

New Jersey Court of Errors and Appeals.

IN CHANCERY OF NEW JERSEY.

Between

THE NEW JERSEY ZINC COMPANY, com-
plainants,

and

THE NEW JERSEY FRANKLINITE COM-
PANY, defendants.

} *On bill, &c.*

Between

THE BOSTON FRANKLINITE COMPANY,
complainants,

and

THE NEW JERSEY ZINC COMPANY AND
THE NEW JERSEY FRANKLINITE COM-
PANY, defendants.

} *On bill in na-
ture of supple-
mental bill.*

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P E T I T I O N .

The petition of the New Jersey Zinc Company respectfully showeth, that upon the bill filed by the Boston Franklinite Company, the said last named company claim title to the property in dispute between the parties, under and by virtue of an alleged decree of this court, in a certain suit in which Oakes Ames was the complainant, and the New Jersey Franklinite Company and others were defendants; upon which said decree it is stated and set forth in the said bill, that an execution was issued out of this court, and the property sold by the sheriff of the county of Sussex, and a deed made therefor to 10 the said Oakes Ames, as purchaser.

Your petitioners further show, that they were not made parties to the said suit as having any interest or claim to the property therein in controversy, and were strangers to all the proceedings in said suit, and that in their answer to the bill in

the cause above stated, of the Boston Franklinite Company against your petitioners, your petitioners set forth and stated that they were ignorant as to all the alleged proceedings in the said suit of Oakes Ames against the New Jersey Franklinite Company and others, and left the complainants to the proof of their alleged title under the said alleged decree.

And your petitioners further show, that the Boston Franklinite Company did, in support of their title, exhibit a certified copy of an enrollment of the proceedings in the Court of  
10 Chancery in the said suit of Oakes Ames against the New Jersey Franklinite Company, but did not produce the execution issued in the said suit, and to the best of the recollection of your petitioners' counsel, no certified copy of the said execution.

And your petitioners further show, that the evidence taken was very voluminous, and the preparation for argument laborious; that the enrollment aforesaid was not in the possession of your petitioners' counsel at any time while they were preparing for argument, and no opportunity was afforded them  
20 for inspecting the same; and that during the said argument the attention of your Honor was not called to the documentary evidence in reference to such proceedings.

And your petitioners further show, that since the argument of the cause before your Honor, the attention of your petitioners' counsel has been called to the proceedings in the said suit of Oakes Ames against the New Jersey Franklinite Company, and to their surprise, they have, since the said argument, discovered that there is no decree in the said suit upon which an execution could issue; and that it appears, by the  
30 record produced, that the decree therein stated as bearing date the third day of February, eighteen hundred and fifty-eight, was opened by the Chancellor, on the ground that the same had been irregularly and improperly obtained.

And your petitioners further show, that the Court of Chancery of the state of New Jersey was closed from the fourth day of February, eighteen hundred and fifty-nine, to the 15th day of March, eighteen hundred and sixty, for the want of a Chancellor, and that during that period no officer could receive or execute any writ of that court, because the powers and  
40 functions of the court were suspended.

And your petitioners further show, that it appears, by the record, that the sheriff of the county of Sussex received the execution, which was pretended to be issued upon the said alleged decree in the suit of Oakes Ames, on the seventh day of February, eighteen hundred and fifty-nine, when there was no Court of Chancery which could give him authority to execute any such writ.

Your petitioners respectfully ask that they may have an opportunity of being heard upon that part of the case referring to the title of the said the Boston Franklinite Company 10 under the proceedings of Oakes Ames, in Chancery as aforesaid, so that they may have the benefit of your Honor's judgment on the same after full argument.

DAVID A. HAYES,

*Solicitor for the New Jersey Zinc Company.*

April 14th, 1862.

We do certify that we have examined the above, and deem the grounds of the application sufficient.

A. O. ZABRISKIE,

*Solicitor. 20*

B. WILLIAMSON,

*Counsel.*

Filed April 22d, 1862.

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DECREE.

These causes, coming on to be heard together before the Chancellor, at a special term of the Court of Chancery, held for that purpose at the court-house in Newton, in the county of Sussex, in the presence of Joseph P. Bradley and A. O. Zabriskie, of counsel with the New Jersey Zinc Company, the complainants in the original cause above stated, and of 30 Thomas N. McCarter, solicitor, and Robert Hamilton, of counsel for the Boston Franklinite Company, the complainants in the supplemental cause above stated, and the pleadings, depositions, exhibits, and proofs being read, and the arguments of the respective counsel being heard and considered, and the

Chancellor having taken time to advise thereon, and now, on this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and sixty-two, it appearing to the Chancellor that the New Jersey Zinc Company, the complainants in the said original cause, are not entitled to the relief sought and prayed for by them in their said bill of complaint in the said original cause—It is therefore, on the said original cause, by Henry W. Green, esquire, Chancellor of the state of New Jersey, ordered, adjudged, and decreed, that the said  
 10 complainants' bill be and the same is hereby dismissed with costs, and that the writ of injunction heretofore issued in the said original cause be and the same is hereby set aside and dissolved.

And it further appearing, that by an order made by the Chancellor in the said supplemental cause, on the seventeenth day of March, in the year of our Lord one thousand eight hundred and sixty-one, the said supplemental bill was ordered to be taken as confessed as against the said New Jersey Frank-  
 20 linite Company, one of the defendants in the said supplemental cause—It is also, on the said supplemental bill ordered, that it be referred to David Thompson, esquire, one of the masters of this court, to take an account of the quantity and value of all the ores taken, mined, and carried away by the said New Jersey Zinc Company, or by any persons in the employ or under the direction of the said New Jersey Zinc Company, from the said mine in the said supplemental bill mentioned, and called "The new opening, situate on the premises known as 'Mine Hill,' " in the county of Sussex, since the  
 30 first day of June, in the year of our Lord one thousand eight hundred and sixty, and up to the time of signing this order; and that on the taking of said account, the said Boston Frank-  
 40 linite Company and the said New Jersey Zinc Company, or either of them, shall have leave to examine, before the said master, any witness heretofore examined either in the said original cause or in the said supplemental cause; and also, that either of the said parties shall be at liberty to use and read before the said master any of the testimony heretofore taken in either of said causes, and to take said testimony from the files of this court for that purpose; and that the said master do make his report thereon with all convenient speed. And

it is further ordered, that the injunction issued out of this court against the said New Jersey Zinc Company, on the filing of said supplemental bill and the order made on the eighteenth day of February, in the year of our Lord one thousand eight hundred and sixty-one, restraining the said New Jersey Zinc Company from mining or carrying away any ores from that part of Mine Hill in said order described, be and the same are continued in full force until the further order of this court.

HENRY W. GREEN, C.

Filed April 24th, 1862.

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NOTICE OF APPEAL.

The New Jersey Zinc Company hereby appeals from so much of the final decree made in this court in the above stated causes as declares that the said the New Jersey Zinc Company are not entitled to the relief sought and prayed for by them in their said bill as dismisses their bill of complaint, as dissolves the injunction issued on the prayer of said bill of complaint, as refers the matters in said supplemental bill to David Thompson, esquire, one of the masters of this court, and as continues the injunction issued against the New Jersey 20 Zinc Company, and all orders made thereon, to the Court of Appeals in the last resort in all causes of law.

DAVID A. HAYES,

*Solicitor.*

A. O. ZABRISKIE,

*Of counsel with New Jersey Zinc Co.*

Filed May 9th, 1862.

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ORDER REFUSING REHEARING.

A petition having been filed in the above stated causes by the New Jersey Zinc Company, on the twenty-second day of 30 April last, praying a rehearing of the said causes for the reasons stated in said petition, and said petition coming on to be

heard before the Chancellor, at Trenton, on the twenty-second day of April aforesaid, in presence of A. O. Zabriskie and Benjamin Williamson, of counsel for the New Jersey Zinc Company, and of Thomas N. McCarter, solicitor, and Robert Hamilton, of counsel for the Boston Franklinite Company, and the said petition and the arguments of the respective counsel having been heard, and the Chancellor having taken time to consider the same—It is, on this ninth day of May, in the year of our Lord one thousand eight hundred and sixty-two,  
 10 by the Chancellor, ordered that the prayer of said petition be denied, and that the rehearing therein prayed for be and the same is hereby refused.

HENRY W. GREEN, C.

Filed May 9th, 1862.

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ORDER CONTINUING INJUNCTION.

The New Jersey Zinc Company having appealed from the decree of the Chancellor in the above stated causes, it is ordered by the Chancellor that the injunction heretofore issued in the same be continued during the pendency of said appeal  
 20 and until the further order of this court.

Dated 15th May, 1862.

HENRY W. GREEN, C.

Filed May 15th, 1862.

## PETITION OF APPEAL.

Between

THE NEW JERSEY ZINC COMPANY, ap-  
pellants,*and*THE BOSTON FRANKLINITE COMPANY and  
the NEW JERSEY FRANKLINITE COM-  
PANY, appellees.} *On bill and pe-  
tition of appeal.**To the Honorable the Court of Appeals in the last resort in  
all causes of law.*

The humble petition of the New Jersey Zinc Company, 10  
the appellants in the above stated cause, respectfully show  
that your petitioners find themselves aggrieved by a final  
decree, made in the Court of Chancery by his Honor Henry  
W. Green, Chancellor of the State of New Jersey, bearing  
date the twenty-fourth day of April, eighteen hundred and  
sixty-two, wherein the said the New Jersey Zinc Company  
were complainants, and the New Jersey Franklinite Company  
were defendants, and the said the Boston Franklinite Com-  
pany were complainants, and the New Jersey Zinc Company  
and the New Jersey Franklinite Company were defendants, 20  
in this respect, to wit: that said decree denies that the said  
appellants are entitled to the relief sought and prayed for in  
their bill of complaint—dismisses the appellants' bill of com-  
plaint—sets aside and dissolves the injunction issued on said  
bill of complaint—that the matters in said supplemental bill is  
referred to David Thompson, esquire, one of the masters of  
the Court of Chancery, to take an account against the appel-  
lants, and continues the injunction issued against the New  
Jersey Zinc Company, and all orders made thereon. And  
your petitioners humbly appeal from that part of the said 30  
decree of the Chancellor which decrees as aforesaid, upon the  
ground that the same is erroneous, for that the New Jersey  
Zinc Company are entitled to the relief sought and prayed for  
in their bill of complaint; their bill ought not to have been  
dismissed; that the injunction issued on said bill of complaint

ought not to have been set aside or dissolved; that the matters in said supplemental bill ought not to have been referred to any master in Chancery, nor any account taken against the appellants; that the injunction issued against the New Jersey Zinc Company, and the orders made thereon, ought not to have been continued, but ought to have been set aside and vacated, and that the Boston Franklinite Company have no title to the minerals or the mineral rights in said bills mentioned.

- 10 Your petitioners therefore pray that the said decree 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.

DAVID A. HAYES,  
*Solicitor of appellants.*

DAVID A. HAYES,  
*Of counsel with the appellants.*

Filed May 16th, 1852.

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ANSWER OF RESPONDENTS.

|                                                                                                                                                                                                        |   |                                                                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-----------------------------------------------------------------------------------|
| <p>THE NEW JERSEY ZINC COMPANY, ap-<br/>pellants,</p> <p style="text-align: center;"><i>and</i></p> <p>THE BOSTON FRANKLINITE COMPANY and<br/>the NEW JERSEY FRANKLINITE COM-<br/>PANY, appellees.</p> | } | <p><i>On bill and sup-<br/>plemental bill<br/>and petition of<br/>appeal.</i></p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-----------------------------------------------------------------------------------|

The answer of the Boston Franklinite Company, respondents, to the petition of appeal of the New Jersey Zinc Company, appellants.

- 30 These respondents, not confessing or acknowledging all or any of the matters or things to be true, as in and by the said petition of appeal are contained and set forth, for answer thereunto say, that they believe it to be true that such decree as is complained of by the said appellants was made by the

Court of Chancery as is in the said petition of the appellants set forth; but as to the date, substance, and contents thereof, these respondents humbly crave leave to refer thereto when the same shall be produced. And these respondents are advised and believe that the said decree is agreeable to equity and justice, and they hereby pray that the same may be affirmed in all things, with costs to be adjudged to these respondents.

THOMAS N. McCARTER,

*Solicitor for and of counsel with the Boston Franklinite Co.* 10  
Filed May 21st, 1862.

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SHERIFF'S RETURN.

Between

OAKES AMES, complainant,

and

THE NEW JERSEY FRANKLINITE COM-  
PANY AND OTHERS, defendants.

*Fi. fa. for sale  
of mortgaged  
premises.*

Ret'ble May  
term, 1859.

|                                                                        |             |    |
|------------------------------------------------------------------------|-------------|----|
| Levy and return,                                                       | \$1 12      |    |
| Advertising,                                                           | 27 00       |    |
| Sale,                                                                  | 1 00        | 20 |
| Statement,                                                             | 1 08        |    |
| Centage,                                                               | 366 25      |    |
| Adjournments,                                                          | 8 00        |    |
|                                                                        | <hr/>       |    |
|                                                                        | \$404 45    |    |
| Levy decree for complainant,                                           | \$60,675 00 |    |
| Interest from January 21st, 1858, till<br>paid, to January 26th, 1860, | 7,331 56    |    |
| Costs taxed at                                                         | 218 48      |    |
| Interest from February 3d, 1858, till<br>paid, to January 26th, 1866,  | 25 93       | 30 |
| Amercement notice,                                                     | 3 50        |    |
| Sheriff's fees,                                                        | 404 45      |    |
|                                                                        | <hr/>       |    |
|                                                                        | \$68,658    |    |

By virtue of the above stated writ, I did advertise the land and premises, with the ores, mines, and minerals described in said writ, for sale on Thursday, the 23d day of June, 1859, between the hours of 12 and 5 o'clock in the afternoon of said day, at the court-house in Newton, and at the request and consent of parties did adjourn the said sale from time to time until the 26th day of January, 1860, and then sold the same to the highest bidder, who was Oakes Ames, the complainant in said writ, for sixty-eight thousand six hundred and fifty-  
10 eight dollars and ninety-two cents, and paid the proceeds of said sale to Robert Hamilton, solicitor of said complainant, except sheriff's fees above stated.

PETER S. DECKER,  
*Sheriff of Sussex.*

*Mr. Zabinski's Assayment in*  
 1. *Continuation*

The test by bulk merely will show that all the minerals in Mine-hill, claimed by the appellants as Zinc ore, contain more metallic Zinc than metallic iron.

To resolve these ores into metals—

Oxide of Zinc contains 80.26 per cent. of metallic zinc.

Blake, p. 565, fol. 2226.

Cook, p. 207, fol. 816.

Dana's Mineralogy, p. 110.

Oxide of iron has 70 per cent. metallic iron. Dana's Min. 114.

Blake, p. 564, fol. 2224, says, and it is undisputed, 100 parts of pure franklinite has—

|                      |       |
|----------------------|-------|
| Metallic iron, M. I. | 45.24 |
| Metallic zinc, M. Z. | 21.02 |

With these elements we can reduce every analysis of specimens of ore to metallic iron and zinc.

Let us take their three leading mineralogists—

I. Blake. Ore sent to him, fair specimen of No. 4, p. 562 and p. 570.

"Fair average of the ore which had been mined as zinc ore. This analysis was made in November and December, 1860, at the Yale Scientific School. The ore was carefully crushed, sampled in the usual way; the analysis gave me thirty-four per cent. of franklinite, and less than fifteen per cent. of red zinc oxide, it having approximately the following composition:

|                    |                |
|--------------------|----------------|
| Franklinite,       | 34.17          |
| Zinc oxide,        | 25.00          |
| Manganese oxide,   | 16.00          |
| Lime,              | 11.90          |
| Carbonic acid,     | 11.00          |
| Magnesia silicate, | undetermined." |

Fr. 34.17 {  $\times 45.26$  for M. I. M. I. 15.46  
           {  $\times 21.02$  " M. Z. 7.28

O. Z. 25  $\times 80.26$  20.06—M. Z. 27.34

II. Kitchell, p. 419, fol. 1644.

"A. Mr. Brown pointed out to me a heap of ore from which the New Jersey Zinc Company had been carting, and requested me to select average specimens for analysis: this selection was made on the 17th of November last, as was also the other specimen above described. I selected six specimens from different parts of the heap, representing, as near as I could judge, a fair average of the whole heap. These specimens were pulverized and mixed together, from which a portion was selected for analysis, and were analyzed with the following result:

|                       |                 |
|-----------------------|-----------------|
| Franklinite,          | 46.40 per cent. |
| Oxide of zinc,        | 22.50 "         |
| Carbonic acid,        | 15.55 "         |
| Silica,               | 3.50 "          |
| Sesqui oxide of iron, | 2.00 "          |
| Lime,                 | 9.80 "          |

which foots up 99.75."

S. O. I.  $2 \times 70$  M. I. 1.40  
 Franklinite, 46.40  $\left\{ \begin{array}{l} \times 45.24 \text{ for M. I. } 20.99 \text{ M. I. } 22.39 \\ \times 21.02 \text{ for M. Z. } 9.74 \end{array} \right.$   
 Ox. Zinc, 22.50  $\times 80.26$  18.04—M. Z. 27.78

Kitchell's analysis of one specimen, p. 520, gives a like result.

### III. Jackson, p. 465, top.

"Another single sample, which I regarded as representing the average quality of the ore, on analysis, yielded 44.80 per cent. of franklinite, oxide of zinc not determined; this I called number 2. The third sample, which contained some red oxide of zinc, mixed with it, and appeared to be the richest of any I had, in oxide of zinc yielded—

|                     |                 |
|---------------------|-----------------|
| Franklinite,        | 44.40 per cent. |
| Oxide of zinc,      | 23.00 "         |
| Oxide of manganese, | 13.00 "         |
| Lime,               | 13.00 "         |
| Carbonic acid,      | 9.60 "          |

Fr. 44.40  $\left\{ \begin{array}{l} \times 45.24 \text{ M. I. } 20.09 \\ \times 21.02 \text{ M. Z. } 9.32 \end{array} \right.$   
 Ox. Z. 23  $\times 80.26$  18.45—M. Z. 27.77

His average specimen, p. 464, evidently not average, if Blake and Kitchell are right.

Take their analysis of this black band or ore, which they say is nearly all franklinite, Kitchell, p. 419, fol. 1642.

"When you speak of the franklinite and willemite occurring together at this opening, in what relative proportion do they occur?"

A. I selected a specimen of ore at this opening composed of franklinite and willemite apparently free from red oxide of zinc and calcite, and analyzed it. The result of this analysis is—

|                       |                 |
|-----------------------|-----------------|
| Franklinite,          | 69.00 per cent. |
| Oxide of zinc,        | 21.20 "         |
| Sesqui oxide of iron, | 1.80 "          |
| Silica,               | 8.30 "          |

making 100.30."

S. O. I.  $1.80 \times 70$  1.26  
 F. 69  $\left\{ \begin{array}{l} \times 45.24 \text{ M. I. } 32.48 \\ \times 21.02 \text{ M. Z. } 14.49 \end{array} \right.$

O. Z.  $21.70 \times 80$  16.96—M. Z. 31.45

Deduct for excess of S. O. I., as per p. 441, fol. 1731.

Excess 2.43 S. O. I.  $\times 70 = 1.70$  of M. I.

Gives M. I. 32.48—1.70 30.78  
 M. Z. 31.45

Shows that in the main body of ore at Mine-hill metallic zinc is in greater bulk than metallic iron.

*Franklinite 450*  
 O<sub>2</sub> 27,85  $\times 70$  — 19,49 M. I.  
 O<sub>2</sub> 25,85  $\times 80$  — 20,28 M. Z.

Zesoinne's Metallurgie General, p. 3.

Ure Dict., tit. ore.

Whitney's Metallic Wealth U. S., pp. 425, 7, 8.

Owen Geol. Survey, p. 53-4. copper ore.

Witnesses—

Dana, 124 (489); 161 (633-4); 165 (650); 168 (660).

Silliman, 128 (505-8); 131 (517-18); 172 (675); 174 (684); 181 (712-14); 182 (716-18); 183.

Cook, 203 (801); 205 (808); 20ii (817); 208 (820); 218.

George, 244 (968); 247 (976).

Aitken, 290, 292, 295.

Detmold, 138-9; 220 (869).

Jackson, 321 (1356-8); 322 (1265-6); 468, 470.

Blake, 344 (1356-8); 565, 566, 568-9, 570.

Rogers, 574 (2264, 2268); 576 (2278).

Even the rich zinc ore of Sterling Hill has in it about  
or or nearly 50 per cent. of franklinite.

Silliman, 175 (688-9).

Detmold, 138 (542-3).

Jenkins, 156 (615), (yield of iron and zinc).

Cook, 194 (966).

Alger, 490 (1926).

That there are two distinguishable strata in the vein at  
Mine-hill.

Dana, 159, 160, 162.

Silliman, 169, 172.

Cook, 106; 203 (800).

George, 244-7; 248.

Cruse, 277-8.

Aitkin, 297.

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# Appellant's Brief

[References to pages of evidence on some of the points.]

It was the object and intent of the deeds of March 8th, 1852, to carry out the agreement of Sept. 1851.

Detmold, 142 (560).

Jones, 406 (1212-14).

Farrington, 333 (1310-14); 335 (1317); 363 (1436).

Curtis, 565 (2107); 536 (2111); 541 (2131-2134); 545 (2140).

Minutes New Jersey Exploring and Mining Company, March 8th, 1852. Agreement of Sept. 4th, 1851.

What is franklinite?

Dana's Mineralogy, voll 2, p. 106.

Roger's Geological Report, p. 63.

Gordon's Gazetteer, p. 247, article "Sussex."

Silliman's Journal, Nov., 1820, vol. 2, p. 319.

Witnesses—

Dana, p. 124 (488).

Silliman, 176-7 (694-607).

Detmold, 138 (542); 220 (868).

Cook, 206 (812); 198 (782-4).

Selleck, 226 (892); 235 (929-30).

Jackson, 319 (1254); 323 (1269-70); 325 (1278); 466 (1832-3).

Farrington, 358 (1415).

Blake, 340 (1337-8); 559 (2203-4); 568 (2238).

Kitchell, 431 (1690-93); 432 (1694).

Brush, 450 (1767); 491 (1771); 458 (1800-1801).

Alger, 488 (1919-20).

Analysis of franklinite, p. 199; Oxide of iron, 66; Oxide of Zinc, 23; Oxide of Manganese, 14.30.

Analysis showing per cent. of franklinite in the ores in Kine-hill; Dana, (p. 124,) 37 per cent.; Silliman, (130), 37 per cent.; Cook, (199-202) 33, 41, 40, 42, 57, 30, 47, 56 per cent.; Kitchell, (419-24), 69, 46, 46; 65, 70 per cent.; Brush (450), 43, 37 per cent.; Blake, (562) 34 per cent.

That the law of naming an ore is to name it from the metal of greatest value found in it, and for which it is principally mined, and that this is a zinc ore.

