary in  
20 view of this increased business?

[Objected to by plaintiff's counsel.]

A. I did.

Q. Who carries your passengers between Hoboken and New York?

A. Hoboken Land Improvement Company.

Q. Are they the owners of the ferry which carry your passengers?

A. Yes, sir, they own the ferry.

Q. For which service you have to pay them about how  
30 much a year?

A. About \$71,000 a year.

Q. Is any of your shore front used for a passenger ferry, or has it been?

A. No, sir.

Q. If you ferry your passengers across the river I suppose doing that would take away some of your shore front now devoted to transportation, would it not, and if so, about how much?

A. It would take away a portion of our shore front; it



would take away our two north freight piers and slips, making a frontage of about 250 feet.

ANDREW REASONER.

Sworn to and subscribed before me, at Jersey City, January 6, 1875.

A. B. BUNTING,

*Master in Chancery of New Jersey.*

*Conrad A. Hotaling*, a witness produced on the part of the defendants, being duly sworn, on his oath says: 10

Q. Are you in the employ of the defendants, and if so, in what capacity, and how long have you acted in that capacity?

A. I am employed by them as coal agent at Hoboken—have been there about four years.

Q. Please state what duties you perform there, that is, the nature of the business you have in charge.

A. I have charge of all the coal arriving at Hoboken, and the delivery of it to purchasers or consignees.

Q. You take care of it, direct where to put it, and what to do with it generally?

A. Yes.

Q. Have you, at this time, any more piers, docks or room for coal and coal cars, at Hoboken and Jersey City, than the present business needs and requires?

A. Yes, sir, we have one dock idle; our business is very slack at the present time—we are not doing our usual amount of business: we are not receiving; the coal trade is at such a state that we are doing but very little.

Q. With an average of the business of the last three years are those accommodations any more than are required?

A. No, sir.

Q. If, in the spring, you send to Hoboken the coal ordinarily going to Elizabethport, will you not require an additional pier?

A. Yes, sir.

Q. Where is the place to put that pier?

A. Very near the line of Fifteenth street, south of Pier No. 9, the most southerly pier.

C. A. HOTALING. 40

Sworn to and subscribed before me, at Jersey City, this January 6th, 1875.

A. B. BUNTING,  
*Master in Chancery of New Jersey.*

*James Archibald*, a witness produced on the part of the defendants, being duly sworn, says:

Q. Are you connected with the defendants, and if so, in what capacity, and how long have you been with them in  
10 that capacity?

A. I am; I am chief engineer of the company; have been there about four and a-half years; I was acting as chief engineer for a year and a-half previously; have been with them altogether about fifteen years.

Q. State the distance from Hoboken to the most westerly terminus of the road, controllable by the defendants.

A. Three hundred and twenty-five miles, to Oswego.

Q. Just state the tributary roads, giving their names and their termini most remote from the trunk line, and the  
20 length of each one.

A. The main line of the Morris and Essex is eighty-four miles, I think, terminating at Phillipsburg; the Newark and Bloomfield Branch, terminating at Montclair, four miles in length; the Boonton Branch, I think about thirty-six miles in length, terminating at Dover; the Chester Branch, terminating at Chester, twelve miles long; the Warren Railroad, from the Junction to Washington, five miles long; the Bloomburgh Division, eighty miles long, from Scranton to  
30 Northumberland; the Winton Branch, from Nayaug to Winton, eight miles long; the Keyser Valley Branch, terminating at the Archibald mines, five miles long; the Pyne, Sloan and Corey Branch, about five miles; the Meadow Brook Branch, terminating at Meadow Brook, nearly three miles long; the Utica Division, one hundred and sixteen miles long, terminating at Utica and Richfield; the Cayuga Division, thirty-five miles long, terminating at Ithaca.

Q. State what roads are tributary to the main line, but not controlled by the defendants.

A. The Hibernia, the Mount Hope, the Sussex, the Lehigh

Valley, the Lehigh and Susquehanna, the Delaware and Hudson, the Erie.

Q. Are you acquainted with the lands at the eastern terminus of the Morris and Essex Railroad on the Hudson River, and the business done at that terminus?

A. I am.

Q. Have the defendants, at that terminus, on or near to the shore to the river, any more land than the necessities of their transportation business require?

[Objected to by plaintiff's counsel.] 10

A. They have not.

Q. If the coal that the defendants now send to Elizabethport be sent to the eastern terminus of the Morris and Essex road, will the defendants require the use of any more piers and docks than they now have?

A. The coal sent to Elizabethport if sent to Hoboken in addition to the average amount sent during the past three years, it would require additional facilities at Hoboken to take care of it.

Question repeated. 20

A. I meant, in my last answer, dock facilities and switch room.

Q. How near the southerly line of the defendants' land will an additional pier come?

A, I think about five feet north of the centre of Fifteenth street.

Q. In building an additional dock and pier, how near Provost street would you drive piles?

A. Probably within about 800 feet, extending eastward to the exterior pier line about 2200 feet—that would be the 30 length of the piling.

Q. Begin at the westerly end of that piling, and tell us what depth those piles would have to be driven as you follow on eastward.

A. Twenty-five to forty feet the piles would go in the filling; in the water we drive them seventy feet.

Q. If there be a tunnel under that ground, varying from fifteen to thirty-five feet below the surface, what would be the effect of your pile driving?

A. It would batter the point of the pile. 40

Q. Would it endanger the roof of the tunnel?

A. It would depend a great deal on the strength of the tunnel.

Q. Suppose the tunnel to be constructed as you would expect such a tunnel to be, would it be safe to drive piles on the roof of it with a steam pile driver?

[Objected to by plaintiff's Attorney.]

A. It would not.

Q. What I want to know is, whether the tunnel, or the 10 pile driving, would not have to be given up, one or the other?

A. I think it would.

Q. Suppose the business of the defendants, for ten years to come, increases in the same per centage it did in ten years past, will the land they now have on shore be adequate to meet the necessities of such an increased business?

A. It will not.

Cross-examination :

20 Q. Would it be practical so to construct a tunnel thirty-five feet below the surface at the water's edge, so as to support the superstructures and works you have described?

A. It can be done.

Q. Would it be practicable to drive sufficient piles each side of such tunnel, if it is not more than thirty-two feet in width outside, so as to give the required support of the work you have described?

A. The piles driven on each side would not be where they ought to be.

30 Question repeated.

A. It is not practicable.

Q. Is it possible to construct such tunnel and the works you have described in such a manner that both may exist and be used successfully.

A. It is.

Re-examined in chief:

Q. What must be done to make it practicable?

A. Making the tunnel strong enough to carry the super-

structure resting on the piles that reach the masonry or shell of the tunnel.

JAMES ARCHIBALD.

Sworn to and subscribed before me, at Jersey City, this January 6th, 1875.

A. B. BUNTING,  
*Master in Chancery of New Jersey.*

Before JUSTICE DEPUE.

THE HUDSON TUNNEL RAILROAD COMPANY	}
<i>vs.</i>	
THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY.	}

Examination of witnesses taken before me, Abraham B. Bunting, a Master and Examiner in Chancery of New Jersey, at my office, 38 Montgomery street, Jersey City, January 8th, 1875, in the presence of H. S. White, Attorney of plaintiffs, and Jacob Vanatta, Attorney of defendants. Being testimony on the part of the plaintiffs.

*William H. Paine*, a witness produced on the part of the plaintiffs, being duly sworn, on his oath says:

Q. State your residence and occupation.

A. My residence is in Brooklyn, in the Eastern District; occupation, civil engineer.

Q. State how long you have been a civil engineer, and what experience you have had. 20

A. I have been engaged as a civil engineer for more than twenty years; engaged upon railroads, tunnels, bridges and military engineering, with engineers of the highest repute in this country; I will mention a few of them, viz: Major General G. K. Warren, Chief Engineer of the Army of the Potomac, Colonel I. N. McComb, Colonel J. C. Duane, General Whipple, and others. I made the preliminary survey

for the Pacific Railroad crossing the Nevada Mountains; I am an assistant engineer on the East River Bridge.

Q. In charge of which tower?

A. I have more than charge of one tower.

Q. Are you the engineer of the Hudson Tunnel Railroad Company, and acquainted with the work projected by that company?

A. I am.

Q. Is the map and survey now shown you, and now marked *Exhibit I*, for plaintiffs, a correct map and profile of the work projected to be done and tunnel to be built, determined upon by the Hudson Tunnel Railroad Company?

A. It is.

Q. Describe the manner projected for the form and location of the same.

[Objected to, as irrelevant and immaterial.]

A. The form of the upper portion of the tunnel is a circular arch, three feet in thickness; as to location, it is so clearly set forth in the map that any other description would be superfluous.

Q. Describe how far below the surface of the ground and dock it would be located.

A. On the east side of Provost street, and the middle of Fifteenth street, the top of the arch is proposed to be about fifteen feet below the surface of the street; at the dock line the top of the arch is proposed to be about forty feet below the surface of the ground, from which point the tunnel is proposed to descend two feet in each hundred feet, in the direction toward the middle of the river.

30 Q. Would you consider it practicable to construct docks and piers for storing coal, iron or merchandise, and for the general use of a railroad company, over the tunnel you have described?

A. I would.

Q. Would it be practicable to construct such tunnel under any such dock or pier after the same had been completed, and without injury thereto?

A. It would.

Q. Could such dock or pier, if located about five feet 40 north of the middle line of Fifteenth street, be properly con-

constructed over such projected tunnel without injury to either, and in such manner as to admit of both being successfully constructed and used?

A. It could.

Q. Will such tunnel, when constructed, interfere with or interrupt in any manner the use or occupation of the land, docks or piers over it, for any of the purposes or uses of a railroad corporation?

A. It will not, in my opinion.

Q. When such tunnel is constructed in the manner proposed will it be of sufficient strength to support piling if driven down to its surface, in the usual manner for constructing piers, if properly constructed, so as not carelessly or intentionally to interfere with such piling or tunnel?

A. It would support the piling and the piers, but some care might be required to be exercised in driving the piles directly over the tunnel.

Q. State whether or not there are not various other ways in which piers and docks can be so constructed over such tunnel as to receive the required support without piling. 20

A. There are various ways.

And being cross-examined:

Q. Have you ever constructed, or superintended or directed the construction in person, of any docks or piers on the west side of the Hudson River, in Hoboken, or in Jersey City north of the Jersey City Ferry, and if so, when and where?

A. I have not, other than this tunnel.

Q. This Exhibit 1 on the part of the plaintiff is a copy, is 30 it not?

A. It is a copy.

Q. Who made the original?

A. I made it myself, personally.

Q. I see on this map a dotted line crossing Provost street northerly of Fifteenth street—what is that line intended to represent?

A. It is intended to represent the line of a fence.

Q. Did you find any fence crossing Provost street in that direction?

A. I did not go out on Provost street north of Fifteenth street, and do not know whether there is any fence there or not.

Q. Have you been on the ground represented on this plan Exhibit 1 on the part of the plaintiffs?

A. I have been upon the whole line of Fifteenth street as represented on this map.

Q. Is not Provost street, between Fourteenth and Fifteenth street, paved, guttered and flagged, and in constant use as a  
10 public street, and been so for years?

A. I do not know.

Q. Did you ever see any fence at the place indicated by this dotted line, to which I previously called your attention?

A. I did, on Fifteenth street.

Q. Anywhere else?

A. I did not examine anywhere else; I did not see any.

Q. Did you see any fence extending from Fifteenth street to and across Provost street, and across the southwesterly  
20 corner of Provost street and Sixteenth street, into and nearly across Sixteenth street, as represented on this map?

A. I saw a fence running from the middle of Fifteenth street in the direction of Provost and Sixteenth streets.

Q. What kind of a fence was it?

A. Post and board fence, quite high.

Q. Was it continued on Fifteenth street easterly, near the middle of the street?

A. It was.

Q. How near is the dotted line on this map, to which I  
30 have been calling your attention, to the original line of high water?

A. I do not know.

Q. Whereabouts, with reference to Provost street and Fifteenth street, is the original line of high water?

A. I am not acquainted with that subject at all.

Q. Did you not, before making this map and adopting this location, make any inquiries or endeavor to ascertain where the original line of high water was?

A. I did not.

40 Q. Where, at this time, do you locate the west shore of the



Hudson River, with reference to the line of this projected tunnel?

A. I should suppose the bulkhead line would be considered the west shore.

Q. That line, as represented on this map, is on the easterly side of Hudson street, is it not?

A. It is.

Q. Where is the westerly end of this projected tunnel?

A. The westerly end of the tunnel proper is proposed to be on the westerly side of Erie street. 10

Q. How far westerly of Provost street is that?

A. Between thirteen and fourteen hundred feet.

Q. How far westerly of Hudson street is the terminus of the tunnel?

A. About three thousand three hundred feet, or in that vicinity.

Q. Is the bottom of the tunnel intended, at its westerly end, to be on a level with the surface of the adjacent streets, and if not, what is to be the difference between the two?

A. The bottom of the tunnel proper is not intended to be 20 on a level with the surface of Erie street, but the bottom of an open cut, is intended to correspond with the surface of Jersey Avenue.

Q. How much higher is the surface of Jersey Avenue, where Fifteenth street crosses it, than the surface of Erie street where Fifteenth street crosses Erie street, if any?

A. My impression is that the surface of Jersey Avenue is lower than the surface of Erie street where Fifteenth street crosses it, and the profile indicates it.

Q. What is the difference in the two elevations? 30

A. In the vicinity of two feet.

Q. On the west side of Erie street how much below the grade of Erie street will the bottom of the tunnel be?

A. Between nineteen and twenty feet, by the scale.

Q. Is it the design and intention to run the railroad cars in the tunnel no farther westward than the west side of Erie street?

A. I suppose that it is the intention of the company to have cars to run further; they have not acquainted me with their design. 40

Q. Is this plan, shown on Exhibit No. 1 for plaintiff, arranged so as to permit cars to go further west than the west side of Erie street, if the construction stops with the consummation of this plan?

A. It is not.

Q. If the bottom of your tunnel, on the west side of Erie street, is about nineteen feet below the grade of Erie street, passengers coming by your railroad to Erie street will have to ascend by some means from your cars to the surface of the street, will they not; and if so, what means are proposed to get them up and down?

A. As no depot or stopping place has ever been contemplated at Erie street, I have made no provision for getting passengers up or down.

Q. How is freight to be received and discharged at Erie street?

A. There has not been any freight depot located there, and no provisions made for receiving or delivering freight at that point.

20 Q. Is it the purpose to receive and discharge passengers and freight at that point?

A. Not to my knowledge.

Q. Where are they to be received and discharged?

A. I do not know.

Q. Can they be received or discharged at that point on that map, and if so, tell us how?

A. I think it would be possible to receive and discharge freight and passengers at that point, if desirable, but it has never been contemplated; it would require considerable 30 planning and engineering, which has not been called for by the company that has employed me.

Q. You have said that you thought it possible; tell us the plan by which it can be made a practicable possibility so as to be useful when done?

A. I do not consider it desirable or practicable, but possible.

Q. Whereabouts is the first station or depot for passengers to be located—I mean the first one as you go westward from the waters of the Hudson River?

40 A. I do not know.

Q. What amount of surface lands would be reasonably necessary to establish and carry on a depot for passengers and freight on this tunnel railroad, at the station nearest to the Hudson River?

A. That would depend upon the character of the business which they intend to do.

Q. I mean for the business which this railroad is intended to do?

A. I am not fully acquainted with all the business intended to be done by this railroad. 10

Q. I mean the business with reference to which you made that plan, Exhibit No. 1, on the part of the plaintiffs?

A. The parties did not acquaint me sufficiently in regard to all their plans as to give me data in regard to depot room required.

Q. Suppose the company to do all the business that they can do with such a work as is indicated by that plan, how much depot room will they need on or near the surface, at their station nearest the west side of the Hudson River?

A. It would depend upon the kind of business they should 20 do.

Q. Suppose it to be exclusively a passenger business, how much would be necessary then?

A. I can imagine a conveyance of passengers to the full capacity of the road, without any depot.

Q. Tell us how that is to be done.

A. By the convergence of other railroad lines running in upon the tracks of this road.

Q. But take the plan as it is now, without any such convergence, treating it as a separate road, tell us how you are 30 to get on without any depot room at your western terminus.

A. There are no provisions made for getting on at the western terminus.

Q. Then is not the plan, shown on that Exhibit No. 1 for the plaintiffs, useless and worthless, unless other railroad companies connect their rails with it?

A. The same company might obtain an extension.

Q. Suppose they do not obtain an extension, then what is the utility of the work shown by that plan?

A. If this company does not obtain an extension, and no 40

other railroad connect with it, the value would be very small, in my opinion.

Q. I perceive that in this tunnel route, as shown on the plan, it has an angle near Hudson street; please tell me what that angle is—how many degrees?

A. It is a change in direction of five degrees, obtained by a curve of one hundred feet in length.

Q. You said, in your principal examination, that this route and plan were determined upon by the Hudson Tunnel Railroad Company—when and where was that adoption made?

A. I was not present at the time of its adoption by the company.

Q. Do you know that the company ever did adopt it, and if so, how do you know it?

A. I was informed by the President that that line was agreed upon.

Q. You spoke or referred in one of your answers on your principal examination, to the dock line; please tell us to what line you had reference—do you mean the bulkhead line?

A. I do, about the easterly side of Hudson street, as shown on this map.

Q. If the Hudson Tunnel Railroad Company made the western terminus of its tunnel and railroad fifty feet easterly of Provost street, the plan shown on Exhibit 1 for plaintiff would not then be applicable, would it?

A. I think not.

Q. What change in the plan would such a change of the westerly terminus involve and require?

A. It would involve so far as the plan goes, the striking out of that portion of the line lying westerly of the point mentioned.

Q. Would it not necessarily involve a change in the location of the residue of the tunnel, so as to bring it nearer to the surface at a point fifty feet easterly of Provost street?

A. It would.

Q. And nearer the surface from that point, easterly to and beyond the dock, would it not?

A. It would either involve a change as to depth over all

the remaining portion of the tunnel, or introduction of a very steep grade over one portion, leaving the other and more easterly portion as at present located.

Q. In making this plan, why did you extend the tunnel and the railroad westerly of the west shore of the Hudson River, or, in other words, why did you not make the projected work stop on the west shore of the Hudson River?

A. The limits of the plan were not matters of my own option.

Q. By whose direction did you make it extend westerly of 10 Provost street?

A. The limits were given me by the President of the company.

Q. By what authority does the President of the company undertake to locate and construct a tunnel and a railroad to the westward of the west shore of the Hudson River?

A. I am not acquainted with the details of their authority—I do not know.

Q. Do you know of any authority for their doing so?

A. I do not, of my own personal knowledge. 20

Q. What is the scale, horizontally and vertically, of this map, Exhibit No. 1 for plaintiffs?

A. Two hundred feet to the inch, horizontally, and forty feet to the inch, vertically.

Q. Please state the height of the intended tunnel from the bottom to the top of the arch, internally, and its inside extreme width.

A. The main portion is intended to be twenty-four feet in height and twenty-six feet in extreme width.

Q. Please state how the railroad tracks will be when fixed 30 for use, and how high from the top of the rail to the top of the arch?

A. Nineteen feet.

Q. What will be the width of the tunnel on a plane of the rails?

A. Something more than twenty feet, I should think; intended for a double track, of a gauge of four feet eight and a-half inches.

Re-direct :

Q. If the tunnel were to terminate at the point near Provost street described upon your cross-examination, could not its present grade be retained, if it were with a curve to ascend upon proper grade to a point north or south of that point?

A. If the line terminated there and that plan was retained, with no change, it could not be done; the plan may be changed and the profile adhered to, or the profile may be  
10 changed and the plan adhered to; or the plan and the profile might both terminate, as now constructed, at that point, if met by another plan and profile to coincide with it.

Q. At the commencement of the open cut upon the west side of Erie street, what is the length of the open cut before the surface of the track of the railroad will reach the grade of the street?

A. Between four and five hundred feet.

Q. At what street will the surface of the projected railroad reach the same grade as the street?

20 A. Jersey Avenue.

Q. Has the Hudson Tunnel Railroad Company caused borings to be made under the waters of Hudson River, between Fifteenth street, in Jersey City, and the City of New York; if so, to what extent?

A. They have caused a large number of soundings and borings to be made between those points.

W. H. PAINE.

Sworn to and subscribed before me, at Jersey City, this  
January 8th, 1875.

30

A. B. BUNTING,  
*Master and Examiner in Chancery of New Jersey.*

*Articles of Association.*

Know all men by these presents, that we, the undersigned, under and in pursuance of an act of the Legislature of the State of New Jersey entitled "An Act to authorize the formation of railroad corporations, and regulate the same," passed April 2, 1873, have associated ourselves together for the purpose of constructing, maintaining and operating a railroad for public use, in the conveyance of persons and property, and for that purpose have made, signed and executed these articles of association. 10

First.—The corporate name of said company shall be "The Hudson Tunnel Railroad Company."

Second.—The company is to continue in existence for the period of ninety-nine years.

Third.—The places from and to which said railroad is to be constructed, maintained and operated, are as follows: the same is to commence at some convenient and eligible point upon the western shore of the Hudson River, and within or near Jersey City or Hoboken, in the County of Hudson and State of New Jersey, and thence to run, by the most direct 20 and feasible route, under the bed of said river, to a convenient and eligible point in that part of the boundary line between the States of New Jersey and New York, lying between said Jersey City or Hoboken, in said State of New Jersey, and the City of New York.

Fourth.—The length of said railroad, as nearly as may be estimated, is two miles, and the same is intended to be constructed within the said county of Hudson.

Fifth.—The amount of capital stock of said railroad shall be three millions of dollars, consisting of thirty thousand 30 shares of one hundred dollars each.

Sixth.—The names and places of residence of thirteen directors of said company, who shall manage its affairs for the first year and until others are chosen in their places, are as follows, to wit:

	Names.	Residences.
	1. D. C. Haskin,	California.
	2. Theo. F. Wood,	New Jersey.
	3. L. C. Fowler,	California.
	4. T. W. Park,	Vermont.
	5. C. Goddard,	New York.
	6. George Miller,	New Jersey.
	7. Jno. F. Ward,	"
	8. Wm. M. Force,	"
10	9. L. M. Price,	"
	10. Jas. L. Marvin,	"
	11. Jas. S. Wethered,	"
	12. J. C. Tucker,	New York.
	13. A. B. Gibbs,	"

In witness whereof, we have hereunto respectively subscribed our names and places of residence, and severally agree to take the number of shares of stock set opposite our respective names.

Dated, New Jersey, May 20, 1873.

20

	Names of Subscribers.	Places of Residence.	Number of Shares Subscribed.
	D. C. Haskin,	California,	Ten.
	Wm. Martin,	New York,	Ten.
	Theo. F. Wood,	Jersey City,	One.
	L. C. Fowler,	California,	Ten.
	George F. Seward,	New York,	Ten.
	T. W. Park,	Vermont,	Ten.
	C. Goddard,	New York,	Ten.
	A. C. Foster,	New York,	Ten.
30	Wm. J. Osborn,	New York,	Ten.
	C. H. Dewing,	New York,	Ten.
	G. H. Clowes,	New York,	Ten.
	A. A. Selover,	New York,	Ten.
	Geo. Miller,	Jersey City, N. J.,	Ten.
	John F. Ward,	Jersey City, N. J.,	Ten.
	Wm. M. Force,	Newark, N. J.,	Ten.
	L. M. Price,	Newark, N. J.,	Ten.
	James L. Marvin,	Newark, N. J.,	Ten.
	Jas. L. Wethered,	Englewood, N. J.,	Ten.
40	Jas. E. Nuttman,	Newark, N. J.,	Ten.
	Albert B. Gibbs,	New York,	Ten.



State of New Jersey, County of Hudson, ss.

De Witt C. Haskin, J. C. Tucker, Jas. S. Wethered, T. W. Park and A. B. Gibbs being severally duly sworn, says that he is a director named in the annexed articles of association of the Hudson Tunnel Railroad Company; that two thousand dollars of stock for every mile, to wit, two miles, of railroad proposed to be made in, under and by virtue of said articles of association, has been and is subscribed thereto, and ten per centum paid thereon, in good faith and in cash, to the directors named in said articles of association; that 10 the amount of stock required by the second section of the act referred to in said articles of association, has been in good faith subscribed, and ten per centum paid in cash thereon, as aforesaid; and that it is intended, in good faith, to construct, maintain and operate the railroad mentioned in said articles of association.

D. C. HASKIN,  
 J. C. TUCKER,  
 JAS. S. WETHERED,  
 T. W. PARK, 20  
 A. B. GIBBS.

Sworn to, before me, this 20th day of May, 1873, at the City of New York, by D. C. Haskin, J. C. Tucker and Jas. S. Wethered, and on this 21st day of May, 1873, by T. W. Park and A. B. Gibbs.

Witness my hand and official seal.

[L. s.]

JOHN BISSELL,  
*Commissioner for New Jersey,  
 Resident in New York City.*

State of New Jersey, Department of State: 30

I, Henry C. Kelsey, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of a paper writing purporting to be "Articles of Association of the Hudson Tunnel Railroad Company," as the same is taken from and compared with the original (filed May 26, 1873, and recorded in Book C of Corp., page 481, &c.,) now remaining on file and of record in my office.

In testimony whereof, I have hereunto set my hand  
 [SEAL.] and affixed my official seal, at Trenton, this tenth  
 day of March, A. D. 1874.

HENRY C. KELSEY,  
*Secretary of State.*

Know all men by these presents, that we, the undersigned, under and in pursuance of an act of the Legislature of the State of New York entitled "An Act to authorize the formation of railroad corporations, and to regulate the same," passed April 2, 1850, and the acts amendatory thereof and supplementary thereto, have associated ourselves together for the purpose of constructing, maintaining and operating a railroad for public use, in the conveyance of persons and property, and for that purpose have made, signed and executed these articles of association.

First.—The corporate name of said company shall be "The Hudson Tunnel Railroad Company."

Second.—The company is to continue in existence for the period of ninety-nine years.

Third.—The places from and to which said railroad is to be constructed, maintained and operated, are as follows: the same is to commence at some convenient and eligible point upon the eastern shore of the Hudson River, and within the City and County of New York, and thence to run, by the most direct and feasible route, under the bed of said river, to a convenient and eligible point upon that part of the boundary line between the States of New York and New Jersey lying between Jersey City and Hoboken, in said State of New Jersey, and the said City of New York.

Fourth.—The length of said railroad, as nearly as may be estimated, is two miles, and the same is intended to be constructed within the said county of New York.

Fifth.—The amount of capital stock of said railroad company shall be seven millions of dollars, consisting of seventy thousand shares of one hundred dollars each.

Sixth.—The names and places of residence of seven directors of said company, who shall manage its affairs for the first year and until others are chosen in their places, are as follows, to wit:

Names.	Residences.
T. W. Park,	Vermont.
D. C. Haskin,	California.
J. C. Tucker,	New York.
A. B. Gibbs,	"
L. C. Fowler,	California.
Wm. Martin,	New York.
C. Goddard,	"

In witness whereof, we have hereunto respectively subscribed our names and places of residence, and severally agree to take the number of shares of stock of said company set opposite our respective names.

Dated, New York, May 20, 1873.

Names of Subscribers.	Places of Residence.	Number of Shares Subscribed.
D. C. Haskin,	California,	Ten.
Wm. Martin,	New York,	Ten.
Theo. F. Wood,	Jersey City,	One.
L. C. Fowler,	California,	Ten.
George F. Seward,	New York,	Ten. 20
T. W. Park,	Vermont,	Ten.
C. Goddard,	New York,	Ten.
A. C. Foster,	New York,	Ten.
Wm. J. Osborn,	New York,	Ten.
C. H. Dearing,	New York,	Ten.
G. H. Clowes,	New York,	Ten.
A. A. Selover,	New York,	Ten.
Geo. Miller,	Jersey City, N. J.,	Ten.
John F. Ward,	Jersey City, N. J.,	Ten.
Albert B. Gibbs,	New York,	Ten. 30
Wm. M. Force,	Newark, N. J.,	Ten.
L. M. Price,	Newark, N. J.,	Ten.
J. Tucker,	New York.,	Ten.
Jas. S. Wethered,	Englewood, N. J.,	Ten.
Ira A. Kip,	New York,	Ten.
Geo. A. Thayer,	New York,	Ten.
David Crocker,	New York,	Ten.
Jas. E. Nuttman,	New Jersey,	Ten.
J. W. Haskin,	California,	Ten.
A. S. Roberts,	New York,	Ten. 40

State of New York, City and County of New York, ss.

De Witt C. Haskin, J. C. Tucker and T. W. Park being severally duly sworn, each for himself doth depose and say, that he is a director named in the annexed Articles of Association of the Hudson Tunnel Railroad Company; that one thousand dollars of stock for every mile, to wit, two miles, of railroad proposed to be made in, under and by virtue of said Articles of Association, has been and is subscribed thereto, and ten per cent. paid thereon in good faith and in cash, to 10 the directors named in said Articles of Association; that the amount of stock required by the second section of the act referred to in said Articles of Association has been in good faith subscribed, and ten per cent. paid in cash thereon, as aforesaid, and that it is intended in good faith to construct, maintain and operate the railroad mentioned in said Articles of Association.

D. C. HASKIN,  
J. C. TUCKER,  
T. W. PARK.

20 Sworn to, before me, the 20th day of May, 1873, by D. C. Haskin and J. C. Tucker, and on this 21st day of May, 1873, by Trevor W. Park.

JOHN BISSELL,  
*Notary Public N. Y. City. No. 243.*

State of New York, Office of the Secretary of State, ss.

I have compared the preceding with the original Articles of Association of the "Hudson Tunnel Railroad Company," with affidavit thereto annexed, filed and recorded in this 30 office on the 22d day of May, 1873, and hereby certify the same to be a correct transcript therefrom, and the whole of said original.

[L. s.] Witness my hand and seal of office of the Secretary of State, at the City of Albany, this 20th day of January, 1874.

DIEDRICH WILLERS, JR.,  
*Secretary of State.*

*Reasons.*

## NEW JERSEY SUPREME COURT.

THE STATE, THE MORRIS AND ESSEX RAILROAD COMPANY <i>et al.</i> , Prosecutors,	} <i>On Certiorari.</i>
<i>vs.</i>	
THE HUDSON TUNNEL RAILROAD COMPANY.	

And the said Prosecutors, by Jacob Vanatta, their Attorney, come and assign to the Court here reasons why the order made by Hon. David A. Depue, one of the Justices, &c., appointing Commissioners, &c., dated the thirteenth day of January, 1875, should not be set aside:

1. Because the said defendant has no legal existence as a corporation, invested with the power of existing, or exercising the State's right and power of eminent domain.

2. Because the act of the Legislature under and by virtue of which the said defendant claims to exist and act, namely, 20 the act entitled "An Act to authorize the formation of railroad corporations, and regulate the same," approved April 2, 1873, does not confer authority to organize or establish a corporation to construct a tunnel from the westerly shore of the Hudson River, under the waters thereof, to or easterly of the middle of said river.

3. Because if the said defendant had any legal right to be erected into and established as a corporation, by virtue of the act stated in the second reason, its organization is void, because in the certificate of its pretended organization it has 30 not specified the places from and to which its proposed tunnel and railroad were to be constructed.

4. Because if the said defendant has any legal existence, and has the right to exercise the power of eminent domain to achieve the purposes expressed in its certificate of organization and incorporation, it has no right or power to take the said land of the prosecutors, because said land is west-

erly of the westerly shore of the Hudson River, as said shore was when said defendant pretends to have been erected a corporation, and ever since has been and now is.

5. Because the true and real purposes and uses for which the land of the prosecutors proposed to be taken by the defendant, under the said order of appointment, are not expressed in the articles of association or certificate of organization of the defendant, or authorized or warranted thereby.

6. Because the said land of the prosecutors, if subject to 10 condemnation by defendant, under any circumstances, cannot legally be condemned in such qualified, limited and restricted manner as is stated in the said order of appointment.

7. Because the land of the prosecutors proposed to be taken by the defendant are necessary for the prosecutors to have and to hold for the use, employment and enjoyment of their franchises as transportation companies, and are, therefore, exempt from condemnation by the defendant.

8. Because the said order is, in divers other respects, illegal, erroneous and irregular.

JACOB VANATTA,  
*Attorney of Prosecutors.*

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*Opinion.*

SUPREME COURT.—Argued Feb. Term, 1875.

THE STATE, THE DELAWARE, LACKA- WANNA AND WESTERN RAILROAD COMPANY, <i>Prosecutors</i> , <i>vs.</i> THE HUDSON TUNNEL RAILROAD COMPANY.	}
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VANATTA for Plaintiff.

GEORGE G. FRENCH, Esq., for Defendant.

BEASLEY, CHIEF JUSTICE.—The defendant, The Hudson Tunnel Railroad Company, is a corporation organized under the General Railroad Law of this State, passed April 2nd, 1873. This company was recognized as an existing corporation by the act of the 21st March, 1874, entitled "An Act to extend the time for completion of the Hudson Tunnel Railroad Company." According to the description in its articles of association, the road was to commence "at some convenient and eligible point upon the western shore of the Hudson River, and within or near Jersey City or Hoboken, 10 in the county of Hudson, in the State of New Jersey, and thence to run by the most direct route under the bed of the said river, to a convenient and eligible point in that part of the boundary line between the State of New Jersey and New York, lying between said Jersey City or Hoboken, in said State of New Jersey, and the City of New York." It is also stated in these articles that this company is incorporated under the laws of New York, and that the road is to be built in a tunnel, which is to be twenty-six feet wide and twenty-four feet high, inside measurement, and at no place to come 20 nearer to the surface than fifteen feet, and from that to thirty-five feet below the surface of the water.

In pursuance of the purpose of this organization, a map

of the survey of the route having been duly filed in the office of the Secretary of State, a petition was presented to a Justice of this Court, setting forth the foregoing facts, and stating that certain lands of the Morris and Essex Railroad Company, and the Delaware, Lackawanna and Western Railroad Company, lessees, were necessary for the uses of the contemplated road, prayed the appointment of commissioners to appraise the damages, according to the statute. Upon this petition and certain affidavits which had been taken, 10 the parties interested appeared by their counsel before the Justice, and the result of the hearing was the appointment of the commissioners and the allowance of a certiorari for the purpose of referring the legal questions which were involved, to this Court for solution.

Upon the case thus presented a number of questions of considerable importance have been discussed. On the part of the prosecutors of this writ of certiorari it was objected that the defendant, the Hudson Tunnel Railroad Company, had no legal existence as a corporation; that under the 20 general railroad law a corporation cannot be created with the franchise to build a railroad under an inter-State river; that by force of the same act the land of the prosecutor is exempt from sequestration, as it is necessary for its own uses. But it seems to me very clear that such matters as these are not to be decided upon a summary proceeding of this nature. The application is simply to have commissioners appointed to ascertain the compensation to which the prosecutor will be entitled for a certain portion of its land, if it shall be taken. On such an application the right to 30 take the land cannot be adjudicated. The appointment of the commissioners does not establish such right, nor has it any tendency so to do. It would be a manifest injustice to the applying company to attempt to adjudicate, in this procedure, such a point, as a decision adverse to its rights would entirely frustrate the purposes of its organization; while a decision in its favor would have no efficacy in establishing its right to take the land. Much less, in such a proceeding, is it competent to raise up the question as to the due incorporation of the applying company, or whether it is not 40 usurping the franchise which it claims. If this can be done,



then, in a summary proceeding, in an incidental way, every land owner whose property is sought to be condemned can challenge the legal existence and the corporate rights of such company to the same extent that the State can on a *quo warranto*. Such a power is entirely unreasonable, and has no warrant in legal principles. The nature of the proceeding, and all its methods, are inappropriate for such a purpose. In form it is a mere summary application to a single Judge, not sitting in Court, without pleadings forming an issue, the officer being destitute of a capacity to enter a judgment of record. The judicial conclusion would have but a true lateral effect; it would conclude, upon all the points decided, the applying company, but would leave its opponent unbound and at liberty to reassert the same rights before another forum. Nor would it seem that any limit could be put to this range of subjects to be investigated. All the grounds of the right of the applicant, and every matter of defence, would be equally open for discussion and decision. In the present instance, the mode of the applicant's corporate organization, the right of that company to the franchise for which it has become incorporated, the right of the prosecutor to hold its lands inviolate for its own uses, and its privileges as riparian owner by force of certain covenants entered into with it by the agent of the State, have all been made part of this proceeding. It is impossible that by such a method subjects of this kind can be satisfactorily investigated or safely adjudged.

It seems to me, therefore, that the true rule of practice is this. The applicant in these cases must make out a *prima facie* right. The petition, duly verified, should show the incorporation of such applying company, its termini and general route; the fact that such route has been surveyed, and that the map or survey has been duly filed, and that the lands sought to be taken, and which should be accurately described, are necessary for the uses of such petitioner. Upon such a ground being laid, commissioners should, as a matter of course, be appointed, unless upon an inspection of the case as presented, or on the counter-showing of the land owner, it can be made apparent that the applicant has no color of right. Undoubtedly, cases may arise when the petition

should be dismissed. Such would be clearly the proper course whenever it should appear that in some important respect the law had not been complied with, so that the applicant, manifestly, was without a corporate capacity, or if the land embraced in the petition was obviously outside of the line of the survey. Such defects as these would leave the proceedings a mere pretense and empty form, and they would be so treated. This line of exception will embrace every objection which is fatal and incontestable. In my  
10 judgment, on the hearing before the Judge he should not, in his inquiry, go much, if any, beyond this bound. All uncertain and debatable questions should be excluded from such consideration, and, with respect to them, the contestants should be referred to a regular proceeding in the proper forum.

Applying this rule to the present application, the result is, this Court must decline to consider or adjudge the questions pressed by the counsel of the prosecutors upon our attention. Such questions are of great moment to the par-  
20 ties, of a highly contestable character, and cannot be properly decided except in due course of law adapted to their elucidation.

The appointment of the commissioners should be affirmed.

A true copy.

B. F. LEE, *Clerk.*

*Assignment of Errors.*

## NEW JERSEY COURT OF ERRORS AND APPEALS.

THE MORRIS AND ESSEX RAILROAD COMPANY AND THE DELAWARE, LACKAWANNA & WESTERN RAIL- ROAD COMPANY, <i>Prosecutors,</i>	}	<i>In Error.</i>
<i>vs.</i>		
THE HUDSON TUNNEL RAILROAD COMPANY.	}	

Afterwards, that is to say, on the \_\_\_\_\_ day of June, in the year eighteen hundred and seventy-five (1875), before the Court of Errors and Appeals in the last resort in all causes, the said The Morris and Essex Railroad Company and The Delaware, Lackawanna and Western Railroad Company, by Jacob Vanatta, their Attorney, come and say, that in the record and proceedings aforesaid, and in the giving of the judgment aforesaid, there is manifest error, in this, to wit: That, by the record and proceedings aforesaid, it appears that the said Supreme Court, on the reasons assigned before them for the reversal of the order complained of in the said writ of certiorari, rendered judgment in favor of the said The Hudson Tunnel Railroad Company, and against the said The Morris and Essex Railroad Company and The Delaware, Lackawanna and Western Railroad Company, and refused to reverse and set aside the said order, whereas by the law of the land, for the reasons for that purpose before it assigned, said Supreme Court should have reversed and set aside the said order, and should have rendered judgment in favor of the said The Morris and Essex Railroad Company and the said The Delaware, Lackawanna and Western Railroad Company, and against the said The Hudson Tunnel Railroad Company.

Therefore, the said The Morris and Essex Railroad Company and The Delaware, Lackawanna and Western Railroad Company pray that the judgment aforesaid, of the said

Supreme Court, and the order aforesaid, for the error aforesaid and for the errors appearing in the record and proceedings aforesaid, may be reversed, annulled, and for nothing holden, and that the said plaintiffs in error may be restored to all they have lost on occasion of said order and said judgment, and that the said The Hudson Tunnel Railroad Company may rejoin to the said errors.

JACOB VANATTA,  
*Attorney of Plaintiffs in Error.*

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