

Court of Errors and Appeals.

IN CHANCERY OF NEW JERSEY.

Between

THE CAMDEN AND AMBOY
RAILROAD AND TRANS-
PORTATION COMPANY,

Complainants,

and

CHARLES STEWART,

Defendant.

} On bill.

Bill of Complaint.

[Filed February 25, 1868.]

To the Honorable Abraham O. Zabriskie, Chancellor of the State
of New Jersey.

Humbly complaining, showeth unto your Honor, your orator, The Camden and Amboy Railroad and Transportation Company, a body corporate of this state, created by public act of the legislature of this state, passed February fourth, eighteen hundred and thirty, that by said act, among other things, the said company was by that name made 10 capable of purchasing and holding real estate, and of enjoying and exercising all the rights, powers, and privileges necessary to perfect an expeditious and complete line of communication from Philadelphia to New York, and were

thereby invested with all the rights and powers necessary to survey, lay out, and construct a railroad or roads, with all necessary appendages, from the Delaware river to a point on Raritan bay, with as many sets of tracks as the said company might deem necessary; provided, that the said road or its branches should not exceed one hundred feet in width on the surface; and it was thereby enacted, that it should be lawful for the said company to construct a lateral road, from the main line of said road, from the nearest practicable point
10 of said main road, to Bordentown, and that the said lateral road might be of the same width, and with as many tracks as the main road, as by said act will appear.

And your orator further shows, that your orator, having determined that the routes of such road should be over the land of Charles Stewart, situated (now in Bordentown borough, then) in the township of Mansfield, in the county of Burlington, and having thereafter, by a survey and location of said routes, filed in the office of the Secretary of State of this state, on the twenty-fourth day of December, in the
20 year eighteen hundred and thirty, located the said routes over the said land of said Charles Stewart, as in said survey is particularly set forth; the said company desiring more land than the fifty feet on each side of the line of said survey. (which width was in said survey declared to be the width of said routes and locations on the surface of the road,) for the purpose of erecting thereon a depot, and having negotiated with said Stewart for land for said depot, and the land required for said railroads as hereinafter stated, and having
30 come to an agreement with him therefor, which was reduced to writing afterwards, your orator, prior to the signing of the agreement hereinafter mentioned, by the consent of the said Charles Stewart, proceeded to construct the said railroad upon so much of the land of said Stewart as was within the one hundred feet in width appropriated to said railroad by said location and survey, that is to say, within said fifty feet on each side of the line of said survey, so filed in said Secretary of State's office, and proceeded to appropriate other lands so verbally agreed upon as the site for the depot; that it was
40 always the design of your orator to lay a double track along the whole line of your orator's railroad, as well over the

premises of said Stewart as all the way to Amboy; that neither, at the time of the location of said road, nor for a long period after, was the idea for a moment entertained that a single track of railroad would answer the purposes of the company, or enable it to transact its business as a transportation company; that in pursuance of the said design, and before the said written agreement hereinafter set forth was signed, the following works were done by your orator: the whole of the said railroad over the land of said Stewart, and all the way to Amboy, was graded for a double track, 10 all the bridges and culverts along the whole of the said line of the said road were constructed with a view to a double track; that a double track, for a distance of five miles, from Hightstown to Gravel Hill, was actually laid; that all the estimates of the expense of constructing the said road had been based upon the idea of a double track, and all the embankments, bridges, and culverts, which had been constructed or were in process of construction, were constructed or constructing so as to accommodate a double track; that in grading the said road on the said part of the said land of 20 said Stewart, on which the same was located by said survey, your orator, prior to the signing of the agreement hereinafter mentioned, had dug four trenches along and upon the said land of said Stewart, and perhaps, a part in front on the shore, for the purpose of laying therein broken stone, and to put therein stone blocks on which to set the rails—that being the method of constructing the said railroad at first, instead of the modern style of putting ties on the earth directly; that each trench was dug to lay a foundation for a rail; that the bridge over Black's creek, the northern boundary of said 30 Stewart's said land, was, prior to said signing of said agreement hereinafter set forth, twenty-five feet in width, and upon this bridge a double track was then actually laid; that the said Charles Stewart, up to the time of signing the agreement hereinafter set forth, from the year eighteen hundred and thirty, was living within a few hundred feet of the said railroad, and every day or every week or very frequently saw all of the said operations of said company on his said land, and was not absent, as he has sometimes alleged, all the time from the year eighteen hundred and thirty to the time 40

of signing the agreement hereinafter set forth; that a large portion of the land over which the said railroad was located, lay on the shore of the Delaware river, in which the tide ebbed and flowed.

And your orator further shows, that having proceeded so far in the work of appropriating the said Stewart's land for said railroad and said depot, with his consent, and upon the verbal agreement that they were to pay therefor two thousand two hundred and fifty dollars, the said Stewart, on or
 10 about the —— day of September, in the year eighteen hundred and thirty-two, presented to your orator's agent, Edwin A. Stevens, a bill, in the words following:

"Dr. The Camden and Amboy Railroad and Transportation Company to Charles Stewart,

"For nine acres of land as per deed,	\$2250 00
"Interest for one year at six per cent.,	135 00

\$2385 00"

That your orator's agent, Edwin A. Stevens, not being in funds at the moment, requested the said Stewart to take his
 20 check for the same, dated ahead, to which said Stewart assented, and thereupon added to the said bill—

"Interest for three months, till 1st Dec'r, 1832,	\$33 75
---	---------

\$2418 75"

That thereupon, Jeremiah Sloan, the counsel of your orator, who was then present, but has since died, wrote under the said bill a receipt and agreement, in the words and figures following, to wit :

"1832, Sept. 15, received of E. A. Stevens, his check on
 Trenton Bank, dated December 1st, 1832, for the above sum,
 30 for which I agree to execute a deed of conveyance for the above tract, in conjunction with Mrs. Stewart; and also, a grant of the right to pass in front of my premises with said railroad, the said company furnishing me with suitable passage-ways to the river, for which said check, when paid, will be in full."

And thereupon, the said Stewart signed the said receipt and agreement, and said Stevens delivered to him said check, which was paid at maturity.

And your orator further shows, that the said Stewart has never conveyed to your orator the said nine acres of land, pursuant to said agreement, nor made any grant of the said right to pass in front of his premises with said railroad; but your orator admits, that the said Charles Stewart has, within the last fifteen years, frequently declared he has made such conveyance and grant, and stated in his bill brought against your orator and others, in the Circuit Court of the United States for the district of New Jersey, and filed sometime in the year eighteen hundred and fifty-three, as follows: "And 10 your orator further showeth unto your Honors, that after handing the bill and receipt to Mr. Edwin A. Stevens, which he did after he had signed the said receipt, your orator also handed him the deed executed by Mrs. Stewart and your orator, conveying to the Camden and Amboy Railroad and Transportation Company, the nine acres of land above described, with the right to pass in front of your orator's premises, on the river Delaware, with a track of railroad.

("And your orator further shows unto your Honors, that Edwin A. Stevens and Jeremiah H. Sloan sat down together 20 to read the said deed thus delivered as aforesaid, and after reading part of it, Mr. Edwin A. Stevens rose, and was coming towards your orator, when said Sloan called said Stevens back, and said to him, 'Don't you see, you have the whole game in your own hands?' to which said Stevens replied, 'Yes, I have only to suppress the deed.' This conversation between said Sloan and Stevens was spoken in a way not intended to be heard by your orator, but which, from the position of your orator, he distinctly heard; and it then struck the mind of your orator, that the wording of the re- 30 ceipt was done with a fraudulent intent; and the conduct of the said Edwin A. Stevens, and of the Camden and Amboy Railroad and Transportation Co., in making the said additional tracks through his land, has served to verify and more firmly establish the impression which he entertained when he heard the said conversation between said Sloan and Stevens." But your orator, the said the Camden and Amboy Railroad and Transportation Company, further shows, that the said Charles Stewart omitted said statement in an-

other bill, in a subsequent suit against your orator for the same causes of complaint, as in the suit in which said allegations were made.

And your orator further shows, that the said statement in said bill in said first suit of the said Stewart against your orator, in said Circuit Court of the United States for the district of New Jersey, is untrue in this, that any deed was either delivered to, or accepted by, the said Stevens or Sloan, or your orator; and that said Stewart has since sworn that

10 he heard none of the conversation between said Sloan and said Stevens, at that time. And your orator further shows, that if any deed was shown at the time, it is no doubt true, that as said Stewart has since testified, the said Stevens then declared, "it would never do," and for that reason said Stewart signed the agreement to give a deed, and if he ever left any deed, it was accompanied by the agreement to give another deed, according to said agreement. But your orator denies that any deed was left with said Stevens at that time, or ever afterwards; that said testimony of said Stewart, con-

20 tradicting the said allegations in said first bill, is as follows: "I never have seen the original bill and receipt which I gave Mr. Stevens when I delivered the deed to him, since I gave them to him, and I never saw anything purporting to be a copy of the original bill and receipt which I gave, until I received the letter and copies I have spoken of; when I delivered to Mr. Stevens the deed, and gave him the bill and receipt, he gave me a check on the Trenton Bank, at three months, which was for the amount of the bill, with interest added; after he gave me the check, I gave him the deed; it

30 was all done at the same time; I came up in the boat from Philadelphia, having the deed executed by me and Mrs. Stewart—the first deed executed—with me; I landed at the wharf at Bordentown, and met Mr. Stevens there; I told him I had brought the deed executed by Mrs. Stewart and myself up with me; he then asked me to come up and dine with him, and that we could soon settle it; I went to Mr. Arnold's, where he was staying, about the dinner time, and was shown up into the dining room where Mr. Stevens was, and Mr. William McKnight, and Mr. Sloan; I there handed

40 him the deed, and he took it to the front window, and ap-

peared to be reading it; dinner coming in, he folded it up, and handed it back to me, saying, after dinner we will go into my private room, where we will settle it; after dinner, Mr. McKnight left, and Mr. Stevens, Mr. Sloan, and myself went into a room in the back buildings that appeared to be Mr. Stevens' bed-room; I there handed Mr. Stevens the bill, and he sat down to the table and appeared to be examining the bill, and Mr. Sloan was leaning on the table, in low conversation with him; I heard none of the conversation, except an exclamation of Mr. Stevens, as he spoke loud, saying to Mr. Sloan, that will never do; then Mr. Stevens arose from his chair, and came to me and asked me if it made any difference to me if I wanted two or three months for the money, stating that they were low in funds then, but would be flush in that time; and I told him it would make no difference to me—he might take what time he pleased, provided he would add interest to the bill; he then returned and took his seat at the table, and soon after that he asked me to come and sign the receipt; when I went up, I examined the receipt and read it over attentively, and observed the clause contained in it, but considering that I should immediately deliver him the deed, and thus comply with that clause, I signed the receipt; he handed me the check, and I gave him the deed, considering that clause was complied with by my giving him the deed; the clause in the receipt which I refer to, is the clause in these words, 'for which I agree to execute a deed of conveyance for the above tract, (wrongly written trust in the above copy, the original receipt being referred to making it 'tract,') in conjunction with Mrs. Stewart, and also a grant of the right to pass in front of my premises with said railroad;' upon delivering him the deed, I considered that clause as accomplished.")

But your orator charges, (the matters in said evidence contained, so far as they are inconsistent with your orator's allegations herein, are untrue, and) that though the said receipt refers to the account prefixed thereto, and said account refers to a deed for the nine acres, it refers to no deed containing the grant agreed to be made of a right to

pass in front of said Stewart's premises with said railroad, and no such deed, either for the nine acres, or containing such grant, was ever delivered to your orator, or any of its agents or officers, and accepted; (and as evidence thereof, your orator shows, that the deed which said Stewart declares and insists he delivered to your orator at the time of signing said receipt, was as follows:

“This indenture, made this tenth day of May, in the year
 10 of our Lord one thousand eight hundred and thirty-two, between Charles Stewart, of the city of Washington, in the District of Columbia, and Delia, his wife, of the first part, and The Camden and Amboy Railroad Company, of the state of New Jersey, party of the second part, witnesseth—that the said party of the first part, for and in consideration of the sum of two thousand two hundred and fifty dollars, lawful money of the United States, to him, the said Charles Stewart, in hand well and truly paid, by the party
 20 of the second part, before the delivery of these presents, the receipt whereof he, the said Charles Stewart, doth hereby acknowledge, hath granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, and confirm, unto the said Camden and Amboy Railroad Company, the said party of the second part, and their assigns, all that parcel or lot of ground situated, lying, and being in the county of Burlington, and township of Mansfield, state of New Jersey, and butted and bounded as follows: beginning at a stake driven into the ground and bearing south, sixty-one degrees
 30 thirty minutes west, from the southwestern corner of the mansion-house of said Charles Stewart, on the top of the hill or bank fronting on the river Delaware, and distant from said corner of the mansion-house, five chains twenty-nine links; and from thence running south, sixty-one degrees west, twelve chains and fifty links; thence north, thirty-six degrees west, five chains and thirty-two links; thence north, fifty-three degrees east, six chains and thirty-three links and one quarter link; thence north, fifty-nine degrees ten minutes east, five chains and thirty-two links and one quarter link;
 40 thence north, sixty-four degrees forty minutes east, three

chains and eight links; thence south, seventeen degrees forty minutes east, seven chains and eighty links to the place of beginning, and containing nine acres, to the low water mark on the river Delaware; together with all the woods, ways, waters, and water-courses, rights, liberties, privileges, hereditaments, and appurtenances to the same belonging or appertaining; and also all the estate, right, title, interest, use, possession, property, claim, and demand whatsoever, both in law and equity, of them, the said party of the first part, in and to the said premises, to have and to hold the 10
said lot or tract of land hereby granted, and every part and parcel thereof, unto the said party of the second part, and their assigns, forever.

And the said Charles Stewart and Delia, his wife, party of the first part, for themselves, their heirs, executors, and administrators, do hereby covenant, promise, and grant, to and with the said railroad company, party of the second part, and their assigns, at the delivery hereof, the said party of the first part is seized in their own right of an absolute and indefeasible estate in fee simple, of and in all and 20
singular the premises hereby granted with the appurtenances; and also that it shall and may be lawful for the party of the second part, and their assigns, at all times forever hereafter, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said premises, and every part and parcel thereof, without any let, suit, eviction, interruption, or disturbance of the party of the first part, their heirs or assigns, or from any other person or persons claiming by or under them, or any of them. And the party of the first part hereby further grant unto the parties of the second part, the 30
Camden and Amboy Railroad Company, the right of way, with the privilege of laying a track of railroad along their remaining land fronting on the river Delaware, at the foot of the bank, and to be used for no other purpose whatever, the railroad company keeping in good passable condition all the accessible ways now in use, of the said party, or their assigns, of the first part, to and from the river Delaware; and the party of the second part hath agreed, with the party of the first part, to guarantee them from all depredation and damages to their property in consequence of this grant. 40

And lastly, that they, the said party of the first part, and their heirs, all and singular the said tract of land and premises hereby granted, unto the party of the second part, and their assigns, against them, the said party of the first part, and their heirs, and against all and every other person or persons whomsoever lawfully claiming the same, or any part thereof, shall and will warrant and defend.

In witness whereof, the said party of the first part have hereunto set their hands and seals, this tenth day of May, in
10 the year one thousand eight hundred and thirty-two."

And your orator further shows, that the deed which he twenty-one years after tendered to your orator, but which your orator would not accept, was as follows:

"This indenture, made this tenth day of May, in the year of our Lord one thousand eight hundred and thirty-two, between Charles Stewart, of the city of Washington, in the district of Columbia, and Delia his wife, parties of the first part, and the Camden and Amboy Railroad Company, parties of the second part, witnesseth, that the said parties of
20 the first part, for and in consideration of the sum of two thousand two hundred and fifty dollars, lawful money of the United States, to him, the said Charles Stewart, in hand well and truly paid by the parties of the second part, before the delivery of these presents, the receipt whereof he, the said Charles Stewart, doth hereby acknowledge, hath granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, and confirm unto the said Camden and Amboy
30 Railroad Company, the said parties of the second part, and their assigns, forever, all that parcel or lot of ground, situate, lying, and being in the county of Burlington, and the township of Mansfield, state of New Jersey, and butted and bounded as follows: beginning at a stake driven into the ground, bearing south sixty-one degrees thirty minutes west, from the southwest corner of the mansion-house of said Charles Stewart, on the top of the hill or bank fronting on the river Delaware, and distant from said corner of the mansion-house, five chains twenty-nine links; and from thence running south, sixty-one degrees west, twelve chains and
40 fifty three links; thence, north, thirty-six degrees west, five

chains and ninety-two links; thence, north, fifty-three degrees east, six chains thirty-three links and one quarter link; thence, north, fifty-nine degrees, ten minutes east, five chains thirty-two links and one quarter link; thence, north, sixty-four degrees and forty minutes east, three chains and eight links; thence, south, seventeen degrees and forty minutes east, seven chains and eighty links, to the place of beginning, and containing nine acres to the low water mark on the river Delaware; together with all the woods, ways, waters, and watercourses, rights, liberties, privileges, hereditaments, and appurtenances to the same belonging or appertaining; and also, all the estate, right, title, interest, use, possession, property, claim, and demand whatsoever, both in law and equity, of them, the said parties of the first part, in and to the said premises. To have and to hold the said lot or tract of land hereby granted, and every part and parcel thereof, unto the said parties of the second part, and their assigns, forever. 10

And the said Charles Stewart, and Delia his wife, parties of the first part, for themselves, their heirs, executors, and administrators, doth hereby covenant, promise, and grant to and with the said railroad company, parties of the second part, and their assigns, at the delivery hereof, the said parties of the first part are seized in their own right of an absolute and indefeasible estate in fee simple, of and in all and singular the premises hereby granted, with the appurtenances; and that, also, it shall and may be lawful for the parties of the second part, and their assigns, at all times forever hereafter, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said premises, and every part and parcel thereof, without any let, suit, eviction, interruption or disturbance of the parties of the first part, their heirs or assigns, or of any other person or persons claiming by, from, or under them, or any of them. And the parties of the first part hereby further grant unto the parties of the second part, the Camden and Amboy Railroad Company, the right of way, with the privilege of laying a track of railroad along their remaining land fronting on the river Delaware, at the foot of the bank, and to be used for no other purpose whatever, the railroad company keeping in good 30 40

passable condition, all the accessible ways now in use, of said parties, or their assigns, of the first part, to and from the river Delaware. And, finally, that they, the said parties of the first part, and their heirs, all and singular the said tract or lot of land hereby granted unto the party of the second part, and their assigns, against them, the parties of the first part, and their heirs, and against all and every other person or persons whomsoever, lawfully claiming the same, or any part thereof, shall and will warrant and defend.

- 10 In witness whereof, the parties of the first part have hereunto set their hands and seals.

DELIA TUDOR STEWART. [L. s.]

CHS. STEWART. [L. s.]

Witness of signature to Mrs. Stewart:

C. S. STEWART,

S. G. GOODRICH,

JAMES EWING,

by C. STEWART." }

- 20 Of which deed the following are the acknowledgments:
 "Consulate of the United States of America, Paris, France.
 Be it known, that on this thirtieth day of July, A. D. 1853, personally appeared Delia Tudor Stewart, wife of Charles Stewart, known to me to be one of the persons described in and who executed the preceding instrument; and the said Delia Tudor Stewart acknowledged, on a private examination by me made apart from her said husband, that she executed the said instrument, freely, and without any fear or compulsion of him.

- 30 [L. s.] In testimony whereof, I have hereto set my hand and seal of office, at Paris aforesaid, the day and year above written.

S. G. GOODRICH.
Ass't consul."

"State of New Jersey, ss.—Be it known, that on this seventh day of September, in the year of our Lord one thousand eight hundred and fifty-three, before me, James Ewing, esq., one of the masters of the Court of Chancery of the state of

New Jersey, personally appeared Charles Stewart, to me well known as the grantor in the within deed, who, being by me informed of the contents thereof, acknowledged that he signed, sealed, and delivered the same as his voluntary act and deed, for the uses and purposes therein mentioned.

JAMES EWING.")

And your orator charges, that if any deed were even tendered at the time of said receipt and agreement, the same was rejected, and, if delivered, the same is not in accordance with the said agreement, and said Stevens told said Stewart 10 that it would never do; that there is no dispute between your orator and said Stewart as to what the location and description of said nine acres of land so sold to your orator is, and the same is properly described as to courses and distances in the undelivered deed last set out. And your orator further shows, that it is well entitled to have the said nine acres of land conveyed to it, and said grant of said right to pass in front of his premises with said railroad, made to your orator, but the said Stewart refuses to make such deed and grant, but has always insisted upon uniting with said deed 20 for nine acres, said limited grant in said two deeds last mentioned. And as further evidence that said deed was never delivered, your orator charges, that although the said Stewart has since, sometime in the year eighteen hundred and fifty-three, claimed damages against your orator for exercising a right to maintain its railroad with more than one track on his said land, and has brought two suits against your orator in said Circuit Court of the United States, for the district of New Jersey, for damages, he has never claimed anything 30 under said clause said to be contained in the deed pretended to be delivered, by which it is provided, that your orator should guarantee him against depredation and damages to his property, or even set it out in his pleadings.

And as further evidence of the fact that the said deed, pretended to have been delivered to your orator, was never delivered and accepted by your orator, your orator charges, that although said Stewart, on the thirteenth day of March, in the year eighteen hundred and fifty-three, wrote a letter,

alluding to said supposed deed, to your orator, in which letter he stated that he had heard it was lost or mislaid, and also said that, "from the nature of the receipt, taken for the payment made by me, I may be expected to furnish another deed, similarly executed;" and though in a letter to your orator, dated the twelfth day of September, in the year eighteen hundred and fifty-three, the said Stewart stated, he begged leave "to hand to the president of the company, by the hand of Mr. H. S. Crabbe, the duplicate deed, containing
10 all the grants made to the company by the original deed, for the nine acres of land, conveyed to them for the purposes of a depot, and also the right of way at the foot of the bank, along my whole remaining river front, from Whitehall to Black's creek, subject to such limits and restrictions as are contained in the said original deed;" yet, the said Stewart, having in his possession the rough draft, from which he declares the said supposed original deed to the company was made, and which contains the said clause by which the said company agreed to guarantee him against depredations and
20 damages to his property, yet, in the said deed to said company, so sent by the hands of said Crabbe, no such clause appears.

And your orator further shows, that it has no paper title whatever to the said nine acres of land, and that said Stewart has, in writing by his said letter of the thirteenth day of March, in the year eighteen hundred and fifty-three, acknowledged his obligation to deliver another deed, even if he had previously delivered the one he alleges he did; and your orator is advised, that it is entitled to such deed, if none has
30 been delivered and accepted by the company, which they allege is the fact, and is also entitled to such deed, if said supposed deed had been delivered, both under the language of the original agreement, and of the letter of the thirteenth day of March, in the year eighteen hundred and fifty-three, and is entitled to such deed without any restriction to a single track of railroad. And though your orator is informed that this court has already declared, in another suit between your orator and said Stewart, that it may not be necessary for your orator to have any deed for the said right of way,
40 and your orator may defend itself against an action of eject-

ment, under the survey and location before mentioned, if ejection will lie for such possession as your orator exercises under the same; and this court has also declared in said suit, that if such possession is not a subject of such action, that an execution in ejection would not, and ought not, to disturb said easement agreed to be conveyed to your orator; yet, your orator, for the purpose of fully protecting its rights in this behalf, desires to and does present to this court, at this time, its apprehension that the said Stewart will not regard the law of the land, but, in case he succeeds in re- 10 covering judgment in an action of ejection, which he has brought in the Supreme Court of this state, against your orator, by summons, tested the first day of December, in the year eighteen hundred and sixty-three, in which suit Stewart has filed his declaration, demanding the lands which said railroad was located upon as aforesaid, and in which, said easement, mentioned in said agreement, was agreed to be granted, and on and in which your orator's tracks, drains, and water pipes are laid, and other lands, will proceed to turn 20 your orator and its tracks and its drains and water pipes off of the said land in which the said easement was agreed to be granted, which are the same as those in which your orator's tracks are laid, and on which it has drains and water pipes laid. And your orator insists, that such proceeding of said Stewart would be inequitable, and he ought now, or when he actually threatens to or does so proceed, to be restrained by the injunction of this honorable court from so doing.

To the end, therefore, that the said Charles Stewart may, (without oath,) true and perfect answer make to this your orator's bill, (except as to the interrogatories hereto annexed, 30 (the answers to which, only are required to be under oath;)) and that he may be decreed to convey to your orator the said nine acres of land, as described in said deed of said Stewart and wife, which was acknowledged by said Charles Stewart, before James Ewing, on the seventh day of September, in the year eighteen hundred and fifty-three, and in this bill set forth at large, without uniting in such deed any restriction of the grant of the easement, by said agreement agreed to be granted, and be decreed to grant to your orator the right to pass in front of his premises, (within the lines of 40

said location of the route of said railroad,) with said railroad, without any such restriction of that right as is contained in said deed last mentioned; and that such decree and grant may be expressed in such terms as will effectually carry out the intention of the executory agreement, and authorize the use of the land within the lines of said location, that is to say, the width of one hundred feet, or within the lines of occupation, for as many tracks of railroad as the complainant is, by its act of incorporation, or any other statute, authorized to lay down and use, and for drains and water pipes, and all other uses proper for the enjoyment of the railroad of the complainant; and that the said Stewart may be restrained by the injunction of this honorable court, from dispossessing your orator, under any writ of possession to be issued in said action of ejectment, of the actual use for any number of tracks of railroad, or for drains and water pipes, or analagous uses of the land on which the said railroad was located, or which is occupied thereby, for the width of one hundred feet; and that your orator may have such further
 10
 20 and other relief as the nature of the case may require.

May it please your Honor, to grant unto your orator, now, or at and after any judgment which may be obtained in said action of ejectment against your orator, the state's most gracious writ of injunction, to be issued out of and under the seal of this honorable court, requiring and commanding the said Charles Stewart, his counsel, attorneys, and agents, and the sheriff, or other person to whom any writ of possession in said action of ejectment may be directed, to refrain from dispossessing your orator of the actual use for any number of tracks of railroad, or for drains or water pipes, or any
 30 analagous uses of the land on which the said railroad is or was located, or which is occupied thereby, for the width of one hundred feet; and also, the state's most gracious writ of subpœna, directed to the said Charles Stewart, commanding him, that on a certain day, and under a certain penalty, he be and appear before your Honor, in this honorable court, then and there to answer the premises, and to abide such order and decree as the court may make in the premises. And your orator, as in duty bound, will ever pray, &c.

40

JOHN P. STOCKTON,
Solicitor for and of counsel with complainant.

Interrogatories to be answered by the defendant, under oath, referred to in the foregoing bill of complaint.

First. Did you not sign such a receipt as is set forth in the said bill, dated September 15th, 1832?

Second. Did you ever deliver or tender to the complainant, or any one on its behalf, a deed, in accordance with the terms of said receipt, and the agreement therein contained, containing a grant of the right to pass in front of your premises with said railroad, as therein mentioned?

Third. If you ever tendered to the complainant any deed, 10 did it not limit the complainant to a right to a single track?

New Jersey, Hudson county, ss.—Robert Gilchrist, being duly sworn according to law, on his oath deposes and saith—that he acted as counsel for the above named complainant, in a suit brought against the said complainant by Charles Stewart, in the Circuit Court of the United States for the district of New Jersey, being one of the suits referred to in the bill in this cause, as having been brought in that court; that Edwin A. Stevens was sworn as a witness in said cause, in said Circuit Court of the United States, and testified, in 20 deponent's presence and hearing, as is set forth in the schedule to this affidavit annexed, and marked Y; that the following is a copy of the bill and receipt, marked in said cause A 1, to wit.:

“Dr. The Camden and Amboy Railroad and Transportation Company,

To Charles Stewart.

For nine acres of land, as per deed,	\$2250.00
Interest for one year, at six per cent.,	135.00
	<hr/>
	\$2385.00
Interest for three months, till December 1st, 1832,	33.75
	<hr/>
	\$2418.75

“1832, Sept. 15, rec'd of E. A. Stevens, his check on Trenton Bank, dated December 1st, 1832, for the above sum, for which I agree to execute a deed of conveyance for the above tract, in conjunction with Mrs. Stewart; and also, a grant of

the right to pass in front of my premises with said railroad, the said company furnishing me with suitable passage ways to the river, for which said check, when paid, will be in full.

“CHARLES STEWART.”

And deponent further says, that he has taken the copy of the said account from the printed copy of the bill of complaint of Charles Stewart, in said Circuit Court of the United States, and the receipt from the printed copy of the answer in said case, and, as set forth above, they accord with deponent's recollection of the contents thereof; that Edwin A. Stevens aforesaid is now absent out of the state of New Jersey, and has been for several months past, and somewhere in France; and further deponent saith, that an ejectment suit has been brought, as is set forth in the annexed bill.

ROB'T GILCHRIST.

Sworn and subscribed before me, at Jersey City, this twenty-fifth day of February, A. D. 1868.

L. ZABRISKIE, M. C.

Deposition of Edwin A. Stevens.

20

SCHEDULE Y.

Edwin A. Stevens, being duly sworn on part of defendants, deposes and says—I reside at Hoboken, and am the president of the Camden and Amboy Railroad Company; I have been connected with that company from its organization, about the year 1830; my first official position in the company was treasurer and superintendent; I continued superintendent till 1850; I am the Edwin A. Stevens named in this suit.

[Complainant's counsel objects to the examination of Edwin A. Stevens as a witness, on the ground that he cannot be a witness in his own behalf.]

Quest. Where did you reside in the year 1832?

Ans. My business was at Bordentown, and at that time, my parents being alive, I was on Saturday and Sunday nights at Hoboken; where my residence was I do not know; I had rooms at the hotel at Bordentown; I am acquainted with

Commodore Charles Stewart, the complainant, and was acquainted with him in 1832, and prior to that time; the Camden and Amboy Railroad was located on a part of his farm near Bordentown.

Quest. Have you ever seen that check, bill, and receipt before, marked *Exhibit 1* on part of defendants? [Being shown paper *Exhibit 1* for defendant, with check pinned to it, and now marked *A 1* for defendants.]

Ans. I have; the check is signed by me, the receipt was signed by Commodore Stewart in my presence; I should judge the signature, Chas. Stewart, on the back of the check, was in his handwriting, from the similarity of hands.

Quest. State the circumstances under which the check and receipt were given?

Ans. They were given at Bordentown, in the hotel of Mr. Arnold, where my rooms were.

Quest. In whose handwriting is the body of the receipt?

Ans. In that of Jeremiah H. Sloan, who was then counsel of the company; I wish to state that I distinctly remember Stewart's signing this receipt, written by Jeremiah H. Sloan; Sloan has been dead many years.

Quest. The receipt contains an agreement to execute a deed for a tract of land, and for a right to pass in front of his land with said railroad—was such a deed tendered to you at the time of giving such receipt?

Ans. No; no deed was had at that time, nor paper purporting to be a deed.

Quest. How is the nine acres, mentioned in the bill part of the receipt, occupied by the company?

Ans. Part of it by railroad tracks, and part of it by depots erected and dwellings, and part of it by wharves.

Quest. For what purpose was the tract purchased?

Ans. For a depot and a landing, and building sites for the erection of buildings for the work people.

Quest. Have you ever seen an original deed to the company from Commodore Stewart, or from him and his wife, for the property and right of way mentioned in the receipt, in which the right of way was limited to a single track?

Ans. I can't say, but I have understood that Com. Stewart did write out a deed, and that, when it was presented to the agents of the company, he was informed it was not accord-

ing to the agreement, and it was rejected; I do not know that I ever saw such a deed—I may have seen it, and may not; I wish to be understood that no such deed was ever presented to me, but I understood it was presented and rejected.

Quest. How many years after the date of the receipt was it that Com. Stewart presented the deed you have just spoken of?

Ans. I cannot answer without referring to papers which I
10 have not before me.

Quest. Was it several years after?

Ans. To the best of my remembrance, it was.

Quest. Did you ever receive or accept, in behalf of the company, any deed from Com. Stewart, or him and his wife, in which the right of way was limited to a single track?

Ans. No.

Quest. Have you ever seen any deed in the possession of the company which was accepted as the deed called for by that receipt?

20 *Ans.* No.

Quest. Would you have accepted a deed limiting the right to the laying of a single track?

Ans. No.

Quest. Did Com. Stewart make any objection to the receipt when he signed it?

Ans. No.

Quest. In the conversations and negotiations prior to the giving of the receipt, was it ever suggested by Com. Stewart
30 that the right of passage with the railroad was to be limited to a single track?

Ans. No such suggestion was made.

Quest. Was it or not the intention of the company, when and before the agreement was made by Com. Stewart, to have more than a one track railroad? [Objected to as a mere matter of intention on the part of the company.]

Ans. It was the intention to have more than a one track road.

Quest. Who negotiated this purchase with Com. Stewart?

Ans. I did.

40 *Quest.* Was the railroad then in course of construction over this land at the time of signing this receipt?

Ans. Yes.

Quest. State what on the ground exhibited the intention of the company at that time to have more than one track laid over the commodore's land ?

Ans. There was a bridge built over Black's creek to form a portion of the road which was constructed for, and on which were laid two tracks.

Quest. Were any trenches then dug on the commodore's land, and how many, and for what purpose were they dug, and what was at that time put in the trenches ? 10

Ans. There were four trenches dug and filled with broken stone, for the purpose of constructing a road on ; two of them at that time were in use.

Quest. What was the object of the broken stone ?

Ans. To make a solid foundation to place stone blocks on to sustain the rails.

Quest. Do I understand you to say, that at the time a rail had been laid on each of two of the trenches to make one track, and that the track so made was already in use ?

Ans. It was in use at the signing of that paper. 20

Quest. Could the nine acres be used advantageously for a depot without more than one track being laid to it ?

Ans. It could not.

Quest. Was it practicable to maintain a depot there without many tracks ?

Ans. No, it was not.

Quest. Do you know whether the estimates for the cost of the railroad were made on the basis of more than one track ?

Ans. I presume it was, because the railroad was all made, all the bridges and culverts for two tracks. 30

Quest. Can you state, and if you can, do, whether the railroad was constructed on or near, or below or above high water mark on any part of Stewart's place ?

Ans. It was constructed on lands a portion of which was covered with water at all tides, a portion covered at high tide, and a portion above high tide.

Quest. Do you recollect the width of the embankment on the top, where constructed on Stewart's place, whether for a double or single track ?

Ans. For a double track ; the narrowest portion was twenty- 40

seven feet wide, and from that to sixty or seventy, I don't know how far, some a hundred feet.

Quest. Can you tell the width of the bridge over Black's creek when constructed?

Ans. I think it was twenty-seven feet and a half—without my notes I can't speak positively—I mean the width of the covering.

Quest. How long were you at Bordentown?

Ans. I went there in 1825—my home was in Hoboken 10 then, my business in Bordentown; I was superintendent of the stage and steamboat line; I stayed in Bordentown, as my place of business, till I went to England, in 1850.

Quest. How long before the receipt of September, 1832, was it that the bridge over Black's creek was completed?

Ans. I cannot say without reference to the books of the company; Gen. Cook is dead.

Quest. A memorandum in Gen. Cook's handwriting shown to you, states it to have been built June 16th, 1832—does it not? [Objected to.]

20 *Ans.* Yes.

Quest. Have you any doubt of that being the time?

Ans. I have not, from the character of the man, and from my knowledge that it must have been about that time.

Quest. Was there a double track on any other part of the road actually built?

Ans. Yes; from South Amboy wharf towards Bordentown—I don't know how far.

Quest. Between Hightstown and Gravel Hill?

Ans. Between those points was a continuous double track 30 —the distance was four and a half or five miles.

Quest. What do you understand by the expression generally used, "from Bordentown to Amboy?"

Ans. From the steamboat at Amboy to the steamboat at Bordentown; the steamboat at Bordentown started from the wharf on the nine acres, on property bought of Stewart; the buildings on the nine acres are called the "Bordentown Depot," and the buildings in Bordentown are called the "Upper Depot."

Quest. At the time of giving this receipt, on September 40 15th, 1832, was anything said by Com. Stewart about his

then having a deed in his possession for the company for the nine acres and the right of way?

Ans. No.

Quest. Was any such deed read to you at that time?

Ans. No, nor alluded to.

Quest. The room in which the business was transacted on September 15th, 1832, which room was it?

Ans. The room on the second floor next to the room I occupied as my bed-room; I was in the habit of receiving visitors on business in that room. 10

Quest. Was that receipt written by Sloan in the presence of Mr. Stewart?

Ans. Yes.

Quest. Was that receipt in accordance with the verbal understanding that you and Stewart had had?

Ans. Yes; I considered that the consummation of our verbal agreement.

Quest. Could Commodore Stewart have been ignorant of the construction of the railroad over his place in the manner you have mentioned at the time of giving this receipt? 20
[Objected to.]

Ans. No, sir; I should say he could not, if he had paid any attention to the grading of the road, and the building of the bridge, two things right before his eyes.

Quest. On the south side of the nine acre tract, and on land of Stewart, was there any double track used for a turnout in the fall of 1832?

Ans. I think there was.

Quest. Was there a track running from the main track to the steamboat landing over Stewart's property in that year? 30

Ans. I think there was; I don't refer to the whole of Stewart's land.

Quest. Were these tracks and preparations for a double track continued by the company there without objection by Commodore Stewart, and for how many years?

Ans. I can't say.

Quest. Was it for as much as fifteen or twenty years?

Ans. I can't state; I have not the memoranda or data necessary to answer; I can only give you my general impres-

sion, that it was fifteen or twenty years before I heard anything of it.

Quest. Is it necessary, for the enjoyment of the privilege of passing over Commodore Stewart's land with the railroad, that more than one track should be laid down on it?

Ans. Absolutely necessary.

Being cross-examined.

Quest. State, if you please, when the verbal contract was made between you and Commodore Stewart for the sale of
10 the nine acres?

Ans. I cannot state precisely, but it was made shortly before or after the location of the road; I will vary that, and say, it was made previous to the location of the road, as we had other properties in contemplation of purchasing for the depot at the time.

Quest. Was it not made in the year 1831?

Ans. My impression is, it was made before that.

Quest. Can you state whether the agreement was made before the survey of the road was filed?

20 *Ans.* I cannot.

Quest. Did Commodore Stewart come over to Bordentown, and present you that bill for the amount?

Ans. Yes sir.

Quest. Did the company allow him a year's interest on the amount?

Ans. Yes sir.

Quest. Did Commodore Stewart demand the payment of that bill without producing a deed for the property?

30 *Ans.* Yes sir; stating that from his peculiar situation with regard to Mrs. Stewart, he was not at that time prepared to make a deed—I mean to say he was not prepared at that time to consummate a deed.

Quest. Did not Commodore Stewart state that it was in consequence of his not being able to give a deed sooner that he had not come up for the money?

Ans. Not to my memory.

Quest. Do I understand you, then, to say that you paid Commodore Stewart the amount agreed on, with one year

and three months' interest, as appears by the receipt, without receiving any deed for the property?

Ans. Yes.

Quest. Did the company afterwards request Commodore Stewart to make a deed to them for the property?

Ans. I cannot remember—I did not; it wasn't done through me—that's what I want to say.

Quest. Do I understand you to say that the commodore has never made any deed to the company for the nine acres—that the company have no deed for it from him? 10

Ans. The company have no deed from him for it; whether he ever made a deed for it I don't know.

Quest. Do you remember of the company purchasing an additional acre of ground from the commodore?

Ans. Yes.

Quest. Where is that situate, in reference to the nine acres?

Ans. Next adjacent south.

Quest. Did you contract with the commodore for that, or who?

Ans. I cannot say; my impression is that it was made by 20 some other agent of the company.

Quest. What is the length of the river front of that nine acres, as near as you can remember?

Ans. I can't remember; if I was on the ground I could designate it, but I can't remember the chains and links.

Quest. Are not the buildings and improvements upon that nine acres and one acre very valuable to the company?

Ans. Yes, sir; they cost a good deal of money; our circumstances have changed, and the depot being now at Camden, these buildings are not so important to the company. 30

Quest. When was the track laid down, from the depot towards White Hill, over Commodore Stewart?

Ans. I cannot state without reference to the books.

Quest. Did I understand you that, in 1832, when this receipt was given, there was a double track from the depot up to the bridge?

Ans. The road-bed was graded for a double track, and the bridge built with a double track on it—I mean there were two railway tracks on the bridge.

Quest. How long did that double track remain on the bridge?

Ans. My impression is it remained until the bridge was renewed—I presume some ten years—I can't tell.

Quest. Was there a double track laid on the Bordentown side of the bridge immediately adjacent to it?

Ans. The road was graded for a double track; I think the double track was not laid.

Quest. When was the double track laid on the east side
10 connecting with the bridge?

Ans. I can't say.

Quest. Was it not a number of years after the bridge was made?

Ans. I don't remember.

Quest. When was there a double track laid down between the bridge over Black's creek and the depot?

Ans. I do not know.

Quest. Is there one there now?

Ans. I believe so.

20 *Quest.* Has not that track been placed there recently?

Ans. I don't remember the time.

Quest. Has it not been placed there within the last three years?

Ans. I don't remember the time; I am no longer superintendent—I have not been superintendent for many years.

Quest. How long did the double track you have spoken of between Hightstown and Gravel Hill remain a double track?

Ans. I think three or four years.

30 *Quest.* When did you first know of Com. Stewart's finding fault with the turnouts and tracks being placed upon his land?

Ans. I can't remember, but many years after the signing of that—after the payment of the consideration.

Quest. Have the company never made any effort to procure a deed from Com. Stewart for this property at all?

Ans. I have had no particular agency in it.

Quest. How long have you been president of the Camden and Amboy railroad?

40 *Ans.* Since the death of my brother Robert, in 1856; I was

before that time one of the directors, and had been so since 1830; I usually attended the meetings of the board for many years; I went to Europe in 1850, since then I have not so regularly attended; from the organization of the road up to 1856, R. L. Stevens was president.

Quest. So far as you know, was it known to the board that they had no title whatever for the nine acres of land and the right of way which they claim over Com. Stewart?

Ans. The board generally left those matters to the executive officers; I do not know, as the board generally left those matters to the executive officers; I do not know as the board knew of it; I would wish to make that answer a little more definite—I refer to the earlier part of the transaction—the board were afterward informed of it.

Quest. When the board were afterwards informed of it, did they take no steps for the purpose of getting a deed?

Ans. I do not know.

Quest. Did you ever hear of any?

Ans. I heard Mr. Green, the secretary, refer to some communications he had with Com. Stewart in reference to it; I understood those communications were in writing; Mr. Green was secretary of the board until the time of his death.

Quest. Do you remember whether Mr. Green submitted to the board any communications which he had made to or received from Com. Stewart in relation to the deed?

Ans. I do not.

Quest. Did not Com. Stewart tender to the company a duplicate copy of a deed he had prepared for the nine acres and the railroad privilege?

Ans. I do not know.

Quest. Was not the company in possession of a deed from Com. Stewart and wife to them for the said property, or of a copy of said deed at any time?

Ans. Not to my knowledge.

Quest. Did not Com. Stewart, in the year 1853, send to the board, by Henry S. Crabbe, a copy of the deed made by him for the said property?

Ans. Not to my knowledge; I don't remember.

Quest. At the time Com. Stewart brought his account over

for the money, was it at a meeting of the company, or the directors, or the executive committee?

Ans. No, sir.

Quest. Who were present at that interview?

Ans. Jeremiah H. Sloan, Com. Stewart, and myself; those were the persons that were present; Mr. Sloan did not reside there at that time—I think his place of business was Camden—it might have been Mount Holly.

Quest. How did he happen to be there at that time?

10 *Ans.* I do not remember; he might have been there to consummate this, as counsel of the company, with Com. Stewart; Sloan was secretary of the company at that time.

Quest. Do you not know that Com. Stewart, about the year 1853, caused a duplicate copy of a deed for the nine acres to be sent to Paris, to be executed by his wife, who was there at that time, and that the same was returned and tendered to the board, or some of the officers of the board?

Ans. I do not know.

20 *Quest.* Do you know of any searches having been made by the board, or under the authority of the board, for this deed?

Ans. No, sir, as this branch of the company's business had long before been taken out of my charge.

Quest. Being shown a letter, marked *Exhibit D* on part of complainant, is asked—is that letter in your handwriting?

Ans. It is.

30 *Quest.* Being shown paper, marked *Exhibit K* on part of complainant, is asked—in whose handwriting is the signature to this letter?

Ans. The signature is in the handwriting of James S. Green—I know his handwriting; the body of the letter is not in his writing.

Quest. Being shown letter, marked *Exhibit J* for complainant, is asked—in whose handwriting is this letter?

Ans. In that of James S. Green.

Quest. Being shown letter, marked *Exhibit U* on part of complainant, is asked—in whose handwriting is that letter?

Ans. In that of James S. Green.

Quest. Being shown letter, marked *Exhibit R* on part of complainant, is asked—in whose handwriting is that letter?

Ans. In that of James S. Green.

Quest. Being shown letter, dated August 21st, 1848, marked *Exhibit H* for complainant, is asked—in whose handwriting is that letter?

Ans. In that of John R. Thompson, I believe.

[Two notices, dated October 11, 1853, were here produced by defendants in response to a notice to produce the same, and were offered in evidence, and marked *Exhibit C 2* and *D 2* on part of complainant.]

Quest. In building the railroad over the marsh from Black's creek down to the steamboat landing, was any earth taken from Mr. Stewart's land?

Ans. The road was partly on the side hill—the point of the hill.

Quest. Did you take a part of Stewart's earth outside of the line you claim?

Ans. Yes, by his request.

Quest. At what point.

20

Ans. Near the marsh on the northern portion of Commodore Stewart's upland.

Quest. How much was taken?

Ans. I can't state the number of yards.

Quest. Was all the earth for filling up the marsh taken from Commodore Stewart's land?

Ans. I can't say whether a portion came from the Borden-town side or not—my impression is, that it did.

Adjourned to meet again, and continued by consent.

On March 9th, 1866, the complainant appeared, by Peter 30
D. Vroom, esq., his counsel, and the defendants, by Robert
Gilchrist, jun., esq., their counsel, before the said notary
public, by consent, at twelve M., at the Atlantic Hotel, Hobo-
ken, N. J.

The defendants' counsel produced the following papers, in response to a notice by complainant to produce, which papers are marked exhibits, and offered in evidence; and defendants' counsel states that those now produced, with

those heretofore produced, are all of the papers called for by complainant which can be found.

It is admitted, by defendants, that these papers are all signed by complainant; but when they reached the parties to whom they were addressed is not known.

Letter, dated April 13th, 1853—Charles Stewart to James S. Green—*Exhibit E 2* for complainant.

Letter, dated April 15th, 1853—same to same—*Exhibit F 2* for complainant.

10 Letter, dated April 28th, 1853—same to same—*Exhibit G 2* for complainant.

Letter, dated June 24th, 1853—same to same—*Exhibit H 2* for complainant.

Letter, dated September 12th, 1853—Stewart to president and directors of Camden and Amboy Railroad Company—*Exhibit K 2* for complainant.

In response to notice given, defendants produce a deed from Charles Stewart and wife to Camden and Amboy Railroad and Transportation Company, dated April 1st, 1838, recorded in Book S 3, p. 316, Burlington county clerk's office, marked *Exhibit L 2* for complainant.

Mr. Edwin A. Stevens appeared to complete his examination.

The cross-examination having closed, he was now re-examined in chief.

Being shown *Exhibit D* for complainant, is asked—

Quest. Will you explain why allusion is made there to the deed, if there was no deed?

30 *Ans.* Commodore Stewart, I presume, in the conversation at the meeting alluded to, on the previous day, had stated there was a deed, and asked me for it; I did not remember there ever was a deed given, but presumed the commodore would not have made the inquiry if there was not one given; after a search being made, it confirmed me in my previous belief, that there never was a deed given, and I can say positively, that if it was given, it never came under my view or possession.

Quest. I now show you a paper, to be marked *Exhibit O B*

for defendants, which is either an original bill or a copy of an original bill, exhibited by Commodore Stewart against the Camden and Amboy Railroad Company, yourself, and others, containing the following allegation :

“And your orator further showeth unto your Honors, that after handing the bill and receipt to Mr. Edwin A. Stevens, which he did after he had signed the said receipt, your orator also handed him the deed, executed by Mrs. Stewart and your orator, conveying to the Camden and Amboy Railroad and Transportation Company the nine acres of land above 10 described, with the right to pass in front of your orator’s premises on the river Delaware with a track of railroad.

And your orator further shows unto your Honors, that Edwin A. Stevens and Jeremiah H. Sloan sat down together to read the said deed thus delivered as aforesaid, and after reading part of it, Mr. Edwin A. Stevens rose, and was coming towards your orator, when said Sloan called said Stevens back, and said to him, ‘Don’t you see you have the whole game in your own hands?’ to which said Stevens replied, ‘Yes, I have only to suppress the deed.’ This conversation 20 between said Sloan and Stevens was spoken in a way not intended to be heard by your orator, but which, from the position of your orator, he distinctly heard, and it then struck the mind of your orator that the wording of the receipt was done with a fraudulent intent, and the conduct of the said Edwin A. Stevens and of the said Camden and Amboy Railroad and Transportation Co., in making the said additional tracks through his land, has served to verify and more firmly establish the impression which he entertained when he heard the said conversation between said Sloan and Ste- 30 vens.”—Now, I ask you, is that statement true? [Question objected to, because it is not shown that the paper is either the original or a copy of the bill referred to, and also because it is opening up new matter not referred to in the original examination of the witness, and is not pertinent to the issue of this cause.]

Ans. Commodore Stewart never handed to me a deed for the nine acres of land referred to, or you had better put it, did not at that time hand me a deed; and there is no truth in the declaration, “I have only to suppress the deed.” 40

Quest. You state that it had better be said, "he did not at that time hand me a deed;" did he at any time hand you a deed for the nine acres?

Ans. I believe there was a deed for the nine acres some time afterwards made out and presented to the company, but not being in accordance with the agreement, it was not received—I mean by that, not accepted.

Quest. Was that the deed presented some time about the year 1853?

10 *Ans.* It was presented several years after the transaction of the receipt.

Quest. Did you and Sloan ever sit down to read any deed?

Ans. No.

Quest. Did Sloan say to you, "Don't you see you have the whole game in your own hands?"

Ans. No.

Quest. Did Commodore Stewart, at the time spoken of in the extract from the bill, ever complain to you, or during the twenty years which followed the receipt transaction, or
20 did you ever hear of his complaining until this first suit was commenced, in 1853, of your having intended to suppress a deed of his? [Question objected to.]

Ans. I can speak positively that he did not at the time, and I have no remembrance of hearing any before the filing of the bill.

Re-cross examination.

Quest. You have stated that there was a deed for the nine acres presented to the company—can you state by whom that was presented?

30 *Ans.* I cannot positively—I presume it was sent to the company by Commodore Stewart's orders.

Quest. Have you no recollection that that deed was brought to you or to the company at the time you refer to by Commodore Crabbe, in behalf of Commodore Stewart?

Ans. I have not.

Quest. Please state when it was and where, that this deed was presented to the company?

Ans. I don't remember the date, the time, neither do I

remember the place—I presume that I could not have been present—I presume that I was not present.

Quest. Can you state, then, what became of the deed so presented?

Ans. I cannot, not having charge of the papers of the company, and it never having come to my possession.

Quest. Did you or the company, or both, put in an answer to that bill of which you have spoken in your examination-in-chief?

Ans. An answer was put in by the company, signed by 10 me as president.

Quest. Did you or not put in an answer for yourself individually?

Ans. Very probably I did—I have some faint remembrance of it.

Quest. Do you know in whose handwriting this deed, *Exhibit L 2*, is filled up?

Ans. No, I do not.

Re-examined in chief.

Quest. In your previous statement, that there was no truth 20 in the declaration, “I have only to suppress the deed,” do you mean to be understood that there was no truth in the statement in the bill, or not?

Ans. I do mean to be understood there was no truth in the statement in the bill.

E. A. STEVENS.

Subscribed and sworn to before me, at Hoboken, March 9th, 1866.

W. B. WILLIAMS, *N. P.*

Notice is given by defendant's counsel to produce the deed 30 tendered by Crabbe, and the copy of a draft from which it was said to have been made.

Depositions.

[Filed March 31, 1865.]

Examination of witnesses in the above stated cause, taken before Andrew Dutcher, a commissioner for taking bail and affidavits in said court in and for the District of New Jersey, at the office of Philip S. Scovel, in Bordentown, on Friday, September 15th, A. D. 1865, in the presence of Peter D. Vroom, esquire, solicitor and of counsel for the complainant, and John P. Stockton, esquire, solicitor and
 10 of counsel for the defendants.

Due notice of taking the deposition on the part of the complainant admitted by the counsel of the defendants.

Edward L. Smith, a witness produced on the part of the complainant, being duly sworn, says—I reside half a mile west of Bordentown, on the Delaware river; I live on the Commodore Stewart farm; I am twenty-nine years old; I came here when I was four years old; I have lived here since that time, with the exception of a few years that I was away at boarding school and was in business in Philadelphia; was
 20 in business in Philadelphia about eighteen months; I have known the Camden and Amboy railroad, the original road, about twenty-five or twenty-six years; I know where the nine acres are, sold by Commodore Stewart to the company; I do not know of the sale of the additional one acre to the company; when I first knew the railroad, it had a single track, with the exception of a few sidlings—they ran from the railroad depot up opposite to where the commodore resides; I recollect an attempt being made, some years ago, by the
 30 company, to lay a double track—it was commenced in eighteen hundred and fifty-three or four; they laid a double track part way, and about two years ago they completed it, so as to run over the bridge; they conncted it with the main track over the bridge; this was a sidling; it extended down to the railroad depôt; it there joins the main track again—it joins it this side of the depot; before that was ex-

tended over the bridge, there was a single track over the bridge; the work of extending that track over the bridge was done in great haste; instead of taking time to haul dirt there, and make a bank, they put stringers along, pine logs, I should think about fourteen inches square, and between thirty and forty feet long; the embankment was too narrow—it was not sufficiently wide for the second track; some years ago, before they extended the track across the bridge, they laid some ties on the bridge, which I supposed were intended for a second track—that was about eighteen hundred 10 and fifty-three or four; in eighteen hundred and sixty-three or four, when they extended the track over the bridge, they took up the old pieces, and put in others; after that track was connected with the main track on this side, there was nothing further done; from the place of the junction of this track with the main track, the track on towards Amboy is a single track; above the depot there are more than three sidlings or turnouts—they terminate just in front of the commodore's residence—they join the main track; there is only one of these sidlings that comes up as far as the bridge; 20 those turnouts or sidlings are used by the company to put empty cars and stand coal trains on—they are always occupied in that way; a few years ago there was a steamboat ran up to the railroad wharf, and one or more of these sidlings ran to it; some of these sidlings extend down to the river below the company's property, I mean below the property claimed by the company; more than three of them extend below there, without they claim more than I know of; the company have a landing down at White Hill, below; one of 30 the sidlings runs down to that landing; that sidling runs below the property claimed by the company, and through the property of Commodore Stewart—it runs below the paint-shop lot—it merely goes to the landing; I think it does not connect below there with the main track; I think this sidling was put down in eighteen hundred and fifty-five or six; below what we call the paint-shop lot is stored full of lumber, old wheels, scraps of iron, and so forth; these things, the lumber, and so forth, are placed on the south side of the track next to the hill—they have been there as long as I can remember; there has been digging and cutting the banks 40

recently; they have been digging the bank below the paintshop lot not longer ago than three days; I can't say what they did with the dirt—they loaded it in the cars; the first I knew of the last digging, was five or six days ago.

The witness being shown a map, marked *Exhibit A 2* on the part of the complainant, he says—this is a map of Commodore Stewart's property; it was made by me, and is a true copy of the Bordentown map, with a few exceptions; some new houses have been built since the Bordentown map
10 was made, and I put them on this; it is not a map of the whole farm, only of the river front embracing the property in question.

Cross-examination.

The map was made from the Bordentown map; I made no surveys or measurements myself; I do not know the width of the railroad embankment in front of my father's house; I have not noticed that the bank washed much during my recollection; when they commenced laying the second track, they made the railroad embankment wider
20 than it had ever been before—I should judge about five or six feet wider; I mean all the way along from the railroad bridge down to opposite the house—the commodore's residence; this was when they completed the second track—it was in eighteen hundred and sixty-three, I think; it had been widened before; that was in eighteen hundred and fifty-three or four when they commenced laying the second track; then they widened again where they laid their new rails in eighteen hundred and sixty-three; they have widened it beyond the width of the embankment as it was when I first
30 recollect it, I recollect the bank—I can speak of the width of it for fifteen years part; I do not know that the bank is wider now than it was when first made, but it is wider than it was fifteen years ago.

E. L. SMITH.

Sworn and subscribed before me, this fifteenth day of September, A. D. 1865.

ANDREW DUTCHER, *Com'r.*)

State of New Jersey, ss.—Be it known, that before me, a master in chancery in and for said state of New Jersey, personally appeared Samuel C. Forker, of Bordentown, in said state, who being duly sworn according to law, on his oath saith—that the following is a true copy of a certain receipt, given by Charles Stewart to the Camden and Amboy Railroad and Transportation Company, the original of which has been exhibited to him, and is now before him, and is also marked No. 1, *Exhibit A 2* on the part of defendants, in a certain cause depending in the Circuit Court of the United States in and for the district of New Jersey, in equity, wherein Charles Stewart was complainant, and the Camden and Amboy Railroad and Transportation Company and others were defendants; that said receipt is in the words and figures following, to wit.:

Dr. The Camden and Amboy Railroad and Transportation Company,

To Charles Stewart.

For nine acres of land, as per deed,	\$2250 00
Interest for one year, at six per cent.,	135 00
	<hr/>
	\$2385 00
Interest for three months, till 1st Dec'r, 1832,	33 75
	<hr/>
	\$2418 75

1832, Sept. 15, Received of E. A. Stevens, his check on Trenton Bank, dated December 1st, 1832, for the above sum, for which I agree to execute a deed of conveyance for the above tract, in conjunction with Mrs. Stewart; and also, a grant of the right to pass in front of my premises with said railroad, the said company furnishing me with suitable passage-ways to the river, for which, said check when paid, will be in full. 30

(Signed,)

CHS. STEWART.

That this deponent is acquainted with the handwriting of the said Charles Stewart, and that the signature to the original receipt, of which the foregoing is a true copy, is the signature of the said Charles Stewart, and in his own proper handwriting.

SAMUEL C. FORKER.

Sworn and subscribed, this eighteenth day of December,
A. D. 1867, before me.

S. M. DICKINSON, M. C.

State of New Jersey, ss.—Be it known, that before me, a
master in chancery in and for said state of New Jersey, per-
sonally appeared Richard Shippen, of Burlington, in the state
of New Jersey, who being duly sworn according to law, on
his oath saith—that he has been in the service of the Cam-
den and Amboy Railroad and Transportation Company since
10 December, eighteen hundred and thirty; that it was the in-
variable rule of said company, to take deeds for the land
they bought and paid for; that all the deeds belonging to
said company are in his keeping, and that he has been the
recipient and custodian of them from the organization of the
said company to the present moment; that he has never re-
ceived or had in his keeping a deed purporting to have been
executed by Charles Stewart and wife, and dated May 10th,
eighteen hundred and thirty-two, conveying to the said rail-
road company a parcel or lot of ground, situated, lying, and
20 being in the county of Burlington, and township of Mans-
field, state of New Jersey, containing nine acres to the low
water mark on the river Delaware, and that no such deed
ever was delivered by the said Charles Stewart and wife to
the said railroad company; and this deponent further saith,
that a certain receipt, given by Charles Stewart to the said
railroad company, and dated September 15th, 1832, is the
only writing in the possession of the said railroad company
giving the said company a title to the nine acres of land
hereinbefore referred to and described, as this deponent
30 verily believes, and that said receipt is in the words and
figures following, to wit.:

Dr. The Camden and Amboy Railroad and Transporta-
tion Company,

To Charles Stewart.

For nine acres of land, as per deed,	\$2250 00
Interest for one year, at six per cent.,	135 00
	<hr/>
	\$2385 00
Interest, three months, till 1st Dec'r, 1832,	33 75
	<hr/>
	\$2418 75

1832, Sept. 15, received of E. A. Stevens, his check on Trenton Bank, dated December 1st, 1832, for the above sum, for which I agree to execute a deed of conveyance for the above tract, in conjunction with Mrs. Stewart; and also, a grant of the right to pass in front of my premises with said railroad, the said company furnishing me with suitable passage-ways to the river, for which, said check when paid, will be in full.

(Signed,)

CHS. STEWART.

RICH'D SHIPPEN. 10

Sworn and subscribed, this eighteenth day of December, A. D. 1867, before me.

S. M. DICKINSON, *M. C.*

Exceptions to Bill.

[Filed May 16, 1868.]

Exceptions taken by Charles Stewart, the above named defendant, to the bill of complaint, and the verification thereof, of the above named complainants, filed against him.

First exception. For that the setting forth at large and in *haec verba*, the statements alleged to have been made by the 20 defendant in a certain bill brought by the said defendant against the said complainants and others, in the Circuit Court of the United States, and the evidence alleged to have been given by the defendant, in said case, beginning on page 6, and first line, with the words, "And your orator further showeth unto your Honor," &c., and ending on page 9, with the words, "I considered that clause as accomplished," is impertinent, and ought to be expunged.

Second exception. For that the following words, viz. "the matters in said evidence contained, so far as they are incon- 30 sistent with your orator's allegations herein, are untrue, and" on the same page last mentioned, are impertinent, and should be expunged.

Third exception. For that the setting forth at large and in *haec verba*, two several deeds, (and the acknowledgments of one of them,) purporting to be deeds from Charles Stewart and wife to the Camden and Amboy Railroad and Transportation Company, beginning on page 9, and ending on page 16, is impertinent, and ought to be expunged.

Fourth exception. For that the words "without oath," on page 20, line 4, and the words "except as to the interrogatories hereunto annexed, (the answers to which only are
10 required to be under oath.)" in lines 5, 6, and 7, on same page, are impertinent, and ought to be expunged.

Fifth exception. For that all that part of said bill, and the verification thereof, marked *Schedule Y*, and annexed to the affidavit of Robert Gilchrist, is impertinent, and should be expunged.

In all which particulars, the said defendant humbly insists, that the complainants' said bill of complaint, and the verification thereof, is irrelevant and impertinent; wherefore the defendant excepts thereto, and humbly prays that the matters
20 excepted to as aforesaid may be expunged, with costs.

J. WILSON,

Solicitor for and of counsel with defendant.

Opinion.

The exceptions to the bill in this case are five, and are set out in full and with precision.

The bill was for the specific performance of a contract alleged to have been made by the defendant, to convey a tract of land of nine acres, and to grant a right of way in front of his lands for the railroad of the complainants. The
30 contract was contained in a receipt for the consideration, dated September 15th, 1832, annexed to a bill for the price, which was for "nine acres as per deed," and contained no other description of the land.

By the settled practice, exceptions will lie for impertinence in a bill, answer, or other pleading, and in interrogatories, depositions, or affidavits in any suit.

All matters not material to the suit, or if material, which are not in issue, or which, if both material and in issue, are set forth with great and unnecessary prolixity, constitute impertinence.

For more than a century the Court of Chancery in this state, by its rules and decisions, following the example of the English courts of equity, have endeavored to suppress the abuse of stuffing bills and other pleadings and proceedings, with matters immaterial to the controversy, and that cannot aid in the relief sought, and with deeds, records, and other documents set forth at length, when a statement of the effect only is material. A colonial ordinance, by Governor Montgomery, in 1730, is very explicit and minute on this subject. This setting out documents in full is expressly prohibited by the 2d rule of this court, except in the rare cases, if any exist, in which the verbatim recital is necessary for the object in view. And great prolixity is of itself, impertinence. 10

By a late statute in England, and the orders in chancery upon the subject, mere impertinence cannot be excepted to or corrected in the progress of a suit, but the court must direct at the decree, that all costs occasioned by it shall be paid by the party in fault. 20

Before this change, it was the practice to except to pleadings, interrogatories, depositions, affidavits, and schedules, and to strike out the unnecessary and irrelevant matter, at the cost of the party in fault, or in some cases at the cost of the offending solicitor; and the courts have intimated that an examiner might be made to pay the costs occasioned by taking down the impertinent answers of a witness to interrogatories put by the examiner. 1 *Dan. Ch. Pr.* 356, 360; 30 *Gresley's Eq. Ev.* 214, 229, 230; *Gompertz v. Best*, 1 *Y. & Coll. Ex.* 117; *Gude v. Mumford*, 2 *Y. & Coll. Ex.* 445; *Storoy's Eq. Pl.*, § 48 & 881 a; 1 *Barb. Ch. Pr.* 41 & 602; *Powell v. Kane*, 5 *Paige* 265.

A bill in chancery, like a declaration at law, should confine its statements to such facts as are proper to show that the complainant is entitled to relief, and which, if proved, will entitle him to relief, and should not set out the evidence, whether oral or written, by which the facts are to be proved. But one subject of relief to which a complainant in equity is 10

always entitled, and which he generally seeks, is a discovery of such facts material to his relief, as are within the knowledge of the defendant. He is, therefore, entitled to set out such collateral facts and circumstances as would, if proved or admitted, support his case, or go to show that he is entitled to relief, for the very purpose of requiring an answer upon oath. Such statements would, without doubt, be impertinent in a bill which requires an answer without oath, and has no interrogatories annexed relating to them, as they
 10 are only pertinent for the purpose of discovery.

The English courts have, of late years, established a new rule on this subject, by which they not only make the statement in a bill, of all admissions or confessions of the defendant, relied on as evidence, pertinent and proper to be set forth in the bill, but require that they shall be set forth; and if not, exclude the complainant from offering them in evidence. *Story's Eq. Pl.*, § 265 *a & n.*

It is not necessary to determine whether the courts of this state are governed by this rule, which was adopted for reasons
 20 that do not exist here. The matters excepted to are not admissions or confessions of the defendant, which, if proved, would in any degree support the case of the complainant.

The first exception is, to the recital of the allegations in a bill in equity, filed by him in the Circuit Court of the United States, against the complainants, and to a verbatim extract from his evidence in another suit pending between the same parties in that court. These recitals may involve the defendant in contradictions, which might impair his credibility as
 30 a witness, but neither of them, if admitted by the answer as set out, would have any tendency to establish the claim of the complainants to the relief sought in their bill. The first exception must, therefore, be sustained.

The second exception is, to so much of the bill as alleges that the matters in the recitals, excepted to in the first exception, are untrue. This exception must be sustained if the first is.

The third exception is, to so much of the bill as sets forth at length in *haec verba* two deeds, as to which, it is alleged that the defendant contends, that he delivered one in 1832,
 40 and tendered the other in 1856. This must be held to be

impertinence, on account of the prolixity, which is impertinence. Such recital is expressly prohibited by the rules of this court, which makes it impertinent. It was not necessary, for any purpose that appears on the pleadings, to set out these deeds at length, or to set out any part of them; and the court must not refrain from deciding this question upon the only inference to be drawn from the pleadings, because it is suggested that these deeds have an importance and significance from some reason which counsel does not think it prudence to disclose, and which does not manifest itself to the court. It is plainly averred in the bill, outside of these recitals, that no such deed as that which the complainants contend they were entitled to, has been tendered or accepted; and if a more distinct and clear averment had been necessary, it might and should have been made succinctly, without reciting the deeds at length. It was proper and necessary either to aver that the defendant had not delivered or tendered any deed, or, if the fact was so, that he had not delivered any, except deeds containing the objectionable conditions or covenants complained of. It was also proper, as the bill and receipt, which constitute the contract to convey, contain no description of the nine acre tract, except by reference to a deed, to aver that the deed exhibited at the giving of that receipt, and to which it refers, contained a description of that tract, and, perhaps, to set forth that description. But for no purpose was it necessary or proper to set out the deed in full. 10 20

The fourth exception is, to the words "without oath, except as to the interrogatories hereto annexed," in the prayer for answer. The act of March 6th, 1867, (*Nix. Dig.* 119, § 30 106,) provides that a complainant may pray that the defendant answer without oath, and that in such case the answer shall not be evidence, but declares that it shall not affect any suit then pending, or to be brought on a claim upon which a suit in equity was then pending. The defendant claims that he is entitled to the advantage of his answer under oath, as evidence, on the ground that, at the passage of that act, a suit was pending in this court upon the claim on which this suit rests. This exception must fail, unless a suit was then pending on this claim. There was at that time a suit pending in 40

this court on a bill filed by the complainants against the defendant, on the 17th day of February, 1864, entitled a cross-bill. The defendant rests this exception on that suit, and by assent of parties the bill has been submitted for the determination of this question.

Upon a careful examination of that bill. I cannot find that it was at all upon the claim on which this suit is based. It had nothing in it relating to the nine acre tract. It sought to enjoin an ejectment for the land over which the railroad runs, on the ground that the extent of easement, which was the only matter in dispute, could not be tried or settled at law. But it nowhere alleged a contract to convey or grant the easement, or sought any relief upon it. And any answer which the defendant could have made in that suit, relating to the contract to convey, on which alone this suit is brought, would not have been responsive to the bill, and could not have been of any avail to him. The object of the restriction in this act was to prevent a complainant from depriving the defendant of the benefit of an answer under oath in a suit then pending, an end which could have been accomplished by withdrawing the suit, and commencing another, but for the last clause in this limitation. And the true test of its application is, whether an answer to the suit then pending could be of any avail to him, if made in this. The fourth exception must be overruled.

The fifth exception is to a schedule annexed to one of the affidavits to the bill. This schedule contains the deposition of E. A. Stevens, in a suit in the Circuit Court of the United States, in which he was examined as a witness. The object of this affidavit was to procure an injunction. It will not be necessary to determine the question on which courts and jurists have differed, whether a deposition taken, or evidence given in another suit between the same parties, can be admitted because the witness is out of the state; or whether such secondary evidence can be offered only when the witness is dead. There are other reasons, free from doubt, why the deposition is incompetent, and therefore impertinent. First, it is not shown by any competent evidence, that there was a suit pending in which it was taken. Secondly, it appears that the evidence was taken down and subscribed in the form

of a deposition ; in such case a certified or sworn copy of the original is the best and only evidence. The schedule is impertinent, and must be struck out.

The costs occasioned to the defendant by the parts of the bill and schedule adjudged to be impertinent must be paid by the complainants. The exceptions having been sustained in part, and overruled in part, neither party can have costs from the other upon the exceptions.

Order.

[Filed January 26, 1869.]

10

The defendant having filed exceptions to the complainants' bill of complaint in this cause, and the verification thereof, and having entered a rule, in pursuance of the practice of the court, to refer said exceptions to Abraham Browning, esq., one of the masters of the court, to be reported upon, and the counsel for the said parties having subsequently, in open court, agreed that the said exceptions should be heard and argued before the Chancellor, instead of proceeding thereon before said master under said rule of reference, and the Chancellor having thereupon appointed a day for 20 the hearing of the same before him, and the said exceptions having been then duly argued by the counsel for said parties, and the Chancellor having taken time to advise thereon : It is now, on this twenty-sixth day of January, in the year one thousand eight hundred and sixty-nine, on motion of James Wilson, of counsel with the defendant, ordered and adjudged by the Chancellor, that the first, second, third, and fifth exceptions so taken by the defendant to the complainants' said bill, are well taken, and that the same be and they are hereby allowed, and that the fourth of said exceptions is 30 not well taken, and is hereby overruled.

And it is further ordered and adjudged, that all that part of the said bill of complaint mentioned in the said first exception, and beginning on page six of said bill, in the first line, with the words, " And your orator further showeth unto "

your Honor," and ending on page nine of said bill, with the words, "I considered that clause accomplished," is impertinent, and that the same be expunged and stricken out of said bill; and further, that the following words, mentioned in the second of said exceptions, to wit, "the matters in said deed contained, so far as they are inconsistent with your orator's allegations herein, are untrue, and"—which words are on page nine of said bill, are impertinent, and that the same be expunged and stricken out of said bill; and further,

10 that all that part of said bill mentioned in the third of said exceptions, and beginning on page nine, and ending on page sixteen, wherein and whereby the said complainants set forth at large, and in *haec verba*, two several deeds, and the acknowledgment of one of them, purporting to be deeds from said Charles Stewart to the Camden and Amboy Railroad and Transportation Company, is impertinent, and that the same be expunged and stricken from said bill; and further, that all that part of said bill, and of the verification thereof, mentions in the fifth of said exceptions, and which is

20 marked *Schedule Y*, and annexed to the affidavit of Robert Gilchrist, is impertinent, and that the same be expunged and stricken from said bill, and the said verification thereof.

And it is further ordered and adjudged, that all those parts and portions of said bill, and the verification thereof, hereinbefore adjudged to be impertinent, and directed to be expunged and stricken from said bill, shall hereafter have no force or effect, and shall not form or be a part of said bill; and in order more plainly to distinguish the same, the clerk of this court is hereby directed to draw red lines under the

30 said parts and portions so ordered to be stricken out and expunged.

And it is further ordered, that the costs occasioned to the said defendant, by the parts of the bill and schedule thereto, so as aforesaid adjudged to be impertinent, be paid by the complainants to the defendant, or his solicitor, upon the same being taxed by the clerk; but neither party is to have costs against the other upon the exceptions. And the defendant is to have forty days from the date hereof to file his answer to the complainants' bill, and the interrogatories annexed thereto.

40

A. O. ZABRISKIE, C.

Notice of Appeal.

[Filed March 6, 1869.]

The complainants hereby appeal from so much of a certain order made in this court, in the above stated cause, bearing date on the 26th day of January, one thousand eight hundred and sixty-nine, as declares that said first, second, third and fifth exceptions taken by said defendant to the complainants' bill of complaint were well taken, and that the same should be and they were thereby allowed; and further, that all that part of said bill of complaint mentioned in the said first 10 exception, and beginning on page six of said bill, on the first line, with the words, "And your orator further showeth unto your Honor," and ending on page nine of said bill, with the words, "I considered that clause accomplished," was impertinent, and should be expunged and stricken out of said bill; and further, that the following words, mentioned in the second of said exceptions, to wit, "the matters in said deed contained, so far as they are inconsistent with your orator's allegations herein, are untrue, and," which words are on page nine of said bill, were impertinent, and should 20 be expunged and stricken out of said bill; and further, that all that part of said bill mentioned in the third of said exceptions, beginning on page nine, and ending on page sixteen, wherein and whereby the said complainants set forth at large, and in *haec verba*, two several deeds, and the acknowledgment of one of them, purporting to be deeds from said Charles Stewart to the Camden and Amboy Railroad and Transportation Company, were impertinent, and should be expunged and stricken from said bill; and further, that all that part of said bill, and of the verifica- 30 tion thereof, mentioned in the fifth of said exceptions, marked *Schedule Y*, and annexed to the affidavit of Robert Gilchrist, was impertinent, and should be expunged and stricken from said bill and the verification thereof; and further, that all those parts of said bill, and of the verification thereof, so adjudged to be impertinent, and directed to be expunged and stricken from said bill, should thereafter have no force or effect, and should not form or be a part of said bill;

and further, that the costs occasioned to the defendant by the parts of the bill, and the schedule thereto, so adjudged to be impertinent, should be paid by the complainants to the defendant, or his solicitor, upon the same being taxed by the clerk; to the court of appeals in the last resort in all causes of law.

Dated March 6, 1869.

JOHN P. STOCKTON,
Solicitor of complainants.

10 I conceive there is good cause for appeal in the above stated cause.

ROBT GILCHRIST,
Of counsel with complainants.

Petition of Appeal.

[Filed April 7, 1869.]

COURT OF APPEALS.

Between

20	The Camden and Amboy Railroad and Transportation Company,	}	<i>On bill.</i>
	<i>Appellants,</i>		
	<i>and</i>		
	Charles Stewart,	}	
	<i>Respondent.</i>		

To the Honorable the Court of Appeals, in the last resort in all causes of law.

The humble petition of the Camden and Amboy Railroad and Transportation Company, the appellants in the above stated cause, respectfully shows—that your petitioners find
30 the Court of Chancery, by his Honor Abraham O. Zabriskie, Chancellor of the state of New Jersey, in a certain cause

therein depending, wherein your petitioners are complainants, and Charles Stewart is defendant, bearing date on the twenty-sixth day of January, in the year of our Lord one thousand eight hundred and sixty-nine, in these respects, to wit :

That the Court of Chancery, in and by said order, did order and adjudge, that the first, second, third, and fifth exceptions taken by the defendant to the complainants' bill were well taken, and that the same be and they were thereby allowed; and did further order and adjudge, that all that 10 part of the said bill of complaint mentioned in the said first exception of the defendant to the complainants' said bill of complaint, and beginning on page six of said bill, on the first line, with the words, " And your orator further showeth unto your Honor," and ending on page nine of said bill, with the words, " I considered that clause accomplished," was impertinent, and that the same should be expunged and stricken out of said bill; and further, that the following words, mentioned in the second of said exceptions, to wit, " the matters in said deed contained, so far as they are in- 20 consistent with your orator's allegations herein, are untrue, and" on page nine of said bill, were impertinent, and that the same should be expunged and stricken out of said bill; and further, that all that part of said bill mentioned in the third of said exceptions, and beginning on page nine, and ending on page sixteen, wherein and whereby the complainants set forth at large, and in *haec verba*, two several deeds, and the acknowledgment of one of them, purporting to be deeds from said Charles Stewart to the Camden and Amboy Railroad and Transportation Company, was impertinent, 30 and that the same should be expunged and stricken from said bill; and further, that all that part of said bill, and of the verification thereof, mentioned in the fifth of said exceptions, and which is marked *Schedule Y*, and annexed to the affidavit of Robert Gilchrist, was impertinent, and that the same should be expunged and stricken from said bill, and the said verification thereof. And that the said Court of Chancery did further order and adjudge, that all those parts and portions of said bill and the verification thereof, so as aforesaid adjudged to be impertinent, and directed to be ex 40

punged and stricken from said bill, should thereafter have no force or effect, and should not form or be a part of said bill; and that the said Court of Chancery further ordered, that the costs occasioned to the defendant by the parts of the bill and schedule thereto, so as aforesaid adjudged to be impertinent, should be paid by the complainants to the defendant, or his solicitor, upon the same being taxed by the clerk.

And your petitioners humbly appeal from the said order
10 and decree, on the ground that the same, in the particulars aforesaid, is erroneous, and contrary to law and equity. Your petitioners therefore pray, that the parts of the said order and decree of the Court of Chancery, ordering and decreeing as aforesaid, may be 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 29th, 1869.

20

JOHN P. STOCKTON,
Solicitor for and of counsel with appellants.

Answer to Petition of Appeal.

[Filed May 3, 1869.]

This respondent, not confessing all or any of the matters to be true, as in and by the said petition are mentioned and set forth, for answer thereto says—that such order was made by the Court of Chancery, as in said petition is mentioned, but as to the date, substance, nature, and extent thereof, this respondent prays leave to refer thereto when the same shall be produced.

30 And this respondent is advised, that said order is agreeable to equity and justice, and the rules and practice of said court, and he therefore prays that the same may be affirmed as to the parts thereof so appealed from, and that said appeal may be dismissed.

Dated May 1st, 1869.

J. WILSON,
Solicitor of respondent.

Bill of Complaint, with the parts thereof excepted to stricken out.

To the Honorable Abraham O. Zabriskie, Chancellor of the State of New Jersey.

Humbly complaining, showeth unto your Honor, your orator, The Camden and Amboy Railroad and Transportation Company, a body corporate of this state, created by public act of the legislature of this state, passed February fourth, eighteen hundred and thirty, that by said act, among other things, the said company was by that name made capable of 10 purchasing and holding real estate, and of enjoying and exercising all the rights, powers, and privileges necessary to perfect an expeditious and complete line of communication from Philadelphia to New York, and were thereby invested with all the rights and powers necessary to survey, lay out, and construct a rail road or roads, with all necessary appendages, from the Delaware river to a point on Raritan bay, with as many sets of tracks as the said company might deem necessary, provided, that the said road, or its branches, should not exceed one hundred feet in width on the surface; and it 20 was thereby enacted, that it should be lawful for the said company to construct a lateral road, from the main line of said road, from the nearest practicable point of said main road, to Bordentown, and that the said lateral road might be of the same width and with as many tracks as the main road, as by said act will appear.

And your orator further shows, that your orator, having determined that the routes of such road should be over the land of Charles Stewart, situated (now in Bordentown borough, then) in the township of Mansfield, in the county of Burlington, 30 and having thereafter, by a survey and location of said routes, filed in the office of the Secretary of State of this state, on the twenty-fourth day of December, in the year eighteen hundred and thirty, located the said routes over the said land of said Charles Stewart, as in said survey is particularly set forth, the said company desiring more land than

the fifty feet on each side of the line of said survey, (which width was in said survey declared to be the width of said routes and locations on the surface of the road,) for the purpose of erecting thereon a depot, and having negotiated with said Stewart for land for said depot and the land required for said railroads as hereinafter stated, and having come to an agreement with him therefor, which was reduced to writing afterwards, your orator, prior to the signing of the agreement hereinafter mentioned, by the consent of the said

10 Charles Stewart, proceeded to construct the said railroad upon so much of the land of said Stewart as was within the one hundred feet in width, appropriated to said railroad by said location and survey, that is to say, within said fifty feet on each side of the line of said survey, so filed in said Secretary of State's office, and proceeded to appropriate other lands so verbally agreed upon as the site for the depot; that it was always the design of your orator to lay a double track along the whole line of your orator's railroad, as well over the premises of said Stewart as all the way to Amboy; that

20 neither, at the time of the location of said road, nor for a long period after, was the idea for a moment entertained that a single track of railroad would answer the purposes of the company, or enable it to transact its business as a transportation company; that in pursuance of the said design, and before the said written agreement hereinafter set forth was signed, the following works were done by your orator: the whole of the said railroad over the land of said Stewart, and all the way to Amboy, was graded for a double track, all the bridges and culverts along the whole of the said line

30 of the said road were constructed with a view to a double track; that a double track, for a distance of five miles from Hightstown to Gravel Hill, was actually laid; that all the estimates of the expense of constructing the said road had been based upon the idea of a double track, and all the embankments, bridges, and culverts, which had been constructed, or were in process of construction, were constructed or constructing so as to accommodate a double track; that in grading the said road on the said part of the said land of said Stewart, on which the same was located by said survey,

40 your orator, prior to the signing of the agreement herein-

after mentioned, had dug four trenches along and upon the said land of said Stewart, and, perhaps, a part in front on the shore, for the purpose of laying therein broken stone, and to put therein stone blocks on which to set the rails, that being the method of constructing the said railroad at first, instead of the modern style of putting ties on the earth directly; that each trench was dug to lay a foundation for a rail; that the bridge over Black's creek, the northern boundary of said Stewart's said land, was, prior to said signing of said agreement hereinafter set forth, twenty-five feet in width, and 10 upon this bridge a double track was then actually laid; that the said Charles Stewart, up to the time of signing the agreement hereinafter set forth, from the year eighteen hundred and thirty, was living within a few hundred feet of the said railroad, and every day or every week or very frequently saw all of the said operations of said company on his said land, and was not absent, as he has sometimes alleged, all the time from the year eighteen hundred and thirty, to the time of signing the agreement hereinafter set forth; that a large portion of the land over which the said railroad was 20 located lay on the shore of the Delaware river, in which the tide ebbed and flowed.

And your orator further shows, that having proceeded so far in the work of appropriating the said Stewart's land for said railroad and said depot, with his consent, and upon the verbal agreement that they were to pay therefor two thousand two hundred and fifty dollars, the said Stewart, on or about the ——— day of September, in the year eighteen hundred and thirty-two, presented to your orator's agent, Edwin A. Stevens, a bill, in the words following: 30

"Dr. The Camden and Amboy Railroad and Transportation Company to Charles Stewart,
 For nine acres of land as per deed, \$2250 00
 Interest for one year at six per cent., 135 00
 \$2385 00"

That your orator's agent, Edwin A. Stevens, not being in funds at the moment, requested the said Stewart to take his

check for the same, dated ahead, to which said Stewart assented, and thereupon added to the said bill—

“Interest for three months, till 1st Dec’r, 1832, \$33 75

—————
\$2418 75”

That thereupon, Jeremiah Sloan, the counsel of your orator, who was then present, but has since died, wrote under the said bill a receipt and agreement, in the words and figures following, to wit:

10 “1832, Sept. 15, received of E. A. Stevens, his check on Trenton Bank, dated December 1st, 1832, for the above sum, for which I agree to execute a deed of conveyance for the above tract, in conjunction with Mrs. Stewart; and also, a grant of the right to pass in front of my premises with said railroad, the said company furnishing me with suitable passage ways to the river, for which said check, when paid, will be in full.”

And thereupon, the said Stewart signed the said receipt and agreement, and said Stevens delivered to him said check, which was paid at maturity.

20 And your orator further shows, that the said Stewart has never conveyed to your orator the said nine acres of land, pursuant to said agreement, nor made any grant of the said right to pass in front of his premises with said railroad; but your orator admits, that the said Charles Stewart has, within the last fifteen years, frequently declared he has made such conveyance and grant, and stated, in his bill brought against your orator and others, in the Circuit Court of the United States, for the district of New Jersey, and filed some time in the year eighteen hundred and fifty-three, as follows:

30 “And your orator further showeth unto your Honors, that after handing the bill and receipt to Mr. Edwin A. Stevens, which he did after he had signed the said receipt, your orator also handed him the deed, executed by Mrs. Stewart and your orator, conveying to the Camden and Amboy Railroad and Transportation Company the nine acres of land above described, with the right to pass in front of your orator’s premises, on the river Delaware, with a track of railroad.”

But your orator charges, that though the said receipt refers to the account prefixed thereto, and said account refers to a

deed for the nine acres, it refers to no deed containing the grant agreed to be made of a right to pass in front of said Stewart's premises with said railroad, and no such deed, either for the nine acres, or containing such grant, was ever delivered to your orator, or any of its agents or officers, and accepted. And your orator charges, that if any deed were ever tendered at the time of said receipt and agreement, the same was rejected, and if delivered, the same is not in accordance with the said agreement, and said Stevens told said Stewart that it would never do; that there is no dispute 10 between your orator and said Stewart as to what the location and description of said nine acres of land so sold to your orator is, and the same is properly described as to courses and distances in the undelivered deed last set out. And your orator further shows, that it is well entitled to have the said nine acres of land conveyed to it, and said grant of said right to pass in front of his premises with said railroad made to your orator, but the said Stewart refuses to make such deed and grant, but has always insisted upon uniting with said deed for nine acres said limited grant in said two deeds 20 last mentioned.

And as further evidence that said deed was never delivered, your orator charges, that although the said Stewart has since, some time in the year eighteen hundred and fifty-three, claimed damages against your orator for exercising a right to maintain its railroad, with more than one track, on his said land, and had brought two suits against your orator in said Circuit Court of the United States for the district of New Jersey, for damages, he has never claimed anything under said clause, said to be contained in the deed pre- 30 tended to be delivered, by which it is provided, that your orator should guarantee him against depredation and damages to his property, or even set it out in his pleadings.

And as further evidence of the fact that the said deed pretended to have been delivered to your orator, was never delivered and accepted by your orator, your orator charges, that although said Stewart, on the thirteenth day of March, in the year eighteen hundred and fifty three, wrote a letter alluding to said supposed deed to your orator, in which letter he stated that he had heard it was lost or mislaid, and 40

also said that "from the nature of the receipt taken for the payment made me, I may be expected to furnish another deed similarly executed;" and though in a letter to your orator, dated the twelfth day of September, in the year eighteen hundred and fifty-three, the said Stewart stated he begged leave "to hand to the president of the company, by the hand of Mr. H. S. Crabbe, the duplicate deed containing all the grants made to the company by the original deed for the nine acres of land conveyed to them for the purposes of

10 a depot, and also, the right of way at the foot of the bank, along my whole remaining river front, from White Hill to Black's creek, subject to such limits and restrictions as are contained in the said original deed;" yet the said Stewart, having in his possession the rough draft, from which he declares the said supposed original deed to the company was made, and which contains the said clause by which the said company agreed to guarantee him against depredations and damages to his property, yet in the said deed to said company, so sent by the hands of said Crabbe, no such clause

20 appears.

And your orator further shows, that it has no paper title whatever to the said nine acres of land, and that said Stewart has, in writing, by his said letter of the thirteenth day of March, in the year eighteen hundred and fifty-three, acknowledged his obligation to deliver another deed, even if he had previously delivered the one he alleges he did. And your orator is advised, that it is entitled to such deed, if none has been delivered and accepted by the company, which they allege is the fact; and is also entitled to such

30 deed, if said supposed deed had been delivered, both under the language of the original agreement, and of the letter of the thirteenth day of March, in the year eighteen hundred and fifty-three, and is entitled to such deed without any restriction to a single track of railroad. And though your orator is informed that this court has already declared, in another suit between your orator and said Stewart, that it may not be necessary for your orator to have any deed for the said right of way, and your orator may defend itself against an action of ejectment under the survey and location

40 before mentioned, if ejectment will lie for such possession as

your orator exercises under the same; and this court has also declared in said suit, that if such possession is not a subject of such action, that an execution in ejectment would not, and ought not, to disturb said easement agreed to be conveyed to your orator; yet your orator, for the purpose of fully protecting its rights in this behalf, desires to, and does present to this court, at this time, its apprehension that the said Stewart will not regard the law of the land, but, in case he succeeds in recovering judgment in an action of ejectment, which he has brought in the Supreme Court of this state, against your orator, by summons tested the first day of December, in the year eighteen hundred and sixty-three, in which suit Stewart has filed his declaration, demanding the lands which said railroad was located upon as aforesaid, and in which said easement mentioned in said agreement was agreed to be granted, and on and in which your orator's tracks, drains, and water pipes are laid, and other lands, will proceed to turn your orator, and its tracks and its drains and water pipes, off of the said land in which the said easement was agreed to be granted, which are the same as those in which your orator's tracks are laid, and on which it has drains and water pipes laid. And your orator insists, that such proceeding of said Stewart would be inequitable, and he ought, either now, or when he actually threatens to or does so proceed, to be restrained by the injunction of this honorable court from so doing.

To the end, therefore that the said Charles Stewart may, without oath, true and perfect answer make to this your orator's bill, except as to the interrogatories hereto annexed, (the answers to which only are required to be under oath,) and that he may be decreed to convey to your orator the said nine acres of land as described in said deed of said Stewart and wife, which was acknowledged by said Charles Stewart before James Ewing, on the seventh day of September, in the year eighteen hundred and fifty-three, and in this bill set forth at large, without uniting in such deed any restriction of the grant of the easement by said agreement agreed to be granted; and be decreed to grant to your orator the right to pass in front of his premises (within the lines of said location of the route of said railroad,) with said rail-

road, without any such restriction of that right as is contained in said deed last mentioned; and that such decree and grant may be expressed in such terms as will effectually carry out the intention of the executory agreement, and authorize the use of the land within the lines of said location, that is to say, the width of one hundred feet, or within the lines of occupation, for as many tracks of railroad as the complainant is, by its act of incorporation, or any other statute, authorized to lay down and use, and for drains and

10 water pipes, and all other uses proper for the enjoyment of the railroad of the complainants; and that the said Stewart may be restrained by the injunction of this honorable court from dispossessing your orator under any writ of possession to be issued in said action of ejectment, of the actual use for any number of tracks of railroad, or for drains and water pipes, or analagous uses of the land on which the said railroad was located, or which is occupied thereby for the width of one hundred feet; and that your orator may have such further and other relief as the nature of the case may require:

20 May it please your Honor, to grant unto your orator, now or at and after any judgment which may be obtained in said action of ejectment against your orator, the state's most gracious writ of injunction, to be issued out of and under the seal of this honorable court, requiring and commanding the said Charles Stewart, his counsel, attorneys, and agents, and the sheriff or other person to whom any writ of possession in said action of ejectment may be directed, to refrain from dispossessing your orator of the actual use for any number of

30 tracks of railroad or for drains or water pipes, or any analagous uses of the land on which the said railroad is or was located, or which is occupied thereby, for the width of one hundred feet; and also, the state's most gracious writ of subpoena, directed to the said Charles Stewart, commanding him that, on a certain day and under a certain penalty, he be and appear before your Honor in this honorable court, then and there to answer the premises, and abide such order and decree as the court may make in the premises. And your orator, as in duty bound, will ever pray, &c.

JOHN P. STOCKTON,

Solicitor for and of counsel with complainants.

Interrogatories to be answered by the defendant, under oath, referred to in the foregoing bill of complaint.

First. Did you not sign such a receipt as is set forth in the said bill, dated Sept. 15, 1832?

Second. Did you ever deliver or tender to the complainant, or any one on its behalf, a deed, in accordance with the terms of said receipt, and the agreement therein contained, containing a grant of the right to pass in front of your premises with said railroad, as therein mentioned?

Third. If you ever tendered to the complainant any deed, 10 did it not limit the complainant to a right to a single track?

New Jersey, Hudson county, ss.—Robert Gilchrist, being duly sworn according to law, on his oath deposes and saith—that he acted as counsel for the above named complainant, in a suit brought against the said complainant by Charles Stewart, in the Circuit Court of the United States, for the district of New Jersey, being one of the suits referred to in the bill in this cause as having been brought in that court; that Edwin A. Stevens was sworn as a witness in said cause, in said Circuit Court of the United States, and testified, in 20 deponent's presence and hearing; as is set forth in the schedule to this affidavit annexed, marked Y; that the following is a copy of the bill and receipts marked in said cause A 1, to wit:

“Dr. The Camden and Amboy Railroad and Transportation Company

To Charles Stewart,

For nine acres of land as per deed,	\$2250 00
Interest for one year, at six per cent.,	135 00

	\$2385 00 30
Interest for three months, till December 1st, 1832,	33 75

\$2418 75

“1832, Sept. 15, rec'd of E. A. Stevens, his check on Trenton Bank, dated December 1st, 1832, for the above sum, for

which I agree to execute a deed of conveyance for the above tract, in conjunction with Mrs. Stewart; and also, a grant of the right to pass in front of my premises with said railroad, the said company furnishing me with suitable passage way to the river, for which, said check when paid, will be in full.

CHARLES STEWART."

And deponent further says, that he has taken the copy of the said account from the printed copy of the bill of complaint of Charles Stewart, in said Circuit Court of the United States, and the receipt from the printed copy of the answer in said case, and as set forth above, they accord with deponent's recollection of the contents thereof; that Edwin A. Stevens aforesaid, is now absent out of the state of New Jersey, and has been for several months past, and some where in France; and further, deponent saith, that an ejectment suit has been brought, as is set forth in the annexed bill.

ROB'T GILCHRIST.

Sworn and subscribed before me, at Jersey City, this 20 eighteenth day of February, A. D. 1868.

L. ZABRISKIE, M. C.

State of New Jersey, ss.—Be it known, that before me, _____, a master in chancery, in and for said state of New Jersey, personally appeared Samuel C. Forker, of Bordentown, in said state who, being duly sworn according to law, on his oath saith—that the following is a true copy of a certain receipt, given by Charles Stewart to the Camden and Amboy Railroad and Transportation Company, the original of which has been exhibited to him, and is now before him, and is also marked No. 1, *Exhibit A 2* on the part of defendants, in a certain cause depending in the Circuit Court of the United States, in and for the district of New Jersey, in equity, wherein Charles Stewart was complainant, and the Camden and Amboy Railroad and Transportation Company and others were defendants; that said receipt is in the words and figures following, to wit:

"Dr. The Camden and Amboy Railroad and Transportation Company to Charles Stewart,	
For nine acres of land as per deed,	\$2250 00
Interest for one year at six per cent.,	135 00
	<hr/>
	\$2385 00
Interest for three months, till 1st Dec'r, 1832,	\$33 75
	<hr/>
	\$2418 75

1832, Sept. 15, received of E. A. Stevens, his check on Trenton Bank, dated December 1st, 1832, for the above sum, for which I agree to execute a deed of conveyance for the 10 above tract, in conjunction with Mrs. Stewart; and also, a grant of the right to pass in front of my premises with said railroad, the said company furnishing me with suitable passage ways to the river, for which, said check when paid, will be in full.

(Signed,) CHS. STEWART."

That this deponent is acquainted with the handwriting of the said Charles Stewart, and that the signature to the original receipt, of which the foregoing is a true copy, is the signature of the said Charles Stewart, and in his own proper 20 handwriting.

SAMUEL C. FORKER.

Sworn and subscribed, this eighteenth day of December, A. D. 1867, before me.

S. M. DICKINSON, M. C.

State of New Jersey, *ss.*—Be it known, that before me, _____, a master in chancery, in and for said state of New Jersey, personally appeared Richard Shippen, of Burlington, in the state of New Jersey, who being duly sworn according to law, on his oath saith—that he has been in the 30 service of the Camden and Amboy Railroad and Transportation Company since December, eighteen hundred and thirty; that it was the invariable rule of said company to take deeds for the land they bought and paid for; that all the deeds belonging to said company are in his keeping, and that he has been the recipient and custodian of them from the

organization of the said company to the present moment; that he has never received or had in his keeping a deed purporting to have been executed by Charles Stewart and wife, and dated May tenth, eighteen hundred and thirty-two, conveying to the said railroad company a parcel or lot of ground situated, lying, and being in the county of Burlington, and township of Mansfield, state of New Jersey, containing nine acres, to the low water mark on the river Delaware; and that no such deed ever was delivered by the said Charles
 10 Stewart and wife to the said railroad company. And this deponent further saith, that a certain receipt, given by Charles Stewart to the said railroad company, and dated September 15th, 1832, is the only writing in the possession of the said railroad company, giving the said company a title to the nine acres of land hereinbefore referred to and described, as this deponent verily believes, and that said receipt is in the words and figures following, to wit:

“Dr. The Camden and Amboy Railroad and Transportation Company to Charles Stewart,

20	For nine acres of land as per deed,	\$2250 00
	Interest for one year, at six per cent.,	135 00
		\$2385 00
	Interest three months, till 1st Dec'r, 1832,	33 75
		\$2418 75

1832, Sept. 15, received of E. A. Stevens, his check on Trenton Bank, dated December 1st, 1832, for the above sum, for which I agree to execute a deed of conveyance for the above tract, in conjunction with Mrs. Stewart; and also, a
 30 grant of the right to pass in front of my premises with said railroad, the said company furnishing me with suitable passage ways to the river, for which, said check when paid, will be in full.

(Signed,) CHS. STEWART.”

RICH'D SHIPPEN.

Sworn and subscribed, this eighteenth day of December,
 A. D. 1867, before me.

S. M. DICKINSON, M. C.

organization of the said company to the present moment, that he has never received or had in his keeping a deed purporting to have been executed by Charles Stewart and wife and dated May tenth, eighteen hundred and thirty-two, conveying to the said railroad company a parcel or lot of ground situated lying and being in the county of Burlington and township of Mansfield, state of New Jersey, containing an acre or more to the low water mark on the river Delaware; and that no such deed ever was delivered by the said Charles Stewart and wife to the said railroad company. And the deponent further avers, that a certain receipt given by Charles Stewart to the said railroad company, and dated September tenth, 1832, is the only writing in the possession of the said railroad company, giving the said company a title to the acre or more hereinbefore referred to and described, as the deponent verily believes, and that said receipt is in the words and figures following, to wit:

"The Camden and Amboy Railroad and Transportation Company to Charles Stewart,
 For nine acres of land as per deed,
 Interest for one year, at six per cent.

Interest three months till 1st Decr, 1832
 \$1085 00
 32 12

\$1117 12
 1832 Sept. 15, received of E. A. Stevens, the check on Trenton Bank, dated December 1st, 1832, for the above sum, for which I agree to execute a deed of conveyance for the above tract, in conjunction with Mrs. Stewart; and also a grant of the right to pass in front of my premises with and to the said railroad, the said company (I further do with suitable proviso) ways to the river, for which said check when paid, will be in full.

(Signed) E. A. Stevens
 E. M. Dickinson W. A.
 From and attested, the eighth day of December
 1832