

New Jersey Court of Errors and Appeals.

Between

THE MAYOR AND COMMON COUNCIL
OF JERSEY CITY, appellants,

and

THE MORRIS CANAL AND BANKING
COMPANY, appellees,

} On bill, &c.

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### BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

*To His Honor Benjamin Williamson, Chancellor of the  
State of New Jersey.*

Humbly complaining, showeth unto your Honor your orators the Morris Canal and Banking Company, a body corporate of the state of New Jersey.

That your orators became incorporated on the thirty-first day of December, eighteen hundred and twenty-four, by an act entitled, "An act to incorporate a company to form an artificial navigation between the Passaic and Delaware rivers."

By the fifth section of the act last aforesaid, authority was given to your orators to make and execute a canal, or artificial navigation, to connect the waters of the Delaware river, 10 near Easton, with the tide waters of the Passaic river, with all the works, devices, wharves, and offices necessary for the use of said canal. The said company were also, by the first section of the said act, fully authorized to purchase, possess, enjoy, and retain all such lands, tenements, hereditaments, and water privileges as might be necessary for carrying into effect any of the provisions of that act.

It was also declared, by the twenty-fifth section of the said act, that the said canal, when completed, should for ever thereafter be esteemed a public highway, free for the trans- 20 portation of any goods, commodities, or produce whatsoever, on the payment of tolls and conforming to the regulations made or authorized by that act. It was also declared, by the

fourth section of the said act, that no state, county, township, or other public assessment, taxes, or charges whatsoever, should at any time be laid or imposed upon the said canal company, or upon the stocks and estates which might become vested in them under that act; but that exception should not extend to any other estate or property of the company than such as was possessed, occupied, and used by the said company for the actual and necessary purposes of the said canal navigation under that act, according to the true intent  
 10 and meaning thereof.

By a supplement to the last mentioned act, passed January twenty-sixth, eighteen hundred and twenty-eight, the said company were authorized to continue the Morris canal to the waters of the Hudson, at or near the city of Jersey City, and for that purpose the legislature declared that the said company should have all the rights, powers, and privileges given and granted by the said first mentioned act, and should be subject to all the restrictions, limitations, conditions, and provisions in the said first mentioned act contained, in the same manner  
 20 and to the same effect as if the said company had been originally authorized by the said act to construct a canal, or artificial navigation, to connect the waters of the Delaware river, near Easton, with the waters of the Hudson, at or near the city of Jersey City.

The said company, by the said supplement, were also authorized to make and construct the said canal through, upon, or along any street, road, or public highway; but if the said canal should be made or constructed through, upon, or along any street or streets in the town of Newark and Jersey City, or either of them, in such case the land occupied by the said canal, and for its tow path, should not exceed a space of thirty  
 30 feet.

By a further supplement to the said act, passed March fifth, eighteen hundred and thirty-six, the said company were authorized to increase their capital stock to an amount not exceeding six hundred thousand dollars, to enable them to procure the requisite lands and premises, and to construct the several basins, reservoirs, and feeders authorized by the said act of incorporation and the amendments thereto.

40 To which act incorporating the said company, and the sup-

plements above referred to, and all the supplements thereto, for greater certainty, reference is made.

The said company, having been organized under the said acts, found it indispensable, for the necessary purposes of said canal navigation, to construct a basin and piers at Jersey City, where a harbor might be provided for boats, and where boats could pass from the said canal to the waters of the Hudson, at Jersey City, and could also there enter said canal from the waters of the Hudson, and which piers might be used for loading and unloading merchandise transported, or to be transported, 10 over the said canal, and where merchandise might be stored and kept for future use.

Such being the necessities of the said company in the year of our Lord one thousand eight hundred and forty, or about that time, the said company caused to be constructed, at a large expense, and to be used solely for the actual and necessary purposes of the said canal navigation, a pier, of about nine hundred feet in length, which pier extended along or near to, and parallel with South street, as South street was laid down on Mangin's map of Jersey City, made for the As- 20 sociates of the Jersey Company.

That north of the said pier, and about one hundred and sixty feet therefrom, your orators subsequently caused a pier or bulk-head to be constructed, and lands to be reclaimed further north of the said bulk-head; that the space between the two piers, of about one hundred and sixty feet as aforesaid, constituted the basin of the canal, and was the outlet of the same.

The said first mentioned pier is in length, as aforesaid, about nine hundred feet, and is in width about one hundred and 30 twenty feet. The basin is about one hundred and sixty feet in width, and about nine hundred feet in length, and the bulk-head, or north pier, where the taxes herein after mentioned were assessed, is of the length of about three hundred and twenty feet, and of the width of about one hundred feet.

That the Associates of the Jersey Company caused that part of Jersey City where the said piers and basins are situated to be mapped out into streets, blocks, and lots, notwithstanding the same was flowed by the tide waters of Hudson river. 40

That that part of Jersey City was so mapped out by Joseph F. Mangin; which map is well known, the same having been lodged in the county clerk's office of the county of Hudson, and recognised by various acts of the legislature of the state of New Jersey.

That, notwithstanding the place where the said piers and basin are situated is represented on the said map by streets, lots, and blocks, no streets, lots, and blocks actually exist where the said piers and basin have been constructed.

10 And your orators expressly charge, that the said piers and basin were constructed under and by virtue of the powers given to them by various acts of the legislature by which they were incorporated, and under which they now exercise their franchises and privileges.

The right to construct the said piers and make the said basin by your orators has been recognised and fully established by the courts of New Jersey having competent jurisdiction to decide such questions. And your orators expressly charge, that the said piers and basin, since they were constructed and  
20 formed, have been possessed, occupied, and used by the Morris Canal and Banking Company for the actual and necessary purposes of said canal navigation under their act of incorporation, according to the true intent and meaning thereof, and for that reason, no state, county, township, or other public assessment, taxes, or charges whatsoever, can be lawfully imposed on your orators on account of the said piers and basin, or could have been lawfully imposed on that account since they have been constructed.

And your orators further show, that on the eighteenth day  
30 of March, in the year eighteen hundred and fifty-one, an act of the legislature of the state of New Jersey was passed to incorporate Jersey City.

That the said piers and basin are situated within the corporate limits of the last mentioned corporation, the said last mentioned act having been passed for the purpose of establishing a municipal government.

That the said municipal corporation, by their officers, in the year eighteen hundred and fifty-one, caused sixteen lots, in block numbered one, and thirteen lots, in block numbered four-  
40 teen, on said Mangin's map, then constituting a pier of your

orators, and ten lots in block numbered two, on said map, and then constituting a part of your orators' basin as aforesaid, to be assessed for taxation.

That your orators, for the reasons herein before stated, conceived that the said tax was illegal, and in direct violation of the privileges granted to your orators by their charter.

They thereupon caused the said tax to be removed to the Supreme Court of the state of New Jersey, by a writ of *certiorari*, issued, in the name of the said state, by the order of that court; that depositions were taken in the proceeding last aforesaid, and the whole matter in relation to the legality of that tax was brought before the said Supreme Court. 10

The said court, after mature deliberation, did declare and pronounce their opinion, that the piers and basins of your orators were appendages to the canal of your orators, used for the actual and necessary purposes of the canal navigation, within the meaning of the said charter. The said court did also declare the said tax so assessed to be illegal, for the cause last aforesaid, and set the same aside; to which judgment of the said Supreme Court, and all the proceedings had in the said *certiorari*, for greater certainty, reference is made. 20

Notwithstanding the premises herein before set forth, the mayor and common council of Jersey City, incorporated as aforesaid, by their officers and agents, in the year eighteen hundred and fifty-four, caused the following taxes to be assessed upon the property of your orators, consisting of piers or bulkhead and basin of your orators, as herein before described, and which, in that year, were possessed, occupied, and used by your orators for the actual and necessary purposes of said canal navigation under the said act. 30

Morris Canal Company, block 1 South street, north side; lots 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, assessor's map, or 1 to 12, inclusive, Mangin's map; also west side of Hudson street, 5, 6, 7, 8, assessor's map, or 1, 2, 3, 4, Mangin's map, each lot 25 by 100,

\$91 76

Morris Canal Company, block 1 Bergen street, south side, lots 21 to 32, inclusive, assessor's map, or lots 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, Mangin's map; also Hudson street, west side, lots 1, 2, 3, 4,

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- assessor's map, or 5, 6, 7, 8, Mangin's map, each lot 25 by 100, 49 88
- Morris Canal Company, block 14 South street, north side, lots 1 to 9, inclusive, assessor's map, or 13 to 21, Mangin's map; also Washington street, east side, lots 10 to 13, inclusive, assessor's map, or 22 to 25, inclusive, Mangin's map, each 25 by 100, 73 01
- 10 Morris Canal Company, block 14 Washington street, east side, lots 14 to 17, inclusive, assessor's map, or 26 to 29, inclusive, Mangin's map; also lots 18 to 26 Bergen street, south side, assessor's map, or lots 25, 27, 29, 31, 33, 35, 37, 39, 41, Mangin's map, each lot 25 by 100, 43 50
- Morris Canal Company, block 2 Hudson street, west side, lots 5 to 8, inclusive, assessor's map, or 9 to 12, inclusive, Mangin's map, each lot 25 by 100, 35 50
- Morris Canal Company, block 2 Bergen street, north side, lots 9 to 14, inclusive, assessor's map, or 2, 4, 6, 8, 10, 12, Mangin's map, each lot 25 by 100, 36 50
- 20 Which taxes, being illegal, were not paid by your orators.

That the said the mayor and common council of Jersey City caused the lots or property, so taxed as aforesaid under color of the powers given in the charter, to be sold for said unpaid taxes of the year eighteen hundred and fifty-four, which sale took place on the twenty-seventh day of July, eighteen hundred and fifty-five; and at such sale, the city treasurer of Jersey City became a purchaser of the said property, and purchased a pretended right to a lease for ten thousand years; on the twenty-seventh day of July, eighteen hundred and fifty-

30 seven, the period for rendering said taxes, under the powers in the said city charter contained, will have elapsed, and the said city treasurer will receive a lease for the said lots or property, unless restrained by some competent lawful authority.

The said the mayor and common council of Jersey City, by the forty-eighth section of their act, have the power, if any tax and assessment assessed upon any lands, tenements, or real estate situated in said city shall not be paid within the time limited by them, to cause the same to be sold at public auction for the shortest term for which any person will agree

40 to take the same, and pay such tax or assessment, interest,

costs, charges, and expenses incident thereto, and are authorized to execute a declaration of sale, to be delivered to the purchaser; and the owner of the property taxed can have two years after such sale to redeem the said property taxed, by paying the purchaser the amount he paid at the sale, with interest at the rate of fifteen per cent. per annum: to which last mentioned section of the charter of the said city, and the said charter generally, for greater certainty, reference is made.

In the year eighteen hundred and fifty-five, the mayor and <sup>10</sup> common council of Jersey City, by their officers and agents, caused the following property to be taxed for the sums mentioned, which is the same property taxed, as last aforesaid, in the year eighteen hundred and fifty-four:

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| Morris Canal Company, block 1 Hudson street, east side, lots 5 to 8, inclusive, assessor's map, or 1, 2, 3, 4, Mangin's map, each 25 by 100; also same block South street, north side, lots 9 to 20, inclusive, assessor's map, or 1 to 12, inclusive, Mangin's map, each 25 by 100, also part of pier, | \$79 65 20  |
| Morris Canal Company, block 1 Bergen street, south side, lots 21 to 32, inclusive, assessor's map, or 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, Mangin's map, each 25 by 100; also same block Hudson street, west side, lots 1, 2, 3, 4, assessor's map, or 5, 6, 7, 8, Mangin's map, each 25 by 100,  | 52 57       |
| Morris Canal Company, block 14 South street, north side, lots 1 to 13, inclusive, assessor's map, or 13 to 25, inclusive, Mangin's map, each 25 by 100,                                                                                                                                                 | 84 11       |
| Morris Canal Company, block 14 Bergen street, south side, lots 18 to 26, inclusive, assessor's map, or 25, 27, 29, 31, 33, 35, 37, 39, 41, Mangin's map, each 25 by 100; also lots 14 to 17, inclusive, assessor's map, or 26 to 29, inclusive, Mangin's map, each 25 by 100,                           | 30<br>54 26 |
| Morris Canal Company, block 2 Bergen street, north side, lots 9 to 14, inclusive, assessor's map, or 2, 4, 6, 8, 10, 12, Mangin's map, each 25 by 100,                                                                                                                                                  | 37 82       |
| Morris Canal Company, block 2 Hudson street, west side, lots 5, 6, 7, 8, assessor's map, or 9, 10, 11, 12, Mangin's map, each 25 by 100,                                                                                                                                                                | 38 82 40    |

The property last above mentioned was sold, by the officers of said city, on the fourth day of August, eighteen hundred and fifty-six, to the city treasurer of the said city for the said taxes of eighteen hundred and fifty-five, which were unpaid by your orators, being illegal as aforesaid; that the said city treasurer became the purchaser thereof for the period of ten thousand years. On the fourth of August, eighteen hundred and fifty-eight, the period of redemption of said property from said tax will expire.

- 10 That, in the year eighteen hundred and fifty-six, the mayor and common council of Jersey City, by their officers and agents, caused the piers or bulk-head and basin of your orators, as aforesaid, to be assessed for the following taxes:

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Morris Canal Company, block 1 Hudson street, west side, lots 5 to 8, inclusive, assessor's map, or 1, 2, 3, 4, Mangin's map, each 25 by 100; also same block South street, north side, lots 9 to 20, inclusive, assessor's map, or 1 to 12, inclusive, Mangin's map, each 25 by 100, also part of pier, | \$114 50 |
| 20 Morris Canal Company, block 4 South street, north side, lots 1 to 13, inclusive, assessor's map, or 13 to 25, inclusive, Mangin's map, each 25 by 100,                                                                                                                                               | 98 80    |
| Morris Canal Company, block 2 Hudson street, west side, lots 5, 6, 7, 8, assessor's map, or 9, 10, 11, 12, Mangin's map, each 25 by 100,                                                                                                                                                                | 44 60    |
| Morris Canal Company, block 2 Bergen street, north side, lots 9 to 14, inclusive, assessor's map, or 2, 4, 10, 12, Mangin's map, each 25 by 100, 6, 8,                                                                                                                                                  | 45 60    |

- Which taxes, being illegal, were unpaid. That thereupon, 30 and on the twenty-third day of April, eighteen hundred and fifty-seven, the mayor and common council of Jersey City caused the property last aforesaid to be sold for such unpaid taxes, and the said city treasurer became the purchaser thereof for the period of ten thousand years. That the period of redemption of said property from said sale will expire on the twenty-seventh day of April, eighteen hundred and fifty-nine.

And your orators expressly charge, that the said property, so taxed in the years eighteen hundred and fifty-four, eighteen hundred and fifty-five, and eighteen hundred and fifty-

six, constituted, as aforesaid, a part of the said canal, being the piers or bulkhead and basin of the said canal; and in the years aforesaid, said property was possessed, occupied, and used by your orators for the actual and necessary purposes of the said canal navigation, under their act of incorporation, according to the true intent and meaning thereof, and for that cause the mayor and common council of Jersey City had no power to impose the said tax in the years aforesaid; that said taxes were assessed under color of the powers given in the charter of Jersey City for public municipal purposes, and 10 were such taxes as expressly came within the exemption specified in the act incorporating your orators, and were of the same character as the said tax of eighteen hundred and fifty-one, declared illegal by the judgment of the Supreme Court.

And your orators further show unto your Honor, that the pier aforesaid, known as the south pier, being on the southerly side of the said basin, is a structure built of stone, earth, wood, and piles into Hudson's river, and the space occupied thereby is known, on said Mangin's map, as parts of block numbered one and block numbered fourteen. 20

The part of block numbered one occupied by said pier is known on said map as lots one, two, three, four, fronting on Hudson street, lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fronting on South street.

The part of block numbered fourteen occupied by said pier is known on said map as lots thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, and twenty-one, fronting on South street, and lots twenty-two, twenty-three, twenty-four, and twenty-five, facing towards Washington street. 30

The basin of the said canal, which is flowed by water, is known on said map as lots in blocks one and fourteen, lots in block number one, constituting basin, being five, six, seven, eight, fronting on Hudson street, and lots one, three, five, seven, nine, eleven, thirteen, fifteen, seventeen, nineteen, twenty-one, and twenty-three, fronting on Bergen street.

In block number fourteen, occupied by said basin lots, twenty-five, twenty-seven, twenty-nine, thirty-one, thirty-three, thirty-five, thirty-seven, thirty-nine, and forty-one, fronting on Bergen street, and in the same block fourteen lots, twenty-six, 40

twenty-seven, twenty-eight, and twenty-nine, fronting toward Washington street.

And the bulk-head, or north pier, actually being and used as a wharf for lading and unloading coal, north of the said south pier on said map, is known as part of block two, and being lots nine, ten, eleven, twelve, fronting on Hudson street, and lots two, four, six, eight, ten, twelve, fronting on Bergen street.

And your orators show that, as they believe to be the case,  
 10 no purchasers would bid at the tax sale of the said lots, in consequence of the illegality of the said tax so imposed upon the property of your orators, and for that reason the said city treasurer purchased the same. The forty-eighth section of the charter of Jersey City provides, that if any sale of lands, tenements, or real estate for assessment of taxes, the whole or any part thereof, shall remain unsold for the want of purchasers, then it shall and may be lawful for the said common council to adjourn the said sale not less than thirty, nor more than sixty days, &c. ; and if, at said adjourned sale, there shall  
 20 be no purchasers for said lands, tenements, or real estate, or any part thereof, then it shall and may be lawful for the treasurer of the said city to purchase the said lands, tenements, or real estate for the benefit of the city, subject to the same redemption as herein before provided for.

That the time for redemption under the first mentioned sale, made July twenty-seventh, eighteen hundred and fifty-five, will expire on the twenty-seventh day of July, eighteen hundred and fifty-seven, and your orators will be greatly embarrassed by reason of the supposed right of the said city treasurer to claim a title for the said lots so sold.  
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That persons not aware of the exemption of your orators' property from taxation might conclude that, by the said pretended tax sales, the title of your orators to the said piers and basin was cut off.

And your orators further show, that other tax sales of their said property, so exempt as aforesaid, have been made by the defendants herein named, or by the mayor and common council of Jersey City, the corporation which preceded these defendants, to the powers of which former corporation these de-  
 40 fendants have succeeded by virtue of acts of the legislature

of New Jersey, passed for that purpose; your orators have paid some of these taxes under protest, and some of these taxes your orators believe have been cancelled, and your orators are not now able accurately to specify and set forth all such taxes and sales, or how much they have paid for taxes.

And your orators further show, that they have frequently remonstrated with the mayor and common council of Jersey City, their officers and agents, in relation to the said illegal taxes and assessments, and have requested them to desist from taxing the said piers and basin, and other property used 10 by your orators, for the actual and necessary purposes of said canal navigation at Jersey City aforesaid.

And your orators well hoped that the mayor and common council of Jersey City would have desisted and refrained from such illegal assessments for taxes, and would have complied with the law, as enacted by the legislature of the state of New Jersey, and expounded by the Supreme Court of the said state.

And your orators are advised by their counsel, and humbly insist, that the said assessment of taxes in the years eighteen 20 hundred and fifty-four, eighteen hundred and fifty-five, and eighteen hundred and fifty-six, and all other assessments of tax on the said property, are illegal and void, and no sales can be made by the mayor and common council of Jersey City of the property assessed for such taxes.

And your orators expressly charge, that all their property at Jersey City which has been filled in and reclaimed, or which lies along or contiguous to the said canal, is possessed, cupied, and used by the said company for the actual and necessary purposes of said canal navigation, according to the 30 true intent and meaning of the act incorporating your orators, and it has become necessary to enlarge the property of your orators, near to the said piers or bulk-head and basin, to accommodate the increasing business of the company; and if the mayor and common council of Jersey City persist in the said course of illegal assessments for taxes, your orators will be compelled yearly to remove the said assessments, by writs of *certiorari*, to the Supreme Court, unless this honorable court shall interpose by its writ of injunction; and your orators are advised by their counsel that, the circumstances of 40

this case being considered, they are well entitled to the writ of injunction of this court to restrain any further taxation of the said property of your orators, or any other property at Jersey City possessed, occupied, and used by your orators for the actual and necessary purposes of said canal navigation, and also from proceeding any further under the taxes already assessed; and also to restrain the imposition of any state, county, township, or other public assessment taxes or charges whatsoever upon the said property of your orators; and also that  
 10 they are entitled to have all tax sales set aside and all money paid for illegal taxes refunded to them.

And your orators well hoped that the said the mayor and common council of Jersey City, their officers and agents, would have complied with such reasonable requests; but now so it is, may it please your Honor, the mayor and common council of Jersey City, combining and confederating with divers other persons at present unknown to your orators, whose names, when discovered, your orators pray they may be at liberty to insert herein, with apt words to charge them as parties defendant hereto, and contriving how to wrong and injure your orators in the premises, absolutely refuse to comply with such requests. All which actings, doings, and refusals are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the premises: in consideration whereof, and forasmuch as your orators can only have adequate relief in the premises in a court of equity, where matters of this nature are properly cognizable and relievable: to the end, therefore, that the said the mayor and common council of Jersey City, under their corporate seal and according to  
 20 the course and practice of this honorable court, and their confederates, when discovered, may upon their several and respective oaths, to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto, and that the said the defendants may set forth and show what taxes have been levied on the said property, when such property has been sold, and to whom sold, and for  
 30 what amounts.  
 40

And that the said assessment of taxes herein before set forth and made in the years eighteen hundred and fifty-four, eighteen hundred and fifty-five, and eighteen hundred and fifty-six, under which sales have been made, and all other assessments for taxes made before or since upon property of your orators situated at Jersey City, possessed, occupied, and used by your orators for the actual and necessary purposes of said canal navigation, may be decreed to be void and for nothing holden, and all proceedings had under such assessments for taxes may be declared void and for nothing holden, and that 10  
your orators may have refunded to them all moneys which they have paid for such illegal taxes, whensoever the same may have been imposed.

And that the mayor and common council of Jersey City, their officers and agents, may be enjoined by perpetual injunction, or otherwise, from delivering any declaration of sale or lease or leases, or taking any steps of any kind towards perfecting a tax title for the said property of your orators, and from taking any further proceedings whatever to establish such taxes or make good and effectual such sales, and may be 20  
enjoined perpetually, or otherwise, from assessing for taxation the said property of your orators and all other property of your orators at Jersey City possessed, occupied, and used by your orators for the actual and necessary purposes of said canal navigation, or making or perfecting a tax title to the same.

And that your orators may have such other and further relief as the nature of the case may require and as may be agreeable to equity and good conscience, may it please your Honor to grant unto your orators not only the writ of injunc- 30  
tion of the state of New Jersey, to be issued out of and under the seal of this honorable court, to be directed to the mayor and common council of Jersey City, their officers, city treasurer, attorneys, solicitors, counsellors, and agents, therein and thereby commanding, enjoining, and restraining them, and each of them, from delivering any declaration of sale, lease, or leases, or taking any further or other steps of any kind towards perfecting a tax title for the property of the complainants known as parts of block numbered one, and block numbered fourteen, being the piers and basin of your 40

orators, and known as follows: the pier is known on said map as lots, one, two, three, four, fronting on Hudson street, lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fronting on South street.

The part of block numbered fourteen, occupied by said pier, is known on said map as lots thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, and twenty-one, fronting on South street, and lots twenty-two, twenty-three, twenty-four, and twenty-five, facing towards Washington

10 street.

The basin of said canal, which is flowed by water, is known on said map as lots in block one and fourteen, lots in block number one, constituting basin, being five, six, seven, eight, fronting on Hudson street, and lots one, three, five, seven, nine, eleven, thirteen, fifteen, seventeen, nineteen, twenty-one, twenty-three, fronting on Bergen street.

In block number fourteen, occupied by said basin lots, twenty-five, twenty-seven, twenty-nine, thirty-one, thirty-three, thirty-five, thirty-seven, thirty-nine, and forty-one, fronting on Bergen street; and in the same block fourteen lots, 20 twenty-six, twenty-seven, twenty-eight, and twenty-nine, fronting on Washington street; and the bulk-head, or north pier, actually being and used as a wharf for loading and unloading coal, north of the said pier, on said map, is known as part of block two, and being lots nine, ten, eleven, twelve, fronting on Hudson street, and ¶lots, two four, six, eight, ten, twelve, fronting on Bergen street, or any other property so taxed as aforesaid, however the same may be described, or by what lots and numbers the same may be known on the assessor's 30 map of Jersey City, or any other map or description.

And from taking any further proceedings whatever to establish such taxes, or make good and effectual the sales thereof, in this bill of complaint set forth, or any other taxes of your orators' property so exempted as aforesaid, whenever the same may have been levied; and also from assessing for taxation the aforesaid property and all other property at Jersey City possessed, occupied, and used by the Morris Canal and Banking Company for the actual and necessary purposes of said canal navigation, or making or perfecting a tax title to 40 the same, until this court shall make other order to the contrary.

And also the writ of subpoena of the state of New Jersey, to be directed to the mayor and common council of Jersey City, therein and thereby commanding them, on a certain day and under certain penalty, therein to be expressed, to be and appear before your Honor in this honorable court, then and there, according to the course and practice of this court, to answer the premises, and to stand to, abide, and perform such decree as to your Honor shall seem meet. And your orators, as in duty bound, will ever pray.

I. W. SCUDDER, 10

*Solicitor and of counsel with complainants.*

State of New Jersey, Hudson county, ss.—Ephraim Marsh personally appeared before me, and being duly sworn according to law, deposeth and says—that he is the president of the said the Morris Canal and Banking Company, the complainants in the foregoing bill of complaint named; that the matters, facts, and things in the foregoing bill of complaint contained, so far as the same relate to the acts and deeds of the complainants, are true, to the best of the knowledge, information, and belief of this deponent, and that so far as the same relate to the acts and deeds of any other person or persons, or to the acts and deeds of the Mayor and Common council of Jersey City, this deponent believes them to be true; that the knowledge which this deponent has of the said taxes in said bill of complaint set forth has been derived partly from personal knowledge and public advertisements, and partly from the records of the proceedings of the mayor and common council of Jersey City, which this deponent has caused to be searched for that purpose; and that the seal hereunto annexed is the seal of the complainants. 20 30

EPHRAIM MARSH.

Subscribed and sworn before me, at Jersey City, this 21st day of July, 1857.

Jos. ANNIN, M. C.

Filed July 21st, 1857.

## ORDER FOR INJUNCTION.

Upon filing the bill in the above cause, let an injunction issue according to the prayer thereof.

B. WILLIAMSON, C.

Dated July 21st, 1857.

## ANSWER.

These defendants, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' bill of complaint contained, for answer thereunto, 10 or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants answering say—

That they admit that the said complainants became incorporated under the act and supplements thereto, and possess the powers, franchises, and privileges in said bill alleged, subject, among other restrictions, to those set forth in said bill.

And they further admit, that the said complainants have constructed a basin and piers in Jersey City, and that the piers so constructed by them are of about the dimensions in said 20 bill mentioned, and that the Associates of the Jersey Company caused that part of Jersey City where the said piers and basin are situate to be mapped out into streets, blocks, and lots, notwithstanding the same was flowed by the tide waters of the Hudson river, and that that part of Jersey City was mapped out by Joseph F. Mangin, and that the said map is well known and recognised, and lodged in the clerk's office of the county of Hudson, as in said bill stated.

And these defendants further answering say, that the streets, lots, and blocks, as laid out on the said map, in the place 30 where the said piers and basin are situate, have never been filled up, but that the same were dedicated and given to public use, by the making of said map, and the recognition of the same, as stated in said bill; but they further deny that the said streets, lots, and blocks have no actual existence where the said piers and basin have been constructed.

And they further say, that though the defendants have never filled up the streets, lots, and blocks in the said place last mentioned, and though the same are now covered with water, unless the complainants have caused some part of the same to be filled by the construction of their piers aforesaid, they have full right, power, and authority at any time to enter upon the same, and have the same filled up, with the reservation, that the said complainants may enjoy the space of thirty-two feet along *one* of such streets, as by the supplement to their act of incorporation, referred to in the bill of complaint 10 of the said complainants, is expressly set forth; and these defendants further say, that by the said supplement, the said complainants are expressly restricted to the said width of thirty-two feet of land, to be occupied by their canal and for its tow-path.

And these defendants further answering deny that the said piers and basins were constructed under and by virtue of the powers given to them by the various acts of the legislature by which the said complainants were incorporated, but they expressly charge that the said piers and basins were con- 20 structed for the convenience of said complainants, and that the same are not necessary appendages to the canal of the said complainants, and that the same are not used for the actual and necessary purposes of the canal navigation within the meaning of the said charter of the said complainants.

And these defendants further say, that they admit that, on the 18th day of March, 1851, an act of the legislature of the state of New Jersey was passed to incorporate Jersey City, and that the said piers and basin are situated within the corporate limits of the last mentioned corporation of Jersey City, 30 and that said Jersey City is a municipal government.

And further answering say, that the said municipal corporation of Jersey City did, by their officers and agents, in the year 1851, cause the 16 lots in block numbered 14 on said Mangin's map, then constituting a part of the basin of the said complainants, and ten (10) lots in block No. 2, also constituting a part of the said basin, to be assessed for taxation, and that the same was carried before the Supreme Court of the state of New Jersey by *certiorari*, and there reversed, under depositions taken for that purpose; and they further admit that the 40

decision of the said Supreme Court was as stated in said bill ; but they further (protesting that the said decision cannot control or affect the course to be pursued in this honorable court, and that your Honor is in no way bound by the same,) say, that the said court expressly, in said cause, reserved for future consideration the question, whether, if the said Morris Canal and Banking Company leased out the wharves or piers erected by them for the purpose of renting them out and increasing their profits by deriving an income therefrom, is within the  
 10 exemption afforded by their charter, no such state of facts having appeared before them in the said cause.

And these defendants further answering admit that they, by their officers and agents, caused the taxes specially enumerated and set forth in the said bill of complaint to be assessed upon the property of the said complainants, as mentioned in the said bill of complaint, but denying that the said taxes are illegal, except as herein after stated, and admit that the same have not been paid by the said complainants, and that the mayor and common council of Jersey City possess the power of selling,  
 20 giving leases, and executing the declarations of sale, and all other powers mentioned in said bill, by reason of their acts of incorporation, and that they did sell, as stated in said bill, the property therein set forth, and deny that the taxes aforesaid come expressly within the exemption specified in the act of incorporation of the complainants.

And these defendants further answering admit that the pier known as the south pier, on the southerly side of the basin of the complainants, is a structure built of stone, earth, wood, and piles, and is built along, but not into the Hudson river,  
 30 the same occupying a part of the limits of Jersey City, as laid down on said Mangin's map, and that the same is known on said map as parts of blocks numbered 1 and block numbered 14; and these defendants further say, that lots 1, 2, 3, 4, fronting on Hudson street, on block one, and lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, fronting on South street, and occupied by what is designated in said bill as the southerly pier, have been for the last five years, to wit, from about the year 1852 to this time, and are now rented out by the said complainants for purposes not necessary to nor intended for the purposes of  
 40 the canal navigation, but are rented out by the said complain-

ants for the purpose of increasing their profits, by deriving an income from the person or persons to whom the same are so rented out, and that the tenant or tenants, to whom the said lots are so rented, pay the rent or compensation for the use of said lots to the said complainants, and that such tenant or tenants claim to possess, and do possess the exclusive and sole right to use, possess, and enjoy the said lots as to them may seem best, and have exercised, and do still exercise the right and power of any other tenant or tenants leasing without restriction of any kind of lands, houses, or buildings from another, and that such tenant or tenants exercise the right and power, among other things, of causing such vessels as they choose, and over which they have the right to exercise control, to come alongside the said pier, and that they also exercise, and have exercised since the day first aforesaid, the exclusive right and power to cause any vessel or vessels to remove or be removed from that part of the said pier so leased by them from said complainants, and that he or they, the said tenant or tenants, have never, and do not now permit any vessel or vessels to come alongside that part of the said pier so rented out to them by the said complainants without his or their consent. 10

And these defendants further answering say and insist, that the said complainants, having leased out the lots 1, 2, 3, 4, on block number 1, and on the southerly pier aforesaid, have no right or authority to use or enjoy the same for any purpose; that the said complainants have debarred themselves, during the time in which the said lots have been by them rented out as aforesaid, from lading, at that part of the said pier occupied by the said lots, any vessel or vessels with coal or other merchandise without the consent of the person or persons to whom the same are so rented out, and they have not the right or power to discharge any coal or merchandise from any vessel or vessels on that part of the said pier without the consent aforesaid. 20

And these defendants further say, that the said complainants do not, nor have they the right to cause any vessel not belonging to or under the control of the lessees of the lots aforesaid to lay next that part of the said pier without the consent of such lessees. 30

And these defendants further say, that lots 9, 10, 11, 12, fronting on Hudson street, and lots 2, 4, 6, 8, 10, 12, on block 2, known as the north pier, and fronting on what would be Bergen street (had not the Morris Canal and Banking Company, in violation of their charter, appropriated the whole of the space intended for said Bergen street to the purposes of a basin), and lots 13 to 25, inclusive, in block 14, are leased by the said complainants to tenants who occupy in the same manner and on the same terms and conditions as lots 1, 2, 3, 10 4, in block 1, are occupied by the tenants thereof, and that the complainants are entitled to no more rights and privileges than, as herein before mentioned, the lessees of lots 1, 2, 3, and 4, in block 1, choose to extend to them.

And these defendants further answering say, that the basin of the said canal, which is flowed by water and known on said map as lots in blocks 1 and 14, and enumerated in the said bill of complaint, occupy the whole of what is known on said map as Bergen street, and running along blocks 1 and 14, besides the one half of all the lots in said blocks on the north 20 side thereof, and that the width of the said basin is about 160 feet.

And these defendants further say, that the said complainants purchased the rights to the land under water of the Associates of the Jersey Company in the year 1828, after the making of the said map, and subject to the streets so laid out and dedicated on the same; and further, that the said complainants are, by the express provisions of their charter and its supplements, restricted to the width of thirty-two feet on the line of their canal, and that the legislature of the state of New Jersey 30 never intended that the Morris Canal and Banking Company should occupy the whole of a public street of the said city, even for purposes necessary for said canal navigation; that the plain intention of the said act incorporating the complainants was that they should not interfere with the rights, privileges, and advantages attempted to be secured to parties purchasing in good faith from the Associates of the Jersey Company (the said associates having dedicated to the use of the public all the streets laid down on said map), with the exception of thirty-two feet, through which the complainants might 40 cause the canal to run; that the legislature contemplated, that

in case it became necessary for the purposes of said canal navigation that the said company should have a basin of the width of 160 feet, that the same should be constructed beyond the limits of the said city, or beyond the locality heretofore mentioned, and where streets, blocks, and lots were so laid out.

And these defendants further answering say, that the construction of said basin of the width and in the place aforesaid is an infringement of the said act of incorporation of the complainants, a violation of good faith toward the state of New Jersey, a detriment to the interests of the public of Jersey City, and will, if persevered in by the complainants, result in retarding the prosperity and commercial advantages to which said city is entitled to aspire by reason of her geographical position.

And these defendants further say, that the complainants are required, by their act of incorporation, to erect bridges over the said canal, where the same should be made or constructed through any street or streets in Jersey City, and that although the said Bergen street was laid out and dedicated in the year 1804, on said map, twenty-four years before the complainants were incorporated, and the complainants purchased their rights with full knowledge thereof, yet the said complainants have neglected to erect any bridges where the said canal is constructed through Hudson street or Green street, so dedicated by said map.

And these defendants further say, that it is not true, as alleged in said bill of complaint, that no purchasers would bid at the tax sale of the said lots in consequence of the illegality of said tax, but that the city treasurer has been, since the last act of incorporation of Jersey City, the purchaser of more lots under tax sales than any other individual or corporation.

And these defendants further say that, for the reasons herein before mentioned, the complainants in the said bill of complaint come before this honorable court without any shadow of equity, and are not entitled to the relief sought thereby.

And these defendants further say, that the uses to which the lots of the complainants, as described and set forth in their said bill of complaint, are not such as are necessary for the actual and necessary purposes of said canal navigation, and

that the said lots are not exempt from the taxation imposed by these defendants upon them; that the said complainants assert, in the said bill, that the uses to which the said lots not covered by water of the basin are appropriated are necessary for the purposes of the canal navigation, but that they utterly fail to show, by the allegations in said bill, the truth of such assertion.

And these defendants deny all unlawful combinations and confederacy in said bill charged, without that any other matter or thing in said bill charged, material for these defendants to make answer unto, and not herein sufficiently answered or avoided, is true, to the knowledge or belief of these defendants. All which things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray that the injunction granted in this case may be dissolved, and that they may be herein dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

And these defendants, the Mayor and Common Council of Jersey City, have hereunto caused their corporate seal to be affixed, attested by the signatures of the mayor and clerk of said city to this answer, and also have caused the same to be verified by the oath of Thomas E. Tilden, who is acquainted with the contents hereof.

RICHARD D. McCLELLAND,  
*Solicitor and of counsel with defendants.*

JAMES WESTCOTT, *Mayor.*  
Attest.

GEO. W. CASSEDY, *City Clerk.*

State of New Jersey, Hudson county, ss.—Thomas E. Tilden, being duly sworn upon his oath according to law, deposes and saith, that he is one of the members of the mayor and common council of Jersey City, and that the matters, facts, and things in the foregoing answer mentioned and set forth, so far as the same relate to the acts and deeds of the said mayor and common council, are true of his knowledge, and so far as the same relate to the acts and deeds of any other person or persons, this deponent believes them to be true.

THOS. E. TILDEN.

Sworn and subscribed before me, at Jersey City, this 10th day of April, 1858.

A. S. JACKSON, *M. C.*

Filed April 10th, 1858.

State of New Jersey, Hudson county, ss.—Before me personally appeared William H. Talcott, who, by me being duly sworn according to law, deposeth and says—that he is a director of the Morris Canal and Banking Company and engineer of the said company; that he has read the bill of complaint exhibited in the Court of Chancery, wherein the Morris Canal and Banking Company are complainants, and the Mayor and Common Council of Jersey City are defendants; that he is familiarly acquainted with the property in the said bill described as taxed in the years eighteen hundred and fifty-four, eighteen hundred and fifty-five, and eighteen hundred and fifty-six. And this deponent says, that the said property included in the said tax sales of the said years was, to the best of the knowledge, information, and belief of this deponent, property possessed, occupied, and used by the said company and others doing business over the canal for the actual and necessary purposes of canal navigation, and no other use, to this deponent's knowledge; and that the said property so taxed, as in the said bill stated, was not, in the years when the said taxes were levied, leased by the said company to any person or persons who possessed, occupied, or used the same for any other purpose than the actual and necessary purposes of canal navigation, and in immediate connection therewith.

That this deponent is also superintendent of the said canal, and is generally familiar with the works and operations of the said company, and the mode of doing business on the said canal.

W. H. TALCOTT.

Sworn and subscribed before me, at Jersey City, this 22d day of December, A. D. 1858.

WASHINGTON B. WILLIAMS, *M. C.*

Filed February 2d, 1859.

## ORDER CONTINUING INJUNCTION.

This cause coming on to be heard on bill and answer, and motion thereon made to dissolve the injunction, and the matters in said bill and answer contained having been debated by the counsel of the respective parties, and the court having considered the same—

It is thereupon, on this second day of February, eighteen hundred and fifty-nine, on motion of I. W. Scudder, solicitor for the complainants, ordered by the Chancellor, that the injunction issued in this cause be continued till the final hearing of the cause.

B. WILLIAMSON, C.

Filed February 2d, 1859.

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 PETITION OF APPEAL.

COURT OF APPEALS IN THE LAST RESORT, &C.

Between

THE MAYOR AND COMMON COUNCIL  
OF JERSEY CITY, appellants,  
and  
THE MORRIS CANAL AND BANKING  
COMPANY, appellees,

} *On bill and ans.*  
} *Order of decree.*

20 *To the Honorable the Court of Appeals in the last resort in all causes.*

The humble petition of the Mayor and Common Council of Jersey City, the appellants in the above stated cause, shows that they find themselves aggrieved by a decretal order, made in the Court of Chancery by his Honor Benjamin Williamson, Chancellor of New Jersey, bearing date the second day of February, eighteen hundred and fifty-nine, wherein your petitioners were defendants, and the Morris Canal and Banking Company were complainants, in this respect, to wit, that the said decretal order adjudges that the injunction issued  
30 in the said cause be continued till the final hearing of the

cause, and that the said order in effect adjudges that the said defendants were not entitled to have had the said injunction dissolved.

And your petitioners humbly appeal from that part of the decretal order which adjudges as aforesaid, upon the ground that the same is erroneous, for that the said complainants were not entitled to have had the original injunction granted and prayed for by them in their said bill of complaint continued till the final hearing of the cause, and for that the said defendants were well entitled to have had the said injunction dissolved. 10

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

Dated March 5th, 1859.

RICH'D D. McCLELLAND,  
*Solicitor and of counsel with appellants.*

Filed March 7th, 1859.

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CHANCELLOR'S OPINION.

I have no doubt of the jurisdiction of the court in this case.

In the first place, it has jurisdiction on the ground of a multiplicity of suits. It is within the principle of the case of *The Paterson and Hudson River Railroad Company v. The Mayor, &c., of Jersey City*, 1 *Stock. Ch. Rep.* 434.

The Supreme Court decided, in the case of *The State (the Morris Canal and Banking Company prosecutors) v. Betts, collector*, 4 *Zab.* 555, that the land taxed was exempt from taxation under the 14th section of the company's charter, 1 *30 Har. Comp.* 94, which enacts, that no state, county, or township, or other public assessments, taxes, or charges whatsoever, shall at any time be laid or imposed upon the company, or upon the stocks or estates which may become vested in them

under this act ; but this act shall not extend to any other estate or property of the company than such as is possessed, occupied, and used by the said company for the *actual* and *necessary* purposes of canal navigation under this act, according to the true intent and meaning thereof. The answer of the defendants attempts to take the assessments in dispute out of the effect of this decision, by alleging that the property was not, at the time of the assessments in question, possessed and occupied by the company for the actual and necessary purposes of the canal. But this is new matter set up by the answer, and the defendants are not entitled to the benefit of it on this motion. It will be time enough to decide, as to its effect, when it has been established by proper proofs.

But again, the court has jurisdiction for the purpose of preventing the delivery of deeds which will be clouds upon the complainants' title. These deeds will not be void upon their face. The land is *prima facie* liable to taxation. The record is perfect. The defendants can make the proof necessary to enable them to recover the land. The defence against the validity of the deeds depends upon matters outside the record. The complainants ought not to have their title put in jeopardy by meeting the issue just when the defendants choose.

It is said the injunction is too broad ; that it prevents the defendants from ever after taxing the property, when it is admitted they may do so whenever the land is not possessed or occupied by the company for the actual and necessary purposes of canal navigation. The injunction does not extend so far in its operation. It only enjoins the defendants from assessing for taxation the aforesaid property, and all other property at Jersey City aforesaid, possessed, occupied, and used by the Morris Canal and Banking Company for the actual and necessary purposes of said canal navigation.

The bill and answer show that the rights of these parties ought to be settled, so as to put an end to litigation. It is apparent that it cannot be done, except by a suit in this court. It is the interest of both parties that this injunction should be continued, and the rights of the parties definitely settled.

The motion to dissolve is denied.

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